



City of Portland
Bureau of Development Services
Land Use Services Division

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www.portlandonline.com/bds

Date: May 20, 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 08-121139 AD

GENERAL INFORMATION

Applicant: Meredith K Rose
5625 SE 80th Ave
Portland, OR 97206-5123

Site Address: 5625 SE 80TH AVE

Legal Description: LOT 24 BLOCK 4, CHICAGO
Tax Account No.: R155400490
State ID No.: 1S2E17DA 16500
Quarter Section: 3638

Neighborhood: Mt. Scott-Arleta, contact Jim Williams at 503-772-1059.
Business District: Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832.
District Coalition: Southeast Uplift, contact Gary Berger at 503-232-0010.

Plan District: None
Other Designations: None

Zoning: R2.5a, Residential 2,500 with an Alternative Design Density overlay

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 Section 33.110.255, Fences, to allow a fence height of 6 feet in the front building setback adjacent to SE Reedway (along the south property line). The maximum height allowed in the setback without an adjustment is 3 ½ feet. The front building setback in the R2.5a zone is 10 feet. The Portland Zoning Code defines the shortest section of street frontage on a corner lot as the front property line, which in this case is the property line along SE Reedway. However, this area essentially functions as the side yard because the front of the house is oriented toward the east property line along SE 80th.

The applicant would like to construct a 6-foot high wooden fence around the perimeter of their yard to replace an existing chain-link fence. The entire front façade of the house (facing SE 80th) will not be fenced in and will remain exposed to the street. The portion of fence along SE Reedway would be constructed on the property line, which is 3 feet back from the sidewalk.

The fence will run the length of the north and west property lines; approximately 36 feet along the southern property line (SE Reedway); and approximately 28 feet along the eastern property line (SE 80th). The fence along the southern and eastern property lines will cut back from the street into the yard to connect to the front corners of the house. The portion of fence at the southwest corner of the lot will be clipped at an angle in order to not obstruct sight-lines from the driveway abutting the western property line. Please see the attached site plan and elevation for a graphical depiction of the site and proposed fence.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is located at the northwest corner of the intersection of SE Reedway Street and SE 80th Avenue, and is developed with a residential structure and attached garage built in 1951. The front of the home and access to the site are both oriented toward SE 80th Avenue. The lot is approximately 0.11 acres or 4,792 square feet. An existing chain-link fence surrounds the property, in approximately the same location of the proposed wooden fence. The eastern and southern portions of the site, between the house and the streets, are characterized by open lawn with some landscaping at the site entrance, at the house foundation, and in the planting strips along the sidewalk.

The vicinity, within approximately a 200-foot radius of the site, is residentially developed. In the vicinity of the site, both SE Reedway and SE 80th are considered neighborhood collectors. Both streets are improved with sidewalks and planting strips on either side of the street, and allow on-street parking.

Zoning: The site is within the R2.5a zone district; single-dwelling residential 2,500 with an Alternative Design Density overlay. The single-dwelling zones are intended to preserve land for housing and provide housing opportunities for individual households. The R2.5 zone allows attached and detached single and medium density residential development. The zoning changes from R2.5a to R2 (low density multi-dwelling residential 2,000) along the center of SE 80th, just to the east of the site. Other sites to the north, south, and west of the subject site are within the R2.5 zone. The Alternative Design Density overlay zone is intended to focus development on vacant sites, preserve existing housing, and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods.

The Portland Zoning Code defines the front property line as the shortest property line abutting a street, regardless of the orientation of the development on the site. The maximum height allowed for fences within the required front setback area is 3.5 feet and within the required side setback area is 8 feet (Section 33.110.225.C.2).

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

Agency Review: The following Bureaus have responded with no issues or concerns (Exhibit E.1 – E.4):

- Site Development Section of BDS
- Life Safety
- Fire Bureau
- Bureau of Environmental Services

The following Bureaus responded with no issues or concerns but included additional comments:

- The **Bureau of Transportation Engineering** (E.5) responded with concerns regarding the potential creation of visibility conflicts with pedestrians when pulling a vehicle out of the driveway at the adjacent property on SE Reedway, which has a driveway next to the side property line for this site. Transportation provided three alternative design options, one of which was to place the 6-foot high fence at the property line on SE Reedway with a 2-foot triangle of the western corner clipped to allow a 5-foot sight triangle from the back of the sidewalk. The applicant chose to revise the plan to meet this recommendation. Transportation added a note stating that the 6-foot high fence will also create the same visibility issues and safety conflicts on SE 80th Avenue. Although this is not required by City Code, Portland Transportation also recommended the fence either be placed 5 feet from the back of the sidewalk or reduce the fence to 3.5 feet high to a point 5 feet back from the sidewalk. The applicant has already constructed this portion of the fence and chose to not make changes at this time.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 23, 2008. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

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.

- 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 6-foot fence within the front setback. On this site, the front setback is the first 10 feet back from the property line that abuts SE Reedway. Because the property was developed with the front of the house facing the side property line along SE 80th Avenue, the front of the lot along SE Reedway actually functions as a side yard. The applicant is proposing to fence off only the southwestern portion of the yard along SE Reedway. Approximately 18 feet of this frontage will remain unfenced. Only 28 feet at the northeastern end of the SE 80th Avenue frontage will be fenced. The portion of fence proposed within the front setback and subject to this Adjustment review includes a 36-foot portion along the property line running east/west parallel to SE Reedway, the clipped SE corner, and the two 10-foot portions running north/south perpendicular to and within 10 feet of the property line along SE Reedway. The total amount of fence requiring an Adjustment is approximately 50 feet.

The home is set back from SE 80th by approximately 24 feet (18 feet from the property line). The front yard, oriented toward SE 80th, is currently fully open to the street, and this condition is proposed to remain, maintaining views from the house to the street for surveillance and communication between the public and private environments, and maintaining a sense of community. The proposed fence along the property's SE Reedway Street frontage will promote the positive benefits of fences by providing privacy to the subject lot, protecting children and pets, and providing privacy from within the yard and bedrooms.

The public right of way extends three feet behind the sidewalk along SE Reedway. The fence will be located outside of the ROW at the property line, three feet behind the sidewalk. This setback will assist in creating a greater sense of space for pedestrians and reduce the street wall effect that could otherwise be created.

There is no impact to emergency access. The fence stops 18 feet short of the intersection of SE Reedway and SE 80th, therefore the Transportation Bureau has determined that it does not hinder the line-of-sight for pedestrians or automobiles at the intersection. Autos traveling south on SE 80th are required to stop at the intersection, allowing an opportunity for vehicles traveling in any direction a moment to gain sight of other vehicles before entering the intersection. The driveway of the lot directly to the west is located at the property line. In order to help prevent conflict between pedestrians on SE Reedway and vehicles exiting the adjacent lot, the applicant has revised the plan to reflect a 2-foot portion clipped from the SE corner, as recommended by Transportation. With this revision, this approval 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 applicant proposes to construct the fence of cedar fence boards. The SE Reedway portion will be located 3-feet behind the sidewalk, which is approximately 1-foot further back from where the existing chain link fence is located. Although it is within the ROW and cannot be considered mitigation for the project, the applicant has expressed that she will extend the existing landscaping in the planting strips in front of the fence along SE Reedway. The proposed fence promotes the positive benefits of fences while maintaining the safety and appearance of the residential area. 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 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

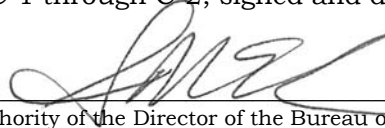
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be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

CONCLUSIONS

Due to the configuration of the structure on the lot, and the existing use of the lot, the side property line, facing SE 80th Avenue, functions as the front property line, and the front property line, facing SE Reedway Street, functions as the side property line. The proposal to install a 6-foot-tall fence within the setback along the property line on SE Reedway creates an enclosed area that provides privacy, screening, and safety from traffic on the adjacent street while allowing for greater utilization of the subject site. The proposal maintains an open yard in front of the home, therefore maintaining the physical and visual connection between the home and the street. The applicant revised her design based on recommendations from the Bureau of Transportation, thereby maintaining safety for vehicular and pedestrian traffic. The positive aspects of fences are promoted by this proposal and the negative aspects are eliminated through the proposed location and design of the fence.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.110.255, Fences, to allow a 6-foot high wooden fence to be constructed within the front building setback, in substantial conformance with the approved plans, Exhibits C-1 through C-2, signed and dated May 16, 2008.

Decision rendered by:  **on May 16, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 20, 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 April 9, 2008, and was determined to be complete on April 22, 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 April 9, 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 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 June 3, 2008** 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. Recognized neighborhood associations are not subject to the appeal fee. 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 **June 4, 2008**.
- 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:

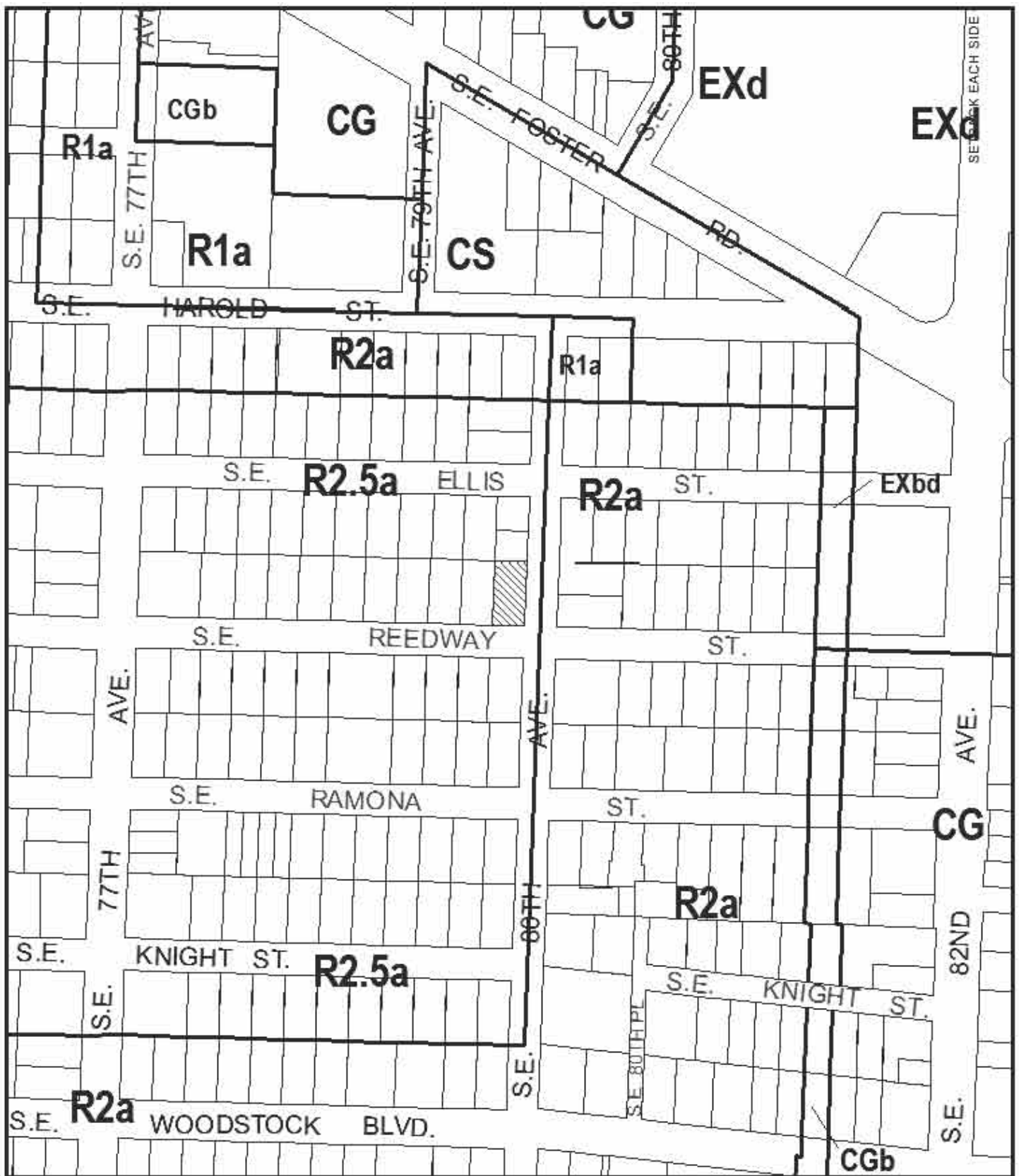
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Fence Detail (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Site Development Review Section of BDS
- F. Correspondence:
 - None Received
- 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. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



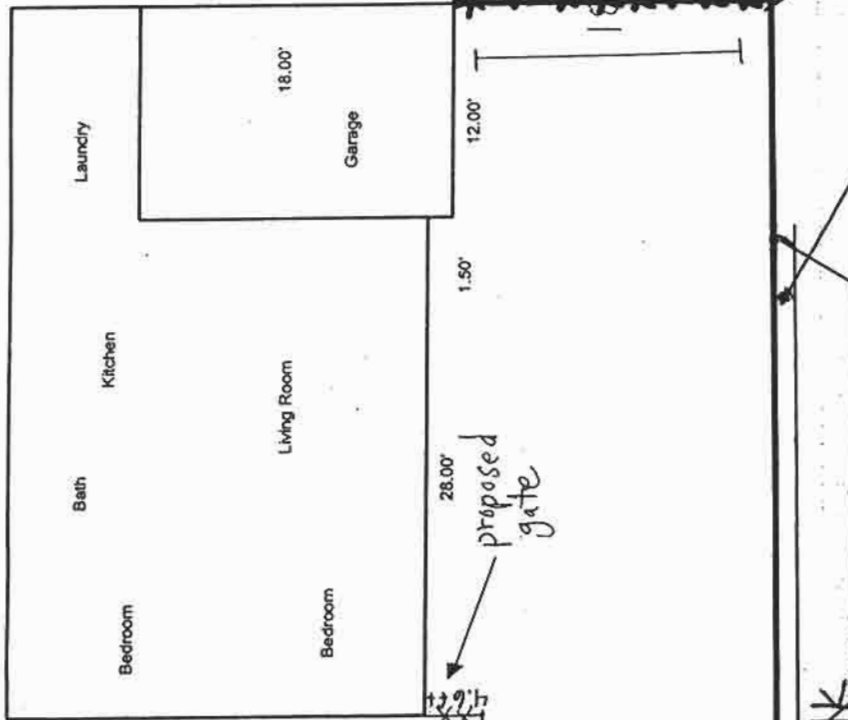
ZONING



File No. LU 08-121139 AD
 1/4 Section 3638
 Scale 1 inch = 200 feet
 State Id 1S2E17DA 16500
 Exhibit B (Apr 14, 2008)



Approved
City of Portland
Bureau of Development Services
Zoning: Crystal Hill 28
Date: 5-26-08
*This approval applies only to the
project as proposed and is subject to all
local laws of approval
that may apply.



1-foot additional
public right-of-way
DOB
30th
SE

XXXX =
proposed 6-foot
wooden fence

Area of
requested
adjustment
maximum
height

3-foot
additional
public
right-of-
way

5' Sidewalk

LU08-121139AD

Exhibit C.1

Fence corner clipped

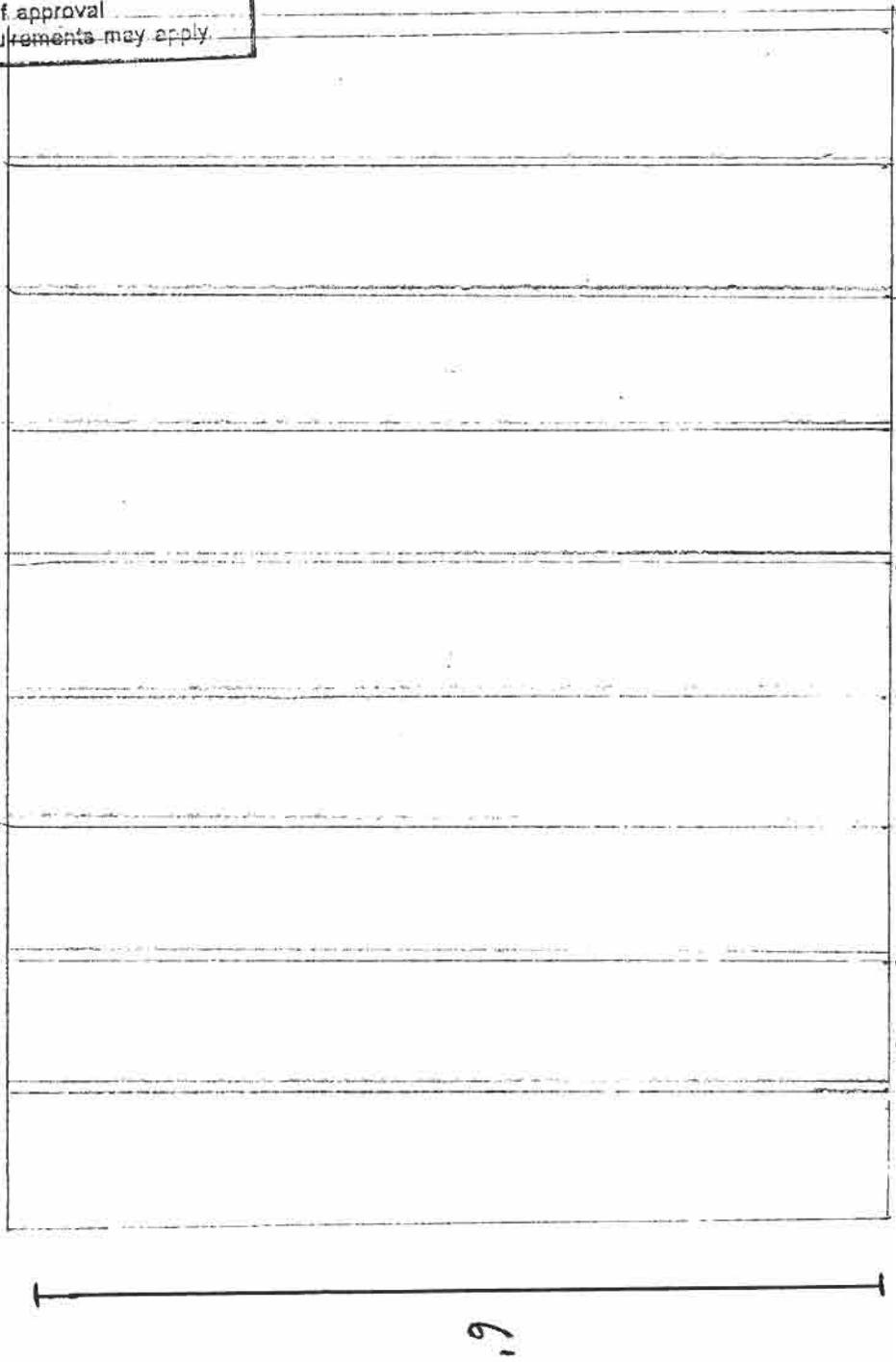
2-foot in on south
& west fence line
to provide sight distance

6' Sidewalk
SE Reedway

Fence
Detail

Approved
City of Portland
Bureau of Development Services
Planner Crystal Hitchings
Date 5-16-08
* This approval applies only to the
reviews requested and is subject to all
conditions of approval.
Additional zoning requirements may apply.

Approx 8'4" fence span



LU 08-121139AD

Exhibit C.2