

# NOTICE OF DECISION

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
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## DECISION OF THE HISTORIC LANDMARKS COMMISSION

**CLASS 3 MAJOR HISTORIC DESIGN REVIEW CASE NO.: HIS23-22**

**APPLICATION NO.: 23-121239-PLN**

**NOTICE OF DECISION DATE:** November 21, 2023

**SUMMARY:** A proposal to install a forged-steel, fixed panel fence/gate within the storefront and entry of the Fred Meyer Building (1914).

**REQUEST:** Major Historic Design Review of a proposal to install a forged-steel, fixed-panel fence/gate within the storefront and entry of the Pacific Telephone and Telegraph Co/Fred Meyer Building (1905-1914), a historic non-contributing building within the Salem Downtown Historic District. The subject property is located at 170 Liberty Street NE, Salem, 97301; Marion County Assessors Map and Tax Lot Number: 073W27AB05600.

**APPLICANT:** Ann Johnson

**LOCATION:** 170 Liberty St NE

**CRITERIA:** Salem Revised Code (SRC) Chapters 230.045(d) – Storefronts

**FINDINGS:** The findings are in the attached Decision dated November 16, 2023.

**DECISION:** The **Historic Landmarks Commission DENIED** Class 3 Major Historic Design Review Case No. HIS23-22 based on the application deemed complete on October 25, 2023.

### VOTE:

**Yes 3      No 2      Absent 4** (Curteman, Morris, Ponce, Zimmerman)

Jennifer Maglante-Timbrook  
Vice-Chair, Historic Landmarks Commission

Application Deemed Complete:	<u>October 25, 2023</u>
Public Hearing Date:	<u>November 16, 2023</u>
Notice of Decision Mailing Date:	<u>November 21, 2023</u>
Decision Effective Date:	<u>December 7, 2023</u>
State Mandate Date:	<u>February 22, 2024</u>

**Case Manager:** Kimberli Fitzgerald, [kfitzgerald@cityofsalem.net](mailto:kfitzgerald@cityofsalem.net), 503-540-2397

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m. Wednesday, December 6, 2023. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 230. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

## DECISION OF THE SALEM HISTORIC LANDMARKS COMMISSION

**CASE NO.:** Historic Design Review Case No. HIS23-22

**FINDINGS:** Based upon the application materials, the facts and findings in the Staff Report incorporated herein by reference, and testimony provided at the Public Hearing of the November 16, 2023 Historic Landmarks Commission (HLC) finds that the applicant did not adequately demonstrate that their proposal complies with the applicable provisions of the Salem Revised Code (SRC) 230.045(d) as follows:

**Public Testimony:**

Notification of the public hearing was sent to the neighborhood association; tenants and surrounding property owners within 250 feet of the property; and property owners within the district; pursuant to Salem Revised Code (SRC) requirements on October 27, 2023. Notice of public hearing was also posted on the subject property.

Neighborhood Association Comment: The subject property is located within Central Area Neighborhood Development Organization (CANDO). The staff report noted comments submitted in support from Michael Livingston representing the neighborhood association.

Public Comment: As of the date of the staff report, no comments were received. One written comment was received prior to the hearing from Jon Christensen expressing concern that this is the second case related to fencing, that is not in conformance to SRC Chapter 230. Mr. Christensen noted that the City provides grants for non-fencing security options downtown and recommends that the grant be extended to residential properties near downtown.

At the hearing there was one person that testified in opposition to the proposal. Ms. Weston noted that the store is never open and has not been for a very long time. She also noted that the owner continues to store items outside behind the fence/gate. Concern was expressed about what perception a fence/gate in our downtown gives to the public about the safety of downtown. While she notes that there is some vandalism and issues with houseless individuals sleeping and causing other issues in alcoves downtown, she noted this is not New York City and we do not need to fence and gate off downtown. Commissioners asked follow-up questions regarding her knowledge of the retail store not being open to the public.

Staff Response: Staff noted that this property is the subject of an ongoing compliance case related both to the installation of the fence/gate without historic design review approval and permits but also related to prohibited outdoor storage in the alcove. Staff related that the owner has made some progress with removing items but noted from a site visit the day of the hearing that she has brought new items into the alcove, as shown in pictures in the staff presentation, and noted by Ms. Weston.

Staff explained that the issue of the outdoor storage and the use of the building (storage is not allowed as the main use on the ground floor in the CB-Central Business District) is being addressed, and will continue to be addressed, by City compliance staff and is not the purview of the HLC. Staff also explained how the compliance process works, with the goal of voluntary compliance. The applicant has been issued correction notices and an Enforcement Orders (Case No. 23-114376-CC) that are outstanding and on-going.

## **FINDINGS**

### **Criteria:**

#### **SRC 230.045(d) Non-Contributing Storefronts in Commercial Historic Districts**

##### **1. Materials.**

*(A) Materials dating from the period of significance shall, if possible, be retained and repaired or restored.*

**Findings:** The staff report noted that the security gate is not attached to the existing storefront, but is freestanding, therefore no original material has been disturbed by the security gate or fence installation. Staff recommended that the HLC find that SRC 230.045(d)1(A) had been met. However, the HLC found that the proposal does not in fact include the repair of any original historic material, and therefore SRC 230.045(d)(1)(A) is not applicable to the evaluation of this proposal.

*(B) Replacement materials shall be, to the greatest degree practicable, of the same type, quality, design, size, finish, proportions and configuration of the storefronts commonly found in the district.*

**Response:** The HLC found that while the applicant is not proposing to replace any original materials, and the security gate and fence is a new alteration, the proposed metal material is of a design, finish and proportion which permanently blocks access to a portion of the recessed storefront alcove and display windows. This configuration is not typically found on storefronts commonly found in Salem's Downtown Historic District, therefore the HLC finds that this standard has not been met for the proposal.

##### **2. Design.**

*(A) To the extent practicable, original storefront components such as windows, door configuration, transoms, signage and decorative features dating from the period of significance shall be preserved.*

**Findings:** The staff report noted that the applicant is not proposing to alter any existing features of the existing storefront and recommended that the HLC find that SRC 230.045(2)(A) has been met for this portion of the proposal. However, the HLC found that the applicant's gate and fence are permanently covering the recessed storefront opening, which is incompatible with the historic resource and permanently alters the existing features of the existing storefront by denying access to the alcove and windows. Testimony was provided at the public hearing indicating that the business is no longer open to the public, and it is instead being used a storage space with the fence/gate always closed and locked. The Commission expressed concerns with a permanently closed gate in the historic district. While they understand and acknowledge that *use* violations are not under their purview, they found that this information does impact the ability to comply with the approval criteria.

The HLC has previously approved one fence/gate in the Downtown Historic District, but that

gate was a roll up gate that almost completely disappears when opened (HIS23-05) which was crucial in determining compliance with the approval criteria. Further, the applicant for this case was able to clearly state that their security gate would remain open throughout Salem's typical downtown business hours, and be closed only during the late evening/early mornings. This fence/gate, which is already installed, swings open inwardly, but even when open, it partially blocks the alcove entrance. The Commission found that this partial, permanent fence, would cause an adverse impact to the historic alcove and storefront. Further, the applicant's submittal materials did not indicate if a gate stop or barrier was provided that would ensure that the gate, when open, did not hit the glass in the storefront, and the applicant was not in attendance to answer these questions. Inability to determine if the gate would impact the glass storefront, made it impossible for the HLC to determine compliance with this criterion.

This case is a request for a retroactive approval; the gate is already installed which limits the Commission's ability to suggest design alternatives that could ensure compatibility with the approval criteria. Therefore, the HLC finds that the existing fence/gate fails to comply with SRC 230.045(d)(2)(A) and this criterion has not been met.

*(B) Restoration of the appearance of the storefront during the period of significance, based on historical research and physical evidence, is preferred.*

**Findings** The HLC finds that the applicant is not proposing to restore any features of the storefront as part of this proposal. The HLC finds that SRC 230.045(2)(B) is not applicable to the evaluation of the proposal.

*(C) Replacement that is contemporary in design shall be compatible with the scale, proportions, massing, height, rhythm, materials, color and texture of historic contributing buildings in the district.*

**Findings:** The HLC finds that while this proposal does not include replacement of any existing features of the storefront, the security gate and fence are installed at the entry to the recessed opening of the storefront, and as the gate and fence obscure the display windows and access to the historic resource, this alteration results in an adverse visual impact to the historic storefront. The HLC finds the gate/fence is noncompliant with design standards, specifically, scale, proportions, massing, materials, and color of the contributing buildings in the vicinity. The Commission noted that the color of the fence and gate across the storefront are not typical of security gates found within storefronts of historic contributing buildings within the district (ie. 248 Commercial St. NE; 360 State Street; 381 State Street and 447 State Street-see **Attachment C**). Further, the applicant did not demonstrate that the design and location of the gate will not damage the storefront glass, especially as a result of the operation of the security gate. Questions regarding the color, how the gate functions and impacts the glass storefront and how often it is closed were not able to be answered as the applicant did not attend the hearing.

Overall, the HLC finds that the design of the gate and fencing are incompatible with the resource and the surrounding Historic District and therefore, the HLC finds that SRC 230.045(d)(2)(C) has been not been met for this proposal.

## **DECISION**

The Historic Landmarks Commission **DENIES** HIS23-22.

**VOTE: Yes 3    No 2    Absent 4 (Curteman, Morris, Ponce, Zimmerman)**

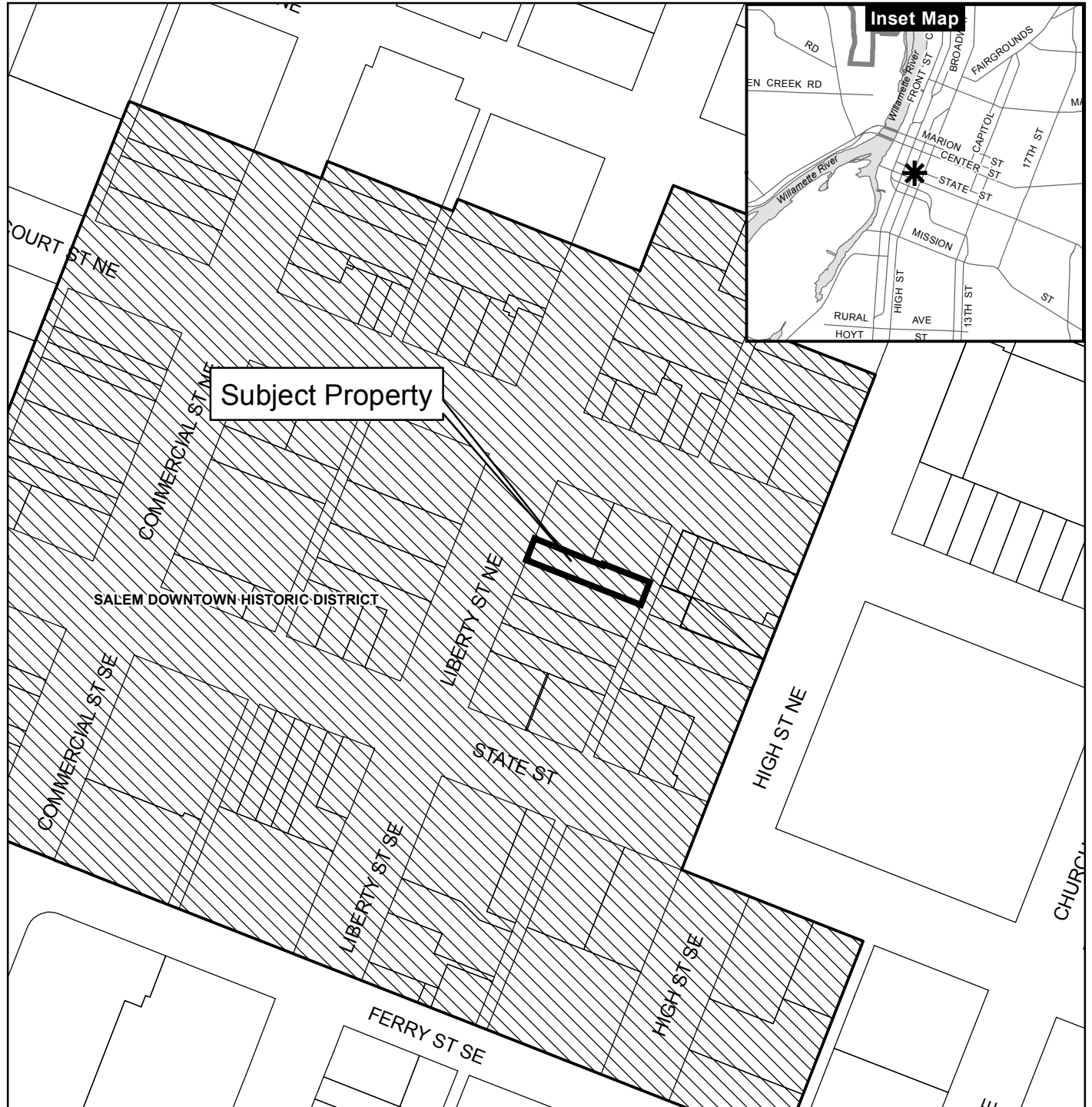
**Abstain 0**

Attachments: A. Vicinity Map  
B. Excerpt from Applicant's Submittal Materials  
C. Examples of Security Gates on Contributing Buildings in Salem's Downtown  
Historic District






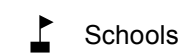

Prepared by Kimberli Fitzgerald, Historic Preservation Officer

G:\CD\PLANNING\HISTORIC\CASE APPLICATION Files - Processing Documents & Staff Reports\Major Type  
III\2023\Decisions\HIS23-22 170 Liberty St. NE. Decision Findings.doc

# Vicinity Map 170 Liberty St NE

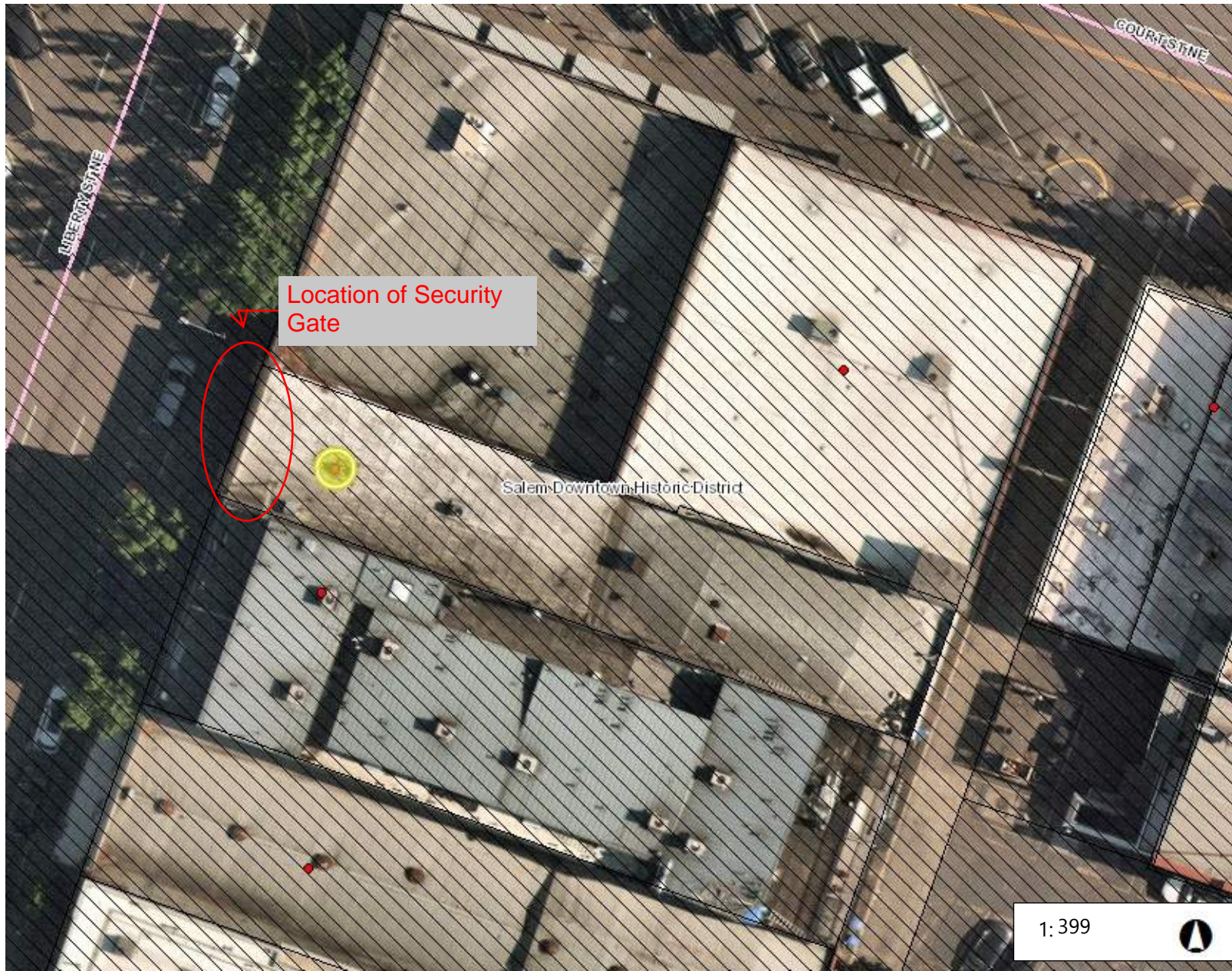


**Legend**

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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Legend

- Centerline (Labels)
- Historic Buildings
- ▣ Historic Districts
- ▣ Annexations (delayed)
- Taxlots
- Creeks
  - 50 - 200
  - 200 - 640
  - 640 - 6400
  - GT 6400
- Hydrology
- Street Class
  - Future Minor Arterial
  - Future Collector
  - Major Arterial
  - Minor Arterial
  - Parkway
  - Collector
  - Highway/Freeway
- Overlay Zones
  - ▣ Overlay Zones
  - ▣ Compact Development Overlay Zor
  - ▣ Mixed-Use Overlay Zone
  - ▣ Urban Growth Boundary
  - ▣ City Limit

Notes

Enter notes here...

0.01 0 0.01 0.01 Miles

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
City of Salem, Oregon

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



9/21/23

Ann Johnson,

## **STANDARDS FOR HISTORIAL CONTRIBUTING BUILDINGS COMMERCIAL HISTORIC DISTRICTS**

### **CRITERIA RESPONSE WORKSHEET ADDENDUM**

#### **230.040F**

##### **1 (A)**

The material for the gate and fence is galvanised metal. Galvanized metal is now used in the fabrication of ironwork that has historically been wrought iron.

The Height of 5' to fence top rail; to 6' at the rail at the highest point of the gate arch. Add 6" h to the pickets/finials that extend above the top rail.

The ongoing maintenance is superior to wrought iron as well.

The gate and fence have been professionally painted with a commercial paint made for exterior metal.

The paint colour used on the metal has been custom mixed to match the gold colour of the stucco, complementary marble and historical vitrolite on the building facade.

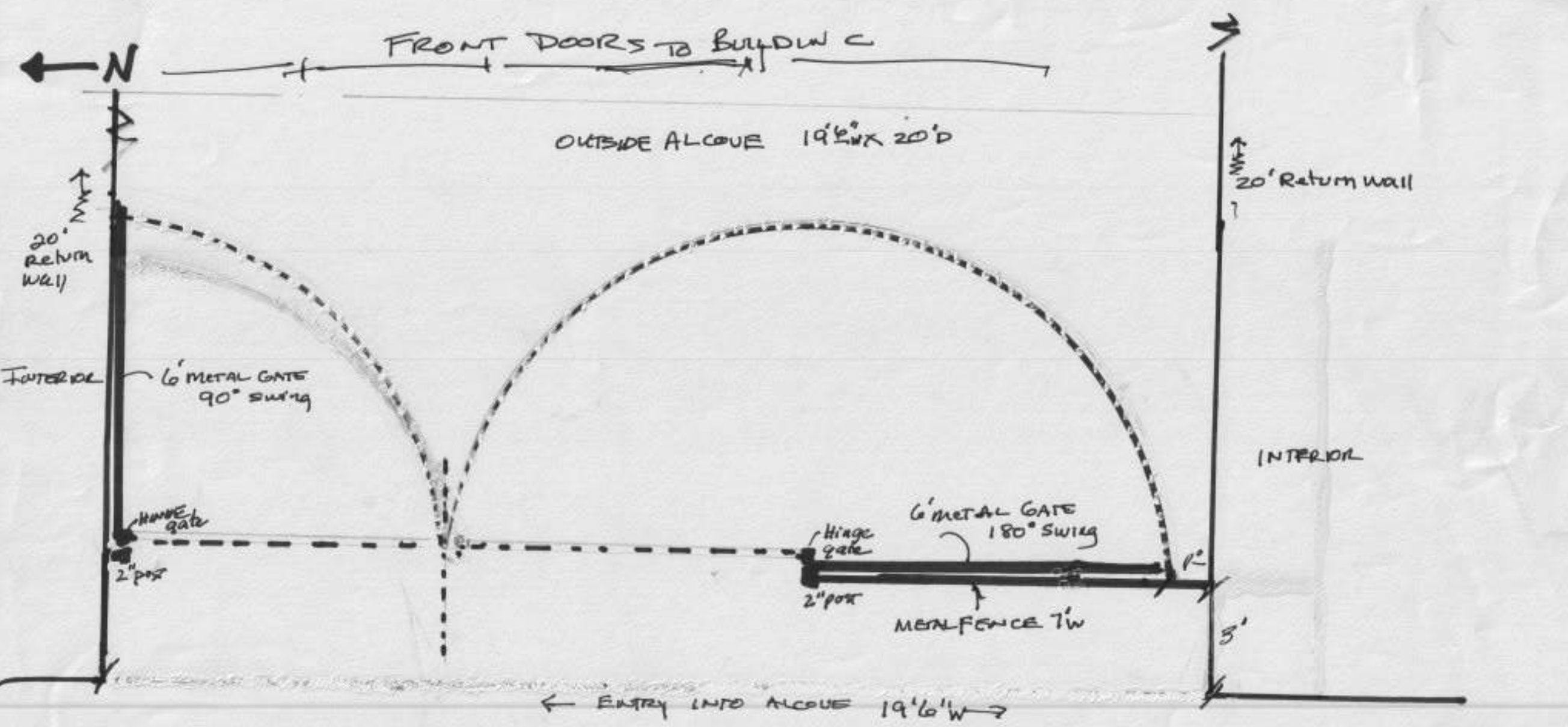
##### **1 (B through L)**

The original design of the front facade constructed in 1917 did not have an alcove but was instead fully faced with brick with an entry door. Based on the choice of materials and design the major renovation to re-face the front facade brick with stucco and vitrolite appears to have been done during the same time period many other buildings downtown were remodelled to include alcove to front door. Old photos from the early 1900's, show majority of commercial buildings were brick or lap wood siding. Iron was used throughout the downtown core. Cement block and stucco and vitrolite appear to have been the standard material used in renovation during the 1930-50's.

A metal sleeve and anchor was made to securely attach the fence and gate posts to the terrazzo floor. The fence and gate are free standing and are not attached to the side of the building so as to not disrupt the vitrolite as well as the large glass windows that line the walls of the alcove. The fence design, colour and visual stature meld well with the overall appearance of the 32' wide facade's walls alcove and awnings. It gives some visual weight to offset the very wide header that spans the full width of the alcove. The height of the Posts and pickets is approx 3:1 ratio of alcove coffered ceiling height to fence height.



Installed gate- 170 Liberty Street NE



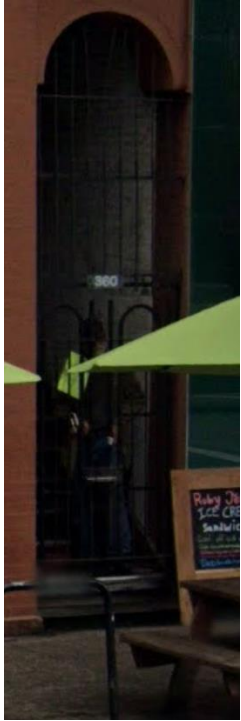
Fence / GATE DESIGN / DIMENSION

- SIDEWALK -

170 LIBERTY ST NE



248 Commercial Street NE



360 State Street



381 State Street



Rear of 447 State Street (fronting the alley)