



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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Date: December 17, 2008
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / scate@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 08-129217 AD

GENERAL INFORMATION

Applicant/Owner: Nancy K. Martin
6360 SW Merlin Ct.
Portland, OR 97219

Representative: Martin M. Rall
1818 SW Martha St.
Portland, OR 97239

Site Address: 6360 SW MERLIN CT

Legal Description: LOT 9 BLOCK 5, ASH CREEK WOODS
Tax Account No.: R042003380
State ID No.: 1S1E30BB 03700
Quarter Section: 3923
Neighborhood: Ashcreek, contact Jack Klinker at 503-246-7872
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592
Zoning: R7, Medium Density Single-Dwelling Residential 7,000
Case Type: AD, Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant has built a 6-foot tall solid wood fence within the front building setback along SW Dolph Drive. Because this is a corner lot, the front building setback is defined as the shortest side of the lot that borders a street. The wooden fence within the front setback extends from the south property line of the site to the southern edge of the driveway. The grade at the base of the fence is approximately two feet above the adjacent sidewalk.

Section 33.110.255 C.1 of the Zoning Code limits the height of fences within the front building setback to 3 ½ feet. The applicant is requesting an Adjustment to this standard to allow the 6-foot tall fence to remain within the front setback. As part of this Adjustment request, the applicant is proposing to modify the portion of the fence within the front setback by removing the upper 2 ½ feet of solid fence and replacing it with a trellis to allow for greater visibility of

the driveway and front property. All sections of the fence that are within the 15-foot front building setback will be modified in this manner.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria found in Section 33.805.040 of the Zoning Code.

ANALYSIS

Site and Vicinity: The site is a 10,145 square foot lot developed with a single dwelling residence built in 1985. The immediately surrounding area is characterized by single dwelling uses and development consistent with the R7 zoning.

Zoning: The site is zoned R7, Single-Dwelling Residential 7,000. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 13, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Review Section of BDS
- Bureau of Parks-Forestry Division

The Bureau of Transportation Engineering responded that the only applicable transportation related purpose or issue related to fences as identified in Code Section 33.110.255.A is *italicized* below:

“The purpose of the fence standards 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. These standards are intended to promote the positive aspects of fences and to limit the negative ones”

With regard to the “endangering of public or vehicle safety” factor above, fences along property lines on corner lots that are excessive in height have the potential for creating sight line impairment for vehicles approaching an intersection and attempting to turn onto the perpendicular street. It must be noted here that the intersection of SW Merlin and SW Dolph is an uncontrolled intersection; there are no STOP signs or signals controlling movements through the intersection. In relation to the originally described project, it must be recognized that the fence that has already been constructed along the site’s SW Dolph frontage, has been built within the City’s right-of-way, not on private property. Accordingly, in order to retain the fence in its current location, the applicant would need to file an encroachment permit with the City. The applicant has been advised that PBOT would not be supportive of such an encroachment into the right-of-way primarily because the applicant would not be able to demonstrate that the fence couldn’t be located entirely on the subject site, without the need for the encroachment.

The applicant has therefore indicated in writing, that it is her intent to modify the proposal. The new proposal will include completely removing the wooden fence that has been constructed along the site’s SW Dolph frontage. The proposal now only includes maintaining the gate

portion of the fence in its current location, and reducing its height to 3.5-ft. The project will also include the existing trellis that has been built behind the gate. This trellis exceeds the Zoning Code's height limitation for such structures within the front yard setback area, therefore the only reason why the requested Adjustment is now necessary is because of the height of the trellis.

With the removal of that portion of the fence constructed along the site's SW Dolph frontage, PBOT has no objections to the height of the existing trellis.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 13, 2008. A total of eight written responses have been received from notified property owners in response to the proposal. While some of the issues raised are not directly relevant to the approval criteria, many of the concerns expressed relate directly to the approval criteria and are addressed below. In summary, the concerns raised include appearance and safety for bikes, vehicles and pedestrians.

Staff Comment: After receiving copies of the public comments and the response from Portland Bureau of Transportation [PBOT] the applicant submitted written comments modifying the original request. The applicant has modified the proposal and states that she will completely remove the fence on the west side, so that it will no longer be in the PDOT right of way, and will no longer create a height issue. However, the applicant wishes to keep the gate and trellis in the present location, but the gate itself will be lowered in height to meet the height limit of 3 ½ feet. The trellis will remain as built to form a decorative entryway element above the gate.

The zoning code allows by right certain vertical accessory structures, such as trellises [per 33.110.250 C 2 a-b] if certain dimensions are met. Because the existing trellis exceeds the 3 foot width limit for a trellis allowed by right, this Adjustment review is still required.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose

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 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

33.110.255 A. Fences – Purpose. The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

Findings: Site visits by both land use and transportation city staff concluded that the existing fence, as built, has negative impacts, both in appearance and in pedestrian and vehicle safety. After reviewing the initial comments and the Portland Transportation's response regarding the location of the existing fence, the applicant modified the proposal to remove the fence along the west property line, but leave the gate and trellis above the concrete steps that provide access into the yard. The gate must be cut down to 3 ½ feet in height to comply with the development standards for fences in the front setback.

As a result of the modified proposal, only the 'as built' trellis that arches over the double gate remains as an element triggering an Adjustment review. While the zoning code allows by right trellises and similar vertical accessory structures in the front setback, the subject trellis is greater than 3 feet in width due to the double gated entry dimensions. However, such decorative elements are relatively common features above gates throughout the city. As a decorative element that helps 'announce' the gated entry into the yard, the trellis does not contribute negative impacts of appearance nor hinder safe movement and line of sight for pedestrians and vehicles. The gate and trellis will provide a clear separation of the yard of the site from the public sidewalk, but with the reduction in height of the gates, there will no longer be an unattractive 'street wall' that blocks views into or out of the site. The integrated elements of gate and trellis will provide a strong visual element announcing the steps and entry, and will serve as a design feature that can serve as a visual foil to vegetation and similar landscaping. For these reasons, the modified proposal can meet this criterion.

- 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 site is in a residential zone. With the removal of the fence from the public right of way along the west property line, the restored visibility and sight lines will promote safer movement for both pedestrians and vehicles, which enhances the livability of the immediate area. The removal of this portion of the fence will eliminate the 'fortified street wall' appearance, an element of the existing situation, which many neighbors expressed objections about. The applicant has also proposed to cut the double gate down to meet the 3 ½ foot height standard and retain the existing trellis above the gates. The trellis will not have a negative visual impact nor will it impinge upon the livability of the immediately surrounding residential area. For these reasons, 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 being requested; therefore this criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: The site does not contain any city-designated scenic or historic resources; therefore this criterion is not applicable.

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

Findings: With the removal of the 6 foot high fence along the west property line where it encroaches into the public right of way, the impacts of the existing situation will be

eliminated. Sight lines will be restored to facilitate safer pedestrian and vehicle movements and the apparent 'street wall' created by the existing fence will be removed. With a condition of approval that the fence is removed and the double gate is cut down to meet the height standard within 30 days of the final date of this decision, all impacts are mitigated and therefore 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; therefore 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

The applicant originally requested an adjustment in order to modify an existing 6 foot high solid wooden fence in the front setback by removing the upper 2 ½ feet and replacing it with a trellis to allow greater visibility of the driveway and property. However, after review by Portland Transportation regarding the placement of the fence, which encroaches into the public driveway, and in consideration of concerns raised by neighbors, the applicant revised the proposal such that the entire portion of the fence that is encroaching into the public right of way [along the west property line] will be removed, and the double gated entry with trellis located at the top of the steps near the driveway will remain, but with the gates cut down to the required 3 ½ foot height. The revised proposal, with conditions of approval, can meet all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of: retention of an existing entry way trellis over a double gated entry, per the approved site plans, Exhibit C-1, signed and dated December 15, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) 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 08-129217 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Within 30 days of the date of the final decision, the portion of the fence along the west property line that encroaches into the public right of way must be removed.
- C. Within 30 days of the date of the final decision, the double gated entry at the top of the steps along the west property line must be cut down to meet the required 3 ½ feet in height.

Decision rendered by:  **on December 15, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed: December 17, 2008**Staff Planner: Sylvia Cate**

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 14, 2008 and was determined to be complete on November 7, 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 14, 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 December 31, 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 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 **January 2, 2009 – (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:

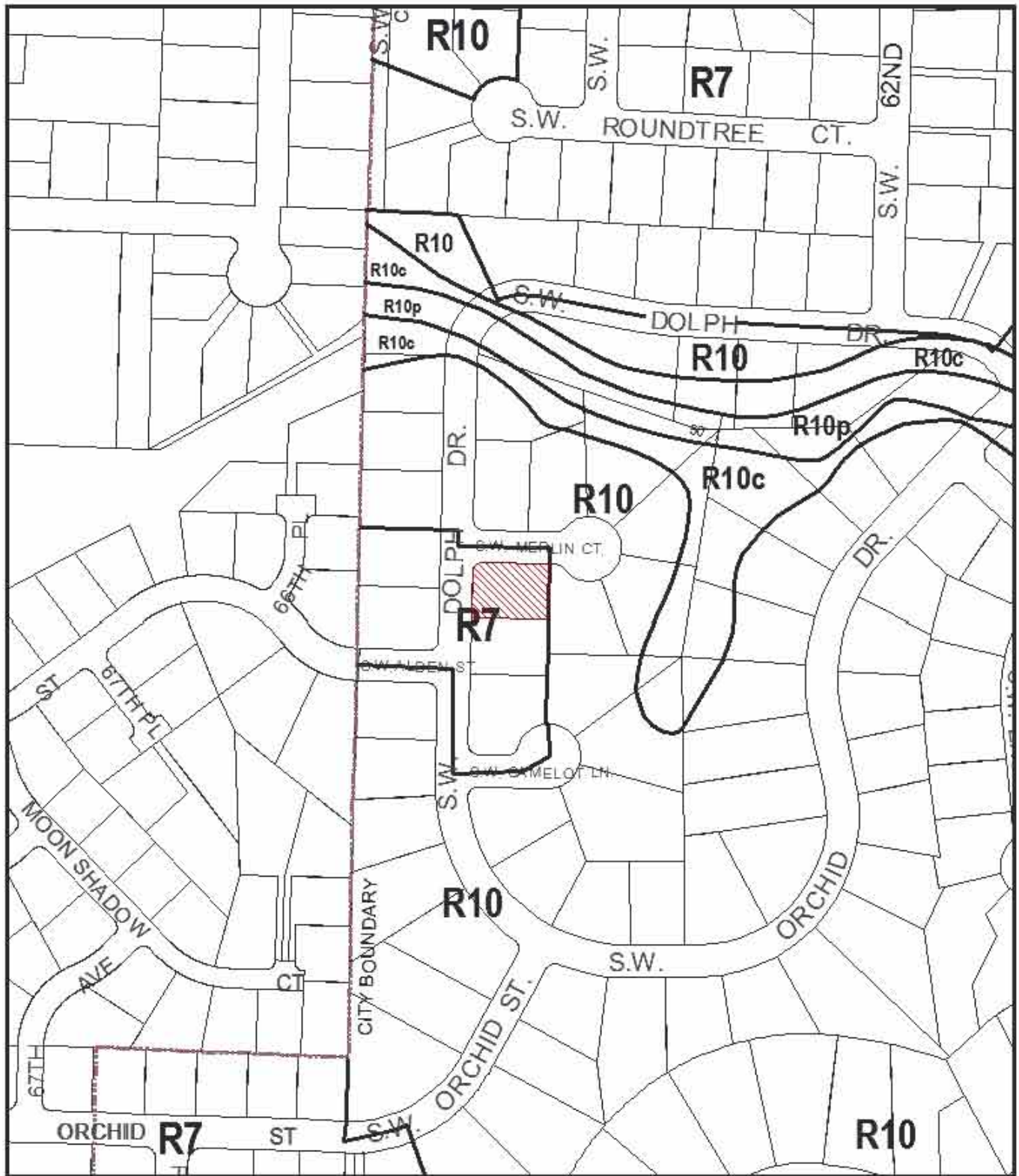
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original narrative
 - 2. Expanded narrative
 - 3. Modification December 8, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan and Elevation Drawing (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. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Ron Lipton, November 19, 2008, e-mail in opposition to proposal
 - 2. James Ekberg, November 20, 2008, e-mail in opposition to the proposal
 - 3. Marcia Wehling, December 3, 2008, e-mail in opposition
 - 4. Ralph Zenier, December 4, 2008, e-mail in opposition
 - 5. Penny Price, December 2, 2008, email in opposition
 - 6. Dawn Whitney, December 1, 2008, email in opposition
 - 7. Dan Ruth, December 3, 2008. email in opposition
 - 8. Cheryl McNamara, December 3, 2008, email in opposition
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter, November 13, 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

 Site



File No.	<u>LU 08-129217 AD</u>
1/4 Section	<u>3923</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S1E30BB 3700</u>
Exhibit	<u>B</u> (May 21, 2008)



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MARTIN RESIDENCE
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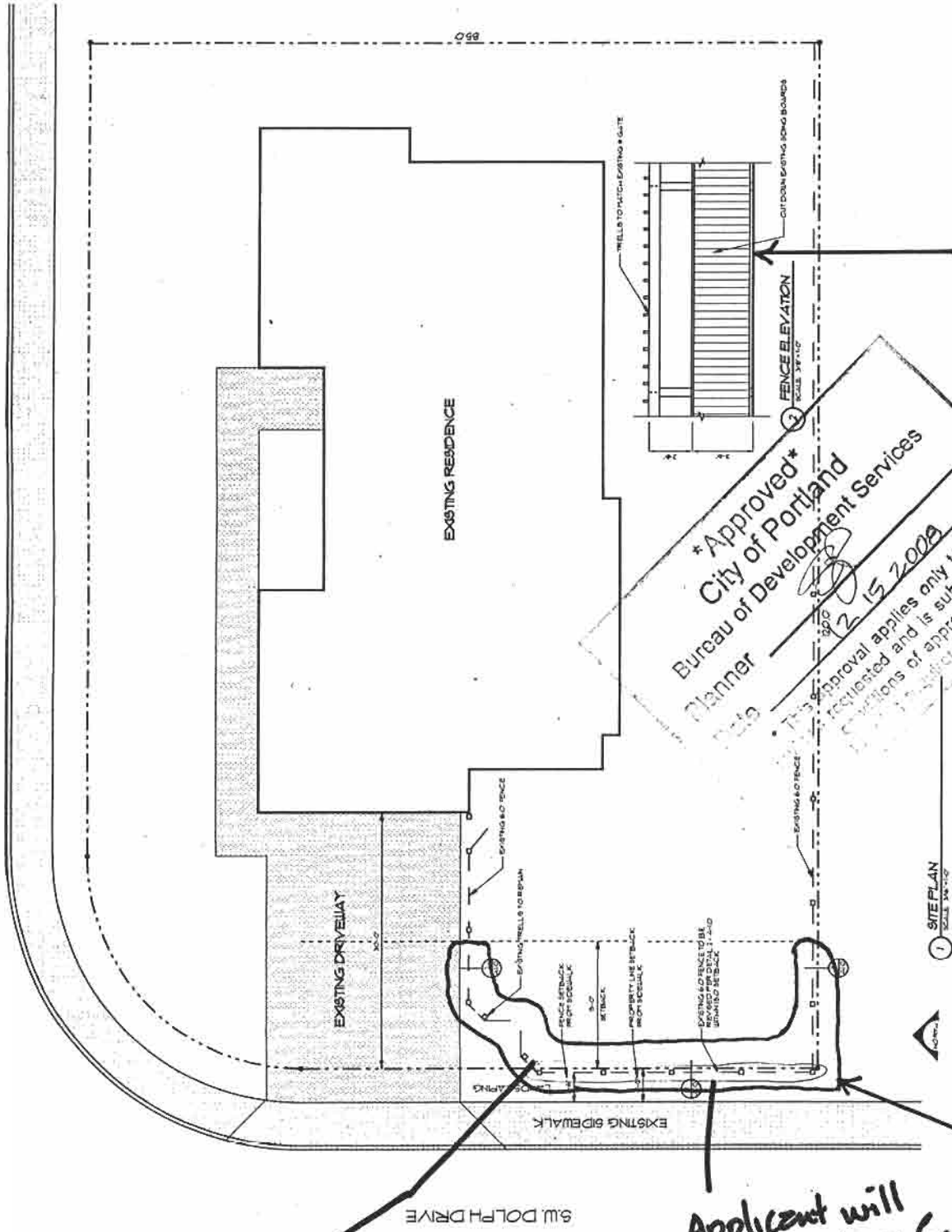
SITE PLAN

DATE: 02/14/2009
 REVISIONS:

SCALE: AS SHOWN
 DRAWN BY: JLB
 CHECKED BY: JLB
 DATE: 02/14/09

AL-0
 SHEET

S.W. MERLIN COURT



PROPOSED MODIFIED FENCE

* Approved *
 City of Portland
 Bureau of Development Services
 Planner
 Date: 12/15/2008

This approval applies only to the
 conditions of approval
 requested and is subject to all
 applicable laws and regulations.

① SITE PLAN
 SCALE 1/8"=1'-0"

PORTION OF FENCE TO BE MODIFIED

existing trellis
 over double gates
 (cut to 3 1/2') TO REMAIN

Applicant will
 remove fence from
 R.O.W

C-1