



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

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**Date:** September 28, 2009  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto:frugolis@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 09-148527 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Andrew B Cox  
8639 N Fowler Ct  
Portland, OR 97217-7282

**Site Address:** 8639 N FOWLER CT

**Legal Description:** BLOCK 1 LOT 14, DAHLKE ADD  
**Tax Account No.:** R194100400  
**State ID No.:** 1N1E08AD 13100  
**Quarter Section:** 2126

**Neighborhood:** Kenton, contact Steve Rupert at 503-317-6573.  
**Business District:** North Portland Business Assoc, contact Jim Schaller at 503-517-9915.  
**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

**Plan District:** None  
**Zoning:** R7a, Single-Dwelling Residential 7,000 zone with the a, 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 requesting an Adjustment to increase the maximum allowed fence height in the required front setback from 3.5 to 6 feet. The applicant's lots has street frontage on three sides of the lot. The Zoning Code considers this a through lot with two front lot lines. The shortest lot lines with frontage on N. Washburne Ave. and N. Fowler Ct. are defined as front lot lines. Therefore, the fence height is limited to 3.5 feet tall within the first 15 feet of each front setback area. In response to a complaint, the City has cited the newly-built fence as a Zoning Code violation. The applicant is requesting this Adjustment in order to legalize the 6-foot tall fence and keep it in its current location.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are Adjustment criteria, Section 33.805.040.A-F.

**ANALYSIS**

**Site and Vicinity:** The subject site is located on the northwest corner of N. Washburne Avenue and N. Fowler Court. The front of the house (front door and garage) faces N. Fowler Court which is a wide cul-de-sac. Nine lots, all with split-level, 1960's ranch-style homes, face the cul-de-sac. All of the homes are set back from N. Fowler Court. Except for the subject site, the yards fronting the cul-de-sac are visually open, with a few low fences and limited trees and shrubs. N. Washburne Avenue is also developed with single-dwelling residences with open yards.

**Zoning:** This site is within the R7, Single-Dwelling Residential 7,000 zone. This zone allows residential development at a density of one dwelling per 7,000 square feet.

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

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **August 13, 2009**. The following Bureaus have responded with no issues or concerns (Exhibit E.1):

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

The **Portland Transportation/Development Review** responded that it has reviewed the application for potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. A site visit revealed that adequate sight distance is maintained at the intersection despite the 6-foot high fence. Therefore, the Bureau of Transportation has no concerns with the height of the fence. (Exhibit E.2)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 13, 2009. A total of six written responses have been received from either the Neighborhood Association and/or notified property owners in response to the proposal. The Portsmouth Neighborhood Association and three other individuals submitted comments opposing the request. Two letters of support were sent. The letters conveyed the following points:

**Support**

- It would be a waste to tear it down or to modify it. It is well constructed and looks good.
- Nice touch to neighborhood. Neighbors should be proud of the improvement.

**Oppose**

- Fences should comply with Zoning Code requirements.
- It looks like a fort.
- The fence has taken away the clear view to the left when exiting N Fowler cul-de-sac. There are concerns about speeding and safety for children playing in the area.
- The fence obstructs broader view to keep eye on children.
- Prowlers can hide behind the fence.
- It is ugly, humongous, and not aesthetically in-keeping with the neighborhood.
- The fence will cause a fatality or fender bender.
- The fence detracts from the prevailing open, friendly appearance of the community. Existing fences (on other lots) are generally unobtrusive or ornamental.

- The fence is hostile appearing and needs to be opened up with gates or other treatment.

## ZONING CODE 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 purpose statement regarding fences is as follows:

### **33.110.255 Fences**

*Purpose: 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 applicant is requesting an Adjustment to allow a fence, taller than 3.5 feet, within the required front setback. On this site, the front setback is the first 15 feet back from the property line that abuts both NE Washburne Avenue and the west turnaround of the N. Fowler Court cul-del-sac. Per the Portland Zoning Code, this lot is a through lot with street frontage on two streets and where the frontages do not intersect (Zoning Code Chapter 33.910, Definitions). Through lots have two fronts with two front setback areas required. The property was developed with the front of the house facing the side property line along the street portion of N Fowler Court. Therefore the area abutting N Washburne and the area abutting the cul-de-sac actually function as side yards.

The applicant is requesting approval of the recently constructed fence which is built up to both front lot lines and exceeds the allowed 3.5 feet height. The fence is set back from the intersection of NE Washburne and NE Fowler Court by approximately 20 feet. The home is set back from N. Fowler Court by approximately 18 feet. Most of the portion of the lot along N. Fowler Court is unfenced and open to the street. The functioning front yard, oriented toward this street, is currently fully open to the street, except for a fenced portion at the northwest and southwest corners.

This request responds to the purpose of the fence regulations as follows:

**Provide privacy and protect children and pets from busy streets.** The fence provides privacy for the applicant and a safe enclosure for pets and children, keeping them away from the adjacent streets. Outdoor activities can be enjoyed by the applicant in a more private setting.

**Safety and Surveillance:** Concerned neighbors have stated that the portion of the fence that is adjacent to NE Washburne Avenue obstructs sight distance and thus creates vehicle, bicycle and pedestrian safety issues at the intersection of NE Fowler Ct and Washburne. Further, neighbors state that the fence obstructs clear views of possible prowlers and unwanted visitors entering the dead-end street. The Bureau of Transportation (PBOT) staff completed a site visit and determined that the fence did not impede sight distance at the intersection. It is understandable that a new fence in this location can be perceived as reducing drivers' visibility when turning off N Fowler

Ct. onto N. Washburne, a busier street. However, PBOT has determined that traffic safety standards are met. Further, given that the fence is set back from the corner approximately 20 feet, surveillance opportunities of pedestrians and vehicles entering N Fowler Ct. is not significantly reduced.

**Sense of Community:** The Portsmouth Neighborhood Association submitted written comments stating objections to the fence Adjustment (Exhibit F.6). Note: This site is located within the Kenton Neighborhood Association boundary. The Portsmouth Neighborhood Association received notice because the subject site is located within 400 feet of the site. The boundary between the Kenton and Portsmouth neighborhoods runs through N. Chautauqua. The Portsmouth representative wrote that the fence detracts from the prevailing open, friendly appearance of the neighborhood. The neighborhood does not support “anti-social” fences. The neighborhood association identified only one similar fence, approximately 2 blocks away, in the immediate area. During the site visit, staff observed only one tall fence along the N. Chautauqua Blvd street lot line. The fence is located at the rear of the lots separating the residence from the street and the commercial and employment uses on the west side of the street. Staff observed no other tall fences located within the front lot line on N. Fowler Ct. or N. Washburne Avenue.

The southern most portion of the fence facing the N. Fowler Court cul-de-sac is unobtrusive. There is a massive tree on the property that minimizes the scale of the fence. Even if the tree were not there, the fence does not dominate the character of the street. The cul-de-sac is approximately 100 feet wide. The tall fence, although unique on this cul-de-sac street, does not create adverse impacts. The portion of the fence that faces N. Washburne stands out. However, as stated under criterion A, the front yard area of the home is not obstructed.

**Appearance.** The fence is comprised of wide vertical cedar boards with horizontal boards creating a cap (top) and shirt (bottom) on the fence panels. Separate panels, approximately 4 feet wide are attached to fence posts along the length of the fence. The fence appears to be solid, well-constructed. Nearby property owners who wrote in support of the fence, stated that it was attractive. On the other hand, an equal number who wrote in opposition to the fence stated that it was unattractive. Staff finds that design, style and quality of materials are not the sole determinant for judging attractiveness. Rather, its location and relationship to other features is equally relevant. On this uniquely situated lot, the location of the fence, in relation to the N. Washburne and N. Fowler Court screens the applicant’s backyard area but does not create an unattractive wall.

**Summary:** The fence provides significant privacy and enclosure for the applicant. Because the fence is located approximately 20 feet back from the corner property line, Transportation staff has determined that sight distance is acceptable at the intersection of N. Fowler Court and N. Washburne. The fence does not hinder view of the front yard and associated activities. The fence is well built with quality cedar materials and does not negatively impact the appearance of the neighborhood. Therefore, 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:** As stated under criterion A, the portion of the fence located within the front setback areas does not significantly detract from the open, friendly appearance of the neighborhood. The applicant’s front yard area remains open to the neighborhood for surveillance purposes. Therefore, 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:** 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:** There are no significant impacts that would result from granting the requested adjustment. Therefore no mitigation is needed. 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.

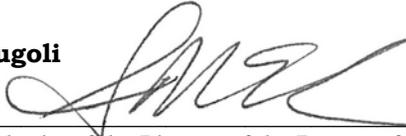
## CONCLUSIONS

Fence height Adjustments are frequently requested and approved for corner lots where the house is oriented to the longest lot lines. In those situations, the orientation of the lot, the appearance of the fence and the character of the surrounding development including other taller fences is considered. At this location, the fence does not mask the scale of the house or dominate the streetscape. The approval criteria are met for the fence and should be approved.

## ADMINISTRATIVE DECISION

**Approval** to increase the maximum allowed fence height from the required 3.5 feet to 6 feet for the existing fence that is located within the 15-foot front setback area from the northern property line, adjacent to N. Washburne Avenue and the southern property line, adjacent to the N. Fowler Court cul-de-sac., per the approved site plan, Exhibits C.1, signed and dated September 23, 2009.

**Staff Planner: Sheila Frugoli**

**Decision rendered by:**  **on September 24, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: September 28, 2009**

**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 August 4, 2009, and was determined to be complete on August 11, 2009.

*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 August 4, 2009.

*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 did not waive or extend the 120-day review period.

**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 October 12, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617,

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](http://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 **October 13, 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:

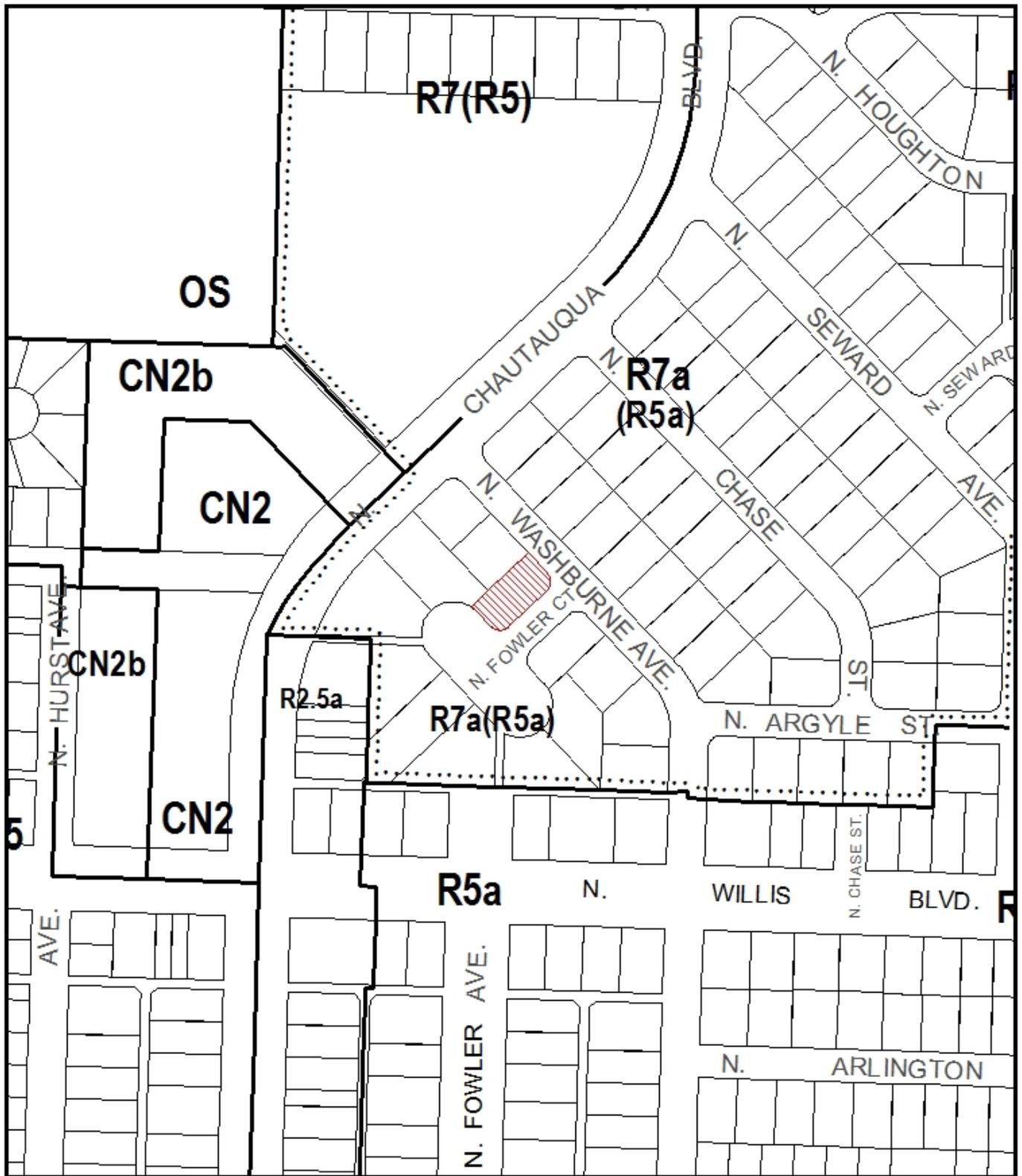
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. TRACS print-showing "no concerns" stated from City Bureaus
  - 2. Bureau of Transportation Engineering and Development Review
- F. Correspondence:
  - 1. Edward Little, 8611 N. Fowler Court, Portland, 97219, e-mail letter of support.
  - 2. Roxanne Martinez,, e-mail letter of support.
  - 3. Peggy Gulbrandson, 8625 N. Fowler Ct., Portland, 97219, letter of opposition.
  - 4. David Gulbrandson, 8625 N. Fowler, Ct., Portland, 97219, letter of opposition.
  - 5. Kathleen and John Sundby, 8636 N. Fowler Ct., Portland, 97219, letter of opposition.
  - 6. Susan Landauer, Portsmouth Neighborhood Association, e-mail letter of opposition.
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING

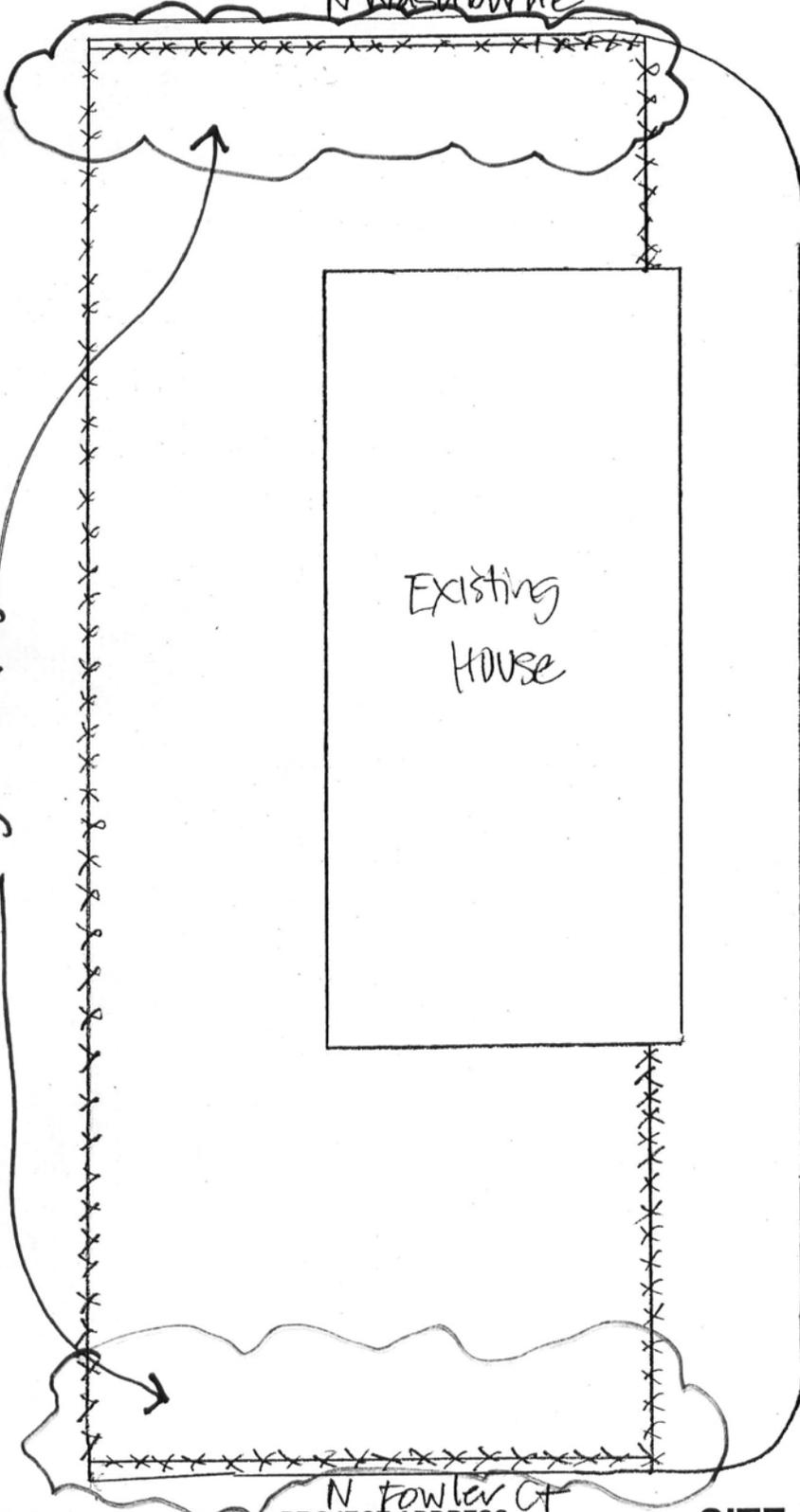
 Site



File No.	LU 09-148527 AD
1/4 Section	2126
Scale	1 inch = 200 feet
State Id	1N1E08AD 13100
Exhibit	B (Aug 05,2009)

\*\*\* = 6 foot fence

N Washburne



Six foot tall fence approved in 15 foot front setback area.

Existing House

N Fowler Ct

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner S. Frugoli Date Sept. 24, 2009  
 This approval applies only to the reviews requested and is subject to all other requirements of approval. Additional zoning requirements may apply.

LU 09 - 148527 AD

PROJECT LEGAL

Lot 14 block 1  
Dahlke Add

PROJECT ADDRESS  
N Fowler Ct

8639 N Fowler Ct

SITE PLAN

SCALE 1" = 10'

Not to Scale



NORTH ARROW