

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: September 23, 2011
To: Interested Person

From: Kathleen Stokes, Land Use Services

503-823-7843 / Kathleen.Stokes@portlandoregon.gov

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 11-151766 AD

GENERAL INFORMATION

Applicant: Maxwell T Folley

3126 NE Ainsworth St Portland, OR 97211-6722

Site Address: 3126 NE AINSWORTH ST

Legal Description: BLOCK 45 LOT 5&6, IRVINGTON PK

Tax Account No.: R421317100

State ID No.: 1N1E13CD 04800

Quarter Section: 2433

Neighborhood: Concordia, contact George Bruender at 503-287-4787.

Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321. **District Coalition:** Northeast Coalition of Neighborhoods, contact Shoshana Cohen at 503-

823-4575.

Zoning: R5ah (R5,000, High Density Single-Dwelling Residential with

Alternative Design Density Overlay and Aircraft Landing Overlay)

Case Type: Adjustment Review

Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal: The applicant constructed a solid wood fence, 4 feet, 10 inches tall, across the front of his property. The fence is set back 7 feet from the edge of the sidewalk. In this location, the sidewalk is one foot from the front property line. The Portland Zoning Code, Title 33, limits the height of fences in the front building setback to 3.5 feet in height. In the R5 zone, the front building setback is 10 feet from the front property line. Exceptions to the limit on fence height are approved through Adjustment Review, if all of the relevant approval criteria are met or if the criteria can be met through conditions of approval. The applicant is requesting approval of an Adjustment to Code Section 33.110.255 C, to allow the height of the fence, which is located 6 feet from the front property line, to be increased to 4.5 feet. The request includes a proposal to modify the existing solid wood fence to give it a more open character. The proposed modification, as shown in the attached drawing, would lower the overall height of the fence to

4.5 feet. The solid fence would remain for the first 3.5 feet in height, with smaller vertical pieces that alternate with open spaces in a cap along the top one foot of the fence.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The applicant's site is a 5,000 square-foot lot that is located on the south side of NE Ainsworth Street, between NE 31st and NE 32nd Avenues. The site is developed with a single-dwelling residence that was constructed in 1929. The residence is one story with a finished attic, with dormers, that provides an upper level living space. A covered front entry porch faces NE Ainsworth Street. The porch is elevated from the front yard grade level and is approached by a walkway that leads to the front porch stairs. A rockery planting bed is located on the slope on either side of the stairs that lead up from the sidewalk to the front entrance walkway. The area around the site is developed with other single-dwelling structures, in a variety of sizes, ages and architectural styles. Immediately abutting the site, on both the east and the west, there are single-story homes that are of more recent vintage (1957 and 1946, respectively) and that have lower profiles, without any attic space or dormers to provide additional height.

Zoning: The site is zoned R5ah (R5,000.High-Density Single-Dwelling Residential, with an "a" or Alternative Design Density Overlay and a "h" or Aircraft Landing Overlay). The R5 zone requires an average lot area of 5,000 square feet, with a maximum allowed density of one unit per lot (generally 8.7 units per acre.) The "a" Overlay Zone allows opportunities for increased residential density in certain situations. The overlay zone does not apply to this situation. The provisions of the Aircraft Landing Overlay limit the height of structures within the aircraft landing approach patterns for the Portland International Airport. The provsions of this overlay are not relevant to this proposal.

Land Use History: City records include two prior land use reviews for this site (LU 02-106366 and LU 08-120374). These cases were for the review of development proposals at Concordia University and are incorrectly linked to this applicant's property. (A request has been made to rectify this record-keeping problem).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **August 23, 2011**. The following Bureaus have responded with an electronic response of "no concerns":

- Environmental Services
- Transportation Engineering
- Fire Bureau
- Site Development Section of BDS
- Life-Safety Plan Review Section of BDS
- Parks-Forestry Division
- Water Bureau provided a written response, which stated that there are no issues or concerns regarding approval of the requested Adjustment and also included information on the existing water service for this site (Exhbit E-1).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 23, 2011. 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; 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 CONCLUSIONS

The applicants' proposal meets all of the relevant approval criteria: The purpose for limits on fence heights is to 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. The standards are intended to promote the positive aspects of fences and to limit the negative ones.

The applicant was advised that the existing fence creates too much of a visual barrier across the front of the house. The request is for approval of an exception to increase the allowed height by one foot, which would be shorter than the existing fence. The applicant is also proposing a modification to the fence which would include cutting the solid wood portion down to 3.5 feet and installing a one-foot-tall cap that would have alternating open spaces and wood slats to allow a more open aspect and better views to and from the street. The proposed modifications to the fence will allow privacy, separation from the street, and protection of children and the large family dog. The modifications will ensure that the street wall effect no longer exists and that emergency access and safe movement of pedestrians and vehiles are not hindered. The fence will be constructed of natural wood and the open character of the top of the structure will ensure that it does not create an unattractive appearance. With the proposed modifications, the increased height that has been requested can still meet the purpose of the regulation. The proposal will not have any negative impacts on the livability or the appearance of the residential area, due to all of the reasons that have been discussed above. Further, the proposed modifications to the fence adequately mitigate for any of the potential impacts that have also been mentioned above. Therefore, these approval criteria (A, B and E) have been met.

Only one Adjustment has been requested. There are no scenic or historic resources on this site; and it is not located in an environmental zone, so the criteria related to these issues (C, D and F) do not apply. Therefore, all of the relevant approval criteria are met and the proposal can be approved, in substantial compliance with the proposed site plan and elevation drawings.

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.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.255 C, to allow the maximum height of the fence, which is located 6 feet from the front property line, to be increased from 3.5 feet to 4.5 feet, including a one-foot cap that has open spaces between the vertical members, in general compliance with the approved site plan and elevation drawing, Exhibits C-1 through C-2, signed and dated September 21, 2011, subject to the following condition:

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 Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-151766 AD."

Staff Planner: Kathleen Stokes

Decision rendered by: ______ on September 21, 2011

By authority of the Director of the Bureau of Development Services

Decision mailed: September 23, 2011

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 24, 2011, and was determined to be complete on August 19, 2011.

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 24, 2011.

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, as stated with Exhibit A-2. Unless further extended by the applicant, **the120 days will expire on: December 17, 2011**

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 7, 2011**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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 October 10, 2011 (the first business 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:

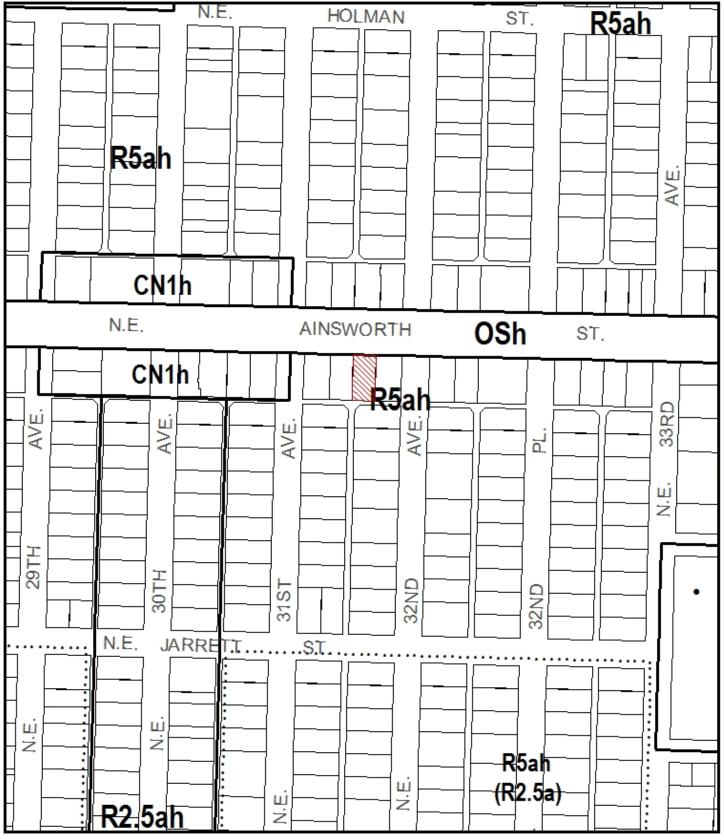
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review:
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original application, plans, drawings, pictures and narrative
 - 2. Request to extend 120 days for final local decision
 - 3. Final drawing of proposed fence
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawing (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Water Bureau
 - 2. Summary sheet of electronic responses from City agencies
- F. Correspondence: (none received)
- G. Other:
 - 1. 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



NORTH

File No.	LU 11-151766 AD
1/4 Section	2433
	1 inch = 200 feet
State Id	1N1E13CD 4800
Exhibit.	

1 Sidewalk Front profine Sidework Porch House *Approved* City of Portland - Bureau of Development Services Stokes Date Septem ber 21, 2011 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply. Parking Exhibitc-1 LUII-151766 AD

