



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: December 18, 2008
To: Interested Person
From: Crystal Hitchings, Land Use Services
503-823-7583 / Crystal.Hitchings@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-138443 AD

GENERAL INFORMATION

Applicant: Ed Grube
Kobin & Kobin
610 SW Alder Street, Suite 1010
Portland, OR 97205

Property Owner: Thomas Cramer
4636 NE Cleveland Ave
Portland, OR 97211-2712

Site Address: 4636 NE CLEVELAND AVE

Legal Description: LOT 12 BLOCK 9, MAEGLY HIGHLAND
Tax Account No.: R526704010
State ID No.: 1N1E22AD 10600
Quarter Section: 2530

Neighborhood: Humboldt, contact Paul Anthony at 503-367-9679.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

Zoning: R2.5a, Single-dwelling Residential 2,500 with an Alternative Design Density Overlay Zone

Case Type: AD, Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing that an existing, over-height wooden fence be allowed to remain at its current height and location within the front setback. The fence was constructed several

years ago of 1x4 inch cedar planks and 6x6 inch posts. The western façade of the fence, located just over the front property line and in the public right-of-way along NE Cleveland Street, has been reduced from the original proposal of 6 feet to 3.5 feet in height, measured from the top of the retaining wall, to meet PDOT requirements. The front façade of the existing fence contains 6, 6x6 posts that are 6 feet, 9 inches tall and intended to support the growth of roses and shrubs planted near the fence. These will also be reduced to 3.5 feet, per PDOT requirements. The north and south portions of the fence which are located within the 10-foot front building setback are 4 feet, 4 inches (or 4.3 feet) in height.

The R2.5 zone requires a maximum fence height of 3.5 feet within the 10-foot front building setback. Therefore, an Adjustment is required to allow the existing 4.3-foot fence to remain. The portion of the fence located within the public right-of-way is regulated by PDOT and is not subject to the Adjustment process.

***Note:** The comment period for this case ended on July 31, 2008. However, on July 11th the case was put on hold for a period of 152 days in order to enter discussions with and resolve potential conflicts with the Portland Department of Transportation (PDOT) standards. These issues have been resolved and the proposal has been revised from the original proposal to reflect the conditions of the resolution.*

ANALYSIS

Site and Vicinity: The 5,000 square foot lot is located on the east side of NE Cleveland Street, between NE Wygant and NE Going Streets. The site is developed with a 1,100 square foot single-dwelling home originally built in 1908. The home is located along the north side property line, leaving open front, rear, and south side yards landscaped with open lawn and mature trees and shrubs. Several mature deciduous street trees obscure the site from many vantage points on the street. The site slopes sharply up from the street and the grade of the site is a couple of feet above the grade of the road. The front yard of this site and the adjacent site to the north are retained by low stone walls. A gate to a parking space is located just south of the center of the front façade of the fence, and swings open out into the ROW and sidewalk. NE Cleveland Street is a local service access street, and is developed with a 4-foot planting strip, a 6-foot sidewalk, and retains an additional 2-foot right-of-way behind the sidewalk.

Zoning: The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R2.5 zone is a high density single-dwelling zone. The R2.5 zone allows attached and detached single-dwelling structures and duplexes.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Request for Response" was mailed **July 10, 2008**. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.6):

- Site Development Section of BDS
- Life Safety Bureau
- Fire Bureau
- Bureau of Environmental Services
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus have submitted additional comments:

- The **Bureau of Transportation Engineering** (Exhibit E.7): In their original response, dated August 5, 2008, PDOT stated that they could not justify or support a request to allow the fence encroachment into the public right-of-way, but stated that the fence height may be acceptable

provided that certain conditions are met. The applicant entered into discussions with PDOT and reached an agreement where the portion of the fence located within the ROW would be reduced to 3.5 feet, and the swinging gate would be allowed to remain as is. An email from PDOT dated December 8, 2008 stated that PDOT would support an encroachment permit and that an Adjustment should be processed prior to issuance of the permit. See the discussion under Approval Criteria below for more details on PDOT findings.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on **July 10, 2008**. A total of eight written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. Six letters were submitted by the applicant as part of the original application, and were in support of the proposal. One response received during the comment period was written in support of the proposal. One response received during the comment period stated that “the property should be brought up to city code.”

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant is requesting an Adjustment to **Section 33.110.255, Fences**. The purpose statement for this regulation is as follows:

The fence standards promote the positive benefits of fences without negatively impacting the community or endangering the public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

The portion of fence located within the public right-of-way is not subject to this Adjustment review. The front (west) façade of the fence and first foot of each of the sides of the fence, are located within the public right-of-way, and will be reduced from the current height of 6 feet to 3.5 feet, as required by PDOT. This is the portion of the fence which would have most affected public and vehicle safety or would most likely have created a street wall. Only the side portions of the fence, beginning at the property line and running back for the first 10 feet, which are proposed to be 4.3 feet in height, are subject to this Adjustment review.

The northwest and southwest corners of the subject site are planted densely with bamboo that is several feet taller than the fence. The bamboo on the northwest corner is outside of the fence, and

therefore the portion of the fence located within the front setback on the northwest side is completely obscured by vegetation. The bamboo on the southwest corner of the fence is planted inside the fence within the 10-foot front setback, and outside of the fence beyond the setback. Therefore, the area of fence within the setback is visible from the street, but views over the fence and into the yard are completely obscured by vegetation. In both cases, the fence does not create an obstruction that would hinder safety or inhibit community surveillance.

The fence is constructed of raw, picket-style cedar slats, and contributes an attractive landscape structure to the street environment. The fence is tall enough to provide privacy to the residents of the site, and the reduction of the front façade allows for adequate community surveillance and interaction.

The Portland Department of Transportation did not support the original proposal which included retaining the existing 6-foot high fence within the ROW in conjunction with the on-site parking space. After considerable discussions between the applicant and PDOT staff, it was determined that PDOT will support the proposed Adjustment and that the fence and swinging gate will be allowed to remain in the ROW if the portion of the fence and gate located within the ROW is reduced to a height of 3.5 feet and an encroachment permit for the fence and gate is obtained from PDOT.

For these reasons, safety for vehicles and pedestrians will not be negatively affected by the north and south sides of the fence, community surveillance and interaction is maintained, no street wall is created, and an attractive landscape feature is added to the streetscape. This criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The 4.3 foot north and south side sections of the fence do not create a street wall or obstruct community interaction. PDOT has reviewed the proposal and determined that the fence will not obstruct the safety of vehicles or pedestrians. Fences along property lines are quite common in this neighborhood, and many are taller than the fence on the subject site. The subject fence is not out of character with development in the neighborhood. The fence is constructed of attractive material and is of an attractive design, and therefore does not detract from but adds to the appearance of the neighborhood. This criterion is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. This criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: The property owner has worked extensively with PDOT staff to address potential impacts to safety of vehicles and pedestrians, and has reduced the height of the fence that is within the public right-of-way. There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposal to allow the first 10 feet of the side north and south facades of the fence to remain at 4 feet, 4 inches in height does not impact safety, livability, or appearance, and promotes the positive rather than the negative aspects of fences. All approval criteria are met and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow the 4.3 foot high north and south facades of the existing fence to remain within the front setback, in their current condition per the approved site plans, Exhibits C-1 through C-3, signed and dated December 16, 2008.

NOTE: An encroachment permit must be obtained from PDOT for the portion of the fence located in the ROW, which includes the entire west façade and approximately the first 1 foot of the north and south facades. PDOT has required that this portion of the fence must be reduced to a height of 3.5 feet in order to be approved to remain in the public ROW.

Decision rendered by:  on December 16, 2008.
By authority of the Director of the Bureau of Development Services

Decision mailed: December 18, 2008

Staff Planner: Crystal Hitchings

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on June 18, 2008, and was determined to be complete on July 2, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on June 18, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that

the 120-day review period be extended for a total of 152 days, from July 11, 2008 through December 9, 2008, as stated with Exhibits G.4.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 2, 2009**, at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part, may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment

Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **January 5, 2009 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

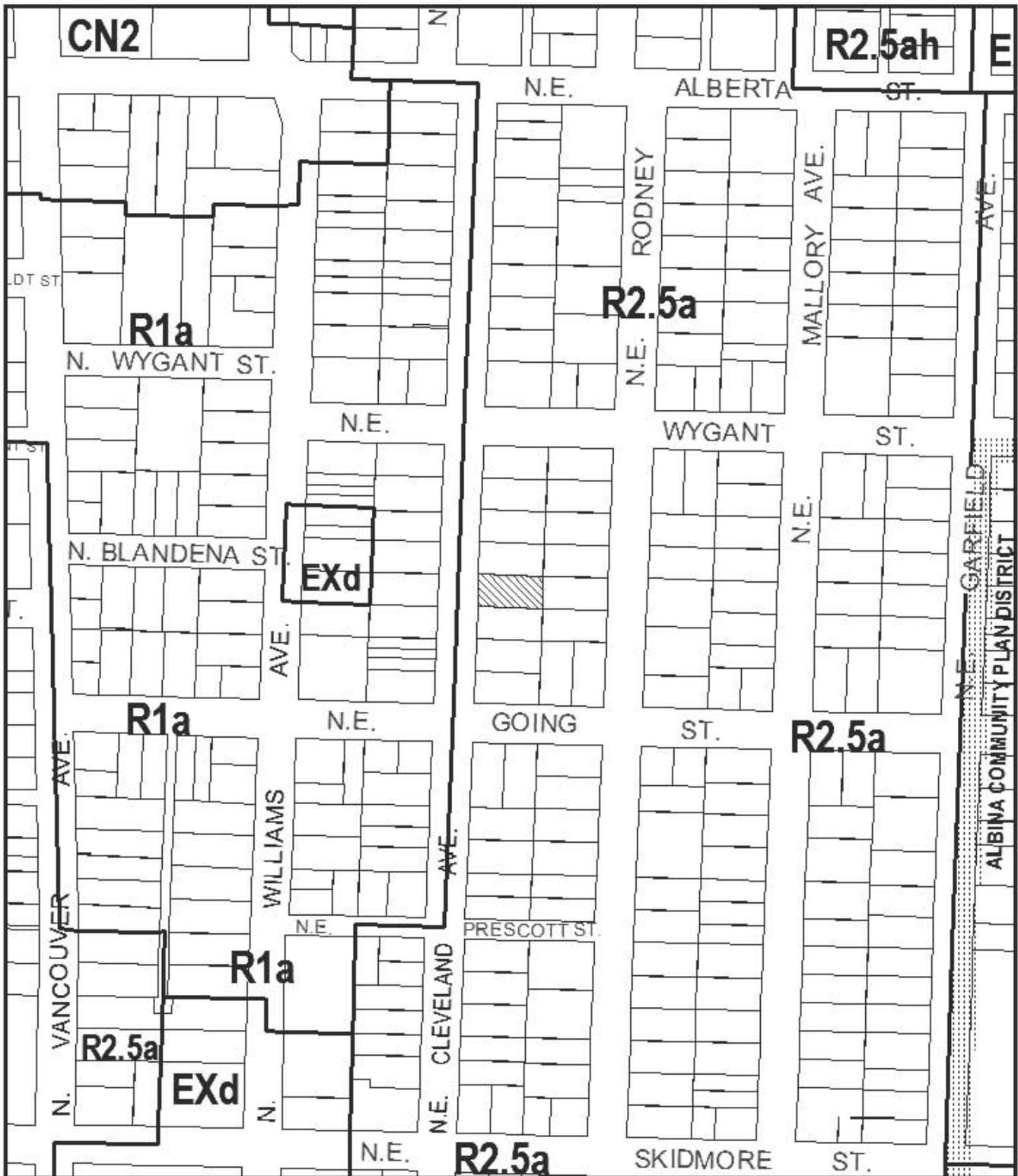
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. West Elevation, revised (attached)
 - 3. North Elevation, revised (attached)
 - 4. Site & Vicinity photos, submitted by applicant
 - 5. Staff photos, north and south facades of fence
 - 6. West and North elevations, existing fence
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Life Safety Bureau
 - 3. Fire Bureau
 - 4. Bureau of Environmental Services
 - 5. Water Bureau
 - 6. Bureau of Parks, Forestry Division
 - 7. Bureau of Transportation Engineering and Development Review
 - 8. Bureau of Transportation e-mail stating support of the proposed Adjustment
- F. Correspondence:
 - 1. Mitzi Waltz; July 22, 2008; support of proposal
 - 2. Elbert Hill; July 31, 2008; "property should be brought up to city code"
(received after comment period end)
 - 3. Package of 6 letters of support from neighbors, submitted by applicant with original application
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter
 - 4. Requests to place application on hold, and remove application from hold
 - 5. Notice of Enforcement Penalty; December 4, 2008
 - 6. Letter from Ed Grube in response to notice of enforcement penalty; December 10, 2008

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



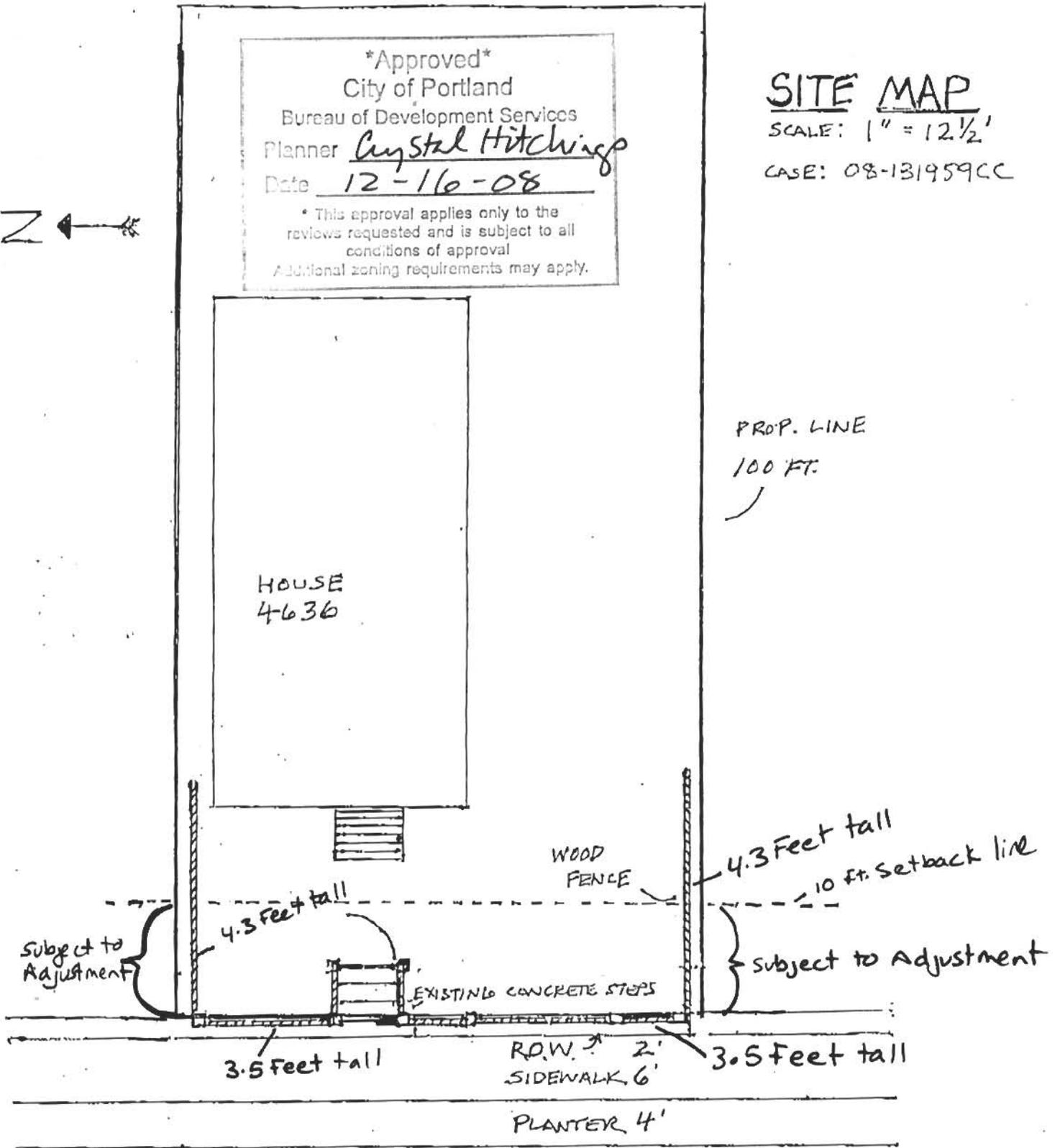
File No.	<u>LU 08-138443 AD</u>
1/4 Section	<u>2530</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E22AD 10600</u>
Exhibit	<u>B (Jun 23, 2008)</u>

Approved
City of Portland
Bureau of Development Services
Planner Crystal Hitchings
Date 12-16-08
* This approval applies only to the reviews requested and is subject to all conditions of approval
Additional zoning requirements may apply.

SITE MAP

SCALE: 1" = 12 1/2'

CASE: 08-131959CC



N.E. CLEVELAND AVENUE

EXHIBIT C.1
PAGE 1 of 2



WEST ELEVATION

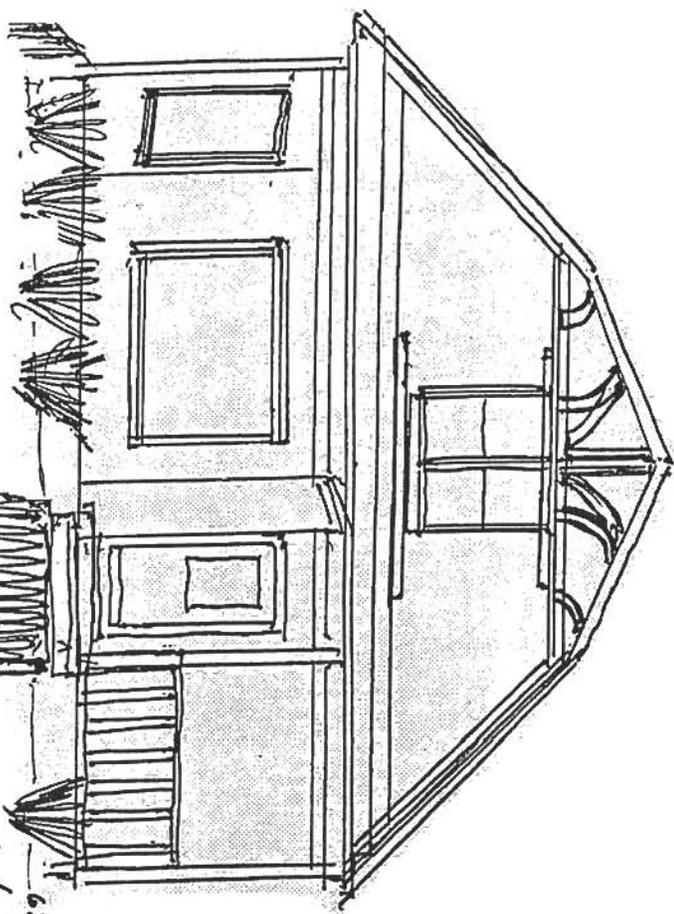
SCALE: 1" = 5' 0"

CASE NO: 08-131959CC

PROPERTY: 4636 N.E. CLEVELAND

TAX ACCT # RS226704010

ADJUSTMENT REVIEW; FENCE



N.E. CLEVELAND AVE.

Approved
City of Portland
Bureau of Development Services
Planner *Rayshl H. Hines*
Date 12-16-08
* This approval applies only to the
reviews requested and is subject to all
conditions of approval.
Additional zoning requirements may apply.

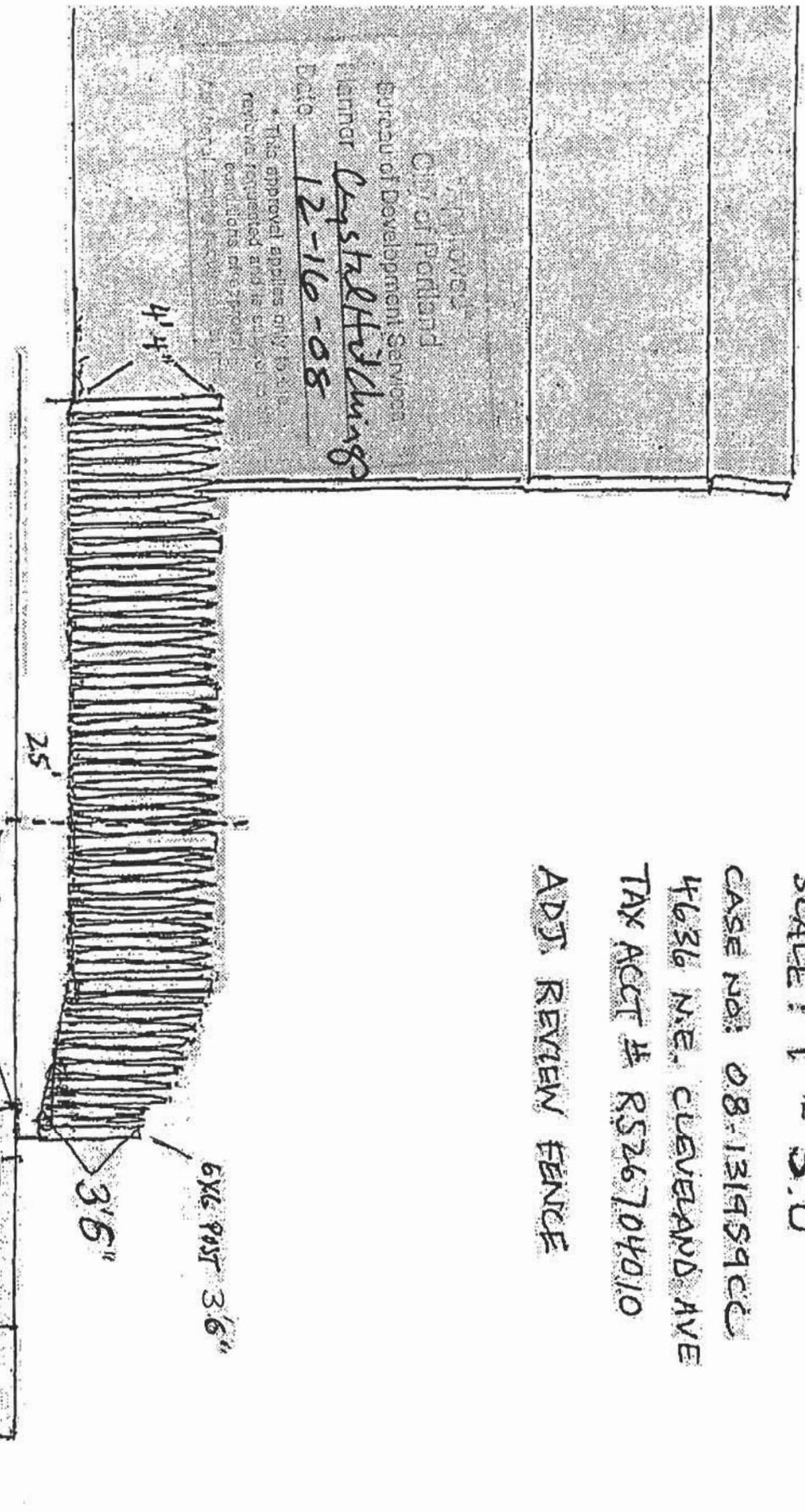
SUPPLEMENT TO
APPLICATION

EXHIBIT A
PAGE 1 OF 1

REVISED
NORTH ELEVATION
 SCALE: 1" = 5'-0"

CASE NO: 08-131959CC
 4636 N.E. CLEVELAND AVE
 TAX ACCT # RS26704010

ADJ. REVIEW FENCE



APPROVED
 City of Portland
 Bureau of Development Services
 Planner Cynthia Williams
 Date 12-16-08
 *This approval applies only to the
 specific conditions and site
 conditions in the
 application.

N.E. CLEVELAND AVE

EXHIBIT
 PAGE 1 of 1