



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

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Date: January 23, 2015
To: Interested Person
From: Douglas Strickler, Land Use Services
 503-823-7919 / Douglas.Strickler@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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 14-239025 AD

GENERAL INFORMATION

Applicant/Owner: Lenore A Barrett / 7130 SW 37th Ave / Portland, OR 97219-1614
Site Address: 7130 SW 37TH AVE
Legal Description: BLOCK 13 S 30' OF LOT 1-3 N 55' OF LOT 12-14, LYNDHURST
Tax Account No.: R519002460
State ID No.: 1S1E20BA 05300
Quarter Section: 3725
Neighborhood: Multnomah, contact James Peterson at 503-246-0725.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Plan District: None
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 seeking approval of an Adjustment for the height of a fence in the 15-foot front building setback of her property. The portion of the fence parallel to the street is 56 inches high with 20 inches of open trellis at the top. There is also one panel of the fence along the north property line within the front building setback that is 60 inches high and does not have the open trellis at the top. Since Zoning Code Section 33.110.255.C.1 limits fences in front building setbacks to 3-1/2 feet, an adjustment is required to allow the fence to remain in place as built.

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

ANALYSIS

Site and Vicinity: The site is a 10,489 square foot lot located on SW 37th Avenue. The site is developed with a single story house with an attached garage. There is an existing 56-inch high fence along the front of the property and within the front building setback where the top 20 inches is an open trellis. There is also a 6-foot solid fence along the side of the lot, a segment of which is in the front building setback. It is proposed that the fence be allowed to remain as it was built. The neighborhood is characterized by one and two story houses on moderate (5,000 square feet) to large (20,000+ square feet) lots in various architectural styles, most with attached garages. Gabriel Park is across the street from the site.

Zoning: The R7 zoning designation is one of the City's single dwelling residential zones, which are intended to preserve land for housing and to promote 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.

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 **December 22, 2014**.

The Bureau of Transportation Engineering responded with the following comment: "0-6-0 curb tight sidewalk, property line at back of walk. Fence is completely on private property and does not block ped., bike or traffic sight distance" Please see Exhibit E-1 for additional details.

Neighborhood Review: A total of 14 written responses were provided by the applicant as part of her application and one phone call was received regarding the proposal. All of the written responses expressed support for the proposal and the person who called was opposed to granting the adjustment. No written responses were received independent of the ones submitted with the application.

ZONING CODE APPROVAL CRITERIA

Title 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 the 3.5 foot height limitation for a fence in the required front building setback. The purpose of the setback standard is stated in Zoning Code Section 33.110.255

Purpose: *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.*

Since the fence along the front of the property will be open above the 3-foot level it will equally or better meet the purpose of the 3.5 foot height limitation for fences in the required front building setback by allowing views above the 3-foot level and enhancing the appearance of the property. Although the fence along the front property line is 56 inches tall, the top 20 inches is an open trellis that allows for views of Gabriel Park across the street and makes the effective height of the fence 36 inches. The design of the fence is

distinctive and the open trellis makes the fence the effective equivalent of a 36 inch fence which is allowed in the front setback.

The portion of the solid 6-foot fence along the side of the property which is in the 15-foot front building setback, however, does not equally or better meet the purpose of the regulation to be modified. The first 15 feet of the solid 6-foot portion of the fence along the side of the lot functions as a 6-foot high wall that blocks the views of pedestrians and makes it necessary for the neighbor to the north to back out onto the sidewalk to get a clear view of the street. The applicant has requested that the solid fence remain to serve as a wall for the "outside room" to provide a greater sense of privacy, but that privacy comes at a cost to the openness that is intended by the height limitation standard for fences built in the front yard setback.

Based on these reasons, the part of the proposal requesting the adjustment for the 56-inch fence with the 20-inch open trellis satisfies the intent of the fence height regulations for front building setbacks and the criterion is met. The solid 6-foot high section of the fence in the front yard setback, however, does not meet the intent of the fence height regulations. In order to fully meet the criterion, the solid 6-foot high section of the fence in the front yard setback must be altered to match the fence along the front of the property line or reduced to 3.5 feet in height or less. With a condition of approval ensuring this alteration is made, this criterion can be 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: Since the fence along the front of the property will allow views above the 3-foot level and will enhance the appearance of the front yard, it will not significantly detract from the livability or appearance of the residential area. The portion of the solid 6-foot fence in question along the side of the property, however, functions as a 6-foot high wall that does significantly detract from the appearance of the residential area.

Based on these reasons, the part of the proposal requesting the adjustment for the 56-inch fence with the 20-inch open trellis will not significantly detract from the livability or appearance of the residential area and the criterion is met, however, the solid 6-foot high section of the fence in the front yard setback does significantly detract from the appearance of the residential area. In order to fully meet the criterion, the solid 6-foot high section of the fence in the front yard setback must be altered to match the fence along the front of the property line or reduced to 3.5 feet in height or less. With a condition of approval ensuring this alteration is made, this criterion can be met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is being 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. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

Findings: As discussed in the findings for approval criterion B, the portion of the proposal regarding the fence along the front of the property has no adverse impacts on the livability or appearance of the surrounding residential area, so no mitigation is required. The 15-foot portion of the solid six-foot high fence along the side of the property, however, does impact

the appearance of the surrounding residential area negatively and no mitigation is proposed. In order to fully meet the criterion, the solid 6-foot high section of the fence in the front yard setback must be altered to match the fence along the front of the property line or reduced to 3.5 feet in height or less. With a condition of approval ensuring this alteration is made, this criterion can be 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 the 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 or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposal to retain the existing fence with the open trellis along the front of the subject property equally meets the intent of the fence height regulations for front building setbacks and will not significantly detract from the livability or appearance of the residential neighborhood. The portion of the 6-foot high solid fence along the side of the subject property in the front building setback, however, does not meet the intent of the fence height regulations, and significantly detracts from the appearance of the residential area. With a condition of approval lowering the tall solid portion of the fence, however, the approval criteria are met and the request can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment for the height of an existing fence in the 15-foot front building setback of the applicant’s property, per the approved site plans, Exhibits C-1 through C-4, signed and dated January 21, 2015, subject to the following conditions:

- A. The portion of the 6-foot high solid fence along the northern side of the property and within the 15-foot front yard setback must either be altered to match the fence along the front of the property line with a height of 56 inches including an open 20-inch trellis or be reduced to a height of 3.5 feet or less.

Staff Planner: Douglas Strickler

Decision rendered by:  **on January 21, 2015**

By authority of the Director of the Bureau of Development Services

Decision mailed: January 23, 2015

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 18, 2014, and was determined to be complete on **December 18, 2014.**

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 18, 2014.

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 extended by the applicant, **the 120 days will expire on: April,17, 2015.**

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 6, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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.

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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **February 9, 2015**.

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:

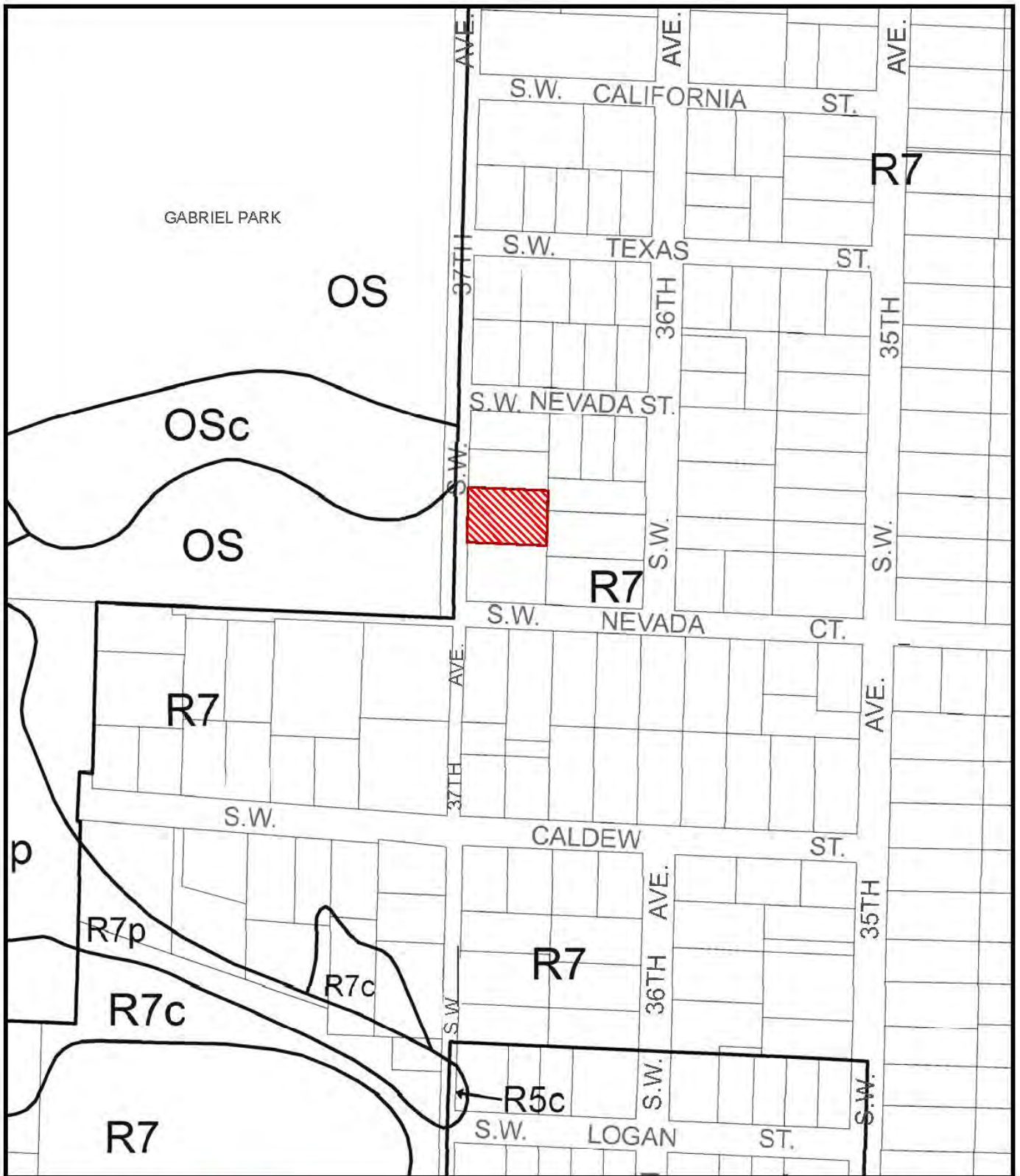
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Written Narrative
 - 2. Photos
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Photo (Elevation-attached)
 - 3. Photo (Elevation-attached)
 - 4. Photo (Elevation-attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Transportation Engineering and Development Review
- F. Correspondence (provided by applicant):
 - 1. Noel, Monica & Glenn L./Darin j. McSuther, 10/9/14, Supportive
 - 2. Synoground, Frank & Kaye, 10/9/14, Supportive
 - 3. Richardson, Sara, 10/9/14, Supportive
 - 4. Farrar, Erin & Sirkin, Samuel, 10/10/14, Supportive
 - 5. Preble, Shawn & Mark, 10/10/14, Supportive
 - 6. Motsko, Monica & Jason, 10/10/14, Supportive
 - 7. Puterbaugh, Rex & Emily, 10/10/14, Supportive
 - 8. Donovan, Helen, 10/10/14, Supportive
 - 9. Chatre, Stephane & Reinette, 10/11/14, Supportive
 - 10. O'Donnell, Mary Ann, 10/12/14, Supportive
 - 11. Downey, Michael, 10/12/14, Supportive
 - 12. Davies, Phyllis & Franklin, George, 10/12/14, Supportive
 - 13. Molander, Earl & Bremer, Ann, 10/12/14, Supportive
 - 14. Stengel, Nadine, 10/12/14, Supportive
- 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



Site



File No. LU 14-239025 AD
 1/4 Section 3725
 Scale 1 inch = 200 feet
 State_Id 1S1E20BA 5300
 Exhibit B (Nov 20, 2014)

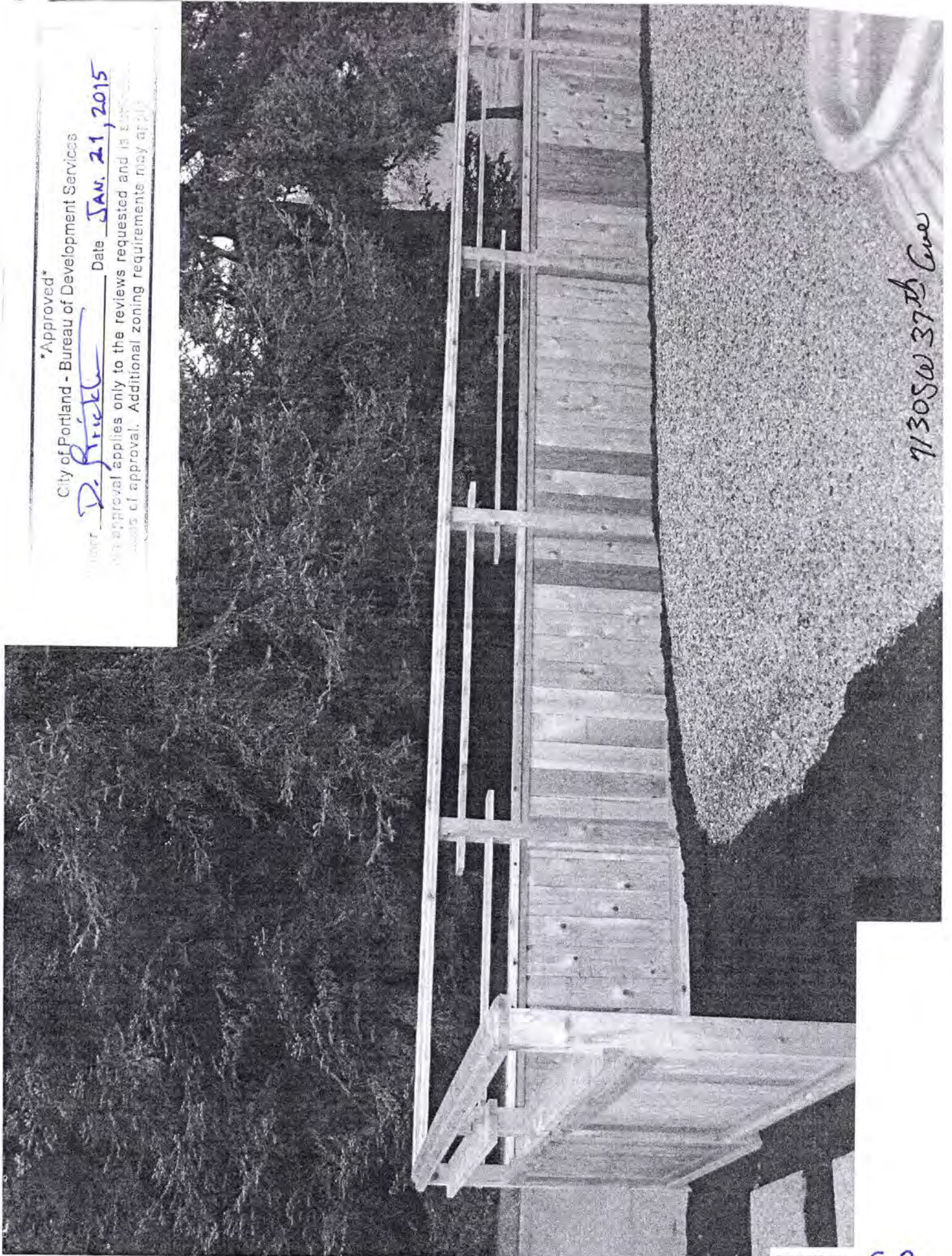
Approved

City of Portland - Bureau of Development Services

By D. Ricketts

Date JAN. 21, 2015

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



7130 SW 37th Ave



Noel's car (neighbor to North)
7130 SW 37th



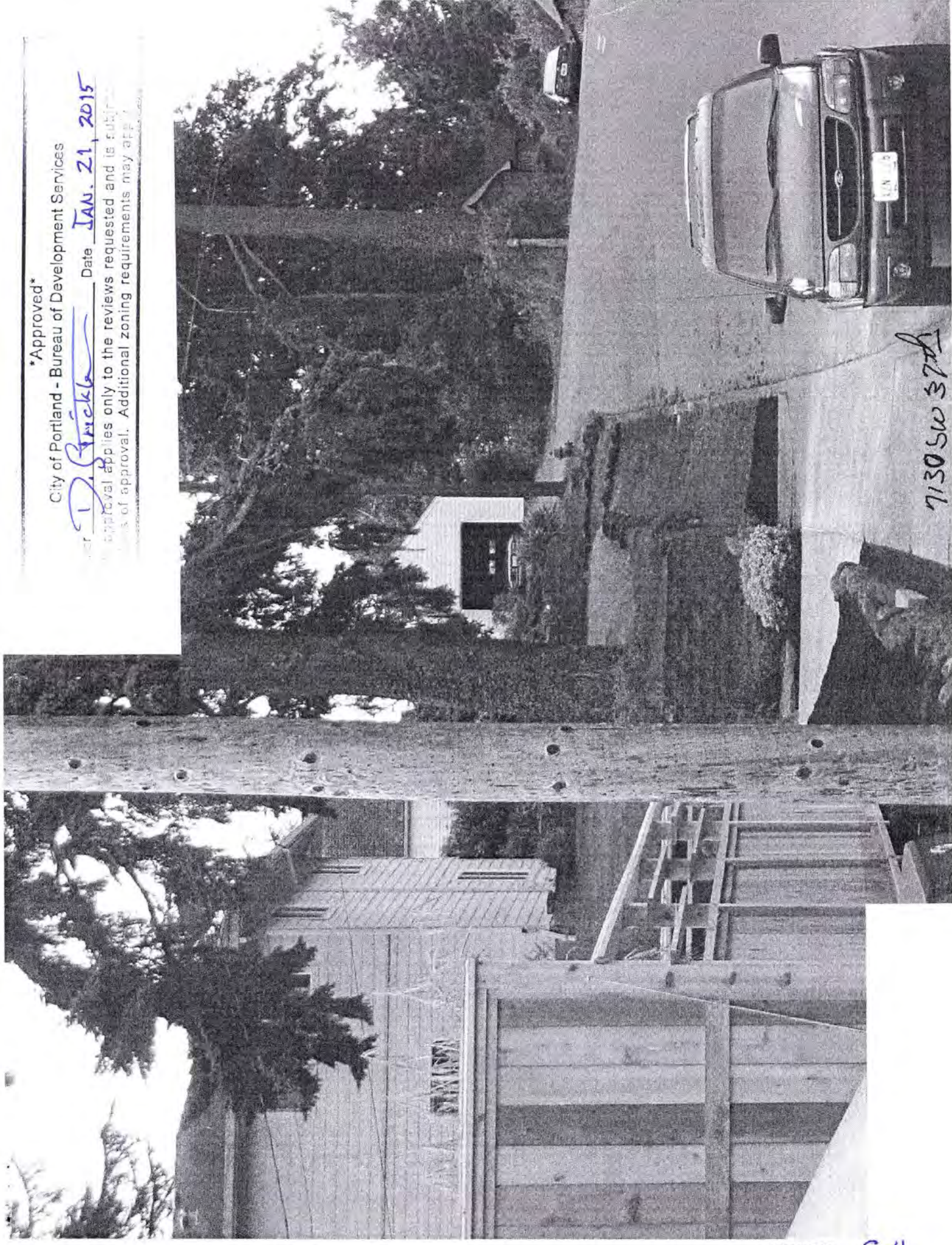
Approved
City of Portland - Bureau of Development Services
Date JAN. 21, 2015
D. Grick
Approval applies only to the reviews requested and is subject to the terms of approval. Additional zoning requirements may apply.

Approved

City of Portland - Bureau of Development Services

By D. Bricker Date JAN. 21, 2015

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



7130 SW 37th