



MORGANTOWN BOARD OF ZONING APPEALS

August 19, 2015
6:30 PM
City Council Chambers

Board Members:

Leanne Cardoso, Chair
Bill Burton, Vice-Chair
Linda Herbst
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: V15-51 / Devine-King / 524 Overhill Street

REQUEST and LOCATION:

Request by David Carter of Laurel Home Improvement, on behalf of Gary and Ann Devine-King, for approvals of two (2) variance petitions relating to property located at 524 Overhill Street.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 14, Parcels 303 and 304; R-1A, Single-Family Residential District

SURROUNDING ZONING:

R-1A, Single-Family Residential District

BACKGROUND and ANALYSIS:

The petitioner seeks to construct a detached two-car garage at 524 Overhill Street. Addendum A of this report illustrates the location of the subject development site.

Article 1331.08(A)(4) provides that detached accessory structures on corner lots may not be located between any portion of the principal structure and either street. The proposed detached accessory garage structure will be approximately **4' – 3"** closer to Eureka Drive than the principal building, which requires **variance relief**.

It should be noted that the subject garage will not extend closer to Eureka Drive than the porch addition that has been completed. Additionally, the Planning Division required the applicant to obtain minor subdivision approval from the Planning Commission to combine Parcels 303 and 304 of Tax Map 14, which was granted on 14 MAY 2015 under Case No. MNS15-07. Specifically, the petitioner purchased the corner parcel from Monongalia County Schools. Obtaining the minor subdivision approval eliminated the nonconforming corner parcel and mitigated setback encroachments that may have been created by the proposed two-car garage. However, the minor subdivision also changed petitioner's parcel from a "through lot" to a "corner lot" thereby requiring the petitioner to seek variance relief from Article 1331.08(A)(4).

Article 1331.08(A)(7) provides that the total square footage of all accessory structures shall not exceed fifty (50) percent of the first or ground floor area of the principal building. According to aerial photography, the area of the first or ground floor of the principal building is approximately 1,118 square feet.

The dimensions of the petitioner's detached two-car garage is 24 feet by 24 feet for an area of 576 square feet, which is 17 square feet more than 50% of the area of the principal building's first or ground floor. As such, **variance relief of 17 square feet (1.5%)** is required to exceed the subject maximum area standard.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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Please note a memorandum to the Board is attached hereto for the benefit of the Board's record addressing the initiation of construction of the proposed garage prior to the Board's consideration of the subject variance petition.

It is the opinion of the Planning Division that the only manner by which the proposed garage could observe related standards of Articles 1331.08(A)(4) and 1331.08(A)(7) would be to either:

1. Raze and remove the existing principal structure and construct a single-family house with a larger first or ground floor area footprint situated closer to Eureka Drive than the present house; or,
2. Construct an addition to the existing single-family dwelling at least five (5) feet toward Eureka Drive, the area for which would be sufficient to address its proportionate relationship with the proposed detached accessory two-car garage structure.

It should also be noted that the Board has granted similar variance relief for accessory structures to exceed the subject 50% standard and/or the subject proximity to a front or side street standard on a corner lot under at least Case Nos. V11-14 / 604 Preston Road; V13-62 / 235 Darst Street; and, V14-37 / 412 Cobun Avenue.

STAFF RECOMMENDATION:

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Given the circumstances of this case described in the memorandum referenced above, Staff does not submit a recommendation to approve or deny variance relief as requested by the petitioner under Case No. V15-51.

Should the Board grant variance relief of 4' – 3" from Article 1331.08(A)(4) and 17 square feet (1.5%) from Article 1331.08(A)(7) as requested, Staff recommends the following conditions:

1. That the subject detached accessory two-car garage structure may not exceed eighteen (18) feet in height calculated as the halfway point between the highest and lowest elevations of the building footprint measured from the ground level to the midpoint between the eave and ridge of the roof.
2. That no part of the subject detached accessory two-car garage structure may be designed or used for sleeping purposes, and no cooking fixtures shall be placed or permitted therein.

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Director

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Attachments: Application and accompanying exhibits

STAFF REPORT ADDENDUM A
V15-51 / Devine-King / 524 Overhill Street

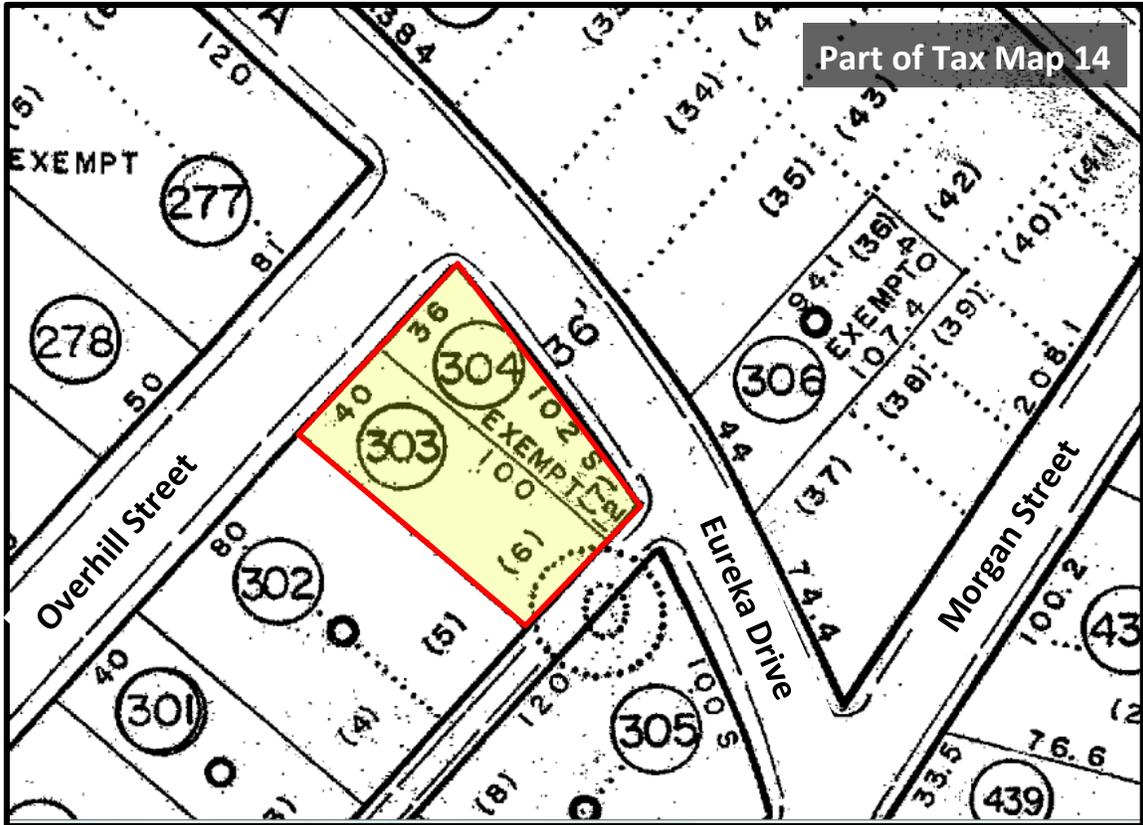




Pre-exterior remodeling work by petitioner



Exterior remodeling work by petitioner



STAFF REPORT ADDENDUM B
V15-51 / Devine-King / 524 Overhill Street

Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Placement of the garage with driveway onto Eureka will provide safer access for residents to enter and leave premises with unobstructed view of the roadway. This will help decrease car and pedestrian traffic from parking on either Eureka or Overhill Streets. It will not negatively influence adjacent property owners or residents and it will make use of the alley for the neighbors safer with traffic flow more inclined to use Eureka Street rather than the alley that is used for garage access for immediate neighbor on Overhill St.

The 2-car garage will provide off-street parking for the residents in a secure and protected structure.

The garage will allow easy, convenient, closer access for the residents from the car to the primary residence. This will replace the current situation whereby the residents park on the grass or street and walk 50+ ft, usually on the grass, to the primary residence.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed 2-car garage is slightly more than the 50% of the principal structure, however, there are compelling reasons why this variance is reasonable. The Primary residence is a smaller home built in 1950 on a 40X100 ft. lot at a time when homes were small and often did not accommodate more than one car. Receiving approval from the City of Morgantown for Minor Subdivision approval, 2 parcels were joined by the owners and the primary residence is on a larger lot measuring 100X52.5X100X76 ft. The lot will accommodate a 2-car garage, providing the benefits cited in section 1.

In addition, the site of the garage is placed at maximum setback from Eureka Street and adjacent alley and as close to the primary residence as the lot size will allow while not disturbing the integrity of the foundation, basement windows and air conditioning unit. This does place the garage a few feet forward to the primary residence but it lies smoothly with the front porch and architectural design, thereby making this variance reasonable.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Unnecessary hardship will be avoided and will permit a reasonable use of the land to benefit the residents of the premises by accepting the reasons cited for a slightly larger garage in relation to the traditional size proportion to the primary residence and accepting the citing of the garage.

The residents of the property will benefit with safer access to the primary residence while being able to safely store their vehicle in off-street, secure and protected structure. Access from the garage to Eureka Street provides the safest and most reasonable approach,

considering the lot size and geometry and structure of the primary residence.

Overall curb-appeal and residential design is considered enhanced from the current situation.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

This variance will allow accommodation for the small primary residence, the size and geometry of the expanded lot, and the benefits of a 2-car garage while respecting the intent of the zoning ordinance. It will provide a more convenient and safer access for the residence of the primary residence without affecting the health, safety, welfare of others.



Development Services

389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: Wednesday, August 19, 2015
To: Board of Zoning Appeals
RE: V15-51 / Devine-King / 524 Overhill Street

The purpose of this communication is to supplement the Staff Report, for the benefit of the Board and its record, with information pertaining to administrative decisions leading to the issuance of recent building permits at 524 Overhill Street given the several questions/concerns fielded by Staff from neighborhood residents and leaders prior to the Board's 19 AUG 2015 hearing.

Sometime during the month of February or March 2015, the petitioner contacted this office seeking guidance for the planning and construction of a detached two-car garage and improvements to the existing single-family dwelling. Staff learned that the petitioner had acquired the corner lot (Parcel 304 of Tax Map 14) from the Monongalia County Board of Education in 2011. Staff advised the petitioner that minor subdivision approval would be required to mitigate potential setback encroachments created by the contemplated garage even though the petitioner owned Parcels 303 and 304. The minor subdivision also eliminated the substandard, nonconforming Parcel 304.

In response, the petitioner submitted a minor subdivision application on or about 31 MAR 2015 to combine Parcels 303 and 304, which the Planning Commission approved on 14 MAY 2015 under Case No. MNS15-07.

On or about 06 JUL 2015, the petitioner's contractor submitted a building permit application (No. 2015-00000876) that included work relating to the construction of a 24' X 24' detached accessory two-car garage structure; construction of a 36' X 10' deck with roof; and, siding and shingles.

During plans review, the undersigned determined the proposed detached garage was closer to the side street (Eureka Drive) than the principal structure [see Article 1331.08(A)(4)], an issue created by combining the two parcels into one parcel.

Additionally, the undersigned determined the proposed garage exceeded the maximum area standard for accessory structures by 17 square feet [see Article 1331.08(A)(7)].

The contractor was contacted and advised that a variance application must be submitted and approved prior to the issuance of a building permit for work relating to the garage. On 14 JUL 2015, the undersigned approved the subject building permit application with the condition that said approval did not include work relating to the garage.



Development Services

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MEMORANDUM

On 14 JUL 2015, Mr. Carter filed a variance application on behalf of Gary and Ann Devine-King.

During the week of 20 JUL 2015, the undersigned met the petitioner's contractor, Mr. Dave Carter, at the site to discuss a number of potential site plan modifications that would address the proximity of the proposed garage to Eureka Drive. After identifying and thoroughly discussing several scenarios, he agreed to consider moving the detached garage further away from Eureka Drive but he needed to assess how doing so would impact the existing HVAC unit for the house and existing window wells for the house's basement windows. The undersigned spoke with him later in the day by phone and advised him that the altered site plan (placement of the detached garage) he described would eliminate the need to obtain variance relief. The undersigned then directed Stacy Hollar to initiate returning the variance application fee.

On or about 27 JUL 2015, a second building permit application (No. 2015-00001018) was submitted for the 24' X 24' detached accessory two-car garage structure. As the undersigned reviewed the second application, it was realized that the issue of the size of the garage being slightly larger than 50% of the principal building's footprint (area in square feet) had not been resolved. The undersigned and the contractor were so focused on resolving the proximity of the garage to Eureka Drive issue that the area (square footage) issue was inadvertently overlooked.

This office immediately contacted the contractor and the property owner and advised them of the error and that variance relief was still required. The property owner was gracious, understanding, and immediately initiated renewal of her initial variance application for which public notification tasks had already been completed.

Unfortunately, the contractor had already poured the footers for the garage because of favorable weather and my verbal indication that variance relief had been resolved, which again was an error in communication that rests on the undersigned. However, the undersigned did not state nor indicate in any manner that initiating work involving the garage prior to amending the initial building permit application or seeking a second separate building permit would be acceptable. The contractor should not have initiated work on the garage until related building permit approvals were issued.

The undersigned advised the contractor and the property owner that this office would approve the zoning portion of the second building permit application with the condition that variance relief approval from the Board must be obtained and that the applicant assumed sole financial risk for work completed prior to the Board's variance consideration and approval. This condition was recorded on the second building permit application with the undersigned's signature dated 29 JUL 2015.



Development Services

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MEMORANDUM

Beginning 05 AUG 2015, this office began receiving complaints that work being completed at 524 Overhill Street would result in an illegal conversion of the single-family structure into a two-family structure and that the detached garage would house a second dwelling. The origin of or basis on which this conjecture has propagated are unknown. However this office immediately confirmed with the Code Enforcement Department that no building permit had been issued to permit work resulting in a second dwelling unit within the principal building or within the subject accessory garage structure. Further, a Code Enforcement Inspector was directed by the City Building Code Official to visit the site to ensure no work completed would create a second dwelling unit.

A detailed email was sent to a concerned neighborhood leader explaining that the subject structure had been registered with the City as a single-family rental dwelling since 26 AUG 2004; that no evidence had been found of approved plans or completed work that would create a second dwelling unit; and, the several reasons for which a stop work order had not been pursued by the undersigned.

After continued objections by neighborhood residents and at the direction of the City Manager, a stop work order was issued on 11 AUG 2015 and remains in effect until a decision by the Board is rendered.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	115-51
RECEIVED:	

0107

CK 1393

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name:	Ann and Gary Devine-King	
Mailing Address:	726 Snake Hill Rd.		Phone:	304-594-2636
	Street	Morgantown, WV 26508	Mobile:	304-694-4579
	City	State	Zip	Email: atdking@gmail.com
II. PROPERTY		Street Address:		
Owner:	Ann & Gary Devine-King		Zoning:	R-1A
Mailing Address:	524 Overhill St.		Tax Map No:	14
	Street	Morgantown, WV 26505	Parcel No:	303 & 304
	City	State	Zip	Phone: 304-594-2636
III. NARRATIVE		Please describe the nature and extent of your variance request(s).		
Petition to build 24 X24 ft. garage next to primary residence on 524 Overhill St., Morgantown, WV.				
ARTICLE 133.08(A)(4) Detached garage is closer to Eureka Drive than principal building <i>CK</i>				
ARTICLE 133(A)(7) Detached garage will be 17 sq. ft more than 50% of front or ground floor area of principal building.				
V. ATTEST				
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Development Services Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.				
Ann Devine-King		<i>Ann Devine-King</i>		DATE 07/28/2015
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		Date

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.

Finance Office Morgantown, WV 26505 (304) 284-7408



APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	
RECEIVED:	

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

- Land Use Characteristics (complete only those that apply)
 - Residential Single-Family Dwelling Townhouse Dwelling
 - Two-Family Dwelling Multi-Family Dwelling
 - Non-Residential or Mixed (please explain)

- Structure Characteristics (complete only those that apply)

Total number of buildings: _____ Gross floor area of each building: _____

Estimated number of employees: _____ No. of dwelling units: _____ No. of bedrooms: _____

Additional structure-related details: _____

- Additional Information (as required by Staff):

- Site Plan. A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.
 - Location, shape, exterior dimensions, and number of stories of each building on the site.
 - Standard yard setbacks for the applicable zoning district
 - Location, grade, and dimensions of paved surfaces, and all abutting streets
 - Existing and proposed contours, at an interval of at least two (2) feet
 - Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
 - Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required



APPLICATION FOR VARIANCE PETITION

OFFICE USE	
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VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
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The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Placement of the garage with driveway onto Eureka will provide safer access for residents to enter and leave premises with unobstructed view of the roadway. This will help decrease car and pedestrian traffic from parking on either Eureka or Overhill Streets. It will not negatively influence adjacent property owners or residents and it will make use of the alley for the neighbors safer with traffic flow more inclined to use Eureka Street rather than the alley that is used for garage access for the immediate neighbor on Overhill St.

The 2-car garage will provide off-street parking for the residents in a secure and protected structure.

The garage will allow easy, convenient, closer access for the residents from the car to the primary residence. This will replace the current situation whereby the residents park on the grass or street and walk 50 + ft , usually on the grass, to the primary residence.

2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed 2-car garage is slightly more that the 50% of the principal structure, however, there are compelling reasons why this variance is reasonable. The Primary residence is a smaller home built in 1950 on a 40 X100 ft. lot at a time when homes were small and often did not accommodate more than one car. Receiving approval from the City of Morgantown for a Minor subdivision approval, 2 parcels were joined by the owners and the primary residence is on a larger lot measuring 100 X 52.5 X 100 X 76 ft. The lot will accommodate a 2-car garage, providing the benefits cited in section 1.

In addition, the site of the garage is place at maximum setback from Eureka Street and adjacent alley and as close to the primary residence as the lot size will allow while not disturbing the integrity of the foundation, basement windows and air conditioning unit. This does place the garage a few feet forward to the primary residence but it lies smoothly with the front porch and architectural design, thereby making this variance reasonable.



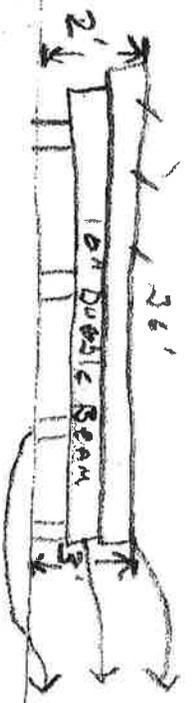
City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

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VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
<p>3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:</p> <p>Unnecessary hardship will be avoided and will permit a reasonable use of the land to benefit the residents of the premises by accepting the reasons cited for a slightly larger garage in relation to the traditional size proportion to the primary residence and accepting the citing of the garage.</p> <p>The residents of the property will benefit with safer access to the primary residence while being able to safely store their vehicle in off-street, secure and protected structure. Access from the garage to Eureka Street provides the safest and most reasonable approach, considering the lot size and geometry and structure of the primary residence.</p> <p>Overall curb-appeal and residential design is considered enhanced from the current situation.</p>	
<p>4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:</p> <p>This variance will allow accommodation for the small primary residence, the size and geometry of the expanded lot, and the benefits of a 2-car garage while respecting the intent of the zoning ordinance. it will provide a more convenient and safer access for the residence of the primary residence without affecting the health, safety, welfare of others.</p>	

on plate
Doubled
2' space

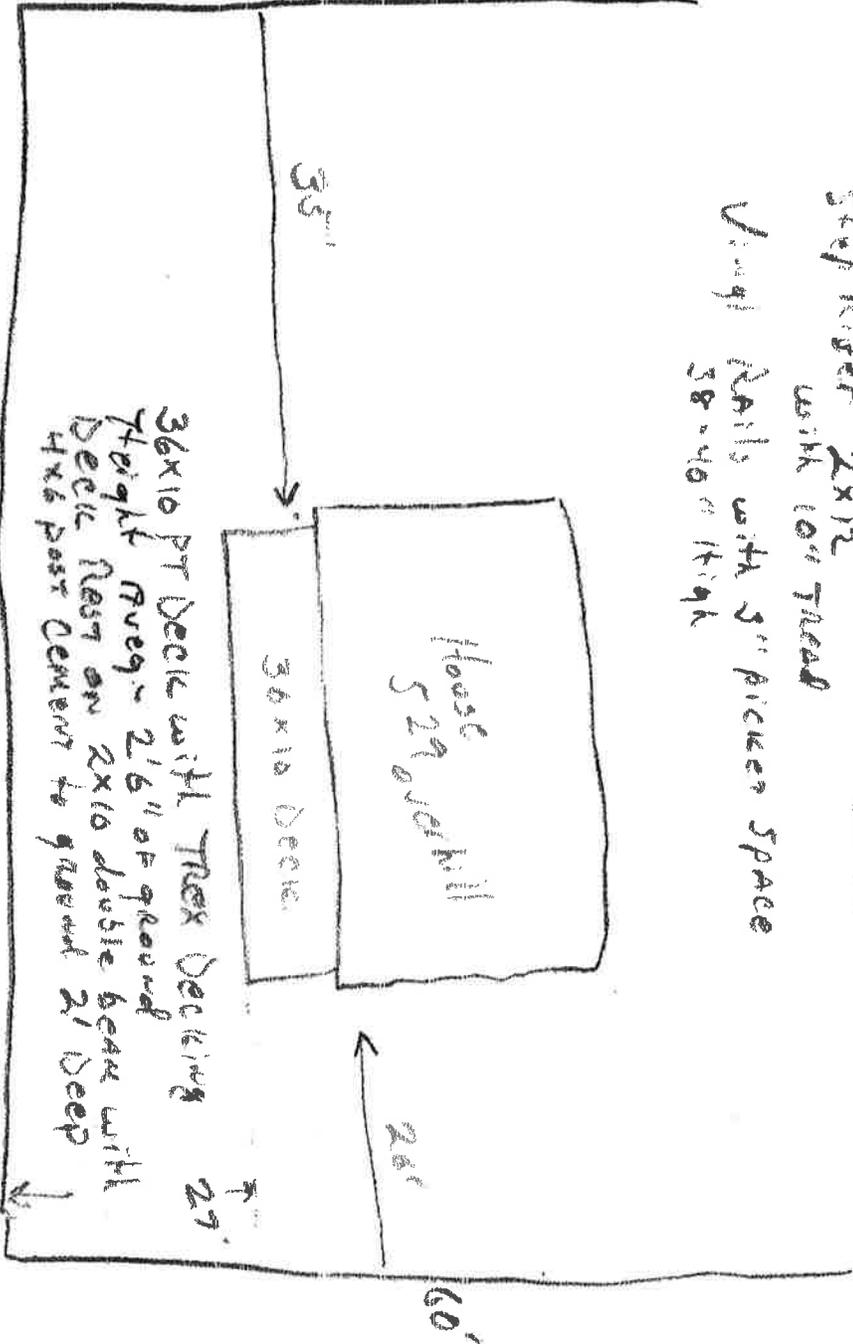


2x8x10 PT 16" oc
Double 2x10 PT Beam
4x6 PT post 12' space
Rest on 12" board 2' deep
Concrete

Step lower
with 10" Tread

Using Rails with 3" picker space
38-46" high

Center Alley 60'



CONCRETE DR

Over Hill # 5-29

V15-51