



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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Portland, Oregon 97201  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** June 16, 2008  
**To:** Interested Person  
**From:** Crystal Hitchings, Land Use Services  
503-823-7583 / [Crystal.Hitchings@ci.portland.or.us](mailto: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 08-128223 AD**

#### **GENERAL INFORMATION**

**Applicant:** Michael Domenico and Nicole Howe  
5004 SE Raymond St  
Portland, OR 97206

**Site Address:** 5004 SE RAYMOND ST

**Legal Description:** BLOCK 3 TL 1100, YALE  
**Tax Account No.:** R933900400  
**State ID No.:** 1S2E18BD 01100  
**Quarter Section:** 3535  
**Neighborhood:** Woodstock, contact Terry Griffiths at 503-771-0011.  
**Business District:** Woodstock Community Business Association, 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:** R5, Single-Dwelling Residential 5,000  
**Case Type:** AD, Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant would like to construct a 6-foot high wooden fence along the west side of their yard, from the SW corner of the property and extending approximately 38 feet along SE 50<sup>th</sup>, to just shy of the NW corner of the house, where the fence will cut back into the yard approximately 16' to meet the side of the house. The entire front façade of the house (facing SE Raymond) will not be fenced in and will remain open to the street. The portion of fence along SE 50<sup>th</sup> Ave. would be constructed at the property line, which is 2 feet back from the sidewalk. The applicant is requesting an Adjustment to Section 33.110.255, Fences, to allow a fence height of 6 feet in a portion of the front building setback adjacent to SE 50<sup>th</sup> Avenue (along the west property line). The maximum height allowed in the setback without an adjustment is 3 ½ feet. The front building setback in the R5 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 50<sup>th</sup> Ave. However, this area essentially functions as the side yard because the front of the house is oriented toward the north property line along SE Raymond Street.

**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 5,263 square-foot lot is located at the northeast corner of the intersection of SE Raymond Street and SE 50<sup>th</sup> Avenue. The site is developed with a single-dwelling residence with an attached garage, originally constructed in 1952. The lot is 50.62 feet wide and 86 feet deep, and is comprised of the northern halves of two originally platted lots. The site contains trees, shrubs, garden, and open lawn. The northeastern portion of the yard is already fenced in. The fence is set back from the property line and roughly aligned with the façade of the garage (which is stepped back from the house). A large picture window on the west façade of the home, which faces SE 50<sup>th</sup> Avenue, allows unobstructed views between the inside of the home, the street, and the adjacent front yard to the west across SE 50<sup>th</sup> (this adjacent site is accessed off of SE Raymond). These views would be obstructed by the proposed fence, affording privacy to both properties.

Access to the site is from SE Raymond Street, along a paved driveway leading to an attached garage. In this location, SE Raymond Street serves as a local service street and is improved with a 13 foot curb, 5 foot sidewalk, and 1 foot additional right-of-way behind the sidewalk. The site fronts on SE 50<sup>th</sup> Avenue. In this location, SE 50<sup>th</sup> also serves as a local service street and is improved with a 4-foot curb, 5-foot sidewalk, and 2-foot additional right-of-way behind the sidewalk.

**Zoning:** The site is zoned R5, Single-Dwelling Residential. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. Single-dwelling zones allow attached and detached single-dwelling residential structures. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

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

**Agency Review:** A “Request for Response” was submitted on May 21, 2008. The following Bureaus have responded with no issues or concerns (Exhibit E.1-E.6):

- Site Development Section of BDS
  - Life Safety Bureau
  - Fire Bureau
  - Bureau of Environmental Services
  - Water Bureau
  - Bureau of Parks-Forestry Division
- The Bureau of Transportation Engineering (Exhibit E.7) had no concerns and submitted additional comments stating that the configuration of the street intersection and location of the proposed fence 19 feet back from the property line contribute to vehicle and pedestrian safety.

**Neighborhood Review:** A “Notice of Proposal in Your Neighborhood” was mailed on May 21, 2008. 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 (Adjustments)**

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

**33.805.040 Approval Criteria**

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

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

**Findings:** The 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 50<sup>th</sup> Avenue. Because the property was developed with the front of the house facing the side property line along SE Raymond Street, the front of the lot along SE 50<sup>th</sup> Avenue actually functions as a side yard, and the side of the lot along SE Raymond actually functions as a front yard. The applicant is proposing to fence off only the southwestern perimeter of the yard along SE 50<sup>th</sup> Avenue. Approximately 19 feet of this frontage will remain unfenced at the northwest corner of the lot. Most of the portion of the lot along SE Raymond will remain unfenced and open to the street. The portion of fence proposed within the front setback and subject to this Adjustment review includes a 38-foot portion along the property line running north/south parallel to SE 50<sup>th</sup> Avenue, and the first 10 feet of the portion running east/west perpendicular to and within 10 feet of the property line along SE 50<sup>th</sup> Avenue, where the fence cuts back toward the house (please see site plan for a graphical depiction). The total amount of fence requiring an Adjustment is approximately 48 feet.

The home is set back from SE Raymond Street by approximately 36 feet (17 feet from the property line). The functioning front yard, oriented toward SE Raymond, is currently fully open to the street, except for a fenced portion at the northeast corner. This condition is proposed to remain, thus maintaining views from the house to the street, and visa versa, for surveillance and communication between the public and private environments, and thus maintaining a sense of community.

The public right of way extends two feet behind the sidewalk along SE 50<sup>th</sup> Avenue. The fence will be located outside of the ROW at the property line, two feet behind the sidewalk. This setback will assist in creating a greater sense of space for pedestrians

and, along with the short distance of the fence and open nature of the side yard along SE Raymond, will eliminate the street wall effect that could otherwise be created.

Emergency access is not impeded. The fence stops 19 feet short of the intersection of SE 50th Avenue and SE Raymond Street, and therefore does not hinder the line-of-sight for safe movement of pedestrians or automobiles at the intersection.

For these reasons, the proposed fence along the property's SE 50th Avenue frontage will equally promote the positive benefits of fences and will not create any negative impacts to the appearance or safety 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:** The applicant proposes to construct the fence of wooden boards in a style that matches the existing fence on the northeastern portion of the property. The fence will be located at the property line and set back 2 feet behind the sidewalk. The fence remains in scale and character with the residential qualities of the neighborhood. 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

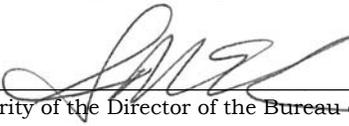
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be 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 Raymond Street, functions as the front property line, and the front property line, facing SE 50<sup>th</sup> Avenue, functions as the side property line. The proposal to install a 6-foot-tall fence within the front setback along the property line on SE 50<sup>th</sup> Avenue creates an enclosed area that provides privacy, screening, and safety from traffic on the adjacent street and allows 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 large area of yard left open at the intersection of SE 50<sup>th</sup> and SE Raymond maintains site distances and maintains safe conditions 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 of the fence. This proposal meets the approval criteria and can be approved as proposed.

## 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 June 12, 2008.

Decision rendered by:  on June 12, 2008  
By authority of the Director of the Bureau of Development Services

Decision mailed: June 16, 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 May 9, 2008, and was determined to be complete on May 14, 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 May 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 30, 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](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 **July 1, 2008 – (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

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

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

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

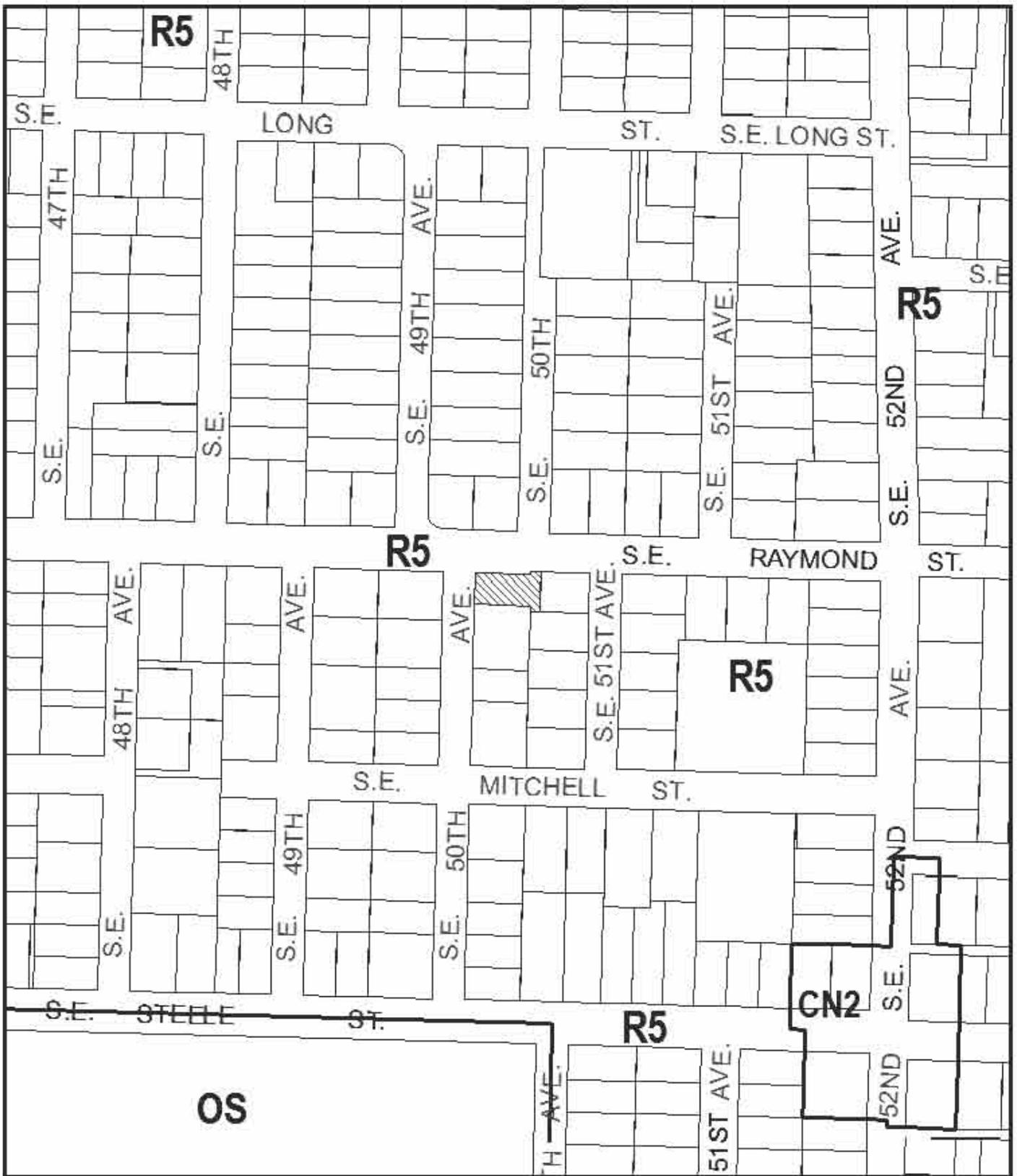
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Detail/Elevation (attached)
  - 3. Tax Map
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Section of BDS
  - 2. Life Safety Bureau
  - 3. Fire Bureau
  - 4. Bureau of Environmental Services
  - 5. Water Bureau
  - 6. Bureau of Parks-Forestry Division
  - 7. The Bureau of Transportation Engineering
- F. Correspondence:
  - None Received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research



# ZONING



File No.	<u>LU 08-128223 AD</u>
1/4 Section	<u>3535</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E18BD 1100</u>
Exhibit	<u>B</u> (May 15,2008)

LU 08-128223 AD

Scale 1/4" = 2'6"

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Crystal Hildings Date June 12, 2008  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

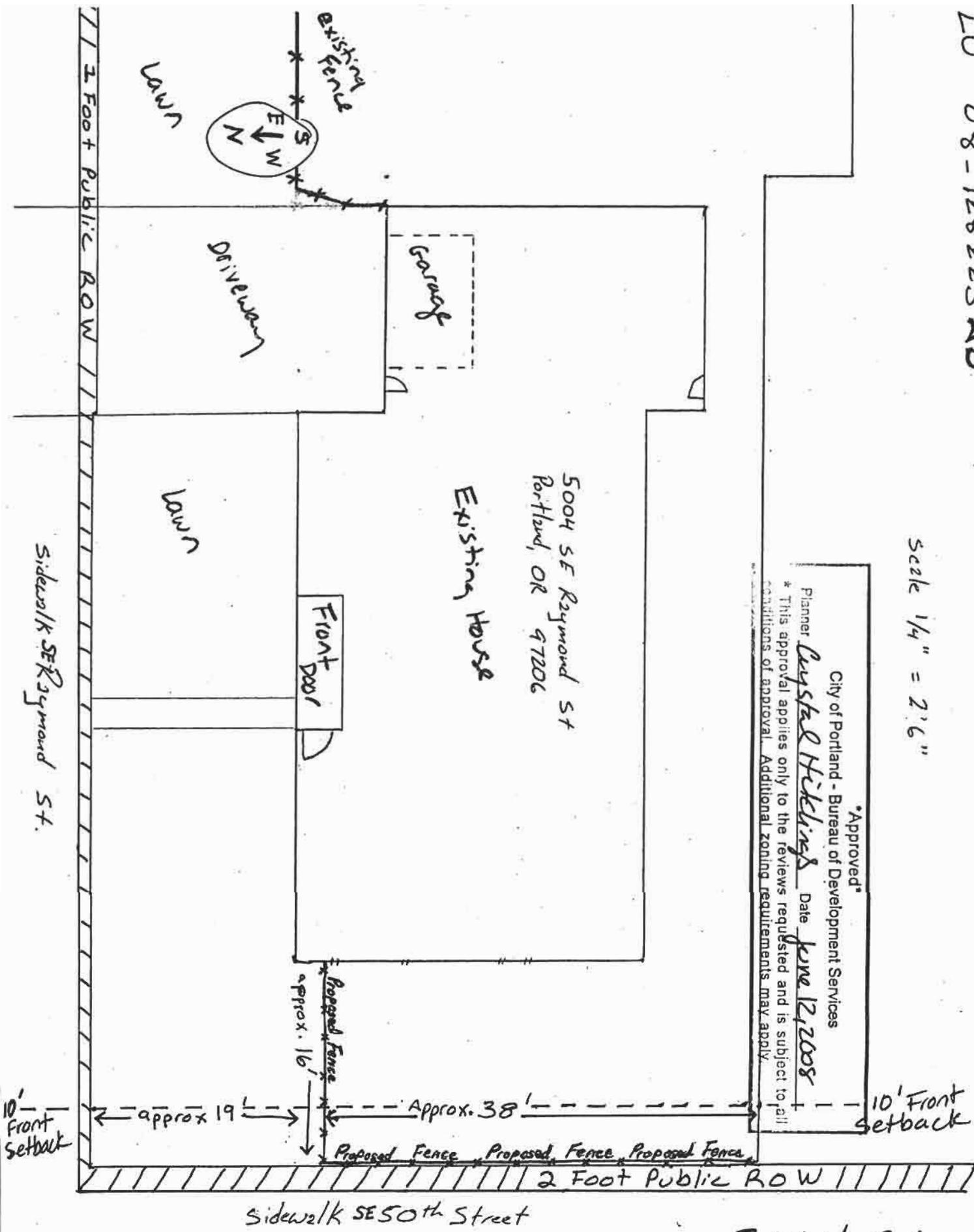
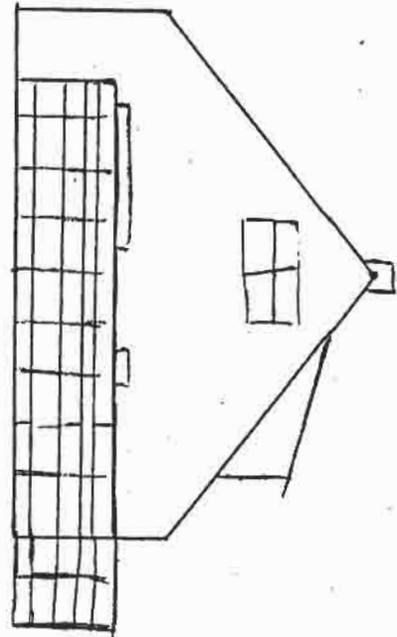
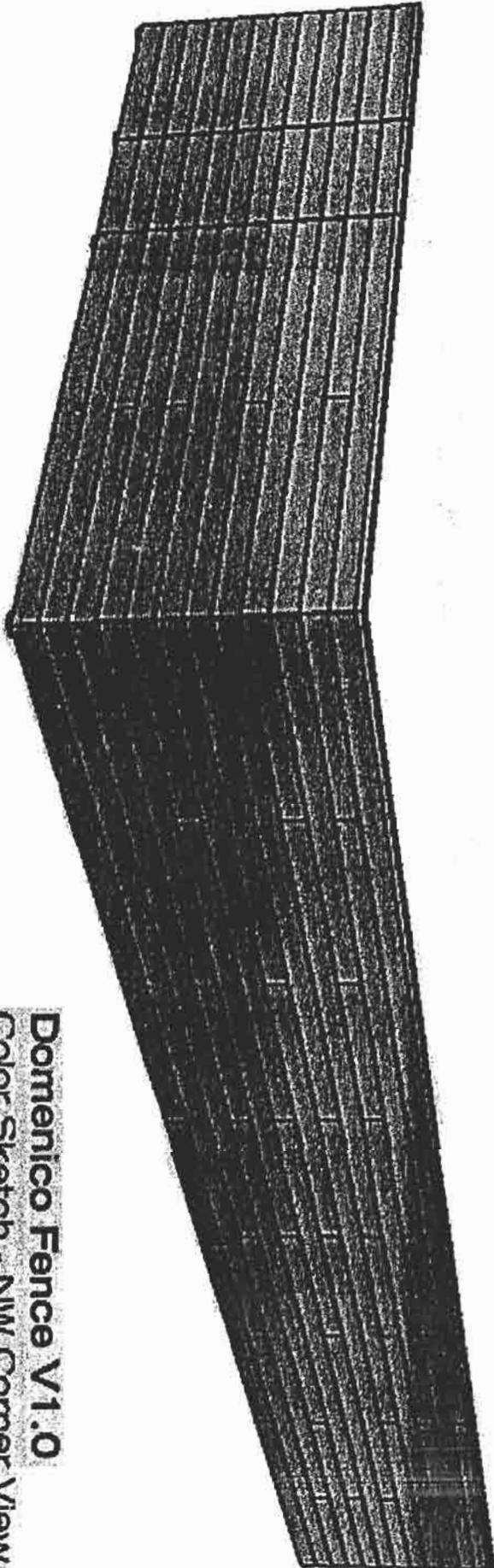


Exhibit C.1

West Side



LU08-128223 AD Exhibit C.2  
A+B



Approved\*

City of Portland - Bureau of Development Services

Planner

*Crystal Hitchings*

Date

*June 12, 2008*

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

**Domenico Fence V1.0**

**Color Sketch - NW Corner View**

**02/21/08**