



CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201 **P524**
Land Use Decision Enclosed
Case # LU

16

Return Service Requested



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: July 22, 2010
To: Interested Person
From: Mark Bello, Land Use Services
503-823-7810 / mark.bello@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 10-114207 AD

GENERAL INFORMATION

Applicant: Quy D Vu
12235 NE Rose Pkwy
Portland, OR 97230

Huan D Vu
12235 NE Rose Pkwy
Portland, OR 97230

Vincent Tran
12412 NE Rose Okwy
Portland, OR 97230

Site Address: 12235 NE ROSE PKY

Legal Description: BLOCK 1 LOT 14&15, CENTENNIAL HTS
Tax Account No.: R145600700
State ID No.: 1N2E26BB 02900
Quarter Section: 2743
Neighborhood: Argay, contact Troy Palmquist at 503-256-5445. Parkrose Neighborhood Assoc., contact Mary Walker at 503-252-2146.
Business District: Parkrose Business Association, contact Wayne Stoll at 503-284-1921. Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Zoning: R7 Residential 7,000
Case Type: AD Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to complete construction of a six-foot high iron fence with stone pillars along north and west property lines. (The tallest is 7'10".) The entry gate is the same height as

the pillars. Completion of work requires an adjustment from the Zoning Code height limit of 3.5 feet within the 15-foot front setback (33.110.255).

ANALYSIS

Site and Vicinity: The site is located at the southeast corner of NE Fremont and Rose Parkway. There is approximately 91 feet of frontage along Fremont and 144 feet along Rose Parkway. The house is sited on the southern half of the lot and orients to Rose Parkway. Vehicle access is from Rose Parkway, approximately 55 feet from NE Fremont.

The site slopes approximately 12 feet down from the south property line. A retaining wall within 50 feet of NE Fremont allows an even grade approximately 4½' above the NE Fremont sidewalk. The retaining wall steps back from the sidewalk in two segments – 2'4" high, and 2'2" high. At the top of the second retaining wall, the applicant has erected a 6' high panelized iron fence. This fence is about 4 ft. back from the property line and its base is 4'6" above the sidewalk grade. The fence design is open with clear views through it. There are attractive (approx.) 7-ft. tall stone pillars regularly spaced along the fence. Notably, these pillars bracket a double gate for vehicle access. At the time of the staff site visit, the fence was not completed between the house and Rose Parkway.

Houses on the south side of NE Fremont are sited above the street. The house to the east is on a gentler slope, located closer to Fremont without a retaining wall. That house is set back about 25 feet and is about six feet above the sidewalk. The house to the west, across Rose Parkway is sited close to the street and high above it – 16 feet back and six feet high – and is well-treed.

NE Fremont is a well-trafficked street. The volume of traffic and elevation of these properties separate them from the surrounding residential area that slopes down to the Columbia River.

Zoning: The site is zoned R7, Medium Density single-dwelling Residential. This zone designation is intended for areas with adequate public services but minor development constraints. Single-dwelling residential will be the primary use. The maximum density is generally 6.2 units per acre or an average of one lot for every 7,000 square feet. Buildings are required to be set back 15 feet from the front property line and 5 feet from side or rear property lines. The maximum height allowed for residential structures is 30 feet. The maximum building coverage allowed by the base zone development standards is based on the area of the individual lot.

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 **June 14, 2010**. The following Bureaus have responded with no issues or concerns:

1. Bureau of Environmental Services
2. Bureau of Transportation Engineering and Development Review
3. Water Bureau
4. Fire Bureau
5. Site Development Review Section of BDS
6. Bureau of Parks, Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 14, 2010. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

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

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

33.110.255 Fences

A. Purpose. The fence standards promote the positive benefits of fences without negatively impacting the community or endangering 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.;

and

- 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
- 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
- D. City-designated scenic resources and historic resources are preserved; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical.
- 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 AND CONCLUSION

This site is divided in two parts: the house/driveway is located on the south half of the site; the play yard is located on the north half. The fence serves to protect children and pets who play above NE Fremont Street. The fence is transparent and provides demarcation between the public sidewalk/street and the private property. It enhances the property by the use of iron panels and stone pillars appropriately spaced. It protects the property specifically from busy traffic on NE Fremont Street. The fence does not hinder surveillance due to the open design of the fence or emergency access due to the change of grade and the access available through the double gate vehicle access.

However, a 6-ft. tall fence between the house and the street is not required for safety as NE Rose Parkway is roughly at grade with the main entrance. In this location (in front of the entrance to the house) a tall fence inhibits a connection between the main entrance and the sidewalk. Other houses in the vicinity avoid this type of barrier between the main entrance and the sidewalk. The applicant is willing to reduce the height of the fence to the zoning code maximum of 3 ½ feet adjacent to the side property line (along SE Rose Parkway) beginning just south of the driveway. This condition of approval is attached to this administrative decision.

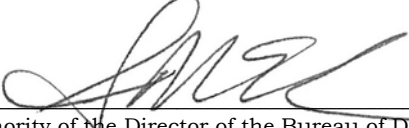
There are no scenic or historic resources on the site; no impacts have been identified and the site is not located in an environmental zone, so the criteria related to these issues do not apply. Therefore, because all of the relevant approval criteria are met, or can be met with conditions of approval, the proposal can be approved, in substantial compliance with the proposed site plan.

ADMINISTRATIVE DECISION

Approval of an Adjustment to the maximum fence height standard of 33.110.255 to allow a six-foot high iron fence and stone pillars (and entry gate) as tall as 7'10" per the approved site plan, Exhibit C-1, signed and dated June 14, 2010, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-114207 AD.
- B. Fence height must be 3 ½ feet or lower between the house (beginning south of the driveway) and NE Rose Parkway.

Staff Planner: Mark Bello

Decision rendered by:  **on July 16, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 22, 2010

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 February 24, 2010, and was determined to be complete on June 9, 2010.

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 February 24, 2010.

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. Unless further extended by the applicant, **the 120 days will expire on: September 9, 2010.**

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 August 5, 2010** 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.

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 **August 6, 2010 – (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.

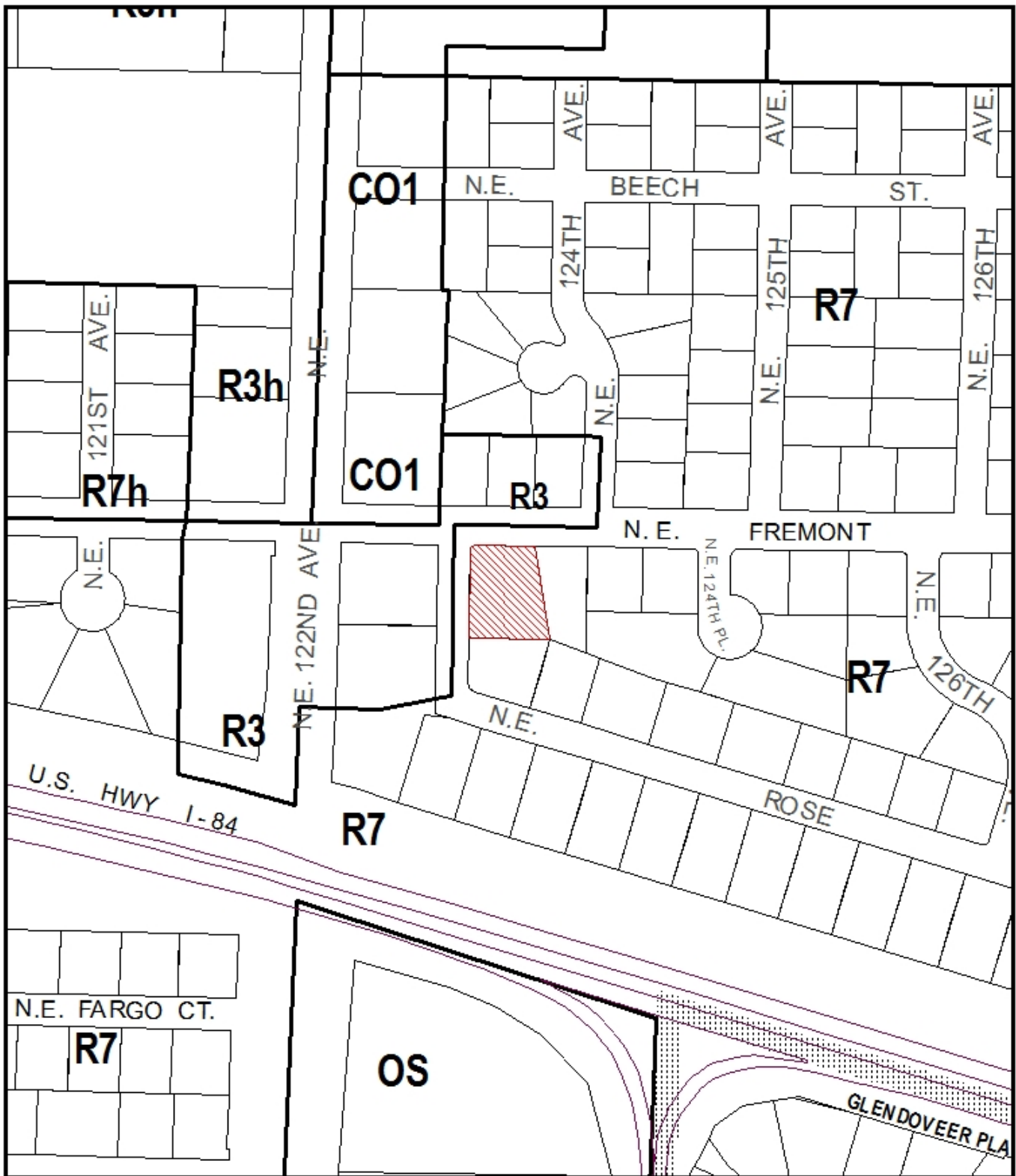
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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:
 - 7. Bureau of Environmental Services
 - 8. Bureau of Transportation Engineering and Development Review
 - 9. Water Bureau
 - 10. Fire Bureau
 - 11. Site Development Review Section of BDS
 - 12. Bureau of Parks, Forestry Division
- F. Correspondence: (none)
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Notice of Enforcement Penalty, September 10, 2009
 - 4. Incomplete Letter Sent to Applicant, March 3, 2010

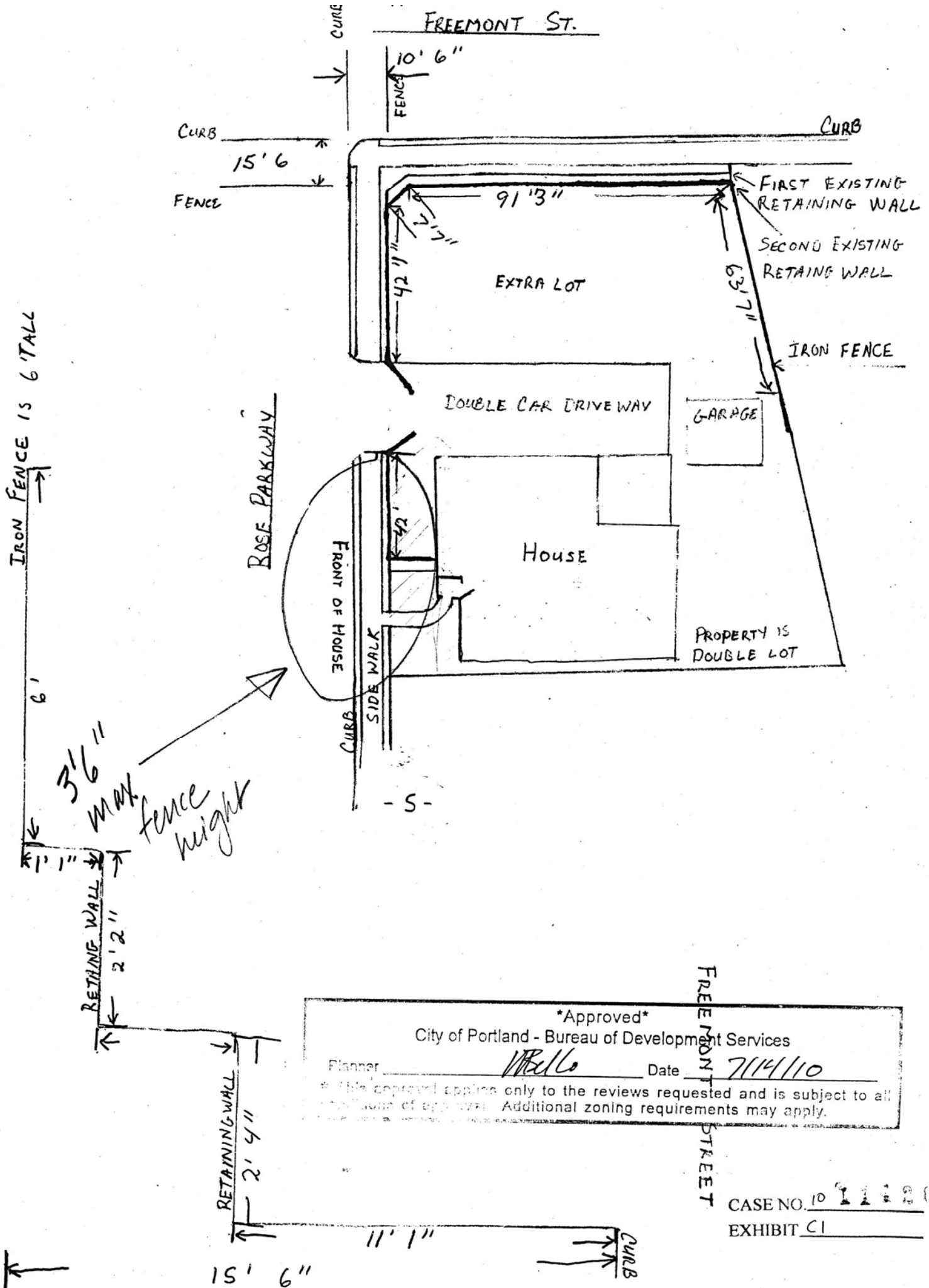


ZONING

 Site



File No. LU 10-114207 AD
 1/4 Section 2743
 Scale 1 inch = 200 feet
 State_Id 1N2E26BB 2900
 Exhibit B (Mar 01,2010)



Approved

City of Portland - Bureau of Development Services

Planner W. Bell Date 7/14/10

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

FREEMONT STREET

CASE NO. 10 1 1 2 2 1
EXHIBIT C1