

**CITY OF ST. HELENS PLANNING DEPARTMENT  
STAFF REPORT  
Variance V.2.22**

**DATE:** March 1, 2022  
**TO:** Planning Commission  
**FROM:** Jennifer Dimsho, AICP, Associate Planner  
Jacob A. Graichen, AICP, City Planner

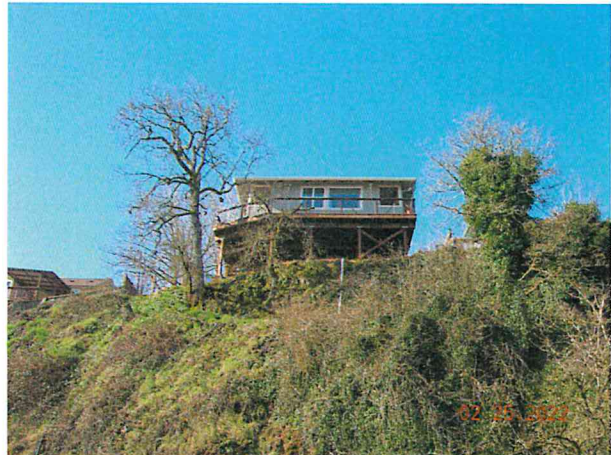
**APPLICANT:** Jay Echternach  
**OWNER:** Jeanette Nelson

**ZONING:** Apartment Residential, AR  
**LOCATION:** 434 S. 2<sup>nd</sup> Street  
**PROPOSAL:** Allow a reduced rear yard (setback) for an existing deck

**SITE INFORMATION / BACKGROUND**

In 2008, a detached single-family dwelling on the property was approved for demolition. Then, Building Permit No. 10840 approved a new detached single-family in its place with a similar footprint. It was approved with a rear setback of 10' and reviewed with land use file SDRsv.1.08 for Site Development Review (Scenic Resource Review) because it was new development on S. 2<sup>nd</sup> Street over 15' in height.

The applicant submitted a building permit in February 2022 for work which was unrelated to the deck which is the subject of the variance. The site plan showed a deck structure which did not comply with the approved 10' rear setback from 2008. The site plan submitted reflected a 0' setback from the abutting City-owned property below. This is what the Commission is reviewing with this Variance application.



*Left: Front of subject property*

*Right: Back of subject property from City-owned property below deck*

## **PUBLIC HEARING & NOTICE**

**Public hearing** before the Planning Commission: March 8, 2022

**Notice** of this proposal was sent to surrounding property owners within 100 feet of the subject property on February 11, 2022 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on February 16, 2022 in The Chronicle newspaper.

## **APPLICATION COMPLETENESS**

The 120-day rule (ORS 227.178) for final action for this land use decision is June 4, 2022.

## **AGENCY REFERRALS & COMMENTS**

As of the date of this staff report, no relevant agency comments have been received.

## **APPLICABLE CRITERIA, ANALYSIS & FINDINGS**

### **CRITERIA:**

#### **SHMC 17.108.050 (1) – Criteria for granting a Variance**

- (a) The proposed variance will not be significantly detrimental in its consequence to the overall purposes of this code, be in conflict with the applicable policies of the comprehensive plan, to any other applicable policies and standards of this code, and be significantly detrimental in its consequence to other properties in the same zoning district or vicinity;
- (b) There are special circumstances that exist which are peculiar to the lot size or shape, topography or other circumstances over which the applicant has no control, and which are not applicable to other properties in the same zoning district;
- (c) The use proposed will be the same as permitted under this code and city standards will be maintained to the greatest extent that is reasonably possible while permitting some economic use of the land;
- (d) Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic landforms, or parks, will not be adversely affected any more than would occur if the development were located as specified in the code; and
- (e) The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.

The Commission needs to find all these criteria **(a)** – **(e)** are met in order to approve the variance

### **FINDINGS:**

**(a) This criterion requires a finding that the variance will not be detrimental.**

- See applicant's narrative.



- Staff comments: Within the vicinity of the subject property, there are only two properties in the same block on the east side of S. 2<sup>nd</sup> Street. The property to the north has a rear deck which extends approximately the same distance (see photos below), which means they have a similar reduced rear yard. The property to the south, which is a much smaller lot, also has a deck that has a similarly reduced rear setback.
- This variance would have no visual impact to the homes on the west side of S. 2<sup>nd</sup> Street.
- Given the two abutting properties have similarly reduced rear yards, and the lack of a visual impact to properties along S. 2<sup>nd</sup> Street, staff feels the proposed variance would not be detrimental to other properties within the vicinity and in the same zoning district.



*Left: From deck looking north at neighbor's deck. Note the similar reduced rear setback. Right: From deck looking south at neighbor's deck. Not in line with subject property deck because lot is smaller, but has a similar reduced rear setback.*

**(b) The criterion requires a finding that there are special and unique circumstances.**

- See applicant's narrative.
- Staff comments: Within the Houlton Business District zoning and the Riverfront District, Plaza subdistrict standards, there is a section which helps frame steep topography as it relates to setbacks. SHMC 17.32.172 (4) (f) states:

Where the plaza subdistrict abuts a residential zone and the uses are more than 30 feet above the proposed commercial use, then the height of the topography counts as part of the setback, e.g., 35-foot bluff behind a commercial building is same as 35-foot setback on that side.

- While this section does not apply to the Apartment Residential zone of the subject property, it does give a way for the Commission to consider great differences in topography and how they apply to yard (setback) requirements. The purpose of yard (setback) requirements are to provide adequate air, light and space between properties,

which is particularly important between residential and non-residential uses. In this case, while there may not be a horizontal separation between the structure and the property line, there is a substantial vertical separation.

- The grade of the subject property is over 60 feet above the City-owned property below. This is clearly a special and unique circumstances which is not applicable to other properties within the same Apartment Residential zoning district.

**(c) This criterion prohibits a use variance and requires a finding that the applicable standards are maintained to the greatest extent that is reasonably possible.**

- See applicant's narrative.
- Staff comment: This is not a use variance.

**(d) This criterion requires a finding that existing physical and natural systems will not be adversely affected as a result of the requested Variance.**

- See applicant's narrative.
- Staff comment: There are no known impacts to existing physical and natural systems as a result of the rear deck setback reduction.

**(e) This criterion requires a finding that the variance issue is not self-imposed and that the variance is the minimum necessary to alleviate the hardship.**

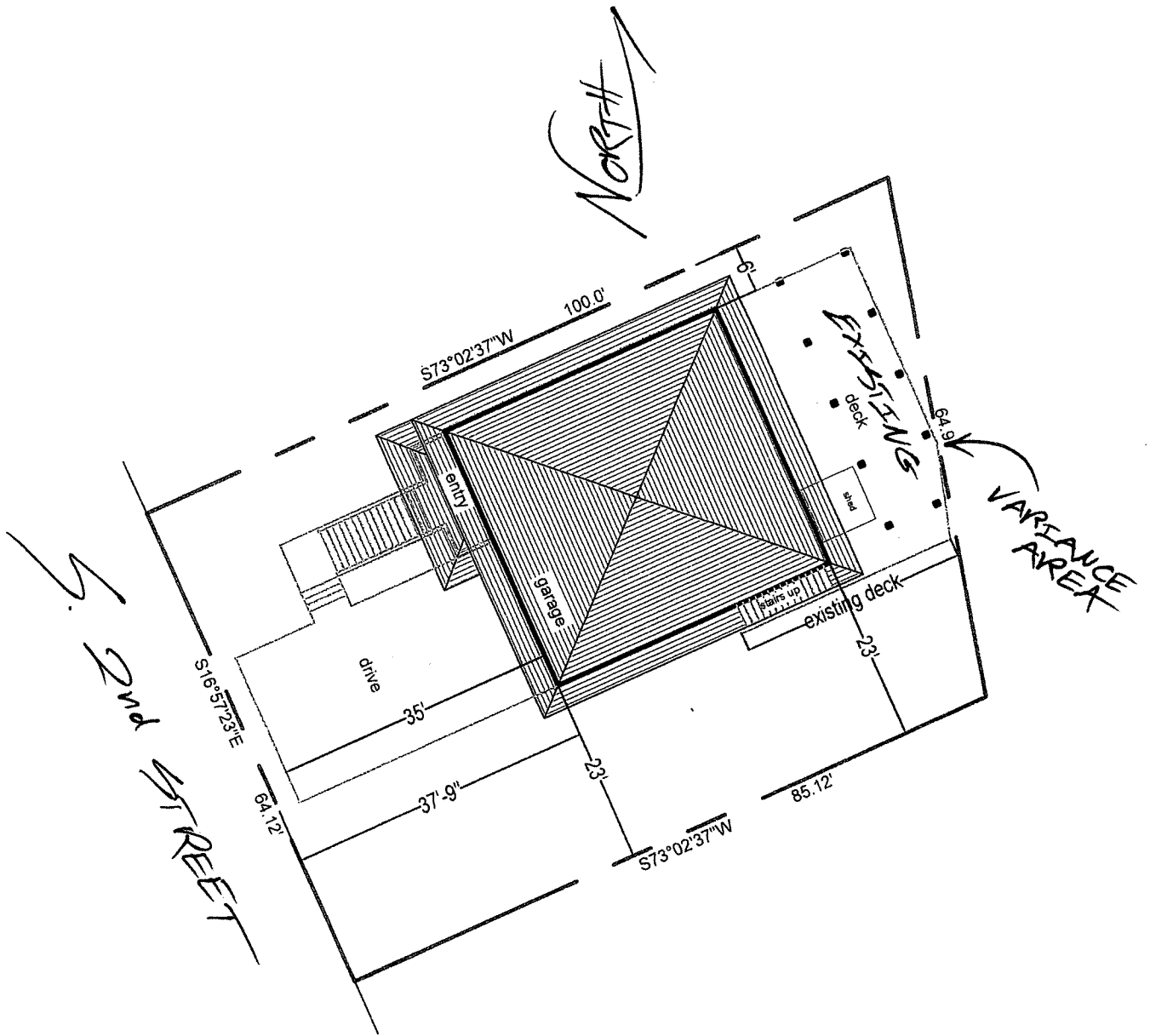
- See applicant's narrative.
- Staff comments: The deck was existing when the applicant purchased the home in November 2021. Approving the variance will bring the home into compliance.
- There are no proposed modifications to the deck with this variance.
- Staff feels this variance is not self-imposed and is the minimum necessary to alleviate the hardship.

### CONCLUSION & RECOMMENDATION

**Based upon the facts and findings herein, staff recommends approval of this Variance with the following conditions:**

1. This Variance approval is valid for a limited time pursuant to SHMC 17.108.040.
2. Owner/applicant and their successors are still responsible to comply with the City Development Code (SHMC Title 17), except for the Variance(s) granted herein.

**Attachments:** *Site Plan, Applicant Narrative*



434 S.  
2ND STREET

17.108.050- criteria for granting a Variance in St. Helens;

A- proposed variance will not be significantly detrimental in its consequences to the overall purpose of the code-

- Existing 20' wide deck is on the rear property line and adds value to the house and the view below from the St. Helens waterfront

B- There are special circumstances that exist which are particular to the lot size, shape or topography which the home owner has no control-

- Lot line is on the cliff edge, 65' above the St. Helens waterfront and cannot be moved back

D- Existing physical and natural systems will not be adversely affected any more than would occur if the development followed the existing city code-

- Back cliff is a natural green belt covered in trees, plants and greenery. The rear deck attached to the house does not broach or affect this in anyway

E- The hardship is not self imposed and the variance requested is the minimum variance which would alleviate the hardship

- The deck was existing when we bought the house in November 2021. It adds tremendous value to the house and cannot be moved or changed without major remodeling. Affords a spectacular view of the waterfront from above and is unique and attractive to viewers below.

Our building permit request is to finish the existing concrete basement and will in no way change the existing structure of the house (interior build out) and will not affect any current lot lines or encroach on our neighbors (lot lines or waterfront views).