



City of Duluth

Meeting Agenda

Planning Commission.

Tuesday, August 11, 2020

5:00 PM

Council Chamber, Third Floor, City Hall, 411
West First Street

To view the meeting, visit <http://www.duluthmn.gov/live-meeting>

Call to Order and Roll Call

Public Comment on Items Not on Agenda

Approval of Planning Commission Minutes

[PL 20-0714](#) Planning Commission Minutes 7/14/20

Attachments: [07-14-20 PC Minutes \(not approved yet\) \(1\)](#)

Consent Agenda

[PL 20-060](#) Variance to Shoreland Setbacks for Garage at 2130 Abbotsford Ave by Leonore Baumler

Attachments: [PL 20-060 Revised Staff Report_Memo and Attachments](#)

[PL 20-091](#) Vacation of a Portion of Calvary Road at 5 W Calvary Road by City of Duluth

Attachments: [PL 20-091 Staff Report and Attachments](#)

[PL 20-106](#) Vacation of a Portion of Calvary Road at 1 Calvary Road by City of Duluth

Attachments: [PL 20-106 Staff Report and Attachments](#)

[PL 20-109](#) Variance to Build a Garage at 1221 W 5th Street by Matthew Unzeitig

Attachments: [PL 20-109 Staff Report and Attachments](#)

[PL 20-110](#) Variance to Front Yard Setback for New Single-Family House at Anson Avenue by Daniel and Jodi Slick

Attachments: [PL 20-110 Staff Report and Attachments](#)

[PL 20-111](#) Concurrent Use Permit for Low Clearance Signage at 36th Avenue E by St Louis and Lake Counties Railroad Authority

Attachments: [PL 20-111 Staff report and attachments](#)

[PL 20-112](#) Concurrent Use Permit for Low Clearance Signs at 32nd Ave E by St Louis and Lake Counties Railroad Authority

Attachments: [PL20-112 Staff Report and attachments](#)

[PL 20-118](#) Vacation of W Michigan Street at 2102 W Superior Street by Jon Aamodt

Attachments: [PL20-118 Staff Report w exhibits](#)

[PL 20-119](#) Vacation of Slope Easement at 2102 W Superior Street by Jon Aamodt

Attachments: [PL 20-119 Staff Report w exhibits](#)

Public Hearings

[PL 20-103](#) Variance to Fence Height at 2316 W 7th St by Justin Lee

Attachments: [PL 20-103 Staff Report and Attachments Website](#)

[PL 20-104](#) Concurrent Use Permit for a Fence in the Right of Way of W 7th Street at 2316 W 7th Street by Justin Lee

Attachments: [PL 20-104 Staff Report and Attachments Website](#)

Communications

Land Use Supervisor Report

Historic Preservation Commission Report

Joint Airport Zoning Board Report

Duluth Midway Joint Powers Zoning Board Report

NOTICE: The Duluth Planning Commission will be holding its August 11, 2020 Special Meeting by other electronic means pursuant to Minnesota Statutes Section 13D.021 in response to the COVID-19 emergency. Some members of the Commission will be participating through video conference. Due to the COVID-19 emergency and the closure of City facilities, public comment will not be taken in person. However, members of the public can monitor the meeting and provide public comment on agenda items through WebEx Events. Visit <https://duluthmn.gov/live-meeting> to access the meeting. The public is also encouraged to submit written comment to planning@duluthmn.gov prior to the meeting. Please include "Planning Commission Agenda" in the subject line, and include your name and address and the agenda item you are speaking to. Please note that all public comment is considered Public Data. The public is also encouraged to watch the meeting by tuning into Public Access Television, Channel 180.

City of Duluth
Planning Commission
July 14, 2020 Meeting Minutes

Due to the COVID-19 emergency, many planning commission members participated through video conference from home. The meeting was held as a Special Meeting pursuant to Minnesota Statute 13D.021 in response to the Covid-19 emergency. Public comment was taken at planning@duluthmn.gov prior to and during the meeting, and via verbal comment through public attendance in the WebEx video conference during the meeting.

Call to Order

President Margie Nelson called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, July 14th, 2020.

Roll Call

Attendance: (* Via WebEx video conferencing – all votes conducted via roll call)

Members Present: Jason Crawford*, Gary Eckenberg*, Tim Meyer*, Margie Nelson*, Michael Schraepfer*, and Andrea Wedul*

Member Absent: Sarah Wisdorf and Zandra Zwiebel

Staff Present: Adam Fulton*, Robert Asleson*, Kyle Deming*, John Kelley*, Steven Robertson*, and Theresa Bajda*

Approval of Planning Commission Minutes

June 9, 2020

MOTION/Second: Eckenberg/Wedul approved the minutes with one change

VOTE: (6-0)

Presentations

Duluth International Airport Zoning Ordinance – Deputy Director Adam Fulton gave an overview. The Duluth International Joint Airport Zoning Board (JAZB) is comprised of: the city of Duluth, the city of Hermantown, the township of Canosia, the city of Rice Lake and St. Louis County. They are updating the ordinance, which was originally created in 1988. A draft was created by Duluth Deputy City Attorney Steve Hanke. MNDOT will need to approve it, and then it will come back to the city where they will conduct an additional public hearing before adoption into the UDC. City Planner Kyle Deming is the chief zoning administrator for the Board. Andrea Wedul asked what are the main changes being proposed. Deputy Director Fulton noted the greatest impacts are on the runway areas impacting Hermantown and Rice Lake, and is non-contentious at the runway ends in Duluth. He will keep the planning commission informed regarding next steps.

PL 20-107 Tax Forfeit Land Swap Process – Deputy Director Fulton gave an overview. He noted the priorities for selecting tax forfeit and open space parcels for city ownership and protection. They are collaborating with St. Louis County to create a community funding process. The Natural Resources commission acted to recommend adoption of the guidelines for selecting tax forfeit and open space parcels for city ownership and protection at its Wednesday, July 1st, 2020, meeting. Following the planning commission action on this item, the guidelines will go

before the city council for approval. This action/vote by planning commission will take place later in tonight's agenda. Wedul asked how much public involvement will there be. Deputy Director Fulton noted there is commitment to an open and transparent process, which will involve public meetings, by both Natural Resources and planning commissions. Today they are focusing on the guidelines. Gary Eckenberg asked about the "swap" process or funding through legacy grants. Deputy Director Fulton noted it is an internal term, but they are looking at the broader picture, and a shift of preservation. Eckenberg is in support of the process. Deputy Director Fulton noted the Parks and Library staff have been working hard on it, including Jim Filby Williams and Diane Desotelle. Wedul is in support and feels the guidelines are very helpful.

Consent Agenda

~~PL 20-060 Variance to Shoreland Setbacks for Garage at 2130 Abbotsford Avenue by Leonore Baunier~~ (Item removed from July's agenda by the applicant for additional information and may be brought back in August.)

PL 20-063 Variance to Front and Side Yard Setbacks at 523 E Skyline Parkway by Mark Merrill

PL 20-088 Interim Use Permit for a Vacation Dwelling Unit at 120 E Superior Street Floor 3 by Cook and Kocon Real Estate Holding LLC

PL 20-089 Interim Use Permit for a Renewal Vacation Dwelling Unit at 1026 N 10th Ave E by Eve Graves

PL 20-092 Minor Subdivision at 1136 S Lake Avenue by Larry McGough

PL 20-094 Special Use Permit for Pump House at 2120 W. Michigan St by the city of Duluth

PL 20-099 Final Plat for Kirkland Addition at Haines Road and Arrowhead Road by Costco

Staff: N/A

Applicant: N/A

Commissioners: PL 20-089: Eckenberg referred to page 108 of the packet and noted some discrepancies on the address in the staff report. He asked about the six-year term, and the three parking spaces listed. Are they in addition to what is existing? John Kelley stated this is a renewal and the parking was existing. He noted only two spaces are required. Deputy Director Fulton noted there is a parking pad in the back. Kelley affirmed. Eckenberg asked the applicant about the three spaces. The applicant Eve Graves stated one car fits in the garage and there is a 2nd space parallel to the garage. Eckenberg asked if the staff report can be changed to reflect two spaces instead of three. Deputy Director Fulton they will look into it before the approval is issued.

Public: No speakers.

MOTION/Second: Meyer/Crawford to approve the consent agenda items as per staff recommendations.

VOTE: (6-0)

Public Hearings

PL 20-090 Special Use Permit for Outdoor Recreation Facilities at 3301 Technology Drive, North Star Academy by Tischer Creek Duluth Building Company

Staff: John Kelley introduced the applicant's proposal for a special use permit to expand its existing school campus to provide outdoor accessible space with structures located in an R-2, Residential Urban zone district. Staff recommends approval with the conditions listed in the staff report. Proposals include a yurt, a playfield, and a trail. Wetlands are avoided. They want to expand their outdoor space for educational purposes and make it ADA accessible. Wedul noted the proposed tree replacement plan. 24 trees are being removed and only 8 are going back in. Kelley stated the preliminary report has been submitted to the City Forester. Wedul verified the turf grass seed will be evaluated as well. Kelley stated yes, and the stormwater run-off will need to be evaluated and approved. Wedul asked if there will be any lighting proposed, and the purpose of the shed. Kelley stated there is no lighting planned at this time. He deferred to the applicant on the shed question.

Applicant: Landscape Architect, Heidi Bringman of LHB, Inc. addressed the commission and stated the shed use depends on the programming for the yurt. They may want it close to the parking lot for access. It will hold snowshoes, orientation gear, rain boots, etc. The Maintenance Supervisor would like a shed to store a mower, weed wacker, etc. The site plan includes two sheds: one close to the yurt, and one maintenance shed that may be outside of the site map area. She confirmed there will be no lighting involved in the outdoor recreation facilities. There will be lighting in the parking lot and an electrical hook-up will be included by the yurt. She noted the tree preservation plan. Of the 24 being removed, only two are significant and there are no special trees, therefore just a different tree species was suggested. Paul Goossens of Tischer Creed Duluth Building Company addressed the commission. They looked at what capital improvements would support educational improvements. They are trying to meet the needs of their students. It's a win/win for joint use of the land with Snowflake Ski Area. Wedul asked if a wetland delineation is being proposed. Bringman noted the delineation occurred when the school was built ten years ago. The whole site sits on a hill. The intent is to develop a primary area, and will be a 1-5 year phased approach. No grading is proposed at this time, just more clearing at this first phase. She invited commissioners to walk that the site, and noted it is quite a bit away from the wetlands. It will have a parkland feel. Wedul appreciates the consideration of the turf seed. Bringman noted it was be similar to the area around the cabin that you don't mow. She noted they have a couple of letters in support for the project.

Public: No speakers.

Commissioners: N/A

MOTION/Second: Eckenberg/Wedul approved as per staff recommendations

VOTE: (6-0)

New Business

Approval of Tax Forfeit Land Swap Process – Deputy Director Adam Fulton stated they are recommending approval of the guidelines as presented

MOTION/Second: Wedul/Eckenberg/Wedul recommended approval of guidelines as presented

VOTE: (6-0)

Communications

Land Use Supervisor (LUS) Report – Deputy Director Fulton gave an overview. He thanked commissioners and noted city hall continues to be open to the public by appointment only. He asked commissioners for their feedback regarding web-ex brown bag meetings. Wedul stated she would like a brown bag meeting and thinks web-ex meetings are doable. Eckenberg noted they have mastered the web-ex meeting and agreed to a brown bag meeting. Deputy Director Fulton noted a doodle poll to gauge availability will follow. He noted the city is tracking an asphalt plant planned in Rice Lake township. Rice Lake is contemplating a moratorium on the issue. There is a citizen petition for an Environmental Assessment Worksheet (EAW). This is outside Duluth's city jurisdiction, but Steven Robertson is working closely with our surrounding communities. Deputy Director Fulton asked for volunteers for the Land Swap subcommittee. Interested commissioners include: Eckenberg, Wedul, Chair Nelson and Crawford. Wedul asked about the Costco status. Deputy Director Fulton stated that Costco has indicated an intent to proceed subject to additional approvals. The City Council will consider tax abatement status at their 7/20/2020 meeting.

Heritage Preservation Commission – Commissioner Wisdorf not in attendance, but Deputy Director Fulton noted there was a resolution to maintain landmark status for the city-owned Tiffany windows. City council affirmed.

Joint Airport Zoning Board – No report. (Ordinance earlier on the agenda.)

Duluth Midway Joint Powers Zoning Board – No report.

Adjournment

Meeting adjourned at 6:09 p.m.

Respectfully,

Adam Fulton – Deputy Director
Planning and Economic Development



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

Date: August 4, 2020
 To: Planning Commission
 From: John Kelley, Planner II
 RE: PL 20-060 Shoreland Variance – Construction of garage

Recommended Action: Motion to recommend approval of the variance with the following conditions:

- 1) The project be limited to, constructed, and maintained based on the site plan and drainage plan submitted with the application.
- 3) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.

At the July 14, 2020 Planning Commission meeting the application for a shoreland variance at 2130 Abbotsford Avenue was removed from the agenda pending a revised variance request. The initial application was to demolish and existing 20' x 32' garage and an 8' x 33' garden shed attached to the east end of the structure that is in poor condition. The applicant was proposing to replace it with a 26 foot wide by 50 foot deep garage, which is inclusive of the garden shed, and in the same configuration. The initial application had the proposed garage approximately 10 feet longer than the existing structure. That application had the new structure encroaching approximately 30' to 40' into the 150' shoreland setback. The current garage also does not meet side yard setback requirements for accessory structures as it straddles the southern property line adjacent to the neighbor's garage. The applicant is proposing a 5-foot setback from the southern property line.

The applicant has submitted a revised variance request to construct a 34' x 46' garage and garden shed in the same configuration as the initial request. The revised building plan shows the structure as 8 feet wider but 4 feet shorter than the initial application. The proposed building would be moved slightly to the east and north, and encroach into the shoreland setback of 150' a few feet deeper than the original application. The applicant has stated that this design will allow the driveway to be narrowed to match the existing driveway to minimize runoff and maximize lawn area. The applicant's mitigation plan is proposing drain tile on the south side of the garage to accommodate drainage from the trench drain on the west side of the garage and into a surface swale on the east side (back of building), and gutters running along the north side of the structure to the swale. The property is forested and has existing ground cover between the garage and Tischer Creek.

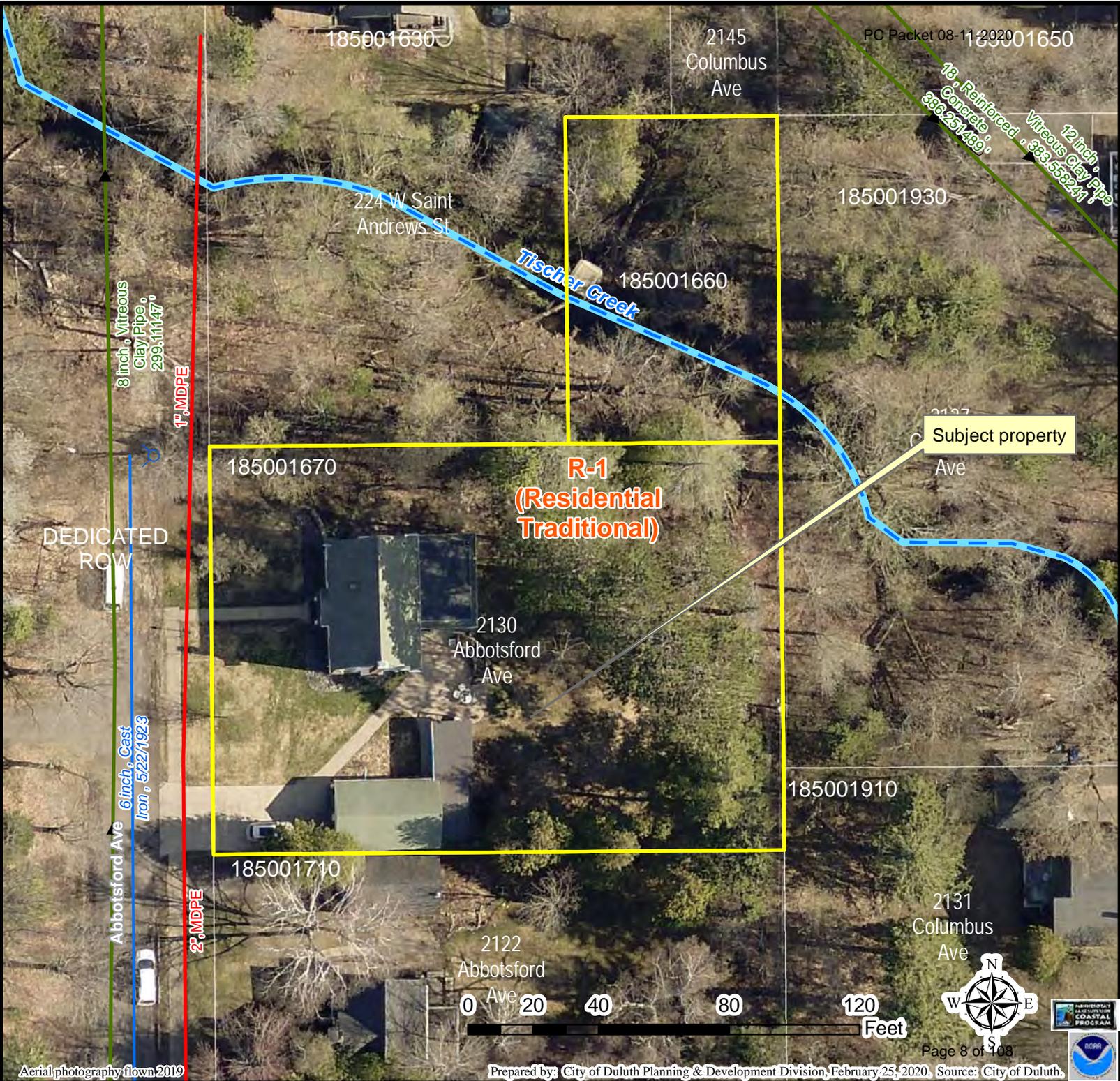
Staff recommends approval of the variance with the recommended conditions noted above.



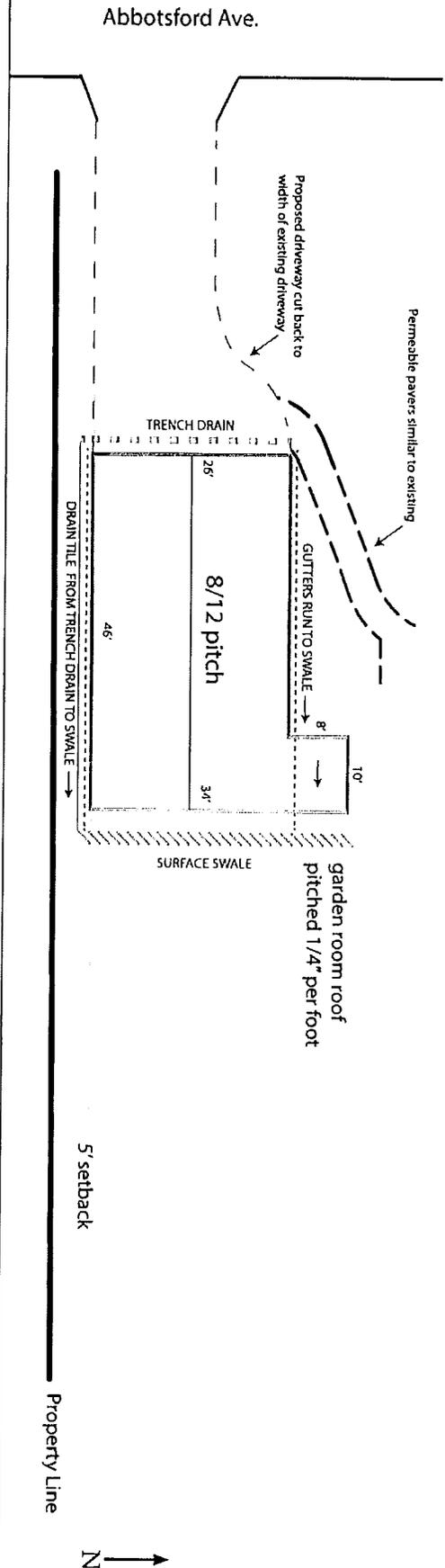
Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Easement Type
 - Utility Easement
 - Other Easement
 - Zoning Boundaries
 - Trout Stream (GPS)
 - Other Stream (GPS)

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

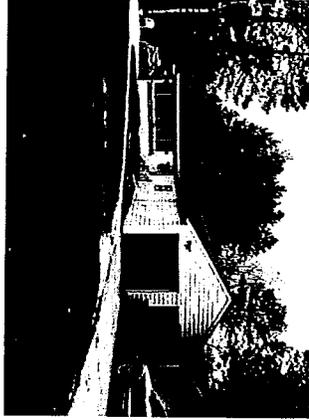


PROPOSED DRAINAGE PLAN



EXISTING CONDITIONS

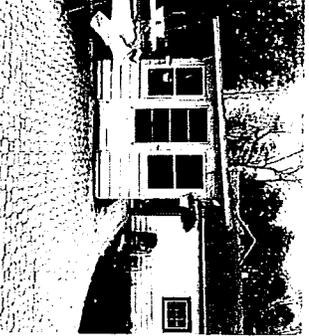
View looking east from street



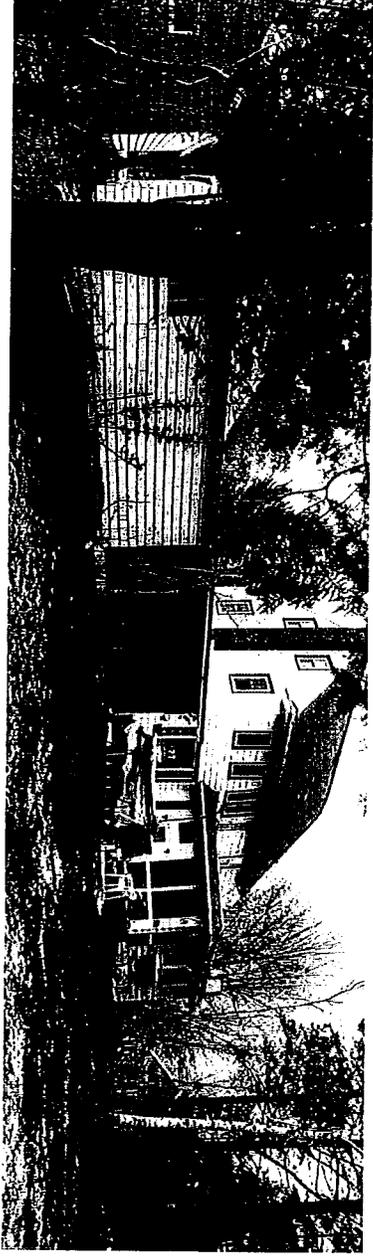
View looking north-east from garage showing existing permeable pavers



View of garden room and garage looking south from existing patio of permeable pavers



View looking north-west at back of garage and house



Aerial view existing conditions





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580
 planning@duluthmn.gov

File Number	PL 20-060	Contact	John Kelley, jkelly@duluthmn.gov	
Type	Variance – Shoreland structure setback	Planning Commission Date	July 14, 2020	
Deadline for Action	Application Date	May 21, 2020	60 Days	July 20, 2020
	Date Extension Letter Mailed	March 25, 2020	120 Days	September 18, 2020
Location of Subject	2130 Abbotsford Avenue			
Applicant	Leonore Baeumier	Contact		
Agent		Contact		
Legal Description	See attached			
Site Visit Date	June 7, 2020	Sign Notice Date	June 30, 2020	
Neighbor Letter Date	June 30, 2020	Number of Letters Sent	24	

Proposal

The applicant is seeking a variance to remove an existing garage and construct a new garage of similar size and configuration within the 150' shoreland setback of Tischer Creek.

Recommendation

Staff are recommending approval with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single Family Homes	Traditional Neighborhood
North	R-1	Single Family Homes	Traditional Neighborhood/Open Space
South	R-1	Single Family Homes	Traditional Neighborhood
East	R-1	Single Family Homes	Traditional Neighborhood/Open Space
West	R-1	Single Family Homes	Traditional Neighborhood

Summary of Code Requirements

Sec. 50-37.9. B – Variance Procedures. “The Planning Commission shall...make a decision on the application based on the criteria in subsections 50-37.9. C – M...”

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant’s property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief for from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

Sec. 50-37.9.L – Standards for variances in Shorelands: No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #1 - Reuse of previously developed lands, including adaptive reuse of existing building stock and historic resources, directs new investment to sites which have the potential to perform at a higher level than their current state. This strengthens neighborhoods and is preferred to a dispersed development pattern with associated alteration of natural landscapes and extensions of public services. Site preparation or building modification costs are offset by savings in existing public infrastructure such as streets and utilities, and transit, fire, and police services.

The applicant is proposing to construct the new garage in the general area of the existing structure location.

Governing Principle 5 – Promote reinvestment in neighborhoods through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's

The homeowner will be reinvesting in their home in the Hunters Park neighborhood by constructing a new garage to replace a very old structure.

Future Land Use, Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses.

History:

House constructed in 1923

Garage constructed in 1948

Review and Discussion Items

- 1) The applicant's existing garage is in poor condition with wall and floor cracks resulting from frost heaving. The applicant has stated the current garage needs to be upgraded to be safe and accessible for the elderly owner.
- 2) The applicant's current 20 foot wide by 32 foot deep garage was constructed in 1948 and has deteriorated to the point that the applicant needs to construct a new garage. There is an 8' x 32' garden shed attached to the east end of the existing garage. The applicant is proposing to remove both and replace it with a 26 foot wide by 50 foot deep garage in the same configuration. The new garage will be approximately 10 feet longer the existing structure and inclusive of a new 8' X 10' garden shed. The proposed structure appears to be encroaching approximately 30' to 40' into the 150' shoreland setback.
- 3) The garage was constructed prior to the adoption of the UDC shoreland setback requirements. Due to the proximity of the garage to Tischer Creek, it's classified as a Coldwater River and requires a 150' setback from the creek's Ordinary High Water Level (OHWL). Since the garage is within the 150' shoreland, a variance to shoreland setback standards is required to construct a structure/garage.
- 4) The current garage also does not meet side yard setback requirements for accessory structures as it straddles the southern property line adjacent to the neighbor's garage. The applicant is proposing a 5-foot setback from the southern property line.
- 5) The applicant is proposing a reasonable use of the site consisting of garage being built to be safe and accessible for the elderly owner and constructed in the general area of the existing structure.
- 6) The proposal will not alter the essential character of the neighborhood as adjacent homes and garages are in proximity to or within to the shoreland setback from Tischer Creek.
- 7) Section 50-37.9.L of the UDC requires mitigation for shoreland variances; the applicant is proposing drain tile via a slot drain on the south side of the garage to a surface drainage swale on the west side (back of building), a trench drain on the west side and gutters running along the north side to the swale. The property is forested and has existing ground cover between the garage and Tischer Creek.
- 8) No other public, private or City comments were received.
- 9) Per UDC Section 50-37.1. N. approved variances lapse if the project or activity authorized by the permit or variance is not begun within one-year

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission grant the Variance with the following conditions:

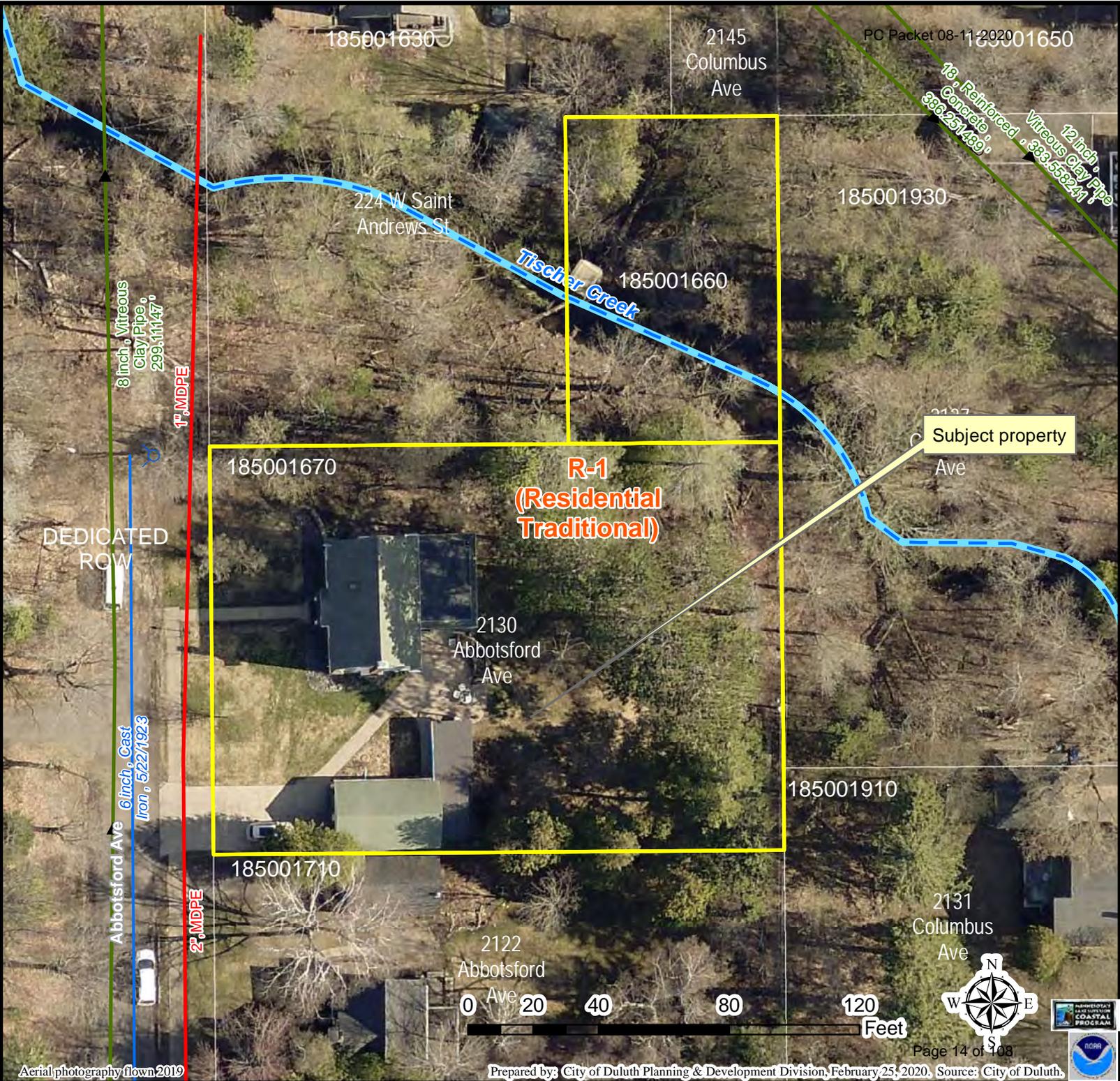
- 1) The project be limited to, constructed, and maintained based on the site plan and drainage plan submitted with the application.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50



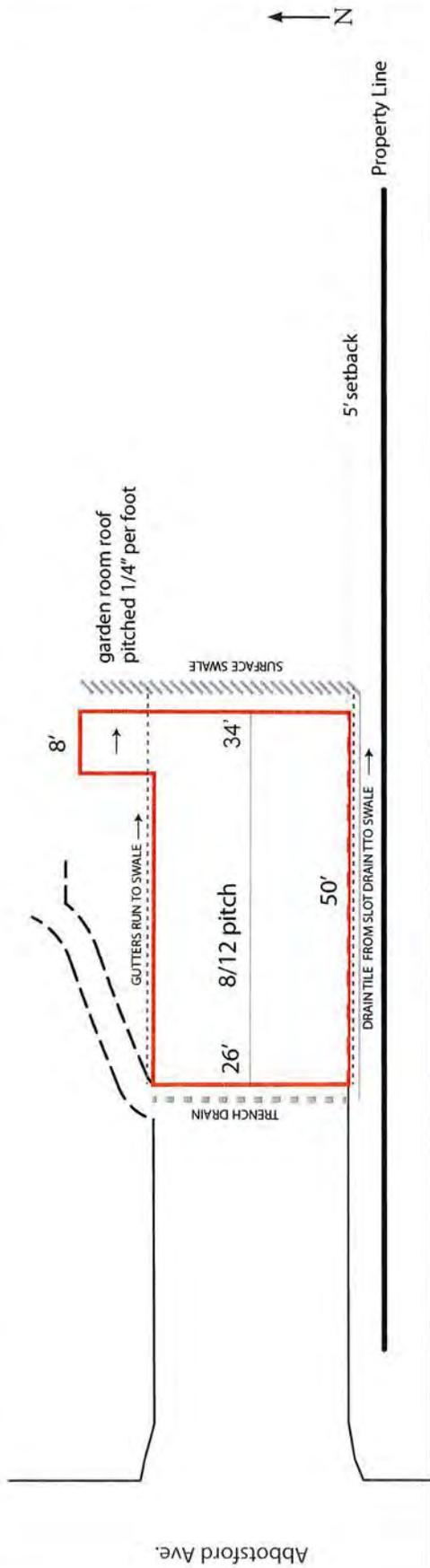
Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Easement Type
 - Utility Easement
 - Other Easement
 - Zoning Boundaries
 - Trout Stream (GPS)
 - Other Stream (GPS)

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



PROPOSED DRAINAGE PLAN



EXISTING CONDITIONS

View looking east from street



View looking north-east from garage



View looking south from patio



Aerial view existing conditions



View looking north-west at back of garage and house





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-091	Contact	John Kelley, jkelley@duluthmn.gov	
Type	Vacation of Right-Of-Way	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	June 11, 2020	60 Days	August 10, 2020
	Date Extension Letter Mailed	July 29, 2019	120 Days	October 9, 2020
Location of Subject	Portion of Calvary Road adjacent to 5 Calvary Road (Moran Rentals)			
Applicant	Moran Rentals	Contact		
Agent	Cindy Voigt	Contact		
Legal Description	See Attached			
Site Visit Date	August 5, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 28, 2020	Number of Letters Sent	35	

Proposal

Moran Rentals is requesting to vacate a portion of Calvary Road adjacent to their street frontage along Calvary Road. St. Louis County has stated that West Calvary Road is County Road #234. This action will not affect the right-of-way of the county road and it has been determined that the area to be vacated is not needed for use by the City or County for street or pedestrian use.

Staff is recommending approval with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N	Access/Parking	Neighborhood Commercial
North	R-1	Residential	Neighborhood Commercial
South	MU-N	Street/ Commercial	Neighborhood Commercial
East	MU-N	Commercial/Residential	Neighborhood Commercial
West	MU-N	Commercial	Neighborhood Commercial

Summary of Code Requirements:

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 - Promote reinvestment in neighborhoods.

Vacation of the right of way is not needed for use by public and will allow property owner to have more area for access and parking options.

Future Land Use - Neighborhood Commercial - Small- to moderate-scale commercial, serving primarily the adjacent neighborhood(s). May include specialty retail; community-gathering businesses such as coffee shops or lower intensity entertainment; offices; studios or housing above retail (storefront retail with vertical mixed use). Typically situated in or adjacent to residential neighborhoods. May transition to neighborhood mixed use.

Review and Discussion Items:

Staff finds that:

1. Moran Rentals is requesting to vacate a portion of Calvary Road in proximity to their property located at 5 Calvary Road as shown on the attached exhibit.
2. The proposed vacation of a portion of Calvary Road is trapezoidal in shape and is approximately 1,037 square feet in size. The proposed vacated area is currently utilized for access and parking for the property at located at 5 Calvary Road and is not used by the general public.
3. There are utilities within the area to be vacated. The City Engineering office has reviewed the proposed vacation and has indicated that a utility easement shall be retained over the entire portion of the right of way.
4. Vacating the right of way will not impact or deny access to other property owners.
5. No other public or City comments have been received at the time of drafting this report.
6. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) Approval of the vacation shown on the attached exhibit
- 2.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 20-091 Vacation of ROW
Location Map

065000360

8 W
Chisholm St

066000050

PC Packet 08-11-2020

2 W
Chisholm St

**R-1
(Residential
Traditional)**

066000030

4119
Woodland
Ave

Subject property

065000410

17 Calvary Rd

066000010

5 Calvary Rd

**MU-N (Mixed Use
Neighborhood)**

066000020

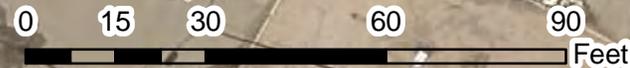
1 Calvary Rd

Legend

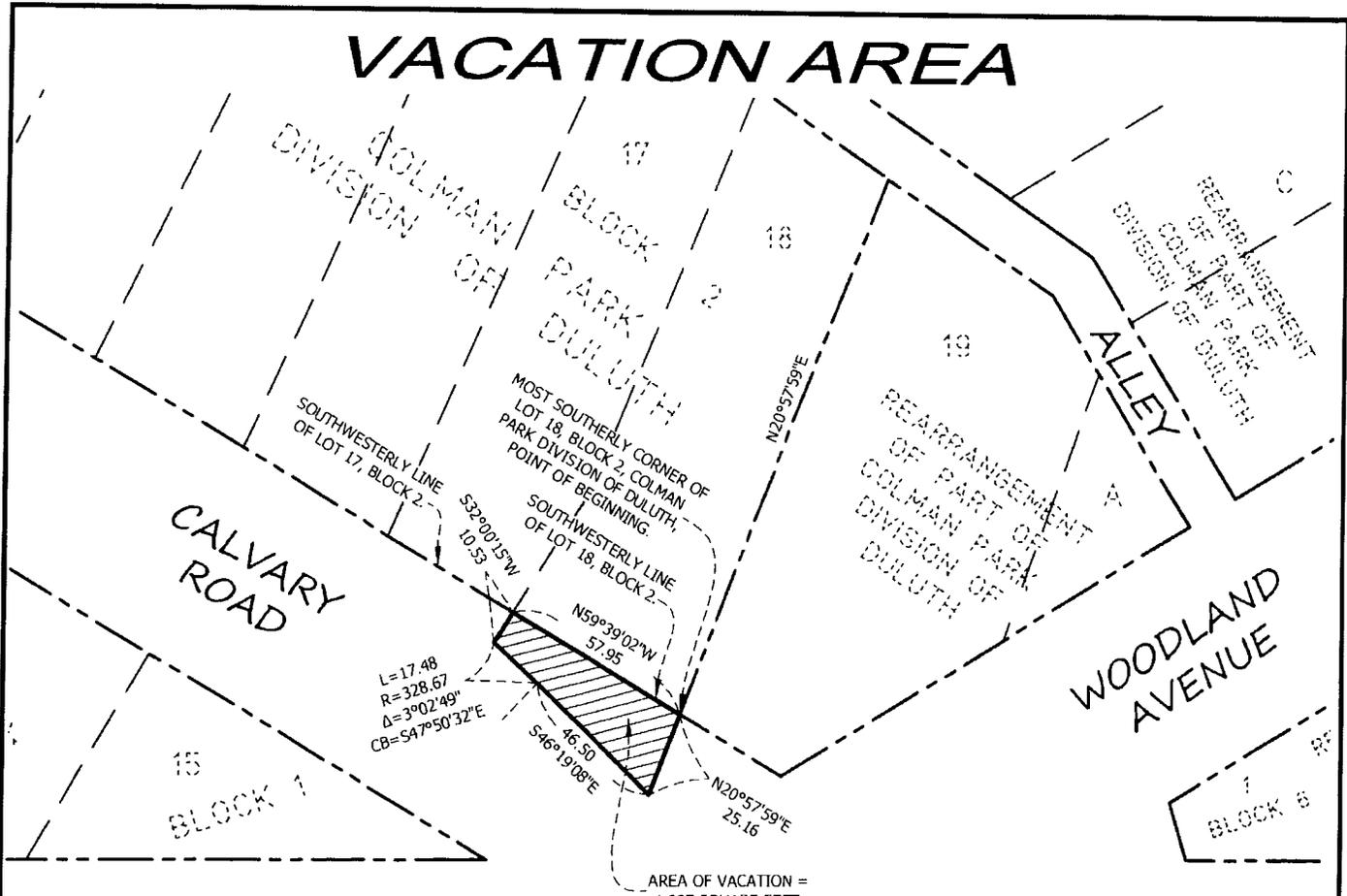
-  Vacated ROW
- Easement Type
-  Utility Easement
-  Other Easement
-  Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

14 Calvary Rd
Aerial photography flown 2019

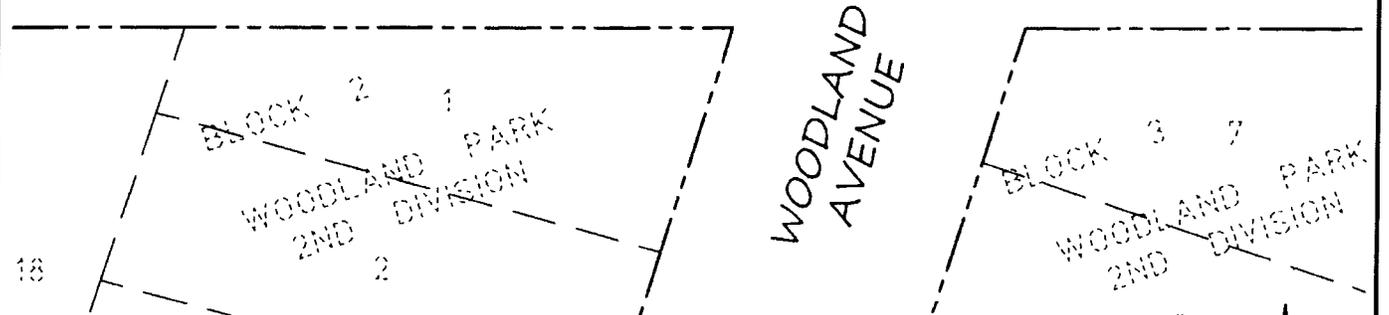


VACATION AREA



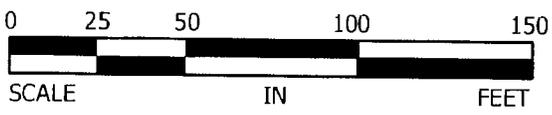
AREA OF VACATION = 1,037 SQUARE FEET

AUSTIN STREET

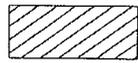


Approved by: [Signature] 10-7-19
 City Engineer Date

SCALE: 1 INCH = 50 FEET



NOTE:

 Denotes vacation area with utility easement retained.

Orientation of this bearing system is based on the southwesterly line of Lot 18, Block 2, COLMAN PARK DIVISION OF DULUTH to have an assumed bearing of N59°39'02"W.



C:\Users\rmorton\Desktop\Woodland Sketch & Description\16-334 Moran Sketch.dwg 8/28/2019 12:08 PM



5670 Miller Trunk Hwy
 Suite A,
 Duluth, MN 55811
 (218) 720-6219
 www.jpjeng.com

EXHIBIT A

For: The City of Duluth, Minnesota

PROJECT NUMBER	16-334
SHEET NUMBER	2 of 2 Sheets

VACATION AREA

VACATION DESCRIPTION:

That part of Calvary Road, as platted and dedicated in COLMAN PARK DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:

Beginning at the most southerly corner of Lot 18, Block 2, said COLMAN PARK DIVISION OF DULUTH; thence North 59 degrees 39 minutes 02 seconds West, assumed bearing along the southwesterly line of said Lot 18 and along the southwesterly line of Lot 17, said Block 2, a distance of 57.95 feet; thence South 32 degrees 00 minutes 15 seconds West 10.53 feet; thence southeasterly 17.48 feet along a non-tangential curve, concave to the southwest, having a radius of 328.67 feet, a central angle of 3 degrees 02 minutes 49 seconds and a chord which bears South 47 degrees 50 minutes 32 seconds East; thence South 46 degrees 19 minutes 08 seconds East, tangent to said curve 46.50 feet to the intersection with a line bearing South 20 degrees 57 minutes 59 seconds West from the point of beginning; thence North 20 degrees 57 minutes 59 seconds East 25.16 feet to the point of beginning.

NOTE:

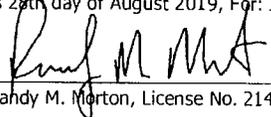
Orientation of this bearing system is based on the southwesterly line of Lot 18, Block 2, COLMAN PARK DIVISION OF DULUTH to have an assumed bearing of N59°39'02"W.

Area of vacation = 1,037 square feet.

CERTIFICATION:

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 29th day of August 2019, For: JPJ Engineering


 Randy M. Morton, License No. 21401

C:\Users\rmorton\Desktop\Woodland Sketch & Description\16-334 Moran Sketch.dwg 8/28/2019 12:05 PM



5670 Miller Trunk Hwy
 Suite A,
 Duluth, MN 55811
 (218) 720-6219
 www.jpjeng.com

EXHIBIT A

For: The City of Duluth, Minnesota

PROJECT NUMBER

16-334

SHEET NUMBER

1 of 2 Sheets



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-106	Contact	John Kelley, jkelley@duluthmn.gov	
Type	Vacation of Right-Of-Way	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	June 3, 2020	60 Days	August 2, 2020
	Date Extension Letter Mailed	July 24, 2019	120 Days	October 1, 2020
Location of Subject	Portion of Calvary Road and Woodland Avenue adjacent to 1 Calvary Road (Falks Woodland Pharmacy)			
Applicant	Falks Woodland Pharmacy	Contact		
Agent	Cindy Voigt	Contact		
Legal Description	See Attached			
Site Visit Date	August 5, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 28, 2020	Number of Letters Sent	31	

Proposal

Falks Woodland Pharmacy is requesting to vacate a portion of Calvary Road and Woodland Avenue adjacent to their street frontage along both right of ways. This action will not affect the right-of-way of the county road and it has been determined that the area to be vacated is not needed for use by the City or County for street or pedestrian use.

Staff is recommending approval with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N	Access/Parking	Neighborhood Commercial
North	R-1	Residential	Neighborhood Commercial
South	MU-N	Street/ Commercial	Neighborhood Commercial
East	MU-N	Commercial/Residential	Neighborhood Commercial
West	MU-N	Commercial	Neighborhood Commercial

Summary of Code Requirements:

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 - Promote reinvestment in neighborhoods.

Vacation of the right of way is not needed for use by public and will allow property owner to have more area for access and parking options.

Future Land Use - Neighborhood Commercial - Small- to moderate-scale commercial, serving primarily the adjacent neighborhood(s). May include specialty retail; community-gathering businesses such as coffee shops or lower intensity entertainment; offices; studios or housing above retail (storefront retail with vertical mixed use). Typically situated in or adjacent to residential neighborhoods. May transition to neighborhood mixed use.

Review and Discussion Items:

Staff finds that:

1. Falks Woodland Pharmacy is requesting to vacate a portion of Calvary Road in proximity to their property located at 1 Calvary Road as shown on the attached exhibit.
2. The proposed vacation of a portion of Calvary Road and Woodland Avenue is irregular in shape and is approximately 6,464 square feet in size. The proposed vacated area is currently utilized for access and parking for the property at located at 1 Calvary Road.
3. The City and County has determined that this portion of the right of way is not needed for street or pedestrian use. Vacating the right of way will not impact or deny access to other property owners.
4. There are utilities within the area to be vacated. The City Engineering office has reviewed the proposed vacation and has indicated that a utility easement shall be retained over the entire portion of the right of way.
5. No other public or City comments have been received at the time of drafting this report.
6. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

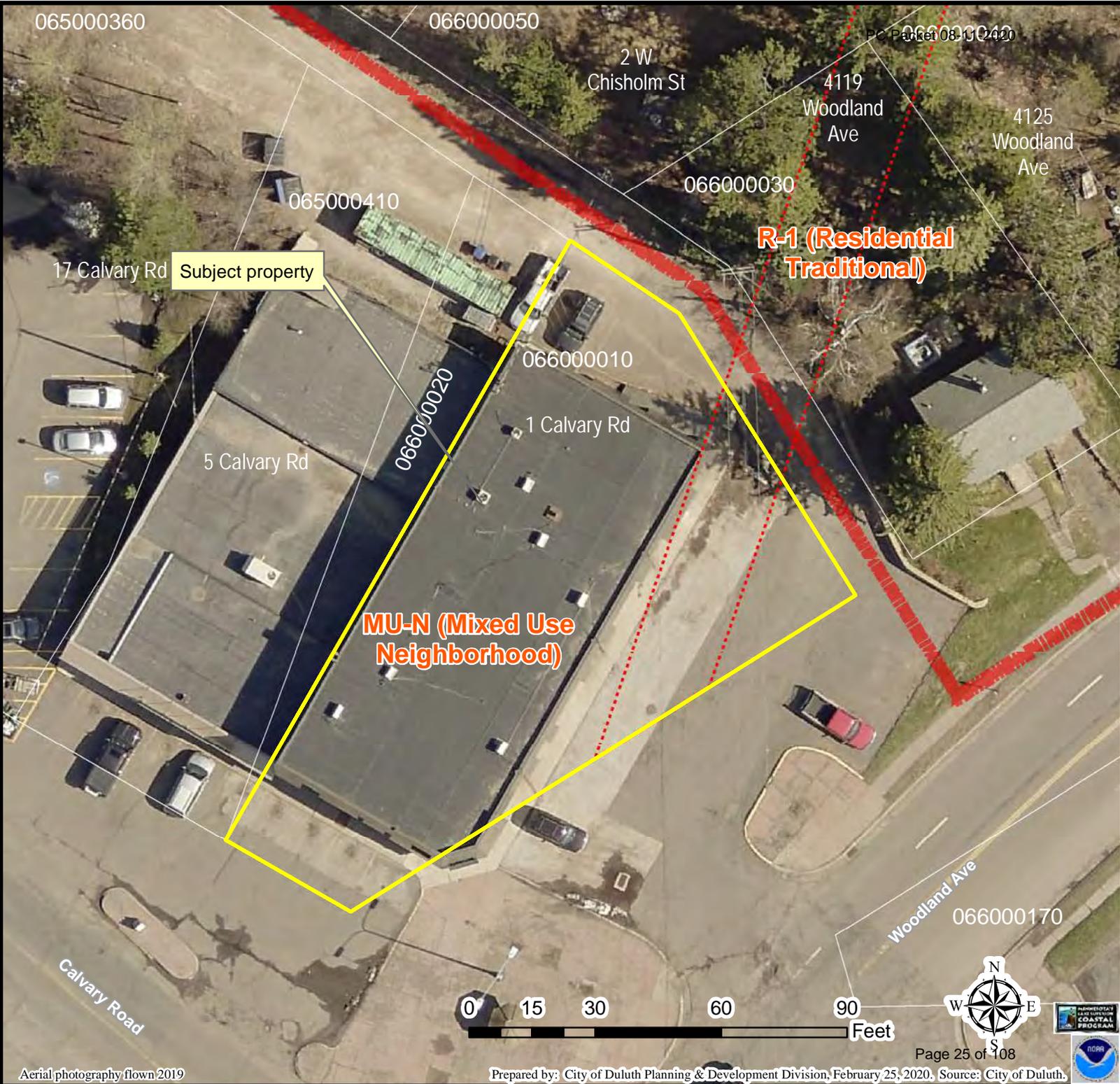
Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) Approval of the vacation shown on the attached exhibit
- 2.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 20-106 Vacation of ROW
Location Map



Legend

- Vacated ROW
- Easement Type**
- Utility Easement
- Other Easement
- Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



VACATION AREA

VACATION DESCRIPTION:

That part of Woodland Avenue, as platted and dedicated in REARRANGEMENT OF PART OF COLMAN PARK DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota and that part of Calvary Road, as platted and dedicated in COLMAN PARK DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:

Beginning at the most easterly corner of Outlot A, said REARRANGEMENT OF PART OF COLMAN PARK DIVISION OF DULUTH; thence South 31 degrees 38 minutes 54 seconds East, assumed bearing along the southeasterly extension of the northeasterly line of said Outlot A, a distance of 16.93 feet; thence southwesterly 125.16 feet along a non-tangential curve, concave to the southeast, having a radius of 760.87 feet, a central angle of 9 degrees 25 minutes 29 seconds and a chord which bears South 42 degrees 52 minutes 33 seconds West; thence westerly 38.72 feet along a reverse curve, concave to the north, having a radius of 26.00 feet and a central angle of 85 degrees 19 minutes 42 seconds; thence North 56 degrees 30 minutes 30 seconds West, tangent to said last described curve 19.59 feet; thence North 66 degrees 17 minutes 29 seconds West 20.00 feet; thence northwesterly 16.11 feet, along a non-tangential curve, concave to the northeast, having a radius of 171.33 feet, a central angle of 5 degrees 23 minutes 11 seconds and a chord which bears North 49 degrees 00 minutes 43 seconds West; thence North 46 degrees 19 minutes 08 seconds West, tangent to said last described curve 3.14 feet to the intersection with a line bearing South 20 degrees 57 minutes 59 seconds West from the most southerly corner of Lot 18, Block 2, said COLMAN PARK DIVISION OF DULUTH; thence North 20 degrees 57 minutes 59 seconds East 25.16 feet to the most southerly corner of said Lot 18; thence South 59 degrees 39 minutes 02 seconds East, along the southwesterly line of Lot 19, Block 2, said REARRANGEMENT OF PART OF COLMAN PARK DIVISION OF DULUTH a distance of 35.23 feet to the intersection with the southwesterly extension of the southeasterly line of said Outlot A; thence North 58 degrees 21 minutes 06 seconds East, along said last described extended line 141.73 feet to the point of beginning.

NOTE:

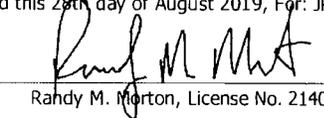
Orientation of this bearing system is based on the northeasterly line of Outlot A, REARRANGEMENT OF PART OF COLMAN PARK DIVISION OF DULUTH to have an assumed bearing of S31°38'54"E.

Area of vacation = 6,464 square feet.

CERTIFICATION:

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 28th day of August 2019, For: JPJ Engineering


 Randy M. Morton, License No. 21401

C:\Users\rmorton\Desktop\Woodland Sketch & Description\16-334 Pharm. Falks Sketch.dwg, 8/28/2019, 12:10 PM

 <p>5670 Miller Trunk Hwy Suite A, Duluth, MN 55811 (218) 720-6219 www.jpjeng.com</p>	<h1>EXHIBIT A</h1>	PROJECT NUMBER
	<p>For: The City of Duluth, Minnesota</p>	16-334
		SHEET NUMBER
		1 of 2 Sheets



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-109	Contact	Chris Lee, 218-730-5304	
Type	Variance – Shoreland structure setback	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	July 15, 2020	60 Days	September 13, 2020
	Date Extension Letter Mailed	July 24, 2020	120 Days	November 12, 2020
Location of Subject	Lot adjoining 1221 West 5 th Street			
Applicant	Gerald Crittenden	Contact		
Agent		Contact		
Legal Description	Parcel ID Number 010-1310-00480			
Site Visit Date	July 31, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 27, 2020	Number of Letters Sent	28	

Proposal: The applicant is seeking a variance to construct a 2-car garage within 82 feet from Buckingham Creek rather than the required 150 feet.

Staff Recommendation: Staff is recommending that Planning Commission approve this variance with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Vacant lot	Open Space
North	R-1	Single Family Residential	Open Space
South	R-1	Single Family Residential	Open Space
East	R-1	Single Family Residential	Open Space
West	R-1	Vacant lot	Open Space

Summary of Code Requirements:

Sec. 50-18.1.D-1 – Minimum Shoreland Area Standards: for Coldwater Rivers, maintain a minimum structure setback of 150 feet.

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant's property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardships. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief from the normal guidelines is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

Sec. 50-37.9.L: Standards for variances in Shorelands: No variance shall be granted that compromises the general purpose or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 – Promote reinvestment in neighborhoods. The variance would allow for an increase in property value causing an increased tax base.

Housing Policy #4 – Improve the quality of the city’s housing stock and neighborhoods. The variance would allow a reasonable and appealing addition to an existing infill lot.

Future Land Use – Open Space: High natural resource or scenic value with substantial restrictions and development limitations. Primarily public lands but limited private use is anticipated subject to use and design controls. Examples include: city parks and recreation areas, shorelands of the lake and streams, and primary viewsheds.

Recent History – This area was platted prior to the existing shoreland regulations. The adjoining lot contains a 3 bedroom home built in 1891. The subject lot is vacant and has been historically used for parking.

Review and Discussion Items

Staff finds that:

- 1.) The applicant is requesting a shoreland setback variance to allow for a new garage. The proposed structure would be at a minimum of 80 feet from Keene Creek, a designated cold water river, versus the required 150 feet. A garage for a single-family house is a reasonable use in the R-1 zone district. Garage is 25 feet by 25 feet and is at an appropriate scale for this neighborhood.
- 2.) The parcel is located entirely within the 150-foot structure setback for Buckingham Creek, so no garage could be built on the property without a variance. The closest corner of the garage would be approximately 82 feet from the creek, while still maintaining side and rear yard setbacks.
- 3.) Applicant is proposing to place the garage in a location furthest from the creek, minimizing the variance required. The adjacent house is much closer to the creek and sits directly between the proposed garage and the creek.
- 4.) This proposed variance will allow for use of the property in a manner consistent with the neighborhood character.
- 5.) Granting the variance is consistent with the intent of the UDC and Comprehensive Plan.
- 6.) The addition of an accessory building would not impair light or air to neighbors, increase congestion in the neighborhood, create fire danger, or imperil public safety.
- 7.) Variances to shoreland setbacks require mitigation. The applicant has stated they will submit a mitigation plan for approval prior to receiving a building permit.
- 8.) To date, no public, agency, or City comment has been received.
- 9.) Per UDC Section 50-37.1.N, approved variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission approve the variance, subject to the following conditions:

- 1.) The applicant shall submit a mitigation plan demonstrating measures and practices that will be installed or constructed to improve stormwater quality and reduce runoff; this plan must be approved by the Land Use Supervisor prior to receiving a building permit.
- 2.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land use Supervisor without further Planning Commission action; however, no such administrative approval shall constitute a variance from the provisions of UDC Chapter 50.



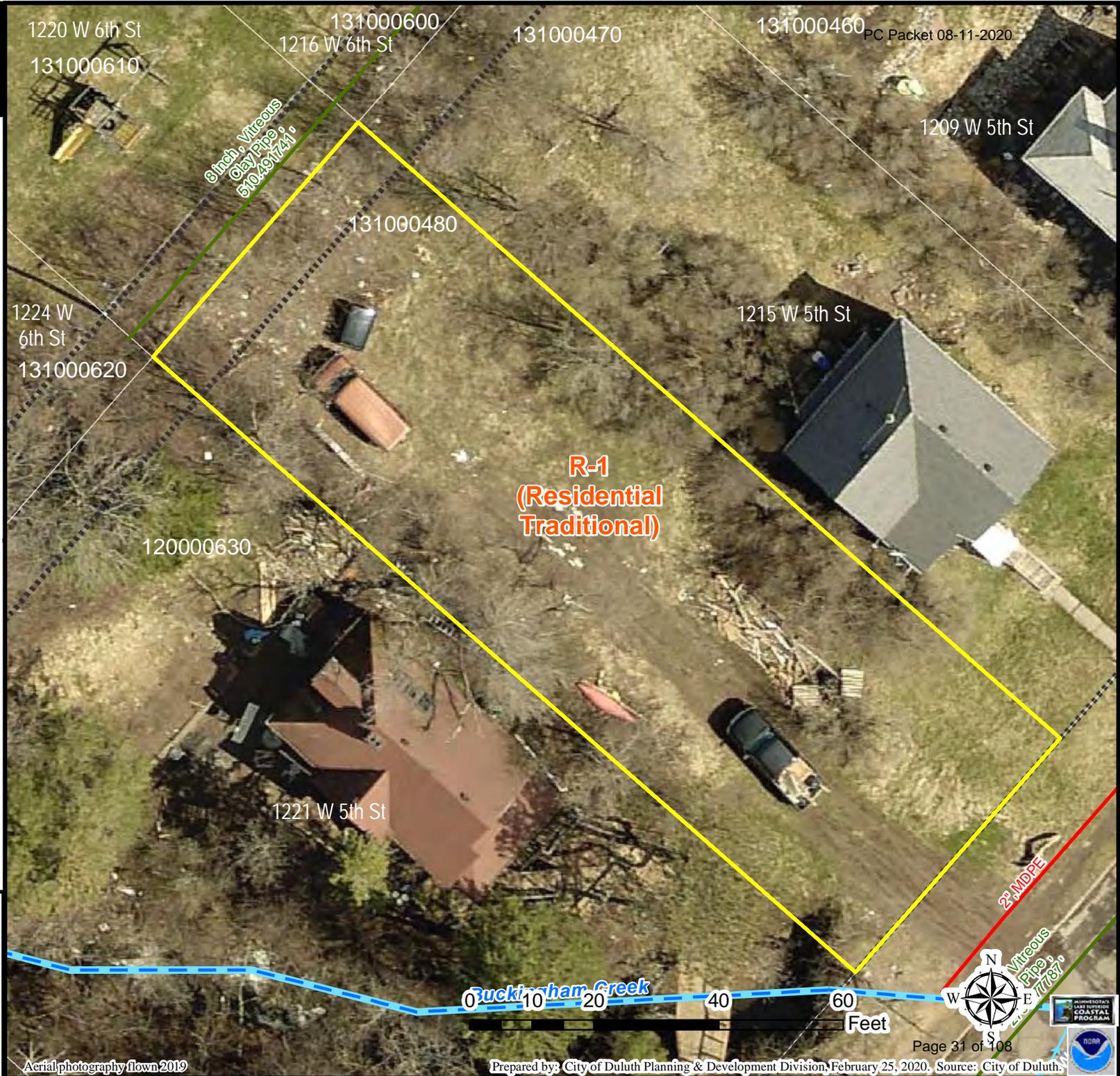
PL 20-109
Variance
1221 W 5th St.

PC Packet 08-11-2020

Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Road or Alley ROW
- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



Aerial photography flown 2019

Prepared by: City of Duluth Planning & Development Division, February 25, 2020. Source: City of Duluth.

PROPERTY DETAILS

ADDRESS: 1221 W 5th STREET
DULUTH, MINNESOTA
55806

PIN: 010-1310-00480 (50X150)
010-1200-00630 (100X150)

Plat Description:
DULUTH PROPER THIRD DIVISION
Lot: 0201
Block: 066

LOT SIZE: 150'X150'
0.5165 ACRE



NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
**PROPOSED
SITE PLAN**

PROJECT DESCRIPTION:
**1221 W. 5th Street
Duluth Minnesota**

DRAWINGS PROVIDED BY:

DATE:
7/20/2020

SCALE:
1"=20'

SHEET:
SP-1





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580
 planning@duluthmn.gov

File Number	PL 20-110	Contact	John Kelley, jkelley@duluthmn.gov	
Type	Variance –front yard structure setback	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	July 13, 2020	60 Days	September 11, 2020
	Date Extension Letter Mailed	July 24, 2020	120 Days	November 10, 2020
Location of Subject	Corner of Lyman Street and Anson Avenue			
Applicant	Dan and Jodi Slick	Contact		
Agent		Contact		
Legal Description	010-3710-01490			
Site Visit Date	August 5, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 30, 2020	Number of Letters Sent	18	

Proposal

Applicant has requested a front yard setback variance to construct a new single family home with an attached garage. The house will be 5 feet from the front property line instead of the required 25 feet, due to site topography and bedrock issues.

Recommended Action: Approve variance with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single family dwelling	Traditional Neighborhood
North	R-1	Vacant land	Traditional Neighborhood
South	R-1	Single family dwelling	Traditional Neighborhood
East	R-1	Vacant land	Traditional Neighborhood
West	R-1	Single family dwelling	Traditional Neighborhood

Summary of Code Requirements

Sec. 50-37.9. B – Variance Procedures. “The Planning Commission shall...make a decision on the application based on the criteria in subsections 50-37.9. C – M...”

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant’s property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief for from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

Comprehensive Plan Governing Principles and/or Policies and Current History (if applicable):

Governing Principle #5 – Promote reinvestment in neighborhoods. This variance would allow for the construction of a new single family dwelling in the Lincoln Park neighborhood.

Housing Policy #4 – Improve the quality of the city’s housing stock and neighborhoods.

The variance would allow for additional housing stock for the City.

Future Land Use – Traditional Neighborhood - Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth’s older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

Review and Discussion Items

Staff finds that:

- 1) The applicant's property consists of two lots separated by a platted alley. The portion of the lot that the proposed dwelling would be built on has approximately 125 of frontage on Anson Avenue and is 244 feet in depth. The UDC requires a front yard setback of 25 feet. The applicant is proposing to encroach into the front yard by approximately 20 feet to construct a dwelling unit with an attached garage.
- 2) The applicant is proposing to use the property in a reasonable manner to build a home on a lot with access to existing utilities and an improved street.
- 3) The applicant is requesting the ability to move the house from the required 25-foot front yard setback to 5 feet due to exceptional topographic conditions including slope, surface bedrock and a drainage way located on or near the rear portion of the parcel. Additionally, the applicant states that it is their desire to locate the home in its proposed location to increase the resilience of their investment to potential severe rain events due to the drainage way’s proximity to the home.
- 4) The UDC requires the minimum depth of the front yard to be the smaller of 25 feet or the average of adjacent developed lots facing the same street. One other home is on Anson Avenue and it’s located to the south of the applicant’s property. The house on this lot is located at an angle along Anson Avenue with the southwest corner of the house possibly encroaching into the right of way. The rule for adjacent developed lot would not apply to the proposed dwelling, as there is an unimproved right of way for what could be the extension of West 6th Street. However, the applicant is proposing to locate their home along a similar front façade building line as the neighboring home. The proposed addition would be built similar to other homes along Skyline Parkway in which the topography or home placement requires attached garages to be built as either tuck-under structures or in front of homes. Granting this variance will not alter the essential character of the area.
- 5) This variance would not result in reductions of light and air to surrounding properties. The variance would not impact the visibility triangle for users of surrounding streets.
- 6) The variance, if granted, would not impair the intent of the UDC expressed in Sec. 50-2. The variance is consistent with the Comprehensive Plan designation of the property as Traditional Neighborhood.
- 7) No additional landscaping is recommended as mitigation for the reduced setback per Sec. 50-37.9. H.
- 8) No comments from citizens, City staff, or any other entity were received for the proposed variance.
- 9) Per UDC Section 50-37.1.N. approved variances lapse if the project or activity authorized by the permit or variance is not begun within one-year.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission grant the Variance with the following conditions:

- 1) The single family home to be constructed on PID #010-3710-01490, be limited to, a front yard setback of 5 feet for the proposed dwelling unit as depicted on the attached exhibits.

2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



PL 20-110 Variance
Zoning map



Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSDD; PRIVATE
 - Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Vacated ROW
- Easement Type
 - Utility Easement
 - Other Easement
- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)

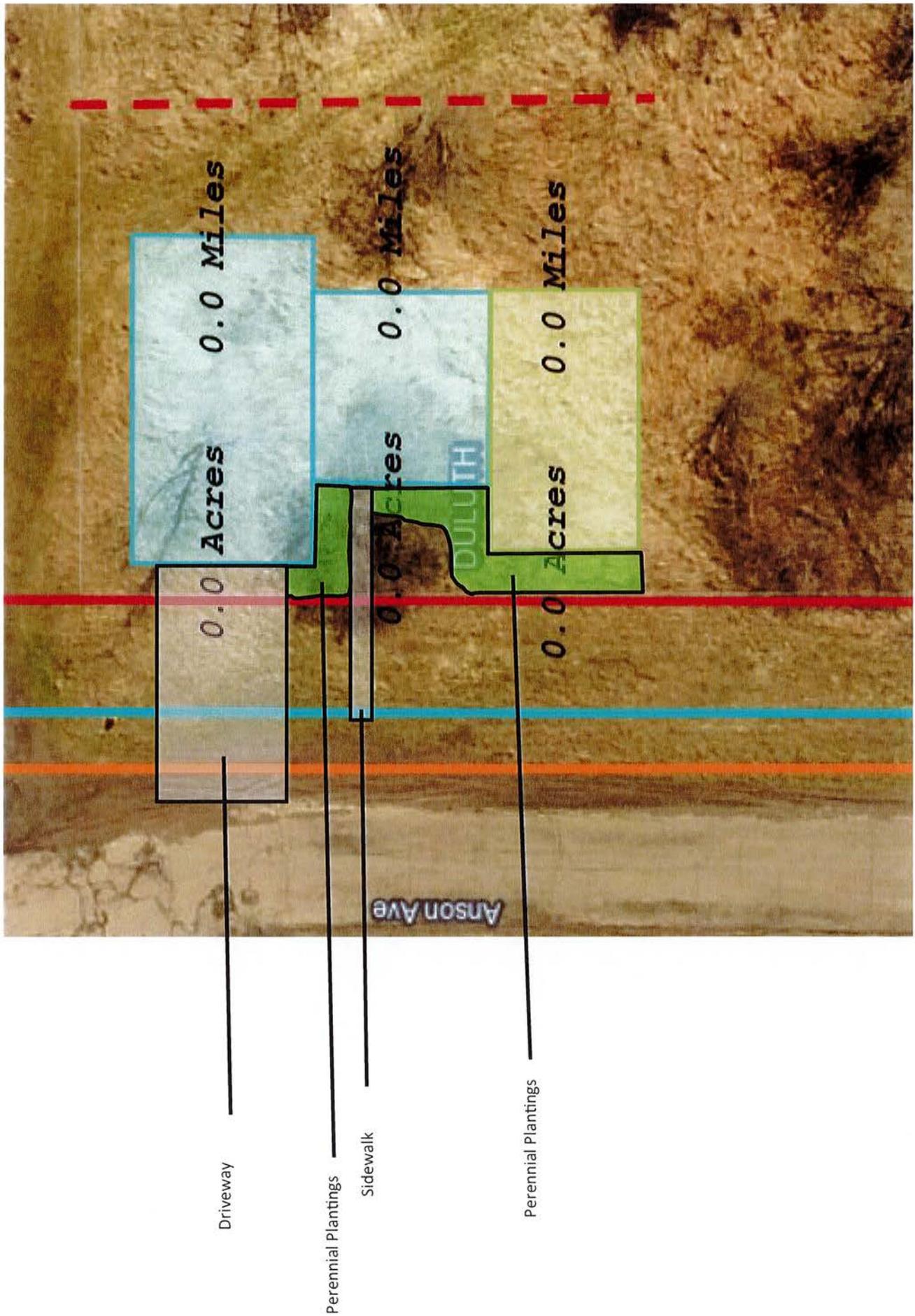
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



Figure 1



Figure 2—Landscaping and Buffering Plan





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-111	Contact	Kris Liljeblad, 218-730-5338	
Type	Concurrent Use Permit	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	July 9, 2020	60 Days	September 7, 2020
	Date Extension Letter Mailed	N/A	120 Days	November 6, 2020
Location of Subject	36 th Avenue East between London and Greysolon Roads, Duluth, MN			
Applicant	Bob Manzoline, St. Louis & Lake Co. Railroad Authority	Contact		
Agent	Kristy Marken, Krech Ojard & Associates	Contact		
Legal Description	Public right of way on either side of NSSR Bridge 4C. See attached.			
Site Visit Date	July 22, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 27, 2020	Number of Letters Sent	36	

Proposal: The applicant is proposing to install a passive (no bells or cross arms) pre-warning sign structure on both sides of the low clearance (10'6") North Shore Scenic Railroad Bridge 4C crossing 36th Avenue East between London and Greysolon Roads in Duluth, MN. The sign structure would be located over the entire roadway, with vertical supports between the back of curb and sidewalk on both sides of the avenue near each of the London Road and Greysolon Road intersections. The signs are intended to prevent high-profile vehicle impacts to the bridge structure and to improve safety for the traveling public. The applicant St. Louis and Lake County Railroad Authority will be financially responsible for the project, not the City or adjacent land owners. This is a companion proposal with PL-112 located on 32nd Avenue East.

Staff Recommendation: That Planning Commission recommend approval to City Council.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single Family Dwelling	Traditional Neighborhood
North	R-1	Single Family Dwelling	Traditional Neighborhood
South	R-1	Single Family Dwelling	Traditional Neighborhood
East	R-1	Single Family Dwelling	Traditional Neighborhood
West	R-1	Single Family Dwelling	Traditional Neighborhood

Summary of Code Requirements:

UDC Section 50-37.7C. The Planning Commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
2. Not Applicable – Skywalk related
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. Not Applicable – Parking related

Comprehensive Plan Governing Principles and/or Policies:

The Transportation Mission cited in the *Imagine Duluth 2035 Plan* is: “Duluth’s transportation system will connect all users in a way that promotes safety, health, and quality of life.”

Policy #1 – “Improve street conditions to function better for everyone”; Strategy 9. “Adopt measures to reduce vehicular travel speed and improve intersection safety...to improve overall safety conditions, reduce injuries, and eliminate deaths.”

Policy #6 – “Protect and enhance regional transportation networks, especially for the purposes of expanding opportunities for movement of freight.” Strategy 6. “Expand public-private partnerships with rail freight companies to maintain, improve and expand rail infrastructure.”

Funding & Projects – Specific projects include: “Transportation infrastructure that facilitates uphill/downhill mobility.”

Review and Discussion Items

Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to install passive advance warning sign structures over the entire roadway, with vertical supports on both approaches to the roadway undercrossing of North Shore Scenic Railroad Bridge 4C on 36th Avenue East between London Road and Greysolon Road. The overhead sign structures are proposed to be located close to the intersections of each cross street to permit oversize vehicles to stop and re-route before becoming committed to going under the low clearance (10’ 6”) railroad bridge.
- 2.) The applicant has identified a history of oversize vehicles striking the bridge and/or becoming lodged underneath it, including recreational vehicles, a pontoon boat, cement and garbage trucks, and a mobile crane. In most cases this causes vehicle damage but has at times required street closure and engineering inspection of the bridge to ensure its structural integrity. This causes disruption for users of both the public roadway and NSRR operations.
- 3.) City Engineering has determined that the specified sign structures satisfy City and MUTCD standards. The proposed use of public right of way will not impede snow removal on the street or sidewalk.
- 4.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the city and the public are typically included in the ordinance that is submitted to City Council. The ordinance will also state that the City is not responsible for removal/replacement of the applicant’s infrastructure should the City need to access the right-of-way in the permitted area.
- 5.) The sign structure bases will be located in the boulevard between the back of the curb and sidewalk, so the area proposed for the concurrent use permit (sign structures) will not take away from the public’s ability to use the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city. It will improve health and safety by reducing or eliminating vehicle collisions with the fixed object, NSRR Bridge 4C.
- 6.) One comment in opposition was received from Mark Boben, see attached. No other comments have been received as of August 4, 2020.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission recommend approval of the concurrent use permit to City Council with the following conditions:

- 1.) Applicant shall construct any structures within the limits identified in the attached exhibit.
- 2.) The structure will need to comply with any applicable engineering standards, and building or fire code requirements.
- 3.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 4.) Applicant will remove the obstructions at the applicant’s expense if directed to by the City with appropriate notice.
- 5.) The City shall not be responsible for any damage to the structure caused by work in the right of way.
- 6.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Legal Description

Public right-of-way located on either side of RR Bridge 4C:

Sign 36A - Commencing at the northwesterly corner of Lot 8, Block 28 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; which is also the point of beginning: Thence southerly along the easterly right-of-way line, 10.00 feet, thence westerly at a right angle, 66.00 feet, more or less, to the westerly right-of-way line of 36th Avenue East, thence northerly along said right-of-way a distance of 10.00 feet; thence easterly at a right angle 66.00 feet, more or less, to the point of beginning.

Sign 36 B - Commencing at the northwesterly corner of Lot 9, Block 34 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; Thence southerly 120.00 feet, along the easterly right-of-way line of 36th Avenue East to the point of beginning; Thence southerly along the easterly right-of-way line a distance of 10.00 feet; thence westerly at a right angle 66.00 feet, more or less, to the westerly right-of-way line of 36th Avenue East, thence northerly along said right-of-way line a distance of 10.00 feet; thence easterly at a right angle, 66.00 feet, more or less, to the point of beginning.





**RESIDENT
PERMIT PARKING
ZONE**
PERMIT REQUIRED
8:00AM TO 4:00PM
MON THRU FRI
SEPT 1 TO JUNE 15

ZONING NOTICE
AT ADDRESS:
307 Ave East, Duluth, MN (between Crookston Rd & Landon Rd)
APPROVAL SOURCE:
Consistent Use of Smart
Growth by the St. Louis and Lake County Rail Authority
PROJECT DESCRIPTION:
• Preparing System to be installed for low-clearance
North Shore Service Railroad Bridge, etc.
• Curb-line structure with low-clearance bars crossing 307 Ave East
• Less than 20' height
• Clear structure on each side of bridge
PLANNING COMMISSION MEETING:
August 11, 2020, 6:00 p.m.
Rm 201-111
to join the meeting, visit:
<https://data.duluth.gov/permits>
FOR FURTHER INFORMATION CONTACT:
Scott Stimpich, PE
Kiewit Civil & Infrastructure, Inc.
227 W. First St., Suite 500
Duluth, MN 55802
Tel: 727-2382
scott.stimpich@kiewit.com
Kirk Lislefeld
City of Duluth
411 West First Street
Duluth, MN 55802
Tel: 818-738-3390
planning@duluth.mn.gov



Mark Boben greysolon2010@gmail.com

From: Mark Boben <greysolon2010@gmail.com>

Sent: Sunday, August 2, 2020 3:16 PM

To: planning <planning@DuluthMN.gov>; Mark Boben <greysolon2010@gmail.com>

Subject: Concurrent Use Permit - Low Clearance Warning Signs - PL 20-111

Kris Liljeblad
Planning and Development Division
City of Duluth

I am ***opposed*** to the proposal to construct low clearance warning signs for NSRR bridge on 36th Ave East (PI 20-111).

The proposed solution does ***not*** fit our neighborhood. The proposal is for an industrial environment.

The current signage on 36th Avenue East is inadequate and redundant. There are too many signs that are not effective and not seen by vehicles or, in the case of bikers or runners, ignored. Bikers and runners frequently do not stop before crossing the street. There have been several vehicles who have had to stop quickly so as not to hit a biker or runner. This is a terrible accident waiting to happen.

Attached are photos of signs going both up and down 36th Avenue East, signs on the Lakewalk by 36th and the pedestrian / bike crossing. I have provided suggested solutions utilizing new signage and warning striping. The proposed, industrial "passive" system is not the solution.

Please feel free to contact me regarding any questions.

Respectfully,

Mark Boben
218-355-1349



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

 218-730-5580

 planning@duluthmn.gov

File Number	PL 20-112		Contact	Kris Liljeblad, 218-730-5338	
Type	Concurrent Use Permit		Planning Commission Date		August 11, 2020
Deadline for Action	Application Date		July 9, 2020	60 Days	September 7, 2020
	Date Extension Letter Mailed		N/A	120 Days	November 6, 2020
Location of Subject		32nd Avenue East between London and Greysolon Roads, Duluth, MN			
Applicant	Bob Manzoline, St. Louis & Lake Counties Railroad Authority		Contact		
Agent	Kristy Marken, Krech Ojard & Associates				
Legal Description		Public right-of-way located on either side of NSSRR bridge. See attachment:			
Site Visit Date	July 22, 2020		Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 27, 2020		Number of Letters Sent	33	

Proposal: The applicant is proposing to install a passive (no bells or cross arms) pre-warning overhead sign structure on both sides of the low clearance (10'9") North Shore Scenic Railroad Bridge 4C crossing 32th Avenue East between London and Greysolon Roads in Duluth, MN. The two overhead sign structures would span the entire roadway with vertical supports located between the curb and sidewalk on both sides of the avenue, and near each of the intersections of London Road and Greysolon Road. The overhead signs are intended to prevent collisions with the railroad bridge by over-height vehicles and to improve safety for the traveling public. The project will be the financial responsibility of the St. Louis & Lake Counties Railroad Authority, not the City or adjacent property owners. This project is a companion to CUP project PL-111 located on 36th Avenue East.

Staff Recommendation: That Planning Commission recommend approval to City Council.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single Family Dwelling	Traditional Neighborhood
North	R-1	Single Family Dwelling	Traditional Neighborhood
South	R-1	Single Family Dwelling	Traditional Neighborhood
East	R-1	Single Family Dwelling	Traditional Neighborhood
West	R-1	Single Family Dwelling	Traditional Neighborhood

Summary of Code Requirements:

UDC Section 50-37.7C. The Planning Commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
2. Not Applicable – Skywalk related
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. Not Applicable – Parking related

Comprehensive Plan Governing Principles and/or Policies:

The Transportation Mission cited in the *Imagine Duluth 2035 Plan* is: “Duluth’s transportation system will connect all users in a way that promotes safety, health, and quality of life.”

Policy #1 – “Improve street conditions to function better for everyone”; Strategy 9. “Adopt measures to reduce vehicular travel speed and improve intersection safety...to improve overall safety conditions, reduce injuries, and eliminate deaths.”

Policy #3 – “Add to the transportation network by systematically enhancing multimodal options.” Strategy 11. “Complete planned trails and bike lanes to connect gaps in the bicycle route network.”

Policy #6 – “Protect and enhance regional transportation networks, especially for the purposes of expanding opportunities for movement of freight.” Strategy 6. “Expand public-private partnerships with rail freight companies to maintain, improve and expand rail infrastructure.”

Funding & Projects – Specific projects include: “Transportation infrastructure that facilitates uphill/downhill mobility.”

Review and Discussion Items

Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to install passive advance warning sign structures over the entire roadway on both approaches to the roadway undercrossing of North Shore Scenic Railroad Bridge 4A on 32nd Avenue East between London Road and Greysolon Road. The two overhead sign structures are proposed to be located close to the intersections of each cross street to permit oversize vehicles to stop and re-route before becoming committed to going under the low clearance (10’ 9”) railroad bridge.
- 2.) The applicant has identified a history of oversize vehicles striking the bridge and/or becoming lodged underneath it, including recreational vehicles, a pontoon boat, cement and garbage trucks, and a mobile crane. In most cases this causes vehicle damage but has at times required street closure and engineering inspection of the bridge to ensure its structural integrity. This causes disruption for users of both the public roadway and NSRR operations.
- 3.) City Engineering has determined that the specified signage structures satisfy City and MUTCD standards. The proposed project will not impede snow removal on the roadway or sidewalk.
- 4.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the city and the public are typically included in the ordinance that is submitted to City Council. The ordinance will also state that the City is not responsible for removal/replacement of the applicant’s infrastructure should the City need to access the right-of-way in the permitted area.
- 5.) The area proposed for the concurrent use permit (sign structures) will not take away from the public’s ability to use the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city. It will improve health and safety by reducing or eliminating vehicle collisions with the fixed object, NSRR Bridge 4A.
- 6.) 32nd Avenue East will become more important in the future as an access route for non-motorized travel between London Road and the Campus Connector Trail which has a planned connection to the Lakewalk Trail on the north side of NSRR Bridge 4A. 32nd Avenue East is not currently a designated bikeway, nor is one planned at this time.
- 7.) No other public, agency, or other comments have been received as of August 4, 2020.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission recommend approval of the concurrent use permit to the City Council with the following conditions:

- 1.) Applicant shall construct any structures within the limits identified in the attached exhibit.
- 2.) The structure will need to comply with any applicable engineering standards, and building or fire code requirements.
- 3.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 4.) Applicant will remove the obstructions at the applicant’s expense if directed to by the City with appropriate notice.
- 5.) The City shall not be responsible for any damage to the structure caused by work in the right-of-way.
- 6.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute

Legal Description

Public right-of-way located on either side of NSRR Bridge 4A:

Sign 32A - Commencing at the northwesterly corner of Lot12, Block 24 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; thence southerly 16.00 feet along the easterly right-of-way line of 32nd Avenue East to the point of beginning; Thence southerly along the easterly right-of-way line, 10.00 feet, thence westerly at a right angle, 66.00 feet, more or less, to the westerly right-of-way line of 32nd Avenue East; thence northerly along said right-of-way line a distance of 10.00 feet; thence easterly at a right angle 66.00 feet, more or less, to the point of beginning.

Sign 32 B - Commencing at the southwesterly corner of Lot 14 Block 38 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; Thence southerly 190.00 feet along the easterly right-of-way line of 32nd Avenue East to the point of beginning; Thence southerly along the easterly right-of-way line a distance of 10.00 feet; thence westerly at a right angle 66.00 feet, more or less, to the westerly right-of-way line of 32nd Avenue East, thence northerly along said right-of-way line a distance of 10.00 feet; thence easterly at a right angle, 66.00 feet, more or less, to the point of beginning.



Greysolon Rd

10'-9"

ZONING NOTICE





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-118	Contact	Theresa Bajda, tbajda@duluthmn.gov	
Type	Vacation of Street	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	August 3, 2020	60 Days	October 2, 2020
	Date Extension Letter Mailed	July 24, 2020	120 Days	December 1, 2020
Location of Subject	W. Michigan Street from 21 st Ave W. to west terminus			
Applicant	Jon Aamodt	Contact	Northland Consulting Engineers - Duluth	
Agent		Contact		
Legal Description	See Attached			
Site Visit Date	July 23, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 28, 2020	Number of Letters Sent	26	

Proposal: The applicant is requesting the vacation of a portion of West Michigan Street between 21st Avenue West and to the west at block 346 (see vacation exhibit) with retained utility easement to allow construction of an apartment building at the former Roberts Furniture building.

Staff Recommendation: Staff is recommending that the Planning Commission approve the vacation with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	F-5	Michigan Street	Central Business Secondary
North	F-5	Former Roberts Home Furnishings Building	Central Business Secondary
South	MU-C	Parking Lot/Lower Michigan Street	Central Business Secondary
East	F-5	S 21 st Ave West	Central Business Secondary
West	F-5	Michigan Street	Central Business Secondary

Summary of Code Requirements:

Vacation of public streets, highways, or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water; DOES NOT APPLY
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #1 – Reuse of previously developed lands. The proposed street vacation allows for future investment to a site that has potential to perform at a higher level than its current state. The vacation will allow construction of a 75-unit market rate apartment building.

Governing Principle #5 – Promote reinvestment in neighborhoods. The proposed street vacation will allow the applicant to construct a 75-unit market rate apartment building and result in an increased tax base for the City of Duluth and St. Louis County.

Housing Policy #4 – Improve the quality of the city’s overall housing stock and neighborhoods. The street vacation would allow construction of a 75-unit apartment building in a desirable area in the Lincoln Park neighborhood.

Future Land Use – Central Business Secondary: An area adjacent to and supporting the central business primary area or a stand-alone area providing a similar mix of destination land uses but at a lower intensity than the primary central business area. Includes mixed regional and neighborhood retail, employment centers, public spaces, medium density residential, and public parking facilities.

Recent History – Roberts Home Furnishings operated a home furniture and goods store from 1987 to October 2018. On August 13, 2019, the Planning Commission approved a variance from occupied space setback for a multi-family apartment building to allow for construction of at-ground level parking as part of the apartment building design. The Land Use Supervisor approved this variance for a one-year extension on April 9, 2020.

Review and Discussion Items:

Staff finds that:

1. The applicant is requesting to vacate a portion of West Michigan Street with retained utility easement over the entire vacated area as shown in the attached exhibit. This is a portion of former of the Lower Michigan Street.
2. The proposed vacation will allow the applicant and their development partners to construct an apartment building in accordance with local zoning regulations at the former Roberts Home Furnishings site.
3. The City Utilities, Transportation, and Storm Water Engineers indicated support for this proposal. There is an existing gas and water line within the street. The City Engineering office has reviewed the proposed vacation and has indicated that a utility easement shall be retained over the entire portion of area to be vacated.
4. Vacating the street will not affect or deny access to other property owners. West Michigan Street is not used for through traffic on this block due to the configuration of Lower Michigan Street. Access to the existing parking lot on the west side of the existing Roberts Home Furniture building can be accessed from W Superior Street. A public sidewalk off Lower Michigan Street will retain pedestrian access.
5. No other public or City comments have been received at the time of drafting this report.
6. Vacations of streets and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation:

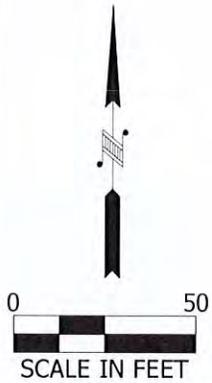
Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) Approval of the vacation of West Michigan Street with retained utility easement as shown in the attached exhibit.
- 2.) The vacation must be recorded within 90 days of final approval by City Council or such approval will lapse. The vacation shall not be final until the plat is recorded in the office of the St. Louis County Recorder.
- 3.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

LEGEND

	POINT OF BEGINNING
	CENTER LINE
	RIGHT OF WAY LINE
	PLAT LINE
	VACATION OF W. MICHIGAN STREET WITH RETAINED UTILITY EASEMENT

LINE	BEARING	DISTANCE
L1	S41°39'38"W	210.19
L2	S48°20'20"E	14.04
L3	N41°39'38"E	117.84
L4	N48°19'27"W	60.00



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	103.63	310.00	19°09'10"	N68°07'22"E	103.14

SURVEYOR'S NOTES

- BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
- THIS IS NOT A BOUNDARY SURVEY.

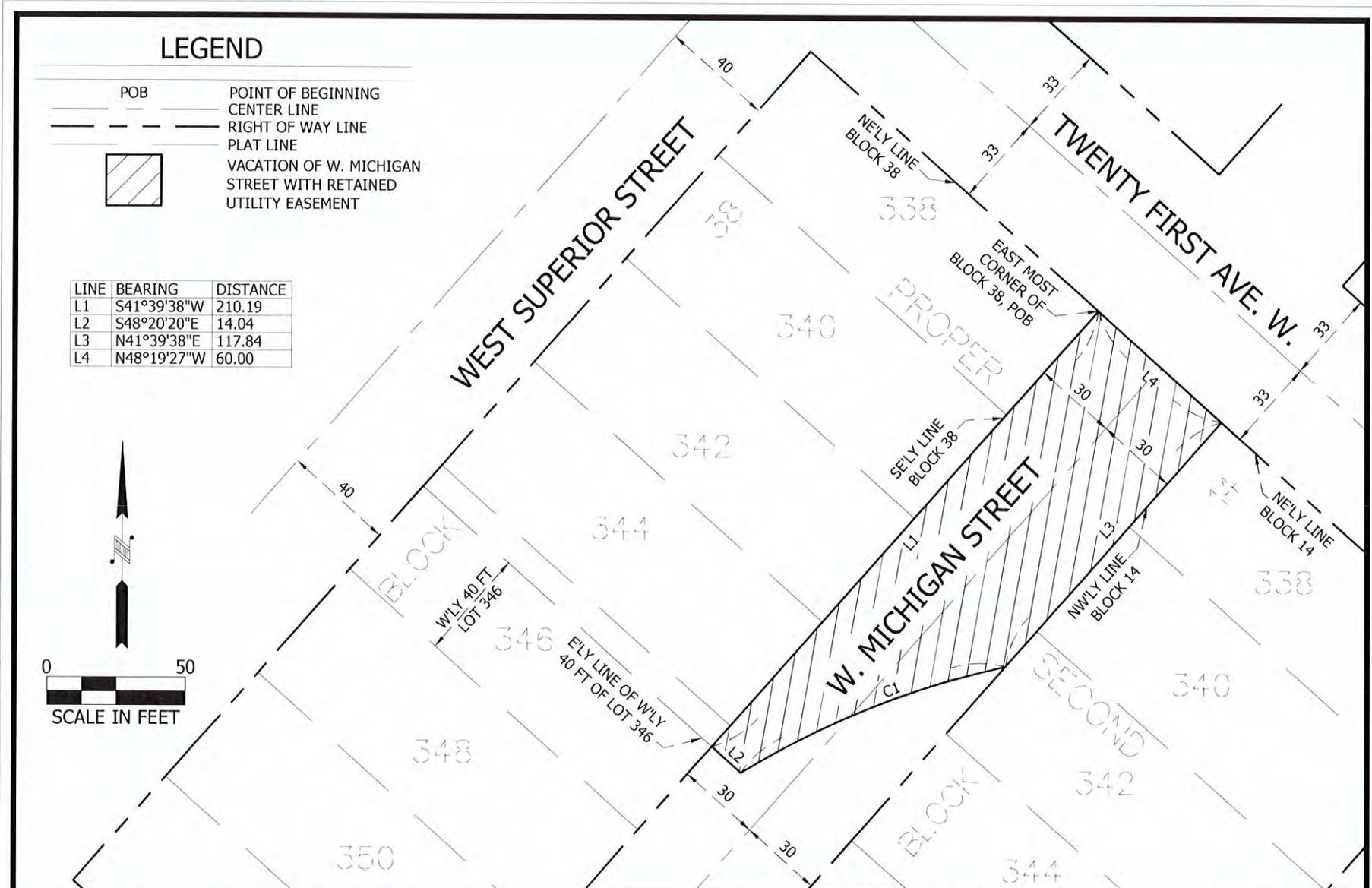
VACATION EXHIBIT

CLIENT: RACHEL DEVELOPMENT
 ADDRESS: 2102, 2104 & 2112 W SUPERIOR STREET, DULUTH, MN 55806
 DATE: 07-02-2020

REVISIONS:
 JOB NO: 20-032
 SHEET 2 OF 2



PHONE: 218-727-5211
 LICENSED IN MN & WI
 WWW.ALTLANDSURVEYDULUTH.COM



LEGAL DESCRIPTION OF VACATION OF W. MICHIGAN STREET WITH RETAINED UTILITY EASEMENT

All that part of West Michigan Street adjacent to and abutting Blocks 14 and 38, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota described as follows:

Beginning at the East most corner of said Block 38; thence on an assumed bearing of South 41 degrees 39 minutes 38 seconds West, along the Southeasterly line of said Block 38 for a distance of 210.19 feet to the Easterly line of the Westerly 40.00 feet of Lot 346, said Block 38; thence South 48 degrees 20 minutes 20 seconds East, along the Southeasterly extension of said Easterly line of the Westerly 40.00 feet of said Lot 346 across said W. Michigan Street 14.04 feet; thence Northeasterly 103.63 feet, along a non-tangential curve concave to the Southeast, have a radius of 310.00 feet and a delta angle of 19 degrees 09 minutes 10 seconds, the chord of said curve bears North 68 degrees 07 minutes 22 seconds East for a chord distance of 103.14 feet to the Northwesterly line of said Block 14; thence North 41 degrees 39 minutes 38 seconds East, along said Northwesterly line of said Block 14 for a distance of 117.84 feet to the Northeasterly line of said Block 14; thence North 48 degrees 19 minutes 27 seconds West, along the Northwesterly extension of said Northeasterly line of said Block 14 across said W. Michigan Street 60.00 feet to the point of beginning.

Said parcel contains 10,192 square feet or 0.23 acres.

Approved by the City Engineer of the City of Duluth, MN this 30 day of AUG 20 20

By [Signature]

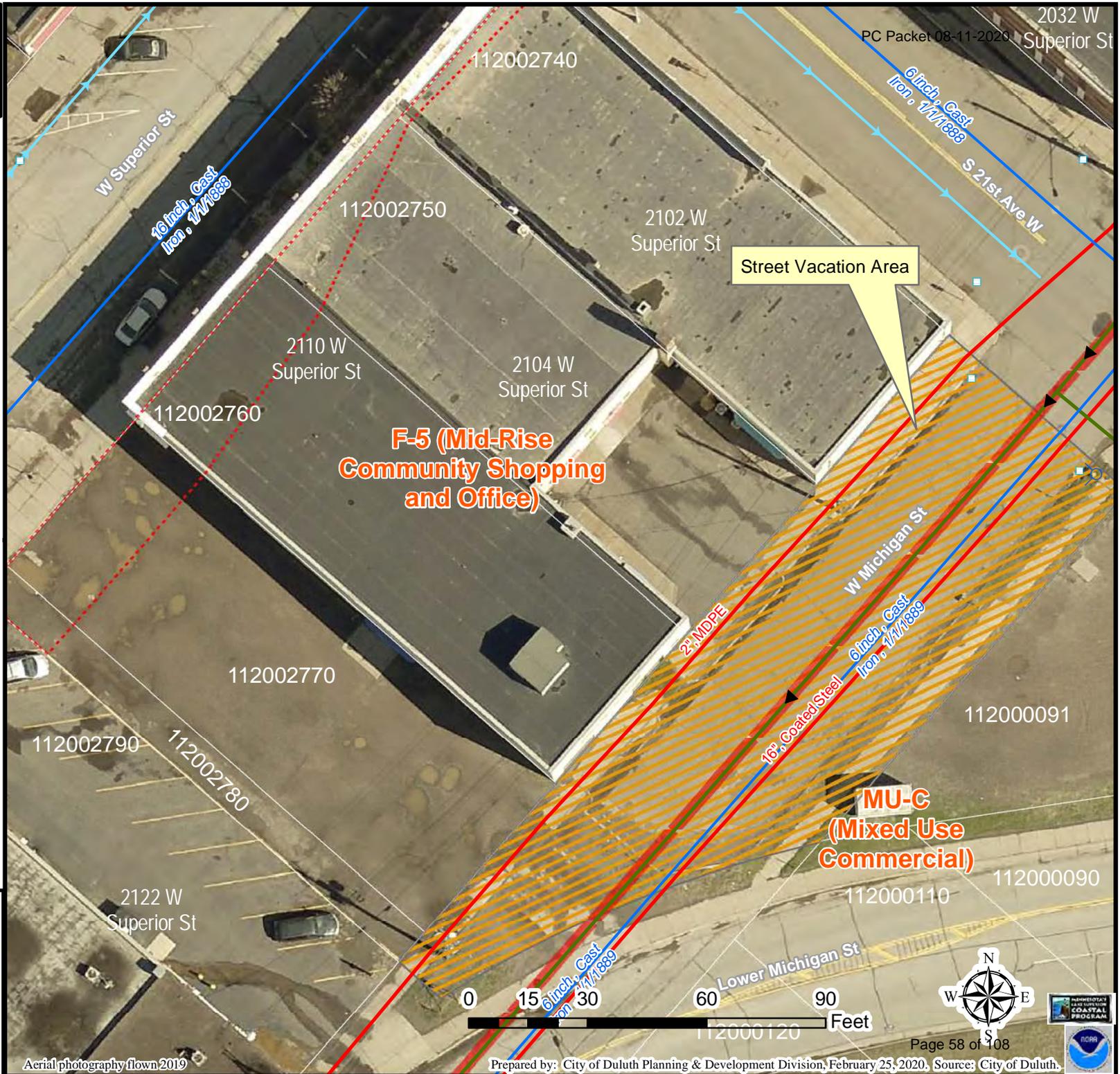
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. <u>David R. Evanson</u> David R. Evanson MN Lic. No. 49505 DATE: 07-02-2020	VACATION EXHIBIT		 ALTA LAND SURVEY COMPANY PHONE: 218-727-5211 LICENSED IN MN & WI WWW.ALTLANDSURVEYDULUTH.COM
	CLIENT: RACHEL DEVELOPMENT ADDRESS: 2102, 2104 & 2112 W SUPERIOR STREET, DULUTH, MN 55806 DATE: 07-02-2020	REVISIONS: JOB NO: 20-032 SHEET 1 OF 2	



PL20-118
Vacation of W Michigan St

Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Vacated ROW
- Easement Type
 - Utility Easement
 - Other Easement
 - Zoning Boundaries



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019

Prepared by: City of Duluth Planning & Development Division, February 25, 2020, Source: City of Duluth.





PL20-118
Site Visit: August 23, 2020



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

File Number	PL 20-119	Contact	Theresa Bajda, tbajda@duluthmn.gov	
Type	Vacation of Easement	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	August 3, 2020	60 Days	October 2, 2020
	Date Extension Letter Mailed	July 24, 2020	120 Days	December 1, 2020
Location of Subject	2102, 2104, and 2112 West Superior Street			
Applicant	Jon Aamodt	Contact	Northland Consulting Engineers-Duluth	
Agent		Contact		
Legal Description	See Attached			
Site Visit Date	July 23, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	July 28, 2020	Number of Letters Sent	26	

Proposal: The applicant is requesting vacation of the slopes and fills easement on south side of West Superior Street in front of the former Roberts Home Furnishings building (see vacation exhibit) to allow construction of an apartment building.

Staff Recommendation: Staff is recommending that the Planning Commission approve the easement vacation with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	F-5	Michigan Street	Central Business Secondary
North	F-5	Former Roberts Home Furnishings Building	Central Business Secondary
South	MU-C	Parking Lot/Lower Michigan Street	Central Business Secondary
East	F-5	S 21 st Ave West	Central Business Secondary
West	F-5	Michigan Street	Central Business Secondary

Summary of Code Requirements:

Vacation of public streets, highways, or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water; DOES NOT APPLY
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #1 – Reuse of previously developed lands. The proposed street vacation allows for future investment to a site that has potential to perform at a higher level than its current state. The vacation will allow construction of a 75-unit market rate apartment building.

Governing Principle #5 – Promote reinvestment in neighborhoods. The proposed street vacation will allow the applicant to construct a 75-unit market rate apartment building and result in an increased tax base for the City of Duluth and St. Louis County.

Housing Policy #4 – Improve the quality of the city’s overall housing stock and neighborhoods. The street vacation would allow construction of a 75-unit apartment building in a desirable area in the Lincoln Park neighborhood.

Future Land Use – Central Business Secondary: An area adjacent to and supporting the central business primary area or a stand-alone area providing a similar mix of destination land uses but at a lower intensity than the primary central business area. Includes mixed regional and neighborhood retail, employment centers, public spaces, medium density residential, and public parking facilities.

Recent History – Roberts Home Furnishings operated a home furniture and goods store from 1987 to October 2018. On August 13, 2019, the Planning Commission approved a variance from occupied space setback for a multi-family apartment building to allow for construction of at-ground level parking as part of the apartment building design. The Land Use Supervisor approved this variance for a one-year extension on April 9, 2020.

Review and Discussion Items:

Staff finds that:

1. The applicant is requesting to vacate the slopes and fills easement on West Superior Street. City records do not indicate when the easement was dedicated nor what it was needed for. The applicant indicated that these types of easements were often created to raise the grade of the roadway and allow the grade to be raised beyond the right of way line versus using a retaining wall system along the road right of way. The grade on the south side of Superior Street was likely lower than the roadway at one time. Currently the grade along Superior Street is at or above the street level, which negates the need for the slopes and fills easement.
2. The proposed easement vacation will allow the applicant to purchase the property without a title exception and construct an apartment building in accordance with local zoning regulations at the former Roberts Home Furnishings site.
3. The City Transportation Engineer has indicated support for this proposal and stated that the slope may have existed back when there was a shoreline. City Engineering has indicated this easement is not needed for public transportation purposes.
4. The existing building is currently located on the easement. Removal of the building and subsequent construction of a building ensures no issues to the property owner.
5. There are no utilities installed in the easement.
6. Vacating the easement will not affect or deny access to other property owners.
7. No other public or City comments have been received at the time of drafting this report.
8. Vacations of streets and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation:

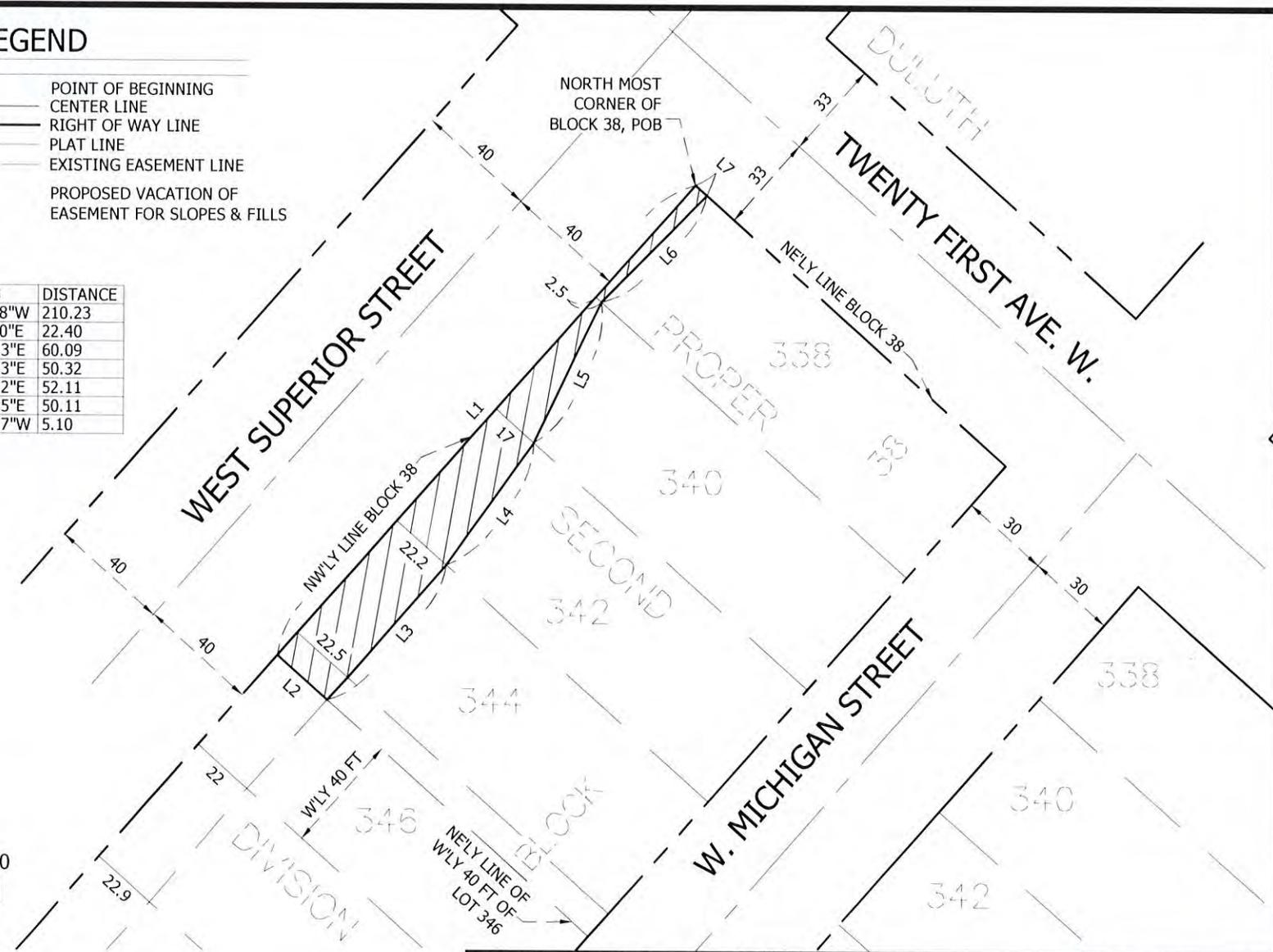
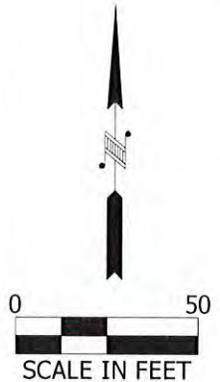
Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) The vacation must be recorded within 90 days of final approval by City Council or such approval will lapse. The vacation shall not be final until the plat is recorded in the office of the St. Louis County Recorder.
- 2.) The vacation shall not be final until the plat is recorded in the office of the St. Louis County Recorder, such recording to be done concurrently.
- 3.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

LEGEND

- POB
- CENTER LINE
- RIGHT OF WAY LINE
- PLAT LINE
- EXISTING EASEMENT LINE
- PROPOSED VACATION OF EASEMENT FOR SLOPES & FILLS

LINE	BEARING	DISTANCE
L1	S41°39'38"W	210.23
L2	S48°20'20"E	22.40
L3	N41°28'13"E	60.09
L4	N35°43'43"E	50.32
L5	N25°30'12"E	52.11
L6	N44°38'05"E	50.11
L7	N48°19'27"W	5.10



SURVEYOR'S NOTES
 1. BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
 2. THIS IS NOT A BOUNDARY SURVEY.

VACATION EXHIBIT

CLIENT: EDWARD AAMODT	REVISIONS:
ADDRESS: 2102, 2104 & 2112 W SUPERIOR STREET, DULUTH, MN 55806	
DATE: 07-02-2020	JOB NO: 20-032 SHEET 2 OF 2

ALTA
 LAND SURVEY COMPANY

PHONE: 218-727-5211
 LICENSED IN MN & WI
 WWW.ALTLANDSURVEYDULUTH.COM

LEGAL DESCRIPTION OF VACATION OF EASEMENT FOR SLOPES AND FILLS

All that part of Lots 338, 340, 342, 344 and 346, Block 38, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota described as follows:

Beginning at the North most corner of said Block 38; thence on an assumed bearing of South 41 degrees 39 minutes 38 seconds West, along the Northwesterly line of said Block 38 for a distance of 210.23 feet to the Northeasterly line of the Westerly 40.00 feet of Lot 346, said Block 38; thence South 48 degrees 20 minutes 20 seconds East, along said Northeasterly line 22.40 feet; thence North 41 degrees 28 minutes 13 seconds East 60.09 feet; thence North 35 degrees 43 minutes 43 seconds East 50.32 feet; thence North 25 degrees 30 minutes 12 seconds East 52.11 feet; thence North 44 degrees 38 minutes 05 seconds East 50.11 feet to the Northeasterly line of said Block 38; thence North 48 degrees 19 minutes 27 seconds West, along said Northeasterly line 5.10 feet to the point of beginning.

Said parcel contains 3,003 square feet or 0.07 acres.

Approved by the City Engineer of the City of Duluth, MN this 31st day of August 2020

By [Signature]

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

[Signature] David R. Evanson

DATE:07-02-2020 MN Lic. No. 49505

VACATION EXHIBIT

CLIENT:EDWARD AAMODT
ADDRESS:2102, 2104 & 2112 W SUPERIOR STREET, DULUTH, MN 55806
DATE:07-02-2020

REVISIONS:
SHEET 1 OF 2



PHONE: 218-727-5211
LICENSED IN MN & WI
WWW. ALTALANDSURVEYDULUTH.COM



PL20-119
Vacation of Slopes & Fills Easement



2032 W Superior St
PC Packet 08-11-2020

Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
 - Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Vacated ROW
- Easement Type
 - Utility Easement
 - Other Easement
 - Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019



MU-C (Mixed Use Center)
Use Category





PL20-119

Site Visit: August 23, 2020



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

☎ 218-730-5580

✉ planning@duluthmn.gov

File Number	PL 20-103	Contact	Chris Lee, clee@duluthmn.gov	
Type	Variance to maximum fence height in the front yard of residential district	Planning Commission Date		August 11, 2020
Deadline for Action	Application Date	July 1, 2020	60 Days	August 30, 2020
	Date Extension Letter Mailed	July 12, 2020	120 Days	October 29, 2020
Location of Subject	2316 West 7 th Street			
Applicant	Justin and Julia Lee	Contact	N/A	
Agent		Contact		
Legal Description	Adjacent to parcels: 010-1220-02920			
Site Visit Date	July 31, 2020	Sign Notice Date		July 28, 2020
Neighbor Letter Date	July 28, 2020	Number of Letters Sent		93

Proposal: Applicant is proposing an 8-foot tall wood privacy fence to be permitted in the front yard, instead of the maximum 4 feet allowed by code.

Staff Recommendation: Staff is recommending that Planning Commission deny the variance.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single Family Residence	Traditional Neighborhood
North	R-1	Single Family Residence	Traditional Neighborhood
South	R-1	Single Family Residence	Traditional Neighborhood
East	R-1	Single Family Residence	Traditional Neighborhood
West	R-1	Single Family Residence	Traditional Neighborhood

Summary of Municipal Planning Act & City Code Requirements

50-7.1 Compliance Required. No land shall be used and no structure shall be erected . . . except in accordance with all provisions of this ordinance that apply in the zone district where the property is located and to the type of use, structure or development in question

Minn. Stat. § 462.357, subd. 6(2) (Variances) – “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant . . . establishes that there are practical difficulties in complying with the zoning ordinance. ‘Practical difficulties,’ as used in connection with the granting of a variance, means that[:]

[1] the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

[2] the plight of the landowner is due to circumstances unique to the property not created by the landowner and

[3] the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties.”

50-37.9.C.- General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant’s property, enforcement of the ordinance would cause the landowner practical difficulties or hardship. The Planning Commission must find the following for a variance to be granted: a) That they are proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner or a predecessor-in-interest, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #5 – Promote investments in neighborhoods. While staff finds this a reasonable fit for the new investment into existing neighborhoods, it does not relate or contribute to the public realm.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth’s older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

History: The property contains a single family home constructed in 1914. The property is 50’ x 140’. The fence was constructed in the fall of 2019. Staff was alerted of the fence by a zoning complaint.

Review and Discussion Items

Staff finds that:

- 1.) The applicant is seeking a variance to permit an 8 foot tall fence in the front yard. The side and rear yards allow an 8 foot tall fence, but require a permit. The front yard may contain up to an 8 foot tall fence only if constructed from decorative material that is also 50% transparent. This fence was constructed in the fall of 2019 after the 2018 requirement that all fences need permits (issued as a "zoning permit") reviewed and approved by city staff. Building permits have always been required for fences of 7 feet tall and require engineered drawings. No permit was obtained at the time of construction.
- 2.) The applicant has expressed that the practical difficulty and desire for a high fence stems from the lack of privacy, the unsafe conditions of the street, and the containment of an athletic dog. While staff is generally in agreement that privacy is important for residences and certain breeds of dog are more energetic than others, these criteria do not fall within the realms of practical difficulty. Additionally, a home in a dense residential area generally comes with an understanding of a sense of shared neighborhood space, particularly in the front yard, and it is not reasonable to expect characteristics of a gated community in an urban neighborhood.
- 3.) This lot is 50' wide by 140' deep and is typical of lots in the Lincoln Park neighborhood. This property has an elevation of 781' at the street level that drops to 764' at the alley. This is also typical of properties on this block and surrounding blocks. The house directly to the east shares a similar, but slightly more aggressive, elevation drop. The applicant has stated that the sloping terrain of the front yard is a unique characteristic of this property and causes undesirable conditions. The need for a variance is not due to the exceptional narrowness or topographical conditions on the lot.
- 4.) The applicant's property is similar to other lots on West 7th Street, and to other properties on surrounding streets. Therefore the circumstances are not peculiar to this specific property, but instead apply generally to other lots in Lincoln Park. The circumstances causing the need for the variance are not unique to the property.
- 5.) The circumstances resulting in the topography have been in place since the home was built in 1914. While the topography of the lot was not created by the owner, the applicant did build the existing fence in 2019 without proper permits and therefore, as the applicant's practical difficulty assertion states the fence is already built, applicant did create this difficulty and therefore does not meet the criteria that the difficulty must not have been created by the property owner.
- 6.) Among other houses fronting on this four-block stretch of W 7th Street, three have fences. Among those, two have fences in the front yard. The height of those front yard fences is about 4 feet or decorative in nature and have boards spaced apart to create over 50% transparency; both meet UDC requirements. The proposed fence is 8 feet tall and 100% opaque and therefore would impact the essential character of the neighborhood.
- 7.) The property has been put to a reasonable use as a single family residence. The applicant is proposing to use the property in a manner that is a permitted use in the R-1 zone district, but is nevertheless inconsistent with orderly development principles supported by the fence and wall requirements in the code.
- 8.) The applicant has provided 37 petitions from their immediate neighbors in support.
- 9.) No other public, agency, or other comments have been received.

Staff Recommendation

Based on the findings of fact and discussion above, Staff recommends denial of the variance.

Staff concludes that the request is not in harmony with the purposes and intent of the zoning code that relate to the encouragement of planned and orderly development within the city, as reflected by the fence and wall standards for residential properties. These standards are to ensure the safety and well-being of all residents of Duluth and provide consistent development patterns in residential neighborhoods. Similarly, staff concludes that the request is not consistent with the comprehensive plan in that a fence over the allowed maximums does not create friendly and inviting neighborhoods that are inclusive to all users.

Staff further concludes that the applicant has not established practical difficulty. While the applicant is proposing to use the property in a permitted and reasonable manner (i.e., single-family home in an R-1 district with a fence for privacy), staff concludes, however, that the plight of the landowner is not due to topographic or geographic conditions unique to the property as conditions exist elsewhere in Duluth.

Staff is not unsympathetic to applicant's request and is appreciative for its containment of animals. The fence appears solidly constructed and shows no signs of immediately contributing blight or danger. Nevertheless, staff concludes that the request is not in harmony with the general purposes or intent of either the City's zoning code or comprehensive plan, and for all the reasons previously stated, recommends denial.



Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

Variance Application Supplemental Form

In order to submit a complete variance application, please explain how your request meets all of the below variance criteria. This is information that is required by the zoning code and will be shared with the Planning Commission during their review. You may fill out this form, or attach your information in a separate letter. This information will be shared with the Planning Commission in order to help them determine the appropriateness of the variance application and request.

List the UDC Section you are seeking relief from (example: "50-14.5 – front yard setback in an R-1"):

50-26.4 - Fence height in front of lot, et al.

1. Please explain how the exceptional narrowness, shallowness or shape of the property, or exceptional topographic or other conditions related to the property, would result in practical difficulties under strict application of the requirements of the UDC:

Natural Topography combined with safety, privacy, environmental, & other factors, motivated our decision to build an 8' fence in front. Please see the attached proposal for lots of detail regarding these deciding factors.

2. Please explain how the special circumstances or conditions that create the need for relief is due to circumstances unique to the property, and were NOT created by the property owner or the property owners' predecessors-in-interest:

Abandoned homes, squatters & crime exist in our neighborhood. We see strangers in alleys & moving between properties. Multiple violent attacks have taken place in within our block since we moved in & we want to feel safe. Our house sits about 8' below street level & the property to the West sits on an artificially retained terrace. With street level 8' above our front door, public sight lines pass through every room of our home & a tall privacy fence in front eliminates much of that intrusion. Other conditions also exist that merit relief. See attached proposal for more detail.

3. Please explain the special circumstances or conditions applying to the building or land in question are peculiar to this property or immediately adjoining properties, and do not apply generally to other land or buildings in the vicinity:

The property to the west is built on a street level terrace retained with concrete, stone & timber, with fence on top. From our lot, below, the neighbor's wall & fence are over 12' high. Our neighbors' homes to the north are 8-10' above street level & they have a high vantage point above our home & tall fence in front does not impair their scenic harbor views. The slope of city property adjoining W 7th & our north line is steep & although the north elevation of the fence is at 8' its East & West elevations quickly diminish to below street level within 8' of its length, so the fence height as viewed from the street does not impose as it could, were the lot totally flat. See attached proposal.

Revised July 2019

4. Please explain how the application proposes to use the property in a reasonable manner, which would not be permitted by this code except for a variance:

Our fence is well designed & built, & we intended it to be the best possible fit for our neighborhood. The fence adds to the character of the neighborhood, & the fence will be well maintained long term. The fence height does not impose on our neighbors & the fence height is not an impediment to utility or emergency access. We dont want our dogs jumping a short fence & running amok. See attached.

5. Please explain how that if the variance is granted it will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety or public welfare of the inhabitants of the city:

The fence does not block scenic views for neighbors & the position & height, at the top of a steep slope, reduces the publics' risk of falling down said slope. Our lot is centered in the block so the height & position do not impede traffic or intersections. The qualtiy & look of the fence has been widely priased & we collected 45 signed letters from neighbors who approve of our fence & I'm certain we could have collected more if were not for covid & social distancing. I'm also certan this fence serves well to improve neighboring property values.

6 Please explain how, if the variance is granted, it will not substantially impair the intent of zoning code and the official zoning map, and will not alter the essential character of the neighborhood:

For reasons already stated above, & more in the attached supplement, we believe the fence design meets & exceeds the needs of our community, & will not negatively alter the essential character of the neighborhood. Rather, we believe our fence positively alters & revitalizes a small part of a long troubled area in Duluth. We know & trust our closest neighbors, all who approve of the fence. We & our neighbors have worked together in the 2 years since moving in to collectively improve our properties in the hopes other will join us in making a safer, cleaner & more enjoyable Duluth for everyone.

Does your variance request need to meet any of the specific criteria in UDC Section 50-37.9, subsections D through M (E. Unsewered Areas, F. Two Family Dwellings in R-1, G. Parking Regulations, H. Reduce Setbacks, I. MU-C District, J. Airport Overlay, K. Flood Plain Regulations, L. Shorelands, or M. Non-Conforming Buildings)?

Yes No

Discuss what subsections are applicable and how this request meets those: Perhaps, maybe yes?

I am the owner & resident, & I am the sole preparer of this proposal.

I am an experienced designer & drafter & I am NOT a certified engineer.

I designed this fence myself & built it with the help of my Wife, Dad & Uncle.

To the best of my ability & knowledge, the entire fence system was designed

as the best possible solution for our property & our needs, while keeping

in the spirit of being a good neighbor & a good, contributing, member of

society. After preparing exhaustive documentation of the fence system, as

it was built, if the city finds there are other outstanding issues

covered by the above UDC subsections, I look forward to working

with the city to understand & address those issues.

Physical Description of the entire site.

This 140'x50' lot is set into the Lincoln Park hillside & slopes in two directions. The primary slope is downward from W 7th St towards the alley. Total change in elevation is about 20' vertical from street to alley. The highest point is at street level of W 7th St, & the lowest point is at the SE corner of the lot .

The secondary slope extends from the West property line gently downward towards the East & is most pronounced in back & in the SE corner of the lot The neighboring lot, to the west, is built on a retaining wall terrace that artificially raises that lot to between 5-8' above the grade of our lot.

Following the primary slope & starting at the curb & moving towards the alley, there is first a 9.25' flat area containing a 40" sidewalk & a buried 2" MDPE Gas Utility Line. At the edge of the flat area the ground slopes downward steeply, at roughly a 45° angle for a horizontal distance of about 10'. Our North property line lies about 3/4 of the way down the steep slope & the area contains a 9 step concrete staircase linking our lot's primary elevation to that of W 7th St. *(This steeply sloped section of public right of way on W 7th St is of unique character & should be taken into close consideration as the city explores this proposal.)*

Beyond the initial steep slope, the lot slopes more gradually, forming two main terraces, for the house & the lower back yard. The lowest 1/8 of the lot slopes steeply away from the lower backyard terrace to meet the alley pavement. The lowest point is the SE corner which is about 3' below the lower edge of the backyard terrace.

The fence enclosing the site is a unique design, closely matches the natural ground contours & is constructed of ACQ treated Pine, consisting of 4x4 uprights set in 3' of concrete. The uprights suspend 8'x8' fence panels made with 2x4 stringers & 1x6 x 96" pickets. The fence is finished on both sides & extends for about 300 lineal feet along the North, East & South elevations. The site is then fully enclosed on the west elevation by a series of concrete, stone & timber retaining structures that artificially elevate the neighboring lot. In front, along the North elevation & within the W 7th St public right of way, our neighbor's retaining wall extends about 9.5' beyond the north line. Our fence extends about 8' into the W 7th St right of way, enclosing a 8'x48' section of the steeply sloped area described above, which lies within the public right of way.

In the rear, at the SE end of the lot, the fence rests on a 6x6 ACQ treated timber knee wall that extends from the center of the South property line, to the SE corner of the lot. The knee wall extends from ground level a to maximum knee wall height of 38" above the natural grade. For ease of maintenance on an otherwise steeply sloped area, & instead of needlessly excavating yards & yards of earth, we designed the fence to be level across the back section, mirroring the front. The rear knee wall simply levels the lower end of the lot, allowing the fence height along the back section to remain uniform & looking clean. The knee wall does not retain the preexisting grade. Rather, the knee wall sits on top of & rises above the preexisting grade. Aside from some sod removal & placement of tie-backs, the preexisting grade was not disturbed by construction of the knee wall. The knee wall has all commensurate footing, tie-back & drainage provisions as called for in any similar structure.

Continued below...

Our reasons for wanting a fence at all.

We have a reasonable expectation of privacy.

Our neighborhood is urban, tightly packed & we see plenty of foot traffic on W 7th St. Due to the steep topography, our house is built about 8' below street level. Passers by on W 7th St are at a high vantage point above the house & are granted direct lines of sight into all 3 levels of our 2 story home. A tall privacy fence in front eliminates that intrusion & grants us some peace of mind, knowing that we can open our curtains without street level passers by having direct views into all levels of our home.

We have a reasonable expectation of Safety & Peace of Mind

Crime is literally at our doorstep. We commonly see tell-tale drug activity & unfamiliar people moving through alleys, between lots & around nearby abandoned structures.

Just a few weeks ago we woke up to a woman screaming at 3:30AM. On the sidewalk, directly in front of our next door neighbor's house, a man was on top of a woman, attacking her. We were forced to personally confront the attacker, while waiting for police. The man eventually ran away & we don't know if he was ever caught.

Earlier this year, a home on our street had an emergency where a number of fire, police & other first responders were on the scene. We overheard police saying that a young man's heart had stopped & that he was successfully revived after paramedics administered Naloxone, a drug used to treat opioid overdose. We commonly see unfamiliar visitors & other telltale drug activity on our street & it saddens us to know this is the state of our community.

In another incident last summer, less than a block away, Duluth Police arrested Jericho Alexander who was charged in a Lincoln Park shooting incident where 6 shots were fired, striking at least 2 nearby homes. Although our fence may not be impervious to bullets, it gives us great peace of mind knowing that strangers cannot easily cross through our property & if someone does happen to be running from police on W 7th St, they will have difficulty climbing our 8' fence to escape.

We do not want to inhumanely teather our dogs within our own yard.

We have 2 friendly & athletic hounds that need lots of exercise. & simply cannot be indoors or tethered all day long. As all hound dogs do, our dogs bark & bay, run & jump at anything that moves. A tall privacy fence in front prevents our dogs from seeing outside the fence & avoids a lot of bark triggering episodes with pedestrians on w 7th St, which would be an unnecessary nuisance to our neighbors. In addition, a tall fence prevents the dogs from escaping the fenced area, especially in the winter, when several feet of snow & drifts can accumulate against the fence. A lower fence in front would significantly increase the risk of our dogs escaping, running amok & becoming a hazard to themselves, or the public. A tall fence in front only serves to decrease these risks.

Continued below...

Our reasons for building the fence the way we did.

-Safety & Ease of maintenance on the sloped area.

The sloped area is set at roughly 45° & extends the full width of our lot. The slope is difficult & is potentially unsafe to maintain. With the fence as built, mowing the slope can be safely accomplished by standing at the bottom of the slope, facing the street & pushing the lawn mower uphill, then backing back down slowly. The full 50' width of the sloped area needs mowing & this the only way we feel reasonably safe while maintaining this section of city property. Placing a fence at the bottom of the sloped area would block access to the sloped area making it impossible to maintain safely.

-Improves Pedestrian Safety.

A fence at the top of the steeply sloped area eliminates the risk of pedestrians, cyclists or others from falling down the steep slope. If the fence were at the bottom of the steep slope, a person falling down the slope could strike the rigid fence at the bottom, greatly increasing their risk of severe injury on the sloped area.

-Does not impede traffic.

Our lot is centered in the block & the fence as built does not obstruct any views of the road or intersections & does not impede visibility or mobility of traffic or pedestrians in any way.

-Future Landscaping Plans.

Like many of our neighbors we planned to landscape the area between the street and our home, with the understanding that obstructions to future utility work, would, of course, be subject to removal. Given the steepness of the slope in front of our lot, we envisioned placing terraced planters & bushes on the slope with spaces to grow vegetables which would make good use of an otherwise unusable, unsafe & difficult-to-maintain space. With the fence at the top of the sloped area vegetation would receive full sunlight & could flourish. On the other hand if the fence were moved down the property line, it would block sunlight & physical access to the sloped area making the space unusable for any purpose including the required maintenance on the slope.

-Other structures exist within the same section right of way & are not an impediment to anyone.

Private stairways, sidewalks, driveways & landscaping features lie within street right of way all over this city. The private retaining wall nearest to our west property line has stood for more than 100 years & artificially elevates our neighbor's lot in the same W 7th St right of way space where our lot has the steep slope. The retaining wall extends further into the W 7th St right of way than does our fence & did not impede the 1980 installation of the 2"MDPE gas utility line, the public sidewalk, or any other utility work that has occurred in on W 7th St. anytime in the last century.

-Several of our neighbors have curb-cut driveways occupying similar sections of right of way.

Most owners with curb cut driveways park vehicles within the public right of way year round. Curb cut driveways are a commonly permitted use of public right of way space that essentially grants the owner exclusive access to that section of the right of way. We see this use as reasonable, although it does force pedestrian traffic off the sidewalk & onto the streets. A section of our fence is occupying the public right of way on W 7th that adjoins our lot, & that use is very similar to a curb cut use in principle, except our fence does not block the public sidewalk, or force pedestrians into the street.

Continued below...

-For Neighborhood Improvements, Curb Appeal & Property value.

There are numerous run-down & abandoned buildings near our home that detract from the quality of our neighborhood & value of our homes & we want this to change. We think this fence is well designed & well suited to the character of the neighborhood & a majority of our neighbors agree. During construction lots of neighbors stopped by to give positive praise about the fence, & long overdue improvements to the neighborhood. In fact, before covid & social distancing, we went out & met our neighbors & collected 45 signed letters approving of the fence & our desire to seek a variance. We believe that we have positively altered the look, feel, safety & value of this neighborhood. It is our sincere hope to see other neighbors join with us & the city to take more positive steps towards revitalizing & improving the safety & quality of this inner-city neighborhood.

-Economy of scale & environmental concerns.

We secured a much better price on 8' pickets than was possible buying at 6' & very little cutting was necessary to build the fence at 8'. As such, very little sawdust from the ACQ treated lumber ended up on the ground, which eliminated the unnecessary release of potentially hazardous wood treating chemicals into our soil.

Additional thoughts about the fence, its construction & the value it adds to our community

-Fence as built grants free & contiguous access to our property & the city property we maintain along W 7th St., without the need for any extraneous internal partitions. There is no need for extra gates or circuitous hikes around the block to access divided spaces with lawn or snow equipment.

-Our insurance provider has stated that if so required, our current injury liability coverage can be extended to the sloped area & the city can be added as an interested party on the policy with coverage up to \$3m.

-The fence has good sight lines & does not impose. Perpendicular to the road, the fence as built slopes steeply down following the ground contour & within a few feet of its length, the height of the fence quickly diminishes to below street level entirely.

-Topography is such that the fence does not impede any scenic views from neighboring properties.

-Positive feedback from many neighbors. During construction, many neighbors & passers by stopped to talk with us & to praise our design & construction & many said they were glad to see some improvements in the neighborhood.

- After receiving the violation notice from the city (& before Covid-19 & Social Distancing) we met with & were able to collect 45 signed letters of approval from our closest neighbors within 350'. Had Covid never happened, I am certain we could have collected more.

-Aside from the violation notice we received from the city, no individual has ever contacted us with negative feedback regarding the height, position or any other feature of the fence.

Continued below...

-Proven Soundness of Construction. Since construction in Fall 2019, the fence has weathered a number of severe storms, with sustained periods of high wind loading, rain, snow & ice. Although we've encountered some shrinkage & warping, these conditions were expected & we understand continuing maintenance is requisite for any similar structure.

-Fence as built in front meets the top edge of the sloped area & our staircase cleanly, granting safe & easy barn door gate access to mail carriers, visitors & anyone entering at street level.

-Fence is 40" from the sidewalk edge allowing ample space for pedestrian traffic.

-Fence is 36" from the location of the buried gas utility line, & farther than other nearby structures.

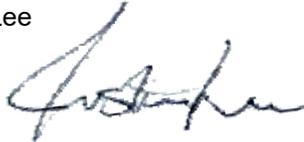
-Fence & other similar structures are no impediment to utility, maintenance or emergency access.

-Slope in rear dictated need for knee wall & fence placement placement above the preexisting grade.

-Fence as built is the most practical use of all spaces in question, as outlined in this proposal.

For all the reasons listed here & those illustrated in the plans below, & with the support of our neighbors, we believe the fence as built meets & exceeds the needs of our community. We believe it should remain standing as built & we believe that this variance proposal should be recommended & approved!

Sincerely,
Justin Lee

A handwritten signature in black ink, appearing to read "Justin Lee", written in a cursive style.

2316 W 7th St, Duluth, MN
612.227.2689

2316 W 7th St. 55806 - FENCE VARIANCE PROPOSAL

Proposed variance would allow existing fence system to remain standing, as built.

LEGEND
★ SCALE:
WHEN PRINTED AT 11"x17
1MM = 1FT
20 feet

THIS PROPOSAL WAS PREPARED BY
OWNER/RESIDENT, JUSTIN LEE

CONTOUR & UTILITY IMAGERY
BY DULUTH ENG DEPT

SURVEY BY JPJ ENGINEERING

CERTIFICATE OF SURVEY

PROPERTY DESCRIPTION:

Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota

JPJ
Engineering
Land Surveying
Economic
Development
JPJ ENGINEERING, INC
5670 Miller Trunk Hwy
Suite A
Duluth, MN 55811
Phone: 218-720-6219
www.jpjeng.com



LEGEND:

- iron monument found
- 1/2 inch iron monument set, marked "JPJ ENG 53683"
- concrete surface
- bituminous surface
- gravel surface
- OE overhead electric line
- power pole

SURVEYOR NOTES:

Orientation of the bearing system is based on the north line of Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, to have an assumed bearing of N 41°39'08" E.

JPJ Engineering has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.

Total gross area of the property is 7,009 square feet or 0.16 acres ±.

Parcel Identification Number 010-1220-02920

CERTIFICATION:

I hereby certify that survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 25th day of June, 2019 for JPJ Engineering, Inc.

Dustin R. Schmaltz
Dustin R. Schmaltz, PLS License Number 53683

CERTIFICATE OF SURVEY
FOR: JUSTIN LEE

2316 West 7th Street, Duluth, MN 55806
Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, St. Louis County, Minnesota

SURVEY BY :	AJG
DRAWN BY :	DRS
DESIGNED BY :	
APPROVED BY :	DRS
DATE:	6/25/2019
PROJECT NUMBER	19-614
SHEET NUMBER	1 OF 1

7TH ST WEST SETBACK AREA
33' EITHER SIDE OF CENTERLINE

CITY SIDEWALK

7TH ST W CENTERLINE

7TH ST W

CITY SIDEWALK

EXISTING STRUCTURE WITHIN SETBACK

CITY DRAIN - 8" VITREOUS CLAY

CITY DRAIN - 8" PVC

CITY WATER - 6" CAST IRON

CITY NATURAL GAS - 2" MDPE

FENCE SYSTEM AS BUILT (RESIDENT)

WATER (RESIDENT)

NATURAL GAS (RESIDENT)

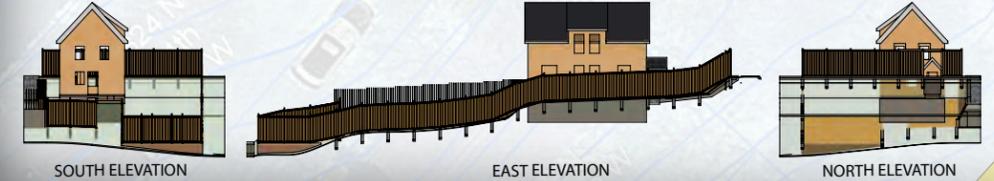
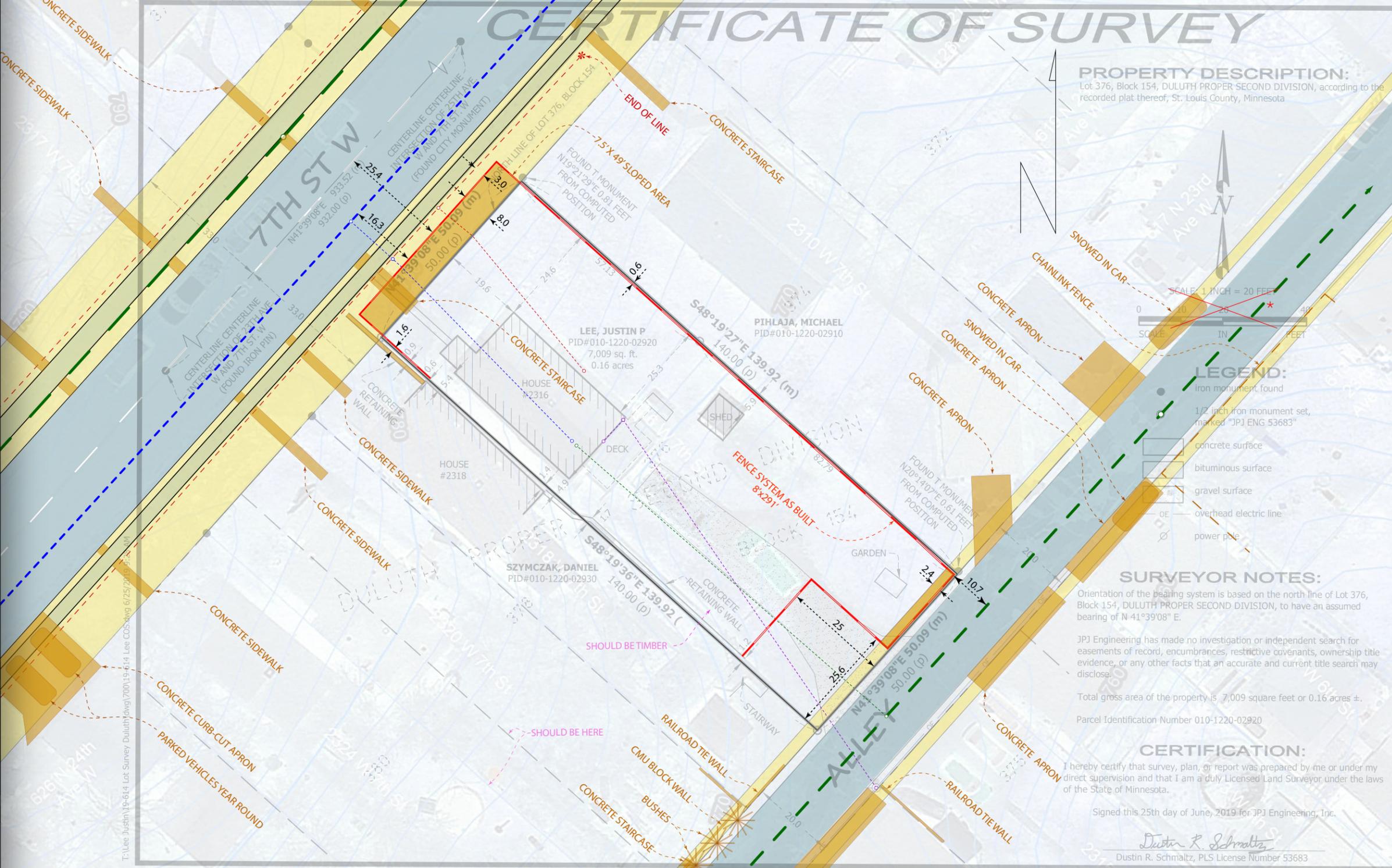
OVERHEAD ELECTRIC (RESIDENT)

WASTE WATER DRAIN (RESIDENT)

ALLEY SETBACK AREA

ALLEY

3' EITHER SIDE OF ALLEY



- Top reasons to permit the existing fence system:**
- 46 of our neighbors within 350' have signed letters in support.
 - Topography, front & rear, both warrant as built positioning.
 - Fence position on front slope improves pedestrian safety.
 - Improved Safety & ease of access maintaining setback.
 - Reduced barking from our dogs as pedestrians pass.
 - Reduced risk of our dogs escaping & running amok.
 - Improved sense of safety for our family & friends.
 - Reduced risk of intrusion to our yard & home.
- Lot is centered in block & fence does not obstruct traffic or intersections.**
- Height & position in front does not block scenic views for neighbors.
 - Multiple existing adjacent structures set precedent for similar use.
 - Fence as built is 3' away from the natural gas utility line.
 - The natural gas utility line ends one door to the east.
 - Barn-door gate not possible with 6' height in front.
 - Use of setback is similar to curb-cut apron.
 - Ease of access for mail carriers & visitors.

CERTIFICATE OF SURVEY

PC Packet 08-11-2020



Engineering
Land Surveying
Economic
Development

JPJ ENGINEERING, INC
5670 Miller Trunk Hwy
Suite A
Duluth, MN 55811
Phone: 218-720-6219
www.jpjeng.com

PROPERTY DESCRIPTION:

Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota



SCALE: 1 INCH = 20 FEET



LEGEND:

- iron monument found
- 1/2 inch iron monument set, marked "JPJ ENG 53683"
- ▭ concrete surface
- ▭ bituminous surface
- ▭ gravel surface
- OE — overhead electric line
- ⊘ power pole

SURVEYOR NOTES:

Orientation of the bearing system is based on the north line of Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, to have an assumed bearing of N 41°39'08" E.

JPJ Engineering has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.

Total gross area of the property is 7,009 square feet or 0.16 acres ±.

Parcel Identification Number 010-1220-02920

CERTIFICATION:

I hereby certify that survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 25th day of June, 2019 for JPJ Engineering, Inc.

Dustin R. Schmaltz

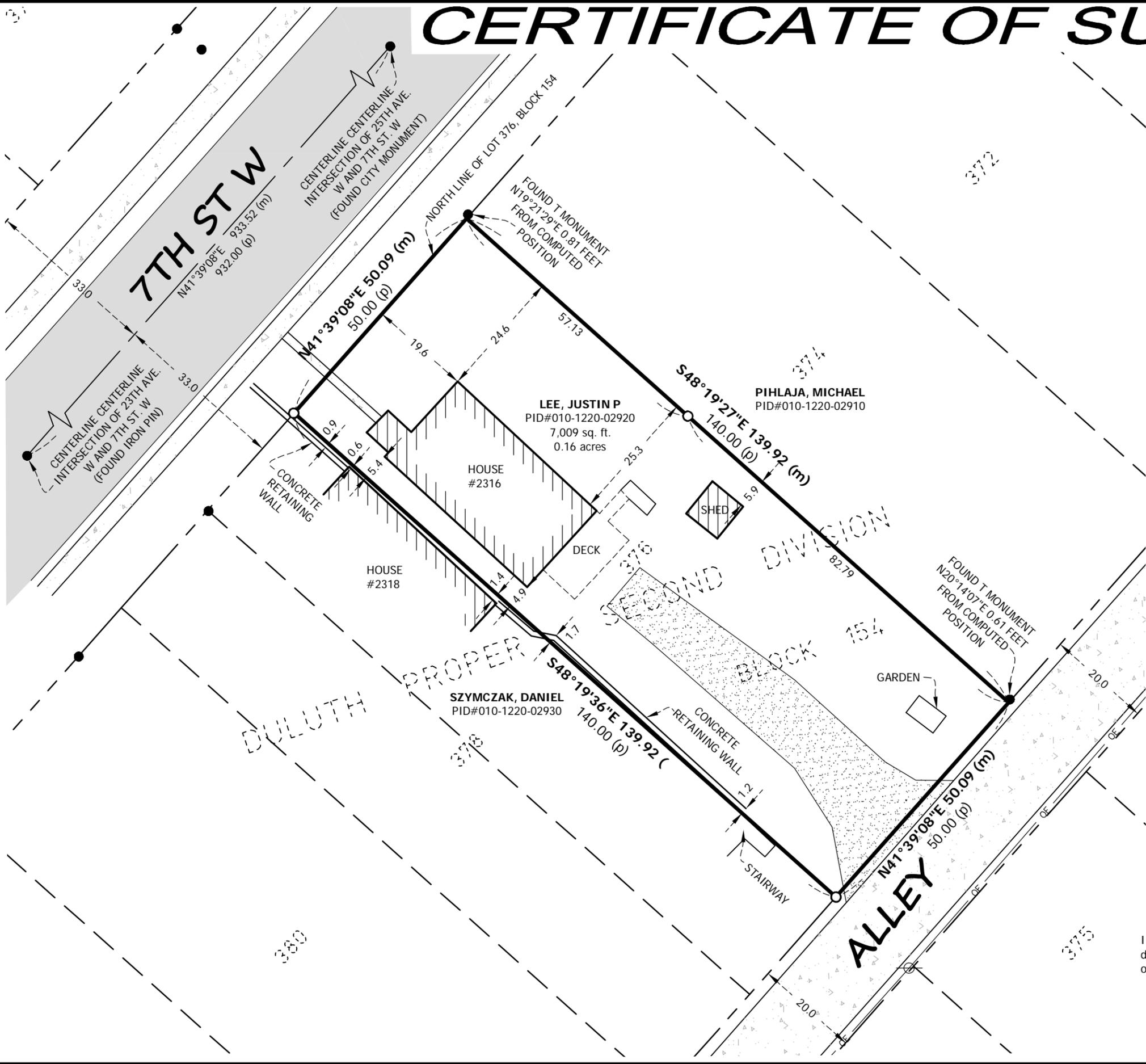
Dustin R. Schmaltz, PLS License Number 53683

CERTIFICATE OF SURVEY FOR: JUSTIN LEE

2316 West 7th Street, Duluth, MN 55806
Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, St. Louis County, Minnesota

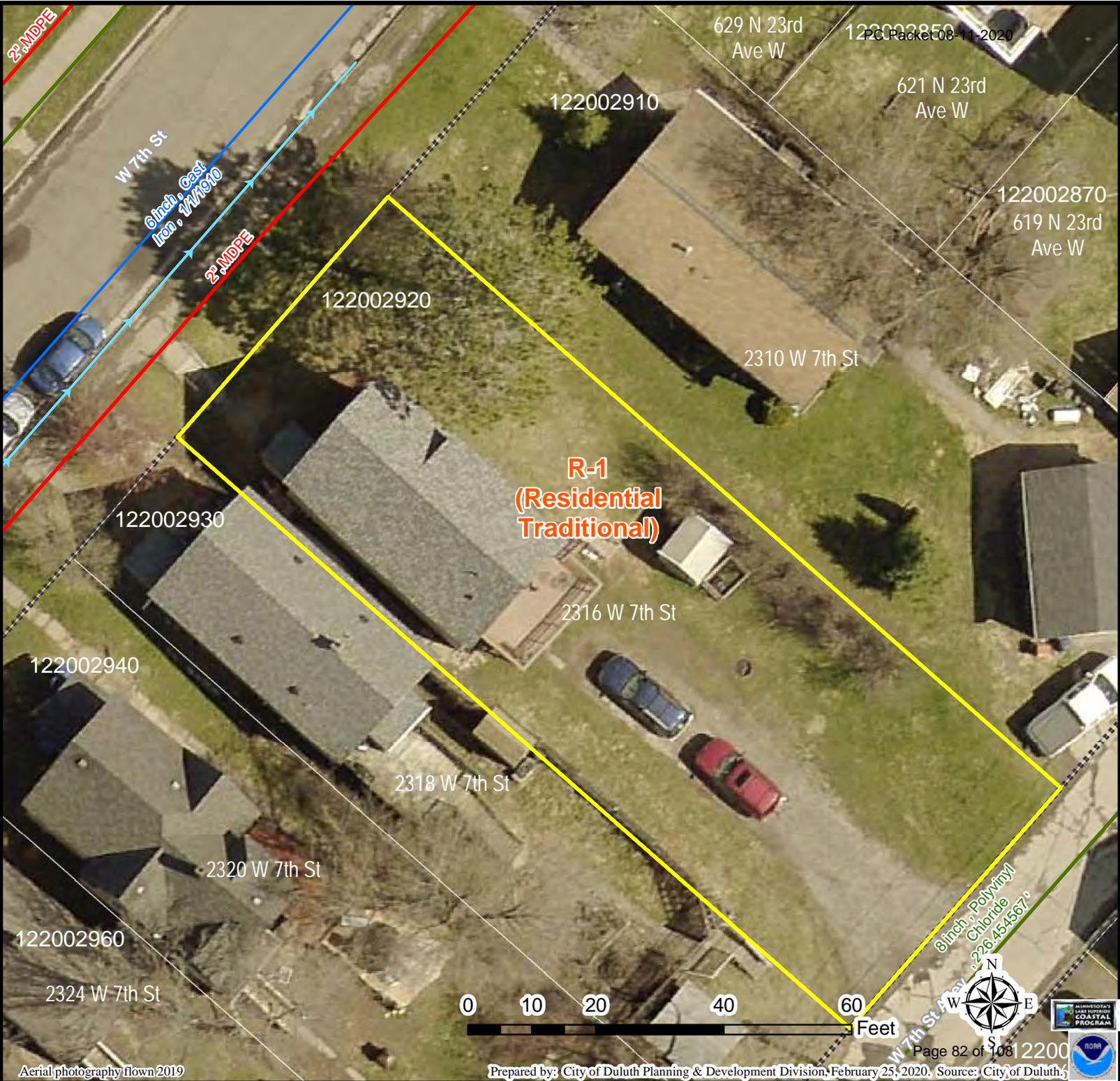
SURVEY BY :	AJG
DRAWN BY :	DRS
DESIGNED BY :	
APPROVED BY :	DRS
DATE:	6/25/2019
PROJECT NUMBER	
	19-614
SHEET NUMBER	
	1 OF 1

T:\Lee Justin\19-614 Lot Survey Duluth.dwg\700\19-614 Lee COS.dwg 6/25/2019 9:28 AM





PL 20-103 and PL 20-104
Variance and CUP
2316 W 7th St.



Legend

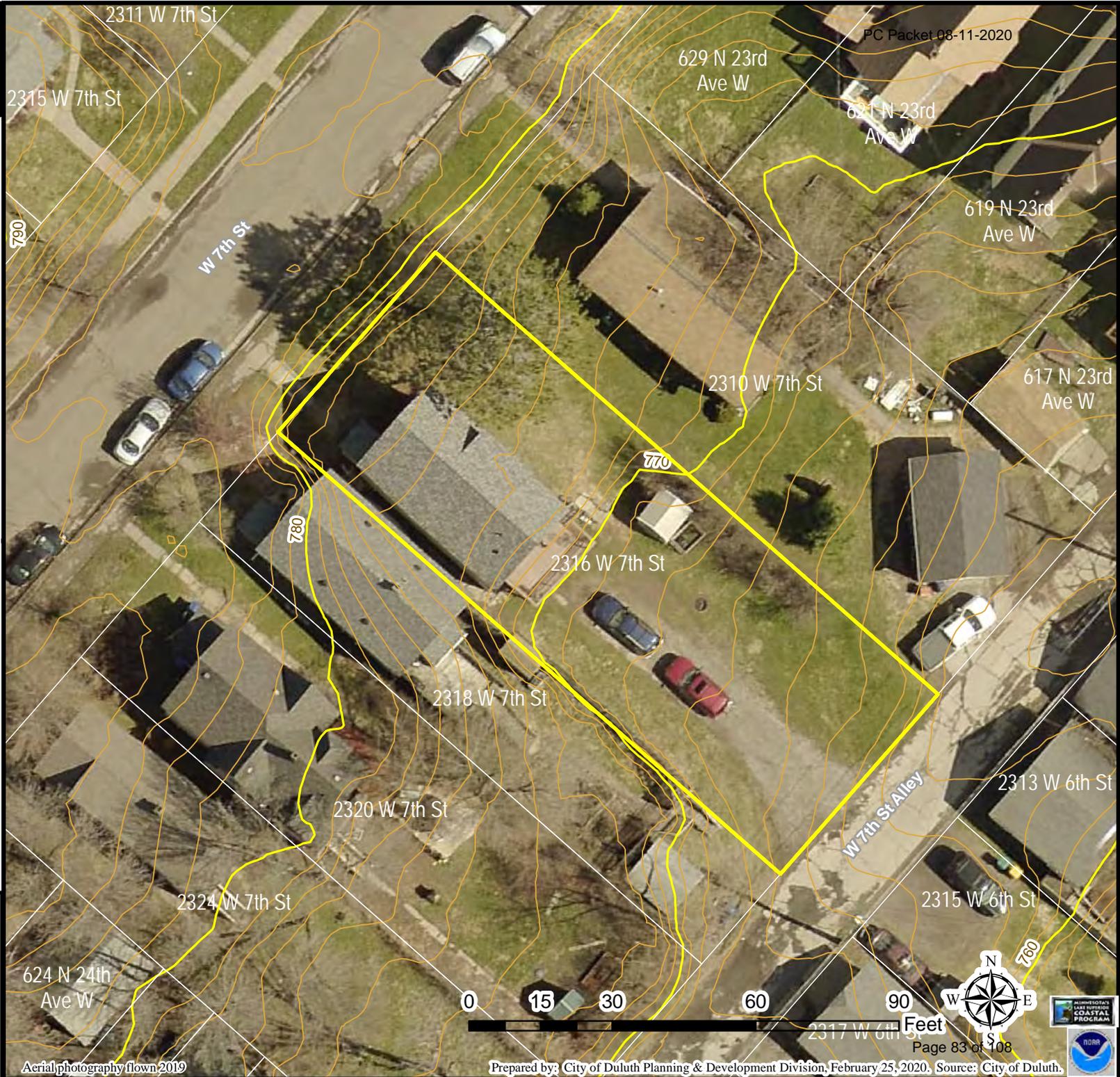
- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
 - CITY OF DULUTH
 - WLSSD; PRIVATE
 - Sanitary Sewer Forced Main
- Storage Basin
- PS Pump Station
- Storm Sewer Mains
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Road or Alley ROW
- Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019

Prepared by: City of Duluth Planning & Development Division, February 25, 2020. Source: City of Duluth.





PC Packet 08-11-2020

Legend

Elevation

- 1 Ft contour
- 10 Ft contour

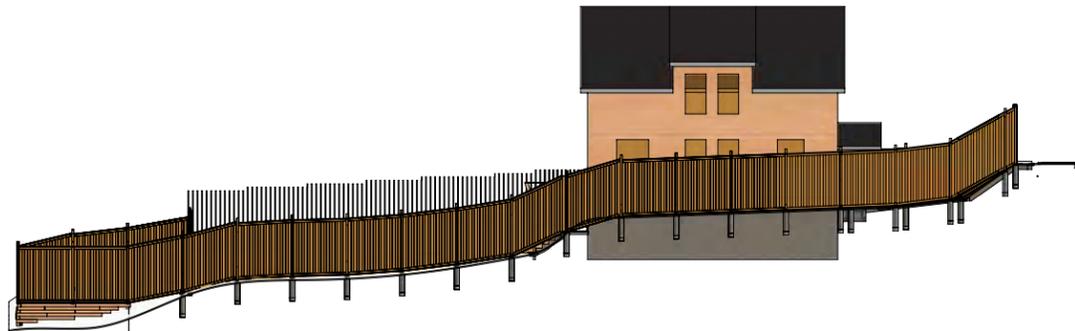
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019





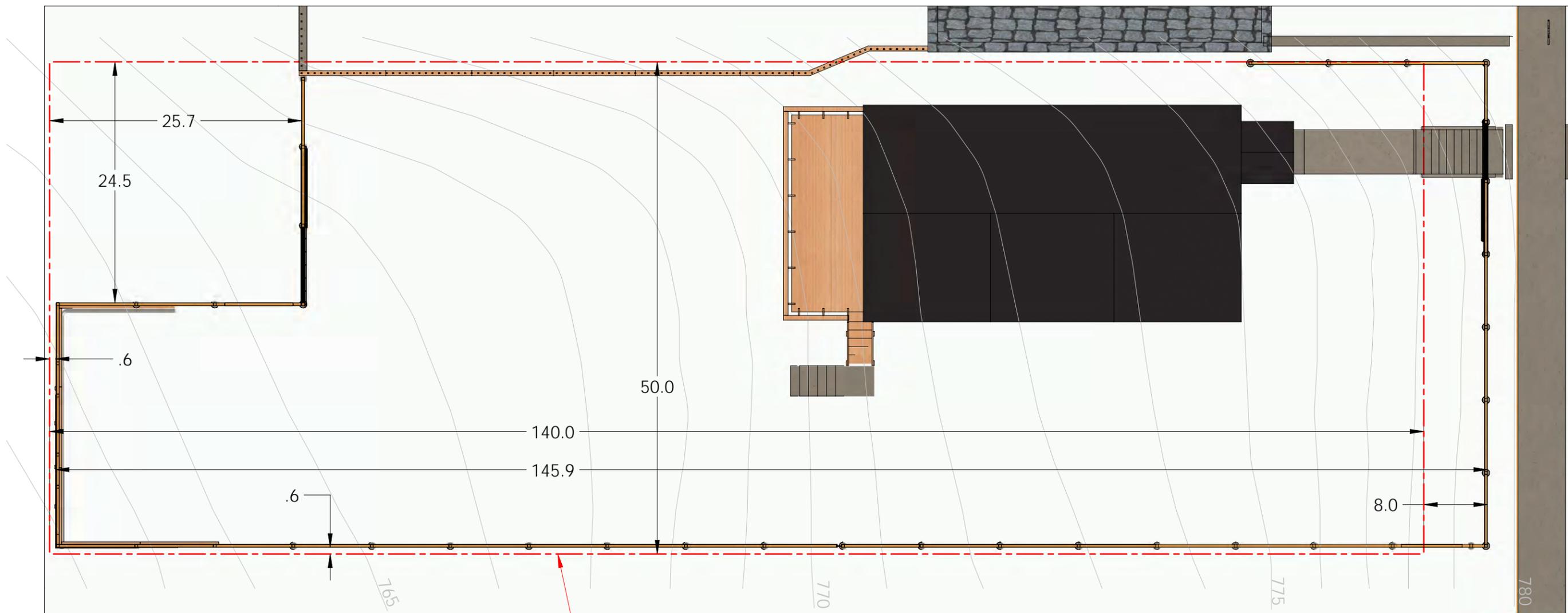
SOUTH ELEVATION
SCALE 1:320



EAST ELEVATION
SCALE 1:320



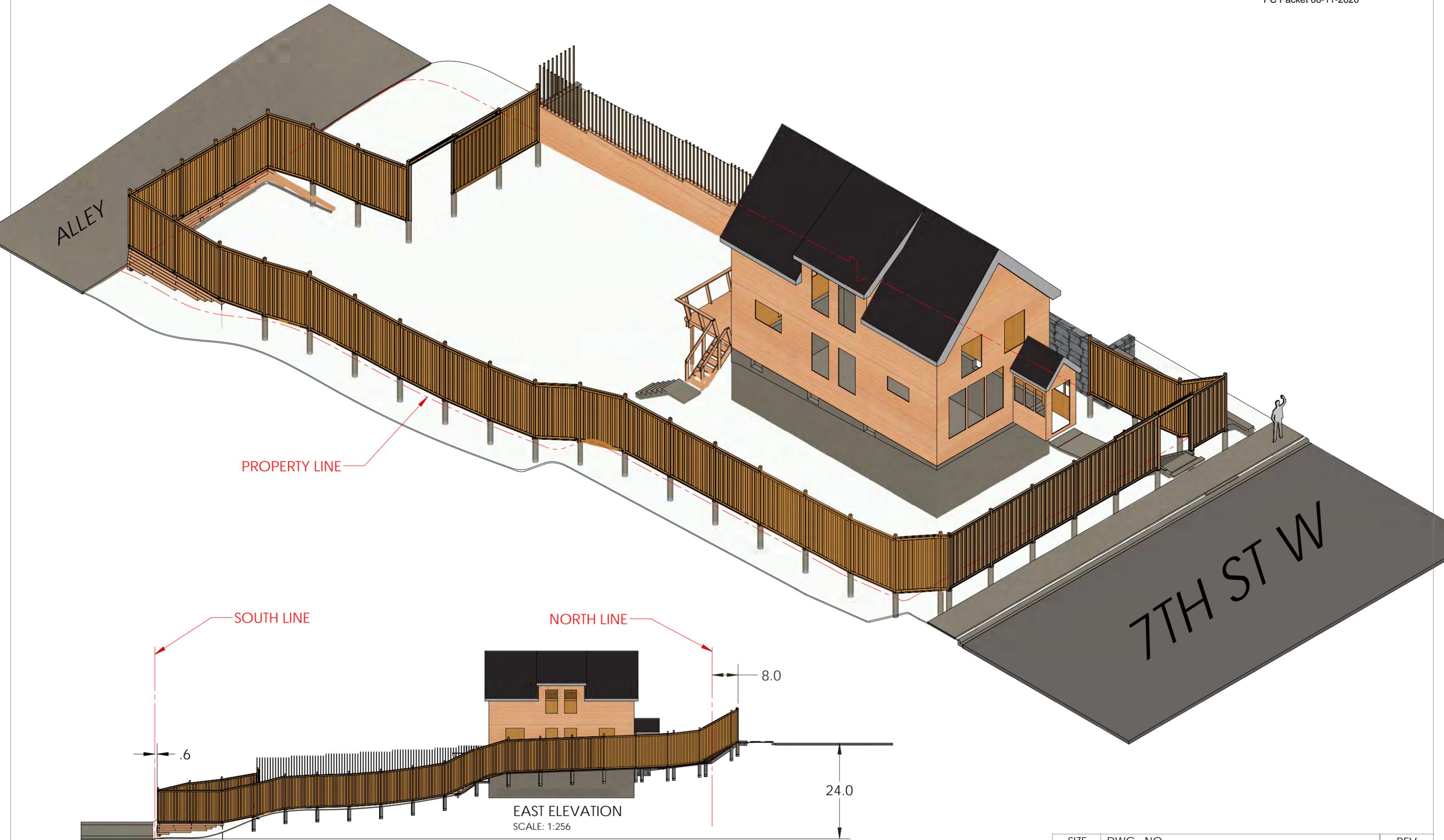
NORTH ELEVATION
SCALE 1:320



PROPERTY LINE



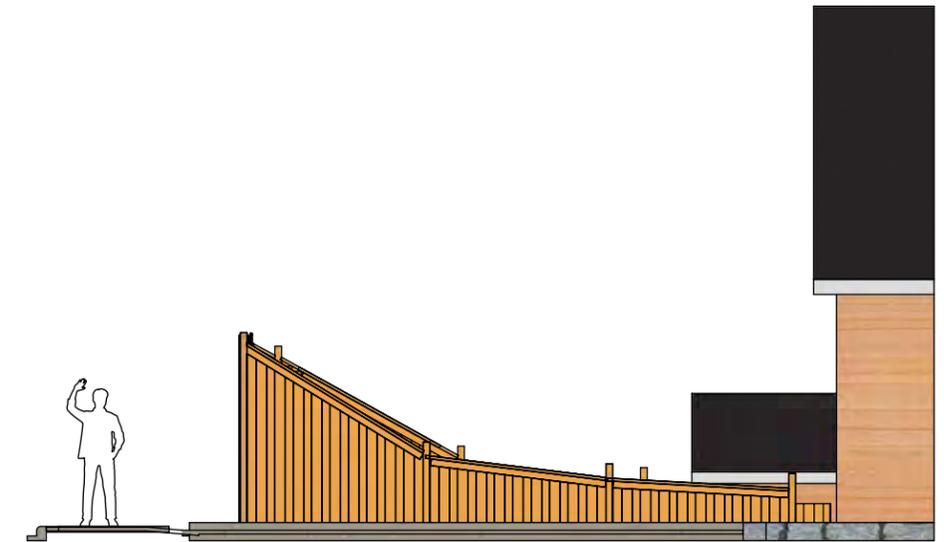
SIZE	DWG. NO.	REV
B	2316 7TH ST W - SITE PLAN	A
SCALE: 1:128	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 3 OF 6



SIZE	DWG. NO.	REV
B	2316 7TH ST W - SITE PLAN	A
SCALE: 1:128	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 2 OF 6



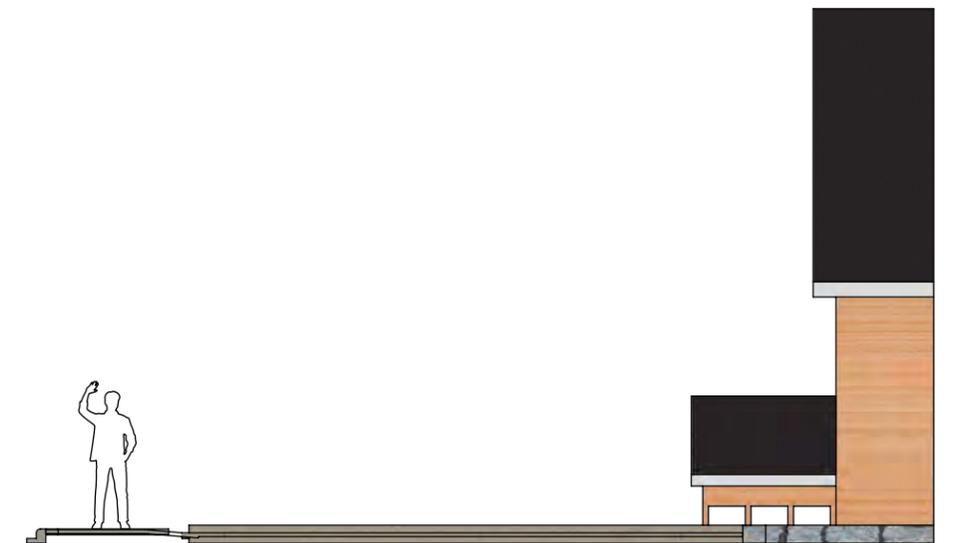
NORTH ELEVATION



WEST ELEVATION

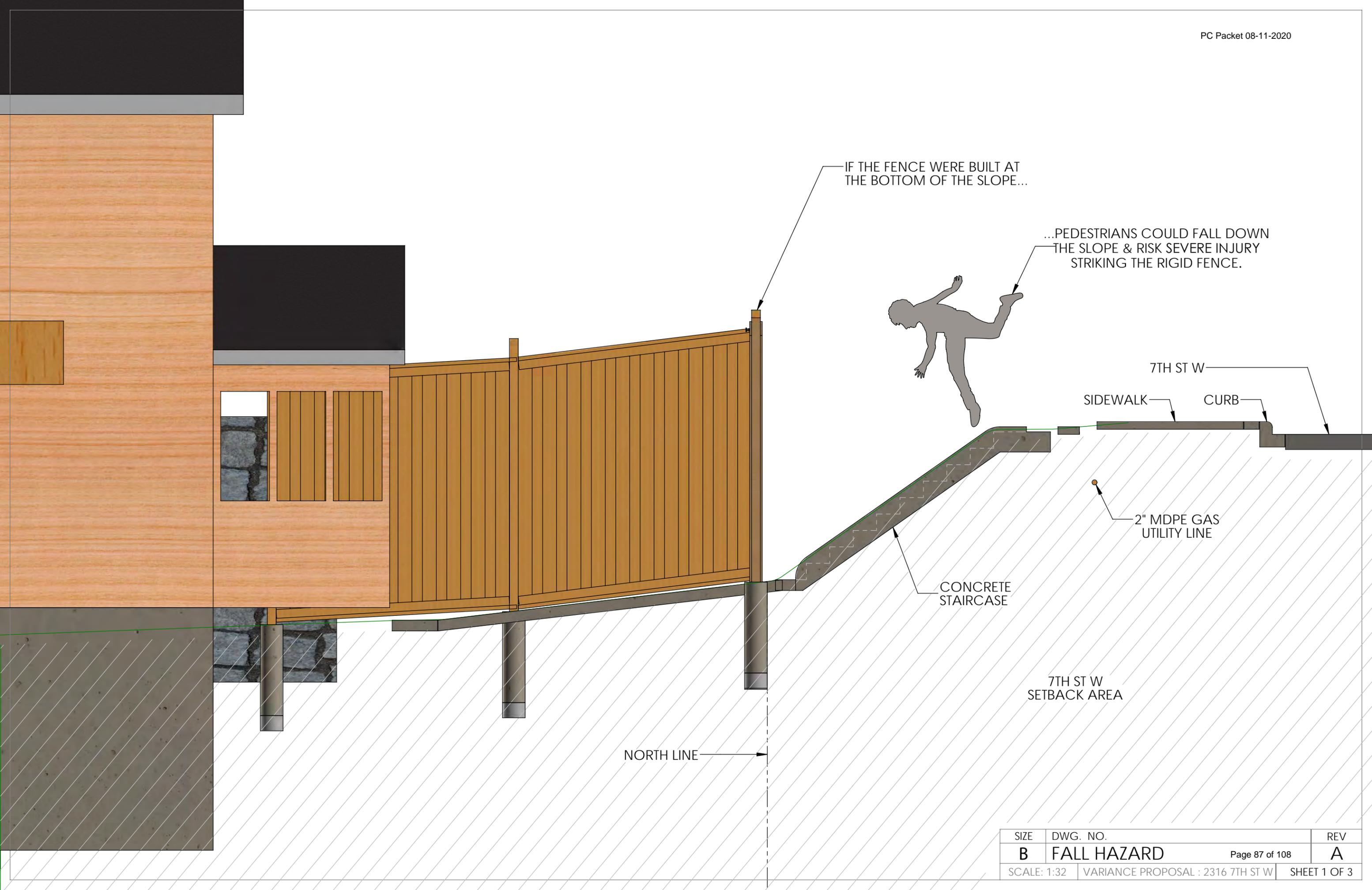


NORTH ELEVATION
PRE CONSTRUCTION



WEST ELEVATION
PRE-CONSTRUCTION

SIZE	DWG. NO.	REV
B	2316 7TH ST W - SITE PLAN	A
SCALE: 1:96	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 6 OF 6



IF THE FENCE WERE BUILT AT THE BOTTOM OF THE SLOPE...

...PEDESTRIANS COULD FALL DOWN THE SLOPE & RISK SEVERE INJURY STRIKING THE RIGID FENCE.

7TH ST W

SIDEWALK

CURB

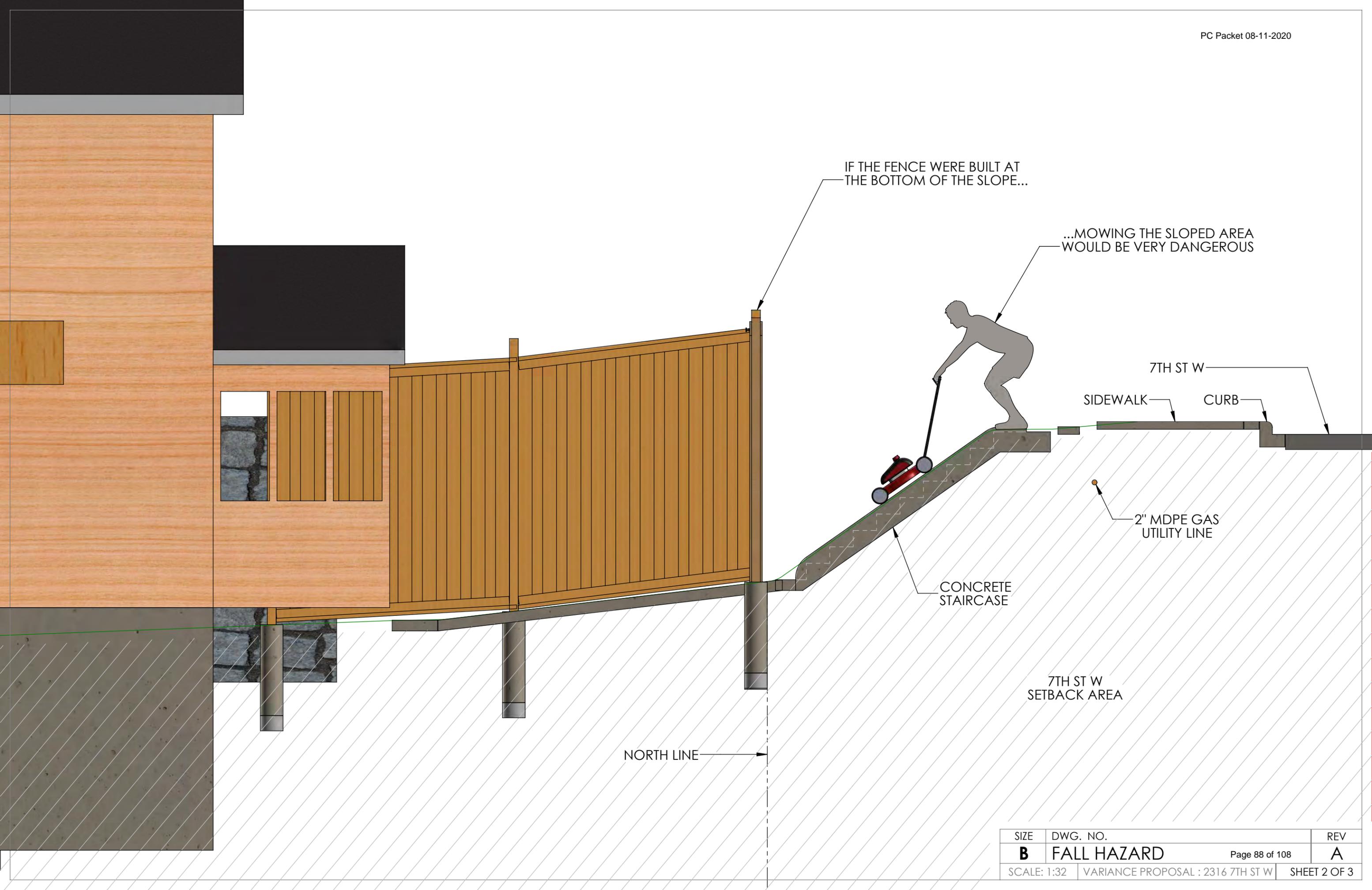
2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE

SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 1 OF 3



IF THE FENCE WERE BUILT AT THE BOTTOM OF THE SLOPE...

...MOWING THE SLOPED AREA WOULD BE VERY DANGEROUS

7TH ST W

SIDEWALK

CURB

2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE

SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 2 OF 3

WITH THE FENCE BUILT AT THE TOP OF THE SLOPE...

...MOWING THE SLOPED AREA CAN BE DONE SAFELY

7TH ST W

SIDEWALK

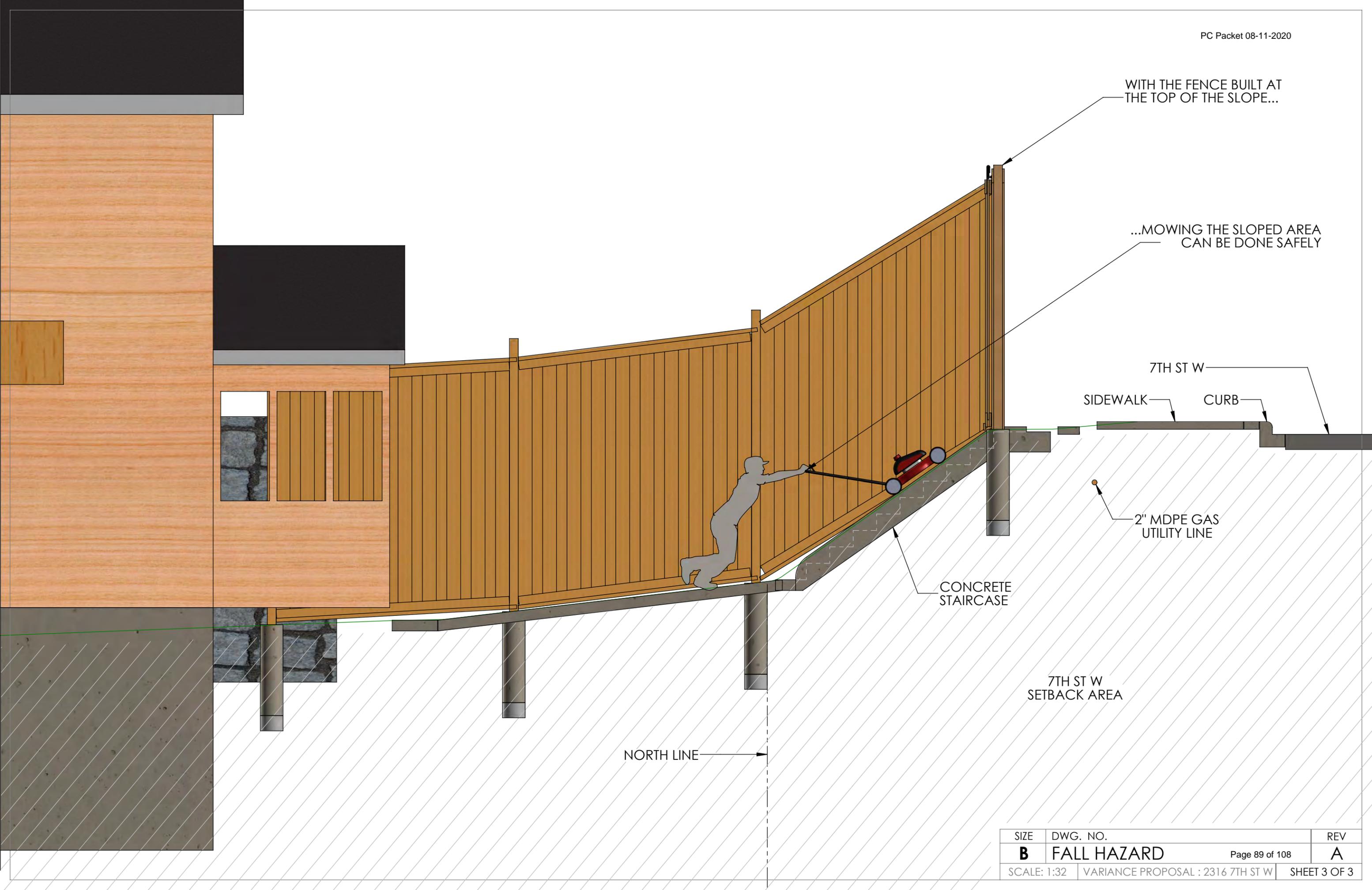
CURB

2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE



SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 3 OF 3



House in area below sidewalk grade



House in area below sidewalk grade



Neighbor Property – below sidewalk grade (applicant fence visible)



Winter alley approach, with some snowed in cars.

Summer alley approach, same parked cars.

Site Tour



Additional W 7th St Views





Planning & Development Division
 Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802

218-730-5580
 planning@duluthmn.gov

File Number	PL 20-104	Contact	Chris Lee, clee@duluthmn.gov	
Type	Concurrent Use Permit	Planning Commission Date	August 11, 2020	
Deadline for Action	Application Date	July 1, 2020	60 Days	August 30, 2020
	Date Extension Letter Mailed	July 12, 2020	120 Days	October 29, 2020
Location of Subject	Right of Way directly in front 2316 West 7 th Street			
Applicant	Justin and Julia Lee	Contact	N/A	
Agent		Contact		
Legal Description	Adjacent to parcels: 010-1220-02920			
Site Visit Date	July, 2020	Sign Notice Date	July 28, 2020	
Neighbor Letter Date	N/A	Number of Letters Sent	N/A	

Proposal: Concurrent Use Permit for right of way improvements to allow an 8 foot tall fence. The area proposed to be used is roughly 50 feet long by 8 feet wide and occupies 400 sf.

Staff Recommendation: Staff is recommending that Planning Commission recommend approval to City Council with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Single Family Residence	Traditional Neighborhood
North	R-1	Single Family Residence	Traditional Neighborhood
South	R-1	Single Family Residence	Traditional Neighborhood
East	R-1	Single Family Residence	Traditional Neighborhood
West	R-1	Single Family Residence	Traditional Neighborhood

Summary of Code Requirements:

UDC Section 50-37.7.C. The Planning Commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
2. Not applicable (skywalks)
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. Not applicable (parking)

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #1 – Reuse previously developed lands: includes adaptive reuse of existing building stock and historic resources, as this strengthens neighborhoods. This property is currently a single family home.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

History: The fence was constructed in the fall of 2019 without building and zoning permits.

Review and Discussion Items

Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to allow for an illegally constructed fence in the public right of way. This structure occupies 50' x 8', or 400 square feet, of the right of way.
- 2.) The site is currently a single family home. The fence was installed at the property sometime in the fall of 2019. The fence extends into the right of way for West 7th Street by about 8 feet.
- 3.) The improvements include an 8-foot tall wood privacy fences that wraps around the entire property.
- 4.) Fence is located 3 feet from the public sidewalk and 22 inches from an underground gas line but not in an area currently being used by the public.
- 5.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the City and the public are typically included in the ordinance that is submitted to City Council. The ordinance will indicate the City is not responsible for removal/replacement of the applicant's infrastructure should the City need to access the right-of-way in the permitted area.
- 6.) The fence will not take away from the public's ability to use the right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city.
- 7.) The applicant is also seeing a height variance to construct a fence taller than 4 feet in the front yard: See PL 20-103
- 8.) No other public, agency, or other comments have been received.

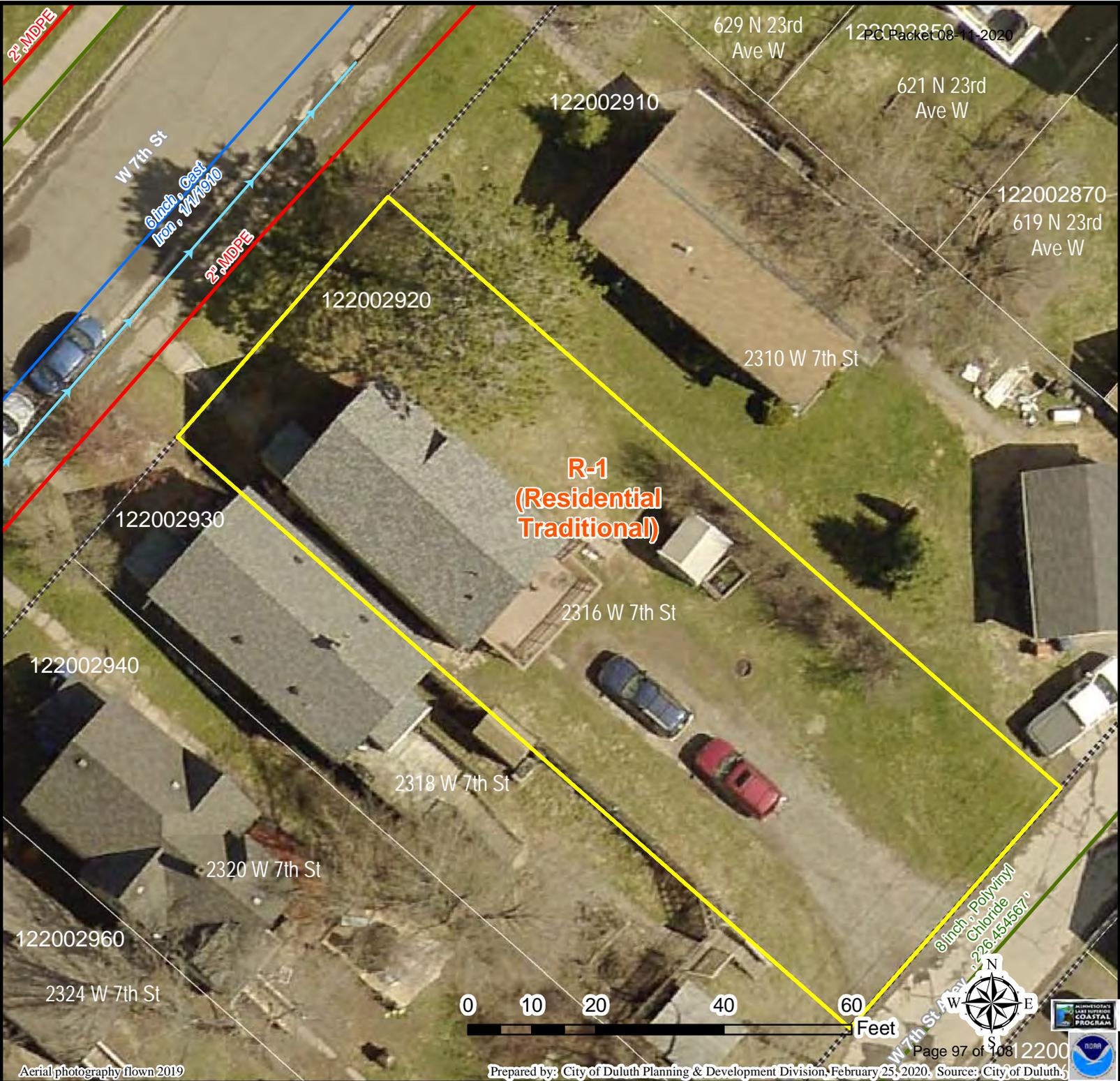
Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission recommend approval of the concurrent use permit with the following conditions:

- 1.) Applicant shall construct within the limits as identified in the attached exhibit and in coordination with the City Engineer and City Building Official and with all required permits. This includes working with the City Building Official on a structural review of the fence for the entire property.
- 2.) Add a condition stating the fence must come into compliance with the height maximum in the front yard.
- 3.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 4.) Applicant shall remove the system at the applicant's expense if directed to by the City with appropriate notice.
- 5.) The City shall not be responsible for any damage to the system caused by snow removal or work in the right-of-way.
- 6.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 20-103 and PL 20-104
Variance and CUP
2316 W 7th St.



Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains
- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Road or Alley ROW
- Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019

Prepared by: City of Duluth Planning & Development Division, February 25, 2020. Source: City of Duluth.



2316 W 7th St. 55806 - FENCE VARIANCE PROPOSAL

Proposed variance would allow existing fence system to remain standing, as built.

LEGEND
★ SCALE:
WHEN PRINTED AT 11"x17
1MM = 1FT
20 feet

THIS PROPOSAL WAS PREPARED BY
OWNER/RESIDENT, JUSTIN LEE

CONTOUR & UTILITY IMAGERY
BY DULUTH ENG DEPT

SURVEY BY JPJ ENGINEERING

CERTIFICATE OF SURVEY

PROPERTY DESCRIPTION:

Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota

JPJ
Engineering
Land Surveying
Economic
Development
JPJ ENGINEERING, INC
5670 Miller Trunk Hwy
Suite A
Duluth, MN 55811
Phone: 218-720-6219
www.jpjeng.com



LEGEND:

- iron monument found
- 1/2 inch iron monument set, marked "JPJ ENG 53683"
- concrete surface
- bituminous surface
- gravel surface
- OE overhead electric line
- power pole

SURVEYOR NOTES:

Orientation of the bearing system is based on the north line of Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, to have an assumed bearing of N 41°39'08" E.

JPJ Engineering has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.

Total gross area of the property is 7,009 square feet or 0.16 acres ±.

Parcel Identification Number 010-1220-02920

CERTIFICATION:

I hereby certify that survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 25th day of June, 2019 for JPJ Engineering, Inc.

Dustin R. Schmaltz
Dustin R. Schmaltz, PLS License Number 53683

CERTIFICATE OF SURVEY
FOR: JUSTIN LEE

2316 West 7th Street, Duluth, MN 55806
Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, St. Louis County, Minnesota

SURVEY BY :	AJG
DRAWN BY :	DRS
DESIGNED BY :	
APPROVED BY :	DRS
DATE:	6/25/2019
PROJECT NUMBER	19-614
SHEET NUMBER	1 OF 1

7TH ST WEST SETBACK AREA
33' EITHER SIDE OF CENTERLINE

CITY SIDEWALK

7TH ST W CENTERLINE

7TH ST W

CITY SIDEWALK

EXISTING STRUCTURE WITHIN SETBACK

CITY DRAIN - 8" VITREOUS CLAY

CITY DRAIN - 8" PVC

CITY WATER - 6" CAST IRON

CITY NATURAL GAS - 2" MDPE

FENCE SYSTEM AS BUILT (RESIDENT)

WATER (RESIDENT)

NATURAL GAS (RESIDENT)

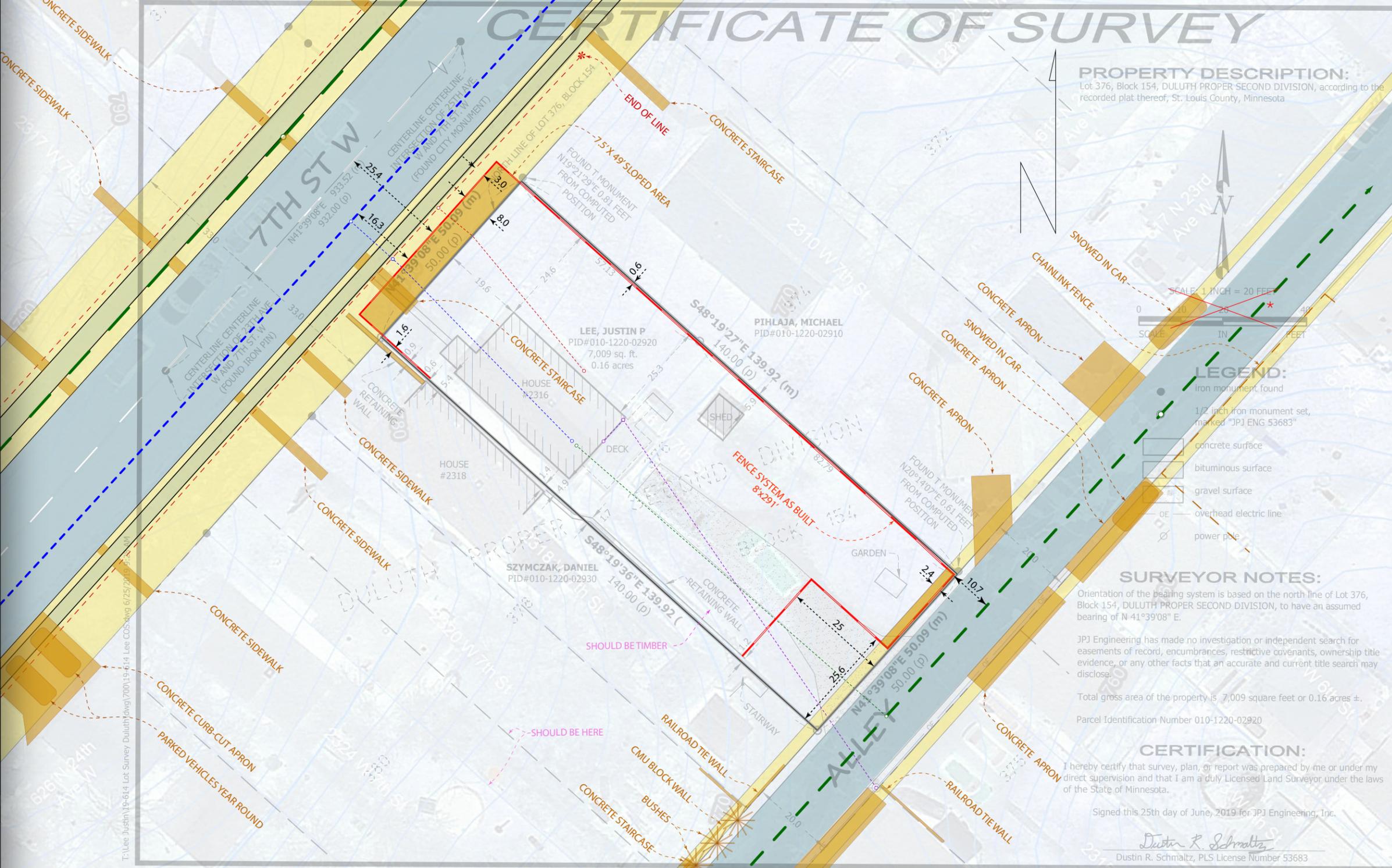
OVERHEAD ELECTRIC (RESIDENT)

WASTE WATER DRAIN (RESIDENT)

ALLEY SETBACK AREA

ALLEY

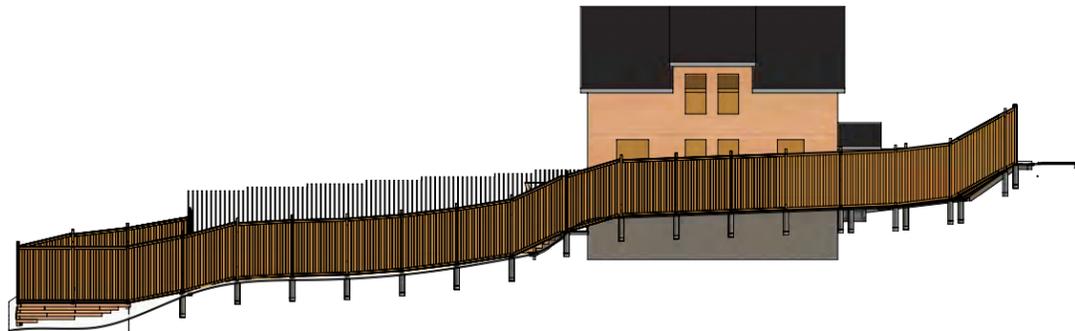
3' EITHER SIDE OF ALLEY



- Top reasons to permit the existing fence system:**
- 46 of our neighbors within 350' have signed letters in support.
 - Topography, front & rear, both warrant as built positioning.
 - Fence position on front slope improves pedestrian safety.
 - Improved Safety & ease of access maintaining setback.
 - Reduced barking from our dogs as pedestrians pass.
 - Reduced risk of our dogs escaping & running amok.
 - Improved sense of safety for our family & friends.
 - Reduced risk of intrusion to our yard & home.
- Lot is centered in block & fence does not obstruct traffic or intersections.**
- Height & position in front does not block scenic views for neighbors.
 - Multiple existing adjacent structures set precedent for similar use.
 - Fence as built is 3' away from the natural gas utility line.
 - The natural gas utility line ends one door to the east.
 - Barn-door gate not possible with 6' height in front.
 - Use of setback is similar to curb-cut area.
 - Ease of access for mail carriers & visitors.



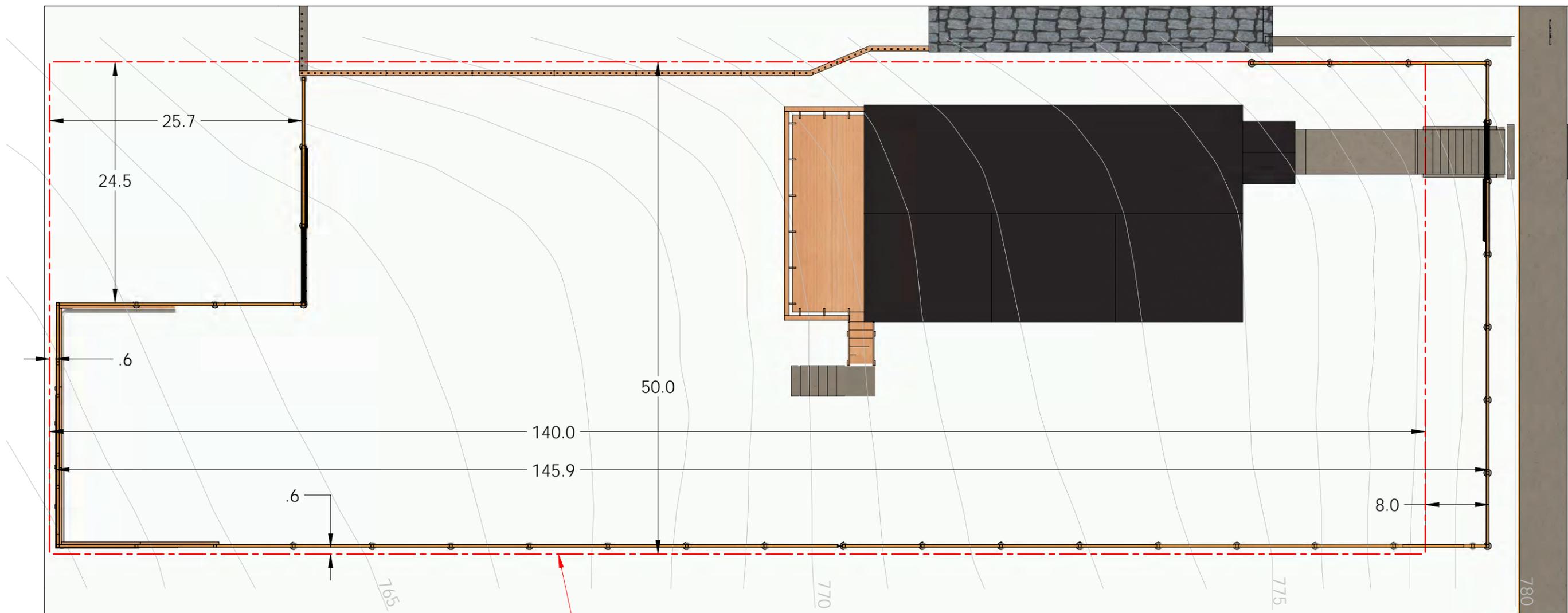
SOUTH ELEVATION
SCALE 1:320



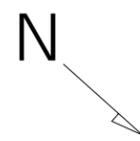
EAST ELEVATION
SCALE 1:320



NORTH ELEVATION
SCALE 1:320



PROPERTY LINE



SIZE	DWG. NO.	REV
B	2316 7TH ST W - SITE PLAN	A
SCALE: 1:128	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 3 OF 6

CERTIFICATE OF SURVEY

PC Packet 08-11-2020



Engineering
Land Surveying
Economic
Development

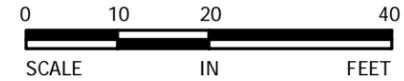
JPJ ENGINEERING, INC
5670 Miller Trunk Hwy
Suite A
Duluth, MN 55811
Phone: 218-720-6219
www.jpjeng.com

PROPERTY DESCRIPTION:

Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota



SCALE: 1 INCH = 20 FEET



LEGEND:

- iron monument found
- 1/2 inch iron monument set, marked "JPJ ENG 53683"
- ▭ concrete surface
- ▭ bituminous surface
- ▭ gravel surface
- OE — overhead electric line
- ⊙ power pole

SURVEYOR NOTES:

Orientation of the bearing system is based on the north line of Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, to have an assumed bearing of N 41°39'08" E.

JPJ Engineering has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.

Total gross area of the property is 7,009 square feet or 0.16 acres ±.

Parcel Identification Number 010-1220-02920

CERTIFICATION:

I hereby certify that survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Signed this 25th day of June, 2019 for JPJ Engineering, Inc.

Dustin R. Schmaltz

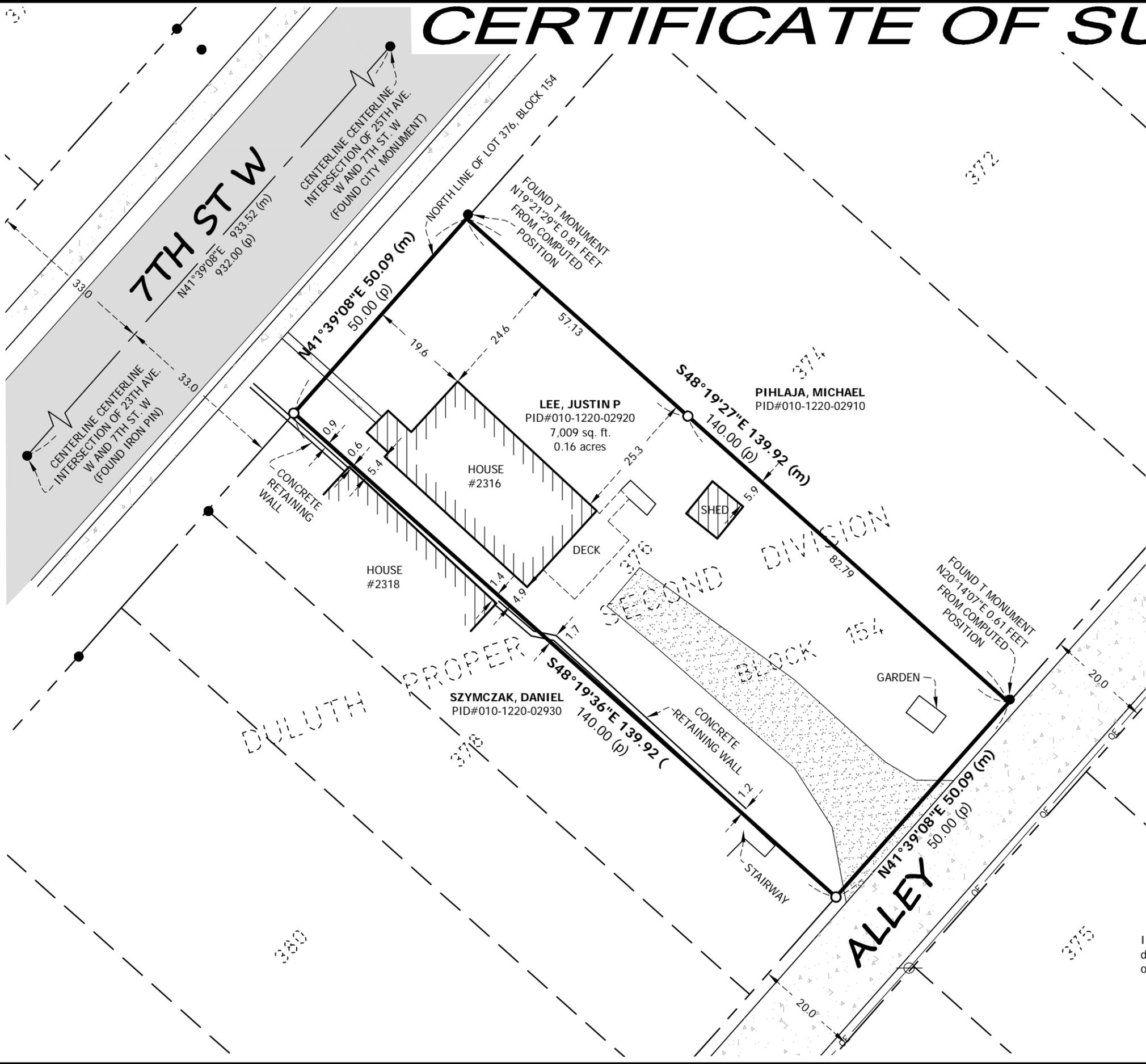
Dustin R. Schmaltz, PLS License Number 53683

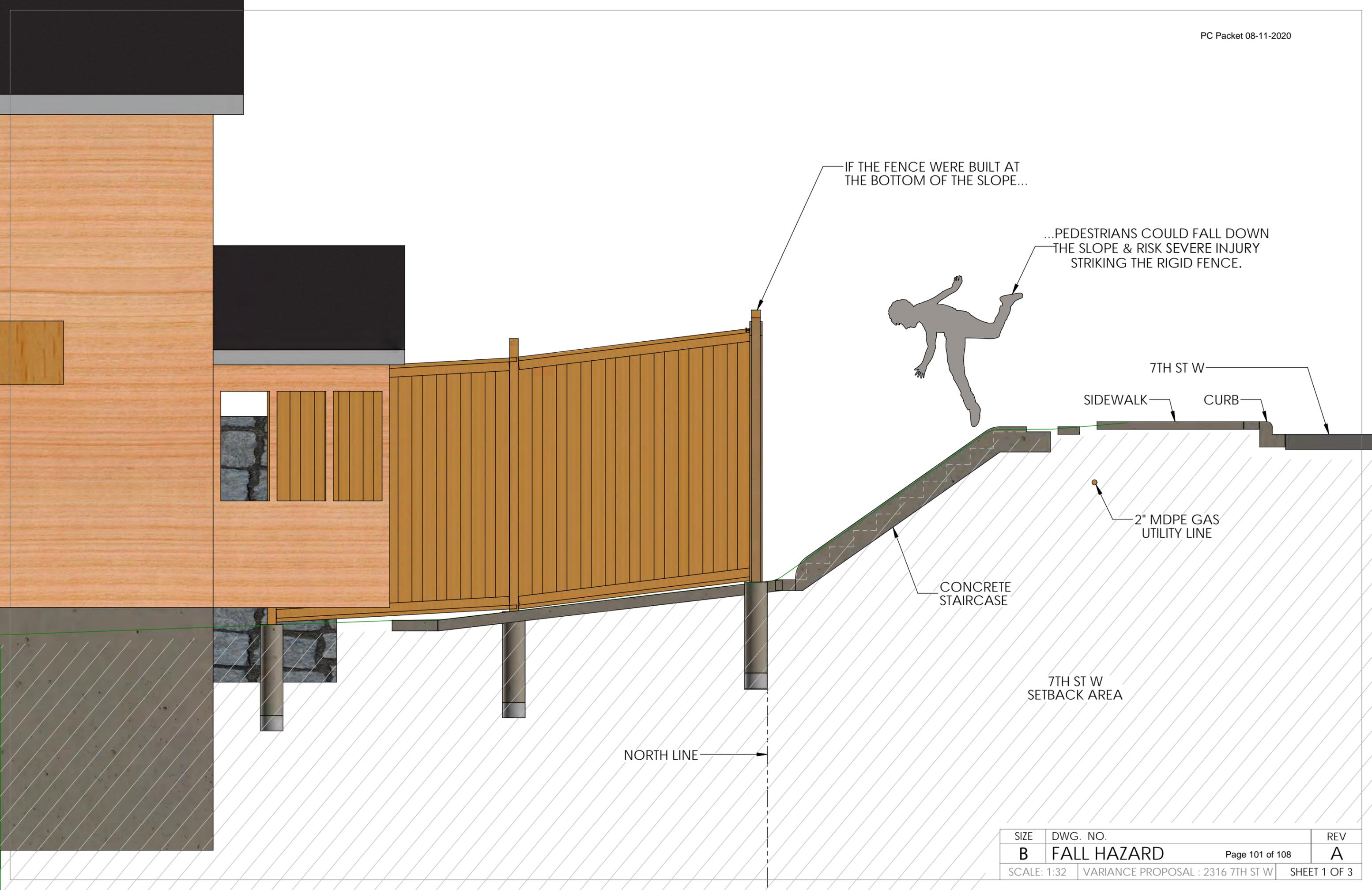
CERTIFICATE OF SURVEY FOR: JUSTIN LEE

2316 West 7th Street, Duluth, MN 55806
Lot 376, Block 154, DULUTH PROPER SECOND DIVISION, St. Louis County, Minnesota

SURVEY BY :	AJG
DRAWN BY :	DRS
DESIGNED BY :	
APPROVED BY :	DRS
DATE:	6/25/2019
PROJECT NUMBER	19-614
SHEET NUMBER	1 OF 1

T:\Lee Justin\19-614 Lot Survey Duluth.dwg 70019-614 Lee COS.dwg 6/25/2019 9:28 AM





IF THE FENCE WERE BUILT AT THE BOTTOM OF THE SLOPE...

...PEDESTRIANS COULD FALL DOWN THE SLOPE & RISK SEVERE INJURY STRIKING THE RIGID FENCE.

7TH ST W

SIDEWALK

CURB

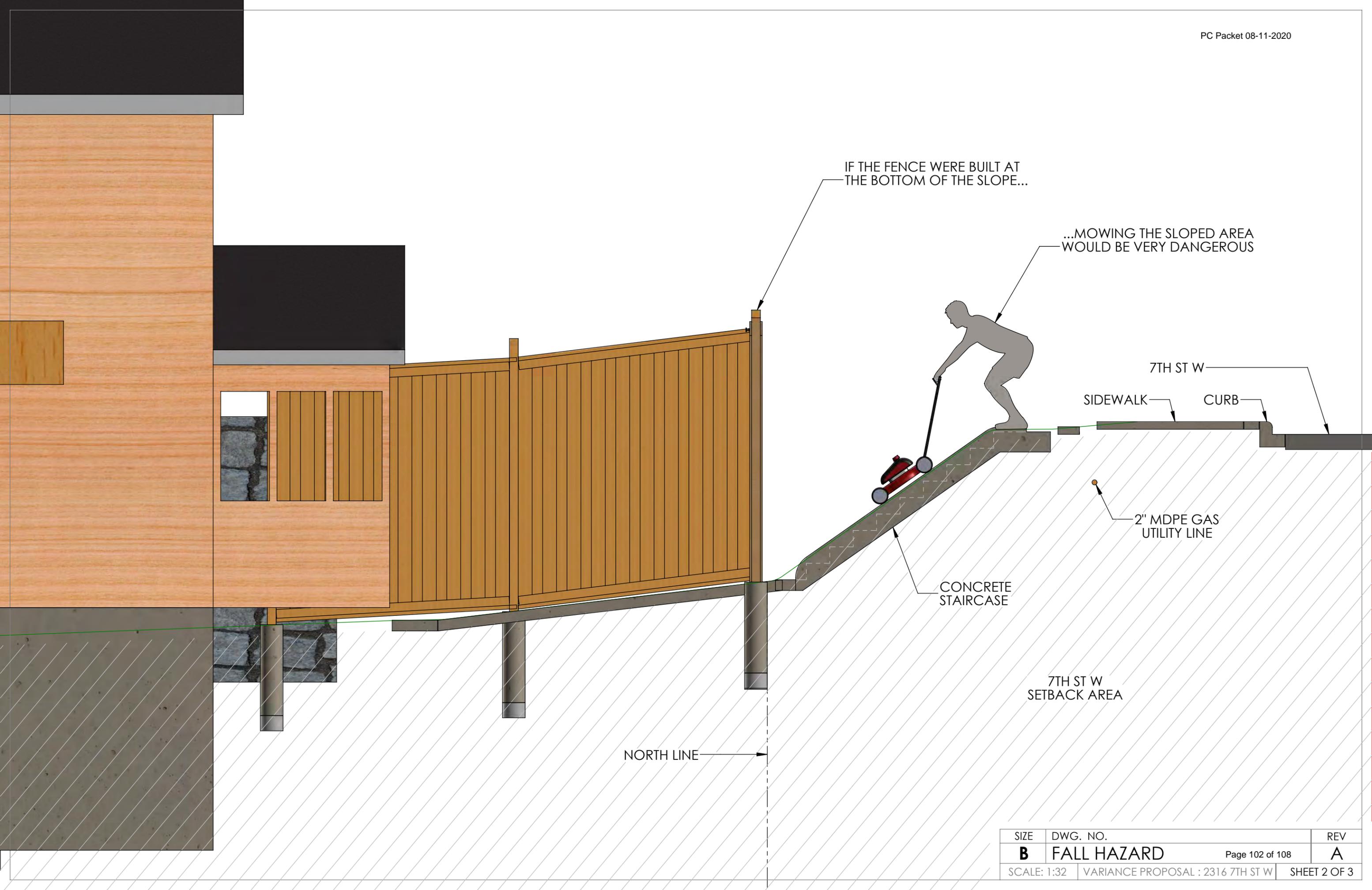
2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE

SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 1 OF 3



IF THE FENCE WERE BUILT AT THE BOTTOM OF THE SLOPE...

...MOWING THE SLOPED AREA WOULD BE VERY DANGEROUS

7TH ST W

SIDEWALK

CURB

2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE

SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 2 OF 3

WITH THE FENCE BUILT AT THE TOP OF THE SLOPE...

...MOWING THE SLOPED AREA CAN BE DONE SAFELY

7TH ST W

SIDEWALK

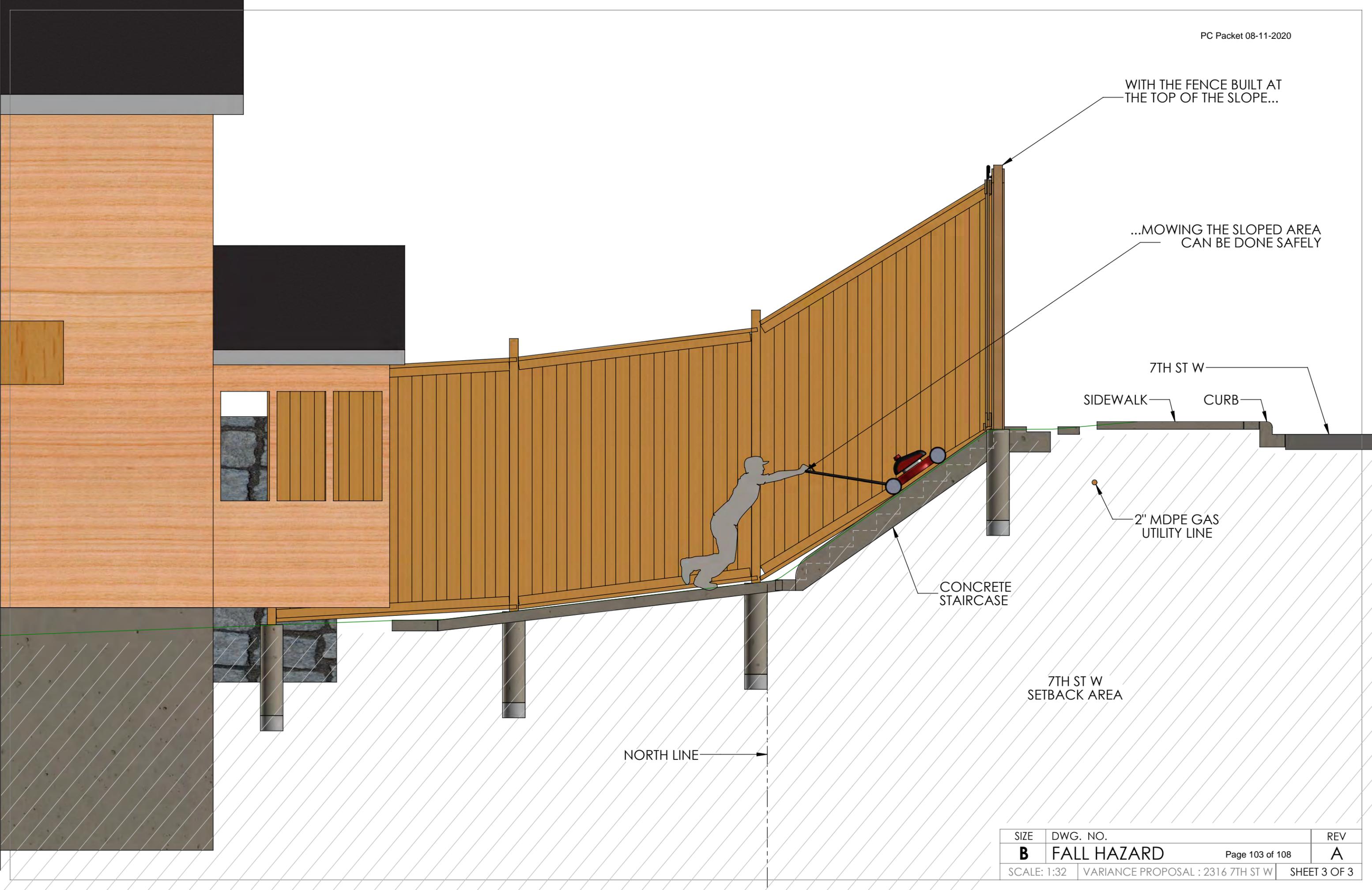
CURB

2" MDPE GAS UTILITY LINE

CONCRETE STAIRCASE

7TH ST W SETBACK AREA

NORTH LINE



SIZE	DWG. NO.	REV
B	FALL HAZARD	A
SCALE: 1:32	VARIANCE PROPOSAL : 2316 7TH ST W	SHEET 3 OF 3



Winter approach, W 7th St

Summer approach, W 7th St





Planning & Development Division
Planning & Economic Development Department

Room 160
 411 West First Street
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

MEMO

TO: Planning Commission

FROM: Adam Fulton, Deputy Director of Planning and Development

DATE: August 11, 2020

RE: Conformance of Development District #17 for Lincoln Park Flats Development to Comprehensive Plan

In order to facilitate development of Lincoln Park Flats, located at 2102 West Superior Street (the “Project”), the City needs to modify Development District #17. The role of the Planning Commission is to make sure the proposed development and its uses are consistent with the Comprehensive Plan and Unified Development Code (UDC). Tax Increment Financing (TIF) is a financing tool that uses the increase in property taxes generated from site improvements to pay for a portion of those improvements.

The Project will consist of an approximately 53,000 square foot, four-level building over an approximately 17,600 square foot parking garage. The building will contain 74 apartment units, ranging from studios to 2 bedrooms, a fitness room, on site leasing office and covered and surface parking. 23 of the units will be available for those earning at or below 80% of the area median income.

The future land-use designation of the development site is Central Business Secondary (CBS). According to the Imagine Duluth 2035 Comprehensive Plan, CBS areas are intended for medium density neighborhood retail, employment centers, public spaces, and residential development. This land use is designated for the entire Lincoln Park commercial corridor east of highway 53. The proposed development meets the intent of this future land use.

The property is zoned F-5; according to the Unified Development Chapter, “The F-5 District is applied to both the West Superior Street study area (Lincoln Park) and the transitional areas surrounding Downtown, including Canal Park and Central Hillside (Second Street from Sixth Avenue West to Third Avenue East). These areas consist of a combination of traditional mixed use buildings and office buildings.” F-5 is an appropriate zone designation for the CBS future land use category. It allows apartments as proposed by this project.

This project implements the following Comprehensive Plan principles:

Principle #1 Reuse previously developed lands. Reuse of previously developed lands, including adaptive reuse of existing building stock and historic resources, directs new investment to sites which have the potential to perform at a higher level than their current state. This strengthens neighborhoods and is preferred to a dispersed development pattern with associated alteration of natural landscapes and extensions of public services. Site preparation or building modification costs are offset by savings in existing public infrastructure such as streets and utilities, and transit, fire, and police services.

Principle #3 -Support existing economic base. Supporting Duluth's existing economic foundation maintains jobs, tax base, and opportunity. Economic activity with specific location requirements may be subject to displacement or site competition with changes in real estate values. This traditional economic activity faces change as a result of global economic patterns, changing markets, new regulation, and aging of extensive infrastructure. Nevertheless, fundamentals remain and the economic contribution, sometimes taken for granted, is significant.

This project supports the significant economic base of the mall and commercial corridor by providing residents to both purchase goods and services, and to work in the area businesses.

Principle #5 Promote reinvestment in neighborhoods. Duluth is strongly defined by its neighborhoods. This system should be supported through land use and transportation that foster neighborhood reinvestment. New development or redevelopment should maximize public investment that strengthens neighborhood commercial centers or diversifies residential opportunities that fit the neighborhood's character.

Principle #8 Encourage mix of activities, uses, and densities. Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunities for a diversity of activity that segregated, uniform uses do not provide.

This project provides the first new multifamily housing opportunity in Lincoln Park in decades and will bolster existing and future businesses by housing potential customers in the immediate vicinity.

Principle #12 Create efficiencies in delivery of public services. The costs of public service must be considered in land use decisions. Street construction and maintenance, utilities, libraries, fire, police, snow removal, and recreation facilities are services directly related to the physical location of development. Infrastructure should help direct development location rather than react to it. The integration of public services to maximize efficiencies with all related use decisions should be evaluated.

City staff believe that the proposed development conforms to and implements the Comprehensive Plan principles. City staff ask that the Planning Commission review this item, and following discussion, make a finding that it conforms to the Imagine Duluth 2035 Comprehensive Plan.