# CITY OF ST. HELENS PLANNING DEPARTMENT
# STAFF REPORT
## Variance V.4.22

**DATE:** July 5, 2022
**TO:** Planning Commission
**FROM:** Jacob A. Graichen, AICP, City Planner
Jennifer Dimsho, AICP, Associate Planner

**APPLICANT:** Steve Paranto
**OWNER:** Same as applicant

**ZONING:** General Residential, R5
**LOCATION:** Vacant lot just south of 214 N. 9th Street; 5N1W-33DD-9401
**PROPOSAL:** Allow wall/fence height greater than normal allowance. This is specific to an ecology block wall along the north property line, more or less, of the subject property

### SITE INFORMATION / BACKGROUND

The subject property in its current form is the result of a right-of-way vacation (file VAC.1.18 and Ordinance No. 3235) and a lot line adjustment (files LLA.1.19 and LLA.2.19). The property's topography is irregular and is "mid-tier" in that Wyeth Street on the south side is well above grade from the "building area" of the subject property and the adjoining property to the north (204 N. 9th Street) is well below grade from the buildable area of the subject property.

The subject wall is existing. However, there was no wall prior to around 2018. In 2018, staff observed a three-block high (6') ecology block wall, which was within the height allowance of the Development Code. As observed by staff, the wall was rebuilt around 2020 as a four-block high (8') wall and in some areas five-block high (10'). The purpose of this Variance is to allow a wall greater than normally allowed by the Development Code.

### PUBLIC HEARING & NOTICE

**Public hearing** before the Planning Commission: July 12, 2022

**Notice** of this proposal was sent to surrounding property owners within 100 feet of the subject property(ies) on June 23, 2022 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on June 29, 2022 in The Chronicle newspaper.

### AGENCY REFERRALS & COMMENTS

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

### APPLICABLE CRITERIA, ANALYSIS & FINDINGS

**DISCUSSION:**

The key Development Code provision for consideration is SHMC 17.72.090. This specifically notes that "for residential uses, a fence may only exceed the height standards if approved by a Variance." The normal height allowed for a residential lot (not along an arterial street) is 4 feet in a required front yard and 6 feet in other yards. The subject property's front yard is along N. 9th Street. The front yard is the 20 feet set back from the property line, so a portion of the subject wall is technically in the front yard.

**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 subject wall creates a very steep drop off which is a safety hazard for users of the lot. For safety purposes, it is recommended that the Commission also approve a fence of 6 feet in height on top of the retaining wall if this variance is approved.

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

- See applicant's narrative.
- Staff comments: The Commission can find that this area has special circumstances which are peculiar to the lot's topography. The Commission can find that the unique topography of this area is not applicable to other properties within the same 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: The Commission can find that the request 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: If the wall was only 6 feet high, it would comply with the Development Code. The Commission can find that there is no evidence that the increase in height from 6 feet to 8 feet/10 feet in some areas adversely affected existing physical and natural systems more than would have occurred for a wall that complied with the Development Code at 6 feet in height.

**(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 comment: The Commission can find that the applicant did not build the original subject wall or make any alterations to its height. The Commission can find that the applicant is not proposing to make the wall any larger or longer with this application and is therefore 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.

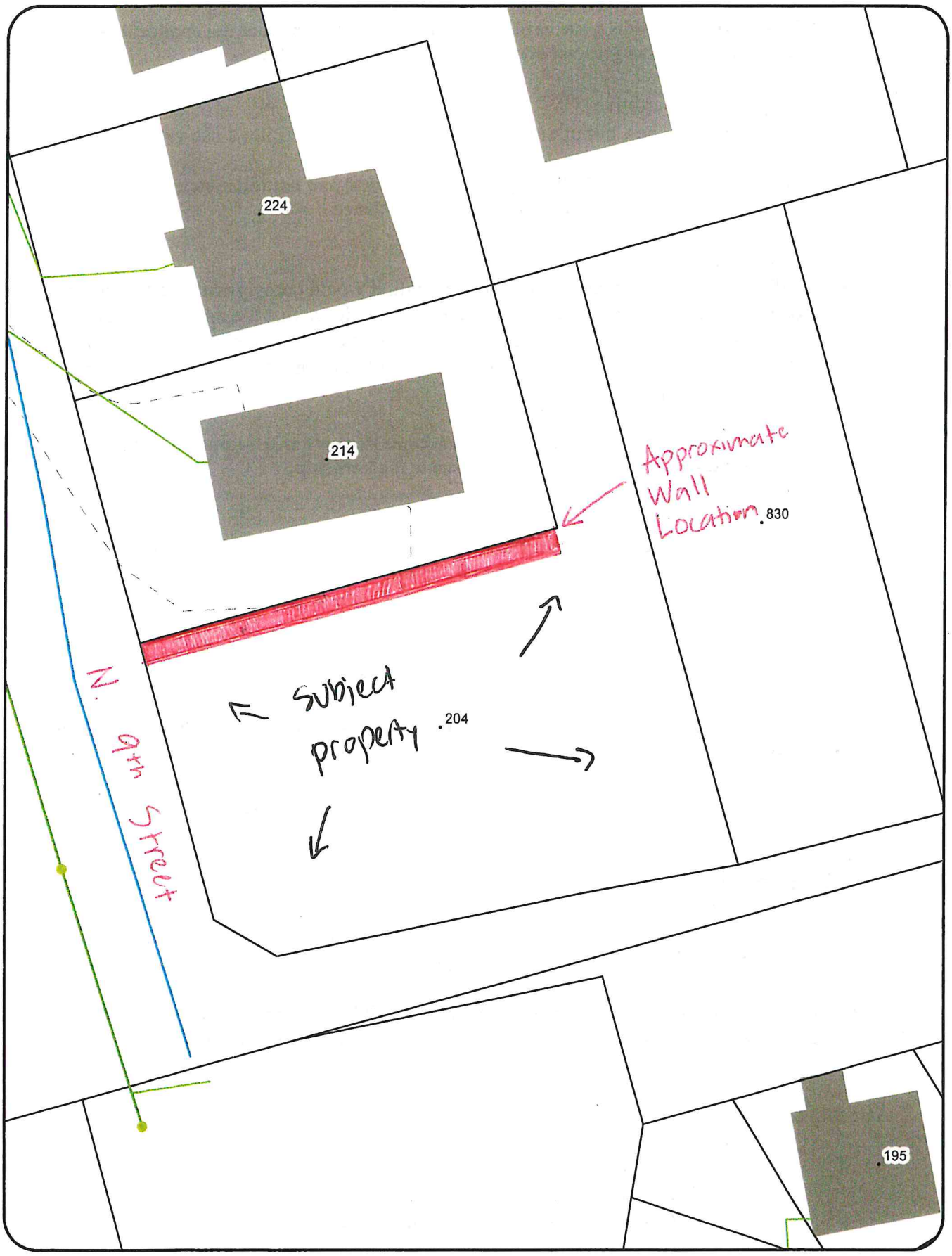
2. This Variance approval allows a 6 feet high fence to be built on top of the retaining wall for safety purposes.

3. This Variance only allows approval of the wall as built in the 2020 photo (**attached**). This approval does not allow a size increase (except for a fence in condition 2).

4. 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*
*Staff Email Dated November 29, 2021*
*2018 & 2020 Photos*
*Applicant Narrative*
*Ron Schlumpberger Engineering Letter Dated 2/21/2019*

# V.4.22 Paranto Site Plan June 2022



| | |
|---|---|
| **From:** | Jacob Graichen |
| **To:** | bighausconstructionllc@yahoo.com |
| **Subject:** | FW: Wall at 9th Street & Wyeth (Paranto lot) |
| **Date:** | Monday, November 29, 2021 12:51:00 PM |
| **Attachments:** | DSCN4792.JPG<br>DSCN6230.JPG |

Jacob A. Graichen, AICP, City Planner
City of St. Helens
jgraichen@sthelensoregon.gov ← *new e-address!!!*
(503) 397-6272

**From:** Jacob Graichen
**Sent:** Monday, November 29, 2021 12:50 PM
**To:** bighauseconstructionllc@yahoo.com
**Cc:** sparanto@comcast.net
**Subject:** FW: Wall at 9th Street & Wyeth (Paranto lot)

Steve Bighaus,

The retaining wall issue needs to be addressed with the building permit for Steve Paranto.

Unfortunately, this is a "baggage" issue left over from the pervious land owner. See email below from last December about its height.

I attached a couple photos to help tell the story. The first is from July 2018. In this you can see that the blocks are stacked three high (about 6 feet). Another layer was added sometime afterwards (but before Steve's purchase), which is visible in the attached December 2020 photo. The now 8' + high wall was not approved by the city.

Note that the earlier 6' wall was installed with zero consultation from the city too, but it did not pose the same compliance issue.

This needs to be resolved as part of this building permit for the dwelling.

The site plan needs to identify how this will be resolved. If the 8' wall is intended to stay, we will need a Variance (current fee $509), which will need to be resolved before the building permit is issued. The other route is to reduce the wall height back to 6' (or less).

Some other (and easy) needed site plan revisions include showing the paved driveway and arrows showing the flow of drainage.

The revisions can be done in person on the plans already provided if you want.

Please let me know if you have any questions.

Jacob A. Graichen, AICP, City Planner
City of St. Helens
jgraichen@sthelensoregon.gov ← *new e-address!!!*
(503) 397-6272

**From:** Jennifer Dimsho <jdimsho@ci.st-helens.or.us>
**Sent:** Tuesday, December 22, 2020 3:47 PM
**To:** sparanto@comcast.net
**Cc:** Mike DeRoia <Miked@ci.st-helens.or.us>; Jacob Graichen <jacob@ci.st-helens.or.us>
**Subject:** Wall at 9th Street & Wyeth

Hi Steve,

Thanks for the phone call earlier. I am following up with additional information about the wall at 9th Street & Wyeth. Ron Shlumpberger did provide some calculations and photos for when the wall was constructed, which Mike reviewed and discussed further with Ron. In my first phone call with you, I had not spoke with Mike yet today. After speaking with him, it sounds like a Building Permit **is only required for the wall if the new structure you plan on building is a certain distance from it**. It sounds like you're planning on being 10' from the wall, which Mike preliminarily said appears to be okay. Mike will be conducting a field visit to confirm this. He also noted that there is a concern about unconsolidated large rocks with significant gaps on the property, but that this could be/would be addressed (with a compaction report) at the time of application for the new structure.

Aside from the building permit implications discussed above, there are land use implications of a wall over 8' and some sections over 10' in height. If the wall cannot be reduced in height down to 6' (measuring height on the taller side), then a Variance is required. Variances are approved by the Planning Commission in a public hearing setting, so if the neighbor that abuts the wall does not like it, your chances may be more difficult for approval. These are the criteria for approving a variance. https://www.codepublishing.com/OR/StHelens/#!/StHelens17/StHelens17108.html#17.108.050 The application costs $484 to apply, and we would need a site plan showing the location of the wall on the property, proximity to property lines, and its varying heights.

I apologize for any confusion about the phone call earlier. Feel free to call me with questions about the Variance or Mike with questions about the building permit implications.

Thanks.

Jenny Dimsho, AICP
Associate Planner
City of St. Helens
(503) 366-8207
jdimsho@ci.st-helens.or.us

2018

2020

Variance Application for Vacant Lot
On 9th Street and Wyeth Street

For Steve Paranto

Reason for Variance Request

I would like to construct and build a dwelling that meets the standards and codes for the city of Saint Helens.

Reason that a Variance is Required

There is a block retaining wall that was built by the previous owner that is 2 feet higher than city codes.

Rationale for Variance to be Granted

1. This block retaining wall is built inside my property line.
2. This block wall was built and certified by a registered engineer.
3. If the top row of blocks are removed the integrity of the engineering Could be damaged.
4. The current 8 foot wall is more aesthetically pleasing because of the natural conditions of this property.
5. This property was sold to me as buildable property by the previous owner with this 8 foot block wall.
6. The land on this vacant lot is solid rock and this block retaining wall is not going to be affected in any way by the construction of my planned building. The geological study of this property shows that it is very stable bedrock.

Specifically Meeting the Criteria A-E (See attached criteria)

These were the particular criteria I was told I would need to meet.

A. Keeping this block wall at 8 feet is not detrimental in any and does not have any negative consequences.
B. This piece of property is naturally unusual because of its rocky formation and bluff. In order to build on this property it was best suited to have this rock retaining wall built at an 8 foot height. The geological study on this property shows that it is very stable bedrock.
C. All city codes will be met before my building permits are granted and before construction begins.

D. Existing physical and natural systems will be retained. Drainage plans meeting city codes will be met and no traffic conditions, or parks will be affected. By building 6 feet from this rock retaining wall I will not only meet the set back codes but I will also be able to leave the bluff adjacent to Wyeth without any disturbance or this natural bluff.

E. The previous owner built this block wall/retaining wall. It was sold to me as buildable property. If this wall needs to be removed or re engineered the expense could easily stop my hopes of building on this property.

## Closing Statement

This rock retaining wall has complicated my building process as far as granting building permits. The last two years I had a very upsetting experience dealing with a contractor that assured me he could handle the permit process and proceed with my dream of building on this property. I am no longer dealing with this contractor and I am starting the process all over again. Currently this property is a very ugly hole in the ground. When my building process is completed this property will be much more eye pleasing and meeting all city codes

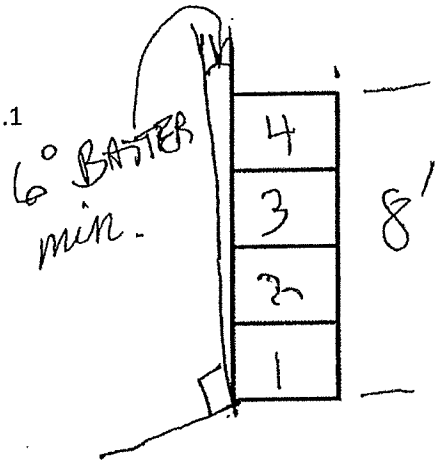
Ron Schlumpberger 2/21/2019

**Calculations for overturning factor of safety during a seismic condition using the ASCE 7-10 lateral load requirements of V {Base Shear} Sec. 12.8.1, applied at H/3, determined at the base of each of the five levels of the wall. Check for FS overturning > 1.5**

| | | | |
|---|---|---|---|
| Wall Slope= | 84 degrees | Block Friction= | 35 degrees |
| Backfill Slope= | 6 degrees | Soil friction= | 37 degrees |
| Bearing Cap.= | 2000 psf | Soil Density= | 120 pcf |
| ka (soil Load)= | 0.2004 | Wall Batter= | 6 degrees |

| Level (ft) | P (lb) | W (lb) | N (lb) | Seismic Loading | Xc (ft) | Yc (ft) | FS overturn | Check Overturning |
|---|---|---|---|---|---|---|---|---|
| 2.00 | 47.56 | 576.00 | 600.13 | 186.04 | 1.00 | 1.00 | 4.58 | >1.5 OKAY |
| 4.00 | 190.25 | 1,152.00 | 1,254.81 | 388.99 | 1.00 | 2.00 | 2.21 | >1.5 OKAY |
| 6.00 | 428.06 | 1,728.00 | 1,964.06 | 608.86 | 1.00 | 3.00 | 2.32 | >1.5 OKAY |
| 8.00 | 761.00 | 2,304.00 | 2,727.87 | 845.64 | 1.00 | 4.00 | 1.63 | >1.5 OKAY |
| 10.00 | 1,189.06 | 2,880.00 | 3,546.24 | 1,099.33 | 1.00 | 5.00 | 1.26 | NO GOOD |
| | | | | | | | | |

Sds = 0.62 USGS
Ie = 1 Importance Factor
R = 2 ASCE 7-10 Sec 12.2.1
L base= 2 ft




**V = ( Sds /R/I ) W =** 0.31 W