



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

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Date: April 23, 2019
To: Interested Person
From: Andrew Gulizia, Land Use Services
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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 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 19-110672 AD

GENERAL INFORMATION

Applicant/Owner: David E. Ward III
3335 SE 7th Ave.
Portland, OR 97202

Site Address: 3335 SE 7th Ave.

Legal Description: BLOCK D LOT 4 LOT 15 EXC PT IN ST, MANHATTAN HTS
Tax Account No.: R530700180
State ID No.: 1S1E11BC 08300
Quarter Section: 3331
Neighborhood: Brooklyn Action Corps, contact Don Stephens at shreddad@me.com
Business District: Greater Brooklyn, contact at greaterbrooklynba@gmail.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010
Zoning: R5 – Single-Dwelling Residential 5,000
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The subject property has frontage on two street rights-of-way: SE 7th Ave. and SE McLoughlin Blvd. The Zoning Code defines both street frontages as “front” lot lines (Zoning Code Chapter 33.910, definitions of “through lot” and “front lot line”). In the R5 zone, fences within 10 feet of front lot lines are limited to 3.5 feet in height (Zoning Code Section 33.110.255.C.1). The applicant constructed a fence along the SE McLoughlin Blvd. lot line which is 8 feet in height. To legalize this fence, the applicant requests an Adjustment to increase the allowable height of the fence from 3.5 feet to 8 feet.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The site is 7,200 square feet in area and fronts on SE 7th Ave. to the east and SE McLoughlin Blvd. to the west. Southeast 7th Ave. is a local residential street and SE McLoughlin Blvd. is a state highway. The property is developed with a single-story, single-dwelling house accessed from SE 7th Ave. The western part of the lot functions as the home's back yard, even though there is no "rear" lot line on this property for zoning purposes. An apartment complex is across SE 7th Ave. from the subject site, but most neighboring properties are developed with single-dwelling houses. The Willamette River is about 300 feet west of the site, on the opposite side of SE McLoughlin Blvd.

Zoning: The R5 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 Review History: There are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal" was sent March 27, 2019. The following Bureaus responded with no concerns about the proposed Adjustment:

- Portland Bureau of Transportation (Exhibit E-1);
- Fire Bureau (Exhibit E-2);
- Site Development Section of BDS (Exhibit E-3); and
- Life Safety Review Section of BDS (Exhibit E-4).

Neighborhood Review: The Brooklyn Action Corps neighborhood association submitted a letter in response to the mailed "Notice of Proposal." The letter stated the neighborhood association had entered into a "good neighbor" agreement with the applicant and did not oppose the Adjustment request (Exhibit F-1).

ZONING CODE APPROVAL CRITERIA

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: An Adjustment is requested to increase the maximum height of a fence within 10 feet of the west lot line, which abuts SE McLoughlin Blvd. The purpose of the fence requirements in the R5 zone is stated in Zoning Code Section 33.110.255.A:

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.

Staff finds the proposed Adjustment equally meets the purpose of the fence requirements for the following reasons:

- Southeast McLoughlin Blvd. is a state highway within a wide (142-foot-wide) right-of-way. The new fence is more than 40 feet from the public sidewalk along SE McLoughlin. While the west lot line is a “front” lot line for zoning purposes, all the houses and driveways on this block are oriented toward SE 7th Ave., a local residential street, rather than toward SE McLoughlin. With the distance from SE McLoughlin and the lot’s orientation toward SE 7th Ave., the new fence has the appearance and function of a rear fence rather than a front fence. The fence encloses the home’s back yard, and the fence provides the privacy and separation typical for back yards rather than the openness and surveillance expected for front yards. An Adjustment for fence height is only required because Zoning Code Chapter 33.910 defines the west lot line as a “front” lot line. An 8-foot-tall fence along a rear lot line is allowed outright in the R5 zone (Zoning Code Section 33.110.255.C.2).
- With more than 40 feet of undeveloped right-of-way between the public sidewalk and the fence, and with existing trees within the right-of-way partially obscuring the view, the fence is not a prominent feature of the SE McLoughlin Blvd. streetscape. The fence does not create the appearance of a street wall and does not hinder pedestrian or vehicle movement along the street.
- Access to the property is from SE 7th Ave., on the opposite side of the lot from the new fence. The Fire Bureau and the Life Safety Review Section of BDS both reviewed the Adjustment request and raised no concerns about emergency access (Exhibits E-2 and E-4, respectively).

Since the Adjustment equally meets the purpose of the requirement, approval criterion A 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: Since the site is in a residential zone, the proposed Adjustment must not significantly detract from the livability or appearance of the residential area.

As mentioned above, with more than 40 feet of undeveloped right-of-way between the public sidewalk and the fence, and with existing trees within the right-of-way partially obscuring the view, the fence is not a prominent feature of the SE McLoughlin Blvd. streetscape. With the distance from SE McLoughlin and the lot’s orientation toward SE 7th Ave., the new fence has the appearance and function of a rear fence rather than a front fence. An Adjustment for fence height is only required because Zoning Code Chapter 33.910 defines the SE McLoughlin Blvd. lot line as a “front” lot line.

For these reasons, staff finds the Adjustment does not detract from the livability or appearance of the residential area. 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: Since 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. 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 A, the Adjustment equally meets the purpose of the fence regulations, and as discussed in the findings for approval criterion B, the Adjustment does not adversely impact the livability or appearance of the area. There are no adverse impacts identified for which mitigation would be needed. Therefore, this criterion is not applicable.

- 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 requirements of Title 11 can be met, and 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 Adjustment request equally meets the intent of the fence regulations and will not have significant adverse impacts on the livability and appearance of the neighborhood. The new fence is set back more than 40 feet from the sidewalk along SE McLoughlin Blvd., is partially obscured by trees, and functions as a back fence rather than a front fence. Since the applicable approval criteria are found to be met, the Adjustment must be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the maximum height of a fence within 10 feet of the west lot line from 3.5 feet to 8 feet (Zoning Code Section 33.110.255.C.1), per the approved plans, Exhibits C-1 through C-4, signed and dated April 18, 2019, subject to the following condition:

- A. As part of the building permit application submittal, each of the 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 – C-4. The sheets on which this information appears must be labeled, “Proposal and design as approved in Case File # LU 19-110672 AD.”

Staff Planner: Andrew Gulizia

Decision rendered by:  **on April 18, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 23, 2019

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 23, 2019 and was determined to be complete on March 22, 2019.

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 23, 2019.

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: July 20, 2019.**

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 May 7, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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.portlandoregon.gov/zoningcode.

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 will be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **May 7, 2019** by the Bureau of Development Services. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. 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. Applicant's narrative
 2. Photographs
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site plan (attached)
 2. West side fence elevation (attached)
 3. North side fence elevation (attached)
 4. South side fence elevation (attached)
- D. Notification Information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Portland Bureau of Transportation
 2. Fire Bureau
 3. Site Development Review Section of BDS
 4. Life Safety Review Section of BDS
- F. Correspondence:
 1. Letter from Brooklyn Action Corps neighborhood association, received April 17, 2019
- G. Other:
 1. Land use application form and receipt
 2. Incompleteness determination letter, dated January 31, 2019

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).

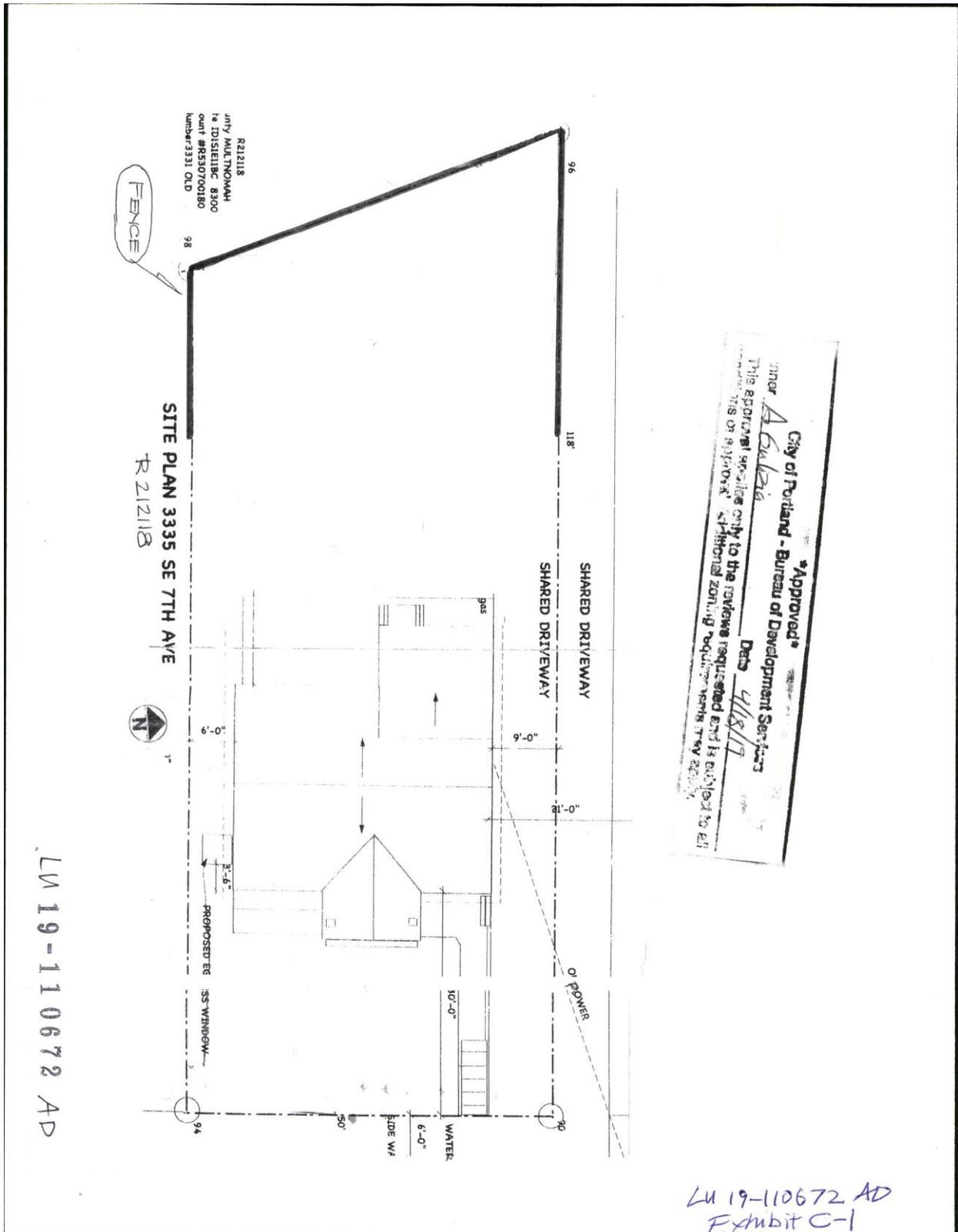


ZONING



-  Site
-  Historic Landmark
-  Bridge
-  Recreational Trails

File No.	LU 19-110672 AD
1/4 Section	3331
Scale	1 inch = 200 feet
State ID	1S1E11BC 8300
Exhibit	B Jan 25, 2019



Approved
 City of Portland - Bureau of Development Services
 Date: 4/18/19
 This approval is valid only to the reviews requested and is subject to all applicable codes and regulations. Additional zoning requirements apply to all projects.

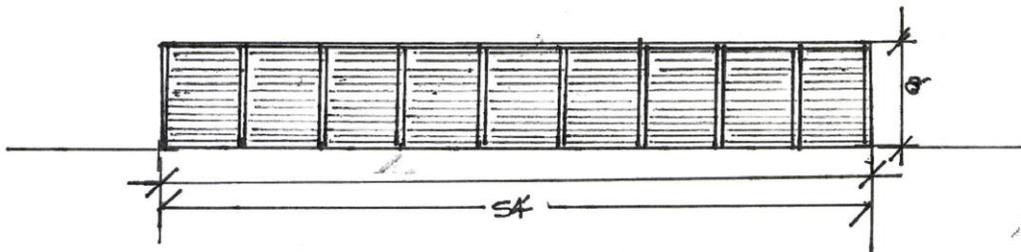
LU 19-110672 AD
 Exhibit C-1

3335 SE 7th AVE

W SIDE ELEVATION

1" X 6" GRADE "A" CEDAR FENCE BOARDS

Approved
City of Portland - Bureau of Development Services
Planner *A Galizia* Date *4/18/19*
This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



LU 19-110672 AD
Exhibit C-2

3335 SE 7th AVE

N SIDE ELEVATION

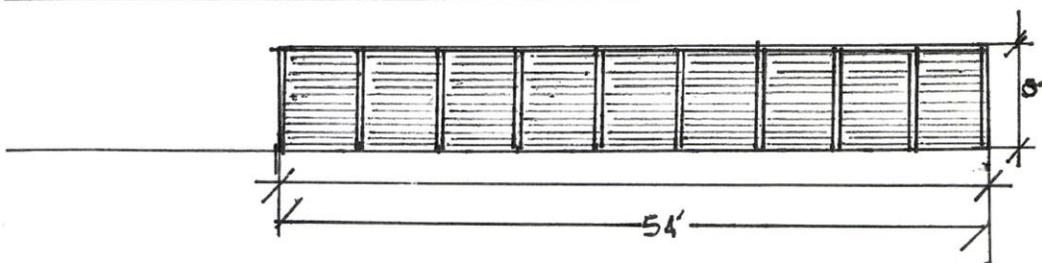
1" X 6" GRADE "A" CEDAR FENCE BOARDS

Approved

City of Portland - Bureau of Development Services

Permit Number A 64219 Date 4/18/19

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



LU 19-110672 AD
Exhibit C-3

3335 SE 7th AVE

S SIDE ELEVATION

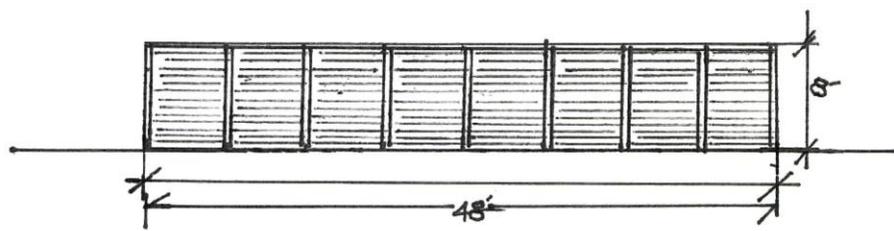
1" X 6" GRADE "A" CEDAR FENCE BOARDS

...*Approved*

City of Portland - Bureau of Development Services

Minor A. Galizia Date 4/18/19

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



LU 19-110672 AD
Exhibit C-4