



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

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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** September 1, 2009  
**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 09-107861 AD**

#### **GENERAL INFORMATION**

**Applicant:** Marilyn Drinkward  
5425 SW Shattuck Road  
Portland, OR 97221-1033

**Site Address:** 5425 SW SHATTUCK RD

**Legal Description:** TL 3900 0.51 ACRES, SECTION 18 1S 1E  
**Tax Account No.:** R991181880  
**State ID No.:** 1S1E18BD 03900  
**Quarter Section:** 3523

**Neighborhood:** SWN, Hayhurst, contact Janet Hawkins at 503-988-3707.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Zoning:** R7, 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 is requesting an Adjustment to zoning code **Section 33.110.255, Fences**, in order to legalize an existing 6-foot wooden fence that is partially located within the front setback along SW Shattuck Road. The fence angles into the front setback at the southeast corner of the property. About 20 feet of the area of fence that is located within the front setback runs almost parallel to the front property line and is 2 feet from the front property line at its closest point, and 4 feet from the front property line at its furthest point. Another portion of the fence that is located within the front setback runs almost perpendicular to the front property line, and is 4 feet from the front property line at its closest point, then extends west for about 14 feet until it is outside of the front setback (please see attached site plan for a graphic depiction). The fence also extends along the south side property line and along portions of the west (rear) property line.

The R7 zone requires a front building setback of 15 feet, and allows fences of up to 3.5 feet in height to be located within the front building setback. Therefore, an Adjustment to zoning code **Section 33.110.225, Fences**, is required in order to allow the existing 6-foot wooden fence to remain in the front building setback.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. 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 22,215 square foot site is located on the west side of SW Shattuck Road, approximately two blocks south of SW Beaverton Hillsdale Highway. The site is developed with a single-dwelling residential structure originally built in 1955, and a detached garage with associated paving for parking and vehicle circulation. The site is characterized by dense natural and ornamental landscaping along the front, rear, and south side property lines, and less dense landscaping along the north side property line. The home is located in approximately the center of the site, with the garage located in the northwest corner, and the driveway access from SW Shattuck Road located in the northeast corner. The property contains an existing fence, located along the front, rear, and south side property lines. The site is bounded on the east by SW Shattuck Road, and on the south by two parallel, private rights-of-way that access three different lots. The site is directly bounded by two other residential properties to the north and west.

Within 200 feet of the subject site, development is single-dwelling residential. The property directly across SW Shattuck road contains a similarly constructed and located fence, and several other similarly sized and located fences were documented within the nearby vicinity. In this location, SW Shattuck Road is designated as a Neighborhood Collector, and is paved, but is not improved with a curb or sidewalk. The subject property and other properties along the west side of the street are located slightly higher in elevation than SW Shattuck.

**Zoning:** The site and immediately surrounding vicinity is zoned R7, Single-dwelling Residential. Sites further to the north are zoned R5, single-dwelling, and R1, multi-dwelling. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R7 zone is a medium density single-dwelling zone, and allows attached and detached single-dwelling structures and duplexes.

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

PC 4405 (90-022631): Year of Case: 1963-64. Planning Commission initiation of adoption of City zoning for Maplewood Annexation area. No additional information regarding this case (such as the Ordinance Number of the authorizing Ordinance) was found in the logbook or the microfiche record.

**Agency Review:** A "Request for Response" was mailed on August 5, 2009, 2009. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.7):

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

- Water Bureau
- Bureau of Parks-Forestry Division

**Neighborhood Review:** A “Notice of Proposal in Your Neighborhood” was mailed on August 5, 2009. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

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

### 33.805.040 Approval Criteria

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

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

**Findings:** The applicant is requesting an Adjustment to **Section 33.110.255, Fences**. The purpose statement for this regulation is as follows:

*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 subject fence is 6 feet in height and is constructed of unpainted, 2” and 4” clear cedar slats and 4”x4” posts. The fence is located within an area of existing vegetation, and the portion within the front setback terminates on the northern end at an area of visually impenetrable natural vegetation. The portion of the fence that is located within the front setback is approximately 34 feet in length, and, due to the angled configuration of both the fence and the property, the fence varies in its proximity to the front property line. The front property line is 16 feet from the edge of the paved edge of SW Shattuck Road. At its closest point, the fence is 18 to 20 feet from SW Shattuck. All nearby homes appear to be at least 100 feet from the area of fence that is located in the front setback.

The fence promotes the positive benefits of fences by providing privacy to the subject site, separating the outdoor living area from SW Shattuck Road (which as a Neighborhood Collector is a busy street), and enhancing the property with attractive landscape materials that present an aesthetically pleasing and residentially compatible façade to SW Shattuck Road.

The fence is located at least 8 feet from the adjacent driveway, and extends for only 14 feet along that driveway. The fence is located at least 18 feet from SW Shattuck, and extends for only 20 feet along SW Shattuck. The remainder of the subject site's frontage along SW Shattuck (about 140

feet) is characterized by dense vegetation that contributes to the low-density, well vegetated character of the nearby area. The majority of this site and other sites in the area are obscured from the street by dense vegetation. The subject site is higher in elevation than SW Shattuck, and views into the sight are generally obscured by the change in elevation and the dense vegetation. At its closest point, the home is located approximately 35 feet from the front property line and approximately 50 feet from SW Shattuck. Many other homes in the area are similarly located and similarly separated by topography and screened by vegetation.

The Portland Bureau of Transportation has reviewed the proposal and submitted no comments or concerns. Adequate sightlines from vehicles exiting and entering the adjacent driveway onto or from SW Shattuck are provided by the 16-foot right-of-way beyond the paved portion of SW Shattuck Road. At the southeast corner of the front setback, the subject fence is angled and located approximately 10 feet from the adjacent driveway to the south, further enhancing sight lines from that adjacent driveway.

For all of these reasons, all of the positive aspects and none of the negative aspects of fences are promoted by the subject fence. Therefore, the purpose statement for fences is equally met, and this approval criterion is met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area; and

**Findings:** The fence presents an attractive façade to the adjacent street and driveway that remains compatible with existing residential development and that does not detract from the character of the nearby neighborhood. Due to its elevation above the street and setback from the street and driveway, the fence does not impinge upon sightlines for vehicle and pedestrian safety. The length of fence within the front setback does not provide a significant visual barrier between the house and the neighborhood beyond the existing barriers of vegetation, elevation change, and physical separation. The livability and appearance of the residential area is not detracted from by the proposed location of the fence. 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:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, 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.

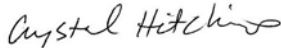
## CONCLUSIONS

The subject fence located within the front setback promotes the positive benefits of fences and does not promote any of the identified negative effects. The fence remains compatible with the residential area and does not significantly detract from appearance or livability. All applicable approval criteria are met, and therefore this Adjustment request should be granted.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to zoning code **Section 33.110.225, Fences**, in order to allow the existing 6-foot wooden fence to remain in its current location in the front building setback, per the approved site plans, Exhibits C-1 through C-2, signed and dated August 27, 2009.

**Staff Planner: Crystal Hitchings**

**Decision rendered by:**  **on August 27, 2009.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 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 February 11, 2009, and was determined to be complete on July 30, 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 February 11, 2009.

*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. Unless further extended by the applicant, **the 120 days will expire on: November 27, 2009.**

**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 September 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 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 **September 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.

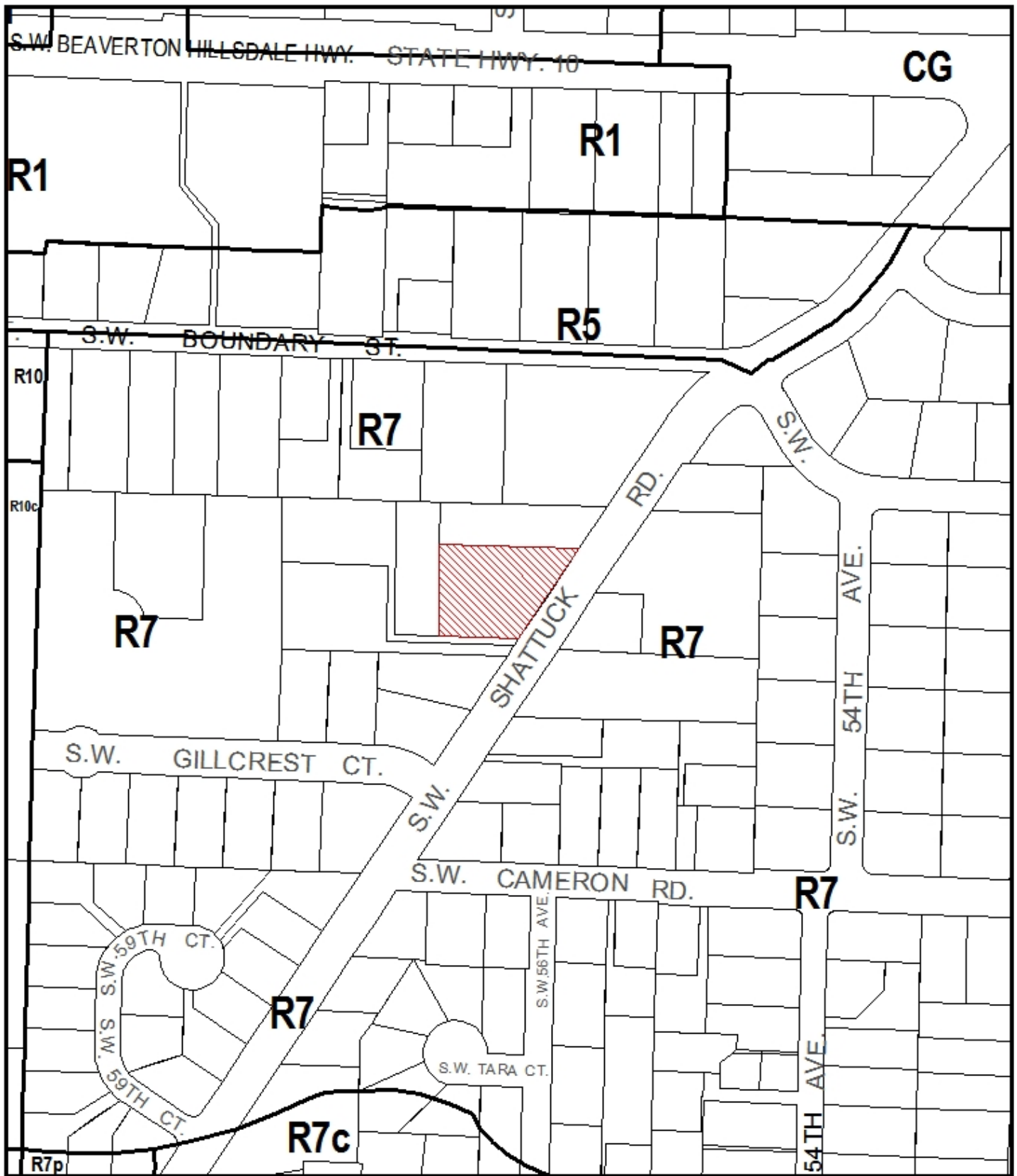
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Fence Elevation (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Review Section of BDS
  - 2. Life Safety Bureau
  - 3. Fire Bureau
  - 4. Bureau of Environmental Services
  - 5. Bureau of Transportation Engineering and Development Review
  - 6. Water Bureau
  - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
  - None Received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter
  - 4. 180-day reminder letter



# ZONING

 Site

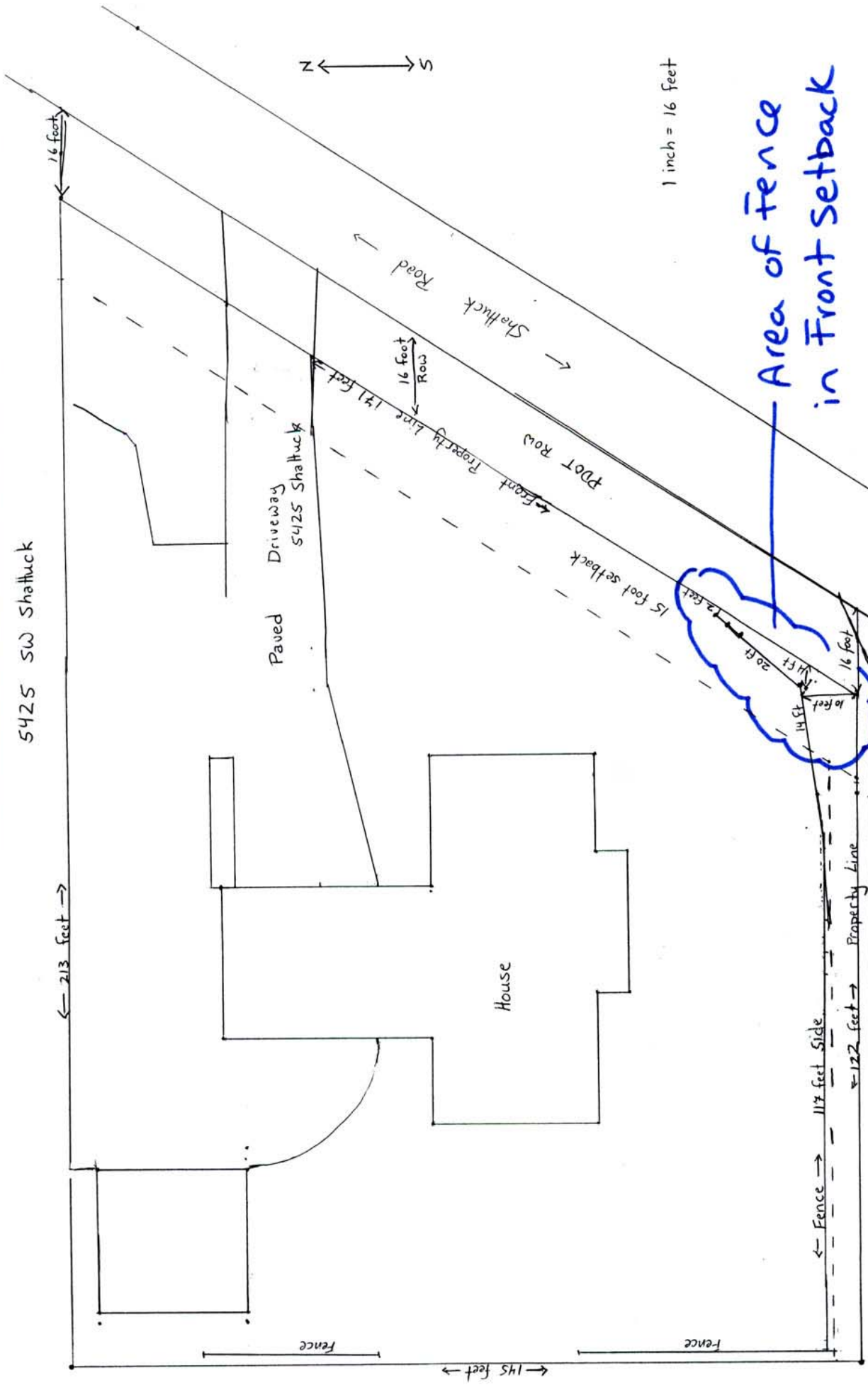


NORTH

File No.	<u>LU 09-107861 AD</u>
1/4 Section	<u>3523</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S1E18BD 3900</u>
Exhibit	<u>B (Feb 13, 2009)</u>



5425 SW Shattuck



1 inch = 16 feet

Area of fence in Front setback

Paved Driveway

\*Approved\*

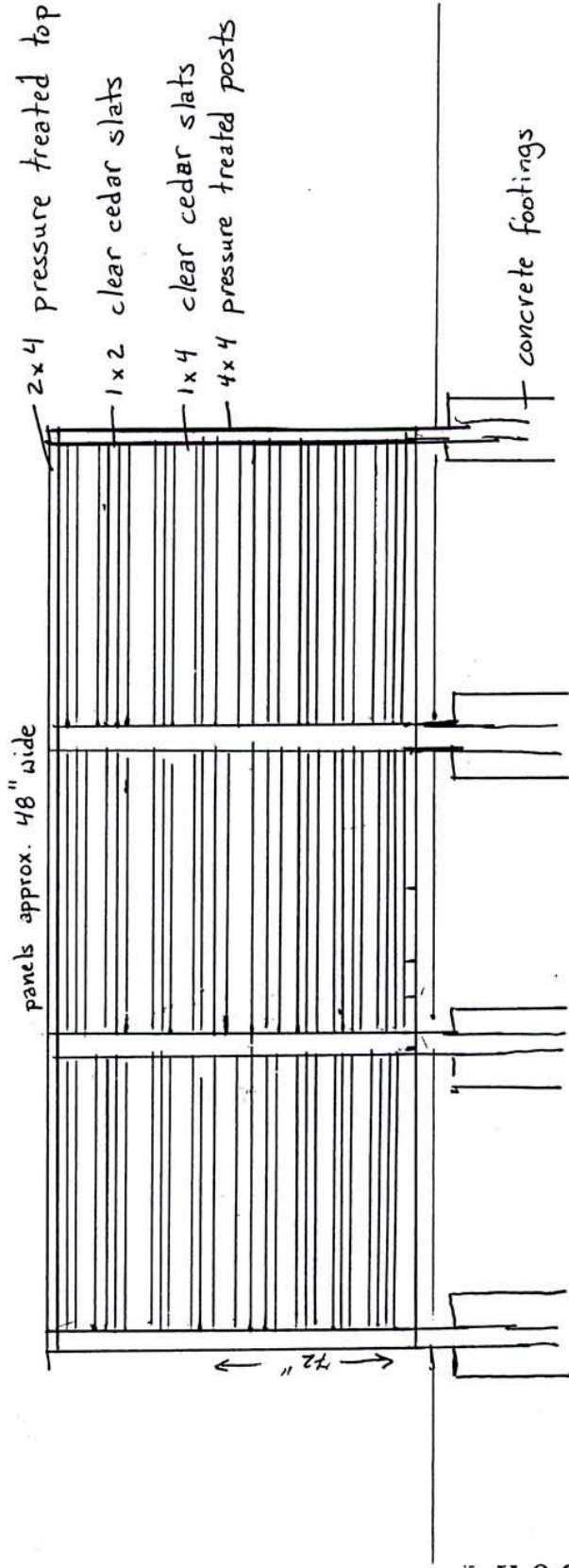
City of Portland - Bureau of Development Services

Planner Crystal Hitting Date Aug. 27, 2009

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

Fence at 5425 SW Shattuck

Approved  
City of Portland  
Bureau of Development Services  
Planner Cynthia Hitching  
Date Aug. 27, 2009  
\* This approval applies only to the  
review requested and is subject to all  
conditions of approval.  
Additional zoning requirements may apply.



LU09 - 107861 AJ