

**CITY OF ST. HELENS PLANNING DEPARTMENT**  
**STAFF REPORT**  
**Variance V.8.22**

**DATE:** November 1, 2022  
**TO:** Planning Commission  
**FROM:** Jennifer Dimsho, AICP, Associate Planner

**APPLICANT:** Jennifer Pugsley & Jane Garcia  
**OWNER:** Same as applicant

**ZONING:** Apartment Residential (AR)  
**LOCATION:** 144 N. 2<sup>nd</sup> Street; 5N1W-34CC-11800  
**PROPOSAL:** Variance for a reduced exterior side yard (setback)

**SITE INFORMATION / BACKGROUND**

The subject property is a standard 5,800 sq. ft. lot developed with an existing detached single-family dwelling. Prior to 2021, the property was much larger. It contained the subject dwelling fronting N. 2<sup>nd</sup> Street **and** a duplex which faces N. 1<sup>st</sup> Street which was approved with a Site Development Review in the early 1990s.

In 2021, the property owner desired to sell the detached single-family dwelling separately from the duplex. In order to do so, they were required to record two easements on the subject property to the serve the duplex: one for easement for ingress, egress, and utilities, and one for parking and pedestrian access easement. Now, the new owners of the detached single-family dwelling (and applicants of this variance) would like to construct a building addition, a proposed 183.6 sq. ft. deck at 12' x 15'3.6". Because of the easement for ingress, egress, and utilities, the proposed deck encroaches into required a required exterior side yard (setback).



*Subject property from N. 2<sup>nd</sup> Street facing easement*



*Proposed deck near slider doors on house*

## PUBLIC HEARING & NOTICE

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

**Notice** of this proposal was sent to surrounding property owners within 100 feet of the subject property on October 19, 2022 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on October 26, 2022 in The Chronicle newspaper.

## APPLICATION COMPLETENESS

The 120-day rule (ORS 227.178) for final action for this land use decision is February 14, 2023.

## AGENCY REFERRALS & COMMENTS

As of the date of this staff report, there are no relevant agency comments.

## APPLICABLE CRITERIA, ANALYSIS & FINDINGS

### DISCUSSION:

The definition of “yard (setback)” is:

open space on a lot which is unobstructed from the ground upward, except as otherwise provided in this code. When determining setback, yard does not include an access easement or street right-of-way.

Therefore, the required side yard is measured from the easement, not the property line. In addition, the lot is considered a “**corner lot**” since it fronts two “streets” which are defined as public or *private ways* which provide ingress or egress for vehicles.

On corner lots in the AR zone, the applicant is required to have a 10’ exterior side yard. The applicant is requesting a 3’ exterior side yard. However, SHMC 17.108.050 (4) allows a reduction in yard requirements by 20% without a variance provided that the reduction of the yard is for the enlargement of remodeling of an existing principal building. Adding a new deck is considered a remodel/enlargement of the existing principal building. With a 20% reduction, the applicant is only required to provide an 8’ exterior side yard (as opposed to 10’). As proposed, the deck has an approximately 2’ yard. This means the request is for a variance of approximately 6’.

SHMC 17.64.050 (5) says:

Unroofed landings and stairs may project into required front, interior or rear yards, or exterior side yards (on corner lots) only.

This is why the landing and stairs is not subject to the 10' rear setback, as measured from the 6.77' easement for vehicle parking and pedestrian access along the rear property line.

**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: The purpose of yard (setback) requirements are to provide adequate air, light, and space between properties. The reason why setbacks requirements are greater along private driveways and public roadways are because of the increased traffic and loss of privacy for residential uses alongside a roadway. In this case, the private drive only serves a single duplex as opposed to larger, busier private drives which can serve upwards of 6 units/lots. In addition, the deck is elevated just under 7' from the driveway, and the applicant has included siding along the railing which matches the house and provides privacy to those who use the space from the traffic of the drive below.
- The Commission can find the impacts of a reduced setback would not be detrimental in its consequence to users of the proposed residential building addition (deck) because of the minimal number of dwellings served by the private drive and because of the elevated, private design of the deck.

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

- See applicant's narrative.

- Staff comments: The Commission can find that a 15' wide access/utility easement down the entire 100' length of the lot is a special and unique circumstance peculiar to this lot, not applicable to other properties in this zoning district. The Commission can also find that the easement was outside of the applicant's control.

**(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: The Commission can find this is not a use variance.
- As described above, SHMC 17.108.050 (4) allows for a 20% reduction of setbacks under certain circumstances without a variance. The applicant meets the criteria for this 20% reduction, which means they are only requesting a variance of approximately 6'. There will still be a 2' setback between the deck and the easement. There will also be over 17' from the proposed deck to the property line. As a point of reference, on a normal lot (not a *corner* lot), the exterior side yard is only 5'.
- The applicant removed a carport which was encroaching by a 1' into the required access easement. It cannot be re-built in this location.

**(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 comments: All areas of the proposed deck and existing access easement are already paved. Applicant indicated interest in returning landscaping to areas which are already paved which would improve drainage. The Commission can find there is no evidence that existing physical and natural systems will be adversely affected as a result of the requested variance.

**(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 former owner of the single-family dwelling and the current owner of the duplex recorded the easement. The Commission can find the issue is not self-imposed.
- The applicant notes that the 6.77' parking and pedestrian access easement in the rear of the property makes it difficult to build a deck off the back of the house. The Commission can find that the proposed location proposed provides the most accommodating area to construct a deck 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. This Variance shall apply to the proposed plan as submitted only or one with equal or less yard encroachment.
3. Owner/applicant and their successors are still responsible to comply with the City Development Code (SHMC Title 17), except for the Variance granted herein.

**Attachments:**

*Site Plan*

*Site Aerial*

*Deck Plans (3)*

*Applicant's Narrative & Photos (8)*



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2022

### Exhibit C

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Easement Exhibit Map  
Situated On Lot 5, Block 16  
Benefitting Lot 18, Block 16  
City of St. Helens  
Section 34, T.5N., R.1W., W.M.  
Columbia County, Oregon  
April 28, 2021

2nd Street

S 16°57'23"E  
15.00'

NOTE:  
IF EXISTING CARPORT  
IS REMOVED OR DESTROYED  
IT CANNOT BE REPLACED  
WITHIN THE EASEMENT

EXISTING  
CARPORT  
88.43'  
EASEMENT FOR INGRESS, EGRESS & UTILITIES  
S 73°02'37"W  
N 73°02'37"E 100.00'

LOT 5

EXISTING  
HOME

N 25°04'54"E 28.1'  
S 25°04'54"W 7.75'

EASEMENT FOR VEHICLE PARKING  
AND PEDESTRIAN ACCESS

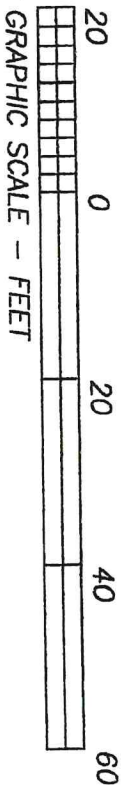
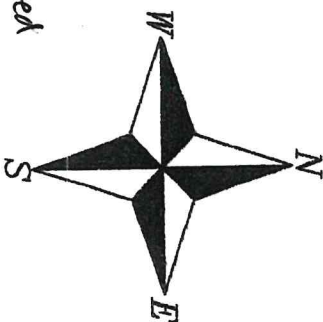
S 73°02'37"W

LOT 18

proposed  
new  
deck

Scale: 1"=20'

CF:05099B  
SF:05099B2  
JN:20009W  
FB:119



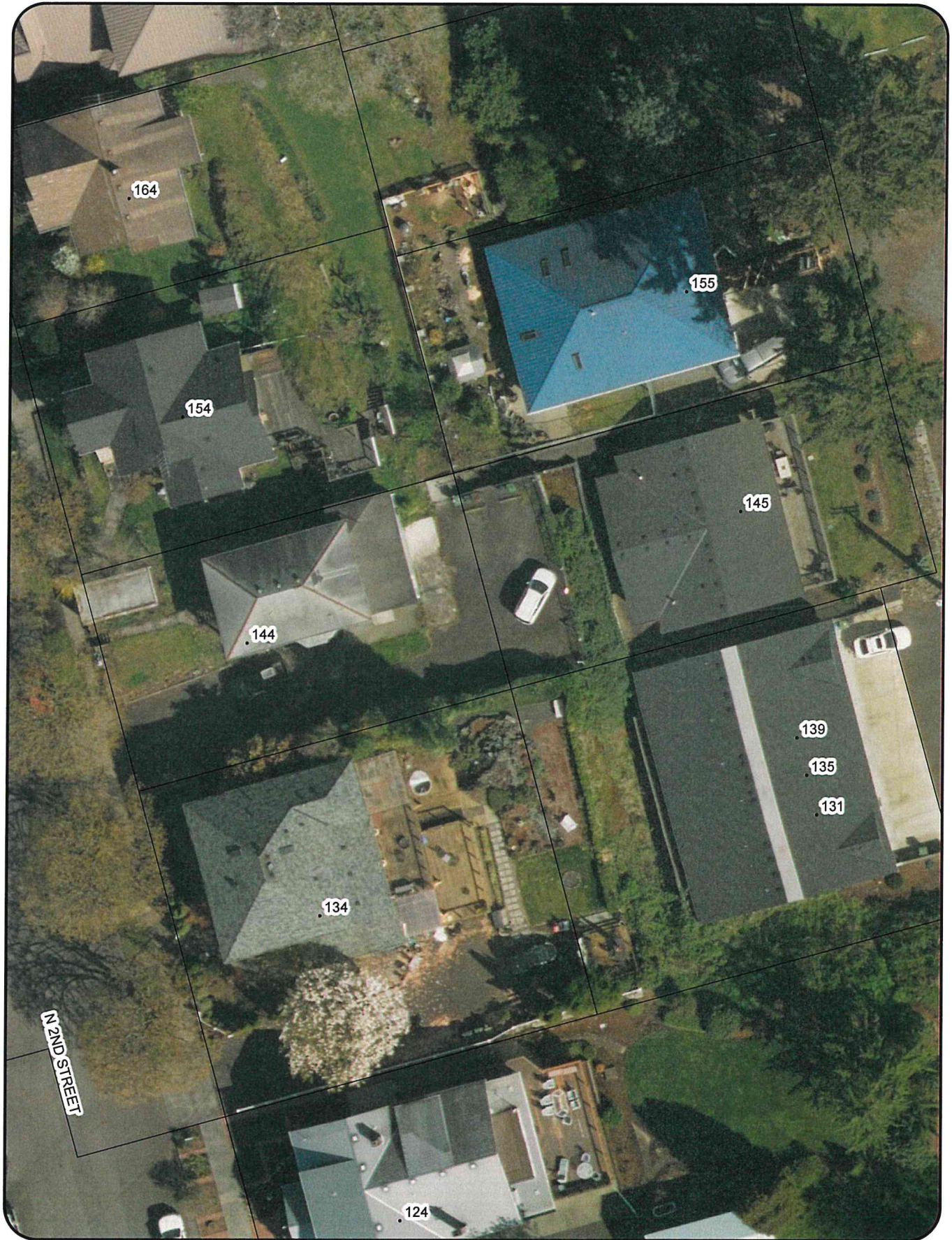
RED LINE = HOUSE

GREEN LINE = DECK

PURPLE LINE = LANDING & STAIRS



Variance V.8.22 144 N. 2nd Street Aerial Photo



144 N 2ND ST  
DECK

16" ON CENTER  
w/ 2x8

4x4 POSTS

PRIMARY  
BEDROOM

SITTING  
ROOM

KITCHEN

60" FRENCH  
DOORS

( LEDGER LABELED INTO  
HOUSE  
6" LEDGER LOCKS

DECK

12 x 15, 36

FRAMED RAIL

ON WEST &

SOUTH SIDE

SIDING TO

MATCH THE HOUSE

(SEE PHOTO)

STAIR

← OPEN RAIL w/  
BALISTERS

← FRAMED  
RAILING

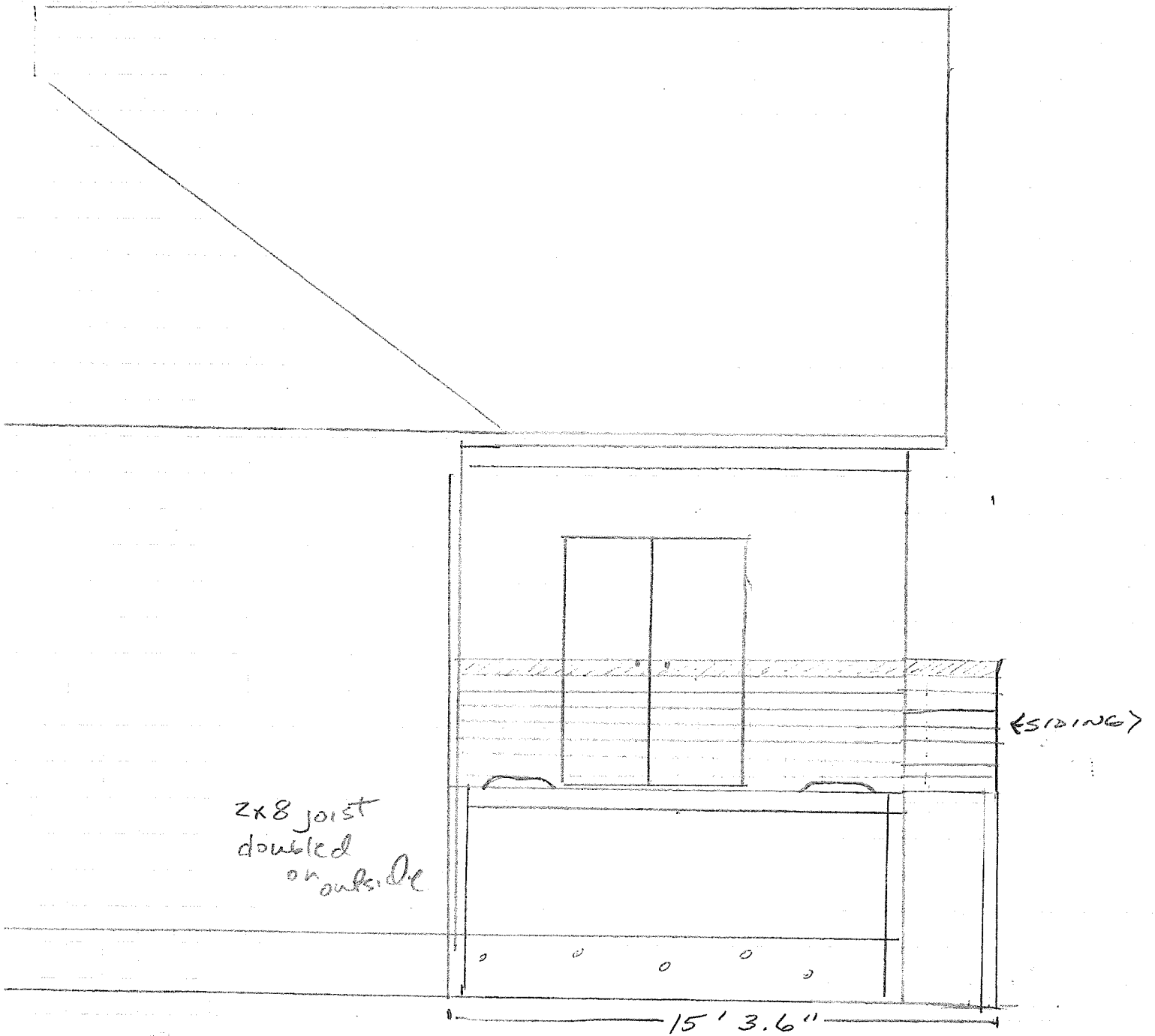
ON  
LANDING,  
SIDED TO  
MATCH  
HOUSE

15' 3.6"

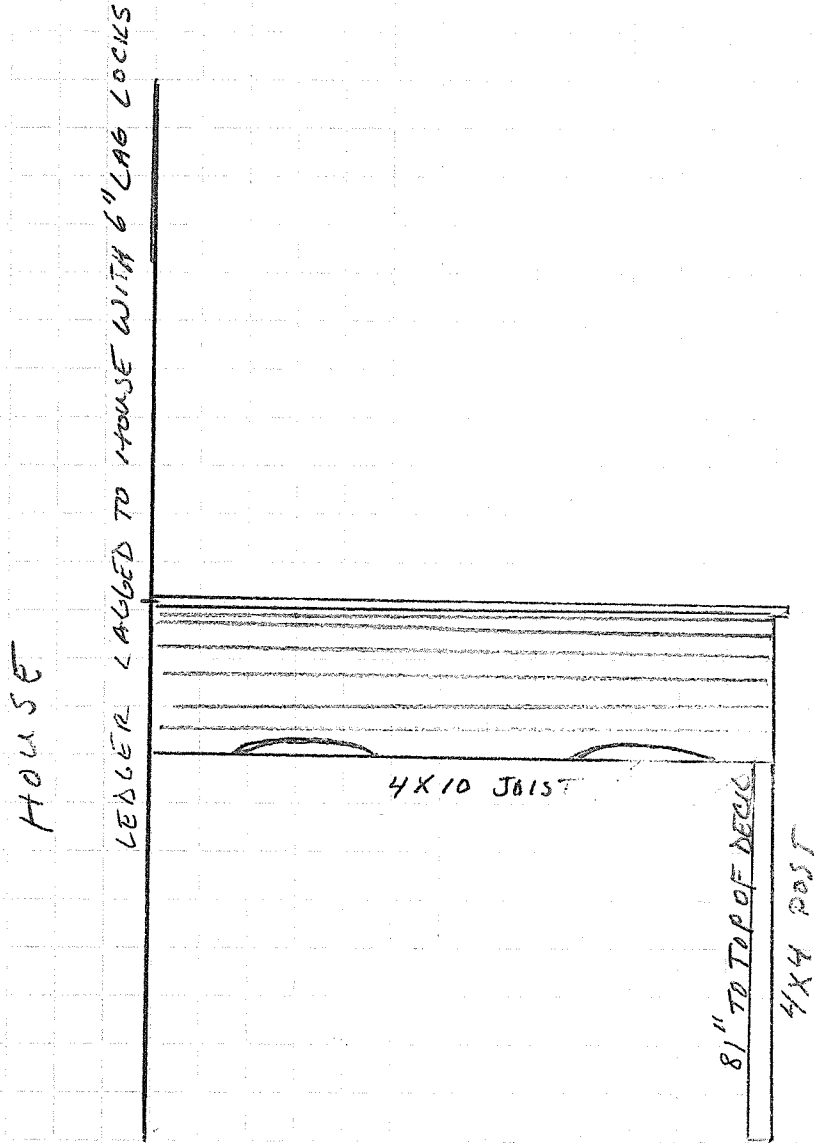
27' 9"



144 N 2ND ST



144 N 2ND ST



## Criteria For Granting A Variance

17.108.050 St. Helens Municipal Code

(1) The commission shall approve, approve with conditions, or deny an application for a variance based on finding that the following criteria are 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.**

17'

The property is zoned AR (Apartment Residential). The proposed deck meets all the setback requirements in the zone. The deck will actually be over 18 feet from the south side property line and approximately 2 feet from the utility and access easement which is only used for access by the adjacent property owners tenant's cars. There are a total of 4 parking spaces.

**(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.**

The lot size is 58 x100 which is typical within the zoning district, however there is a utility and access easement 15 feet on the south and 6.77 feet on the east making the useable area significantly smaller than other parcels in the zoning district, therefore creating special circumstances peculiar to this lot.

**(c) The use proposed will be the same as permitted under this code and city standards will be maintained to the greatest extent possible while permitting some economic use of the land.**

The home on this lot was built in 1908, in the Historic District, as a single family home, and is currently under renovation and will continue to be a single family home. Although not required, every effort has been made to maintain and recreate the historic character of this home. Furthermore, the yard requirements in the applicable zone may be reduced up to 20 percent of the required setback without a variance. SHMC 17.16.010

**(d) Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms, or parks, will not be adversely affected any more than would occur if the development were located as specified in the code.**

Currently the entire south and east sides of this home are paved and allows no drainage. The entire south side that is not within the easement (currently paved) with the exception of pavers or concrete directly under the proposed deck, deck footings and 2 foot wide driveway strips will be landscaped, improving drainage.

**(e) The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.**

The previous property owner divided this parcel and placed the access easement for parking for his duplex that faces N 1st St. The 6.77 foot easement on the east prevents building a deck on the back of this home making the south side, even with the challenges of the 15 foot easement, the only practical spot to build a deck. There is currently no place to enjoy the views of the Columbia River outside because the 4 cars are parked within the easement which is all asphalt.



South Side of the lot ( Shows 15 ft Easement)





Yellow mark is location of the South easement

Red mark is the location of the south edge of the proposed deck.





Yellow mark shows the edge of the South easement.





Yellow corner mark is east property line and marks the South easement.

Red mark is the East side easement.





Deck Railing Example







