

★ **Roll Call Number**

Agenda Item Number

43

Date May 5, 2008

WHEREAS, on April 21, 2008 by Roll Call No. 08-668 it was duly resolved by the City Council that the City Plan and Zoning Commission's recommendation for approval of amendments to Municipal Code of the City of Des Moines Section 134-1296 to provide standards for public utility cabinets located within a front yard, be set down for hearing on May 5, 2008 at 5:00 p.m. in the Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on April 24, 2008; and


WHEREAS, in accordance with the notice, those interested in the proposal amendments, for and against, have been given the opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Des Moines, Iowa:

That upon consideration of the facts, statements of interested persons and arguments of Council, the objections to the proposed amendments to Section 134-1296 of the Municipal Code are hereby overruled, and the hearing is closed.

Moved by _____ to adopt.

APPROVED AS TO FORM:



 Michael F. Kelley
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLISSIS				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

Date April 21, 2008
 Agenda Item 28
 Roll Call # 081068
 43

April 21, 2008

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held April 3, 2008, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty		X		
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier	X			
Brian Millard		X		
Mike Simonson	X			
Kent Sovern	X			
Tim Urban				X
Marc Wallace	X			



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 602 ROBERT D. RAY DRIVE
 DES MOINES, IOWA 50309-1881
 (515) 283-4182

ALL-AMERICA CITY
 1949, 1976, 1981
 2003

APPROVAL of a request from Qwest Communications represented by Carroll Wheaton (regional manager) for a Zoning Ordinance text amendment revising Section 134-1296 to provide standards for public franchise utility cabinets located within a front yard. (10-2008-5.03)

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the proposed amendments to the Zoning Ordinance.

STAFF REPORT

I. GENERAL INFORMATION

Qwest Communications has requested a text amendment to allow utility cabinets and boxes or groupings of utility cabinets and boxes within the required front yard. Based upon the current definition of a "yard" in the Zoning Ordinance, such cabinets must be 36-inches or less in height. This regulation has historically been interpreted such that no single dimension of the utility cabinet (height, width, or depth) may exceed 36-inches.

Pursuant to Exhibit "A", the Regulation and Ordinance Committee has recommended an amendment to Section 134-1296 of the Zoning Ordinance to exempt public franchise utility cabinets from the 36-inch dimensional limitation, subject to the following restrictions:

- The exemption is applicable in Residential and Commercial zoning districts, or a portion of a PUD district or PBP district designated for residential or commercial uses, but excludes properties that are located in the R-HD District, a designated local historic district or on any property designated as a local landmark.
- No dimension of an individual cabinet may exceed 55-inches, excluding any required utility meters.
- The maximum outer dimension of any area or pad containing a grouping of utility cabinets on a single property shall not exceed a dimension of 4-feet wide (parallel to the front lot line) by 8-feet deep (perpendicular to the front lot line).
- Cabinet groupings on the same block face must be separated by at least 300-feet in Residential districts and 100-feet in Commercial districts.
- Cabinets must be setback at least 5-feet from any lot line and any public right-of-way.
- Any grouping of cabinets or boxes on a single property must be placed in an orderly and sequential arrangement as approved by the Zoning Enforcement Officer.
- All utility cabinets and boxes on a single property must have a common color as approved by the Zoning Enforcement Officer.
- Any utility meter mounted to the exterior of a cabinet or box shall be screened from public view as approved by the Zoning Enforcement Officer.
- Any cabinet with a dimension greater than 55-inches is subject to the obtainment of a "Variance" from the Zoning Board of Adjustment.

II. ADDITIONAL APPLICABLE INFORMATION

Qwest originally requested that cabinets with a dimension of up to 70-inches be allowed in the front yard. The Regulation and Ordinance Committee recommended the 55-inch dimensional limit on the basis that it is roughly equivalent to obtaining an "Exception" level of relief to the current 36-inch limitation from the Zoning Board of Adjustment. Cabinets with any dimension greater than 55-inches could not be located in a front yard but could be located in a rear yard. The Committee was emphatic that an "Exception" level of relief to the 55-inch limitation should be prohibited.

SUMMARY OF DISCUSSION

Mike Ludwig: Presented staff report and recommendation as well as the requested text amendments.

Dann Flaherty: Suggested 5' setback for every "x" feet of roadway. Expressed concern for University Avenue because of how narrow the right-of-way is.

Mike Ludwig: Clarified it is a 5' setback behind the sidewalk. A recommendation for additional setback can be considered.

Carroll Wheaton, 8505 NW 69th Street, Johnston, Iowa, 2103 E. University Avenue: Noted Qwest is not a franchised utility company, which is one concern they have with the terms of the ordinance. Explained Qwest was going to increase their Broadband but could not reveal specific locations because of competition. Noted the maximum 55" dimension would work for the boxes. Their largest cabinet is 53" tall and 43" wide. Qwest concerns are moving the cabinets that are already placed and the cost. For new installations they do not have a problem with the ordinance.

Kaye Lozier: Asked if there would be other cabinets all over, not just Qwest.

78
43

Larry Hulse: Affirmed and noted staff spent a lot of time drawing up the map. Noted the suburbs will be wrestling with the same concerns.

Carroll Wheaton: Noted they do not have as many cabinets and there were only a handful of the very large cabinets.

Marc Wallace: Asked how much power the cabinets would require. Suggested there could be a better design with solar energy or something. Suggested it could help Qwest reduce their consumption issues.

Brian Millard: Asked if the City would be preventing the opportunity for getting higher technology later or if they need more space since there are to be no exceptions regardless to the area or how much use there is.

Mike Ludwig: Explained the way the ordinance is written only prevents the Board of Adjustment from granting an exception to the requirement, but they can still consider a variance for the property. The applicant could still seek a variance if expansion were necessary due to technological changes.

Larry Hulse: Noted technology always jumps ahead of the ordinances and it was decided to stay with the smallest that would work for now. It's possible the equipment could go smaller instead of larger. Staff is trying to consider the balance of the aesthetics and providing technology to the citizens.

Fran Koontz: Asked if the ordinance requires the applicant to take the old box out and dispose of it if the technology changes and a new box is required.

Carroll Wheaton: Noted a larger cabinet would feed a lot more customers, but if it is necessary, they would remove the old box. Noted there is a potential that they would have to make the cabinet double-sided but they cannot go over their easement.

Mike Ludwig: Noted they submitted 7 cabinet designs but the ordinance eliminated three of them from being used in front yards. To use them they would have to go to the rear yards.

Jeffrey Johannsen: Suggested a round box to access from different angles.

Carroll Wheaton: Noted they used to make those but they don't anymore. The timing of the project is what is limiting him. There would be an added expense.

Jeffrey Johannsen: Asked how large of an area one cabinet is servicing.

Carroll Wheaton: Explained there are 30-40 sites currently in northwest Des Moines.

Bruce Heilman: Noted there was a lot of discussion on the size and the limit was set so that if or when technology changes if the size increases they wanted the request to return to the Commission.

Carroll Wheaton: Noted they do rear lots, as well, not just front yards. In the newer developments they try to find the best locations for aesthetics, and ease of access for the technicians.

Greg Jones: Noted one of the worst things was the position of the meter and R&O wanted to make sure it is at the rear. Do not want Des Moines to end up with an inferior product compared to the suburban areas.

JoAnne Corigliano: Noted the boxes are aesthetically challenged and asked if they could be screened.

Bruce Heilman: Noted the R&O discussed landscaping and fencing, both of which can create bulk and draw more attention to them.

Mike Ludwig: Noted having fencing would be more intrusive because it would have to be larger than the 4x8 area to allow access. He wanted to make sure there were no provisions in the leases with the property owners to prevent them from placing landscaping to screen the cabinets if they want to as long it doesn't prevent access. Staff did not want to include it in the ordinance as a zoning requirement because then enforcement would be required if the landscaping were not kept up.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

David Cupp: Moved staff recommendation.

Bruce Heilman: Noted R&O did not discuss public franchise. Explained Qwest is a private company, they negotiate. They have to have a franchise vote periodically. Explained he is in favor of Des Moines having access to the latest high speed services but noted it may not just be DSL service. A 4x8 dumpster would never be allowed in a front yard setback and noted it could become a problem if other businesses were to approach the City to put their equipment in the front yard setbacks.

Dann Flaherty: Offered a friendly amendment to have a formula figured out for larger streets to ensure they are not too close to the street; suggested there needs to be a provision such as 1' for every 10' over 32'.

Mike Ludwig: Indicated the liability potential is in existence today in the right-of-ways.

Bruce Heilman: Would not support the amendment. Qwest will not put the boxes in harm's way to the best of their knowledge. There is a provision in the ordinance that they are not to obstruct traffic and a "minimum of 5'" and he would prefer to leave it up to Qwest to protect their investment.

Mike Ludwig: Noted it has to be outside any vision clearance for driveway. Recommended keeping the language and suggested Qwest can provide documentation that they are not in compliance with the ordinance if that's the case.

Mike Simonson: Suggested R&O has done a good job dealing with existing easements. He was concerned with how the city handles utilities overall. In Europe there are no overhead lines or transformer boxes; everything is underground, which is expensive. All utility companies operate within their own profit margins and have their own objectives. Noted everything can be buried underground, but there is a cost associated with that.

Dann Flaherty: Withdrew his amendment.

Motion passed 12-2 (Dann Flaherty & Brian Millard were in opposition)

Respectfully submitted,



Michael G. Ludwig, AICP
Planning Administrator

MGL:dfa

cc: File

28
43



Michael Sadler
Director-Policy and Law
Qwest
925 High Street
Des Moines, IA 50309
May 2, 2008

Date _____

Agenda Item 43

Roll Call # _____

Des Moines City Council
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309

Dear Council Member:

I am writing to follow up on my e-mail of April 25, which alerted you to the announcement of Qwest's plans to deploy Fiber to the Neighborhood (FTTN) technology in Iowa, particularly to sections of Des Moines.

The Des Moines deployment is in jeopardy due to proposed ordinance restrictions that will not allow for a safe and cost effective placement of needed equipment. Qwest has requested a text amendment to Zoning Ordinance 134-1296, providing for public franchise utility cabinets located within a front yard.

Qwest has worked for several weeks with City Staff, the Regulation and Ordinance committee and the Planning and Zoning Commission. We appreciate all the time, effort and patience these groups have spent with us to find a mutually workable solution. After much discussion, Staff has made a recommendation that falls short of Qwest's needs. Staff recommends restrictions involving the placement of our cabinets that will prevent Qwest from deploying this new technology to Des Moines residents and small businesses.

Specifically, Qwest finds restrictions on cabinet heights, method of placement and color of cabinets to be unworkable. There is an agenda item (#43) on the May 5 Council agenda to discuss the proposed text amendment. Qwest will at that time respectfully ask for Council to revise three items, as follows:

1. To allow for cabinet heights up to 70"
2. To allow for perpendicular or parallel placements of cabinets in the public right of way.
3. To strike language that requires a common color on all utility cabinets and boxes on a single property.

May 2, 2008
Page 2

This issue is time critical as we are well into our construction season and failure to begin our build out plans for FTTN in Des Moines in the very near future will cause the planned investment to be utilized in other cities on our deployment schedule for 2008.

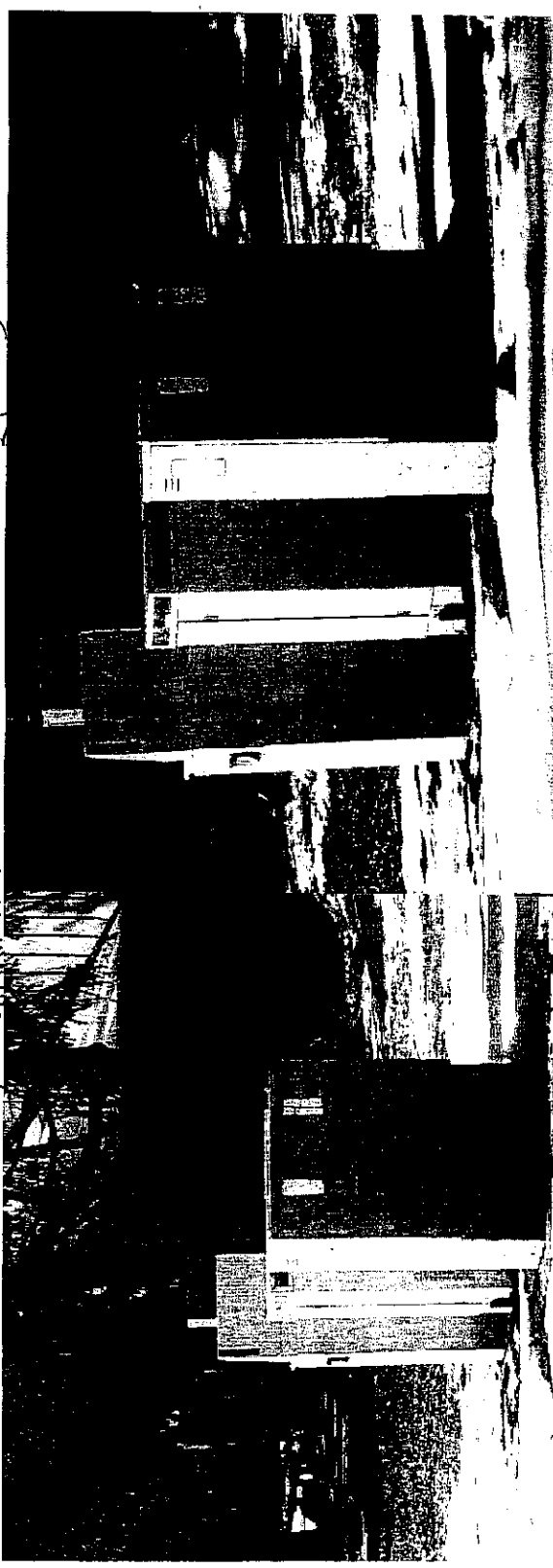
Qwest appreciates your swift consideration of our request. Thank you for your time.

I can be reached at 286-8121 or via e-mail, michael.sadler@qwest.com

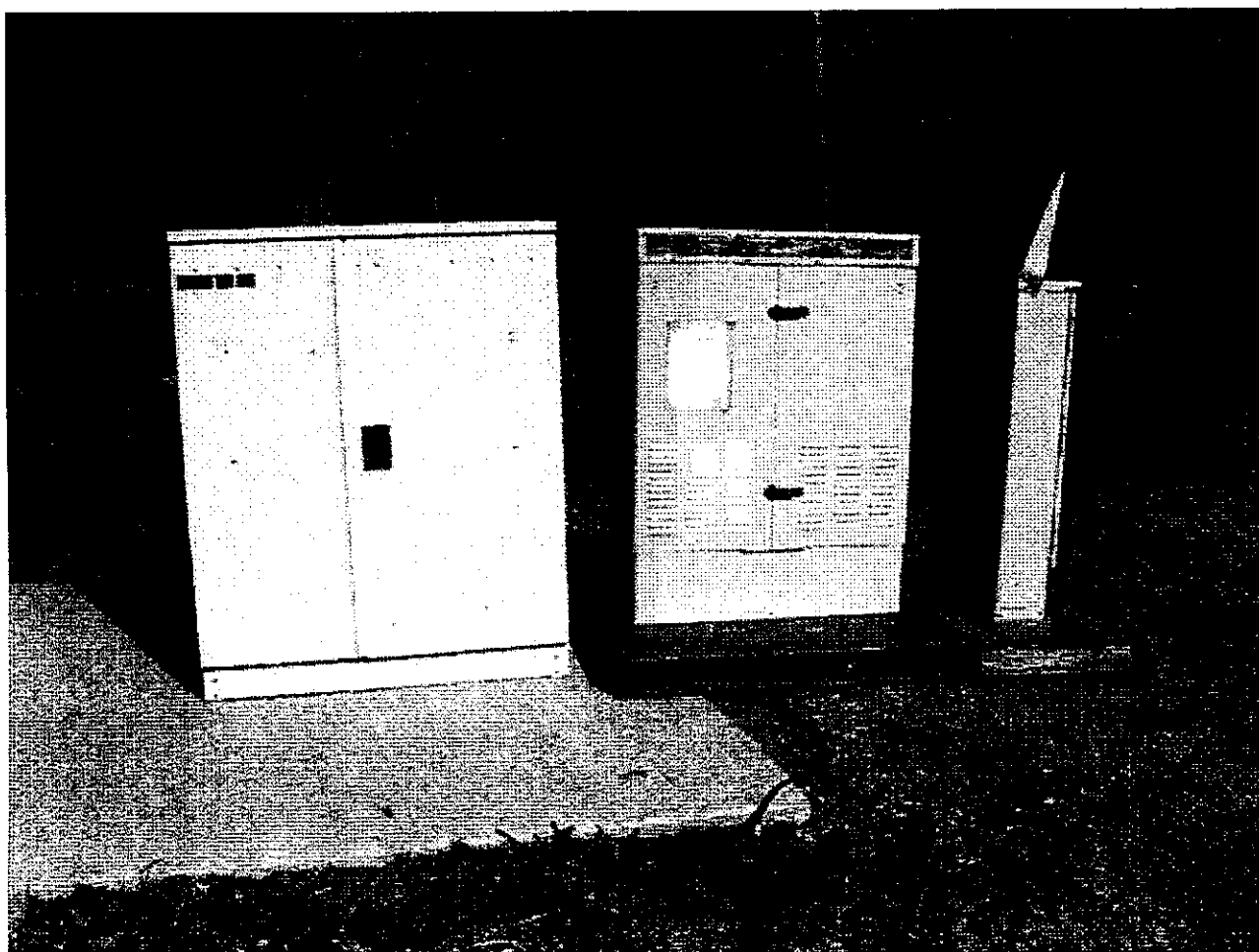
Sincerely,

Michael Sadler

Preferred cabinet alignment behind sidewalk (recommended by P&Z)



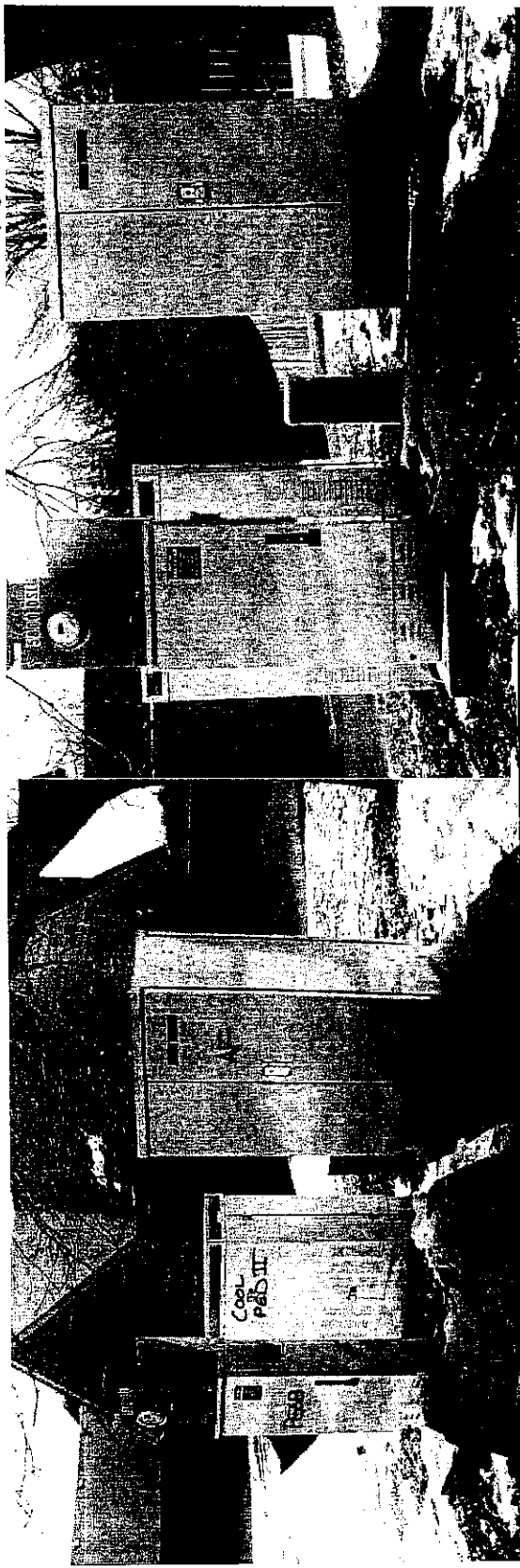
5401 Ashworth (side)



(4' x 8'8" with doors open)

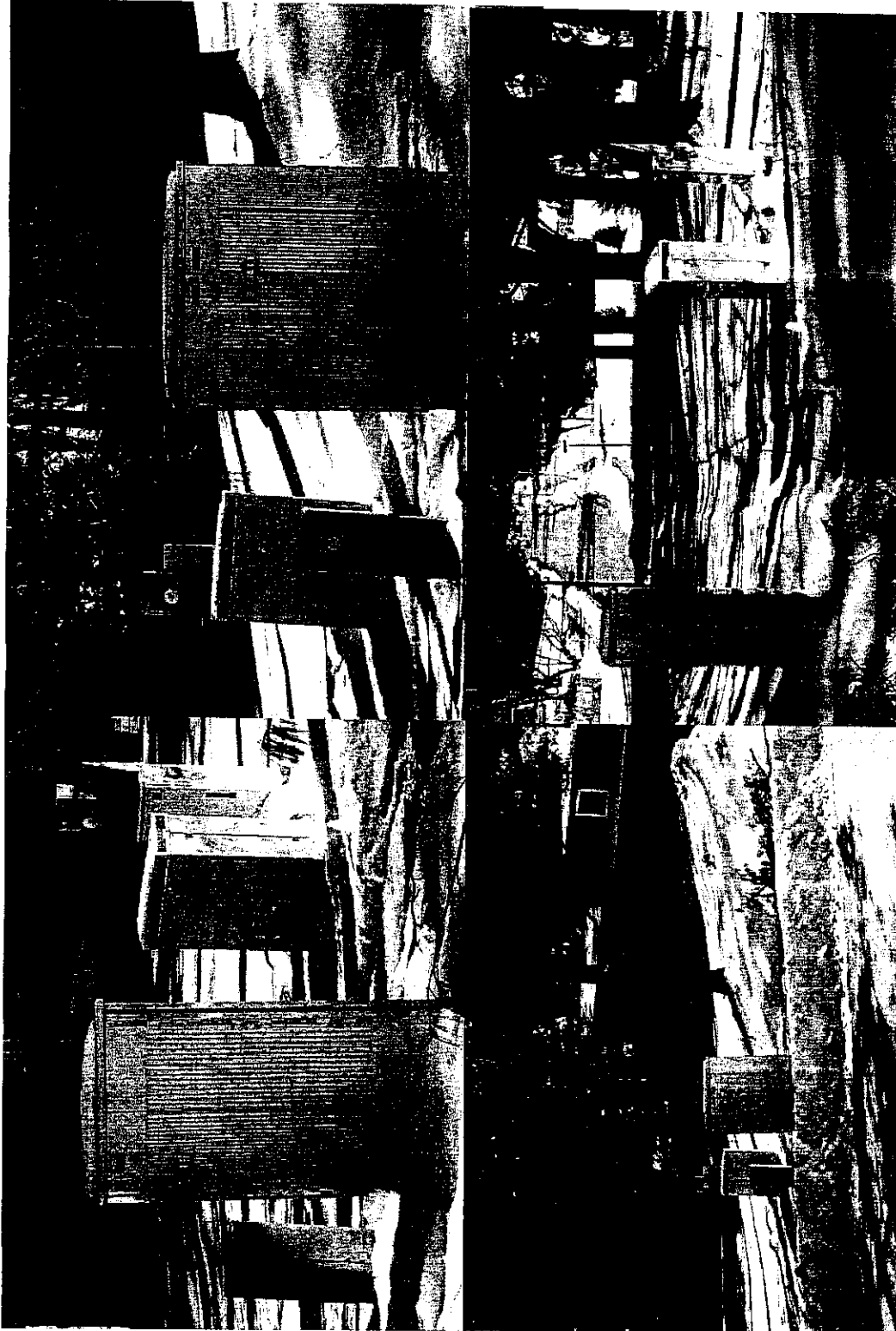
requested cabinet alignment by west
~~reference~~
adjoining sidewalk or in public right-of-way

EXAMPLES OF INSTALLATIONS
IN METRO



714 5845

MORE EXAMPLES
IN METRO



4700 Aspen