



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

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Date: April 1, 2009
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 08-172203 AD

GENERAL INFORMATION

Applicant: Ashley Bishop
4916 SE 84th Avenue
Portland, OR 97266-3107

Site Address: 4916 SE 84th Avenue

Legal Description: S 1/2 OF LOT 2 BLOCK 7 LOT 3 BLOCK 7, DIELS ADD
Tax Account No.: R209500810
State ID No.: 1S2E16BB 16800
Quarter Section: 3539

Neighborhood: Lents, Judy Welch at 503-771-4667.
Business District: Eighty-Second Avenue, Ken Turner at 503-484-6225.
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550.

Zoning: R2.5 (R2500, Attached Single-Dwelling Residential)

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

Proposal: The applicant currently has a 6-foot tall, slatted, chain-link fence that is located at the inside edge of the sidewalk, within the public right-of-way, on SE 84th Avenue. According to Portland Zoning Code, Section 33.110.255 C, fences located within the 10-foot setback from the front property line in the R2.5 zone are limited to a height of 3.5 feet. The applicant is requesting approval of an adjustment to allow an exception to increase the allowed height of the fence from 3.5 feet to a height that varies from 4 to 6 feet within the front setback area.

The fence would be moved back 3 feet to the east, from its present location at the inside edge of the sidewalk, to the location of the front property line and on the west side of a hedge and shrubs that also screen the front yard. The fence is proposed to be 4 feet tall along the front property line and the first 7 feet of the north side property line, rising to 6 feet tall, for the remaining 3 feet of the setback area. The fence is proposed to be 6 feet tall along all of the south property line. The portions of the fence that are 6 feet tall, that are also outside of the 10-foot front setback area, are allowed by right and are not part of the Adjustment Review.

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

ANALYSIS

Site and Vicinity: The applicant's site is a 7,500 square-foot parcel that is located on the east side of SE 84th Avenue, between SE Liebe and SE Raymond Streets. The property is developed with a single-dwelling detached residence, built in 1911, and a detached shed that is located to the north of the house. The area around the house is generally developed with other single-dwelling structures. Tall hedges and shrubs are located in front of the applicant's house and also along the street property line of several other homes in the immediate area.

Zoning: The zoning for this site is R2.5, or R2,500, Attached Residential. This zone is intended for areas with complete public services and without development constraints. The zone allows a mixture of housing types of a single-dwelling character, including attached houses. The maximum density is generally 17.4 units per acre or one unit per 2,500 square feet. To allow the fulfillment of these densities, the allowed scale of development is greater than for other single-dwelling housing structure types.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **March 6, 2009**. The following Bureaus have responded to indicate that there are no issues or concerns related to approval of the requested adjustment, subject to the condition noted below:

- Environmental Services
- Transportation Engineering noted that there are no concerns with the proposal, as long as the pedestrian gate is required to swing inward, toward the property and away from the public right-of-way (Exhibit E-2).
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Parks-Forestry Division

Neighborhood Review: No written responses has 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: The purpose for limits on fence heights is to promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety.

Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. The standards are intended to promote the positive aspects of fences and to limit the negative ones.

The applicant currently has a six-foot tall cyclone fence, with dark green slats that creates a street wall that obscures the view to and from the front of the house. The fence is located at the east edge of the sidewalk, which is within the right-of-way. The proposal is to modify the fence, moving it back three feet to the front property line, and lowering the height to four feet along the front edge of the site. These modifications will eliminate the negative effects of the fence and still allow the positive aspects of fences.

Moving the fence back from the sidewalk and lowering the height of the front edge of the fence will allow police and community surveillance, even through the vegetation at the front of the lot. Emergency access and the safe movement of pedestrians and vehicles will be improved because, with the proposed modifications, the fence will not obstruct views from the driveway or the main entrance to the house.

The modified fence can still provide a sense of privacy and maintain safety for children and pets for the household, but with an improvement to the appearance of the street edge. Therefore, the purposes of the regulation will be equally fulfilled 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: As stated in the findings above, the existing fence causes negative impacts to the appearance and livability of the residential area. The relocation of the fence will improve the pedestrian environment. With a condition that requires the front gate of the fence to swing inward, away from the right-of-way, the proposed modifications to the fence will eliminate these negative impacts and provide a front edge to the site that will not detract from the appearance or the livability of the neighborhood, because it will be in keeping with the surrounding properties. Therefore, with this condition, this criterion can be 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
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: Only one adjustment has been requested. There are no scenic or historic resources on the site. No impacts are expected to occur from the modified fence. The site is not located in an environmental zone. Therefore, these criteria do 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

The proposal to have a fence that is 4 feet tall at the front property line, along SE 84th Avenue, and that is 6 feet tall, within the front setback on the south side and a portion of the north side of the site, will allow an enclosed area for privacy and safety. The fence, when modified as proposed, will not obstruct views to or from the house. With a condition that requires the gate at the front entry to swing inwards, away from the public right-of-way, the fence will not block vehicular or pedestrian movement. The fence will fit in with the treatments along the street edge by other neighbors, eliminating identified negative impacts that result from the fence as it currently exists. All of the approval criteria can be met, with the proposed modifications and the aforementioned condition. Therefore, the requested Adjustment can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.255 C, to increase the maximum allowed fence height within the front setback along SE 84th Avenue, from 3 feet 6 inches to 4 feet, along the front property line and within the west seven feet of the front setback along the north property line. The fence height is also approved to be increased to 6 feet, within the front setback along the south side property line and the east 3 feet of the front setback area on the north side property line. Approval is subject to general compliance with the approved site plan, Exhibit C-1, signed and dated March 30, 2009, and the following condition.

- A. The gate in the fence that provides pedestrian access to the front entrance of the house must swing inward, toward the private property, in order to prevent any encroachment or barriers in the public right-of-way.

Staff Planner: Kathleen Stokes

Decision rendered by:  **on March 30, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 1, 2009

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 October 22, 2008, and was determined to be complete on March 4, 2009.

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 October 22, 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 April 15, 2009** 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 **April 16, 2009 – (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:

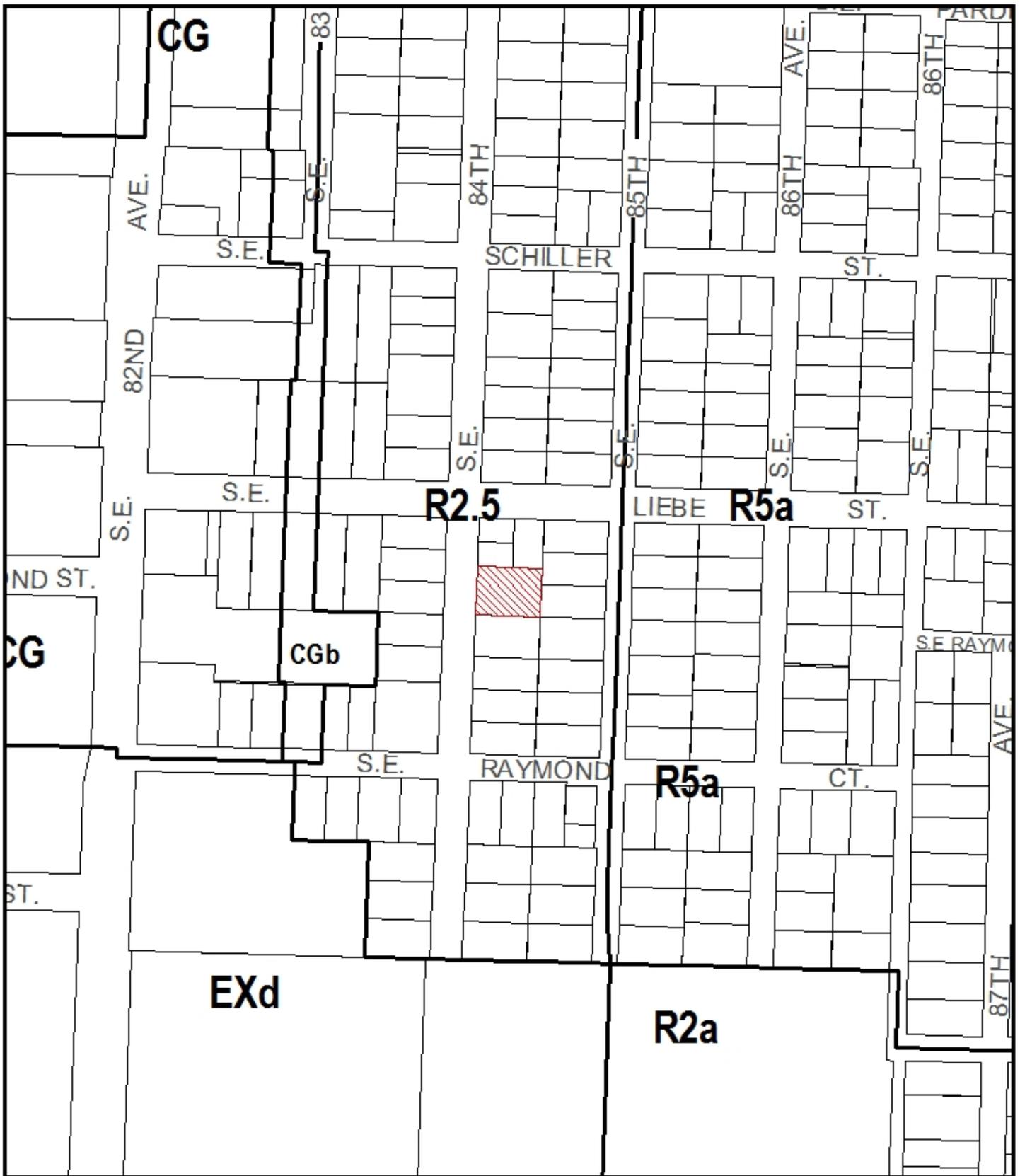
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original submittal
 - 2. Supplemental information and revisions, received March 3, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Printout showing all agency responses
 - 2. Transportation Engineering and Development Review
- F. Correspondence: (none received)
- G. Other:
 - 1. Letter from Kathleen Stokes to Ashley Bishop, November 4, 2008

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



ZONING

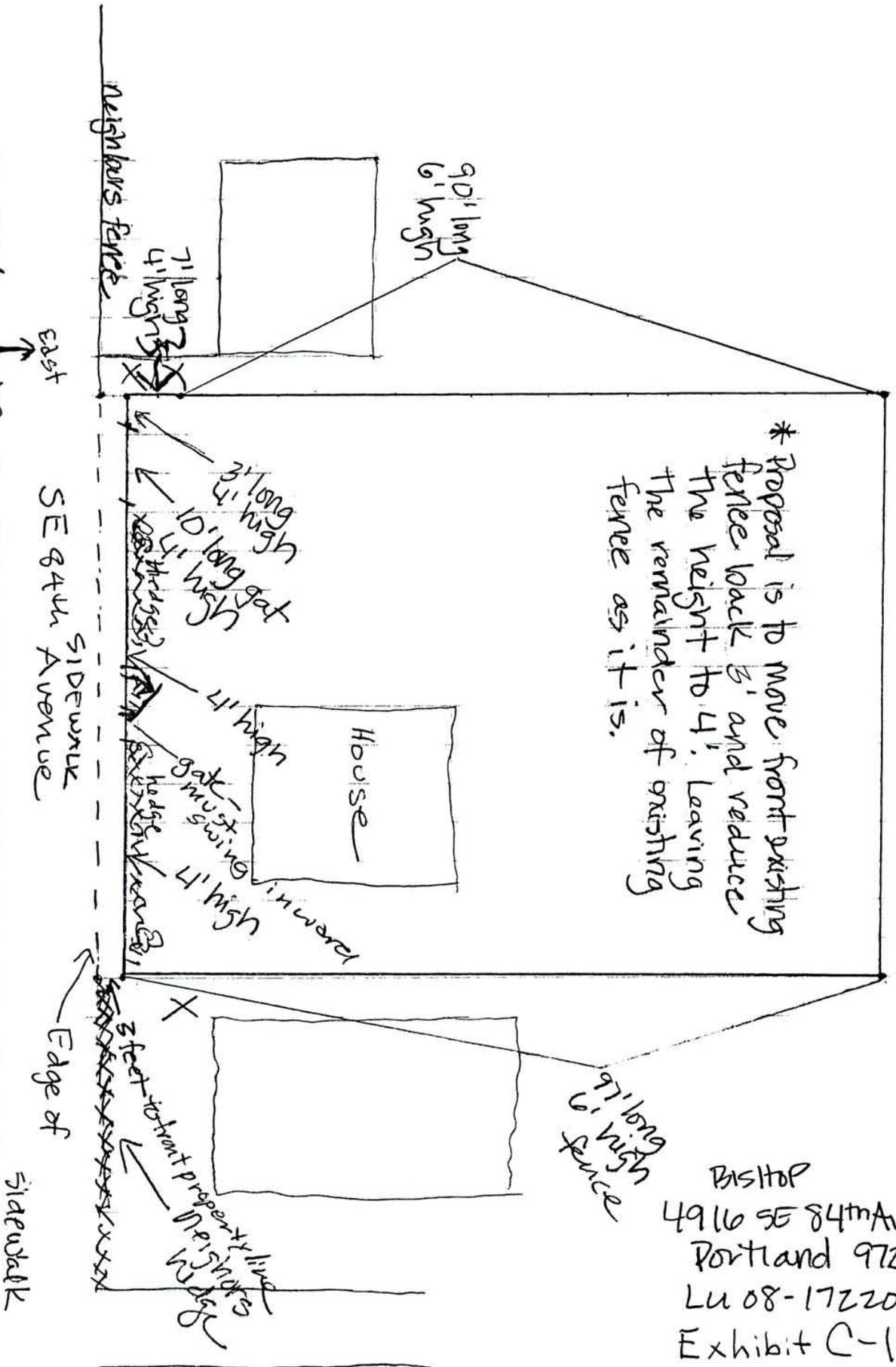
 Site



File No. LU 08-172203 AD
 1/4 Section 3539
 Scale 1 inch = 200 feet
 State_Id 1S2E16BB 16800
 Exhibit B (Oct 24, 2008)

Proposed Fence Change

* Proposal is to move front existing fence back 3' and reduce the height to 4'. Leaving the remainder of existing fence as it is.



* Approved*
City of Portland - Bureau of Development Services
Planner: Kathleen A. Stover Date March 30, 2009
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.