



## CITY OF ST. HELENS PLANNING DEPARTMENT

# MEMORANDUM

TO: Planning Commission  
FROM: Jacob A. Graichen, AICP, City Planner  
RE: City Council remand of Appeal AP.1.25 – AP.3.25 back to the Planning Commission  
DATE: May 5, 2025

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Pursuant to SHMC 17.24.370(2) an appealed matter may be remanded provided all parties provide written consent to extend the 120-day limit per ORS 227.178 and with certain findings made.

On February 11, 2025, the Commission denied the 35732 Hankey Road Variances (V.1.25 – V.3.25) and that decision was appealed to the City Council.

On April 16, 2025, the City Council remanded the matter back to the Commission based on new evidence.

**The basis for the remand is consideration of the sloped area on the opposite side of Hankey Road from the subject property for this proposal. This consideration was posed at the Council hearing after the Planning Commission's hearing where the Commission denied the three Variances, and the Council felt the Commission should reconsider the matter with this new information.**

Written consent pertaining to the 120-day rules per ORS 227.178 was provided by the applicant on April 17, 2025.

### Options:

If you wish to **deny** this application, please see **attached** draft denial prepared for but unused by the Council.

If you wish to **approve** this application based on reconsidering the new information, for example, the following conditions of approval, from the initial staff report to the Commission are recommended:

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

**Attached:** Draft denial prepared for but unused by the Council  
 Applicant's appeal application (includes ground for appeal)  
 Site plan  
 Appeal City Staff Created Map (general information)  
 Appeal City Staff Created Map (distances from other zonings)  
 Presentation slides (City Staff Created) used as the Council's appeal hearing

For additional information please see the previous meeting packets  
<https://www.sthelensoregon.gov/meetings> for:

- Planning Commission February 11, 2025 meeting (item D on agenda)
- City Council April 16, 2025 5:30pm public hearing
- City Council April 16, 2025 regular session (item 3 on agenda)

**THIS IS A DRAFT FINAL DOCUMENT IF THE CITY COUNCIL UPHELD THE COMMISSION'S DENIAL.** It was prepared for the Council to be able to make a final decision the same day as the hearing, if denied, to comply with the 120-day rule. It is a template for denial by the Commission, if the Commission is inclined to deny again based on remand.

**CITY OF ST. HELENS PLANNING DEPARTMENT  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
Appeal AP.1.25 – AP.3.25 of the Planning Commission's denial of Variances V.1.25 – V.3.25**

**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    This is when the Council remanded the matter back to the Commission.

**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.

**For remand, notice sent/mailed on April 18, 2025 and published on May 2, 2025.**

**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).

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. The City Planner produced a memo for this building permit, 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 building 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.

**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 where 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 & DECISION**

**Based upon the facts and findings herein and the City Council denies the three proposed Variances.**

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Jennifer Massey, Mayor

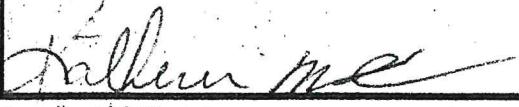
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Date

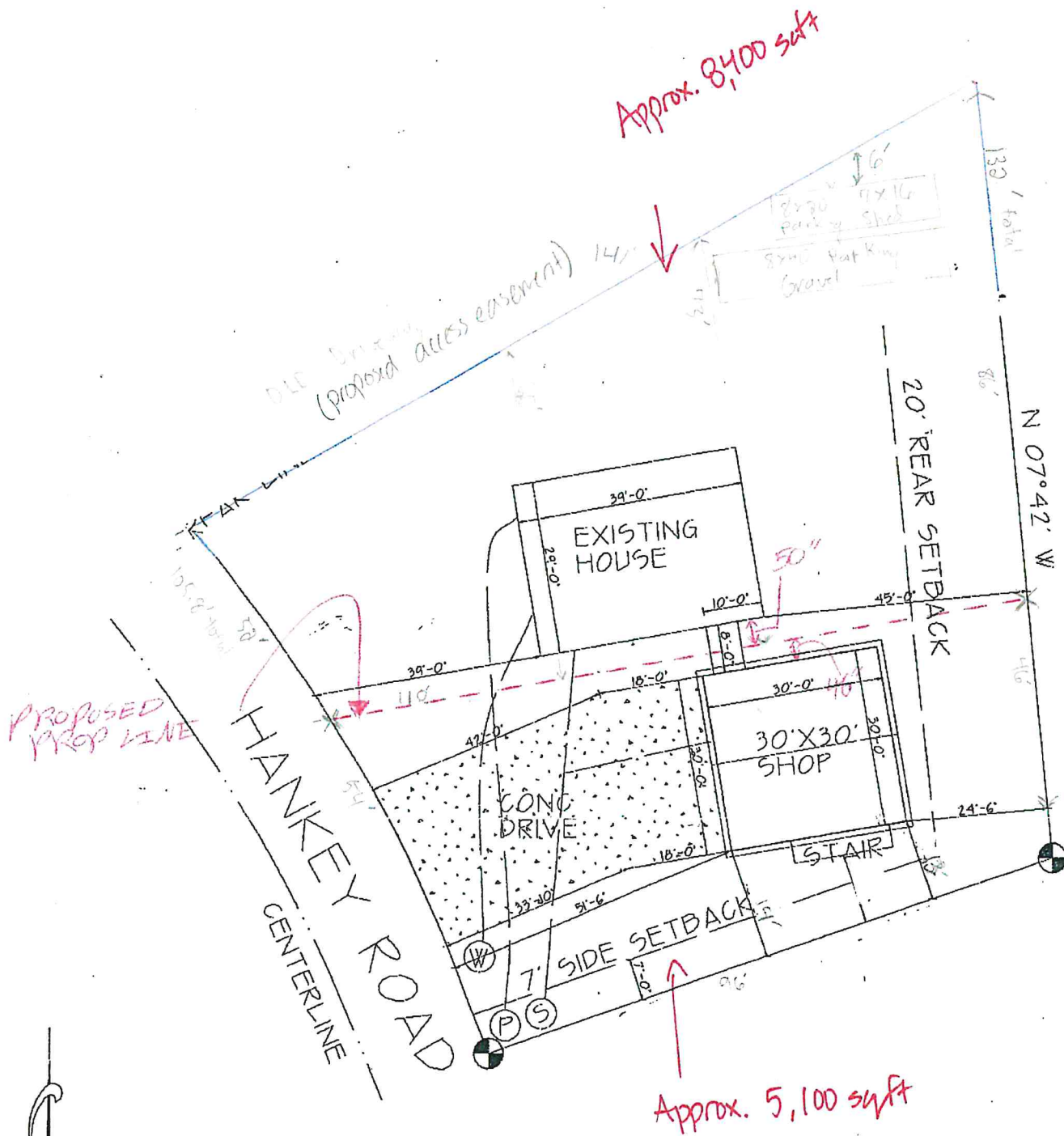
**City of St. Helens**  
**Application for Appeal of Land Use Decision**

Appellant Name(s): Kevin McCarter & Kathy McCarter	File No. of Land Use Decision being Appealed:  <i>VARIANCE</i> <i>V.1.25-</i> <i>V.3.25</i>
Appellant Mailing Address: 35732 Hankey Road, St. Helens, OR 97051	
Appellant Telephone No.: 503-970-9670	Appellant E-mail Address: kevin1967@gmail.com

**APPEAL INFORMATION**

Subject Property Assessor's Map & Tax Lot No.: <del>4N1W-2AB-100</del> <b>4N1W-5AB-100</b>	Subject Property Site Address: <i>Street name if # not assigned</i>  35732 Hankey Road, St. Helens, OR 97051
Type of Land Use Decision being Appealed:	
Statement as to how appellant qualifies to appeal (pursuant to Development Code): When addressing the council initially all of the variance requests 2 of 3 with the exception of the 3 <sup>rd</sup> variance was approved with their statement the request is self imposed. This decision is inaccurate as state law has changed since the time of build.	
Grounds for Appeal: Include <u>specific</u> reference(s) to Development Code and/or Comprehensive Plan provisions which form the basis for the appeal. I am appealing this decision based on the fact the council stated the 3 <sup>rd</sup> variance was not approved because when the 30 by 30 shop was built, it was built as an addition. The council insinuated this would than be self imposed as we could have built it with more space. However, at the time of build no one could have foreseen the law would change allowing two structures on one parcel lot. This law was changed a couple of years ago by the State of Oregon which makes this request not self imposed and gives the impression the council is not using guidance to follow state laws. Had we known or could have seen into the future we most certainly would have built the shop with greater area. Therefore, this is not self imposed and we respectfully request this request be granted.	
 Appellant(s) Signature	<i>2-25-2025</i> Date Signed

**FOR OFFICE USE ONLY**





# 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 1985 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)

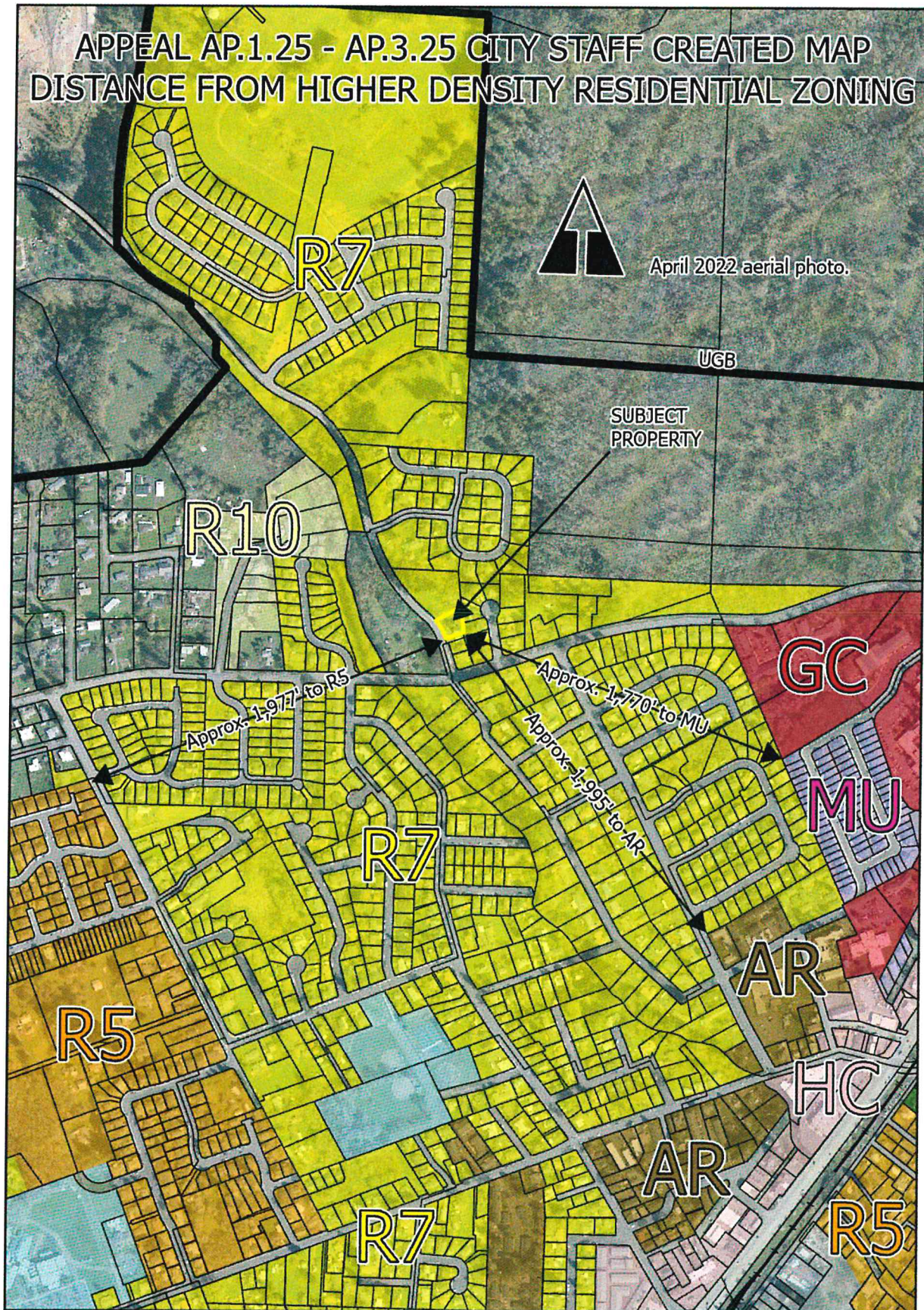
Concept property line.

Driveway approved by 2015 Access Variance.

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



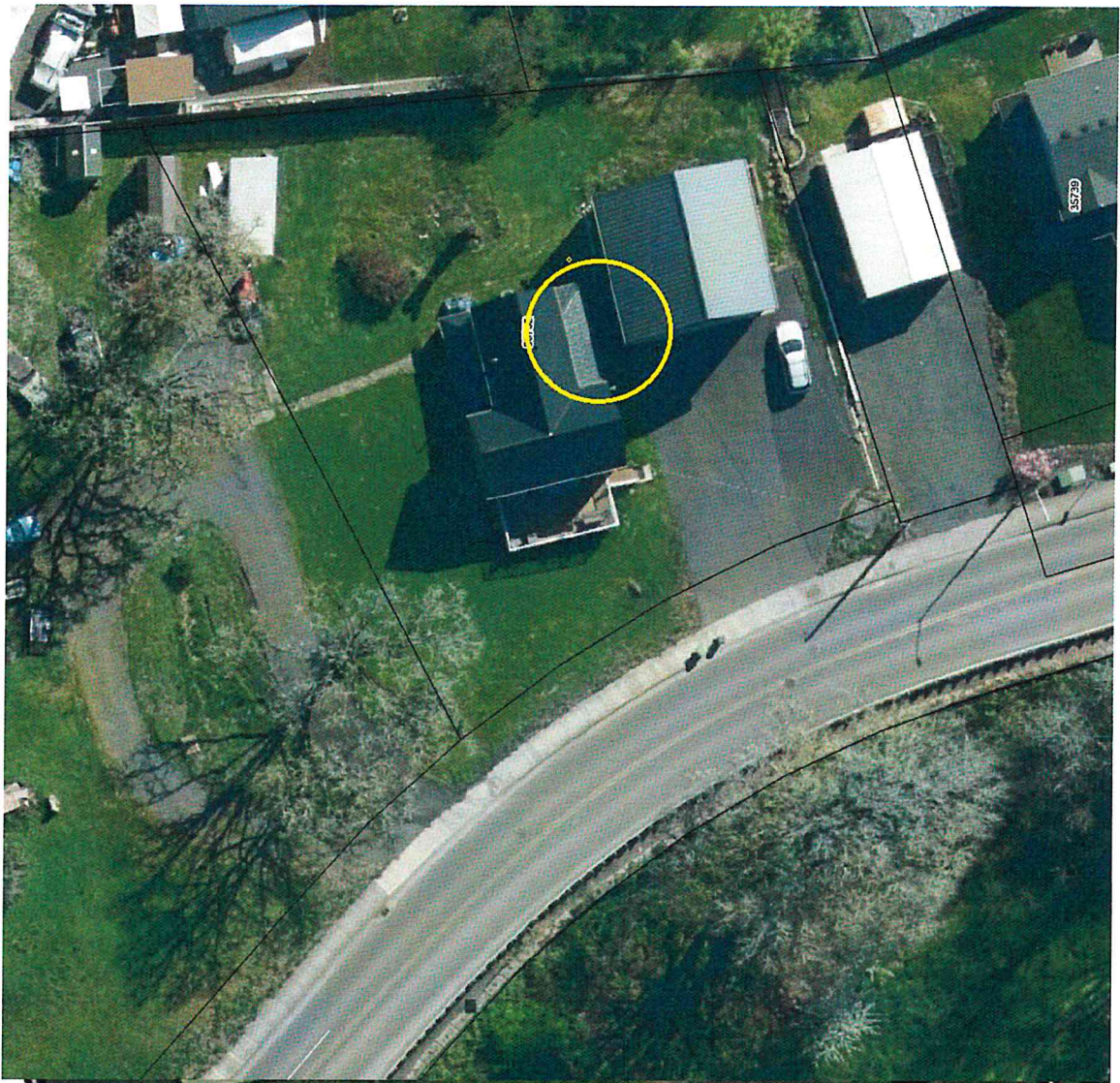
APPEAL AP.1.25 - AP.3.25 CITY STAFF CREATED MAP  
DISTANCE FROM HIGHER DENSITY RESIDENTIAL ZONING







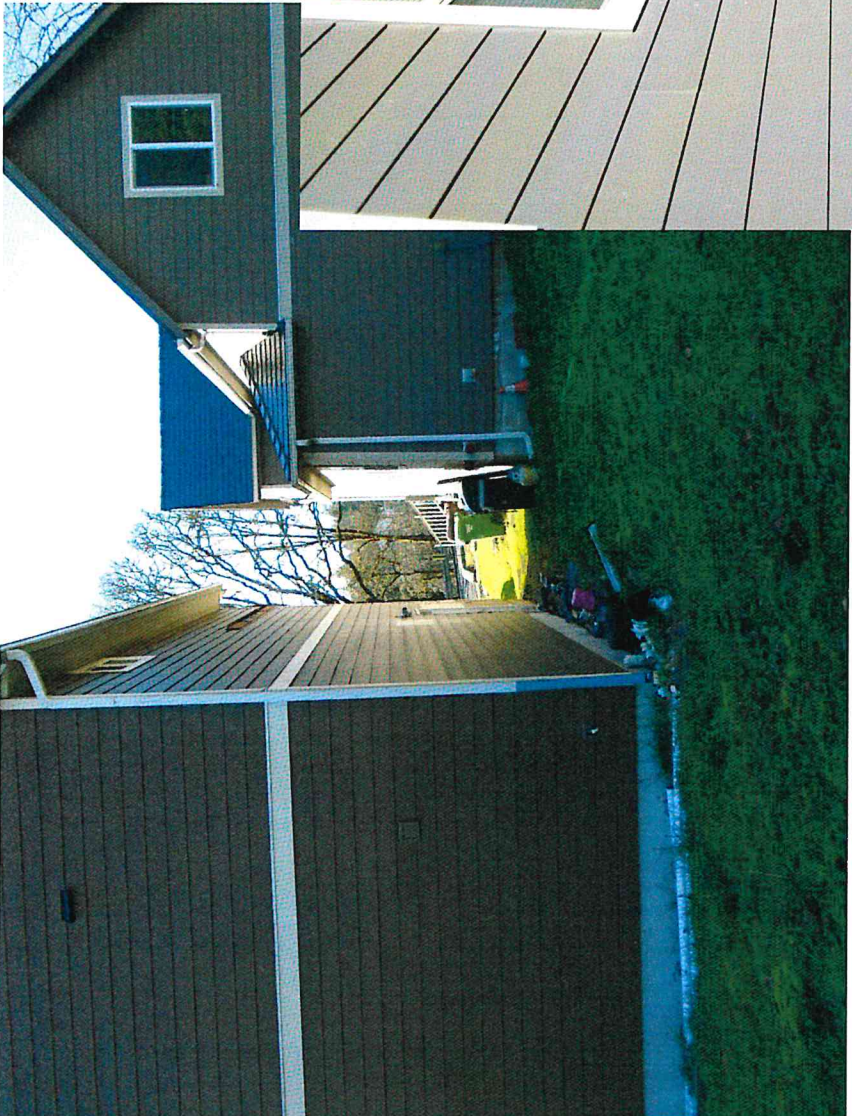




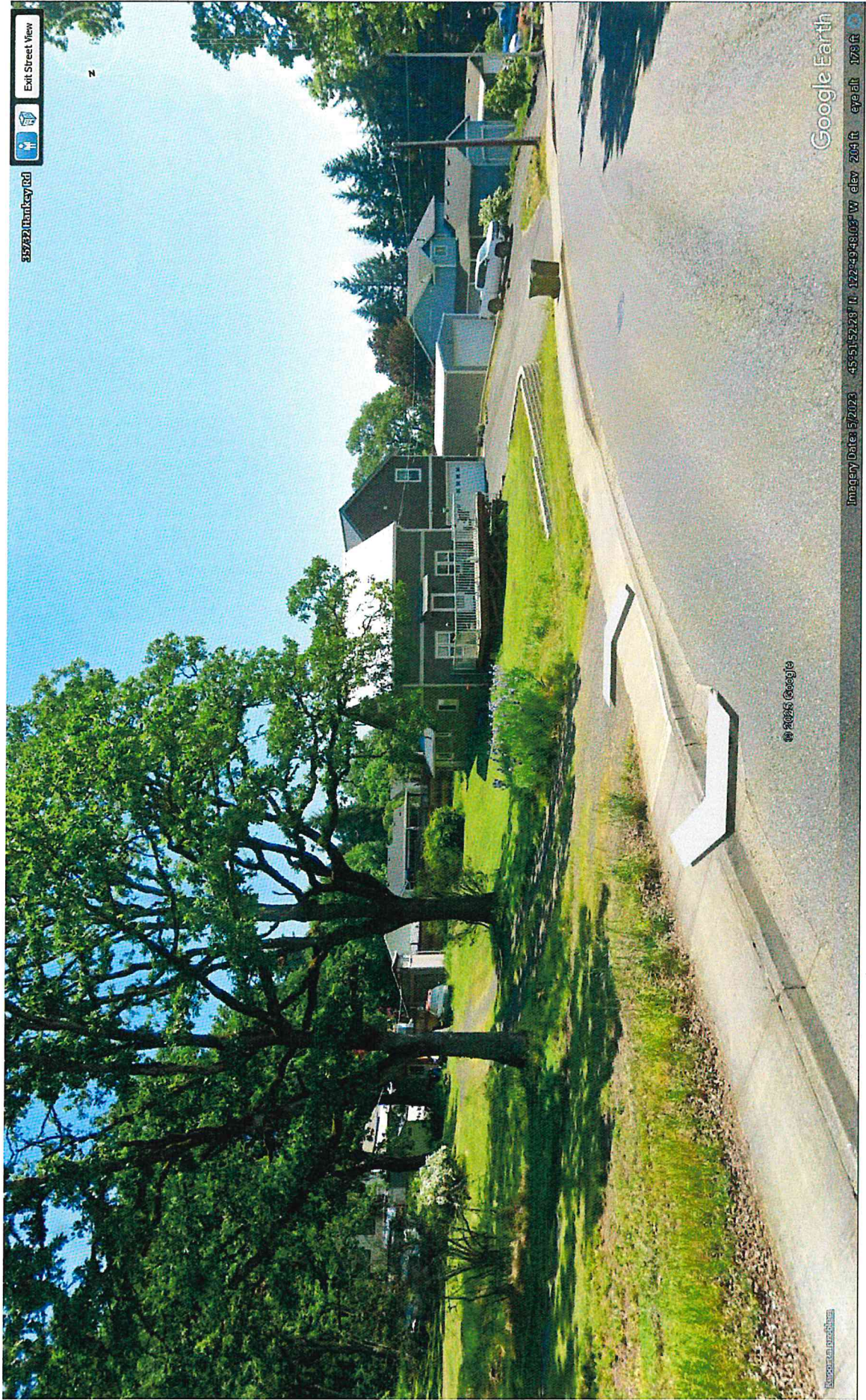












357322 Hanky Rd



Exit Street View

© 2023 Google

Google Earth

Imagery Date: 5/2023

45°51'52.23"N 122°49'48.03"W elev 204 ft eye alt 178 ft



**All of the following criteria must be satisfied:**

- (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.