



CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

TROUTDALE PLANNING COMMISSION REGULAR MEETING

Troutdale City Hall Council Chambers
219 E. Historic Columbia River Hwy. (lower level, rear entrance)
Troutdale, OR 97060

Wednesday, June 18, 2014
7:00 p.m.

1. Roll Call / Pledge of Allegiance
2. Agenda Update
3. Approval of Minutes
 - Meeting minutes of May 28, 2014
4. Citizen Communications – Non-Agenda Items
5. Hearing Procedure

Tanney Staffenson, Planning Commission Chair
6. PUBLIC HEARING TYPE III QUASI-JUDICIAL PROCEDURE
Case File No. 14-016 Clark Boat Cover Side-Yard Setback and
Fence Height Variances

Barbara and Gary Clark, Owners

Variance requests to reduce the side-yard setback to 3-1/2 feet from the west property line for an existing frame covered structure and to exceed the maximum fence height allowed in the front yard for an existing 6-foot high fence.

Staff: Elizabeth McCallum, Senior Planner

7. Work Session

Consideration of administrative procedures and Development Code standard amendments to reduce barriers to development.

Tanney Staffenson, Planning Commission Chair

8. Department Reports.

9. Commission Initiatives and Concerns.

10. Adjourn.

This meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made in writing at least 48 hours prior to the meeting to Elizabeth McCallum, 503-674-7228, or by email at elizabeth.mccallum@troutdaleoregon.gov

Procedure for Quasi-Judicial Land Use Hearings

Quasi-judicial public hearings are held in accordance with Oregon law and procedures contained in the Troutdale Development Code. The hearing proceeds as follows:

1. Staff Presentation
 - City staff presents their report which includes applicable criteria and standards for the matter under consideration in the land use application.
 - All testimony and evidence should be directed toward these criteria.
 - If you believe that other criteria in the Comprehensive Plan, Development Code, or other city land use regulations apply, you must identify these criteria and explain why they apply to the decision.

2. Public Testimony
 - The Planning Commission accepts public testimony relating to the application.
 - The applicant is allowed to speak first, followed by proponents, then by opponents, and then by any parties neutral to the application.
 - An opportunity will be provided to anyone testifying to clarify any issues raised.

3. Raising Issues
 - All issues raised by a participant during the public hearing must be sufficiently clear and specific to allow the Planning Commission and other parties an opportunity to respond to those issues.
 - Failure to raise an issue during this public hearing may invalidate a future appeal based on that issue.

4. Requesting Additional Time
 - Prior to closing of the public hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application.
 - The Planning Commission must grant the request either by continuing the public hearing to a future date, or by leaving the record open for at least seven days to admit only that specific additional written evidence or testimony.
 - If the record is left open for the additional written evidence or testimony, any participant may file a written request for an opportunity to respond to new evidence submitted during the period the record was left open.
 - If such a request is filed, the Planning Commission shall reopen the record to allow any person to raise new issues which relate to the new evidence, testimony, or criteria for decision-making.

MINUTES
TROUTDALE PLANNING COMMISSION
Regular Meeting
Council Chamber
 217 E. Historic Columbia River Highway
May 28, 2014

1. **Roll Call/ Pledge of Allegiance.** The meeting was called to order at 7:00 p.m.
Members Present: Kevin Coulton, Frank Grande, Shirley Prickett, Brian Sheets, Tanney Staffenson and Marv Woidyla
Members Absent: Sandy Glantz
Staff: Elizabeth McCallum, Senior Planner
 John

Guests: John Morgan, Morgan CPS Group, Planning Consultant
2. **Agenda Update.** None.
3. **Approval of Minutes – March 19, 2014.**
Commissioner Woidyla moved, with a second from Commissioner Prickett, to approve the minutes as written. There was no discussion; the minutes were approved unanimously.
4. **Citizen Communication - Non-Agenda Items.** None.
 5. **Hearing Procedure.** Chair Staffenson read the public hearing procedure to the audience. He asked if any Commissioner had any bias, ex parte contact or conflict of interest to declare; none did.
6. **Public Hearing** **Type IV Procedure**
Case File 08-071F Periodic Review Task 6 Population Forecast and Coordination with Metro

Consider text amendments to the Troutdale Comprehensive Land Use Plan Goal 14 Urbanization to adopt updated and revised Metro Urbanization Policies along with updated Metro Population and Employment Projections.

 Chair Staffenson opened the public hearing. Ms. McCallum introduced John Morgan, the planning consultant who will present the case information. She also informed them of a typo on page one of the staff report (the file number should read 08-071F), and Metro's role in the population, household and employment projections (see Attachment A of the staff report).

Mr. Morgan told how he has been working with Ms. McCallum and Craig Ward on this Periodic Review update. He briefly walked the Commission through the parameters of Periodic Review and this Task 6, and said the Citizens Advisory Committee has recommended approval of Task 6 and the proposed Comp Plan amendment as shown in Attachment B of the staff report which is a copy of that portion of the committee's minutes of April 2, 2014. He summarized the draft Final Order and Findings of Fact and then invited questions and comments from the Commission.

Discussion. Commissioner Grande asked about the 100 figure in the 2015 Employment Projection for Troutdale; this is a typo and should read 10,011 instead of 100. (This is reflected in the CAC minutes on p. 2, Attachment A). The Commissioner also verified that these projections are not binding so commented that there was not much choice, but Metro says we have to approve this. Mr. Morgan said when the Commission makes planning decisions, especially for infrastructure such as a Sewer Master Plan, those projections would go into sizing the sewer lines. There was discussion on this and Mr. Morgan said we are mandated to have housing units; you can not necessarily mandate that builders build to these numbers and you can exceed them or come in less. Commissioner Woityla asked for verification that we are allowed to miss the target; Mr. Morgan said absolutely. Ms. McCallum said the numbers are instructive, and we have already been through Periodic Review with the Housing and Employment components of our Comp Plan, which included more detailed studies about the mix of housing types and the opportunities for employment types throughout the city, so this is another brick in that overall structure that is used to help plan. It is supposed to be consistent with those. The Commission discussed these. Commissioner Grande wondered how close the projections of the past have been to reality, and Commissioner Prickett expressed concern that the numbers will be cast in stone and the City will have to update everything to agree with them whenever they look at another plan or project. Mr. Morgan said these projections are updated every five years in order to reflect a role in reality, and he elaborated. Commissioner Coulton said he would like to have the dates of these numbers; Mr. Morgan said they are based on the 2010 census. Commissioner Coulton said he could assume then that the traffic study and the Sewer Master Plan that the Commission looked at used these numbers; Mr. Morgan said yes, and the Regional Transportation Plan used these numbers as do all regional plans, he added.

Chair Staffenson said there have been numerous discussions about extending the Urban Growth Boundary (UGB) and if we adopt this population model, and he asked how that will affect this. Mr. Morgan said Metro is responsible for the UGB. If Troutdale doesn't adopt it independently, Metro has that statutory responsibility to adopt it. It also has the statutory responsibility to review that Boundary once every five years. There are two points of entry for Troutdale or any community into that process. First is that if Metro is not working on the update of the UGB in that five-year cycle then the city can independently petition for an amended Boundary; this process can take a long time and a long time in justification. Some jurisdictions do that; Wilsonville did it about three or four months ago and he explained that. The second point of entry in the process is determining where that will occur. His recommendation to Craig Ward was that the City needs to have an advocate for expansion, if that is the direction the Council wants to take

to participate in this process. It is frankly a lot easier and cheaper than going on your own; however, he asked them to remember what happened in Washington County when the legislature stepped in. His sense is that both the LCDC and Metro are going to be fairly open in this next round and look, especially on the east side, at some jurisdiction boundary expansions if that is deemed to be appropriate. Chair Staffenson said Troutdale has been looking at a chunk of land we want included in the UGB but wonder if, with a population projection of 17,000, if Metro is going to come back when we try to get the UGB expanded and say, well, you proved a population projection of 17,000 so if we expand the boundary it will be more than that.

Metro updates the population projections and they are used regionally, Mr. Morgan said, and he explained how the populations and employment forecasts come out of those projections. This will not drive your position on a UGB change, it is not a policy statement in UGB expansion for the City. Discussion continued on the employment numbers, the error factor vs. the State wanting definitive numbers, and how the data compares with past projections.

Public Comment. None.

Commissioner Woidyla moved, with a second by Commissioner Prickett, to close the public hearing. There was no discussion. **The motion passed unanimously and the public hearing was closed.**

Commissioner Grande moved, with a second by Commissioner Woidyla, to amend Policy 6 of the text amendment to include the following paragraph: . . . For planning purposes, the City shall use Metro's forecasted 2035 population and employment numbers subject to subsequent updates. There was a brief discussion to make certain the motion was as the Commissioner intended. **The motion failed: 3 yes (Grande, Coulton, Woidyla) / 3 no (Prickett, Sheets, Staffenson).**

Commissioner Sheets, in a discussion on "wobble room", said the challenge to the numbers would be more difficult than the language. His thought was to maintain the flexibility in the Code amendments by eliminating the date 2035 and leaving the rest. Mr. Morgan said the language of Policy 6 is exactly what the requirement is, to adopt Metro's forecast. What is not said here is that it is a rolling number. As those Metro projections change over time, you don't go back and revise them, you just say we are going to use the Metro projections because the State says to do so. **Commissioner Sheets moved, with a second by Commission Prickett, to amend Policy 6 language of the text amendment to omit the year (2035).** There was no discussion. **The motion passed unanimously.**

Commissioner Woidyla moved, with a second by Commissioner Coulton, to adopt the Findings of Fact and Recommendation [including the text amendment to Goal 14 automatically as the recommendation references Exhibit A which is the amendment] with revisions of the May 27 dates to May 28 (p. 1 and p. 2), and the

revisions to Policy 6 as agreed to in the previous motion. There was no further discussion. **The motion passed unanimously.**

- 7. Department Reports.** Ms. McCallum reminded the Commission that since Rooney Barker is a contract employee, any communication needs to be sent to either her, Elizabeth, or to Craig Ward. The next scheduled meeting is June 18, 2014, and one variance request for a boat cover is scheduled as well as a work session on the Code amendments.
- 8. Commissioner Initiatives and Concerns.** Chair Staffenson said Code amendments will come before the Commission next month as well as the Storm Water Master Plan.

Commissioner Coulton said the toolbar pull-down menus on the City's website wasn't working. He said he was thinking of the Troutdale citizens having trouble with it, as well.

Commissioner Grande said there were wild coyotes near his house and asked if the City has any program to take care of them as they are wild animals and has followed his wife in the yard; Ms. McCallum said she will refer this to the City's Code Enforcement officer.

Commissioner Woidyla said the Port of Portland has formed a 20-year Master Study Committee now and the first meeting will be June 17, 18 or 19; he said he believes it will be held at McMenamins, and all four cities will be on the committee.

Commissioner Prickett asked if the city park at Woodale is in the Parks Master Plan and if there will be any park development in it. Ms. McCallum said she will refer the Commissioner's question to Steve Gaschler, Public Works Director, now in charge of parks..

- 9. Adjourn.** Commissioner Woidyla moved, with a second by Commissioner Prickett, to adjourn. There was no discussion. The motion passed unanimously and the meeting adjourned at 8:30 p.m.

Tanney Staffenson, Chair

Date

Attest: _____
Rooney Barker, Secretary
Transcriptionist



**CITY OF TROUTDALE
PLANNING COMMISSION STAFF REPORT
TYPE III PROCEDURE
VARIANCE REQUESTS
FILE NO.: 14-016**

STAFF REPORT DATE: June 11, 2014

NAME OF PROJECT: Clark Boat Cover Side Yard Setback and Fence Height Variances

APPLICANT: Gary Clark, owner

OWNERS: Gary and Barbara Clark

REQUEST: Variance requests to reduce the side yard setback to 3 ½ feet from the west property line for an existing frame covered structure (an accessory structure) and to exceed the maximum fence height allowed in the front yard for an existing 6 foot high fence

LOCATION: 432 SE 18th Street

TAX MAP AND TAX LOT: Multnomah County Tax Assessor's Tax Map Tax Lot Number 1N3E36BD- 04000
Block 2 Lot 19 Kiku Heights Planned Development

PLAN DESIGNATION: Low Density Residential

ZONE DESIGNATION: R10PD

APPLICABLE CRITERIA:

- Troutdale Development Code (TDC): 1.000 Introductory Provision; 2.000 Procedures for Decision Making; TDC 5.010 C.6. Setbacks for Residential Accessory Structures; TDC 5.050 A.2. Fences in residential zones; TDC 6.200 Variance; TDC 16.000 Public Deliberations and Hearings.
- Kiku Heights Planned Development overlay zoning
- Construction Standards for Public Works Facilities
- Building and Fire Codes.

ATTACHMENTS:

1. Kiku Heights Subdivision Plat map showing location of the subject site.
2. Aerial photo of site taken in the spring 2012.
3. City correspondence and notifications in the matter:
 - o March 5, 2014 letter from Acting Community development Director Craig Ward to Gary and Barbara Clark
 - o July 18, 2009 email from Gary Clark to Senior Planner Elizabeth McCallum
 - o July 17, 2009 email from Senior Planner McCallum to Gary Clark in reply to July 16 email from Gary Clark to Senior Planner McCallum
 - o July 16, 2009 interoffice memorandum from Senior Planner McCallum to Community Development Director Rich Faith
 - o May 12, 2009 letter to Gary and Barbara Clark from Assistant Planner Rita Correy
 - o April 30, 2009 letter to Gary and Barbara Clark from Assistant Planner Rita Correy
 - o April 30, 2009 email with photos (labeled A through F) from the Code Enforcement Officer to Assistant Planner Rita Correy
4. Comments from the City of Troutdale Chief Engineer, dated May 2, 2014
5. Comments from the Deputy Fire Marshal, dated May 5, 2014
6. Comments from the City Building Official received May 26, 2014
7. Comment from neighboring property owner hand-delivered May 29, 2014
8. Table of setback variances for accessory structures considered during the past 15 years
9. Applicant's narrative and exhibit

BACKGROUND:

On April 30, 2009 the City Code Enforcement Officer notified the Assistant Planner that there was an accessory structure setback violation at 432 SE 18th Street. A number of letters and e-mails went back and forth between city staff and the owners (attachment 1) outlining a remedy for the violations: a variance application was to be submitted. Communication between the City and the property owner "went silent" after July 18, 2009 until March 5, 2014. The owner met with the Senior Planner on April 2, 2014, to identify the standards that apply to the subject frame-covered structure and fence and the variance process. On April 16, 2014, the variance application was submitted to the City for processing.

PROCEDURE:

Degree of Variances Requested

Both the deviation from the dimensional standards for setbacks for detached accessory structures and the maximum height of fences within required front yards exceed 30 percent of the standard.

- The minimum side-yard setback requirement is 7½ feet as established for the Kiku Heights Planned Development. The requested setback is 3½ feet. This is almost a 54 percent reduction in the minimum setback required.
- The maximum fence height allowed within the front yard setback is 3½ feet. The requested fence height is 6 feet. This is almost a 72 percent increase in the fence height allowed.

A Type III procedure for these variances is required under TDC 6.225 Type III Variance.

The Planning Commission may grant a variance under the Type III procedure if the request involves the expansion or reduction of a quantifiable provision in this code by more than 30%, or if this request is referred to the Planning Commission in accordance with section 6.235 of this chapter and the criteria in section 6.215 of this chapter are met. [Adopted by Ord. 705, ef. 5/10/01]

The variance criteria of TDC 6.215 Type I procedure apply to a Type III variance. The criteria are evaluated in this staff report based upon the applicant's submittals and standards for setbacks and fences.

Notification of Type III Variances

As required in Troutdale Development Code 2.060 C Referral and Review of Applications and TDC 16.030 Notice of Hearing:

- Property owners within 250 feet of the subject site, City departments and other affected agencies were notified in writing on May 7, 2014 of the variance requests.
- The agenda for the June 18 meeting was posted on the City's website and in City offices on May 29, 2014.

Written comments received prior to June 6, 2014, are included in this staff report and are listed on page 2.

The report is separated into three sections:

- I. Analysis of detached residential accessory structure standards.
- II. General Provisions for Requesting and Processing Variances
- III. Analysis of the side yard setback variance.
- IV. Analysis of the fence height variance.

I. ANALYSIS OF DETACHED RESIDENTIAL ACCESSORY STRUCTURE STANDARDS FOR SUBJECT BOAT COVER

The standards for detached residential accessory structure apply as the subject boat cover is a frame covered detached residential accessory structure as defined in the Troutdale Development Code (TDC):

TDC 5.010 Residential Accessory Structures. A residential accessory structure is an accessory structure as defined in section 1.020 of this code and includes frame-covered accessory structures. For purposes of these regulations, portable swimming pools less than 24 inches in depth are not considered accessory structures and are not subject to the provisions of this section. Solariums, greenhouses, garages, or other enclosed areas which are attached to the residential structure shall not be considered accessory and shall be subject to the regulatory requirements of the underlying zoning district. The provisions of this section apply only to residential accessory structures.

Standards for Residential Accessory Structures

A. Building Permit – When Required. A building permit is required for any accessory structure over 200 square feet in floor area or over ten feet in height as the term “height” is defined in the Building Code. The building permit application will be evaluated for compliance with the regulatory requirements of this section.

The frame covered structure is 300 square feet in area. A permit for the structure is required under Oregon Residential Specialty Code (2011) section R105.1 (see comments of the Building Official in attachment 6 and condition numbers 1 and 2). Because the subject structure was built without a building permit, draft condition number 2 is proposed as a corrective action. The condition provides for a 30 day period in which to apply for the building permit. The 30-day period is based upon the following standard in the TDC:

TDC 17.060 Noncompliance with Provisions under Obligation.

A. If the Director finds that a permittee is not fulfilling an obligation, the Director shall, in written notice to the permittee and the permittee’s surety, specify the details of noncompliance. Unless the Director allows more time for compliance because of circumstances beyond the permittee’s control, within 30

days after receiving the notice, the permittee or the permittee's surety shall commence the compliance and proceed diligently to complete fulfillment of the obligation.

The detached residential accessory structure standards for the 300 square foot boat cover are evaluated as follows:

TDC 5.010 C. Regulatory Requirements. No accessory structure shall be erected or maintained, and no existing accessory structure shall be structurally altered, converted, enlarged, moved, or maintained unless such accessory structure is located on the lot in conformance with the following:

1. *Cargo shipping containers are not permitted as accessory structures on residential lots.*

The frame-covered structure is not a cargo shipping container.

2. *No single accessory structure may exceed 1,000 square feet in floor area.*

The floor area is 300 square feet. The standard is not exceeded. The detached residential accessory structure identified by the applicant as a boat cover is labeled A on the 2012 aerial photo of the site (attachment 2 of this report).

3. *The cumulative area of detached accessory structures shall not exceed 25% of the gross lot area, nor 50% of the area of the required rear yard.*

The gross lot area is 7,841 square feet. 25% of the gross lot area is 1,960 square feet.

- The boat cover is 300 square feet.
- A second detached residential accessory structure about 180 square feet in floor area is identified on the property based upon the summer 2012 aerial photo (attachment 2): it is labeled B.
- The cumulative area of detached residential accessory structures on this property is 480 square feet and does not exceed 25% of the gross lot area.

50% of the required rear yard area is 800 square feet. This is based upon a rear yard area of 1,600 square feet (20 feet deep by 80 feet wide).

- The boat cover (labeled A on attachment 2) is not in the required rear yard.
- Accessory structure B is in the required rear yard setback. The area of accessory structure B is 180 square feet and is less than 50 percent of the required rear yard area.

The area standard for accessory structures is met.

Note: there is no record of a Development Permit or building permit for detached residential accessory structure B. There is insufficient information about detached residential accessory structure B to determine compliance with the standards of the TDC concurrently with this application for the boat cover and variances. The following additional information is needed about detached residential accessory structure B:

- The floor area of accessory B is estimated from GIS and the height of accessory structure B is unknown.
- At a minimum, a Development Permit is required if it is 200 square feet or less in floor area *and* 10 feet or less in height. If either dimension is greater, a building permit is required for accessory structure B.
- The setback from the side and rear property lines are not known. Structure B must also be at least 7 ½ feet from the side property line due to the square footage of the structure. If structure B is more than 10 feet in height it will need to be 20 feet from the rear property line. If required setbacks are not met, additional variances for accessory structure B will be required.

Condition number 5 requires that the applicant provide dimensional information about accessory structure B to the planning division for evaluation of the permitting process that will be required.

4. The maximum height of a detached accessory structure shall be 20 feet, provided the accessory structure meets the side and rear yard setbacks of the underlying zoning district.

The detached boat cover is 9 feet in height. The structure meets the minimum rear yard setback for Kiku Heights (20 feet) but not the minimum side yard setback of 7 ½ feet. A variance from the minimum side yard setback standard has been requested.

5. A detached accessory structure which does not meet the underlying side and rear yard setbacks shall not exceed ten feet in height as measured from the average adjacent grade to the highest point of the roof of the building.

The detached boat cover is only 9 feet in height. The structure meets the minimum rear yard setback for Kiku Heights (20 feet) but not the minimum side yard setback of 7 ½ feet. A variance from the minimum side yard setback standard has been requested.

6. Accessory structures shall comply with the setback requirements for the main building except where specifically modified by this section. For purposes of this subsection C, the measurement shall be applied to projecting building features, if any, such as eaves, rain gutters, or other similar features.

The required setbacks for the main building in this subdivision, which is the Kiku Heights Planned Development in the R-10 zoning district are:

- 20 foot front yard
- 20 foot rear yard
- 7 ½ foot side yard

However, the modified side yard setback provision under number 10 of this section does not apply because the floor area of the detached structure exceeds 120 square feet in area.

7. *No accessory structure shall be located in a required front yard setback or between the street and front building plane of the dwelling.*

The detached accessory structure is not in the required front yard setback of 20 feet and is not between the street and the front building plane of the dwelling. The standard is met.

8. *No accessory structure shall encroach on an active easement of record. An active easement is an easement containing one or more public utilities.*

The City's Chief Engineer states that there is an inactive five-foot public utility easement on the subject side property line (see note on the Kiku Heights plat, attachment 1). The accessory structure encroaches 1½ feet into the utility easement. Because the easement is inactive and the City has no specific plans for the use of the easement, the variance is acceptable to Public Works. Draft condition number 3 pertains to the following comment from the City's Chief Engineer: "The applicant shall be aware that should a public utility need arise in the future for use of the easement, the City may require relocation of the structure or other necessary modifications to the structure within the easement area, at the property owner's expense."

9. *Rear Yard Setback. An accessory structure that is ten feet or less in height as measured from the average adjacent grade to the highest point of the roof of the structure may be constructed as close as three feet to a rear property line, provided that it does not encroach on an active easement.*

The detached accessory structure is less than 10 feet in height and is not within the required rear yard setback of 20 feet. The plat also includes an inactive five-foot public utility easement on the rear property line: the structure is not within that inactive utility easement and there is no conflict.

10. *Side Yard Setback. An accessory structure of 120 square feet or smaller in floor area and ten feet or less in height as measured from the average adjacent grade to the highest point of the roof of the structure may be constructed as close as three feet to a side property line provided that it does not encroach on an active easement. An accessory structure greater than 120 square feet*

in floor area or greater than ten feet in height must comply with the setback of the underlying zoning district.

The required side yard setback established with the Kiku Heights Planned Development approval is 7 ½ feet and applies due to the floor area, not the height of the structure.

- The structure is 300 square feet in floor area.
- The structure is 9 feet in height.

The structure is only 3 ½ feet from the side property line; the subject variance request pertains to non-compliance with this standard.

11. Street Side Yard Setback. An accessory structure on a corner lot shall meet a minimum street side yard setback of ten feet except for private vehicle storage. Accessory structures for private vehicle storage which have an entrance from the street side yard shall have a minimum street side yard setback of 18 feet. Vehicle access from the side street must be approved by the Public Works Director and constructed to City standards.

This is not a corner lot so there is no street side yard setback.

Except for the side yard setback standard, the applicable standards for detached residential accessory structures (including the frame-covered structure used for a boat cover) are met.

II. GENERAL PROVISIONS FOR REQUESTING AND PROCESSING VARIANCES.

With respect to the variances, the variance process is available to anyone and reviewed on the merits of each case: the applicant has the burden to establish justification for the variance by responding to the variance criteria of TDC 6.215. All of the variance criteria must be met in order to find that a variance from the side yard setback standard of TDC 5.010.C.10 for a detached residential accessory structure (the frame covered boat cover) is warranted.

The applicant's response is quoted after each criteria in both sections II and III.

TDC 6.205 General Provisions. A. The variance procedures are intended to allow modifications of specific standards contained within this code where difficulties exist which render compliance with the standards impractical and such compliance would create unnecessary hardship to the owner or user of land or buildings.

TDC 6.210 Regulations Which May Not Be Varied.

- A. No variance may be granted which will permit a use not permitted in the applicable zoning district.*

The uses, a detached accessory structure and a fence, are permitted in the R10PD zoning district.

- B. No variance may be granted which will increase the maximum residential density or decrease the minimum residential density allowed in the applicable zoning district.*

The requested variances, if approved, do not result in a change of any degree to the residential density on the subject lot.

- C. No variance may be granted to the provisions of chapter 5.300, Nonconforming Uses and Developments. [Adopted by Ord. 705, ef. 5/10/01]*

The variances do not pertain to nonconforming uses and developments.

TDC 6.205 General Provisions. B. In approving a variance request, the approving authority may attach reasonable conditions, restrictions, or safeguards to mitigate any adverse impacts which may result by reason of the approved variance.

If conditions are warranted, they are identified in the staff report and included in the draft Findings of Fact, Final Order and Conditions of Approval for the Planning Commission's consideration. Other conditions may be identified as an outcome of the hearing process and may be included.

III. ANALYSIS OF SIDEYARD SETBACK VARIANCE REQUEST

The variance request is for a four foot decrease of the required 7 ½ foot side yard setback to 3 ½ feet. The 7 ½ foot side yard setback, established with the approval of Kiku Heights applies due to the floor area of the structure, not the height:

TDC 5.010 Residential Accessory Structures. C. Regulatory Requirements. No accessory structure shall be erected or maintained, and no existing accessory structure shall be structurally altered, converted, enlarged, moved, or maintained unless such accessory structure is located on the lot in conformance with the following:

10. Side Yard Setback. An accessory structure greater than 120 square feet in floor area or greater than ten feet in height must comply with the setback of the underlying zoning district.

- The structure is 300 square feet in floor area.

- The structure is 9 feet in height.
- The underlying zoning district side yard setback is 7 ½ feet.
- The side yard setback requested is 3 ½ feet. This is a decrease from the setback of four feet.

Variance Criterion A. *Special circumstances or conditions including, but not limited to, lot size, lot shape, topography, or size or shape of building, apply to the property, development, or to the intended use and are not typical of the general conditions in the surrounding area;*

In response to criteria A, the applicant states:

“A sturdy open sided secured structure to cover property owner’s boat.”

This statement explains the use. A special circumstance or condition of lot size, lot shape, topography or size or shape of the building not typical of general conditions in the surrounding area was not be explained.

Variance Criterion B. *The variance authorized will not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare;*

In response to criterion B, the applicant states:

“The structure variance will not be injurious to any adjacent properties or surrounding neighborhood and will not be detrimental to the public welfare. It is safely secured and very heavy duty/sturdy and is enclosed by a 6 foot fence behind a locked gate. It does not block any views or hinder property lines.”

Property owners within 250 feet of the site were mailed written notices of the request. This criterion requires an objective determination that standards adopted to protect the public welfare, are met. Building and fire codes are adopted by the State to regulate structures that require building permits. The Deputy Fire Marshal has no comments on the structure or fence (attachment 5). The Building Official commented (attachment 6) that “permits are required per Oregon Residential Specialty Code R105.1” and that a building less than three feet to the property line requires a fire wall per Oregon Residential Specialty Code (2011) Table R302.1: the structure is setback is 3 ½ feet from the nearest property line. A condition for a building permit is proposed (condition number 1) and a time frame for applying for the permit (condition number 2). The public welfare is protected through the building permit process when it applies.

This standard also provides that the subjective understanding of what the neighbors may perceive to be *injurious* or *detrimental* to their properties. One written comment from a person notified of the variance request was received before June 6 and is included in this staff report (attachment 7).

There is no specific statement in that letter received May 29, 2014, which indicates the approval of the variances will be *injurious* or *detrimental* to the neighborhood.

Variance Criterion C. *The variance authorized will be consistent with the general purpose and intent of the provision from which a variance is sought; and*

The applicant's response to this criterion is:

"The structure will be used only for the variance proposed: covering the property owner's boat to help eliminate any damage due to weather or security issues."

Under the Building Code, a three foot setback is possible. However, a greater setback of 7 ½ feet from the side property line was adopted for this lot as part of the Planned Development overlay zoning. There is a notion in planning that the narrower the setback between structures is on adjacent lots the more crowded a neighborhood looks. Thus setbacks wider than required under building and fire codes are understood to be for aesthetic reasons. No neighboring property owner has testified that the looks of the frame covered structure or the six foot high fence in the required front yard setback are objectionable.

The following comment quoted from the letter received May 29 (attachment 7) (staff has edited the comment for clarity as noted in brackets []):

Codes written as they [...] are to be followed by all and exceptions as requested should be [...] taken into consideration. If it [is] a fire code [I'm] sure that Mr. Clark will do the right thing.

My opinion is that the commission, Fire Marshal and fellow neighbors that it will all work out and that the codes are written for all to follow and as individuals it is our right to voice our opinion.

If the Planning Commission determines there is a conflict with the City's aesthetic intent of the setback and the use that is the subject of the requested setback variance, then a variance may not be appropriate. Photos of the property labeled A through F have been provided in attachment 3.

Variance Criterion D. *The variance is the minimum necessary to relieve a practical difficulty and the resulting hardship.*

The notions of "resulting hardship" or "unnecessary hardship" are highly variable for each type of variance requested and is subjective in nature, meaning the unnecessary hardship declared by the applicant may be perceived quite differently from neighbors or the Planning Commission. The applicant's response to this criterion is:

“The variance we propose is the minimum necessary to relieve a practical difficulty and the resulting hardship. This was the only option we had to store our boat and keep it protected. We had this built to keep the boat off the street for parking which is not legal. It was well designed and built for this purpose and does not affect other property owner’s or pedestrian’s safety. It does not encroach over any property line. Being behind the locked fence it poses no problems for safety to anyone. It was pall professionally installed and is secure. We also chose black coating on the fence to maintain a nice appearance.”

Most properties in Troutdale have narrow side yards that make it difficult to park more than two cars in front of a garage, or park a trailer, RV, or boat next to the house. Narrow side yard setbacks also make it difficult to utilize back yards for parking.

Over the past 15 years, staff has processed at least 21 setback variances for accessory structures, including for decks: most were approved (list in attachment 8). The granting of variances from a specific standard does not automatically mean that the standard is broken or that a variance then should be given to all.

Variance criterion D echoes the provision for variances the City adopted in the General Provisions of TDC 6.205.A:

TDC 6.205 General Provisions.

- A. The variance procedures are intended to allow modifications of specific standards contained within this code where difficulties exist which render compliance with the standards impractical and such compliance would create unnecessary hardship to the owner or user of land or buildings.*

Based upon the size of the boat and the boat cover the 3 ½ foot side yard setback is the minimum needed to accommodate both within this side yard.

IV. ANALYSIS OF VARIANCE FOR AN INCREASE IN FENCE HEIGHT

Separate from the question of the side yard setback for the frame-covered detached residential accessory structure is the applicant’s request for a variance for an existing six foot high fence that is within the required 20-foot front yard setback. The Development Code standard not met and from which a variance has been requested is:

TDC 5.050 Fences and Windscreens. A. Fences / Residential. 2. Fences in a required front yard. The height of a fence or retaining wall in a required front yard shall not exceed 3½ feet.

The required front yard setback for the site is 20 feet as established by the Kiku Heights Planned Development conditions. The existing fence is 6 feet in height and 18 feet from the front property line. The variance criteria of TDC 6.215 apply to this variance request.

The applicant does not specifically address the variance criteria for the increase in fence height. Quotes from the applicant's submittal that to the understanding of staff match the variance criteria are quoted below each criterion in this section.

Variance Criterion A. *Special circumstances or conditions including, but not limited to, lot size, lot shape, topography, or size or shape of building, apply to the property, development, or to the intended use and are not typical of the general conditions in the surrounding area;*

[The six foot high fence is for a] "... secured structure ... [for the boat]."

Lack of security may be a special circumstance not typical of the general conditions in the surrounding area. Securing property is commonly done behind locked fences. A fence only 3 ½ feet in height could more easily be climbed than the six foot fence proposed.

Variance Criterion B. *The variance authorized will not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare;*

"We also chose black coating on the fence to maintain a nice appearance. We ask for approval for the additional 2.5 foot height for gate."

Public welfare includes the notion of safe construction. Building and fire codes are adopted by the State to regulate structures that require building permits. The Deputy Fire Marshal has no comments on the structure or fence (attachment 5). The Building Official comments (attachment 6) do not identified any issue under the building [or fire] code for the fence.

Variance Criterion C. *The variance authorized will be consistent with the general purpose and intent of the provision from which a variance is sought; and*

Staff researched what the *general purpose and intent* might be for limiting the height of fences to 3 ½ feet in the required front yard setbacks in residential zoning districts. The earliest edition of the TDC that has a fence height standard found by staff is the 1989 TDC, which limited the height in front yard setbacks to three feet. The earliest version of the standard allowing fences in required front yard setbacks to be 3½ feet outside of the clear vision area found by staff, is the 1990 TDC as amended during Periodic Review under Ordinance 550 (adopted 8/25/1990). The Ordinance adopting amendments to the TDC does not include a statement from the Council as to why this particular standard was changed.

The Code provides that the Director has the *responsibility to interpret and apply* provisions of this Code:

TDC 17.020 Interpretation. It shall be the responsibility of the Director to interpret and apply provisions of this code.

The Director has determined that the *general purpose and intent of the provision* – limitation of height of fences in front yards to 3 ½ feet outside of the clear vision area--is aesthetic in nature. The 3 foot height limitation in the clear vision area is for safety. As an aesthetic standard, the variance criterion is then met provided the increase in height within 18 feet of the front property line instead of 20 feet of the front property line is still aesthetic and acceptable to the neighbors and the Planning Commission.

Based upon the identified purpose of limiting the height of fences as being aesthetics, the following statements from the applicant's submittal (attachment 7) concern aesthetics:

“We chose black coating on the fence to maintain a nice appearance.”

“We have spent 15 years of repairing and landscaping our home... [to help] the value of our home, the neighborhood home values and the value to the city of Troutdale. Our home is no longer the eyesore it was when we first moved in.”

No written comments were received from other property owners stating that the fence was not aesthetic.

D. The variance is the minimum necessary to relieve a practical difficulty and the resulting hardship.

Based upon the narrative from the applicant, the practical difficulty is a security issue. Staff evaluated the dimensions on the plot plan to determine if the fence could be setback 20 feet from the front property line.

- The frame covered structure is setback 21 feet 6 inches from the front property line.
- A fence setback 20 feet from the front property line is possible based upon the setback of the frame covered structure.

A clear reason for the fence to encroach within the required 20 foot front yard setback is not evident to staff. It may be that more than a foot and a half is needed between the boat cover and the fence for the boat trailer.

RECOMMENDATION

Staff recommends approval of a 300 square foot detached residential accessory structure nine feet in height (used as a boat cover) with two variances with conditions: 1) a variance from TDC 5.010 Residential Accessory Structures. C. Regulatory Requirements. Part 10. Side Yard Setback, to allow a 3 ½ foot side yard setback for the subject detached accessory structure and 2) a variance from TDC 5.050.A.2. Fences and Windscreens, to allow a six foot high fence to encroach two feet into the required 20 foot front yard setback.

A draft Findings of Fact and Final Order with conditions of approval has been prepared for the Planning Commission's consideration.

Block.2 Lot 19 (street name was changed from SE.19th to SE 18th after plat was recorded)

KIKU HEIGHTS

LOTS 3 THRU 11 OF PARTIAL BLOCK 1,
 LOTS 5 THRU 9 OF PARTIAL BLOCK 2,
 LOTS 14 THRU 24 OF PARTIAL BLOCK 2
 IN THE NORTH 1/2 OF SECTION 36, T.1N, R.3E, W.M.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT HENDERSON AND MENELY HOME BUILDERS, INC. AN OREGON CORPORATION DOES HEREBY MAKE, CONFIRM AND DECLARE THAT THE ANNEXED MAP OF "KIKU HEIGHTS" AS DESCRIBED IN THE ACCOMPANYING SURVEYORS' CERTIFICATE TO BE A PUBLIC TRAIL AND TO BE OPEN TO THE PUBLIC FOR THE USE OF THE PUBLIC AND ALL STRUCTURES OF THE VARIOUS TRADES AND SERVICES TO BE LOCATED THEREON SHALL BE PERMANENTLY DEDICATED TO THE USE OF THE PUBLIC, AS PUBLIC WAYS FOREVER, ALL EXCEPTS, SHOWN ON SAID MAP.

HENDERSON AND MENELY HOME BUILDERS, INC.

Ronald J. Stager
 RONALD J. STAGER, F.S.M.
 ROBERT W. MENELY, S.O.C.

Robert W. Menely
 ROBERT W. MENELY, S.O.C.

ACKNOWLEDGEMENT

STATE OF OREGON
 COUNTY OF MULTNOMAH

THIS CERTIFICATE THAT ON THIS 14th DAY OF FEBRUARY, 1977, BEFORE ME, A Notary Public in and for said State and County, personally appeared ROBERT W. MENELY and RONALD J. STAGER, both of legal age, who are known to me to be the persons whose names are subscribed to the foregoing instrument, and they declared to me that the contents of the same are true and correct, and that they executed the same for the purposes and consideration therein expressed, and that they are not under any legal disability, and that they are not acting in behalf of any corporation.

WITNESSE MY HAND AND OFFICIAL SEAL

Ronald J. Stager
 NOTARY PUBLIC FOR THE STATE OF OREGON
 MY COMMISSION EXPIRES 1-28-80

SURVEYOR'S CERTIFICATE

STATE OF OREGON
 COUNTY OF MULTNOMAH

I, RONALD D. STAGER, BEING DULY SWORN, DEPOSE AND SAY THAT I HAVE PERSONALLY SURVEYED AND MARKED ALL LOT CORNERS AND CURVE POINTS WITH 1/2" X 3/4" IRON NAILS, EXCEPT WHERE OTHERWISE NOTED. THE LANDS REPRESENTED ON THE ANNEXED MAP OF "KIKU HEIGHTS" AS DESCRIBED IN THE ACCOMPANYING SURVEYORS' CERTIFICATE TO BE A PUBLIC TRAIL AND TO BE OPEN TO THE PUBLIC FOR THE USE OF THE PUBLIC AND ALL STRUCTURES OF THE VARIOUS TRADES AND SERVICES TO BE LOCATED THEREON SHALL BE PERMANENTLY DEDICATED TO THE USE OF THE PUBLIC, AS PUBLIC WAYS FOREVER, ALL EXCEPTS, SHOWN ON SAID MAP.

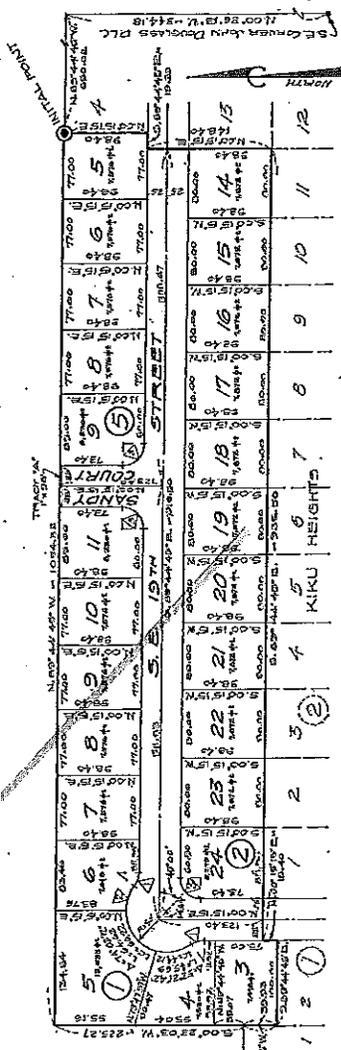
THIS TRAIL IS AN EXACT COPY OF THE ORIGINAL PLAT.

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
Ronald D. Stager
 OREGON
 JULY 14, 1965
 RONALD D. STAGER
 S15

SUBSCRIBED AND SWORN BEFORE ME THIS 12th DAY OF FEBRUARY, 1977

Ronald J. Stager
 NOTARY PUBLIC FOR THE STATE OF OREGON
 MY COMMISSION EXPIRES February 28, 1980

SCALE: 1" = 100'
 CITY OF TROUTDALE
 MULTNOMAH COUNTY, OREGON
 MARTIN ENGINEERING CO.
 FEBRUARY 1977.



NOTE: BY UTILITY, EMBASSMENT ALONG ALL CURVES AND ROAD LOT LINES.

CURVE DATA
 Δ A = 50.24' BY 12:45:00
 Δ A = 50.24' BY 12:45:00
 Δ A = 50.24' BY 12:45:00

ATTACHMENT 1 CASE FILE 14-016

APPROVED March 5, 1977
 PLANNING COMMISSION
 CITY OF TROUTDALE
 BY *Charles J. Bellman*
 CHAIRMAN

APPROVED March 3, 1977
 BY *J. Duane B. P.E.*
 ENGINEER
 CITY OF TROUTDALE

APPROVED April 15th, 1977
 COUNTY ENGINEER
 MULTNOMAH COUNTY, OREGON
 BY *R. L. Bennett*

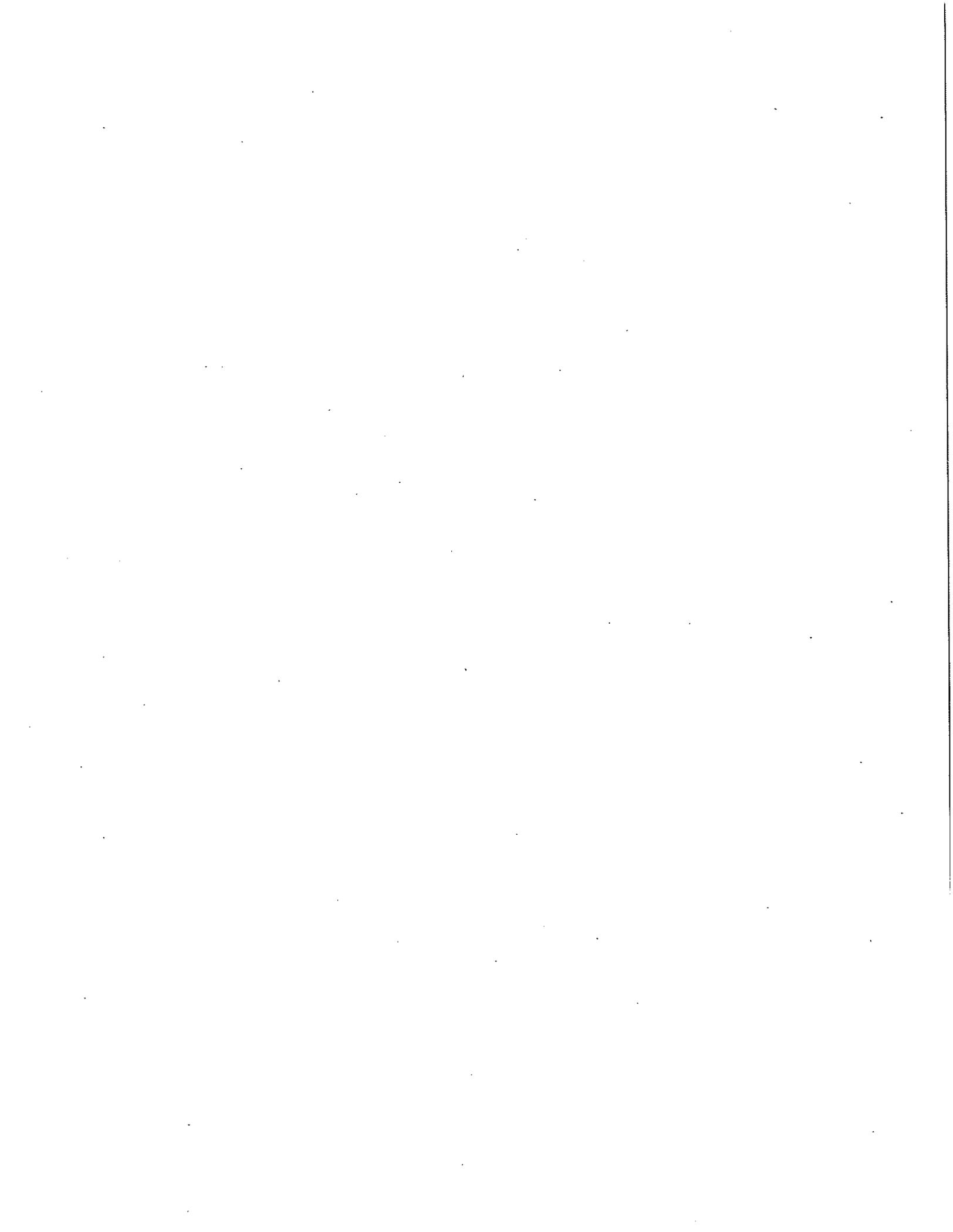
APPROVED March 3, 1977
 ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY O.R.S. 228.025 HAVE BEEN PAID AS OF April 1977

APPROVED March 3, 1977
 BRUCE G. LAWSON
 DIRECTOR
 DIV. OF ASSESSMENT & TAXATION
 MULTNOMAH COUNTY, OREGON
 BY *Edward M. Spalding*
 DEPUTY

APPROVED March 3, 1977
 COUNTY RECORDING OFFICE
 MULTNOMAH COUNTY, OREGON
 BY *Ann S. Seaberg*
 DEPUTY

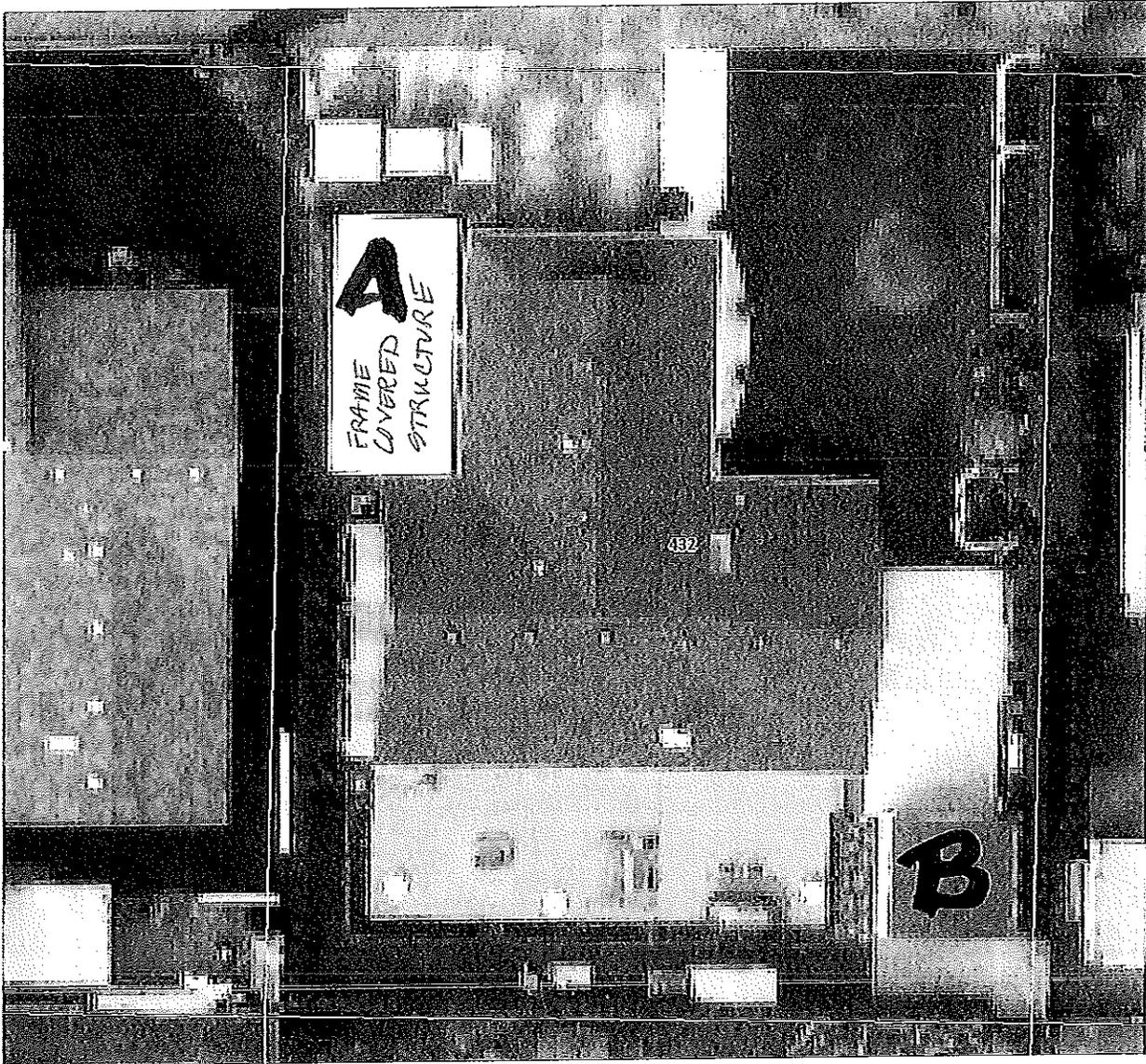
APPROVED March 3, 1977
 COUNTY RECORDING OFFICE
 MULTNOMAH COUNTY, OREGON
 BY *Ann S. Seaberg*
 DEPUTY

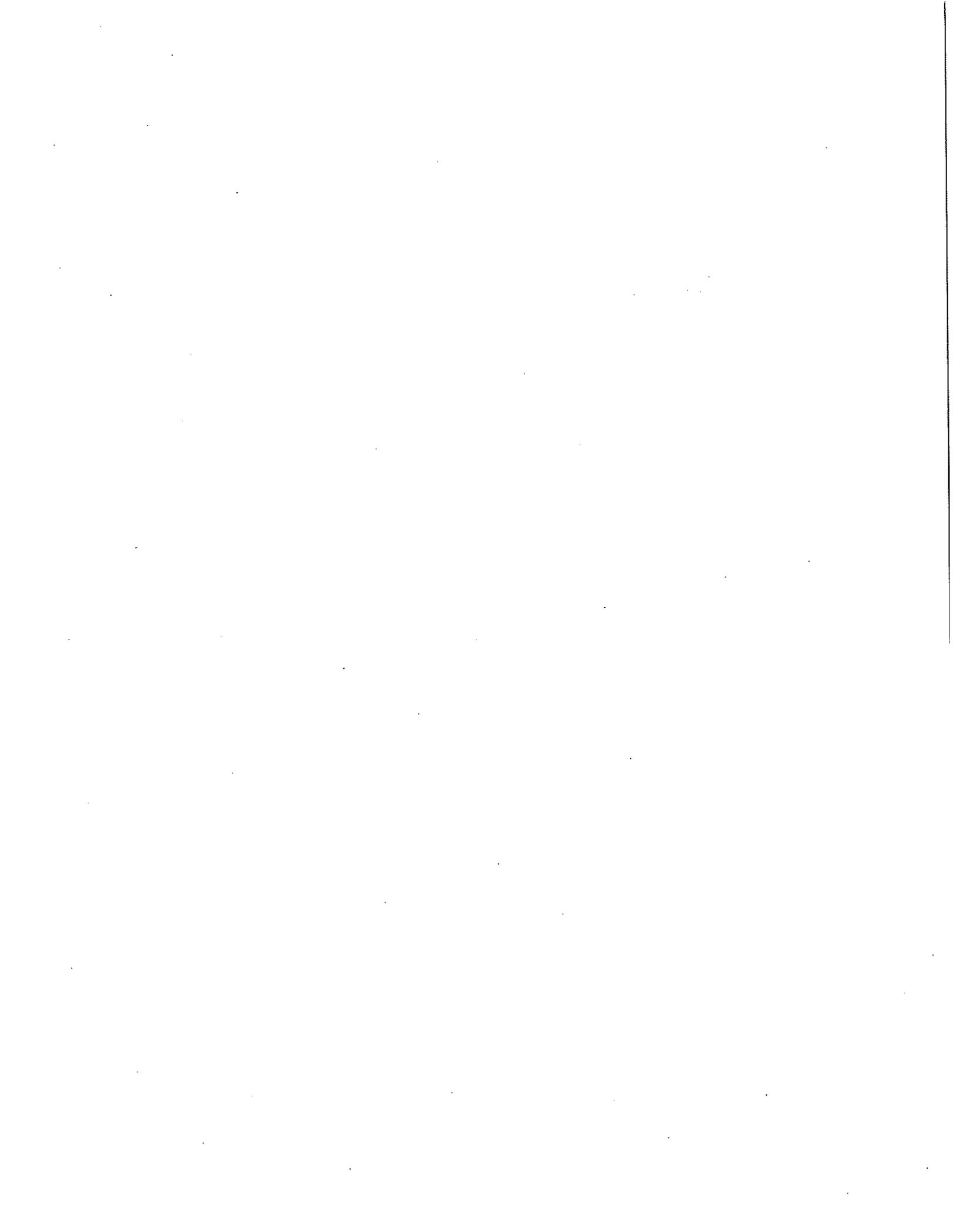
APPROVED March 3, 1977
 COUNTY RECORDING OFFICE
 MULTNOMAH COUNTY, OREGON
 BY *Ann S. Seaberg*
 DEPUTY



**ATTACHMENT 2
CASE FILE 14-016**

Aerial photo 432 SE 18TH Street
City GIS service, photo date Spring 2012





CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"



March 5, 2014

Gary and Barbara Clark
432 SE 18th Street
Troutdale, Oregon 97060

Contacted on 4/2/14 will be submitting variances April 16th

Re: Permit Required for Frame-Covered Accessory structure at 432 SE 18th Street

Dear Mr. & Mrs. Clark:

Based upon the history of correspondence dating back to July 2009 (enclosed), an application for a permit for the subject accessory structure was required to be submitted to the City of Troutdale Planning Division by January 16, 2010. To date the application has not been submitted. Based upon the estimated size and height, at a minimum, a \$25.00 Development Permit is required. However, if the structure is in non-compliance with the front and side yard setbacks, variances must be requested or the structure moved on the lot to meet the setback standards.

Even though the City has not sought correction until now, staff has a duty to enforce the code as it is and the standards for residential accessory structure in effect today. Those standards (reaffirmed by the Council in May 2011) require permits for frame-covered structures, and the structure must comply with the setback requirements of the underlying zoning district unless otherwise allowed in the Code (copy enclosed). There are three options under the current standards of the Code to remedy the violation(s):

- 1) Apply for a Development Permit for the structure if it conforms to the required setbacks of 7 ½ feet from the side property line and 20 feet from the front property line 20 feet. The application form and instructions are enclosed: the fee is \$25.00; or
- 2) Remove the frame-covered structure from the property; or
- 3) Apply for setback variances with the Development Permit application. Instructions for applying for the variance(s) are enclosed. It appears from aerial and street view photos that three setback variances may be needed: one from the side yard setback, one from the front yard setback for the fence in front of this structure, and one from the front yard setback for the structure itself.

Mayor

Doug Daoust

City Council

- Norm Thomas
- Glenn White
- David Ripma
- Rich Allen
- Eric Anderson
- John L. Wilson

City Manager

Craig Ward

City Attorney

David J. Ross

- Side yard setback requirement for structure:
 - If the setback is at least 6 feet 9 inches, a Type I procedure applies.
 - If the setback is less than 6 feet 9 inches but at least 5 feet 3 inches from the side property line, a Type II variance procedure applies.
 - If the setback is less than 5 feet 3 inches from the side property line, a Type III variance procedure applies.

- Front yard setback for frame-covered structure (the front property line is located six inches behind the edge of the sidewalk—per the cross-section standard for city streets):
 - If the structure is not 20 feet from the front property line but is at least 18 feet from the front property line, a Type I variance procedure applies.
 - If the structure is less than 18 feet from the front property line but at least 14 feet from the front property line, a Type II variance procedure applies.
 - If the structure is less than 14 feet from the front property line, a Type III variance procedure applies.

- Front yard setback for the fence: A fence more than 3½ feet in height up to 6 feet in height is allowed when it is setback 20 feet from the front property line. A variance to fence higher than 3 ½ feet in the front yard setback may be requested and is required if the existing fence is not setback 20 feet from the front property line.
 - If the fence is not 20 feet from the front property line but at least 18 feet from the front property line, a Type I variance procedure applies.
 - If the fence is less than 18 feet from the front property line but at least 14 feet from the front property line, a Type II variance procedure applies.
 - If the structure is less than 14 feet from the front property line, a Type III variance procedure applies.

Fees for variances are based upon the degree of variance and how many variances are requested in the same application. Here are the fees: \$125.00 fee for Type I variances, \$250.00 fee for Type II variances and \$350.00 for Type III variances. When more than one variances is requested at the same time, the fee for each additional variance is \$125.00. When the Development Permit is requested with variance applications, the application fee is the variance fees plus the \$25.00 Development Permit fee.

Failure to remove the structure or apply for a Development Permit (with or without variances as may be necessary) by April 7, 2014, will result in the City requesting abatement in accordance with Troutdale Development Code Chapter 17.110 Abatement and Penalty and the nuisance section of the Troutdale Municipal Code. Should you have questions, please contact me at (503) 674-7233 or Elizabeth McCallum, Senior Planner at (503) 674-7228.

Sincerely,



Craig Ward, City Manager / Acting Community Development Director

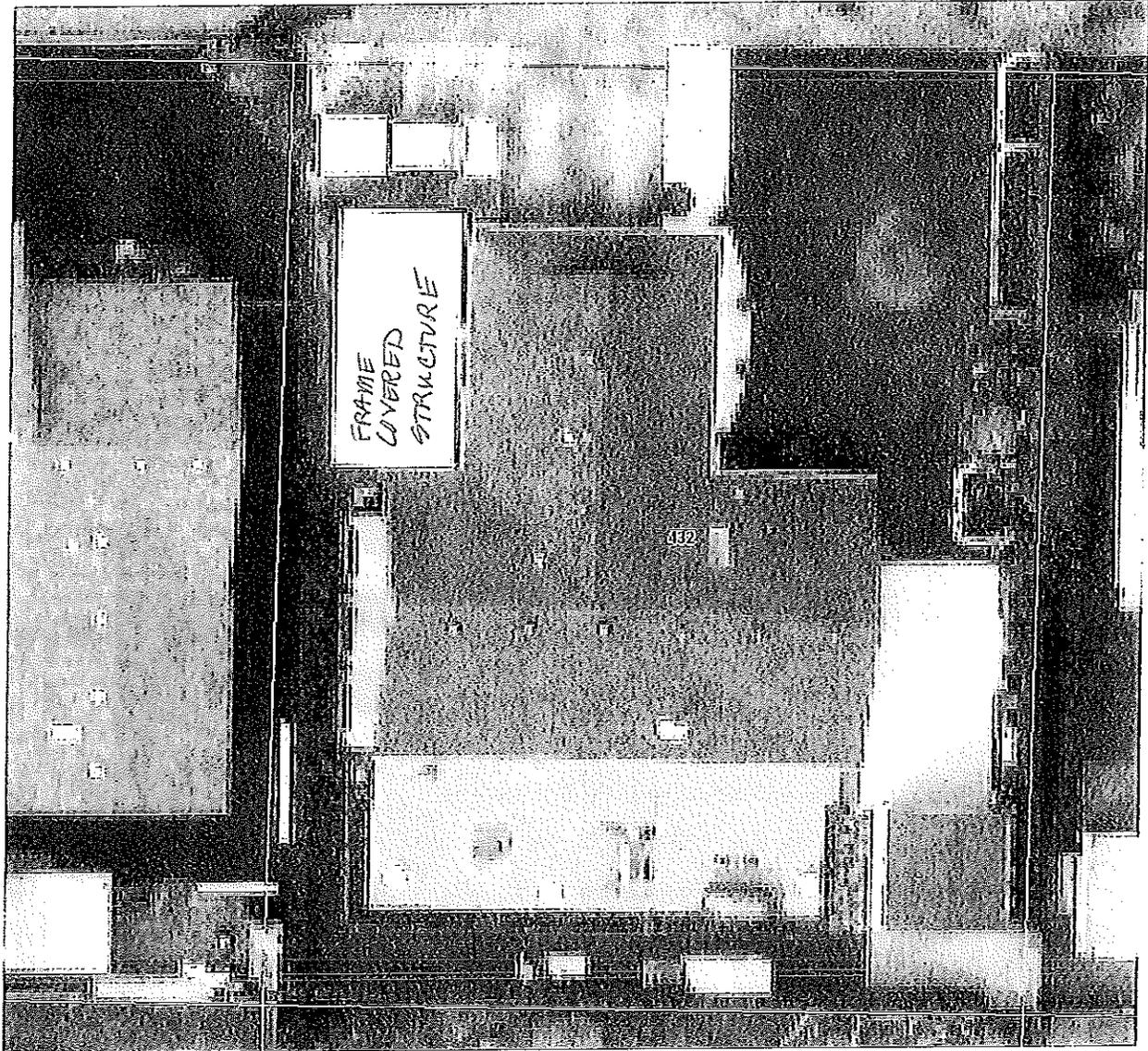
Enclosures:

- Spring 2012 aerial photo of 432 SE 18th Street from City of Troutdale GIS
- 7/18/09 note to Elizabeth McCallum, Senior Planner from Gary Clark
- 7/17/09 email from Elizabeth McCallum, Senior Planner to Gary Clark
- 7/16/09 email from Gary Clark to Elizabeth McCallum, Senior Planner
- 7/16/09 memorandum to Rich Faith, Community Development Director from Elizabeth McCallum, Senior Planner
- 5/12/09 letter to Gary and Barbara Clark from Rita J. Correy, Assistant Planner With June 18, 2009 notation by Ms. Correy for submittal deadline
- 4/30/09 letter to Gary and Barbara Clark from Rita J. Correy, Assistant Planner
- Street view photo dated 04/22/2009 with hand-written dimensions (Ms. Correy's writing)
- 4/30/09 Multnomah County Oregon Property Records for 432 SE 18th Street, Troutdale, Oregon
- County Tax Map showing property location
- 4/30/09 email from Jack Hanna, Code Enforcement Officer to Rita Correy, Assistant Planner, transmitting five street view photos of accessory structure

cc: w/o enc.

Elizabeth McCallum, Senior Planner

Aerial photo 432 SE 18TH Street
City GIS service, photo date Spring 2012



Send via email on 7/18/2009 at 11:08 AM

Hi Elizabeth,

Thank you for your reply.

And thank you for accepting my apology and understanding my circumstances. This is a tremendous help for me and my family in these tough times and very much appreciated!

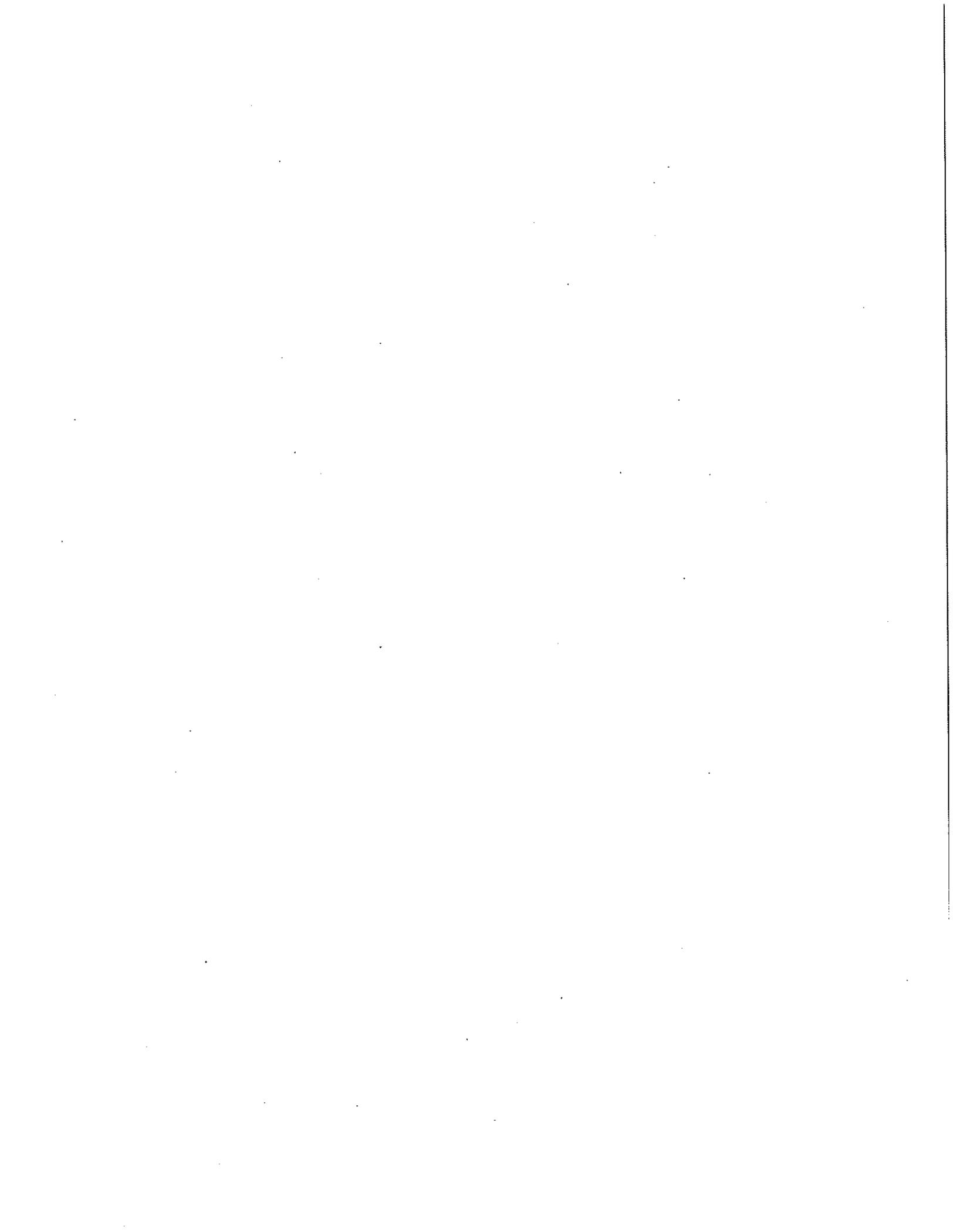
Please give a special thanks to Mr. Faith for his allowing me the extra time to accomodate the city with the variance fees and hopefully get this taken care of in a positive manner.

Thank you again for helping me when not many others are right now!

I knew Troutdale was the town I wanted to raise my family!

God Bless!

Gary Clark



Elizabeth McCallum

From: Elizabeth McCallum
Sent: Friday, July 17, 2009 12:08 PM
To: 'Gary Clark'
Cc: Rich Faith
Subject: RE: Clark Variance

July 17, 2009

Mr. Clark,

Your apology is accepted and I truly appreciate it.

I am sorry, but there is no option to collect a land use application fee *after* a hearing or *only* if it is approved. Fees are collected with the land use application: this is the City's standard practice. The application fee is established by the City Council and helps defray the cost to the city that are unique to the land use application: mailing notices (copying and postage), publishing a notice in the newspaper, staff time to write the City's analysis of the request, staff time at the hearing. These are costs to the City whether the variance is approved or not.

The Community Development Director, Rich Faith, has been informed of your circumstances and, absent a written complaint about your boat cover, the Director will allow you six months from the date of this e-mail to submit the variance request.

Should you have additional questions about the variance procedure, please feel free to contact me or the Director. The Director, Rich Faith's number is 503-674-7261 and e-mail is rfaith@ci.troutdale.or.us.

Elizabeth A. McCallum
Senior Planner, City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060
ph: 503-674-7228 fax: 503-667-0524

From: Gary Clark [mailto:yamahar230@yahoo.com]
Sent: Thursday, July 16, 2009 5:25 PM
To: Elizabeth McCallum
Subject: Clark Variance

Hello Elizabeth,

I'm Gary Clark and I spoke with you today regarding the variance application I brought in.

I do want to apologize for being abrupt and upset regarding the fees. As I mentioned I understood that the fees were the actual permit fees for the variances to be paid if they were approved. It seems to me that to pay all the fees only to be denied is not logical. Would it not be too easy for the city to take your money and then just deny it anyway?

Seems to be some confusion in this.

We are having tremendous financial difficulties right now and have been for various reasons including medical bills and income reduction. I just cannot come up with that amount of money when I must use that to pay our bills and feed my children.

I had anticipated being able to continue saving towards the fee amount and be able to pay it this fall when the case went to the commission for approval. I had never understood it to be paid today and when that was brought up, it was quite upsetting and frustrating.

Things are tough right now and this is one more compounding issue and I am nervous we can lose our home over this.

Please accept my apology for showing my frustration towards you, it was not deserved.

Best Regards,

Gary Clark
503-381-1741

Troutdale Variance Criteria Narrative.

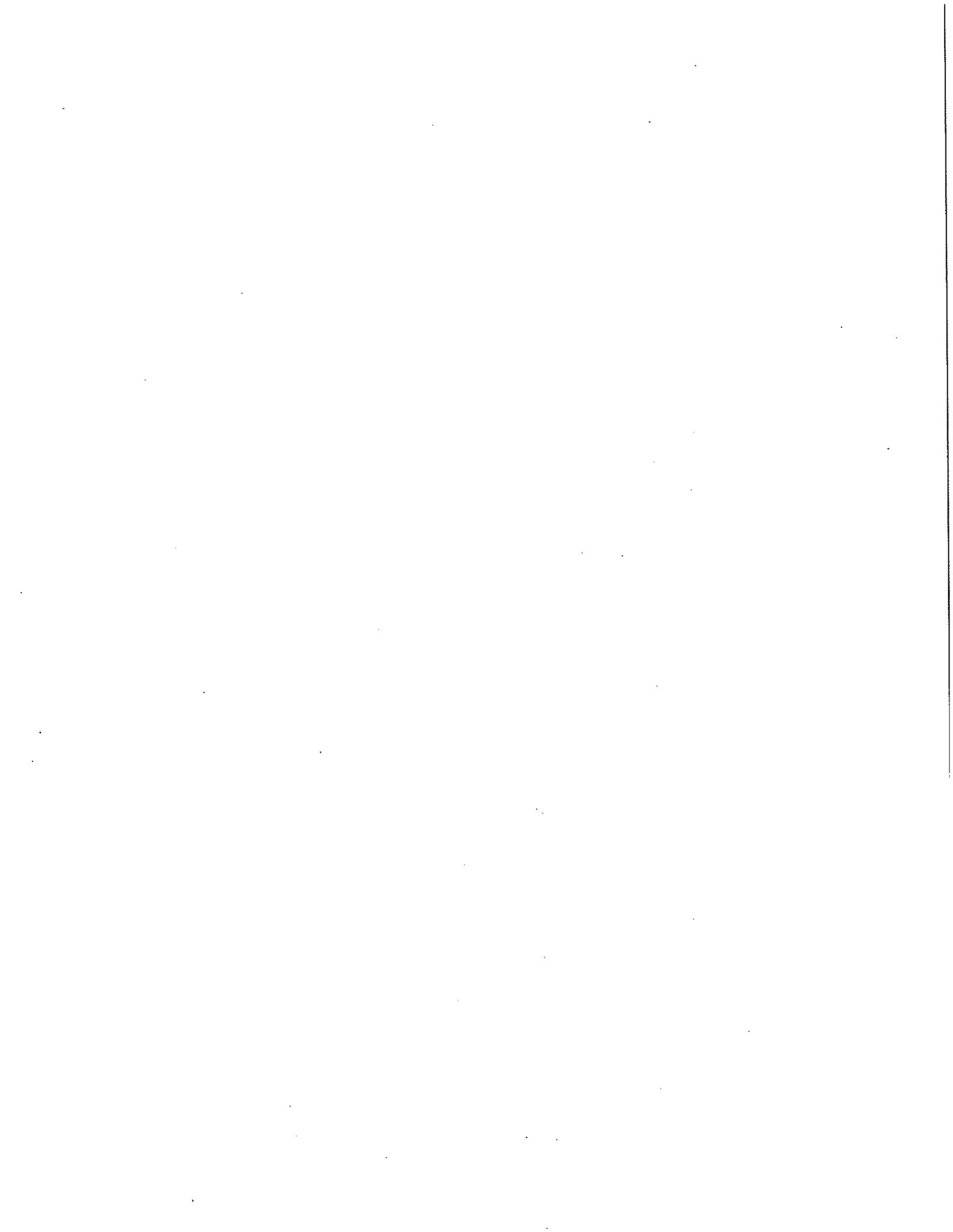
6.215 Type I Variance:

- A: A sturdy open sided secured structure to cover property owner's boat.
- B: The structure variance will not be injurious to any adjacent properties or surrounding neighborhood and will not be detrimental to the public welfare. It is safely secured and very heavy duty/sturdy and is enclosed by a 6 foot fence behind a locked gate.
- C: The structure will be used only for the variance proposed: covering the property owner's boat to help eliminate any damage due to weather etc.
- D: The Variance we propose is the minimum necessary to relieve a practical difficulty and the resulting hardship. This was the only option we had to store our boat and keep it protected. We had this built to keep the boat off the street for parking which is not legal. It was well designed and built for this purpose and does not affect other property owner's or pedestrian's safety. It does not encroach over any property line. Being behind the locked fence it poses no problems for safety to anyone. Due to the length of the trailer it was necessary to bring the gate out a bit to accommodate the trailer tongue. It was all professionally installed and secure.

We have lived in Troutdale since 1993 and in our current home for 10 years. When we moved in, the home had been a rental and in disrepair including broken fencing and little if any landscaping that was not in good shape. We have spent 10 years of repairing and landscaping our home and have spent a lot of hard earned money and an amazing amount of sweat equity to make this our permanent home. This has helped the value of our home, the neighborhood home values and the value to the city of Troutdale. Our home is no longer the eyesore it was when we first moved in. It can be seen as a tremendous improvement, most notably with the amount of landscaping, and an asset to Troutdale and the neighborhood. We respectfully ask to have the City accept and allow the variances proposed as it would create an incredible hardship on our family for them not to be granted.

Thank you,

Gary & Barbara Clark



July 16, 2009

Memorandum

To: Rich Faith, Community Development Director

From: Elizabeth A. McCallum, Senior Planner 

Re: Variance for Accessory Structure (frame covered boat cover) at 432 SE 18th Street

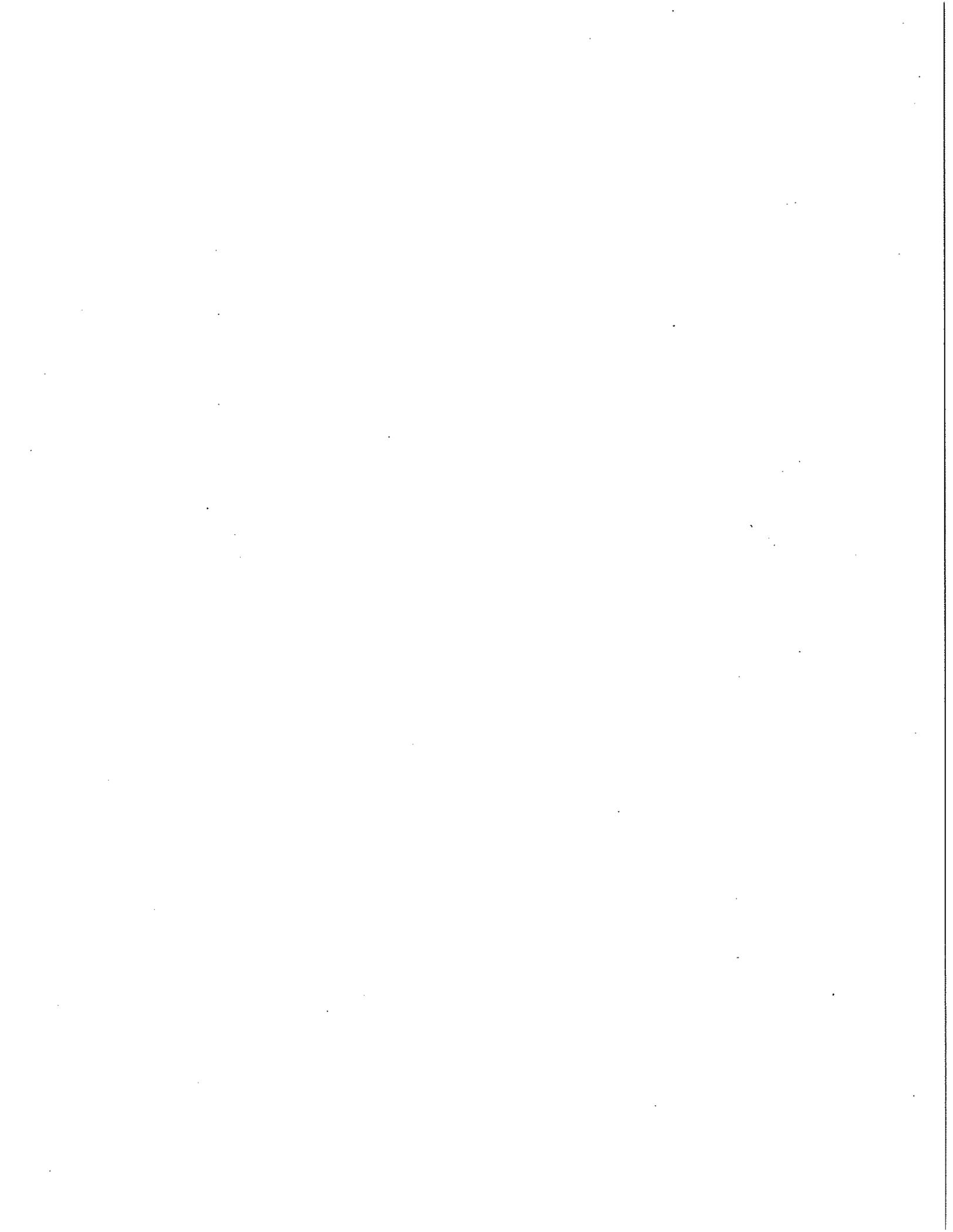
Mr. Clark came in this afternoon (around 2:30) to apply for the Type III variance. He did not have \$350.00 for the fee and said he was not told he had to pay the fee even before the hearing. I told him he had until 5:00 p.m. tomorrow (July 17) to apply and could come back but that I could not take the application in without the fee. He told me his lawyer would be talking to my (city) lawyer. He indicated that he wouldn't even have the money tomorrow. He took his plans and went home.

Gary + Barbara
Clark

503-665-3378

432 SE 18th

gated area where
the





CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

May 12, 2009

**COMMUNITY
DEVELOPMENT
DEPARTMENT**

Fax: (503) 667-0524

Planning Division

(503) 674-7256

Building Division

(503) 674-7229

Gary and Barbara Clark
432 SE 18th Street
Troutdale, OR 97060

RE: Accessory Structure

Dear Mr. and Mrs. Clark:

I called you today to inform you that after discussing your accessory structure with the Department Director, he determined that if you want to retain it in its existing location, variance(s) will have to be obtained. This letter is a confirmation of my conversation with you.

The setbacks for your property are 20 feet from the front and rear property lines, and 7-1/2 feet from the side property line. From the pictures we have obtained, it appears that you would need to request at least a side-yard setback variance; if the fence and structure are less than 20 feet from the front property line, a second variance would be required as well. Variances over 30% of the setback standard are Type III procedures and must be heard before the Planning Commission; the accessory structure appears to be encroaching into the side yard setback by at least 30%. The fee for a Type III variance is \$350, and any additional variances required are \$125 each.

I have enclosed an application and the submittal information for applying for a variance. The Planning Commission meets on the 3rd Wednesday of the month. Applications must be submitted approximately two months prior to the meeting date. To have your application placed on the August 19, 2009 Planning Commission agenda, your materials must be submitted by June 19, 2009. Variances are not automatically approved by the Planning Commission; all the variance criteria must be met for this to occur.

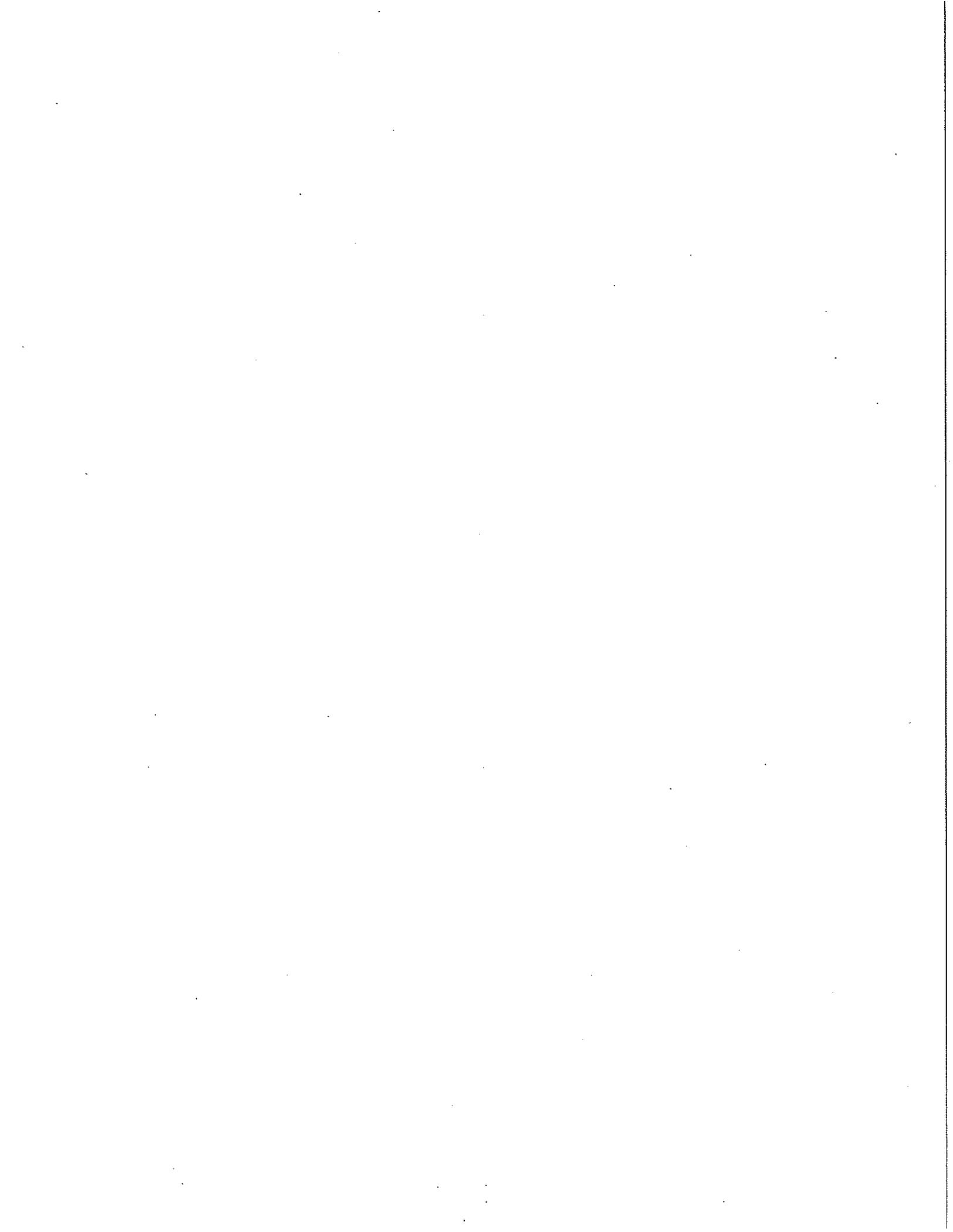
Please contact me if you have any questions about this process at 503-674-7256.

Sincerely,

Rita J. Correy
Assistant Planner

c: Jack Hanna, Code Enforcement Officer

*Called Gary on 6/18/09
relating that Jack wants
something in writing from him
verifying he will have
submittal by 7/17/09
for 9/16/09 PC
meeting*





CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

April 30, 2009

**COMMUNITY
DEVELOPMENT
DEPARTMENT**

Fax: (503) 667-0524

Planning Division

(503) 674-7256

Building Division

(503) 674-7229

Gary and Barbara Clark
432 SE 18th Street
Troutdale, OR 97060

RE: Accessory Structure

Dear Mr. and Mrs. Clark:

The City was notified that an accessory structure has been constructed on your property at 432 SE 18th Street. We have no record that a permit to build this structure was obtained.

The type of permit and setbacks required depends on the size and height of the structure. A brochure is included with this letter to assist you to determine which permit type will be necessary.

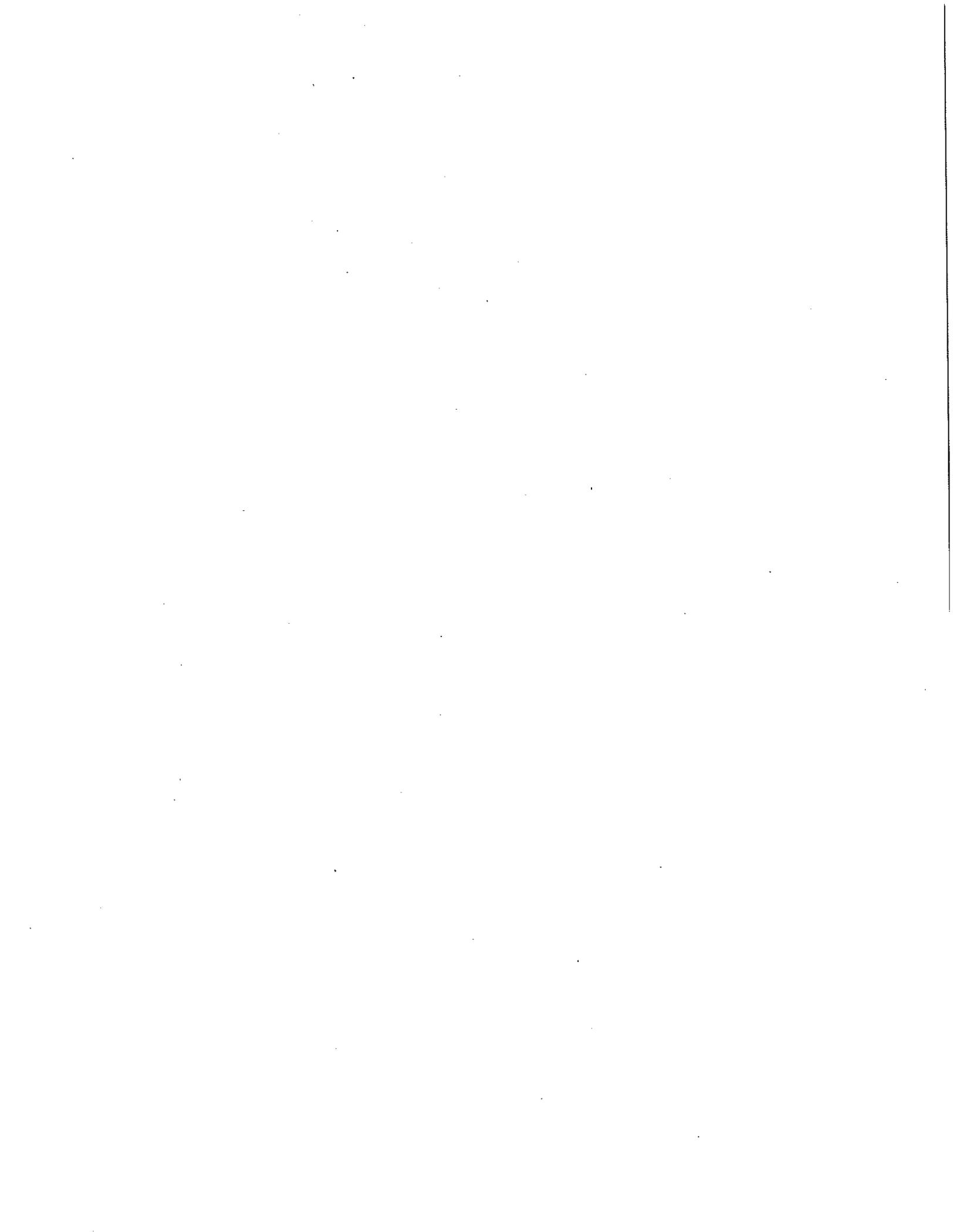
Please come in to the City Hall or contact me at 503-674-7256 to discuss this matter by May 11, 2009.

Sincerely,

Rita J. Correy
Assistant Planner

c: Jack Hanna, Code Enforcement Officer
Jodi Rogers, Permit Specialist

503-665-3378
503-381-1741



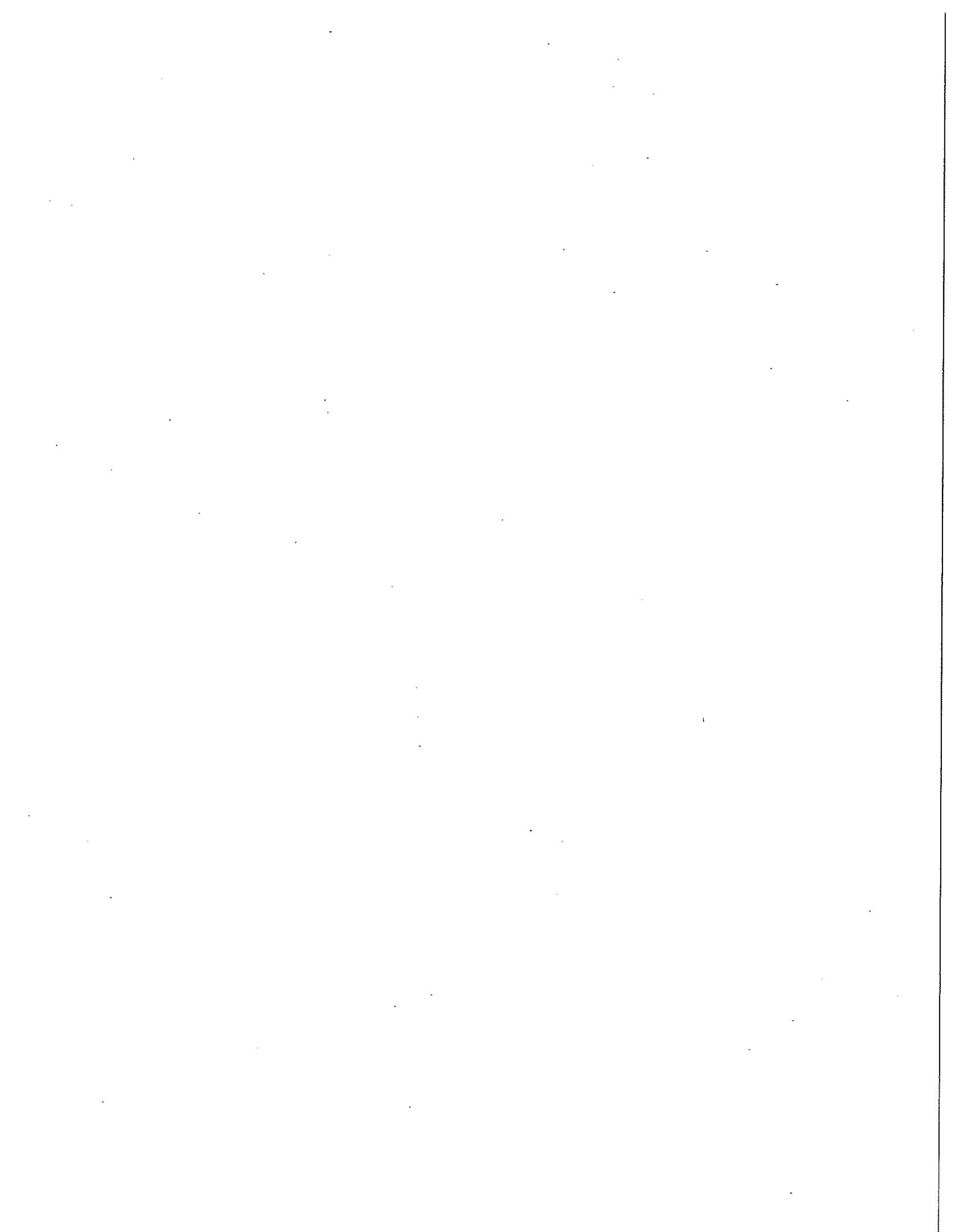
Rita Correy

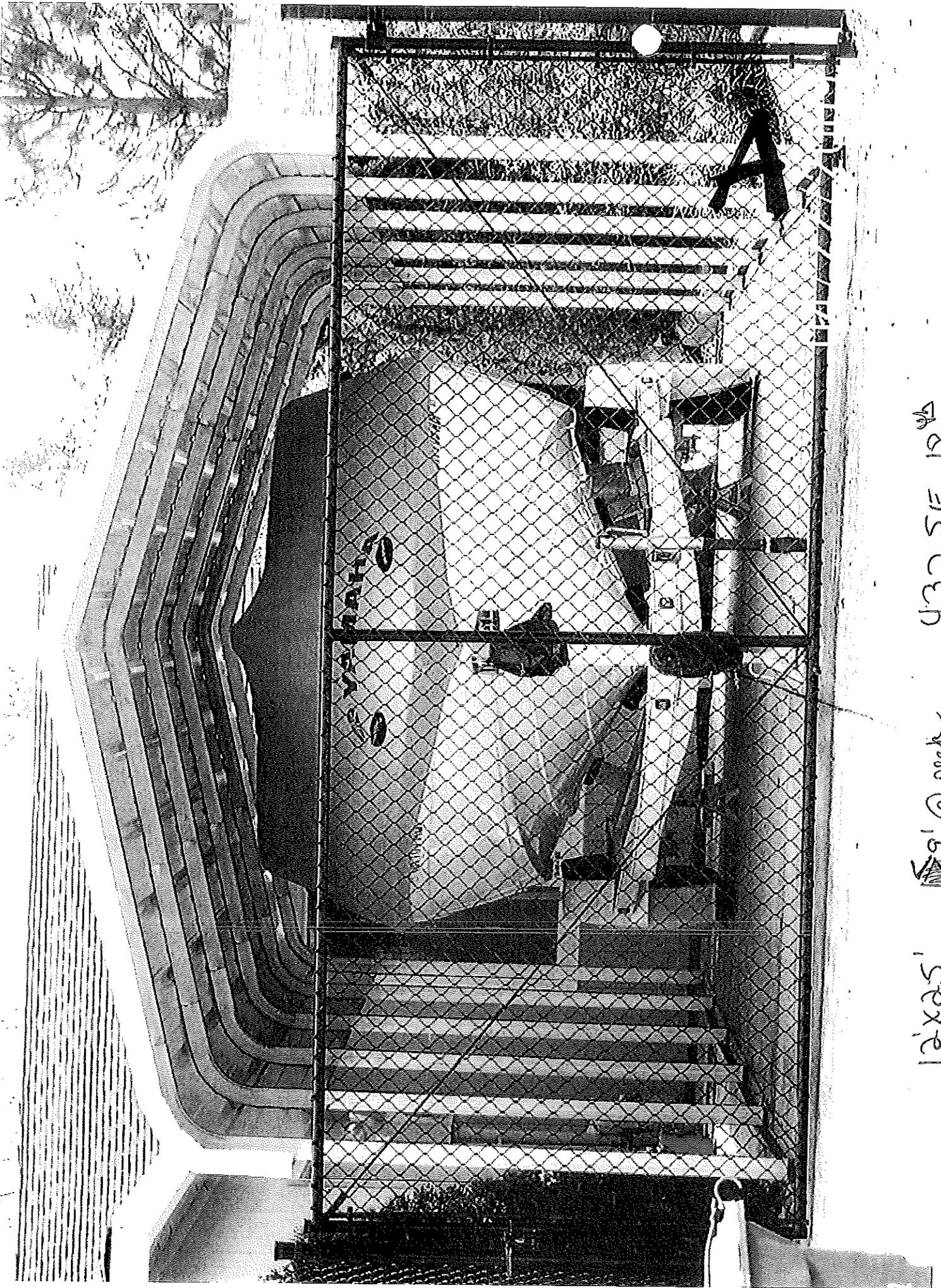
From: Jack Hanna
Sent: Thursday, April 30, 2009 9:29 AM
To: Rita Correy
Subject: Structure
Attachments: 100_2514.JPG

432 SE 18th

Jack Hanna

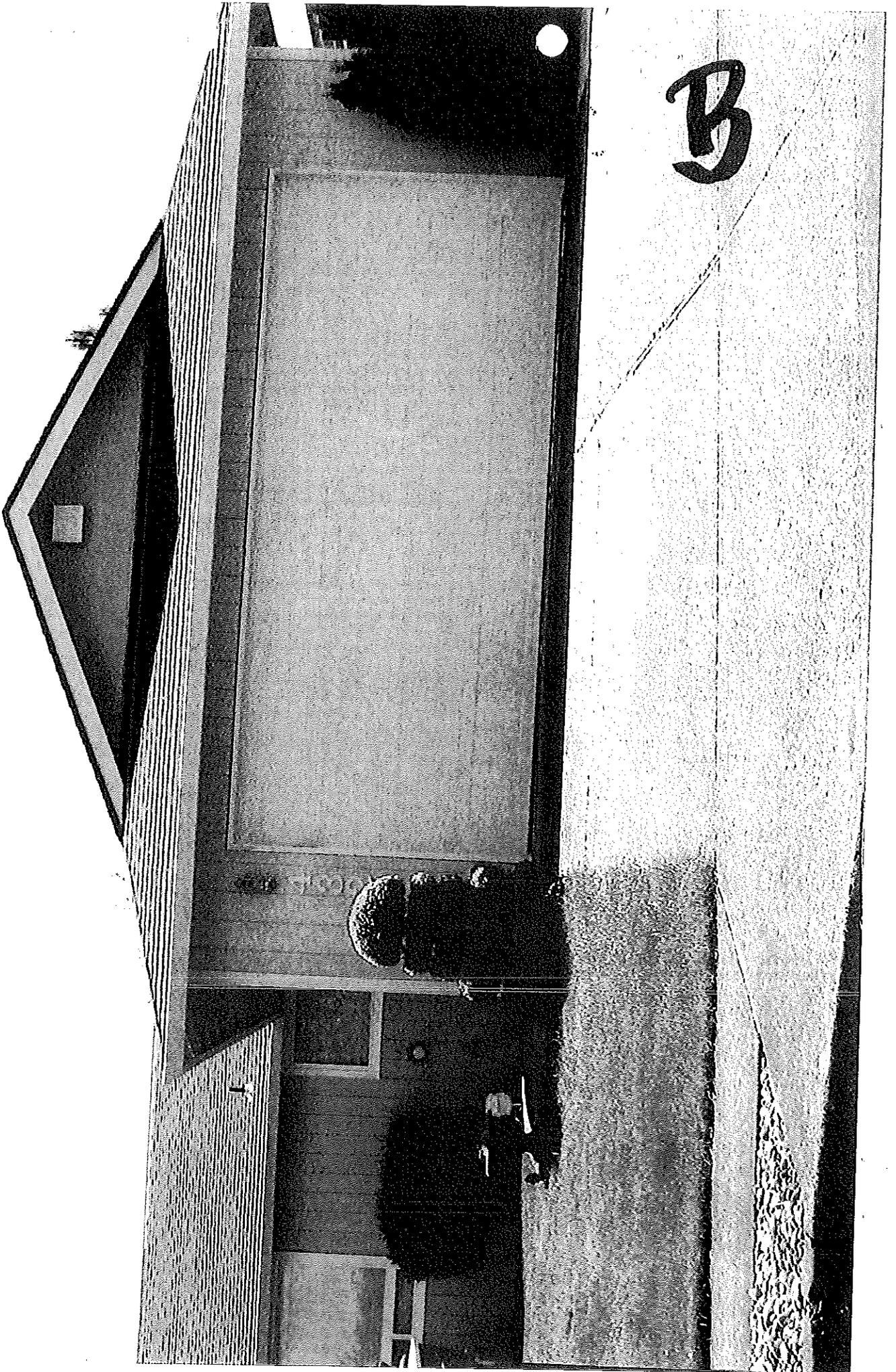
Troutdale Police Department
Code Enforcement Officer
City of Troutdale, OR
Office: 503 491 4009
Fax: 503 669 0875

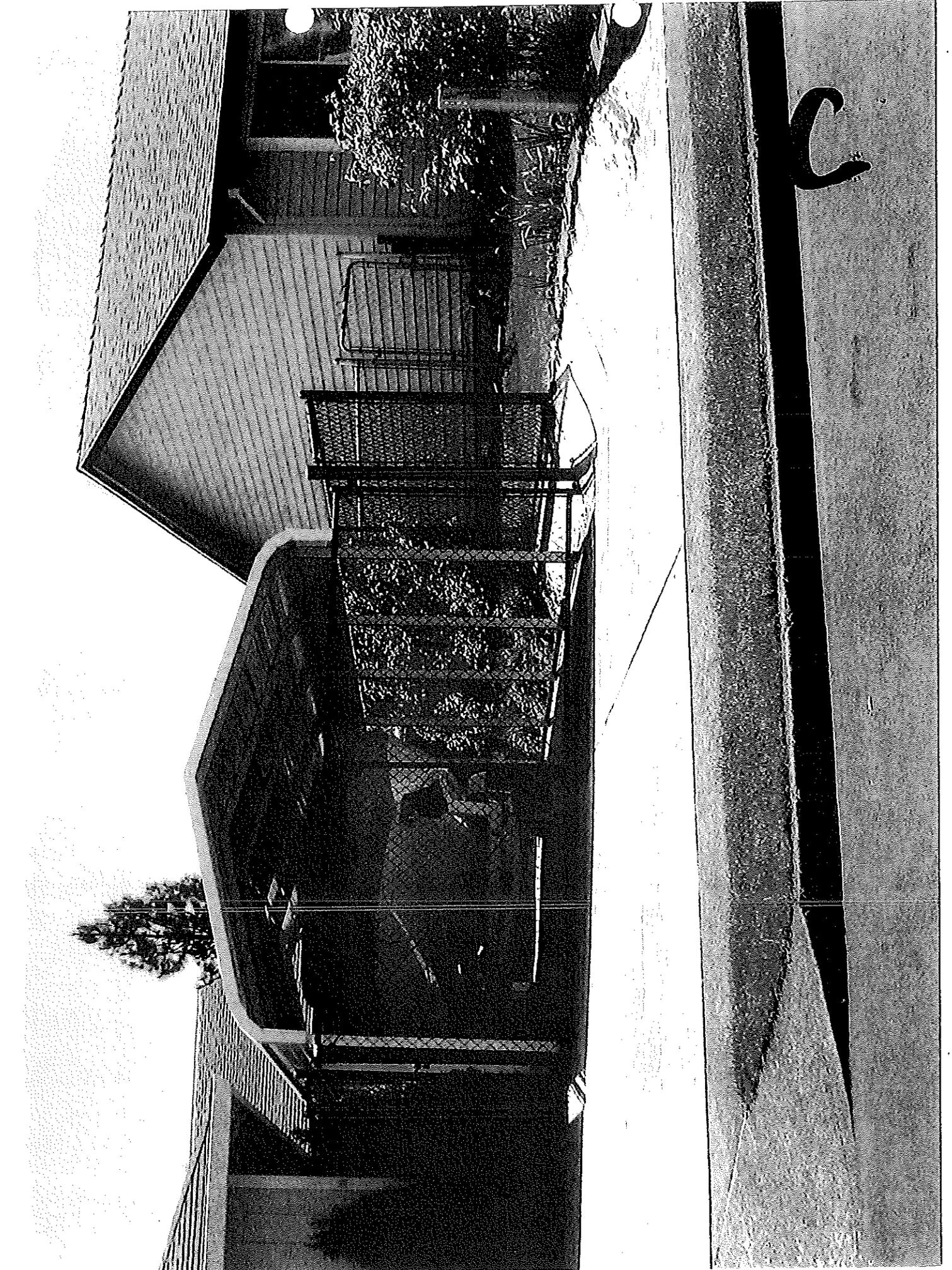


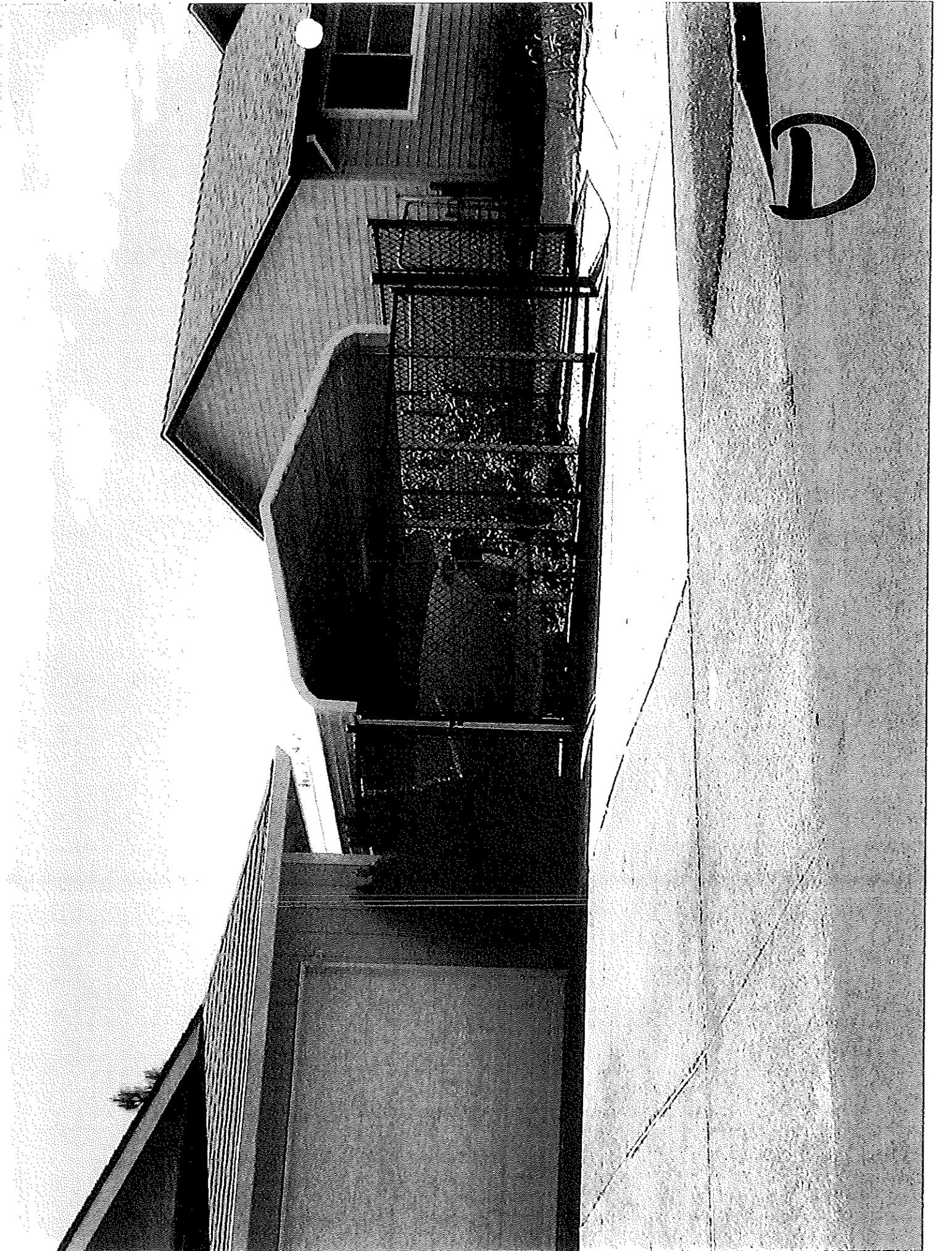


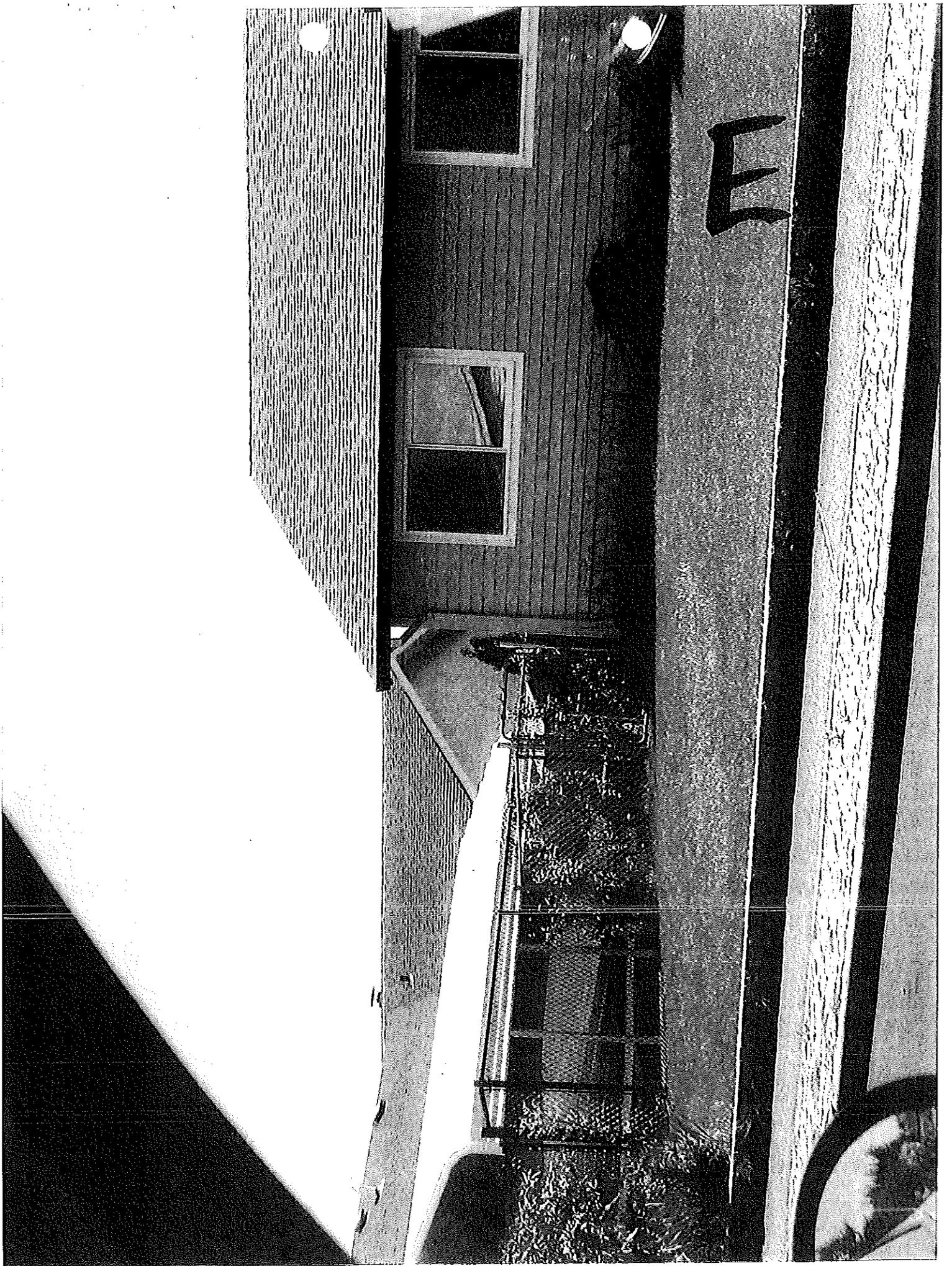
12' x 5' 1/2" @ peak 4325E 18th

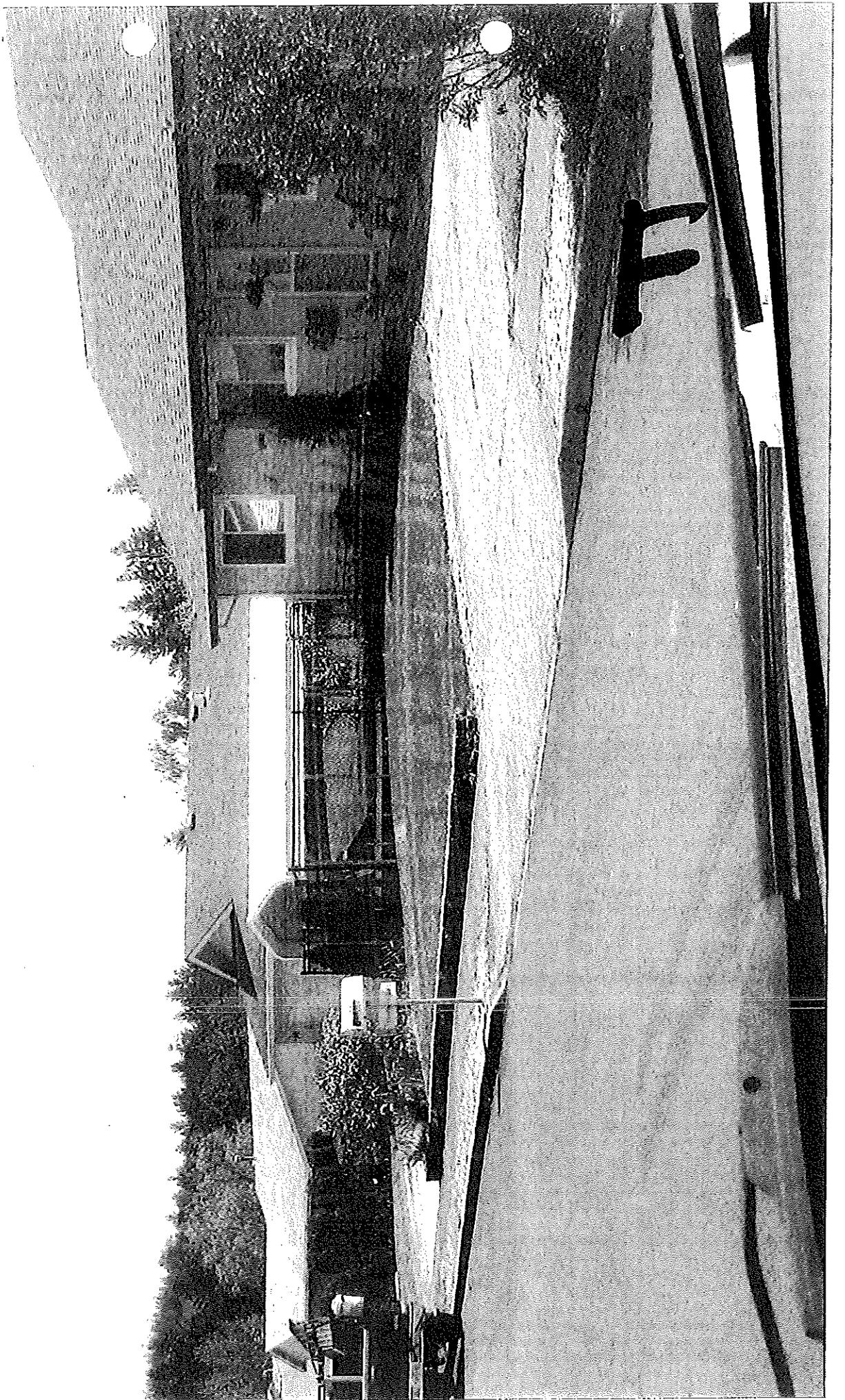
B











Elizabeth McCallum

From: Travis Hultin
Sent: Friday, May 02, 2014 11:40 AM
To: Elizabeth McCallum
Subject: Clark Boat Cover Side Yard Setback and Fence Height Variance (File No. 14-016)

I have reviewed the above referenced variance request on behalf of Public Works. Public Works has no objection to the variance, but offers the following comment for the applicant's information:

1. A currently inactive 5' Public Utility Easement exists along the subject property line. The structure encroaches 1.5' into this easement. As the easement is inactive and the City has no specific plans for use of that easement at present, the variance is acceptable. Applicant shall be aware that should a public utility need arise in the future for use of the easement, the City may require relocation of the structure or other necessary modifications to the structure within the easement area, at property owner's expense.

Public Works consents to the requested variance.

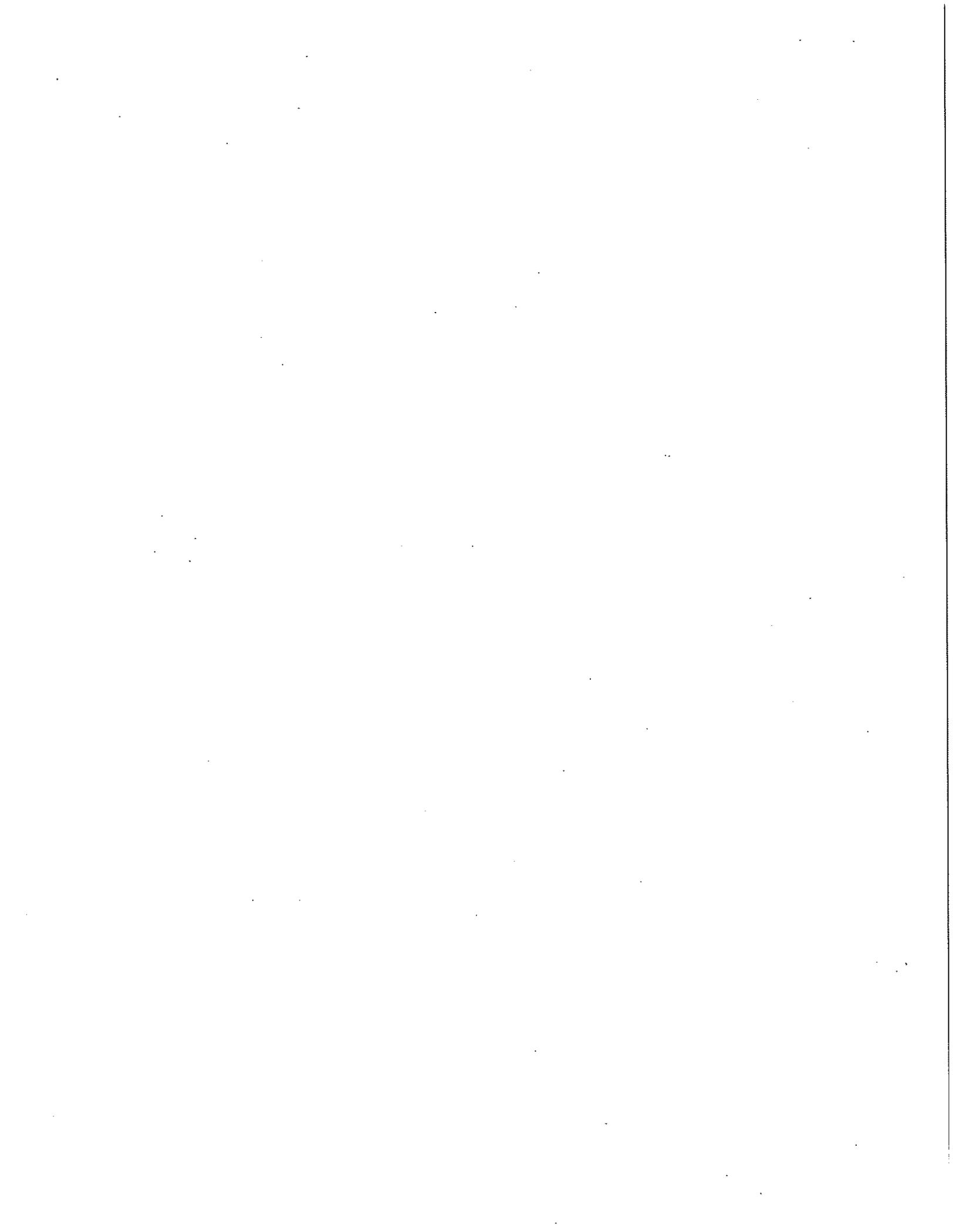
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CITY OF TROUTDALE  
Travis Hultin, PE  
Chief Engineer  
503.674.7265  
[www.troutdaleoregon.gov](http://www.troutdaleoregon.gov)

*"ensuring a safe, livable community by providing efficient and effective public services"*

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**Elizabeth McCallum**

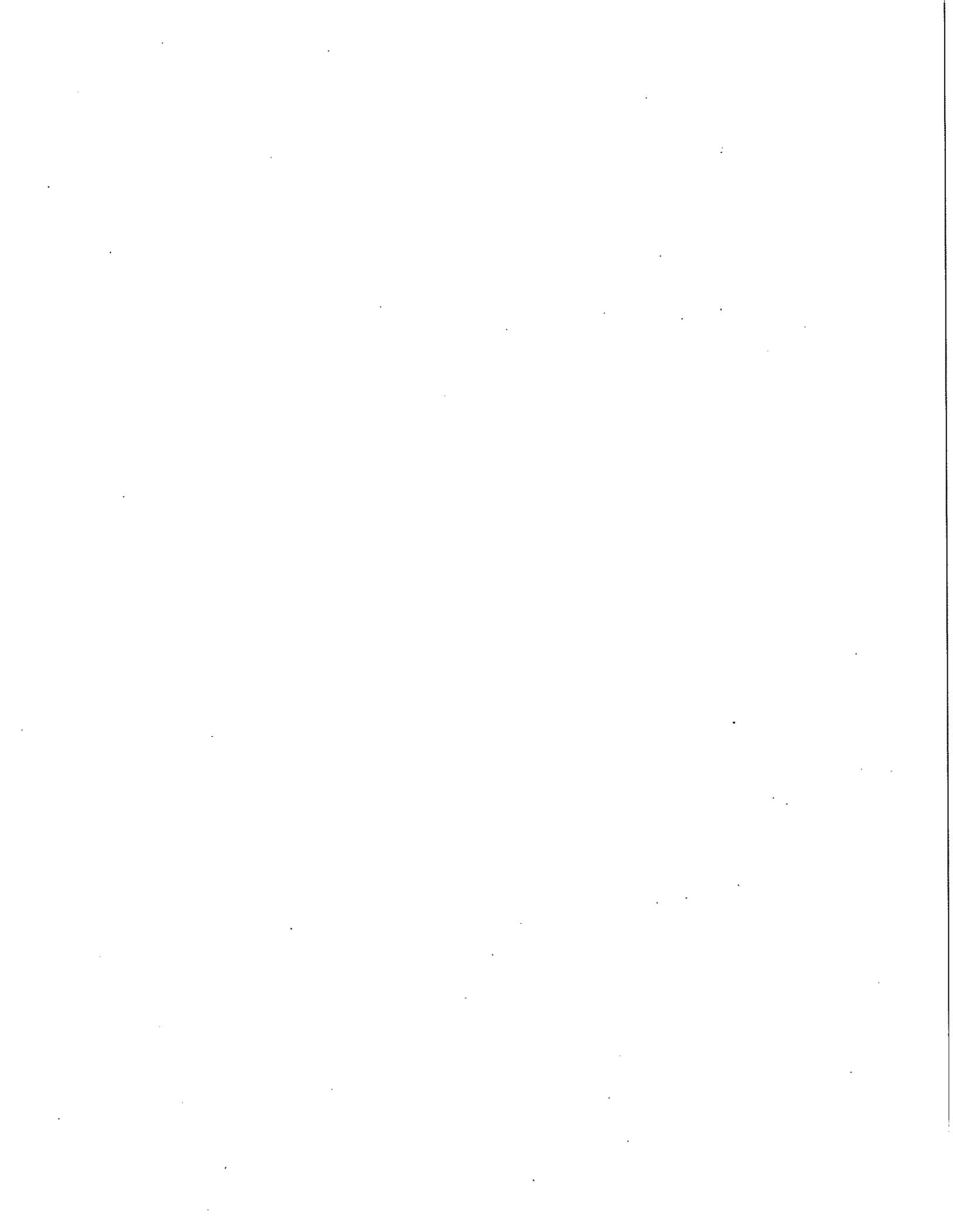
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**ATTACHMENT 5  
CASE FILE 14-016**

**From:** Mottice, Robert <Robert.Mottice@greshamoregon.gov>  
**Sent:** Monday, May 05, 2014 3:51 PM  
**To:** Elizabeth McCallum  
**Cc:** Durham, Shawn  
**Subject:** Notice of Type III Public Hearing 14-016

Gresham Fire is N/A on this one.

Robert Mottice  
Deputy Fire Marshal  
Gresham Fire & Emergency Services  
(503)618-2344



**BUILDING DEPARTMENT  
CITY OF TROUTDALE**

**ATTACHMENT 6  
CASE FILE 14-016**

26MAY14

MEMORANDUM FOR ELIZABETH McCALLUM, CITY PLANNER

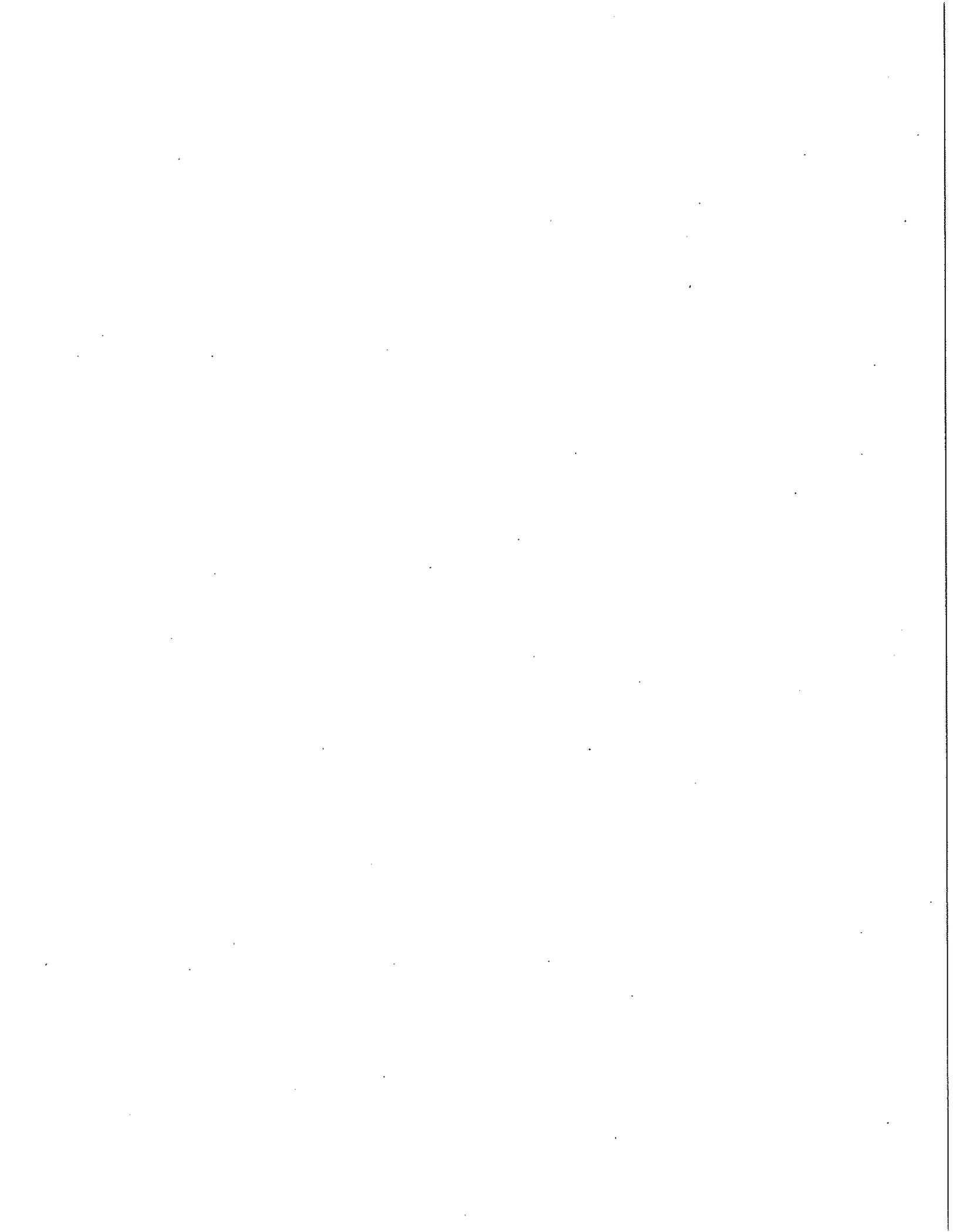
FROM: Stephen Winstead  
Building Official

SUBJECT: Response to request for comments on P2014-016, Variance in side yard.  
References: (a) Oregon Residential Specialty Code (2011)

1. In accordance with reference (a) the proposed project will need to be permitted per section R105.1.
2. If the building is less than 3 feet to the property line, a fire wall is required to be constructed per Table R302.1

Stephen Winstead  
Building Official  
City of Troutdale

copy to Craig Ward  
City Manager



RECEIVED

MAY 29 2014

City of Troutdale  
Community Development Dept.

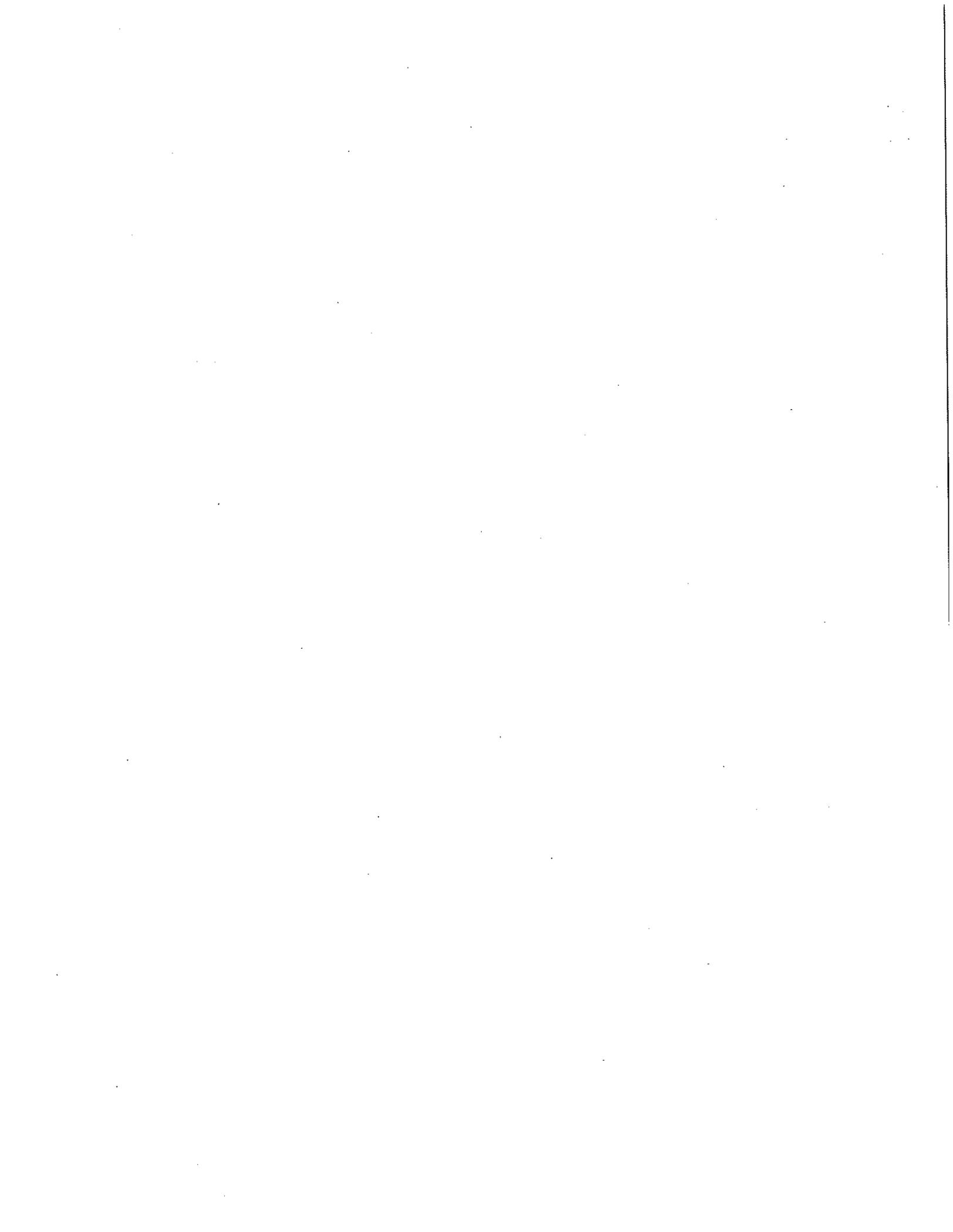
Planning Commission,

As a neighbor to Mr. Clark I would like to respond to the letter sent from the city of Troutdale concerning the described non code issues. Mr. Clark has always been one to point out and report violations he has deemed non-compliant.

When I received this letter I thought that someone is it neighbor or city official reported the violation and I thought it was Karma was to visit him. Codes written as they may are to be followed by all and exceptions as requested should be considered and taken into consideration. If it be a fire code im sure that Mr. Clark will do the right thing.

My opinion is that the commission, Fire Marshal and fellow neighbors that it will all work out and that the codes are written for all to follow and as individuals It is our right to voice our opinion.

Concerned neighbor



**ATTACHMENT 8**  
Variance Application No. 14-016

| CITY OF TROUTDALE<br>VARIANCES APPLICATIONS REQUESTED FROM ACCESSORY STRUCTURE SETBACK STANDARDS<br>BETWEEN 1999 AND 2014 |           |           |                        |                                                                                                                                                                                                |                                  |                         |
|---------------------------------------------------------------------------------------------------------------------------|-----------|-----------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------------------------|
| FILE #                                                                                                                    | DATE RECD | PROCEDURE | ADDRESS                | REQUEST                                                                                                                                                                                        | STATUS                           | NOTICE OF DECISION DATE |
| 14-016                                                                                                                    | 4/16/2014 | III       | 432 SE 18TH ST         | Decrease side yard setback to 3 1/2 feet for an existing boat cover and increase the maximum height of a fence in required front yard setback from 3 1/2 feet to 6 feet for an existing fence. |                                  |                         |
| 13-008                                                                                                                    | 3/19/2013 | II        | 1754 SW CLARA ST       | Variance to decrease 25 foot rear yard setback to 17 1/2 feet for a patio cover.<br>Note: the 25 foot setback was established by the planned development decision for Fraley Heights           | APPROVED                         | 4/25/2013               |
| 11-037                                                                                                                    | 6/14/2011 | III       | 1519 SE 24th Circle    | decrease the minimum side yard setback of 7 1/2 feet to three feet for an existing carport                                                                                                     | DENIED/ carport has been removed | 8/17/2011               |
| 10-043                                                                                                                    | 8/12/2010 | I         | 1511 SE 24TH CIR       | Decrease side yard setback by 6 inches for an above ground swimming pool location                                                                                                              | APPROVED                         | 9/1/2010                |
| 10-036                                                                                                                    | 6/2/2010  | III       | 1519 SE 24TH CIR       | Decrease required side yard setback to zero for attached carport                                                                                                                               | DENIED                           | 12/15/2010              |
| 10-028                                                                                                                    | 5/25/2010 | I         | 1793 SW WRIGHT PL      | Variance to decrease 20 foot rear yard setback to 18.25 feet for attached patio cover.                                                                                                         | APPROVED                         | 5/20/2010               |
| 09-050                                                                                                                    | 7/1/2009  | II        | 750 SE Jackson Park RD | side yard setback variance to decrease 10 foot side yard setback to 7 feet for a carport.                                                                                                      | APPROVED                         | 8/6/2009                |
| 08-060                                                                                                                    | 8/15/2008 | III       | 1348 SE 30th           | Variances to decrease 10 foot side yard setback to 6 1/2 feet and reduce rear yard setback to 17 feet for a 13 foot high 492 sf RV cover.                                                      | APPROVED                         | 10/17/2008              |
| 07-096                                                                                                                    | 8/29/2007 | III       | 1834 SW Haskins Court  | Variance to reduce 20 foot rear yard setback to 11 feet 6 inches for a replacement deck.                                                                                                       | APPROVED                         | 10/17/2007              |

**ATTACHMENT 8**  
Variance Application No. 14-016

|         |            |     |                           |                                                                                                                                                                                                                                                      |                          |            |
|---------|------------|-----|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|------------|
| 07-065  | 6/20/2007  | I   | 847 SE Beaver Creek Lane  | Rear yard setback variance for patio cover to encroach 2' into rear yard setback                                                                                                                                                                     | APPROVED                 | 6/27/2007  |
| 07-052  | 5/18/2007  | III | 2828 SW Clara Court       | setback variance                                                                                                                                                                                                                                     | APPROVED                 | 6/20/2007  |
| 07-032  | 3/16/2007  | II  | 160 SE 19th Street        | setback variance                                                                                                                                                                                                                                     | APPROVED                 | 4/19/2007  |
| 06-104  | 12/29/2006 | III | 701 SE 11th Circle        | Side yard setback variance for boat house                                                                                                                                                                                                            | APPROVED                 | 2/21/2007  |
| 03-131  | 11/21/2003 | III | 1409 SW 26th Avenue       | Variance to decrease the 10 foot street side setback to 3 ½ feet and decrease the 20 foot rear yard setback to 11 ½ feet for an existing deck.                                                                                                       | APPROVED                 | 1/21/04    |
| 03-066  | 06/19/2003 | III | 1030 SE Jackson Park Road | variance from cut and fill and sideyard setbacks                                                                                                                                                                                                     | APPROVED                 |            |
| 02-092  | 10/22/2002 | II  | 102 SE 3RD STREET         | front yard variance for deck                                                                                                                                                                                                                         | APPROVED                 | 11/18/2002 |
| 02-078  | 9/13/2002  | II  | 672 SE BEAVERCREEK COURT  | 3-1/2 foot front yard setback for garage addition                                                                                                                                                                                                    | APPROVED                 | 11/7/2002  |
| 02-012A | 2/14/2002  | III | 3246 SE HALL COURT        | Variance to decrease 20 foot rear yard setback for a deck to 9 feet six inches for a lower deck and to 18 feet for an upper deck and decrease the rear setback for a staircase to 18 feet.                                                           | DENIED BY PC             | 4/17/2002  |
| 02-012B | 5/3/2002   | III | 3246 SE HALL COURT        | APPEAL of denial for variances: to decrease 20 foot rear yard setback for a deck to 9 feet six inches for an upper deck; decrease the rear setback for upper deck to 18 feet; and decrease the rear setback for a staircase to 18 feet. rear setback | APPROVED BY CITY COUNCIL | 6/13/02    |
| 01-039  | 4/20/2001  | III | 2524 SW INDIAN JOHN PLACE | Variance from side and rear setbacks for existing deck and play structure. Requested setback for play structure was 8 feet instead of 10 feet; and for deck 6 feet instead of 10 feet.                                                               | APPROVED                 | 6/26/01    |
| 99-057  | 7/12/1999  | I   | 409 SW 19TH PL            | Decrease 10 foot street side yard side yard setback to 9 feet for a deck.                                                                                                                                                                            | APPROVED                 | 7/12/99    |

HEVLI

APR 16 2014

City of Troutdale  
Community Development Dept.

6.215 Type I Variance:

TDC 5.010 C.6 Side Setback Variance

6.225 - 6.215 A-D – Type III Variance:

TDC 5.050 A.2 Request 2.5' increase in gate height Variance

A: A sturdy open sided secured structure to cover property owner's boat.

B: The structure variance will not be injurious to any adjacent properties or surrounding neighborhood and will not be detrimental to the public welfare. It is safely secured and very heavy duty/sturdy and is enclosed by a 6 foot fence behind a locked gate. It does not block any views or hinder property lines.

C: The structure will be used only for the variance proposed: covering the property owner's boat to help eliminate any damage due to weather or security issues.

D: The Variance we propose is the minimum necessary to relieve a practical difficulty and the resulting hardship. This was the only option we had to store our boat and keep it protected. We had this built to keep the boat off the street for parking which is not legal. It was well designed and built for this purpose and does not affect other property owner's or pedestrian's safety. It does not encroach over any property line. Being behind the locked fence it poses no problems for safety to anyone.

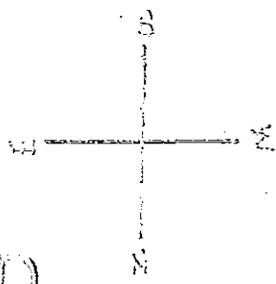
It was all professionally installed and is secure. We also chose black coating on the fence to maintain a nice appearance. We ask for approval for the additional 2.5' height for gate.

We have lived in Troutdale since 1993 and in our current home for 15 years. When we moved in, the home had been a rental and in disrepair including broken fencing and little if any landscaping that was not in good shape. We have spent 15 years of repairing and landscaping our home and have spent a lot of hard earned money and an amazing amount of sweat equity to make this our permanent home. This has helped the value of our home, the neighborhood home values and the value to the city of Troutdale. Our home is no longer the eyesore it was when we first moved in. It can be seen as an improvement, and an asset to Troutdale and the neighborhood. We respectfully ask to have the Planning Commission and the City accept and allow the variances proposed as it would create a hardship on our family for them not to be granted.

Thank you.

Respectfully,

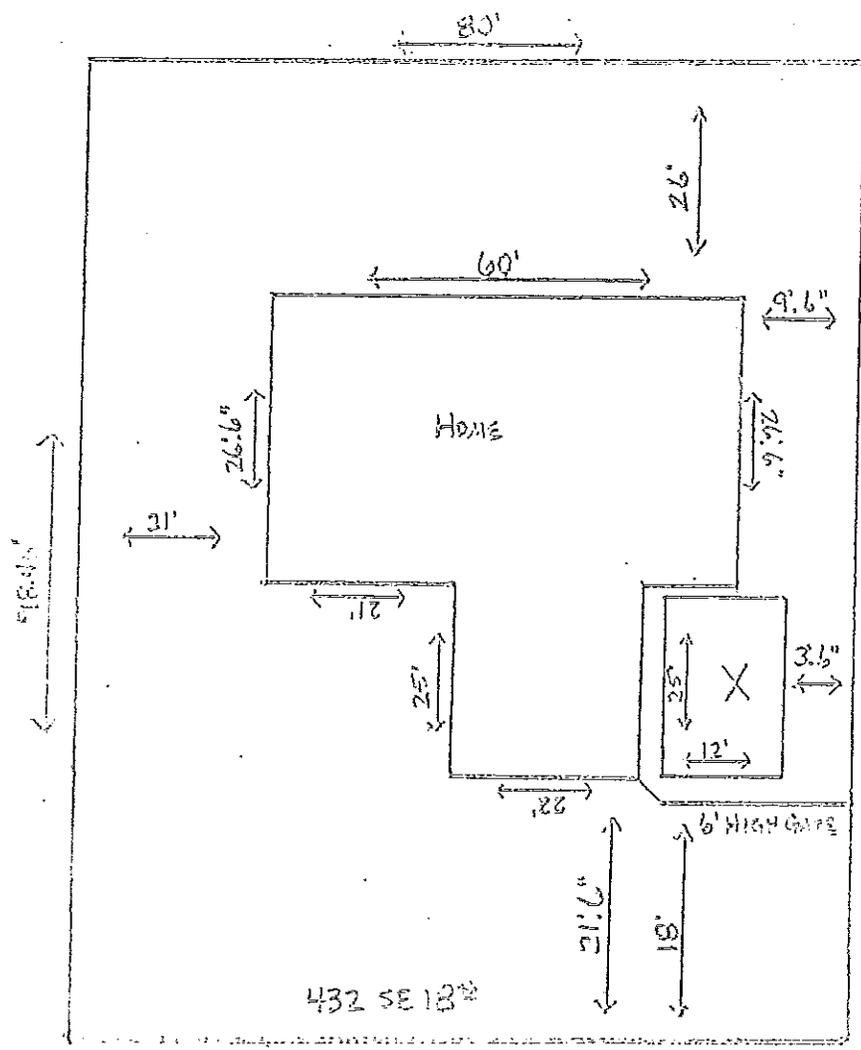
Gary & Barbara Clark



RECEIVED

APR 16 2014

City of Troutdale  
Community Development Dept.

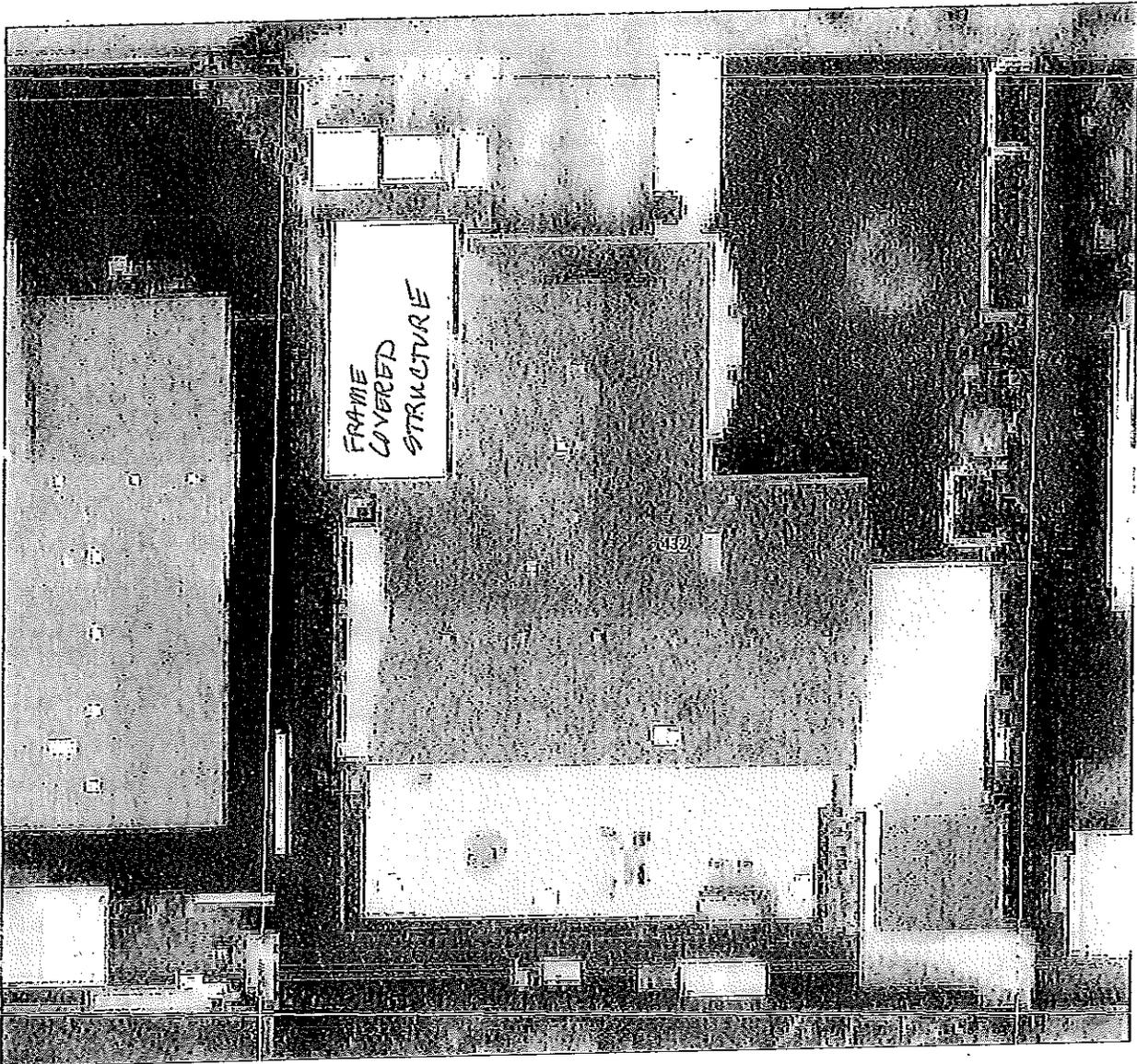


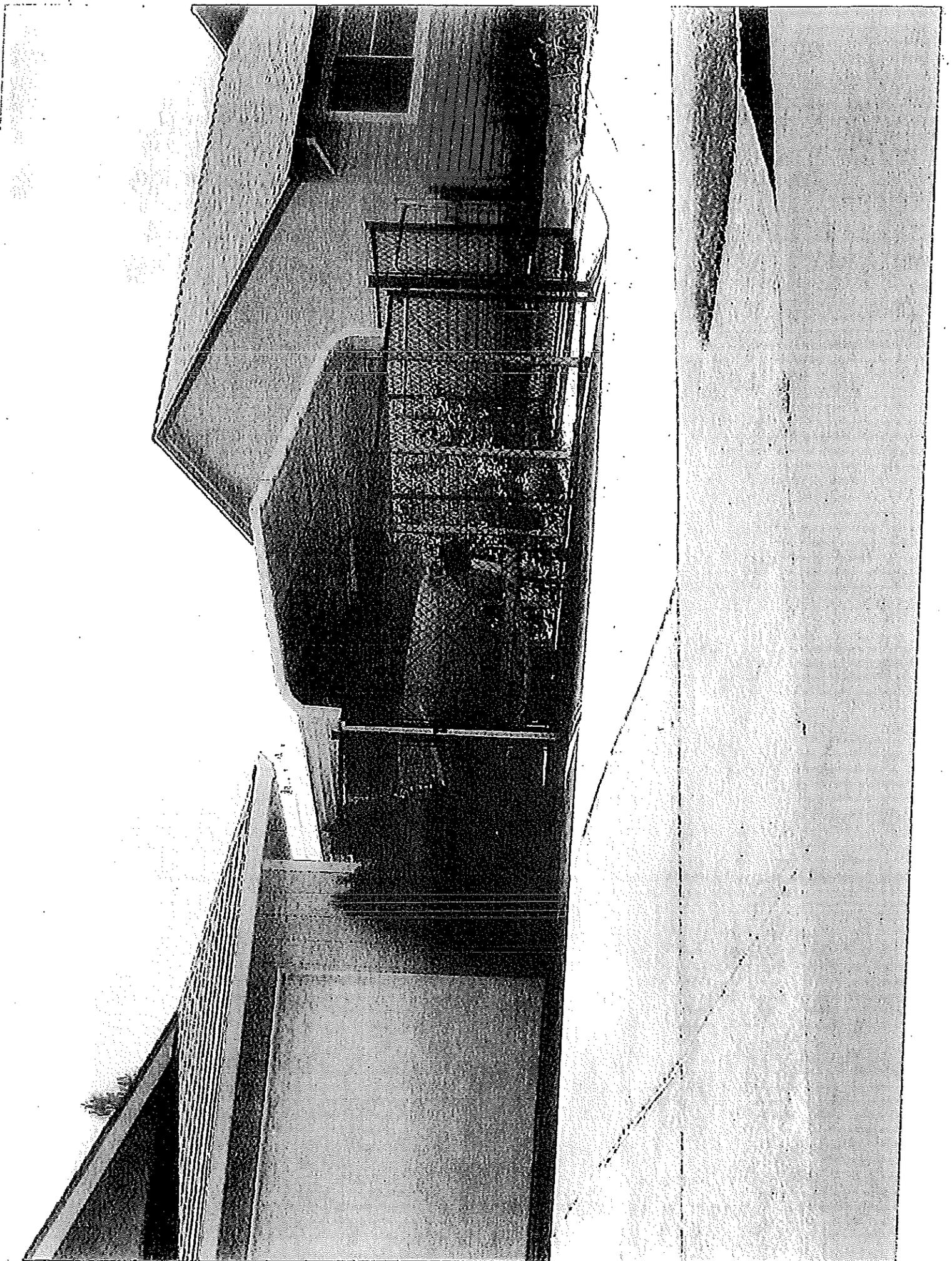
X = VARIANCE  
STRUCTURE -  
OPEN SIDED  
ROOF COVER / PORT  
25' L x 12' H x 9' H

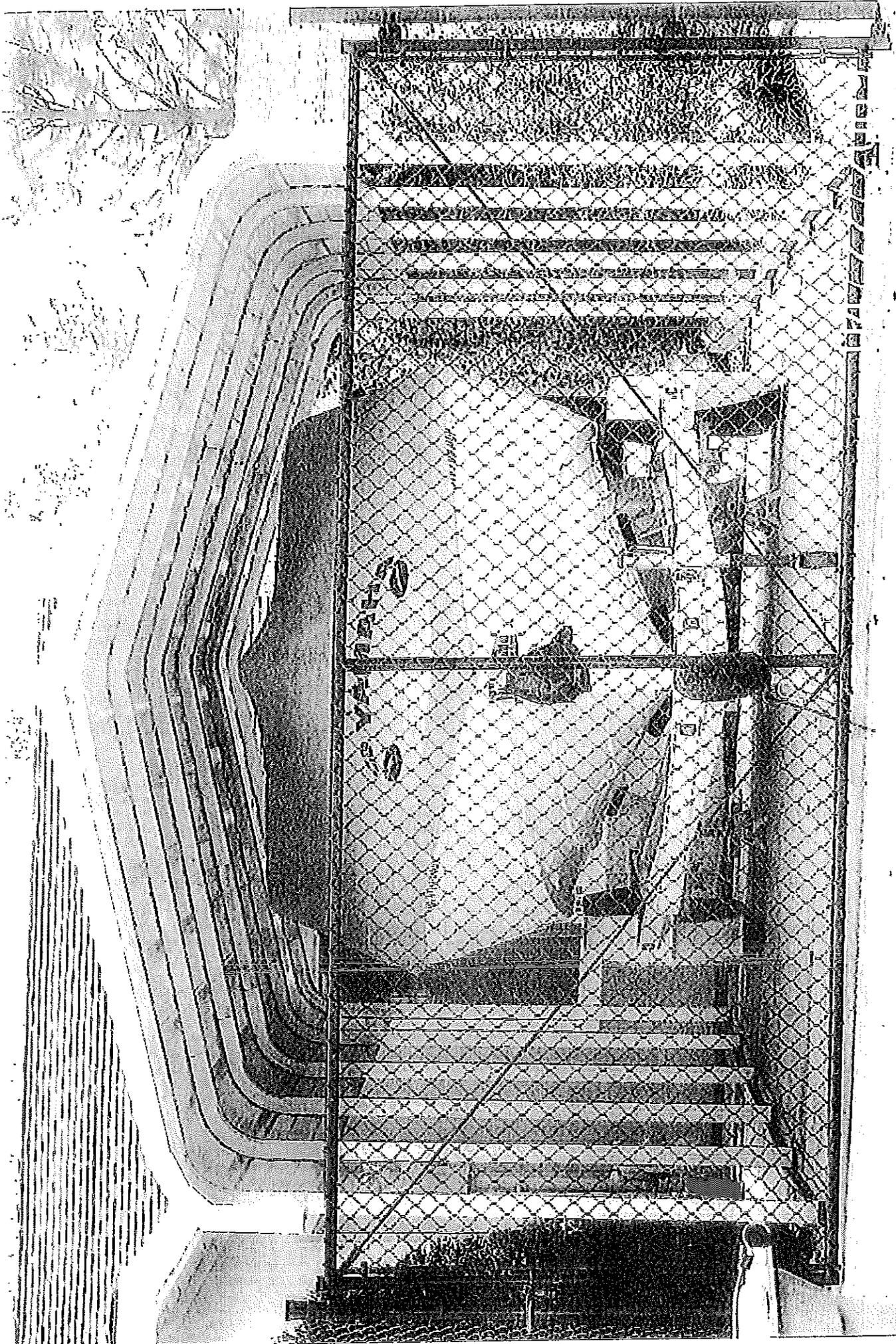
432 SE 18<sup>th</sup>

SE 18<sup>th</sup> ST

Aerial photo 432 SE 18<sup>TH</sup> Street  
City GIS service, photo date Spring 2012







APR 81 ESCB 18<sup>th</sup>

19' @ peak

12' x 25'



**CITY OF TROUTDALE  
PLANNING COMMISSION  
FINDINGS OF FACT AND FINAL ORDER**

**TYPE III PROCEDURE / VARIANCE REQUESTS  
FILE No. 14-016**

**NAME OF PROJECT:** Clark Boat Cover Side Yard Setback and Fence Height Variances

**APPLICANT:** Gary Clark, owner

**OWNERS:** Gary and Barbara Clark

**REQUEST:** Variance requests to reduce the side yard setback to 3 ½ feet from the west property line for an existing frame covered structure (an accessory structure) and to exceed the maximum fence height allowed in the front yard for an existing 6 foot high fence

**LOCATION:** 432 SE 18<sup>th</sup> Street

**TAX MAP AND TAX LOT:** Multnomah County Tax Assessor's Tax Map Tax Lot Number 1N3E36BD- 04000  
Block 2 Lot 19 Kiku Heights Planned Development

**PLAN DESIGNATION:** Low Density Residential

**ZONE DESIGNATION:** R10PD

**APPLICABLE CRITERIA:**

- Troutdale Development Code (TDC): 1.000 Introductory Provision; 2.000 Procedures for Decision Making; TDC 5.010 C.6. Setbacks for Residential Accessory Structures; TDC 5.050 A.2. Fences in residential zones; TDC 6.200 Variance; TDC 16.000 Public Deliberations and Hearings.
- Kiku Heights Planned Development overlay zoning/setbacks.
- Construction Standards for Public Works Facilities
- Building and Fire Codes.

**FINDINGS:**

1. The staff report in this matter dated June 11, 2014, is adopted as the findings of fact in this matter.

**ORDER:**

Based upon the foregoing, the Planning Commission approves a 300 square foot detached residential accessory structure nine feet in height (used as a boat cover) with two variances with conditions: 1) a variance from TDC 5.010 Residential Accessory Structures, part C. Regulatory Requirements, subpart 10. Side Yard Setback, to allow a 3½ foot side yard setback for the subject detached accessory structure, and 2) a variance from TDC 5.050.A.2. Fences and Windscreens, to allow a six foot high fence to encroach two feet into the required 20 foot front yard setback.

**CONDITIONS OF APPROVAL:**

1. A permit is required under Oregon residential Specialty Code (2011) section R105.1 for the frame-covered structure. Contact the City's Building Division for information in how to apply for the permit.
2. The application for a building permit shall be submitted within 30 days of the Notice of Decision to be issued in this matter.
3. The applicant is hereby notified that should a public utility need arise in the future for use of the five-foot utility easement on the side property line of the site, the City may require relocation of the structure or other necessary modifications to the structure within the easement area, at the property owner's expense.
4. The variance approvals do not apply to other structures or fencing on the property.
5. Dimensional information for a detached residential accessory structure in the southeast corner of the site, labeled B on staff report attachment 2, shall be submitted within 30 days of the Notice of Decision to the City of Troutdale Planning Division. The dimensional information shall include the height of the structure as measured from the average adjacent grade to the highest point; the exterior floor area dimensions; the distance from the side and property lines to the eaves of the roof. The owner shall obtain either a building or development permit for this structure and comply with the standards of TDC 5.010 Residential Accessory Structures.

**APPROVED this 18th DAY OF JUNE 2014**

---

Taney Staffenson, Chair  
Troutdale Planning Commission

6/10/2014

Troutdale Planning Commission

Following our Meeting on June 18<sup>th</sup>, we will have work session on the Development Code that we have been tasked with editing by the City Council.

There have been a number of issues raised by our Planning Staff, Code Enforcement, Developers, Residents, Businesses, and Land Owners.

A number of the issues raised at our prior Public Meetings, are not within our control to change but a number of them are within our scope of work.

If possible I would suggest we discuss the following at our work session on June 18th:

- Arterial Setbacks 7.180.L.12
- Variances
- Mini Storage Use
- Development on sloped property in downtown
- Building Entrances after 30% remodel

I consulted with our Attorney and his response is attached along with some sections to consider for edits. At this point, I feel it necessary to present this information to you and receive your feedback before make any further suggestions.

Thank you for your service and see you next Wednesday, June 18<sup>th</sup> .

Tanney Staffenson

**JORDAN RAMIS** PC  
ATTORNEYS AT LAW

Two Centerpointe Dr 6th Fl  
Lake Oswego OR 97035  
www.jordanramis.com

Phone: (503) 598-7070  
Toll Free: (888) 598-7070  
Fax: (503) 598-7373

**LEGAL MEMORANDUM**

TO: Tanney Staffenson  
FROM: Ed Trompke  
DATE: June 10, 2014  
RE: **Responses to questions regarding Troutdale Development Code**  
File No. 51513-72909

---

**INTRODUCTION**

You have requested legal opinions about the below questions.

**DISCUSSION**

We comment as follows:

**1. DEVELOPMENT ON SLOPED PROPERTY IN DOWNTOWN**

Question: Can the City allow increased development on steep slopes, primarily to expedite development of steep-sloped lots in downtown Troutdale?

Discussion: Yes, under certain conditions.

We represented the City Council in 2012 during its process to comply with Metro's Title 13, which contains Metro's "nature in neighborhoods" program, and advised about this possibility at that time. We continue to believe that Troutdale can continue its compliance with Title 13 and that it may create a special district, within the city, that qualifies for higher levels of development under Title 13.

We believe you may identify a map of areas in the City that could be included in a special district. We believe Metro should evaluate such a district as exempt from TDC 4.300, so long as the City can make findings that the economic issues within the district outweigh the environmental issues upon the properties within the district.

**2. MINI STORAGE USE**

Question: Can the City create mini-storage as a permitted use in the light industrial zone?

June 10, 2014  
Page 2

Discussion: Possibly. Findings and analysis would be important components of allowing this use.

We have seen that cities discourage mini storage in areas designated for light industrial use. See, e.g., Beaverton Development Code, Sec. 20.15.20 (prohibiting self-storage in office industrial zone). This position could rest on the view that self-storage businesses generate insufficient jobs to qualify for industrial zone locations, which should promote employment activity.

On the other hand, cities have allowed self storage as conditional uses, usually under certain development standards. For example, the City of Scappoose allows mini storage as a conditional use in its light industrial zone, but limits the size of the facility to three acres or less. This preserves larger sites (which are scarce in Scappoose) for uses with greater potential to create jobs.

It seems possible that Troutdale could allow mini storage outright in the light industrial zone, especially if the storage is structured to be useful to business in the city. Such uses share some characteristics with warehousing, and seem at least somewhat aligned with one purpose of the zone, which is to allow "light, clean industries . . . of a manufacturing or storage nature with little outdoor storage." TDC 3.161.

We suspect that to satisfy state and regional planning requirements, findings would need to demonstrate that allowing the use would not diminish the light industrial zone for employment uses. Furthermore, we suspect that one or more limitations such as the following could be drafted into the permitted use:

- Limiting lot sizes
- Guiding the use onto odd-shaped, remnant, or parcels with other unique features
- The use of floor area ratios to reduce building footprints

### 3. PARTITION LAND APPLICATIONS

Question: Can the City simplify its procedures to create Type I partitions?

Discussion: We see no outright prohibitions against some simplification, should the city wish to seek it. Such a change would be a policy decision.

Currently, to "partition" land in Troutdale means to create "two or three lots within a 12-month period." TDC 1.020.89. The City currently reviews partitions as a Type II application, meaning (chiefly) that owners within 250 feet of the location must receive notice that the application is pending. By contrast, under Type I procedures the City must deliver only a notice of the planning director's decision. Type I and II procedures differ but slightly, though Type II procedures would give the applicant some advantage in that there is no opportunity for an opponent to object until after the administrative decision is made.

June 10, 2014

Page 3

As to process, we are not aware of authority that would bar Troutdale from applying Type 1 procedures to some partitions. The City of Portland uses a form of Type 1 process for partitions that result in 3 or fewer lots, and that do not involve concurrent land use review, environmental review, or potential landslide property.

It would be a policy decision for Troutdale to decide which types of partitions, if any, should be subject to reduced procedures.

#### 4. CONSTRUCTION PROJECT EROSION CONTROL MEASURES

Question: You have asked for further information about erosion control measures required of development in Troutdale

Discussion: It does not appear possible to lessen current standards. Erosion control is a matter of statewide law. In sum, the Department of Environmental Quality (DEQ) enforces state and federal requirements for water quality, which includes erosion control.

At construction project sites, DEQ enforces national clean water laws with a general permit known as NPDES Storm Water Discharge General Permit #1200C. See, *generally*, OAR 340-045-0033(11)(f). In Troutdale, state law requires a permit for construction activity that disturbs one acre of land, or less than one acre if the construction is part of a larger plan that will disturb one or more acres over time.

The permits describe a number of performance measures that construction activity must observe. For instance, sediment-laden water flowing out of construction areas must be filtered, or the sediment must be allowed to settle, before any such water exits the site.

The performance standards derive from statewide law and Troutdale must uphold the standards.

#### 5. VARIANCES

Question: Can the City designate a more flexible process to vary from the requirements of the Development Code?

Discussion: Troutdale can most likely add some additional flexibility to its variance process in ways that the community will accept and support.

Oregon courts generally allow cities some latitude in determining how to provide a "safety valve" in development codes, to avoid unjust results. That being said, case law indicates that cities generally have one of two types of variance criteria. Under the first type, the City allows only to avoid "unnecessary hardship." Variances are almost unapprovable under such codes. Under the second type of criteria, strict "hardship" criteria are not used. In their place, cities supply factors under which to evaluate

June 10, 2014

Page 4

hardship. Or, some cities abandon hardship almost entirely, and write standards that operate more broadly than traditional "hardship" criteria.

For the most part, Troutdale's variance criteria embody some provisions that are "traditionally" restrictive, and others less so. Thus, the criteria already allow more flexibility. Further changes could reduce the requirements for applicants to demonstrate "hardship." It may provide a more "user friendly" application process if the City amends the criteria to prompt applicants to identify potential impacts of the variance and propose reasonable mitigation measures.

The City could also liberalize its Type I and Type II variances and model them after an "adjustment" process. The City of Portland uses such a process in Chapter 33.805 of its zoning code, and gives the director broader discretion.

In sum, the subject of variances is sufficiently broad, with important policy questions, such that you should include this in a broader code revision.

**6. ARTERIAL SETBACKS FOR LAND DIVISIONS, TCD 7.180.L.12**

Question: You have advised that the arterial street setback within TCD 7.180.L.12 is vague in two respects. First, it is not clear how to calculate the setback distance. Second, you advise that is not clear how the setback should operate against other code sections that speak to setbacks.

Discussion as to distance: As in any city, partitions and subdivisions must provide lots that are set back from adjacent arterial streets (if any). The question is, how far? TDC 7.180.L.12 governs the question and states as follows:

Arterial street setback. In residential districts, a building setback line, which shall extend 20 feet back from the right-of-way line of an arterial street or landscaping, fencing, or other method of buffering residential uses from traffic noise, odor, dust, etc., shall be provided adjacent to the arterial. If the use of a buffer strip is selected, no structures may be placed within the buffer.

Use of the word "extend" appears inappropriate. Most likely the section is intended to mean that the setback should be 20 feet, and that while buildings cannot be constructed within a setback, some other features that provide screening can be built.

Discussion as to other code sections: The setback within this section appears to apply when an applicant seeks approval of a land division. You advised us that other code sections, outside of the land division context, supply different setback standards, especially on side streets. Thus, it is not clear how the different code sections should operate together.

June 10, 2014

Page 5

Because it is not clear how TCD 7.180.L.12 should relate to the rest of the code, the relationship merits analysis. A text amendment could potentially clarify several question areas.

Proposed changes: The code can be revised by choosing either (A) or (B) as follows, for clarity.

Arterial street setback. In residential districts, a building setback line, which shall ~~be extend~~ 20 feet back from the right-of-way line of an arterial street or landscaping, fencing, or other method of buffering residential uses from traffic noise, odor, dust, etc., shall be provided adjacent to the arterial. If any lot abuts an arterial street on the side or rear, the setback in [(A) this section (B) the underlying zone] shall control. ~~If the use of a buffer strip is selected, no structures may be placed within the buffer.~~

## 7. BUILDING ENTRANCES

Question: May the City find alternatives to requiring buildings to front on certain streets when a project will remodel 30% of the existing development?

Answer: This question has several complexities. Addressing this will require further legal analysis of the Metro codes and some dialogue with Metro. We recommend considering this question in a broader code revision.

## 8. RIPARIAN ISSUES

Question: You have asked us to comment on flood map changes that Troutdale may enact in the future.

Discussion: Potential changes are sufficiently wide-ranging, and the issue areas are sufficiently specialized, that we believe further study must occur.

- .79 Multiple-Family Dwelling. See Dwelling, Multiple-Family.
- .80 Net Area. The total area of a parcel of land less the following: proposed public streets; area constrained for development under the provisions of this code; area within a community resource protection overlay district; or, where approved by the City Council, land area dedicated or conveyed to the City.
- .81 Nonconforming Development. A development that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.
- .82 Nonconforming Lot. A lot or parcel that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.
- .83 Nonconforming Structure. A structure that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.
- .84 Nonconforming Use. A use that was legally established before this code was adopted or amended, but does not comply with or is not permitted to exist due to subsequent enactments or amendments to this code.
- .85 Nursing Home. Housing with long-term physical and medical care for the physically handicapped, emotionally handicapped, or elderly population. Other terms used today include residential health care facility, extended care, intermediate care, and long-term care. However, independent living, assisted living, and congregate housing are considered unique from this use within this code.
- .86 Outdoor Business. A business, all or most of which is conducted, or items displayed, in an open space area including sidewalk sales, pushcart vendors, Saturday markets, and Christmas tree sales.
- .87 Owner. The owner of record of real property as shown on the tax rolls of Multnomah County, or a person purchasing a piece of property under contract. For the purposes of this title, in terms of violations and binding agreements between the City and the owner, "owner" also means a leaseholder, tenant, or other person in possession or control of the premises or property at the time of agreement, violation of agreement, or the provisions of this title.
- .88 Parcel. A piece of land created by a partition, subdivision, deed, or other instrument recorded with the appropriate recorder. This includes a lot, a lot of record, or a piece of land created through other methods.
- .89 Partition. Creation of two or three lots within a 12-month period.

**CHAPTER 3 - ZONING DISTRICTS**

All areas within the city limits of Troutdale are divided into the following zoning districts. The use of each tract and ownership of land within the corporate limits of the City of Troutdale shall be limited to those uses permitted within the applicable zoning district.

3.000 Zoning District Outline.

| <b>SYMBOL</b>                     | <b>DISTRICT NAME</b>      | <b>MINIMUM LOT SIZE</b>                                                            |
|-----------------------------------|---------------------------|------------------------------------------------------------------------------------|
| <b>LOW-DENSITY RESIDENTIAL</b>    |                           |                                                                                    |
| R-20                              | Single-Family Residential | 20,000 sq. ft. per single-family dwelling                                          |
| R-10                              | Single-Family Residential | 10,000 sq. ft. per single-family dwelling                                          |
| R-7                               | Single-Family Residential | 7,000 sq. ft. per single-family dwelling                                           |
| <b>MEDIUM-DENSITY RESIDENTIAL</b> |                           |                                                                                    |
| R-5                               | Single-Family Residential | 5,000 sq. ft. per single-family dwelling                                           |
| R-4                               | Attached Residential      | 4,000 sq. ft. per single-family dwelling and 3,500 sq. ft. per two-family dwelling |
| <b>HIGH-DENSITY RESIDENTIAL</b>   |                           |                                                                                    |
| A-2                               | Apartment Residential     | 2,000 sq. ft. (average) per dwelling unit                                          |

| <b>COMMERCIAL/INDUSTRIAL</b> |                           |
|------------------------------|---------------------------|
| NC                           | Neighborhood Commercial   |
| CC                           | Community Commercial      |
| GC                           | General Commercial        |
| CBD                          | Central Business District |
| MO/H                         | Mixed Office/Housing      |
| IP                           | Industrial Park           |
| LI                           | Light Industrial          |
| GI                           | General Industrial        |

| <b>ZONING MAP OVERLAYS</b> |                                            |
|----------------------------|--------------------------------------------|
| AR                         | Aggregate Resource                         |
| ALF                        | Airport Landing Field                      |
| CR                         | Community Resource Protection <sup>1</sup> |
| VECO                       | Vegetation Corridor and Slope District     |
| FH                         | Flood Hazard and Water Quality             |
| CH                         | Congregate Housing                         |
| PD                         | Planned Development                        |
| FLMA                       | Flood Management Area                      |
| TC                         | Town Center                                |

[Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 702, ef. 11/24/00]

<sup>1</sup> The Community Resource Protection overlay district is now the Historic Landmark Protection overlay (Ord No. 810).

3.005 Zoning District Map.

- A. The Zoning District Map and all amendments to the map shall remain on file in the City Recorder's office.
- B. The boundaries of all districts are established as shown on the Zoning District Map.
- C. Zoning district boundary lines are intended to follow property lines; lot lines; centerlines of streets, alleys, streams, or railroads; or the extension of such lines except where reference is made on the map to a street line, political boundary, or other designated line by dimensions shown on said map.
- D. The exact location of zoning district boundary lines shall be interpreted by the Director or designated official.
- E. Whenever any street, alley, or other public way is vacated by official action, the zoning district adjoining the side of such public way shall be automatically extended, depending on the side or sides to which such lands revert, to include the right-of-way thus vacated, which shall be subject to all regulations of the extended zoning district or districts. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 653, ef. 9/12/97]

**3.160 LIGHT INDUSTRIAL****LI**

**3.161** Purpose. This district is primarily intended for light, clean industries usually of a manufacturing or storage nature with little outdoor storage. These industries usually do not require rail access and have very little process visibility. They usually create little or no air or water pollution and have no nuisance factors such as bright yard lights, continuous noise or objectionable odors. Professional offices and limited retail sales are permitted in compliance with Title 4 of the Metro Urban Growth Management Functional Plan. Uses within the LI District may be located adjacent to residential uses with appropriate buffering. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 724, ef. 11/8/02; Amended by Ord. 792, ef. 9/25/08]

**3.162** Permitted Uses. The following uses and their accessory uses are permitted in the LI district:

- A. Secondary manufacturing, except any use having the primary function of storing, utilizing, or manufacturing toxic or hazardous materials.
- B. Processing facilities, except any principal use involving the rendering of fats, the slaughtering of fish or meat, or the fermenting of foods such as sauerkraut, vinegar, or yeast.
- C. Distribution centers.
- D. Airport and related uses as defined by the Airport Planning Rule (OAR 660-013-0100), including airport supportive commercial and industrial uses such as maintenance facilities, hangars, aircraft tie-downs, passenger parking, and flight schools.
- E. Warehouses.
- F. Utility facilities, minor.
- G. Research and development companies, experimental or testing laboratories.
- H. Trade or commercial schools whose primary purpose is to provide training to meet industrial needs.
- I. Public parks, parkways, trails, and related facilities.
- J. One caretaker residence.
- K. Corporate headquarters.
- L. Professional offices, subject to the provisions of subsection 3.165(E) of this chapter.

**6.200 VARIANCE****MV****6.210 Type I Variance Procedure.**

[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 705, ef. 5/10/01]

**6.220 Type II Variance Procedure.**

[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 705, ef. 5/10/01]

**6.230 Authority to Grant a Type I Variance.**

[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 705, ef. 5/10/01]

**6.240 Type III Special Variance Procedure.**

[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 705, ef. 5/10/01]

**6.250 Authority to Grant a Type II Special Variance.**

[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 705, ef. 5/10/01]

**6.205 General Provisions.**

- A. The variance procedures are intended to allow modifications of specific standards contained within this code where difficulties exist which render compliance with the standards impractical and such compliance would create unnecessary hardship to the owner or user of land or buildings.
- B. In approving a variance request, the approving authority may attach reasonable conditions, restrictions, or safeguards to mitigate any adverse impacts which may result by reason of the approved variance.
- C. Separate variance provisions apply to uses within the Vegetation Corridor and Slope District and the Flood Management Area. [Adopted by Ord. 705, ef. 5/10/01]

**6.210 Regulations Which May Not Be Varied.**

- A. No variance may be granted which will permit a use not permitted in the applicable zoning district.
- B. No variance may be granted which will increase the maximum residential density or decrease the minimum residential density allowed in the applicable zoning district.
- C. No variance may be granted to the provisions of chapter 5.300, Nonconforming Uses and Developments. [Adopted by Ord. 705, ef. 5/10/01]

**6.215 Type I Variance. The Director may grant a variance under the Type I procedure if the request involves the expansion or reduction of a quantifiable provision in this code by no more than ten percent, and the following criteria are met:**

- A. Special circumstances or conditions including, but not limited to, lot size, lot shape, topography, or size or shape of building, apply to the property, development, or to the intended use and are not typical of the general conditions in the surrounding area;

- B. The variance authorized will not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare;
  - C. The variance authorized will be consistent with the general purpose and intent of the provision from which a variance is sought; and
  - D. The variance is the minimum necessary to relieve a practical difficulty and the resulting hardship. [Adopted by Ord. 705, ef. 5/10/01]
- 6.220 Type II Variance. The Director may grant a variance under the Type II procedure if the request involves only the expansion or reduction of a quantifiable provision in this code by more than ten percent, but not more than 30%, and the criteria in section 6.215 of this chapter are met. [Adopted by Ord. 705, ef. 5/10/01]
- 6.225 Type III Variance. The Planning Commission may grant a variance under the Type III procedure if the request involves the expansion or reduction of a quantifiable provision in this code by more than 30%, or if this request is referred to the Planning Commission in accordance with section 6.235 of this chapter and the criteria in section 6.215 of this chapter are met. [Adopted by Ord. 705, ef. 5/10/01]
- 6.230 Type III Special Variance. The Planning Commission may grant a special variance under the Type III procedure if the request involves waiving a provision in this code not involving a quantifiable standard, and the following criteria are met:
- A. The unique nature of the proposed development is such that the intent and purpose of the regulations and of the provisions to be waived will not be violated;
  - B. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted; and
  - C. The provision to be waived is unreasonable and unwarranted due to the specific nature of the proposed development. [Adopted by Ord. 705, ef. 5/10/01]
- 6.235 Referral to Planning Commission. The Director may refer any variance request involving the expansion or reduction of a quantifiable provision of this code by 30% or less to the Planning Commission if the Director determines that a higher level of review is justified given the complexity or controversial nature of the request. A variance that is referred to the Planning Commission shall be considered in accordance with section 6.225 of this chapter. [Adopted by Ord. 705, ef. 5/10/01]

**4.300 HILLSIDE** **HS**  
 [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 607, ef. 8/11/94; Repealed by Ord. 702, ef. 11/24/00 replaced by VECO]

**4.300 VEGETATION CORRIDOR AND SLOPE DISTRICT** **VECO**

4.310 Purpose. The purpose of these standards is to promote the public health, safety, and general welfare. Provisions under this chapter are designed to:

- A. Restrict or prohibit uses, activities, or development which is damage-prone or damage-inducing to the land or water quality.
- B. Require uses vulnerable to landslides, including public facilities which serve such uses, to be protected at the time of initial construction.
- C. Maintain land and water quality by minimizing erosion and sedimentation, and by restricting or prohibiting development, excavation, and vegetation removal on vegetation corridors and slopes associated with primary and secondary protected water features, and on slopes of 25% or greater not directly associated with a protected water feature.
- D. To comply with the provisions of Title 3 of the Metro Urban Growth Management Functional Plan and Statewide Planning Goals 6, Air, Water, and Land Resources Quality, and 7, Areas Subject to Natural Disasters and Hazards.
- E. Substantially comply with the provisions of Title 13 of the Metro Urban Growth Management Functional Plan to protect regionally significant fish and wildlife habitat in compliance with Statewide Planning Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources, as it pertains to natural resources.

[Adopted by Ord. 702, ef. 11/24/00; Amended by Ord. 814, ef. 7/12/2012]

4.311 Applicability. These standards apply to all development in the Vegetation Corridor and Slope District as defined in section 1.040, Vegetation Corridor and Slope District, and Water Quality and Flood Management Definitions, of this code and to the Metro Title 13 Habitat Conservation Areas of all City-owned and Metro-owned parks and greenspaces as shown on the Metro Title 13 Habitat Conservation Area map. The vegetation corridor, inclusive of the wetland areas identified on the U.S. Department of the Interior, Fish and Wildlife Service National Wetland Inventory 1988 (NWI), are generally mapped on the Metro Title 3 map. Metro's Title 3 and Title 13 maps are used as reference only. Not all wetlands recognized by the Oregon Division of State Lands are mapped on either the NWI or Title 3 map.

- A. Specific determination of the vegetation corridor and slope district shall be made at the time of a development proposal. The final boundary shall be based on a topographical and slope analysis provided by a professional licensed surveyor in the State of Oregon, and a wetland delineation, if applicable, submitted by a qualified wetland specialist. The Oregon Division of State Lands must approve

delineations of wetlands under their jurisdiction. The City will keep a record of all surveys and wetland delineations as revisions to the local copy of the Title 3 map. The survey will be used instead of the Title 3 map to determine the vegetation corridor width. The City will submit this information to Metro for future updates of the Title 3 map.

1. The vegetation corridor is the minimum buffer width to be established between development and a protected water feature as defined in section 1.040, Vegetation Corridor and Slope District, and Water Quality and Flood Management Definitions, of this code. The vegetation corridor width is determined by following the methods established in sections 4.316, Width of Vegetation Corridor, and 4.317, Method for Determining Vegetation Corridors Next to Primary Protected Water Features, of this chapter.
  2. The slope district consists of slopes of 25% or greater that have a horizontal distance of 50 feet or greater in any area of the City.
  3. Exceptions:
    - a. Engineered slopes associated with public streets.
    - b. Development of lots within subdivisions platted with conservation easements and/or buffers specified on that plat that are less than those specified in section 4.316, Width of Vegetation Corridor, of this chapter. Development on the lot within said subdivision shall still be subject to all other applicable development standards of this code.
- B. Properties within the vegetation corridor and slope district may also be within chapter 4.600, Flood Management Area, of this code, and subject to the development standards therein.
- C. Warning and Disclaimer of Liability. The degree of landslide protection required by this chapter is considered reasonable for regulatory purposes and is based on common engineering and scientific practices. Landslides may occur on rare occasions in areas outside the vegetation corridors and may occur on slopes less than 25%. This chapter does not imply that compliance with these standards will assure that property will be free from significant mass movement or landslide damage. This chapter shall not create City liability for damage resulting from reliance on the provisions of this chapter or any administrative decision lawfully made thereunder.

[Adopted by Ord. 702, ef. 11/24/00; Amended by Ord. 814, ef. 7/12/2012]

#### 4.312 Uses within the Vegetation Corridor and Slope District.

- A. Permitted Uses within the Vegetation Corridor and Slope District.

1. Low-impact outdoor recreation facilities, including but not limited to: multi-use paths, accessways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture as designated by the Troutdale Parks Plan, or as approved with a land use application, and in compliance with subsection 4.315(D)(1) or 4.315(D)(2) of this chapter, as applicable.
2. Removal of refuse and unauthorized fill.
3. Removal of nuisance or invasive plant species, or planting of approved vegetation species on the Metro Native Plant List subject to the approval of a removal/revegetation plan prepared by a licensed landscape architect, landscape designer, botanist, or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation in compliance with chapter 5.600, Erosion Control and Water Quality Standards, of this code. The Metro Native Plant List will be kept on file at the Community Development Department.
4. Removal of trees in compliance with subsection 4.315(A)(3) of this chapter.
5. Expansion of existing streets and public utility facilities or construction of new streets and public utility facilities necessary to support permitted development outside the vegetation corridor and on slopes less than 25% in compliance with subsection 4.315(C) of this chapter.
6. Routine repair and maintenance of existing structures (conforming and nonconforming uses), streets, driveways, utilities, accessory uses, and other existing development on the site (including landscaped yards, decks, patios, boat ramps, etc.) if the development existed prior to the effective date of these standards.
7. Any permitted use in the underlying zoning district developed in compliance with section 4.315, Development Standards, of this chapter. For City-owned or Metro-owned parks and greenspaces, any use consistent with an adopted master plan for that park or greenspace and developed in compliance with section 4.315.
8. Construction of stormwater quality facilities in compliance with the standards of section 5.840, Design Standards, of this code.
9. Engineered retaining walls, or similar manmade walls are allowed to protect existing structures upon a determination from a licensed engineer that earth movement threatens the structural integrity of the building. Engineered retaining walls are not allowed to create land for new construction, or to prevent the earth movement of property that is not developed.

10. Rehabilitation or replacement of a structure that is damaged or destroyed to any extent, whether it is partially or fully within the vegetation corridor and slope district, in compliance with subsection 4.315(E) of this chapter. Any structure or use deliberately removed or demolished may not be rehabilitated or replaced except as provided for in subsection 4.315(A) of this chapter.
  11. Any development that must implement a Federal Aviation Administration (FAA) compliant wildlife hazard management plan on property owned by the Port of Portland or within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, and removal of trees that interfere with the landing or takeoff flight path of aircraft at the Troutdale Airport or otherwise interferes with the safe operation of the airport as determined by the Port of Portland. The removal of trees that interfere with the operation of the Troutdale Airport is only subject to implementation of either an on-site or off-site mitigation plan in accordance with the standards of TDC 4.315A(3)(c).
  12. Development identified in an approved District Plan, including, but not limited to development within the Troutdale Riverfront Renewal Area, in compliance with Metro Code Section 3.07.1330.B.4(a).
- B. Prohibited uses within the vegetation corridor and slope district, unless specifically permitted under subsection (A) of this section.
1. Manmade structures.
  2. Vegetation removal, except as allowed in subsection (A)(3) of this section.
  3. Private utility and road construction, including development of individual sewage disposal systems including, but not limited to, septic tanks.
  4. Excavation.
  5. No new partitions, subdivisions, or property line adjustments within the industrial, commercial, or residential zoning districts shall be approved on land that is exclusively within the vegetation corridor and slope district, or that results in creating a new lot exclusively within the district.
  6. Outside storage of hazardous materials as defined by the Department of Environmental Quality.
  7. Expansion of nonconforming uses.
- C. Exempt Development. The following uses and activities are exempt from the requirements of this chapter:
1. Water dependent development.

2. The following activities conducted by the Sandy Drainage Improvement Company (SDIC) or its successor or designee: Routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing, including tree removal and tree cutting, within the hydraulic cross-section in existing stormwater conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS Chapters 547 or 554, or Titles 33 or 44 of the Code of Federal Regulations, shall be exempt from these standards, provided that:
  - a. These activities are conducted by the Sandy Drainage Improvement Company (SDIC) or its successor or designee;
  - b. The activities are consistent with all other applicable local, state, and federal laws and regulations;
  - c. The activities do not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;
  - d. Disturbed areas are replanted with vegetation and no bare soils remain after project completion. The planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native or noxious vegetation shall not be planted; and
  - e. The SDIC or its successor submits an annual report to all local permitting agencies in which the district operates describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.
3. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.

[Adopted by Ord. 702, ef. 11/24/00; Amended by Ord. 814, ef. 7/12/2012]

4.313 Approval Procedures. Permits are required for all uses within this district:

- A. **Administrative Review.** A site development application shall be obtained for uses listed in subsection 4.312(A) of this chapter not requiring a building, plumbing, electrical, or right-of-way permit.

- B. Type I Procedure. New development for a single-family dwelling within the vegetation corridor and slope district shall be reviewed under the Type I site and design review procedure only if the proposed use or structure meets all of these conditions:
1. That development standards are met as prescribed under section 4.315, Development Standards, of this chapter and provisions are made for vegetation corridors as provided for in sections 4.316, Width of Vegetation Corridor, and 4.317, Method for Determining Vegetation Corridors Next to Primary Protected Water Features, of this chapter.
  2. That adequate protection is utilized to minimize landslide and erosion hazards, consistent with chapters 5.600, Erosion Control and Water Quality Standards, and 5.800, Stormwater Management, of this code, and that the reports as required in section 4.314, Submission Requirements, of this chapter have been certified by a licensed engineer.
- C. Type II Procedure. The Site and Design Review Committee shall approve plans for any permitted use in the underlying zoning district requiring a building permit, other than a single-family dwelling, under the Type II site and design review land use application.
- D. Type III Procedure. A variance from the standards of this chapter shall be a Type III procedure. The Planning Commission shall review variances to this chapter pursuant to section 6.220, Type II Variance, of this code. An affirmative finding must be made, with or without conditions, for each variance criteria.

[Adopted by Ord. 702, ef. 11/24/00]

4.314 Submission Requirements. For the purpose of minimizing sedimentation of protected water features, maintaining water quality, and minimizing erosion and landslide hazards where development is proposed within the vegetation corridor and slope district, the Director shall require submission of the following information:

- A. Site Development Application. A site development application, for the purpose of implementing this chapter, shall consist of a grading and erosion control plan and a water quality plan. The applicant or developer shall be responsible for submitting such information with a land use application, or in the case of single-family construction, submitted with the construction plans.
1. Grading and erosion control plan. The grading and erosion control plan for the development shall comply with the *Technical Guidance Handbook, Erosion Prevention and Sediment Control Plans*, by the City of Portland Bureau of Environmental Services and the Unified Sewerage Agency of Washington County, this chapter, and chapter 5.600, Erosion Control and Water Quality Standards, of this code. The grading plan shall include information on terrain (two foot contours), drainage, direction of drainage

flow, location of surface and subsurface devices, retaining walls, water wells, dams, sediment basins, storage reservoirs, gas pipeline easements, or other in-ground utilities, either public or private, which may be affected by the proposed grading operations.

- a. A current topographical survey shall be prepared for the entire site. The contours shall be at two-foot intervals.
  - b. At least three slope measurements along the affected water feature shall be made, at no more than 100-foot increments.
  - c. The contour maps identifying slope percentages shall be prepared and certified by a licensed professional. The mapping shall depict the width of the vegetation corridor as established in sections 4.316, Width of Vegetation Corridor, and 4.317, Method for Determining Vegetation Corridors Next to Primary Protected Water Features, of this chapter. The vegetation corridor width will vary from site to site.
  - d. The grading plan shall also include a construction phase erosion control plan and a schedule of operations, and shall be prepared by a professional engineer registered in Oregon.
2. Water quality plan. The applicant's engineer shall provide a water quality plan, consistent with the provisions of chapter 5.600, Erosion Control and Water Quality Standards, of this code and with the State of Oregon Department of Environmental Quality's National Pollutant Discharge Elimination System (NPDES) program administered by the City.
- B. A hydrology, geology, and soils report of the site in accordance with the following:
1. Prepared by a licensed professional and certified by the same.
  2. Includes information on the hydrological activities of the site, the effect of hydrologic conditions on the proposed development, and any hydrological or erosion hazards.
  3. Quantifies the current stormwater volume and rate that leaves the site and shows direction of flow within the site and toward adjoining properties.
  4. Includes recommendations for the engineering and location of onsite detention facilities to meet the standards of chapter 5.800, Stormwater Management, of this code.
  5. Depicts all stormwater facilities (swales, detention or retention ponds) existing or proposed, and shows the finished contours and elevations, including all cut and fill slopes and proposed drainage channels.

6. Describes how the site is suitable for the proposed use, and why there is no practicable alternative to the site.
  7. Includes geological characteristics of the site and identifies any geological hazard that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility.
  8. Includes information on the nature, distribution, and strength of existing soils and an assessment of grading procedures required to impose the minimum disturbance to the existing topography and native vegetation.
- C. **Vegetation Report.** This report shall consist of a survey of existing vegetative cover, whether it is native or introduced. Measures for enhancement or revegetation with approved plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. The revegetation plan shall be prepared by a licensed landscape architect, landscape designer, botanist, or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation, in compliance with chapter 5.600, Erosion Control and Water Quality Standards, of this code.

[Adopted by Ord. 702, ef. 11/24/00]

4.315 Development Standards. Permitted uses in the vegetation corridor and slope district are to be developed in compliance with the following development standards or in compliance with an approved District Plan in accordance with Metro Code Section 3.07.1330.B.4(a). A District Plan shall be prepared and approved prior to, or in conjunction with, the preparation and approval of a master plan for the eventual development of the specific site. The approval criteria for the District Plan are those of Metro Code Section 3.07.1330.B.3.

A. **New Development.**

1. The applicant shall demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the vegetation corridor and slope than the one proposed.
2. If no such reasonably practicable alternative design or method of development exists, new structures and development shall be limited in scale, as specified in this section, so that the impacts on the vegetation corridor and slope district are the least necessary and the plans shall include restoration, replacement, or rehabilitation of the vegetation corridor and/or slope associated with the site:
  - a. Notwithstanding the provisions of chapter 6.220, Type II Variance, of this code, a maximum of 30% of the total area of the vegetation corridor and slope district on the lot may be used for the development,

- inclusive of any walkways, driveways, patios, decks, accessory buildings, and similar impervious features.
- b. Notwithstanding the provisions of chapter 6.220, Type II Variance, of this code, where necessary to avoid construction within the vegetation corridor and slope district, the following provisions are available for lots of record affected by the vegetation corridor and slope district:
    - i. Setbacks may be reduced up to 50% from the underlying zoning district setback dimension where necessary to avoid construction on slopes of 25% or greater or within the required vegetation corridor, and otherwise meet the standards of this chapter.
    - ii. The maximum allowed height within the A-2 zoning district may be increased to 45 feet for apartment construction.
    - iii. In order to retain the density allowed within the underlying residential zoning district, the minimum lot area may be reduced up to 3,000 square feet in area if:
      - a) No buildable lot created is within the vegetation corridor and slope district.
      - b) That portion of the original lot remaining within the vegetation corridor and slope district is platted as a separate lot and preserved as open space.
      - c) Covenants, conditions, and restrictions are recorded for the maintenance of the open space lot created exclusively within the vegetation corridor and slope district as provided in this section.
    - iv. If more than 50% of the lot being developed, partitioned or subdivided is affected by the Vegetation Corridor and Slope District, then the minimum density standard of this Code does not apply.
  3. The applicant shall provide mitigation to ensure that impacts to the functions and values of the vegetation corridor and integrity of the slope will be mitigated or restored to the extent practicable.
    - a. The existing tree canopy and understory comprised of native plants shall be retained wherever possible outside of the building envelope. A tree preservation and maintenance plan is required to be submitted with the land use application as part of the landscaping plan, or in the case of a single-family dwelling, with the building permit. Only those

trees approved for removal by the Director, Site and Design Review Committee, or Planning Commission may be removed.

- b. Any disturbed portions of the site shall be restored and enhanced by removing non-native plants and noxious weeds, and restoring the vegetation corridor with native plant species listed on the Metro Native Plant List. Only native grass varieties will be permitted.
- c. A mitigation and restoration plan shall be submitted with the land use application and shall be implemented prior to issuance of a Certificate of Occupancy, a Certificate of Completion for a subdivision, or the final building inspection, as applicable.
- i. Required plants and plant densities. An applicant must meet Mitigation Option 1, 2 or 3.

Option 1. Number and type of trees and shrubs that must be planted to qualify as mitigation.

| TREE REPLACEMENT MITIGATION OPTION 1 |                                     |
|--------------------------------------|-------------------------------------|
| Size of Tree Removed                 | Number of Trees and Shrubs to Plant |
| 6 to 12" diameter                    | 1 tree and 1 shrub                  |
| 13 to 18" diameter                   | 2 trees and 3 shrubs                |
| 19 to 24" diameter                   | 3 trees and 6 shrubs                |
| 25 to 30" diameter                   | 4 trees and 9 shrubs                |
| Over 30" diameter                    | 5 trees and 15 shrubs               |

Option 2. The mitigation is calculated based on the size of the area disturbed within the Vegetation Corridor and Slope District. Native trees and shrubs are required to be planted at a rate of one tree and five shrubs for every 100 square feet of disturbance area. All fractions are rounded to the nearest whole number. Bare ground must be planted or seeded with native grasses or herbs.

Option 3. Discretionary Review. This mitigation plan varies the required number and size of trees and shrubs under Option 1 or Option 2.

- (A) An applicant shall submit the following:
  - (1) A calculation of the number of trees and shrubs that would be required under Option 1 or Option 2.
  - (2) The number and size of trees and shrubs that the applicant proposes to plant.



- b) The applicant shall submit a map and accompanying narrative that details the following:
  - (i) The number of trees and shrubs that can be planted on-site;
  - (ii) The on-site location where those trees and shrubs can be planted;
  - (iii) An explanation of why it is not practicable for mitigation to occur on-site;
  - (iv) The proposed location for off-site mitigation; and
  - (v) Documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, and, if the mitigation is not within the Vegetation Corridor and Slope District, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

iv. Mitigation Planting Standards.

- a) All trees, shrubs, groundcovers, and grasses shall be from the Metro Native Plant List.
- b) Conifers shall be replaced with conifers.
- c) Plant size. Replacement trees must be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a one-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
- d) Plant spacing. Trees shall be planted between eight and 12 feet on center and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and ten feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.

- e) Plant diversity. Shrubs must consist of at least two different species. If ten trees or more are planted, then no more than 50% of the trees may be of the same genus.
- f) Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
- g) Tree and shrub survival. A minimum of 80% of the trees and shrubs planted must remain alive on the fifth anniversary of the date that the mitigation planting is completed. Plants that die within five years of the date of planting must be replaced in kind and of sufficient quantity to meet this minimum 80% coverage standard.
- h) Monitoring and reporting. Monitoring of the mitigation plantings is the ongoing responsibility of the property owner. Monitoring shall continue during the first five years of the date of planting. Monitoring shall consist of the submission of color photographs of the mitigation plantings immediately following completion of the initial planting and then annually between September 1 and 21st for the next five years. Photographs shall be dated and a north arrow included on the photographs. The photographs shall be submitted to the Community Development Department with a cover letter that includes the name and contact information for the current property owner, the land use file number, and the address of the property.
- i) To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
  - (i) Planting season. Plant bare root trees between December 1 and February 28, and potted plants between October 15 and April 30.
  - (ii) Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
  - (iii) Irrigation. Water new plantings one inch per week between June 15 to October 15, for three years following planting.
  - (iv) Weed control. Remove or control non-native or noxious vegetation throughout maintenance period.

- (v) Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
  - d. The portion of the vegetation corridor and slope district that is not disturbed with the use shall be conserved and maintained as open space. This may occur through private ownership; private conditions, covenants, and restrictions; conservation easements enforceable by the City, other public or private nonprofit agency, or where approved by the City Council; dedication to the City; or donation to other appropriate public or private nonprofit agency.
  4. The use satisfies all applicable standards of chapters 4.600, Flood Management Area; 5.600, Erosion Control and Water Quality Standards; and 5.800, Stormwater Management, of this code.
  5. All excavation over three feet in depth shall require submission of an engineering report addressing the hydrology, geology, and soils of the site as specified in this chapter. The siting, engineering, erosion control, water quality, and enhancement or revegetation of the site shall comply with the standards of this chapter. The applicant's engineering plans shall certify that runoff from the site will not increase above pre-development quantity and rate, and that visible and measurable erosion is prevented.
- B. Addition or alteration of development in the vegetation corridor and on slopes of 25% and greater may be allowed provided that it meets the standards of subsections (A)(1) – (3) of this section, as applicable, and the following:
1. The addition or alteration is allowed in the underlying zoning district.
  2. The addition or alteration does not encroach closer to the protected water feature than the existing structures, roadways, driveways, or accessory uses and development.
  3. The addition or alteration satisfies the other applicable standards of this chapter, and chapters 5.600, Erosion Control and Water Quality Standards, and 5.800, Stormwater Management, of this code.
- C. Construction of public utilities and public streets not included in the review of the tentative plat shall be processed as a Type II site and design review land use application and shall be subject to the following approval criteria, provided that it meets the standards of subsections (A)(1) – (3) of this section, as applicable, and the following:
1. The application shall declare a need for a public street or public utility crossing of the vegetation corridor and slope district.

2. All grading and improvement plans for such public street, including necessary accessory engineered slopes and utility extensions underneath the street, shall be submitted with the application.
  3. The location of the public street or public utilities is proper in relation to adjacent uses, the development of the community, and to the various elements and objectives of the Comprehensive Land Use Plan and the Transportation System Plan.
  4. The public street or public utility will not be materially detrimental to the character of the neighborhood, nor will it endanger the public health, safety, and general welfare.
  5. It has been demonstrated that the public street will improve and enhance traffic circulation in a manner advantageous to the public convenience and welfare.
  6. The establishment of the proposed public street will not impede the normal and orderly development and improvement of surrounding property for permitted uses.
  7. Adequate drainage devices, landscaping, and other necessary appurtenances will be provided to City standards.
  8. Alternative designs for street access have been evaluated and examined, and have been determined to be infeasible.
- D. Approval Standards for Walkways and Bike Paths and other Low-Impact Outdoor Recreation Facilities.
1. Within the VECO of any property other than City-owned or Metro-owned parks and greenspaces.
    - a. A gravel walkway or bike path shall not be constructed closer than ten feet from the boundary of the protected water feature. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of ten percent of the trail may be within 30 feet of the protected water feature.
    - b. A paved walkway or bike path shall not be constructed closer than ten feet from the boundary of the protected water feature. For any paved walkway or bike path, the width of the vegetation corridor must be increased by a distance equal to the width of the path. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of ten percent of the trail may be within 30 feet of the protected water feature.

- c. A walkway or bike path shall not exceed ten feet in width.
  2. Within the VECO or within mapped Habitat Conservation Areas of City-owned or Metro-owned parks and greenspaces:
    - a. Shall contain less than 500 square feet of new impervious surface or such other area as may be proposed to obtain federal funding or to comply with AASHTO standards; and,
    - b. Trails for pedestrians or bicycles shall be constructed using non-hazardous, pervious materials, with a maximum width of not to exceed (1) the width necessary for federal funding, if utilized, (which is currently ten feet) for regionally significant or federally funded trails, and (2) on other trails, the greater of the width recommended under applicable AASHTO standards for the expected type and volume of use, or four feet.
- E. Prescribed Conditions for the Rehabilitation or Replacement of Pre-Existing Structures.
  1. The structure was in existence prior to November 24, 2000.
  2. The use is allowed in the underlying zoning district at the time the application is made to rehabilitate or replace the structure.
  3. The rehabilitation or replacement is rebuilt on the same footprint of the original structure.
  4. The rehabilitation or replacement satisfies the applicable standards of chapters 4.600, Flood Management Area; 5.600, Erosion Control and Water Quality Management; and 5.800, Stormwater Management, of this code, and other applicable federal, state, or county standards.
  5. A site development application is submitted in accordance with section 4.314, Submission Requirements, of this chapter.

[Adopted by Ord. 702, ef. 11/24/00; Amended by Ord. 814, ef. 7/12/2012]

4.316 Width of Vegetation Corridor.

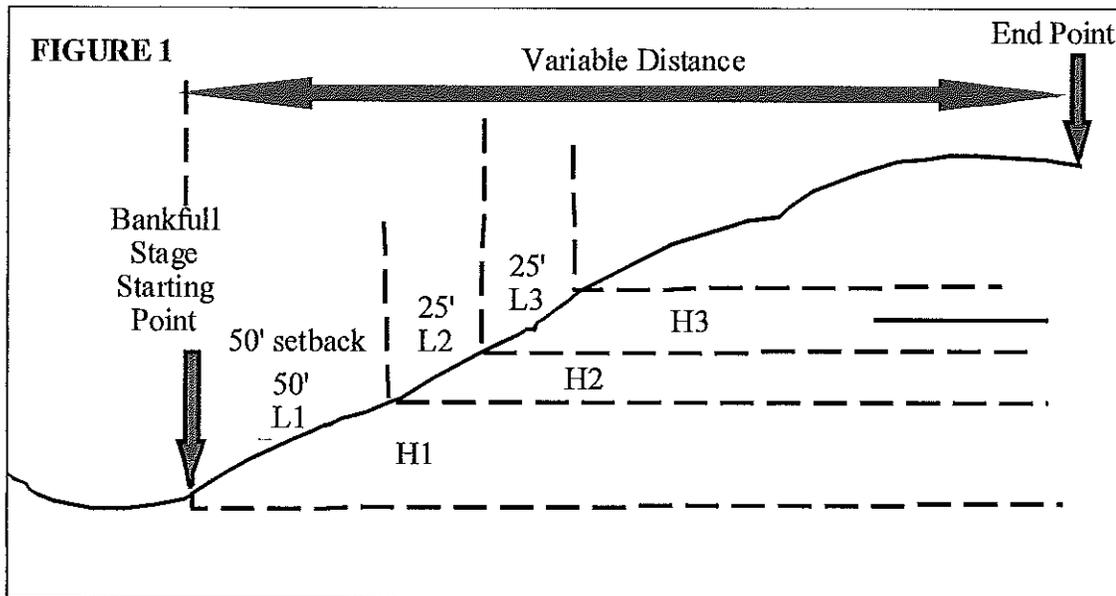
| Protected Water Feature            | Slope Adjacent to Protected Water Feature <sup>1</sup> | Starting Point for Measurements from Water Feature                                  | Minimum Width of Vegetation Corridor <sup>2&amp;3</sup>                                                                     |
|------------------------------------|--------------------------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Primary Protected Water Features   | <25%                                                   | Edge of bankfull stage or two-year storm level. Delineated edge of Title 3 wetland. | 50 feet                                                                                                                     |
| Primary Protected Water Features   | ≥25% for less than 150 feet <sup>3</sup>               | Edge of bankfull stage or two-year storm level. Delineated edge of Title 3 wetland. | Distance from starting point of measurement to top of ravine (break in ≥25% slope) <sup>4</sup> , plus 50 feet <sup>5</sup> |
| Primary Protected Water Features   | ≥25% for 150 feet or more <sup>3</sup>                 | Edge of bankfull stage or two-year storm level. Delineated edge of Title 3 wetland. | 200 feet <sup>4</sup>                                                                                                       |
| Secondary Protected Water Features | <25%                                                   | Edge of bankfull stage or two-year storm level.                                     | 15 feet                                                                                                                     |
| Secondary Protected Water Features | ≥25% <sup>3</sup>                                      | Edge of bankfull stage or two-year storm level.                                     | 50 feet                                                                                                                     |

- 1 At least three slope measurements, evenly spaced along the frontage adjacent to the protected water feature, shall be made, at no more than 100-foot increments.
- 2 These minimum setbacks may be affected by other overlay standards.
- 3 Vegetation corridors in excess of 50 feet for primary protected water features, or in excess of 15 feet for secondary protected water features, apply on steep slopes only in the *uphill* direction from the protected water feature.
- 4 Where the protected water feature is confined by a ravine or gully, the top of the ravine is the break in the slope that is ≥25% (see Figures 4 and 5 in section 4.317 of this chapter). If a slope of ≥25% continues beyond 200 feet, the development standards of this chapter continue to apply until the break in slope.
- 5 A maximum reduction of 25 feet may be permitted in the width of vegetation corridor beyond the break in slope if a geotechnical report demonstrates that the slope is stable. To establish the width of the vegetation corridor, measure in 25-foot increments from the minimum setback away from the water feature until the slope is less than 25% (top or ravine).

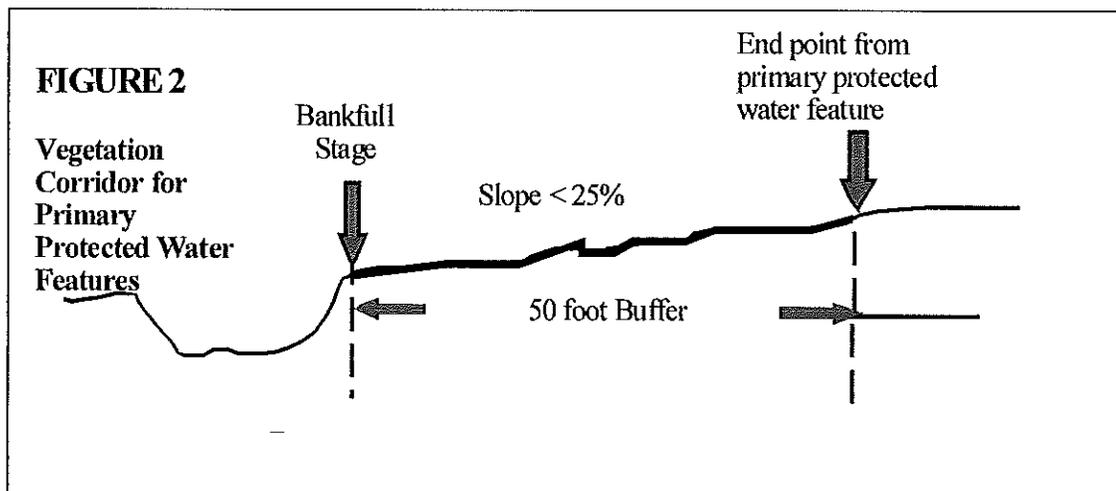
[Adopted by Ord. 702, ef. 11/24/00]

4.317 Method for Determining Vegetation Corridors Next to Primary Protected Water Features.

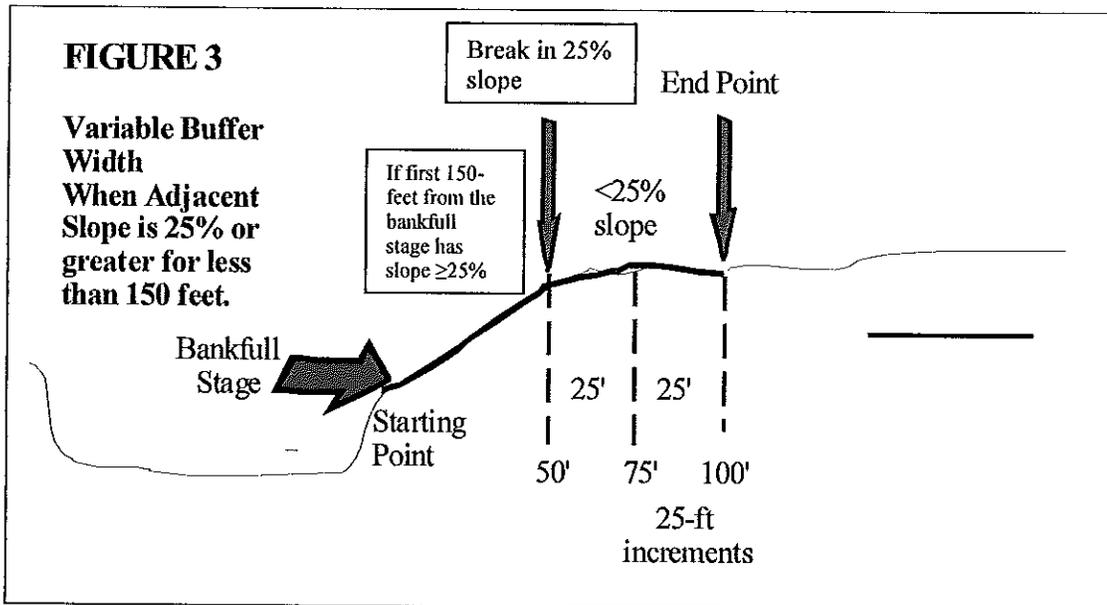
**Figure 1.** How to measure slopes. Measure 50 feet horizontally (L1) from the bankfull stage and determine the slope (H1/L1 is the difference in elevation divided by the difference in horizontal distance multiplied by 100).



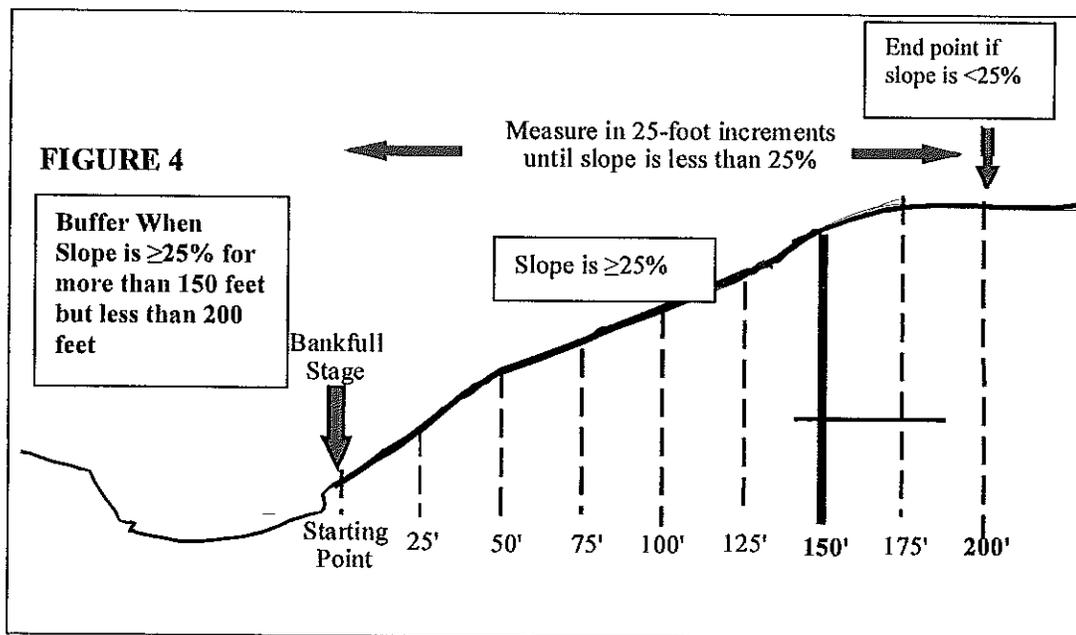
**Figure 2.** If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the bankfull stage.



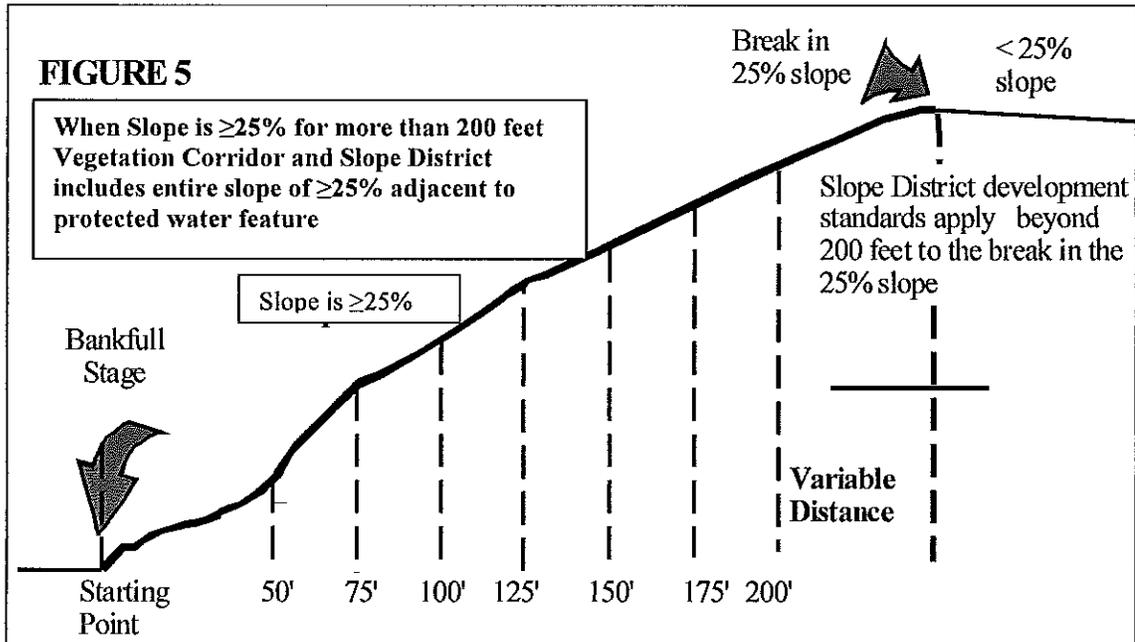
**Figure 3.** If the slope adjacent to the protected water feature is 25% or greater for less than 150 feet, measure horizontally in increments of 25 feet until the slope is *less than 25%* ( $H2/L2 < 25\%$ ) and add 50 feet. This is a variable end point. The vegetation corridor may be 50-, 75-, 100-, 125-, or 150-feet in width.



**Figure 4.** If the slope is greater than 25% in this incremental 25-foot area for more than 150 feet, continue measuring the slope every 25 feet (H/L) until you find a slope less than 25%. When you find a slope less than 25%, the vegetation corridor equals the distance from the bankfull stage to the *end point* of the last surveyed 25-foot increment with a slope greater than 25% plus an additional 50 feet up to a distance of 200 feet from the top of the bank. If the slope continues beyond 200 feet, refer to Figure 5.



**Figure 5.** When you reach 200 feet from the top of the bank and the slope continues to be  $\geq 25\%$  beyond the 200 feet, continue measuring until the break in the  $\geq 25\%$  slope. No additional setback will be required beyond the break in slope.



**Advantages:**

1. Provides protection for slopes of 25% and greater, yet corridor widths can be varied to fit a number of different situations. Development on slopes in excess of 25% beyond the vegetation corridor as determined by the table in section 4.316, Width of Vegetation Corridor, of this chapter and the proceeding methods, are still protected under the provisions of this chapter pursuant to section 4.311, Applicability, of this chapter.
2. Provides flexibility. The end point will be unique for each property based upon an actual topographical survey.

[Adopted by Ord. 702, ef. 11/24/00]

**4.318 Delineation of Habitat Conservation Areas.**

Habitat Conservation Areas (HCAs) are generally shown on the Metro Title 13 maps. For purposes of development within the HCAs on City-owned and Metro-owned parks and greenspaces, delineation of on-the-ground HCA boundaries shall be done by a professional and verified by the City of Troutdale using the best available information.

[Adopted by Ord. 814, ef. 7/12/2012]