



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

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Date: January 13, 2011
To: Interested Person
From: Douglas Hardy, Land Use Services
503-823-7816 / douglas.hardy@portlandoregon.gov

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 10-190637 AD

GENERAL INFORMATION

Applicant: Anthony and Josette Schuur
4831 NE Alameda Street
Portland, OR 97213-1958

Site Address: 4831 NE Alameda Street

Legal Description: Block 134, Lot 9, Rose City Pk
Tax Account No.: R723121150
State ID No.: 1N2E30BD 08700
Quarter Section: 2735

Neighborhood: Rose City Park, contact Ed Gorman at 503-425-1611
Business District: Hollywood Boosters, contact Jan Tolman at 503-281-5497
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156

Zoning: R5h, Single-Dwelling Residential 5,000, with an Aircraft Landing Zone overlay

Case Type: Adjustment (AD)
Procedure: Type II, Administrative decision with appeal to the Adjustment Committee

Proposal:

The applicants are requesting an Adjustment to allow a fence to be in excess of 3.5 feet in height within the minimum required 5 foot setback along NE Alameda Street. The fence within this setback is 6 feet in height, with a corner element (at the intersection of NE Alameda Street and NE 49th Avenue) up to 8 feet in height. The fence, consisting of semi-transparent plexiglass supported by steel panels, extends along approximately 27 feet of the site's 100 foot frontage on NE Alameda Street. The corner, ornamental element, approximately 6 feet in width, is constructed entirely of steel. Note that the 6 foot tall steel fence along the site's NE 49th Avenue frontage is allowed by right.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is located at the northwest corner of NE Alameda Street and NE 49th Avenue. The lot is largely flat, and developed with a single-story, single-dwelling residence. The house (with its main entrance and garage entrance) is oriented to NE Alameda Street, with the side of the house facing NE 49th Avenue. The surrounding area is characterized by one to two-story single dwelling residences, mostly on 5,000 square foot lots, with lots fronting NE Alameda Street tending to be larger than 5,000 square feet.

Zoning: The site is located in an R5, Single-Dwelling Residential 5,000, zone, with an Aircraft Landing Zone (“h”) overlay zone.

The Single-Dwelling Residential zones are intended to preserve land for housing and to provide housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

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

Agency Review: A Notice of Proposal was mailed on December 16, 2010. The following Bureaus have responded with no issues or concerns regarding the requested Adjustment:

- Bureau of Transportation Engineering & Development;
- Bureau of Environmental Services;
- Water Bureau;
- Fire Bureau;
- Bureau of Development Services - Site Development Review Section;
- Bureau of Development Services – Life Safety; and
- Portland Parks & Recreation - Urban Forestry Division.

Neighborhood Review: Two written responses in support of the requested Adjustment were received from notified property-owners.

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

Findings: The applicants are requesting an Adjustment to allow a fence taller than 3.5 feet within the minimum required 5 foot setback along NE Alameda Street. The fence, at 6 feet in height will extend for approximately 27 feet along this frontage, with an element, approximately 6 feet in width, being up to 8 feet in height at the corner of NE Alameda Street and NE 49th Avenue. (Note that the fence along the site's NE Alameda Street frontage, at 8 feet or less in height, meets the zoning requirements and is not subject to this Adjustment review.)

The purpose for regulating the height and location of fences, as stated in Section 33.110.255.A of the Zoning Code, is as follows:

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.

The proposal will equally or better meet the purpose of the regulation based on the following findings:

- Because this is a corner site, the rear yard, which typically provides residents with a private space to relax and recreate, is only six feet in depth, making it more comparable to a side yard. For this site, the yards facing the two streets (NE Alameda and NE 49th) provide the most useable space for the home's residents. Placing the fence along these frontages provide a degree of privacy for the residents, and separation from a relatively busy NE Alameda Street.
- The applicants state in their written submittal that while the fence was designed to provide a sense of privacy, it was also designed to improve and reflect the architecture of the house. Like the house, the fence is horizontal in nature, with a semi-transparent plexi-glass panels that echo the rhythm and proportion of plate glass windows on the house. The use of corten steel for the fence reflects the organic, earthy materials that are a principal design element of the house. Additionally, the steel panels, punctuated by the lighter colored semi-transparent panels, help emphasize the architectural concept of voids and solids that predominates on the street-facing facades of the house.
- The design and placement of the fence along NE Alameda Street, though 6 feet in height with a corner element up to 8 feet in height, does not create the sense of an impermeable street wall that inhibits police and community surveillance. The fence extends along less than 30 feet of the site's 100 foot frontage along NE Alameda Street, thereby maintaining significant views to and from the yard and the house.

- The fence is placed 45 feet east from the site's driveway, thereby preserving the safe movement of vehicles backing out of the driveway, and maintaining adequate sight lines between drivers exiting the site and pedestrians walking along this frontage.
- Placing over height fences near the street on corner lots have the potential to create sight line impairments for vehicles approaching intersections. While the applicants' fence is placed at the corner of NE Alameda Street and 49th Avenue, there is 22 feet between the applicants' lot line and the street curb line. With this 22 foot distance, there is sufficient area for vehicles traveling southbound along NE 49th Avenue to approach the intersection and have a full view of traffic along NE Alameda Street.

As proposed, the Adjustment request equally or better meets the intent of the fence regulations, 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 requested Adjustment will not result in a proposal that detracts from the livability or appearance of the surrounding single-dwelling residential area. As indicated above in response to Approval Criterion A, the design of the fence is intended to blend and complement the architecture of the mid-century house. The major design elements of the fence directly reflect those of the house, and enhance the overall appearance of the site.

In some cases, over height fences in required setbacks can create a fortress-like appearance, especially when located along street lot lines. However, in this case, the applicants have limited the length of the fence so that it extends along less than one-third of the frontage along NE Alameda Street. This allows the majority of the yard fronting NE Alameda Street to be open and visible from the street, providing views not only of the yard but also of the house. With an open yard, views from the house to the street are maintained, which can contribute to neighborhood safety by allowing eyes on the street. Additionally, the semi-transparent plexi-glass panels are light in color, and allow light to pass through, thereby avoiding the presence of an overbearing, dark hardscape element close to the public sidewalk.

As proposed, the fence within the required setback along NE Alameda Street has no significant impact on the appearance or livability of the residential area, 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

Findings: As only one Adjustment is requested, this criterion is not applicable.

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

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there is neither a scenic nor historic resource designation on the site, this criterion is not applicable.

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

Findings: As indicated in responses to Approval Criteria A and B, the proposal:

- is consistent with the intended purposes of the regulation being adjusted; and
- has no impacts on the appearance or livability of the surrounding single-dwelling residential area.

As such, there are no identified adverse impacts for which mitigation is required, and 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: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, 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 via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

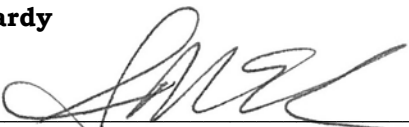
The applicants have demonstrated that the relevant approval criteria have been met. Care has been taken in the design of the fence to ensure that it reflects and enhances the distinctive architecture of the house on the site. The fence will improve privacy for the residents of this corner lot, while not creating an imposing presence close to the public sidewalk that creates a fortress-like appearance. Only the fence along NE Alameda Street is subject to this Adjustment review; the fence along NE 49th Avenue meets Zoning Code requirements. While the portion of the fence along NE Alameda Street exceeds the maximum height limit given its proximity to the property line, the applicants have balanced this by limiting the fence to only a small portion of this frontage, thereby retaining an open and pleasant street setback that provides views to and from the house. Given the proposal is consistent with the purpose of the fence regulations, and does not negatively impact the appearance of the surrounding residential neighborhood, there are no adverse impacts that require mitigation.

ADMINISTRATIVE DECISION

Approval of an Adjustment to allow a fence in excess of 3.5 feet within the required 5 foot setback along NE Alameda Street, per the approved site plan and elevations, Exhibit C1, signed and dated January 12, 2011, and subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 10-190637 AD."

Staff Planner: Douglas Hardy

Decision rendered by:  **on January 12, 2011.**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 13, 2011

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 November 4, 2010, and was determined to be complete on December 13, 2010.

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 November 4, 2010.

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 April 12, 2011.**

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 January 27, 2011**, at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and on Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 Street 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 28, 2011 – (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.

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:

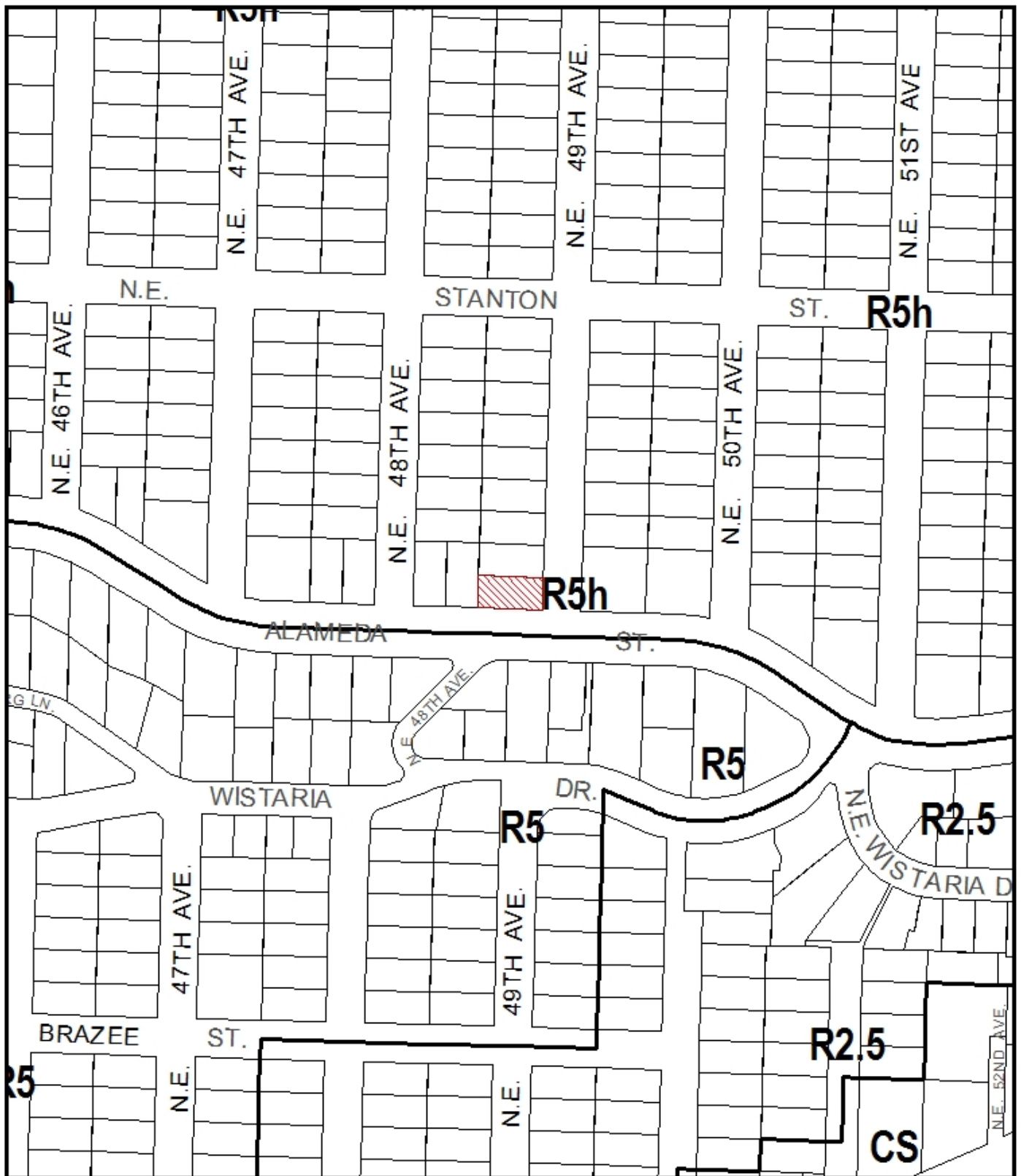
- all conditions imposed herein;
- all applicable development standards, unless specifically exempted as part of this land use review;
- all requirements of the building code; and
- all provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicants' Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan and elevation (attached)
 - 2. Enlarged elevations
 - 3. View of fence from NE Alameda Street
 - 4. Fence details
 - 5. Fence photos
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering & Development
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Bureau of Development Services - Site Development Review Section
 - 6. Bureau of Development Services – Life Safety
 - 7. Portland Parks & Recreation – Urban Forestry Division
- F. Correspondence:
 - 1. Allen R. and Melinda M. Boyce, letter dated December 27, 2010, in support
 - 2. Stuart H. and Gayle C. Morris, letter received January 3, 2011, in support
- G. Other:
 - 1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



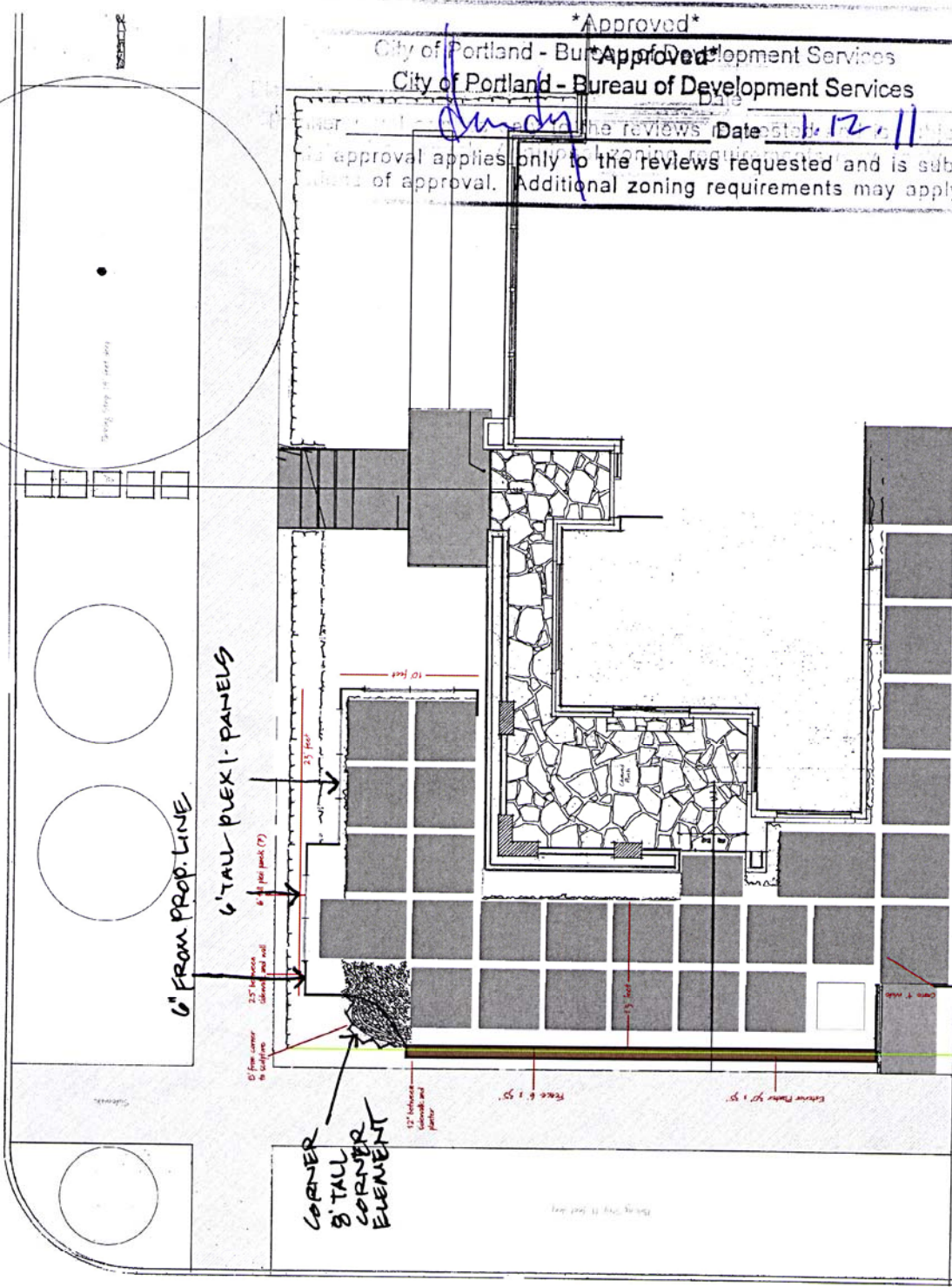
ZONING



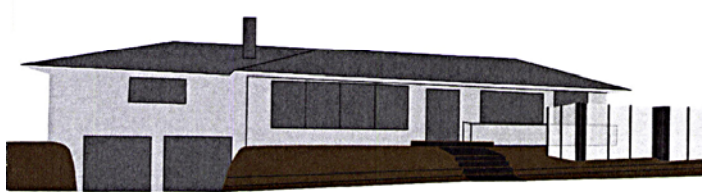
File No. LU 10-190637 AD
 1/4 Section 2735
 Scale 1 inch = 200 feet
 State_Id 1N2E30BD 8700
 Exhibit B (Nov 05,2010)

NE ALAMEDA ST

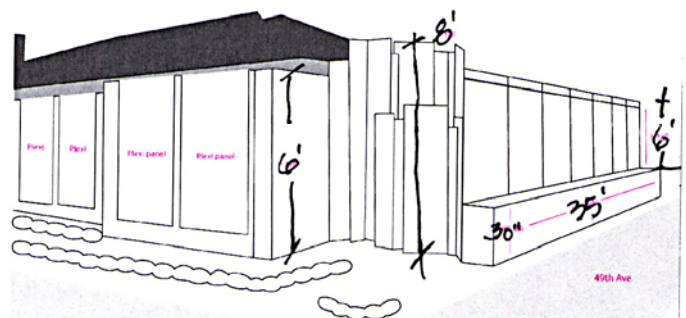
Approved
 City of Portland - Bureau of Development Services
 City of Portland - Bureau of Development Services
 Date 1.12.11
 This approval applies only to the reviews requested and is subject to the zoning requirements of approval. Additional zoning requirements may apply.



NE 49TH AVE



Alameda St.



Alameda St.

CASE NO. 10-190637
 EXHIBIT C1