

**CITY OF ST. HELENS PLANNING DEPARTMENT
STAFF REPORT**

Appeal AP.1.25 – AP.3.25 of the Planning Commission’s denial of Variances V.1.25 – V.3.25

DATE: April 8, 2025
TO: City Council
FROM: Jacob A. Graichen, AICP, City Planner

APPLICANT: Kevin & Katherine McCarter (also the appellant)
OWNER: same as applicant

ZONING: Moderate Residential, R7
LOCATION: 35732 Hankey Road; 4N1W-4AB-100
PROPOSAL: Variances (x3) for reduced side yard (setback), reduced lot size, and reduced lot width for a potential future land partition application

SITE INFORMATION / BACKGROUND

The Planning Commission considered this matter at a February 11, 2025 public hearing and denied the Variances. The matter has been appealed to the City Council. The City Council may affirm, reverse, or modify the decision which is the subject of the appeal.

PUBLIC HEARING & NOTICE

Public hearing before the City Council: April 16, 2025

Notice of this proposal was sent to surrounding property owners within 100 feet of the subject property on March 27, 2025 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

Notice was published on April 4, 2025 in the Columbia County Spotlight newspaper.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

The applicant proposes three Variances to separate a shop building from the original dwelling on its own lot. This proposal is not a land partition, but Variances that could be used with a land partition. This would result in a parcel that is less than the normal size and width allowed. It will also result in both the shop and dwelling being closer to the new property line than normally allowed.

VARIANCE—V.1.25 REDUCED SIDE YARD (SETBACK)

DISCUSSION:

In the R7 zone, the minimum side yard (setback) is 7 feet. Per the applicant, there is about 8 feet between the existing detached single-family dwelling (to be on one parcel) and shop building (to

be on another parcel). This is the distance identified on the plans for the building permit to build the shop in 2015. Proposed yards proposed are approximately 50" (4'2") from the dwelling and new property line and 46" (3'10") from the shop to the property line.

None of the city's residential zoning districts have side yards (setbacks) less than 5'. 5' is the side yard for detached single-family dwellings and duplexes in the R5 and AR zones, the two highest density residential zones of St. Helens. Further, the R5 and AR zones allows attached single-family dwellings and multifamily development (3 or more dwelling units on a lot), but the R7 and R10 zones do not. In other words, close proximity of dwelling units is contemplated in the AR and R5 zones, but not the subject property or the vast surrounding area. In fact, the closest higher residential zoning is approximately 1,700 feet to the SE (MU zone) and about 2,000 feet to the SE (AR zone) and SW (R5 zone). See **attached** map.

These setbacks do not include architectural extensions such as eaves. Viewing the property via aerial photography, there appears to be less than 6 between roof lines. This means distance of building features to the proposed property line may be less than 3 feet (if not modified). This is supported by the numbers provided by the applicant indicating a proposed 46" (3'10") yard (setback) from the shop building to the proposed property line and that the shop has 13.75" (1'1.75") eaves. Ultimately, these numbers would need to be surveyor certified. This issue has a couple of implications:

1. Building code issues. Such close proximity to property lines may have building code issues such as fire rated construction requirements.
2. SHMC 17.64.050(6): *When there is a minimum yard requirement of the zoning district, no building, structure, or portion thereof, regardless of size and whether or not a permit is required for its placement, shall be placed closer than three feet to a property line or to another building or structure.*

So, any Building Code issue would need to be addressed and this Variance would need to include an exception to 17.64.050(6).

The above assumes both the detached single-family dwelling and shop are detached. Currently, they are not lawfully detached. To explain, the dwelling has been in place for a long time; per County Assessor records it was built in 1895. However, the shop is much newer.

The shop's building permit was number 13222 from around 2015. I produced a memo for this building permit (**attached**), which includes conditions about the building being connected to the dwelling and it not being a dwelling. The buildings were attached in order for the building permit to be approved and this was shown on the site plan. Based on the aerial photography below the attachment was probably removed in 2021 or 2022.



Above: June 2021 Google Earth aerial image. Note the brown roof color and breezeway connecting the grey roofed shop building. The attachment (covered breezeway) was an integrated part of the roof.

Right: City of St. Helens April 2022 aerial photo. Roof had changed for the original home and the breezeway and any roof integration has been removed. This contradicts prior permitting and current city law.



There is no accessory structure permit, which would be required for the budling to be detached. However, the maximum gross floor area for a detached accessory structure is 600 square feet. The shop is 30' x 30' and two floors with a total gross floor area of 1,800 square feet or 300% larger than normally allowed. There is no Variance to allow this. These rules have been in place long before 2015 and still apply.

In 2015 in the R7 zone, the only way to get a second dwelling unit on a lot was via Conditional Use Permit for an Auxiliary Dwelling Unit or Duplex. No such permit was ever pursued.

This matter needs to be resolved. Current law allows duplexes and a second detached dwelling unit as outright permitting use. So, can the shop be permitted as a second detached dwelling? There are a couple of things to consider:

First, Ordinance No. 3264 (2021) was when the duplex and second detached dwelling rules were put in place. At this time an interior yard (i.e., distances between buildings on the same lot) was established for the R7 zone at 7 feet. With the current 8' between buildings, the 7' standard would be met.

Second, also created by Ordinance No. 3264 is SHMC 17.104.040(5):

(5) Conversion of Accessory Structures to Second Detached Single-Family Dwellings. A lawfully existing accessory structure that does not comply with a yard or height requirement or lot coverage restriction (including the sum of all other buildings and structures) on a lot developed with one detached single-family dwelling, may be converted to a second detached single-family dwelling on the same lot if:

- (a) A second detached dwelling unit is allowed by the zoning district;
- (b) The conversion does not increase the nonconforming yard, height, or lot coverage;
- (c) Any yard associated with the accessory structure is not the result of the exception pursuant to SHMC 17.64.040(3) or any applicable laws prior to the ordinance codified in this chapter that allowed yard exceptions for accessory structures;
- (d) The accessory structure does not encroach upon any easements or any public utility or other infrastructure;
- (e) The location of the accessory structure does not interfere with future street extensions or increases in right-of-way width based on adopted plans and standards;
- (f) The minimum off-street parking requirements can be met (required if not); and
- (g) It is not located in any of the following areas:
 - (i) Resource or resources per Chapter 17.40 SHMC;
 - (ii) Protection zones per Chapter 17.40 SHMC; or
 - (iii) Area of special flood hazard per Chapter 17.46 SHMC.

The shop is not a lawfully existing accessory structure. And the interior yard appears to be ok, but with a property line between the dwelling and shop, the normal side yard will not be met. This exception doesn't allow the property line as proposed, but the Variance potentially could, if approved.

STAFF RECOMMENDATION: The Planning Commission discussed how having two detached dwellings on a lot is normal now ("the new normal"). So, should that alone be a basis to allow land division? The city needs to be very careful about setting a precedence. Just because there are two dwellings, doesn't mean a lot should be divided and, in this case, technically, the shop is not a dwelling or a lawfully detached building. Further, the side setbacks proposed between two buildings will be less than normal for even high density zoning.

VARIANCE—V.2.25 REDUCED LOT SIZE

DISCUSSION:

In the R7 zone, the minimum lot size is 7,000 sq. ft. for detached single-family dwellings. Placing a property line between the detached single-family dwelling and the shop will result in the parcel with the shop less than 7,000 square feet. The applicant notes approximately 5,100 square feet. Final figures would need to be surveyor certified.

This Variance would create a lot more akin to R5 zoned size. The closest higher residential zoning is approximately 1,700 feet to the SE (MU zone) and about 2,000 feet to the SE (AR zone) and SW (R5 zone).

The Council could consider that development on the immediate opposite side of Hankey Road from the subject property is not anticipated in the future given the steep slope, which can promote a feeling of air, light and space more akin to R7, though because each new lot can include two homes, this would increase density on a hill (approx. 7% slope along the subject property) with quarry related truck traffic.

STAFF RECOMMENDATION: Creating a R5 sized lot nowhere near zoning that would otherwise allow such small size along Hankey Road with its slope and quarry traffic is a cause of concern. If the lot was vacant, maybe that would help, but including two large buildings in close proximity to one another (that was designed to comply with code as one structure) forcing a yard (setback) also contrary to R7 standards makes this a concerning approval. Having two homes on a lot is the new normal and should not be a basis for division.

VARIANCE—V.3.25 REDUCED LOT WIDTH

DISCUSSION:

In the R7 zone, there are a couple of lot width standards: lot width at the street (50') and building line (60'). So normally, an R7 lot could have 50' of street abutment (frontage) but would need to widen to 60' back from the street. In this example, the lot width at the street is anticipated to meet the minimum 50' standard, but the lot narrows instead of widening.

STAFF RECOMMENDATION: The proposed narrowness of the lot is more akin to R5 zoning where the lot width at the street and building line are 50 feet. This creates the type of lot, dimensionally, not contemplated in the R7 zone. As noted above, higher density residential zoning is not near this area.

VARIANCE—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.

DISCUSSION: The Council needs to find all these criteria **(a)** – **(e)** are met in order to approve the three (3) variances. Given the Commission denial and staff thoughts above, below are findings for denial that the Council may adopt. If the Council feels approval is possible we can modify findings and conditions as needed. However, all Variances are needed for a subsequent partition proposal, so each Variance is dependent on the other to be of use and all three need to be approved; otherwise denial across the board is necessary.

FINDINGS:

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

This proposal will be significantly detrimental in its consequence to the overall purposes of this code. All three Variances propose development patterns (reduced yards) and lot size and dimension contrary to the intent on the R7 zone. The proposed yards, lot size and lot width are those of a higher density zoning which contemplates overall less air, light and space, and more allowed dwelling units to be clustered closer together. Moreover, the subject property is within a vast area of R7/R10 zoning with the closest higher residential zoning is approximately 1,700 feet to the SE (MU zone) and about 2,000 feet to the SE (AR zone) and SW (R5 zone).

This proposal will be significantly detrimental in its consequence to the overall purposes of the Comprehensive Plan. The Comprehensive Plan designation of the property is Suburban Residential, SR. The goal of this designation is:

To establish conditions which will maintain attractive, convenient residential living typical of moderate density semi-suburban areas.

A policy that advances this is SHMC 19.12.030(3), where the zoning possible under the SR Comprehensive Plan Designation is R7 and R10.

As a contrast, the city's higher density residential zonings, R5 and AR, are possible under the General Residential, GR Comprehensive Plan designation. Like the zoning noted above, the GR designation is approximately 2,000' away. The Goal of the GR designation is:

To create conditions suitable for higher concentrations of people in proximity to public services, shopping, transportation and other conveniences.

The subject property and area surrounding it are not intended for higher concentrations of people.

Because in St. Helens two detached homes are allowed on any residential lot that allows a detached single-family dwelling, allowing division of a lot with exceptions to rules (i.e., the proposed Variances) to separate a second detached dwelling disregards this new normal and sets a precedence contrary to the intent of the code. As such, approving these Variances would be detrimental in its consequence to the overall purposes of this code.

The Council finds this criterion is not met.

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

There is nothing special or unique about the property that justifies creating reduced yards, or lot size and lot dimension not contemplated for individual lots in the R7 zone. The shop was never permitted as a detached structure and is in a state of violation.

Though not technically the current situation, two dwellings are allowed for this property, just like other residential properties that allow detached single-family dwellings. There is nothing unique about the potential for this property having two dwelling units to be basis for the Variances proposed.

One of the aspects the applicant notes is that “the old house had no garage and it appeared this [the shop building] would solve many problems.” Now the applicant wants to separate the shop building from the home via a land partition (the purposes of the Variances), contradicting their own statement.

The Council finds this criterion is not met.

(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.

The existing circumstances of the subject property is a detached single-family dwelling with what is suppose to be an attached two story addition, with no dwelling unit, that provides a garage amenity utilizing the sole abutting street access off Hankey Road. The subject property’s lot size is approximately 13,504 s.f. and less than twice the minimum size for the R7 zone.

The property is reasonably developed, if made lawful (the building addition issue and lack of attachment since 2021-2022), and there is no justification to create a new parcel that would otherwise not be allowed. In this case, especially because the detached single-family

dwelling and shop were never supposed to be detached; this proposal contradicts past permitting.

Moreover, because a duplex and two detached family dwellings are allowed on R7 zone lots, the land partition that these Variances may make possible, could result in the one current lawful dwelling turning into four. This is inappropriate based on undersized lots created outside of a planned development.

In addition, there is an existing retaining wall and porch stairs/landing which appear to cross onto the proposed property line and potential fire rating requirements per the Building Code. Existing development complicates any partition that these Variances support.

In regards to parking, a detached single family dwelling requires two off-street parking spaces that are supposed to be paved. For detached single family dwellings, off street parking is required to be on the same lot as the dwelling. In the applicant's narrative they note that "the old house had no garage and it appeared this [the shop building] would solve many problems." Now access is proposed on an adjacent separate property to access a gravel parking area that appears to be over 40' from the dwelling and is not visible within the boundary of subject property on the 2022 aerial photo in this report. Note area for parking or maneuvering of vehicles is supposed to be paved.

The Council finds this criterion is not met.

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

The close proximity of the buildings with a proposed property line in between creates a very narrow setback between the structures which creates less area to be able to effectively manage stormwater runoff. For example, there are currently rain drains from the existing dwelling that are directed towards the proposed property line and the natural slope of the property would create nuisance stormwater runoff between the properties.

There are a number of shared utilities (power, sewer, water) between the two structures which would have to be re-configured, or easements recorded prior to any partition which would create disparate ownership.

Creating lots smaller than normally allowed along Hankey Road promotes public hazard, because an R7 lot or parcel may have a duplex of two detached single-family dwellings, that can result in increased density and vehicle use of the site. Hankey Road is classified as a Collector Street per the city's Transportation Systems Plan. Along Collector Streets there is a driveway spacing requirement of 100' and in no case shall the design of a drive require of facilitate the backward movement or other maneuvering of a vehicle in a collector street.

The current driveway serving both the dwelling and shop was approved in 2015 via Access Variance V.4.15. The plan provided with this Variance was the attached shop. The current proposal contradicts the V.4.15 Variance plan because this access was intended to support

the dwelling and its attached building addition (i.e., not a detached building). Reducing the size of the lot that this drive supports with the potential of having two dwelling on the “shop parcel” does not align with what was approved for Access Variance V.4.15.

The Council finds this criterion is not met.

(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.

The current owner and applicant has created the situation at hand. In 2016 they did a Lot Line Adjustment that placed the lot line north of the detached single family dwelling, resulting in a lot less than 14,000 square feet in size. They created a lot that was not able to be divided under normal circumstances.

The Building Permit for the shop (Building Permit No. 13222) from 2015 included conditions about ensuring it was attached to the dwelling with a covered breezeway as per plans and that the shop could not constitute a dwelling unit. That is when the 8’ separation between buildings was established; it was not and has ever been permitted to be detached.

This proposal does not honor the circumstances presented to allow the driveway (i.e., Access Variance V.4.15).

The circumstances behind the Variances requests contradicts, a previous Variance, the Building Permitting associated with the shop and presents a situation that is more akin to high density zoning that is nowhere near the subject property.

There is no hardship. Even if the shop was a lawful detached structure and included a dwelling unit, which is the idea behind the applicant’s proposal, it is normal under St. Helens law to have two dwelling units on a lot in any residential zoning that allows detached single-family dwellings. There is no hardship to remedy and thus no Variance need in order for the owner to have reasonable economic use of their property, while still honoring the Development Code.

The Council finds this criterion is not met.

CONCLUSION & RECOMMENDATION

Based upon the facts and findings herein and the Planning Commission decision, staff recommends denial of the three proposed Variances.

If the Council wishes to consider approval, please refer to the recommended conditions of approval on the attached Planning Commission staff report. Also, the Council should consider if the Access Variance from 2015 is still valid; staff recommends that a new Access Variance based on the proposal be additional condition of approval and that the original Access Variance be null and void for the purpose of this proposal.

Attachment(s): October 20, 2015 memo regarding Building Permit No. 13222
Appeal City Staff Created Map (general information)
Appeal City Staff Created Map (distances from other zonings)
January 31, 2025 Planning Commission staff report including attachments:
 Photos attachment
 Site plan
 Applicant's narrative
 General aerial map



CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: Applicant/Owner/Contractor of Building Permit No. 13222
FROM: Jacob A. Graichen, AICP, City Planner
RE: Land use related conditions applicable to Building Permit No. 13222
DATE: October 20, 2015

The Hankey Road access (driveway approach) for the proposed addition to the existing single-family dwelling was approved by the Planning Commission via Variance V.4.15 (a street access variance).

One of the conditions of Variance V.4.15 reads:

- 1. Prior to final inspection for the proposed addition (allowed by a separate permitting process) to the dwelling or within one year of the date of this access variance approval, whichever occurs first, the existing driveway approach shall be replaced with standard curb/sidewalk.**

Note that the proposed driveway approach for the proposed building addition has been installed already. The existing driveway approach is north of the proposed one (and not shown on the plans). See file Variance V.4.15 for further details.

In addition, the following conditions apply to this permit:

- 2. Driveway shall be paved prior to final inspection/occupancy. Any change to the driveway design is subject to city review and approval prior to installation.**
- 3. This building shall be connected to the house (e.g., with covered breezeway as shown on the plans) in order to be legal. This cannot be a stand-alone building.**
- 4. No permanent cooking facilities shall be allowed in the proposed addition. No 220/240 volt outlet (or the equivalent) shall be allowed on the 2nd floor, except for closet/alcove for clothes dryer as shown on plans.**

This permit does not allow a second dwelling unit. Such would require separate land use approvals. The property is zoned R7. In the R7 zone duplexes and auxiliary dwelling units require a conditional use permit, which amongst other things, requires a public hearing before the Planning Commission.

The Development Code defines “dwelling unit” as follows: *one or more rooms designed for occupancy by one or more persons for living purposes providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.*

Note that the Building Code Definition of “dwelling unit” may differ from the City’s Development Code.

APPEAL AP.1.25 - AP.3.25 CITY STAFF CREATED MAP



April 2022 aerial photo.

0 15 30 60 US Feet



Parcel also owned by applicant.
Created by 2016 Lot Line Adjustment.

Long time existing access that provided access to the 1895 dwelling. This access was separated from the dwelling with the 2016 Lot Line Adjustment (and why a new driveway between the shop and Hankey Road was installed).

Proposed off-street parking area for 1895 dwelling (accessed via separate parcel).

HANKEY ROAD

Property line created by
2016 Lot Line Adjustment.

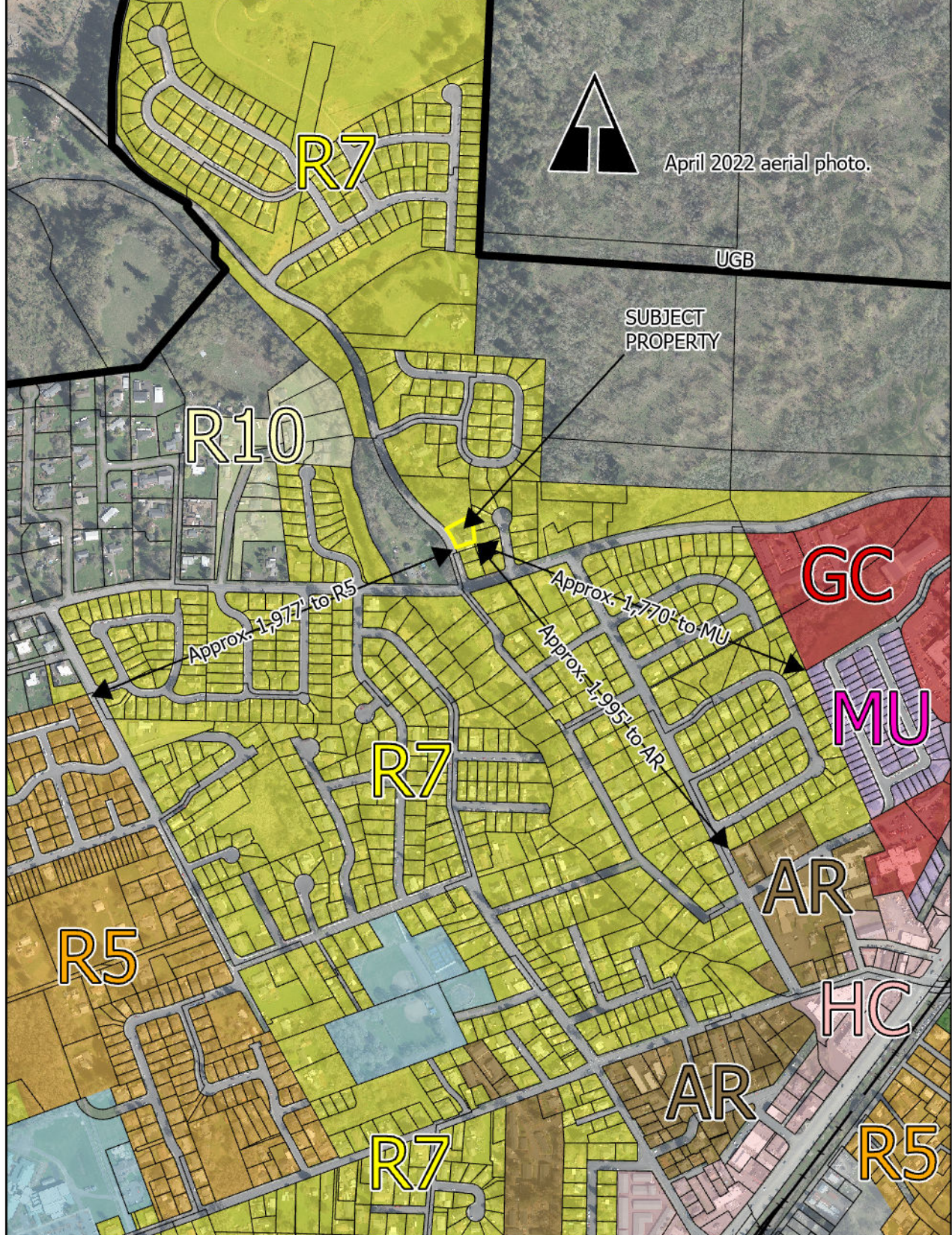
Detached single-family dwelling (1895)

Concept property line.

Driveway approved by 2015 Access Variance.

Attached garage/shop (2015).
Attachment unlawfully
removed 2021-2022.

APPEAL AP.1.25 - AP.3.25 CITY STAFF CREATED MAP
DISTANCE FROM HIGHER DENSITY RESIDENTIAL ZONING



CITY OF ST. HELENS PLANNING DEPARTMENT
STAFF REPORT
Variances V.1.25 – V.3.25

DATE: January 31, 2025
TO: Planning Commission
FROM: Jennifer Dimsho, AICP, Associate Planner

APPLICANT: Kevin & Katherine McCarter
OWNER: Same as applicant

ZONING: Moderate Residential, R7
LOCATION: 35732 Hankey Road; 4N1W-4AB-100
PROPOSAL: Variances (x3) for reduced side yard (setback), reduced lot size, and reduced lot width

SITE INFORMATION / BACKGROUND

The subject property is approximately 0.31 acres (13,504 sq. ft.) and developed with a detached-single-family dwelling and a 30'x 30' attached shop. The shop was an addition to the dwelling with Building Permit No. 13222 in 2015. It is built with a garage on the first floor and living space on the 2nd floor. As a condition of its approval, it was required to be attached to the dwelling with a breezeway and it was *not permitted as a legal dwelling* with permanent cooking facilities (e.g., a stove). This is because in 2015, additional permitting would have been required for an auxiliary dwelling unit (ADU).

NOTE: Upon inspection, it was discovered that the breezeway between the structures had been removed without proper permitting. Regardless of the outcome of these applications, proper permitting to reflect the on-site conditions will be required. Current land use regulations allow two detached single-family dwellings on a property, but they do not allow accessory structures greater than 600 sq. ft. of gross floor area for the subject property.

In 2015, an Access Variance (V.4.15) was approved for a new access which did not meet the drive-to-drive spacing standards for Hankey Road, which is a collector classified street. V.4.15 approved the location of the approach which currently serves the single-family dwelling and attached shop. In 2016, a Lot Line Adjustment (LLA.1.16) was approved which moved the location of the shared property line between the subject property and the property just to the north of the subject property. The property to the north is owned by the applicant as well.

The applicant would like to create a new lot line (partition) between the shop and the existing dwelling.

PUBLIC HEARING & NOTICE

Public hearing before the Planning Commission: February 11, 2025

Notice of this proposal was sent to surrounding property owners within 100 feet of the subject property on January 16, 2025, via first class mail. Notice was sent to agencies by mail or e-mail on January 15, 2025.

Notice was published on January 31, 2025, in Columbia County Spotlight newspaper.

AGENCY REFERRALS & COMMENTS

As of the date of this staff report, there are no referrals from relevant agencies.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

VARIANCE—V.1.25 REDUCED YARD (SETBACK)

DISCUSSION:

In the R7 zone, the minimum side yard (setback) is 7'. The applicant is proposing a property line which would create an approximate 4.1' side yard from the dwelling and an approximate 3.8' side setback from the shop.

SHMC 17.64.050 allows eave projections into side yards provided that the width is not reduced to less than 3'. For the dwelling, the eave projects an additional 10" which leaves approximately 3.3' from the eave to the property line. However, for the shop, the eave projects approximately 13.75" which leaves only 2.7' from the eave to the property line.

VARIANCE—V.2.25 REDUCED LOT SIZE

DISCUSSION:

In the R7 zone, the minimum lot size is 7,000 sq. ft. for detached single-family dwellings. With the proposed property line, the lot with the shop would be approximately 5,100 sq. ft., while the lot with the dwelling would be approximately 8,400 sq. ft. This is a request for a lot which is approximately 1,900 sq. ft. too small for a detached single-family dwelling in the R7 zone.

VARIANCE—V.3.25 REDUCED LOT WIDTH

DISCUSSION:

In the R7 zone, the minimum lot width at the building line shall be 60'. On the lot with the shop, the proposed lot width at the building line is approximately 47.8', which is approximately 12.2' too narrow for the R7 zone.

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 three (3) variances.

FINDINGS:

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

- See applicant's narrative.
- Staff's comments: The surrounding properties are mostly zoned R7, except for a larger County property across Hankey Road. Generally, the lots surrounding the subject property are much larger than 7,000 square feet.
- Generally, the lots surrounding the subject property have side setbacks which meet the minimum 7' for R7. For comparison, even the City's highest density zoning district, Apartment Residential, requires 5' side setbacks.
- Hankey Road is a very steep road with a curve that creates site distance challenges when viewing oncoming traffic. The applicant proposes shared access from the property to the north from an existing concrete driveway approach. This existing gravel driveway serves an undeveloped 1.37-acre (59,677 sq. ft.) lot. This undeveloped lot has potential (based on 7,000 sq. ft. minimum lots only) for 8 lots. This existing approach is in the location with the most visibility in relation to the blind steep curve of Hankey Road. Utilizing this driveway approach for access to the lot with the dwelling seems to be the least detrimental to the surrounding properties. However, it would require a legal access agreement being a separate property.
- Both the proposed access (currently gravel) and parking area (currently gravel) would have to be paved as part of the future partition permitting process.

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

- See applicant's narrative.

(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's comments: The Commission can find this is not a use variance.
- There a number of issues with existing structures encroaching over the proposed property lines or into required fire separation requirements.
- If these variances are granted, any requirements of the Building Official would have to be met, including but not limited to, fire-resistant construction for structures (including eaves) within 3' of any proposed property line. The eaves could also be altered such that no portion encroached within 3' of the property line.
- There is an existing retaining wall and porch stairs/landing which appear to cross onto the proposed property line. Both structures would have to altered/removed or shared agreements recorded as part of the partition application if these Variances are granted.

(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's comments: There are existing frontage improvements (curb and sidewalk) fronting the subject property. The proposal would not change this.
- The request creates a very narrow setback between the structures which creates less area to be able to effectively manage stormwater runoff. For example, there are currently rain drains from the existing dwelling that are directed towards the proposed property line and the natural slope of the property would create nuisance stormwater runoff between the properties. If the Commission grants these variances, this will have to be addressed with stormwater improvements as part of a partition application.
- It appears there are a number of shared utilities (power, sewer, water) between the two structures which would have to be re-configured, or easements recorded prior to any partition which would create disparate ownership.
- If these variances are approved, and a land partition is pursued using them, the air, light, and space between the properties will not be what the R7 zone intends. The Commission needs to find this acceptable.

(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 code permits two dwellings as configured on the subject property outright without any needed variances, easements, access agreements, or modifications to utilities or structures. If these variances are granted, it will create a highly complicated subsequent partition for the purpose of creating two developed lots which the code already outright without any exceptions to the code.

The Commission needs to find all these criteria **(a)** – **(e)** are met in order to approve the variances. If you think one of these is not met, we will need to address why.

CONCLUSION & RECOMMENDATION

Based upon the facts and findings herein, if the Commission wants to approve the Variances, staff recommends the following conditions:

1. These Variance approvals are valid for a limited time pursuant to SHMC 17.108.040.
2. These Variance approvals do not constitute a land partition. Subsequent preliminary plat and final plat partition applications are required. **As part of the partition permitting process,** the following issues will need to be addressed:
 - a. 30' x 30' shop shall be properly permitted as a detached single-family dwelling prior to any subsequent application.
 - b. Actual lot dimensions, lot sizes, and setbacks are to be verified by a surveyor licensed in the state of Oregon prior to preliminary plat application. If any estimated dimensions substantially differ than those approved by these Variances, re-permitting may be required. Utilities shall be verified by survey as well (see condition 2d).
 - c. A detailed shared access proposal which meets the requirements of SHMC Chapter 17.84 to serve the existing dwelling is required with the preliminary plat. Prior to final plat, access will be required to be paved along with two non-tandem parking spaces.
 - d. The dwelling and the shop appear to share utilities (power, sewer, water, storm) which cross the proposed property line. Utility easements and/or reconfiguration of utilities will be required as part of the preliminary plat application. This includes any stormwater improvements and/or modifications as required by City Engineering and/or the Building Official to ensure there is no nuisance stormwater runoff between the properties.
 - e. Any requirements of the Building Official would have to be met prior to final plat, including but not limited to, fire-resistant construction for residential structures (including eaves) within 3' of any proposed property line, or a reduction of the eave width to ensure no encroachment within 3' of the property line.
 - f. Any structures, including but not limited to, the retaining wall and dwelling porch stairs/landing, shall not be located on or over a property line without respective shared agreements or they shall be removed.
3. 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: *Photos Attachment, Site Plan, Applicant's Narrative, General Aerial*



TOP LEFT
View from Hankey Road looking north with dwelling pictured

TOP RIGHT
View of dwelling from Hankey Road.

BOTTOM LEFT
Location of proposed lot line showing distance between dwelling and shop.

BOTTOM RIGHT
Front of shop and paved parking

McCarter Proposed Lot Splitting: 35732 Hankey Road

17.108.050 Criteria

- A) If approved, this variance will not be detrimental to this code, in conflict with any policies or standards, or other properties. This will actually help alleviate the current Home Shortage by allowing 2 affordable homes to be available, instead of the current 1 home with 6 bedroom configuration.
- B) The new home was built on the only relatively flat and tree free area we had, which was rocky and overgrown with Blackberries. It is next to our neighbors garage, and set back approximately as much as our neighbors garage. The old house had no garage, and it appeared this would solve many problems.
- C) The proposed use is the same as permitted, all standards will be maintained to the minimum standards. Previously required Breezeway between new home and old home to be removed.
- D) Structure and Driveway are already built. Permission is being sought to make this an individual Home, instead of being part of the old home. From my understanding another Driveway will never be allowed, as Hankey is a Feeder street. Utility easement required on new lot, Parking access easement required from unimproved lot.
- E) If allowed, this would be the best use for both homes by allowing full ownership of each. Someday in the future when my wife and I are no longer around, this could end up as a bed and breakfast/ short term rental, which is contradictory to helping solve real problems.

Additional Info: Current lot size is .31 Acre, measuring ~~14,300~~ sq. ft. The proposed split would make the new lot Aprox. ~~5150~~ sq. ft., and old lot aprox. ~~9150~~ sq. ft.

Buildings are 8 feet apart. Roof eaves of new building are 13.75", old building 10". Proposed property line to be offset for 3' fire safety, resulting in 46" from old house, and 50" from new house.

VARIANCES V.1.25-V.3.25

GENERAL AERIAL

