



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

Date: July 30, 2008
To: Interested Person
From: Kathleen Stokes, Land Use Services
503-823-7843 / kstokes@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 08-112458 AD

GENERAL INFORMATION

Applicant: Kelly M Hopper
8728 SE Crystal Springs Blvd
Portland, OR 97266

Site Address: 8728 SE CRYSTAL SPRINGS BLVD

Legal Description: LOT 1, PARTITION PLAT 1995-92
Tax Account No.: R649753480
State ID No.: 1S2E21CD 06205
Quarter Section: 3839

Neighborhood: Lents, contact Judy Welch at 503-771-4667.
Business District: Eighty-Second Avenue, Nancy Chapin at 503-774-2832.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin - South
Zoning: R7 (R7,000, Medium Density Single-Dwelling Residential)

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

Proposal: The applicant has a fence that is located along the front property line that exceeds the allowed height within the front setback. The Portland Zoning Code, Section 33.110.255 C, limits the height of fences that are located within 15 feet of the front property line in the R7 zone to 3.5 feet. The applicant is requesting approval of an adjustment to allow an exception to increase the allowed height of the main fence from 3.5 feet to 6 feet, 3 inches. Approval is also requested to allow six brick pillars that are located at or near the corners of the property and on either side of the two driveways and the walkway, at the front of the lot. The pillars are 7 feet tall, with lamps on the top of each pillar that add an additional 15 inches to the height. Wrought iron style metal gates that would be five feet tall, above the rollers, are proposed for the entrances at the openings between the pillars.

Adjustment requests are approved if all of the relevant approval criteria are met or can be met through conditions of approval. The approval criteria require addressing the purpose for the regulation.

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 an 18,743 square-foot parcel that is located on the south side of SE Crystal Springs Boulevard, approximately midway between the intersections with SE 86th and 88th Avenues. The site is developed with a single-story residence that was constructed in 1949. The house is set back about 40 feet from the front lot line. Driveways provide access to the site from SE Crystal Springs, on both the east and the west sides of the lot.

The area around the site is mainly developed with single-dwelling residences that were built over a wide range of years, from 1927 to the current decade. Lots tend to be large and have deep front yards. The 100-Year Flood Plain extends to the middle of Crystal Springs Boulevard, adjacent to the front property line of the applicant's site. The presence of the flood plain, together with extensive areas to the north and west of the site that are identified as containing environmental resources and are designated through Environmental Conservation and Environmental Protection Overlays, ensure that development in the area will retain a lower density character than some other parts of the City.

Zoning: The site is zoned R7, or R7000, Medium Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 7,000 square feet of site area.

The site is also located within the South Subdistrict of the Johnson Creek Basin Plan District. This plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. Regulations for the South Subdistrict include restrictions on the removal of trees and limitations on the amount of impervious surface that is allowed.

Land Use History: City records indicate that prior land use reviews include the following:

LUR 95-00027 MP (95-011920) Approval of a 1995 Minor Partition to create 3 lots, including the applicant's property which was designated as Parcel 1. Conditions of approval were related to potential future land divisions that were contemplated for Parcels 2 and 3.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 3, 2008**. The following Bureaus have responded to indicate that there are no issues or concerns related to approval of the requested Adjustment. Agencies that provided written comments regarding requirements for building permits are noted with exhibit numbers, below:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Plan Review Section of BDS noted that a building permit is required for the fence because it is over 6 feet in height (Exhibit E-1).

- Bureau of Parks-Forestry Division

Neighborhood Review: 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

Findings: Fence standards are intended 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. 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 development standards for lots in the R7 zone require structures to be set back a minimum of 15 feet from front property lines. Fences that are located within the front setback area may not be more than 3.5 feet tall, unless an adjustment to the allowed fence height is approved. The applicant is requesting approval of an adjustment to increase the allowed height of the fence within the front setback on this site, from 3.5 feet to 6.25 feet for the main fence and to 8.25 feet for the lights that are on top of the 7-foot-tall brick pillars at the corners and on either side of the gates. Gates that would be five feet tall, above metal rollers, are proposed at the driveway and pedestrian entrances.

The fence is attractively constructed of high quality materials, including bricks and wood fencing with a naturally-hued stain. Decorative lights have been placed on top of the capstones of the brick pillars. The fence is solid for the first five feet in height. The upper 15 inches consists of lattice-work that provides some views into the yard. The proposed gates would be made of metal bars, approximating wrought iron, and would allow clear views into the yard, including an unobstructed view of the front entrance to the house. Because the house sits back 40 to 67 feet from the street, there is some added need to maintain safety and prevent trespassing in the front yard. The pedestrian and vehicular gates will provide open views of the house and yard for more than 50 feet of the 125-foot-wide property line, so there will be no sensation of creating a continuous street wall. The lights on the top of the pillars will help to promote community surveillance and safety. If the gates are not locked, the fence will not hinder emergency access or the safe movement of pedestrians or vehicles. Therefore, with a condition that requires that the gates be operable for public access, the proposed fence height equally meets the purposes of the regulation and 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 proposal to increase the allowed height of the fence, within the front setback area, will not have a significant impact on the appearance or livability of the residential area. As described in the findings for Criterion A, above, the applicant's residence is located 40 feet back from the front property line, at the closest point. This development pattern, which is common in this area, results in a lower density character that is able to accommodate taller fence heights than would be acceptable in areas of the City that are more densely developed. Many of the surrounding lots, including all of the properties on the north side of Crystal Springs Boulevard include areas that are within environmental overlay zones. All of the properties that have environmental zoning could have taller fences, by right, as there is no front setback requirement on these lots. The fence is an attractive addition to the landscape and does not inhibit views to or from the applicant's house. Therefore, there are no inherent impacts on livability or appearance of the residential area as a result of this request and 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
- D.** City-designated scenic resources and historic resources are preserved; and

Findings: Only one adjustment is being requested and there are no scenic or historic resources on the site. Therefore, these criteria do not apply.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.

Findings: The only potential impact of approval of the requested fence height that has been identified by staff would be the inability of emergency vehicles or other persons who had legitimate business to access the applicant's property. This can be resolved through a condition that requires that the fence gates can be opened without keys or electronic opening devices. With this condition, this criterion can be 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 located in an environmental zone. Therefore, this criterion does not apply.

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

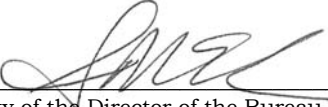
All of the relevant approval criteria have been met. The fence is attractively built and enhances the street edge of the property while it deters trespassing in the large front yard area. Approval of the request to increase the allowed height of the fence within the front setback will not create a continuous street wall because views into the front yard and views to and from the front of the house will be maintained, in part, through the lattice work at the top of the fence but, especially, through the wide gates that are proposed at the driveways and the pedestrian entrance to the property. Access for emergencies, or other legitimate business on the property can be maintained with a requirement that the gates are not locked or otherwise controlled to

prevent such access. The fence is compatible with the lower density character of the area and does not detract from the appearance or livability of the residential area. The Adjustment request can be approved, subject to compliance with the site plan and elevation drawings and a condition regarding ability of the public to access the property.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.255 C, to increase the maximum allowed height of the fence within the front setback, from 3.5 feet to 6.25 feet for the main fence, with gates that are 5 feet tall above the rollers and pillars that are 7 feet tall, with 15-inch tall lamps on top of each pillar, as reflected in the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated July 28, 2008, subject to the following conditions:

- A. Because the fence exceeds 6 feet in height, approval of a building permit is required. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 08-112458 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The fence gates must be operable for use by emergency response personnel or other persons who have legitimate business on the applicant's property, without keys or electronic opening devices that restrict public access.

Decision rendered by:  on July 28, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: July 30, 2008

Staff Planner: Kathleen Stokes

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 29, 2008, and was determined to be complete on June 27, 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 February 29, 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 August 13, 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. 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 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 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 14, 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.

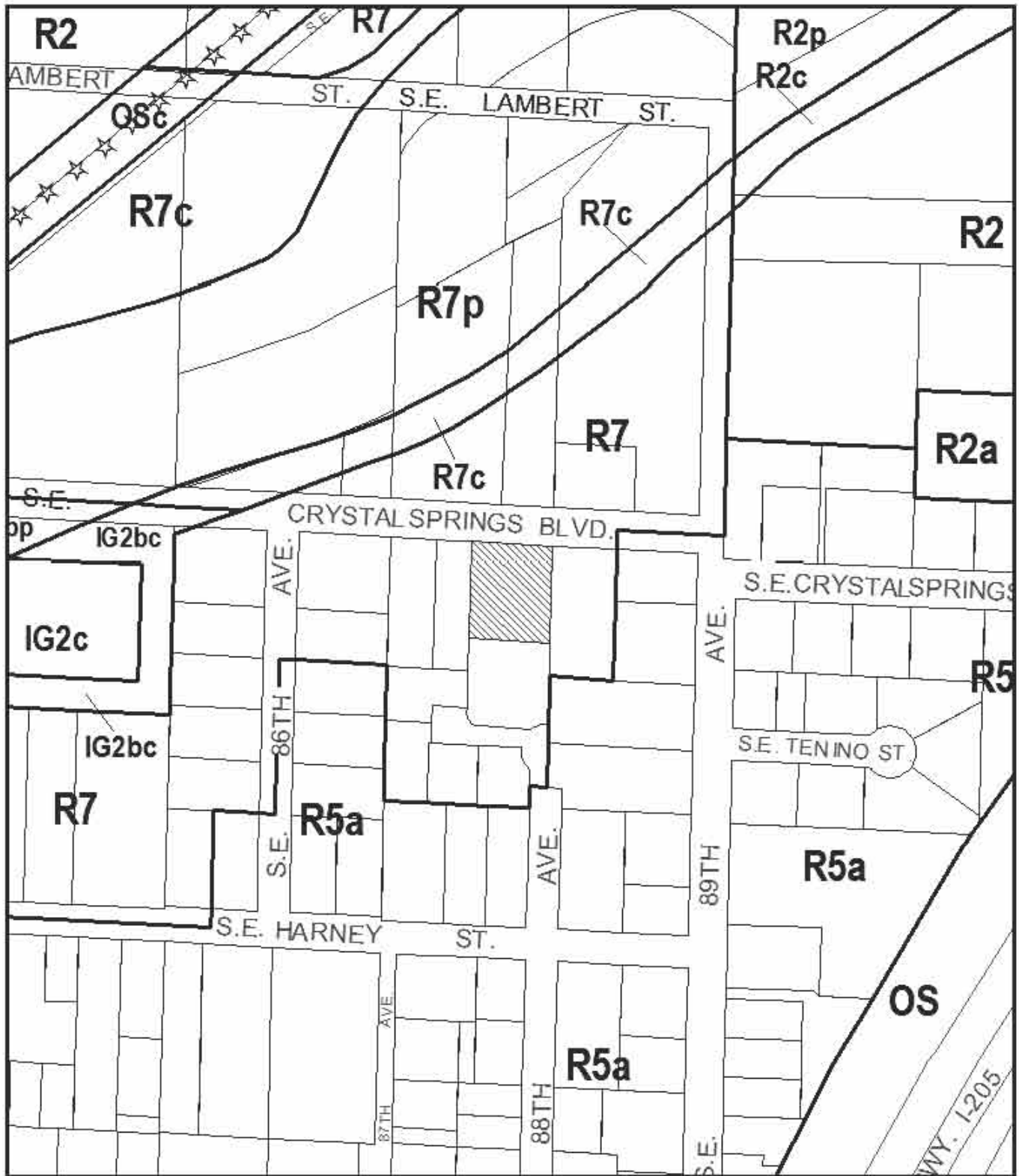
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Application, original, narrative and plans
 2. Revised site plan and elevation drawings, received June 27, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Elevation Drawings (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Life Safety Plan Review Section of BDS
- F. Correspondence: (none received)
- G. Other:
 1. Site History Research
 2. Letter from Kathleen Stokes to Kelly Hopper, March 17, 2008

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

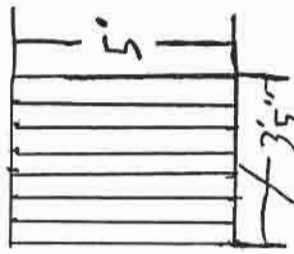


This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

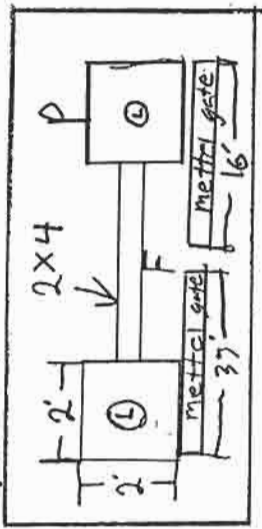
File No.	LU 08-112458 AD
1/4 Section	3839
Scale	1 inch = 200 feet
State_Id	1S2E21CD 6205
Exhibit	B (Mar 03, 2008)

Approved
 City of Portland
 Bureau of Development Services
 Planner Kathleen A. Stoices
 Date July 28, 2008
 * This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

man metal gate



Pillar Top View

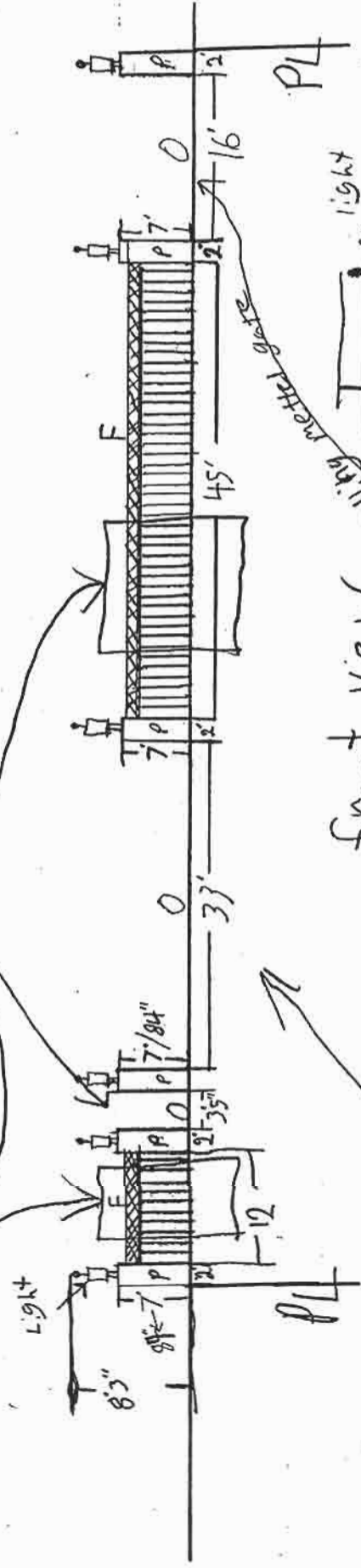


1/16" = 1'

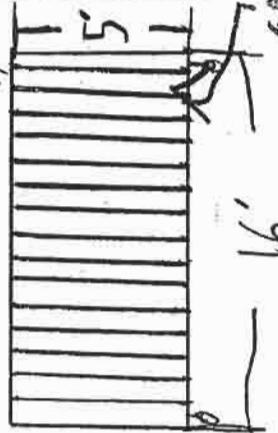
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6'3" = 75"

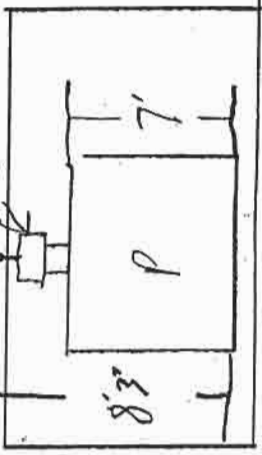
5' = 60"



front view

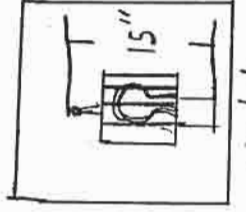


light



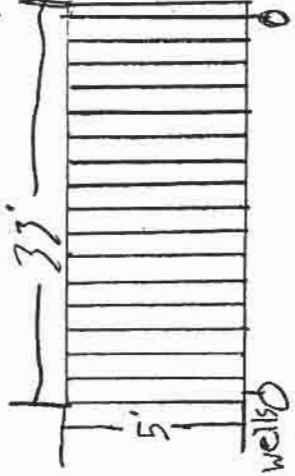
Pillar View

open between bars



light view

Rolling metal fence gate



LU 08-112458AD - Exhibit C-2