



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: February 12, 2010
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 10-100405 AD

GENERAL INFORMATION

Applicant: Chau T Le and Ngoc K Tran
8510 SE 65th Ave
Portland, OR 97206

Site Address: 8510 SE 65TH AVE

Legal Description: LOT 12 BLOCK 13, DES MOINES ADD
Tax Account No.: R206501510
State ID No.: 1S2E20CC 17100
Quarter Section: 3837

Neighborhood: Brentwood-Darlington, contact Denise Shook at 971-533-4741.
Business District: Eighty-Second Avenue, contact Ken Turner at 503-484-6225.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Zoning: R5a (R5,000, High Density Single-Dwelling Residential, with an Alternative Design Density Overlay)

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

Proposal: The applicants have constructed a 6-foot-tall wood fence that encloses the portion of their yard that is on the west side of the house on this site. According to the applicants, the fence extends from the west side of the front porch, for 24 feet, 3 inches along SE Sherrett Street, and also extends along the full length of the property line that abuts SE 65th Avenue, then runs back to the east for 17.5 feet before meeting with the fence on the property of the neighbor to the south.

The Portland Zoning Code, Title 33, defines the front property line as the shortest street-facing property line, regardless of the orientation of the house on the lot. A building setback of 10 feet from the front property line is required in the R5 zone. Code Section 33.110.255 C limits the height of fences that are located within the front building setback to 3.5 feet in height. Exceptions to this standard are approved, through Adjustment Review, when all of the applicable approval criteria can be met. The applicants are requesting approval of an Adjustment to increase the allowed height of the fence within the front setback, from 3.5 feet to 6 feet.

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 4,745 square-foot parcel that is located on the southeast corner of SE 65th Avenue and SE Sherrett Street. The site is developed with a one-story, single-dwelling residence that was built in 1987. The main entrance opens onto a front porch that faces SE Sherrett Street. The area around the site is mainly developed with other single-dwelling residences. An Open Space zone, dedicated to a City-owned neighborhood park, abuts the end of SE Sherrett Street, at SE 67th Avenue. The boundary between Multnomah and Clackamas Counties lies one block to the south, at SE Clatsop Street. This City limits follow an irregular line that alternates between following this right-of-way and dipping to the south in a number of places.

Zoning: The site is zoned R5, High-Density Single-Dwelling Residential with an "a" or Alternative Design Density Overlay. The R5 zone requires an average lot area of 5,000 square feet, with a maximum allowed density of one unit per lot (generally 8.7 units per acre.) The "a" Overlay Zone allows opportunities for increased residential density in certain situations. The overlay zone does not apply to this situation.

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 on January 14, 2010. The following Bureaus have responded, electronically, to indicate that there are no issues or concerns related to approval of the requested Adjustment:

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

Neighborhood Review: One written response was received from notified property owners in response to the proposal. The letter stated that there are no concerns regarding the requested Adjustment (Exhibit F-1).

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 positive aspects of fences and to limit negative ones.*

The proposed fence starts at the edge of the front porch and encloses an area that is located on the west side of the house. Although this area is technically defined in Title 33 as the “front” of the property, in this instance it functions as a side yard. The development on this corner lot, where the house faces the longer of the two street-facing property lines, allows very little outdoor area to the rear of the structure. In this situation, the only practical outdoor recreation space is immediately to the west of the house, where the fence has been constructed, or on the east side of the parking area, at the opposite end of the lot from the residence. The proposed fence offers protection and privacy for the residents, but it does not create a street wall that inhibits police and community surveillance because the front of the house is still open to the adjacent street on SE Sherrett. The fence does not, therefore, create a presence that decreases the sense of community. The fence does not cross the opening for the driveway, which is located on the east side of the house. This provides adequate open space to allow emergency access and safe movement of pedestrians and vehicles. The fence is constructed of natural wood material that does not create an unattractive appearance. The purposes of the regulation are 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: The proposed fence is made of naturally-hued wood and, as viewed from the street, will appear the same as fences that are allowed by right along side yard property lines. In fact, the fence that follows the property line along SE 65th Avenue does not extend as far as fences that are allowed along the longer side property line on corner lots. Due to the layout of the house and driveway, in relation to the fence, there is not expected to be any negative impact on the livability or appearance of the residential area and so, for the proposed 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
- 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 have been identified that would require mitigation. 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 proposed fence encloses an area that functions as the side yard for this property. The configuration will not result in any visual limitations that would obstruct community surveillance. The proposed fence will not hinder access by emergency vehicles or endanger drivers or pedestrians. The requested Adjustment can be approved, in general compliance with proposed site plan and elevation drawings.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.255 C, to increase the allowed height of a fence within the front setback area, from 3.5 feet to 6 feet, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated February 10, 2010.

Staff Planner: Kathleen Stokes



Decision rendered by: _____ **on February 10, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 12, 2010

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 January 5, 2010, and was determined to be complete on January 12, 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 January 5, 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.

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 February 26, 2010** at 1900 SW Fourth Ave. 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 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 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 **March 1, 2010 – (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. Application, plans and narrative
 - 2. Photographs
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Summary sheet of electronic responses from City agencies
- F. Correspondence:
 - 1. Leah D. and Thomas E. Waterworth, January 15, 2010
- G. Other: (none)

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



Site



NORTH

File No. LU 10-100405 AD
 1/4 Section 3837
 Scale 1 inch = 200 feet
 State_Id 1S2E20CC 17100
 Exhibit B (Jan 11, 2010)

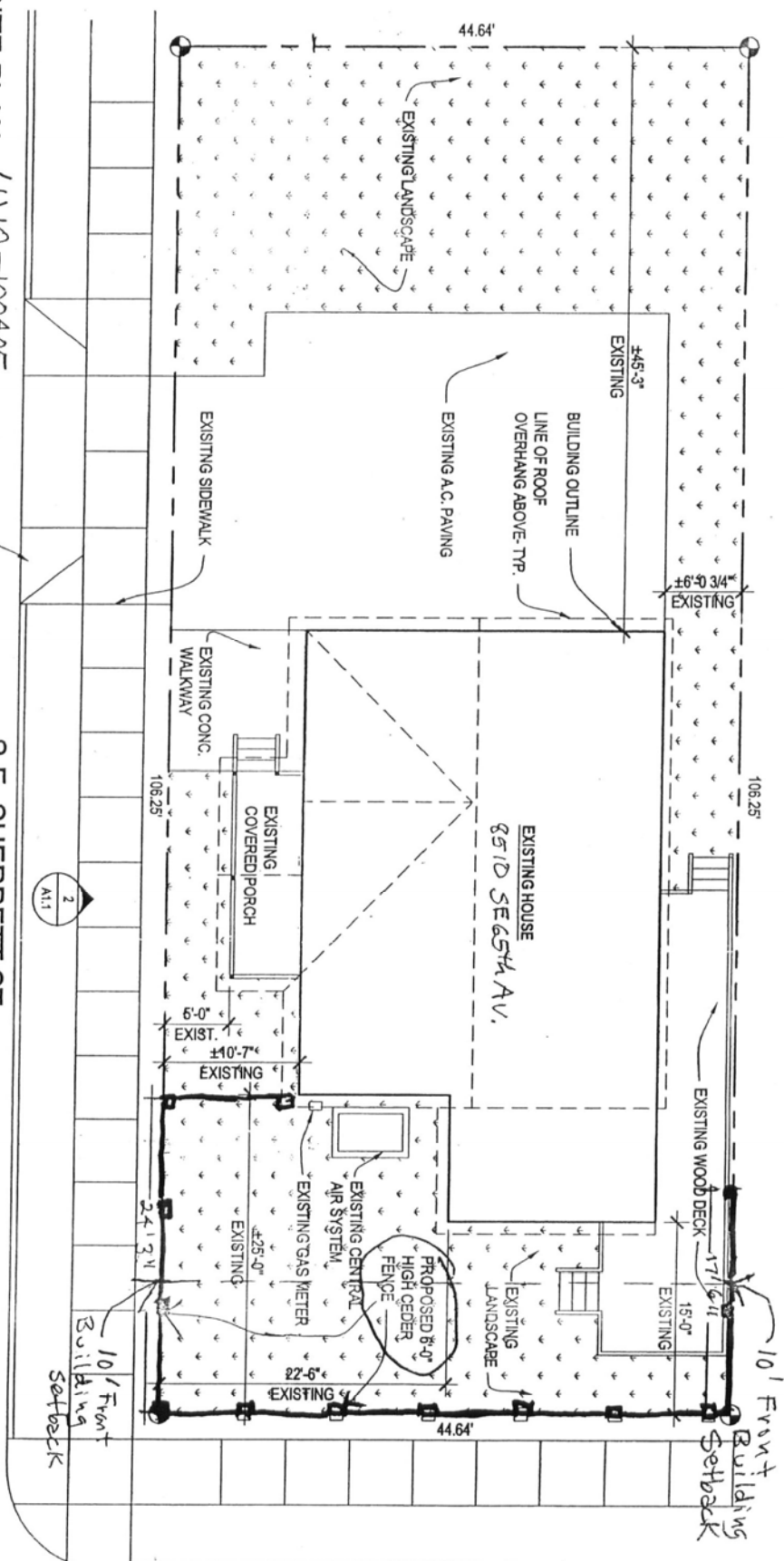
1
A1.1

SITE PLAN

LU 10-100405
AD

EXISTING CURB CUT

S.E. SHERRETT ST.



2
A1.1

3
A1.1



LU 10-100405 AD
Exhibit C-1

S.E. 65TH AVE.

City of Portland - Bureau of Development Services
Kathleen A. Stokes
 Approved
 Date February 19, 2010

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

Approval for site plan only



Exhibit C-2

Approval of
actions for
fence only



City of Portland - Bureau of Development Services

Signature: Cathleen A. Stokley

Date February 18 2015

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