



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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**Date:** December 31, 2012  
**To:** Interested Person  
**From:** Dave Skilton, Land Use Services 503-823-0660  
dave.skilton@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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 12-208726 HDZ - FENCE**

#### **GENERAL INFORMATION**

**Applicant/Owners:** Michelle and Seth Mehr  
2743 NE 14th Avenue / Portland, OR 97212

**Representative:** John Movius 503-877-3412 / Terraccord Landscapes  
5329 SE Gladstone Street / Portland OR 97206

**Site Address:** 2743 NE 14<sup>th</sup> Avenue

**Legal Description:** BLOCK 74 LOT 6 N 1/2 OF LOT 7, IRVINGTON  
**Tax Account No.:** R420415810  
**State ID No.:** 1N1E26BD 15300  
**Quarter Section:** 2731  
**Neighborhood:** Irvington, contact Dean Gisvold at 503-284-3885.  
**Business District:** North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.  
**District Coalition:** Northeast Coalition of Neighborhoods, Chris Lopez at 503-823-4575.  
**Other Designations:** Contributing resource in the Irvington Historic District, which was listed in the National Register of Historic Places on October 22, 2010.

**Zoning:** R5, Single Dwelling Residential 5000, with Historic Resource Protection Overlay zoning.

**Case Type:** HDZ, Historic Design Review  
**Procedure:** Type II, an administrative decision with appeal to the Historic Landmarks Commission.

#### **Proposal:**

The applicant is seeking Historic Design Review approval for a proposal to replace an existing 8' tall wood fence along the south and west sides of the property with a new, 8' tall, wood and metal mesh fence. Historic Design Review is required because the proposal is for a non-exempt exterior alteration in a historic district.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria specified in the Zoning Code (Title 33 of the Portland City Code). The relevant criteria are:

- 33.846.060 G – Other Approval Criteria

## ANALYSIS

**Site and Vicinity:** The subject property is a modest story-and-a-half bungalow stylistically in the Craftsman vein. It is evaluated as a contributing resource in the Irvington Historic District.

Platted in the late Nineteenth Century, today's Irvington Historic District represents the first additions to Portland that employed restrictive covenants from the outset. These included the exclusion of most non-residential uses from the interior of the neighborhood, and where non-residential uses were allowed, such as the fire station and the telephone exchange, the buildings were purposely disguised to appear more residential in character. Other deed restrictions excluded minority groups, established uniform front setbacks, and required minimum expenditure on new buildings. The area developed generally from southwest to northeast and its growth was greatly influenced by the installation of streetcar lines that introduced an easy commuting option to downtown.

The contributing resources in Irvington range in design character from expressions of the late Victorian Era styles, especially Queen Anne, through the many Period Revival modes of the early decades of the Twentieth Century, to a few early modernist examples. There is also a wide diversity in the sizes of lots and houses. In terms of the streetscape, the numbered north-south avenues in Irvington vary dramatically in width, and they mostly form rather long block faces which the houses generally face. The named east-west street block faces are more consistent in length, almost all being traditional 200' Portland blocks. All are lined with mature street trees. Original development in many cases included garages or other accessory structures, typically facing side streets on corner lots and accessed by a variety of driveway types on mid-block sites. Garages that were added within the historic period, were sometimes built at the sidewalk and/or out of architectural character with the house.

**Zoning:** The single-dwelling zones, including R5, 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 Historic Resource Protection Overlay zone protects certain historic resources in the region and preserves significant parts of the region's heritage. The regulations implement Portland's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region's citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

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

**Public Notice:** A "Notice of Proposal in Your Neighborhood" was mailed December 3, 2012.

**Agency Review:** None of the notified Bureaus has responded with issues or concerns.

**Neighborhood Review:** A total of three responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

- John Svicarovich wrote on December 5, 2012, finding the proposed replacement fence an improvement on existing conditions.
- Dean Gisvold, on behalf of the Irvington Community Association Land Use Committee, wrote on December 19, 2012, with no objection to the proposal.
- Donald Kozicki wrote on December 19, 2012 as follows:

"I want Michelle and Seth Mehr at 2743 NE 14th Street to build their proposed 8 foot tall fence on their property.

I live on the south side of the proposed fence in ½ of Lot 7 and Lot 8. My home has a full basement of ~1700 square feet. The earth from the excavated basement makes the grade of my lots higher than the surrounding properties so I have retaining walls on the south, west, and north sides. The construction was done according to the land use rules at the time of 1919 where the walls and buildings are 1 foot inside the property line. The rule leaves 2 feet of open space between properties for maintenance. This is evident by noting the garages at 2726 and 2736 13th Street are 2 feet (1 foot for me and 1 foot for the other properties for 2 feet of total clearance) from my west retaining wall and the distance from the south to north retaining walls is 73 feet (1 foot of clearance on each side inside my property lines). My home is build 3 feet from the property line on the North side with a 2 foot walkway to 14th Street. This leaves 1 foot of open space which I own inside my North property line.

I have some issues with the location of this imposing 8 foot tall fence:

- I have a 4 foot high block wall on the West end of my North retaining wall. The new fence on the North side of the property line must have enough open space to allow for painting and weed control between the two properties. I am giving a foot for this purpose. I want the owners of 2743 NE 14th to give at least a foot of open space inside their property line on the South side of their fence.
- My telephone, cable TV, electric power, and nature gas are connected to my home on the North side. Clearance for utility maintenance needs be considered.
- The layout of the fence is problematic for its owners. It cuts off access to the rear side of their garage and the fence which they should be required to maintain. "

**Staff Response:** The Zoning Code allows fences up to 8 feet high in side and rear setbacks in the R5 zone, see section 33.110.255. The only reason the fence proposed in this case is subject to Historic Design Review is that, being over 6 feet in height, it requires a building permit and cannot therefore meet both requirements for the exemption normally applied to fences in historic districts, i.e. 33.445.320 B. 2.

Access arrangements for maintenance of structures and utilities near property lines are private matters between the adjoining property owners. In this case the Zoning Code simply allows the applicants to build fences up to 8 feet high in their side and rear setbacks. It does not specify a location relative to the property line, leaving that decision at the discretion of the owner.

## ZONING CODE APPROVAL CRITERIA

### **Chapter 33.846.060 - Historic Design Review**

#### **Purpose of Historic Design Review**

Historic Design Review ensures the conservation and enhancement of the special characteristics of historic resources.

#### **Historic Design Review Approval Criteria**

Requests for historic design review will be approved if the review body finds the applicant has shown that all of the approval criteria have been met.

**Findings:** The site is within the Irvington Historic District and the proposal is for non-exempt treatment. Therefore Historic Design Review approval is required. The approval criteria are those listed in 33.846.060 G – *Other Approval Criteria*.

*Staff has considered all guidelines and addressed only those applicable to this proposal.*

**33.846.060 G - Other Approval Criteria**

**1. Historic character.** The historic character of the property will be retained and preserved. Removal of historic materials or alteration of features and spaces that contribute to the property's historic significance will be avoided.

**10. Hierarchy of compatibility.** Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation District, with the rest of the district. Where practical, compatibility will be pursued on all three levels.

**Findings for 1 and 10:** The existing fence is not identified as historic fabric in the National Register documentation for the Irvington Historic District. Judging by its design and materials, it is of relatively recent construction and was certainly built outside the period of significance (1891-1948). As such it does not define historic character or require retention.

Vertical board fences between neighboring properties were commonplace structures during the historic period and are inherently compatible with the adjoining properties in this case, and with the historic district. While the proposed fence, at 8', is technically taller than average, its visual and physical impacts are similar to those of a 6' structure because above that level it is almost 100% transparent.

*These criteria are met.*

**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 purpose of the Historic Design Review process is to ensure that additions, new construction, and exterior alterations to historic resources do not compromise their ability to convey historic significance. This proposal meets the applicable Historic Design Review criteria and therefore warrants approval.

**ADMINISTRATIVE DECISION**

Approval of an eight foot tall fence in the side and rear setbacks of a contributing resource in the Irvington Historic District;

Approval is per Exhibits C-1 through C-2, signed and dated December 27, 2012, 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 Exhibits C-1 through C-2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-208726 HDZ. No field changes allowed."

**Staff Planner: Dave Skilton**



**Decision rendered by:** \_\_\_\_\_ **on December 27, 2012.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: December 31, 2012**

**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 27, 2012, and was determined to be complete on **November 29, 2012.**

*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 27, 2012.

*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 Historic Landmarks Commission, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 14, 2013** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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](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 Historic Landmarks Commission 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 Historic Landmarks Commission 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 15, 2013**.
- 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:

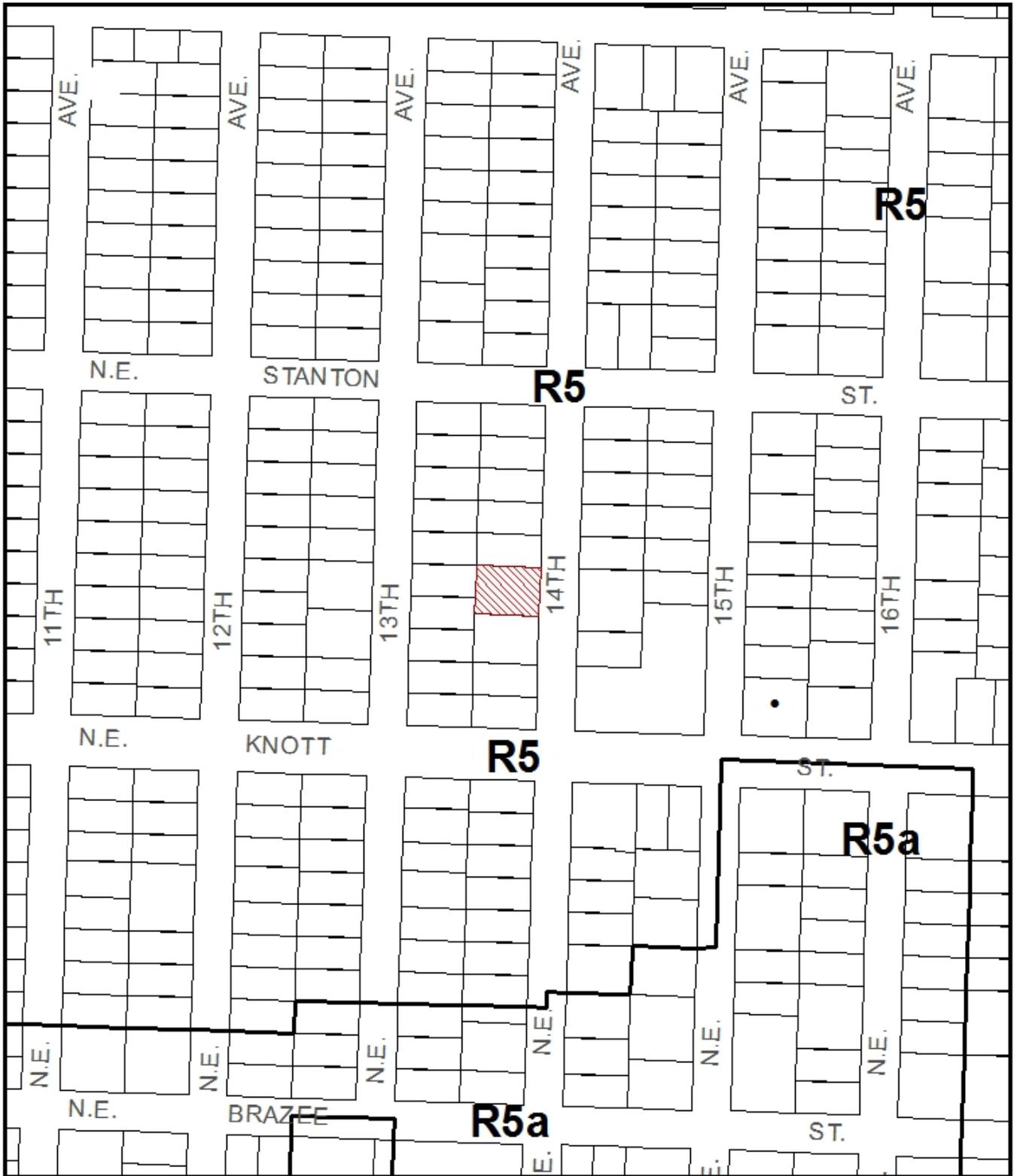
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Life Safety Review Section of BDS
- F. Correspondence:
  - 1. John Svicarovich wrote on December 5, 2012, finding the proposed replacement fence an improvement on existing conditions.
  - 2. Dean Gisvold, on behalf of the Irvington Community Association Land Use Committee, wrote on December 19, 2012, with no objection to the proposal.
  - 3. Donald Kozicki wrote on December 19, 2012 with concerns about the proposal, see above.
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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



Historic Landmark



NORTH

This site lies within the:  
IRVINGTON HISTORIC DISTRICT

File No.	LU 12-208726 HDZ
1/4 Section	2731
Scale	1 inch = 200 feet
State_Id	1N1E26BD 15300
Exhibit	B (Nov 27, 2012)

SITE PLAN DEPICTING LOCATION OF FENCE ALONG WEST AND SOUTH BOUNDARIES OF PROPERTY. FENCE REPLACES EXISTING DILAPIDATED 8' FENCE. FENCE IS 6' HIGH CEDAR PICKETS WITH 2' NESTED WIRE MESH FOR TOTAL FENCE HEIGHT OF 8' (SEE ADDITIONAL ELEVATION DRAWING)

SCALE 1" ≈ 10'

PORTLAND MAPS VIEW  
2743 NE 14th Avenue



(includes lot 6 and 1/2 lot 7)

lot 6  
50' x 100'

1/2 lot 7  
25' x 100'

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner *Dave Fulton* Date *12.27.12*  
\* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

fence height to be limited to 3.5' within 10' at front setback 5' to sidewalk

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(25)

1-3

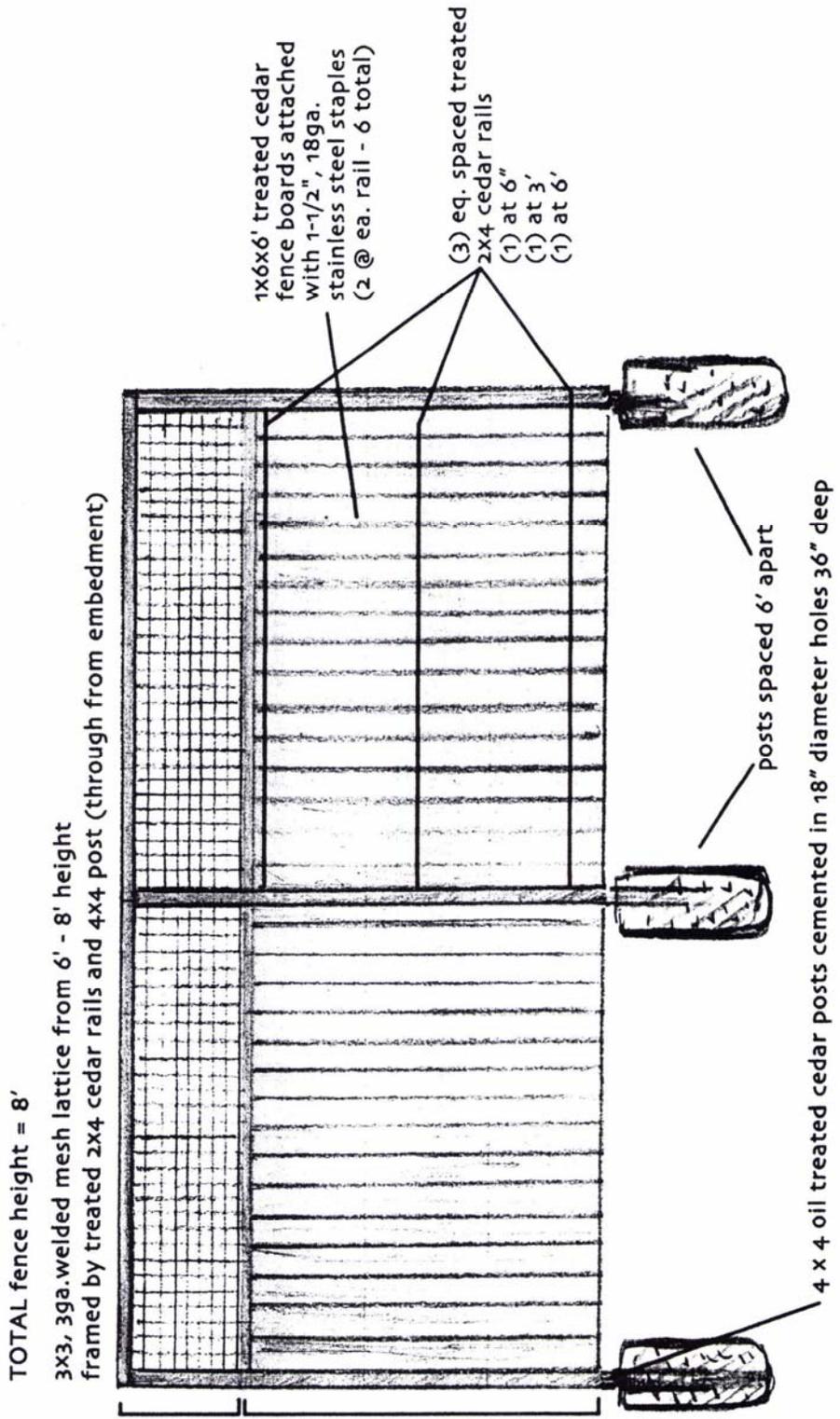
50

(25)

sidewalk

sidewalk

1-3



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Dave Philton Date 12.27.12  
 \* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.

2011 12-208726 HZ  
 C-2