



## CITY OF DULUTH

Community Planning Division

411 W 1<sup>st</sup> St, Rm 208 \* Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

<b>File Number</b>	PL 19-012	<b>Contact</b>	Steven Robertson	
<b>Type</b>	Rezone, from MU-N to MU-B	<b>Planning Commission Date</b>		March 12, 2019
<b>Deadline for Action</b>	<b>Application Date</b>	February 6, 2019	<b>60 Days</b>	April 7, 2019
	<b>Date Extension Letter Mailed</b>	February 22, 2019	<b>120 Days</b>	June 6, 2019
<b>Location of Subject</b>		3802 Trinity Road		
<b>Applicant</b>	Republic Bank	<b>Contact</b>		
<b>Agent</b>	William Burns	<b>Contact</b>		
<b>Legal Description</b>		See Attached		
<b>Site Visit Date</b>		March 4, 2019	<b>Sign Notice Date</b>	February 26, 2019
<b>Neighbor Letter Date</b>		February 22, 2019	<b>Number of Letters Sent</b>	22

### Proposal

The Applicant is proposing to rezone the subject property from the current zoning districts of Mixed Use Neighborhood (MU-N) to Mixed Use Business Park (MU-B).

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-N	Commercial	Urban Residential
<b>North</b>	R-1	Residential/Open Space	Urban Residential
<b>South</b>	R-1	Residential/Open Space	Traditional Neighborhood
<b>East</b>	R-1	Residential/Open Space	Traditional Neighborhood
<b>West</b>	R-1	Residential	Low Density Neighborhood/Trad. Neigh.

### Summary of Code Requirements

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:
  1. Is consistent with the Comprehensive Land Use Plan; 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is required by public necessity, convenience, or general welfare, or good zoning practice; 4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.
- The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or else be considered arbitrary and capricious.

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

### **Governing Principles:**

Principle #6 – Reinforce the place-specific.

Principle #8 – Encourage a mix of activities, uses, and densities.

Economic Development Policy #3 – Build on existing economic strengths and competitive advantages

Strategy #7 Analyze commercial market demand and best practices to determine options for expansion of neighborhood serving uses in nodes accessible by transit, as well as in the city center where skyways create two levels of potential commercial activity.

### **Site History:**

The property has been used for commercial activity continuously since the 1930s. In 1958 it was zoned R-1-B as part of the Comprehensive Plan prepared, but not adopted, at the time. The property was a gas station and repair shop when an attempt to rezone it to C-2 was denied by City Council on September 10, 1968.

In 2006 MN-DOT purchased the gas station and four homes nearby for the widening of Trinity Rd. The owner wanted to continue operation in the area and worked with the Duluth Economic Development Authority (DEDA) to purchase land from MN-DOT that was not needed for the roadway. DEDA Resolution 06D-26, DEDA Contract # 06-860-469 required the site be developed with lighting, landscaping, and screening to avoid neighbor impacts.

April 24, 2006 City Council adopted Ordinance 9773 rezoning from R-1-B (One- and Two-Family Residential) to C-2 (Highway Commercial) land for the new gas station/repair shop/convenience store (Planning Commission File No. 06022).

March 15, 2006 City Planning Commission (File No. 06019) approved a Water Resources Management Ordinance (WRMO) Variance to allow construction of gas station, repair shop, convenience store with impervious surfaces of 71% where the ordinance required no more than 30% due to proximity to Miller Creek. The Planning Commission's action was also to grant a Special Use Permit for 12,770 cubic yards of cutting and 2,135 cubic yards of filling.

June 1, 2007 Certificate of Occupancy issued for Hansen's Gas Station Convenience Store.

October 22, 2007 Certificate of Occupancy issued for Hansen's Service Garage.

## **Review and Discussion Items**

- 1) The Applicant is proposing to rezone the subject property from the current zoning districts of Mixed Use Neighborhood (MU-N) to Mixed Use Business Park (MU-B).
- 2) The comprehensive plan's future land use designation of the subject property is Urban Residential. According to the comprehensive plan, "This is the greatest variety of residential building types, medium to high densities. Applicable to larger infill areas close to downtown, entertainment or activity centers, and waterfront residential areas. May include student housing areas, live/work units, and limited neighborhood retail. Connected or adjacent to parks and open space". Design standards ensure pedestrian orientation and mix of housing, and commercial uses that serve (the) neighborhood market.
- 3) The future land use category of Urban Residential is most commonly reflect in the city's zoning map as R-2 (Residential-Urban). The R-2 district is "established to accommodate multi-family apartments and townhouses, in an urban setting. This district also allows for single-family detached dwellings, duplexes and group living accommodations...The district is intended primarily for locations closer to commercial and mixed use activity centers, and may serve as a transition between lower-density residential areas and more intense commercial and mixed use neighborhoods".
- 4) The current zone district is MU-N district is "established to accommodate a mix of neighborhood-scale, neighbor-hood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood".
- 5) The proposed rezoning is MU-B is "intended to accommodate modern light industrial and technology-based developments of attractive integrated design and function. The development standards for this district are intended to ensure that projects minimize adverse impacts on surrounding uses and neighborhoods, reduce impacts on the natural environment, enhance the visual quality of development and ensure the provision of adequate and cost-efficient public facilities. Intended uses include wholesaling, industrial services, research laboratories, and light manufacturing needed to support the community and region at large".
- 6) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan, and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 7) During the Imagine Duluth 2035 Comprehensive Planning process, based on research and input from the public, 21 sites in the city were identified as warranting a change to their future land use designation. This neighborhood was not among those identified; the future land use designation of urban residential is appropriate.
- 8) Minnesota state Statute 462.357.2.C states "the land use plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan".
- 9) The site is at the corner of two transportation corridors, Trinity Road and Anderson Road. The Comprehensive Plan generally supports economic activity/commercial nodes at the intersection of highways and major roads, but does not support expansion of new strip commercial development along Trinity Road, nor more intense commercial or industrial activity at this specific site. Other than this property, the defining use or characteristic of this neighborhood is residential, and creating a center of intense activity with uses that are allowed in the MU-B district (such as manufacturing or storage yards) will create create land use conflicts.
- 10) At the date that this report was written, the city received no written correspondence, and only one verbal comment from a citizen (generally expressing support of the rezoning).
- 11) Based on the future land use designation of Urban Residential, the character of the residential neighborhood, and the purpose statements of the R-2, MU-N, and MU-B zone districts, rezoning to MU-B is not appropriate. Staff conclude that this rezoning application does not meet the requirements as set out in 50-37.3.C.

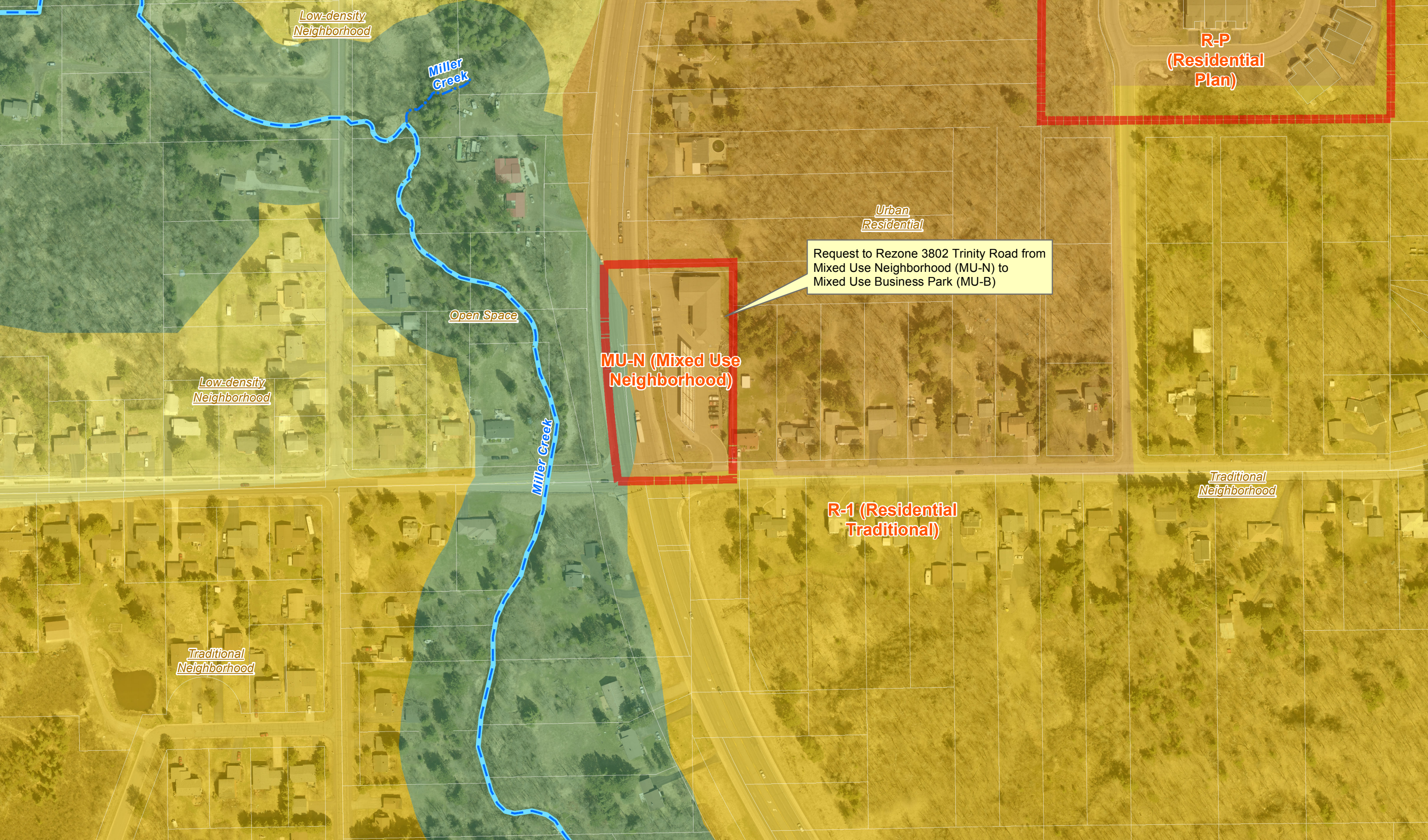
Planning Commission File PL 19-012

RESOLVED by the City of Duluth Planning Commission that, having reviewed Application submitted pertaining to File No. 19-012, having reviewed the record pertaining thereto, heard testimony related thereto and having reviewed the operative provisions of the Uniform development Code and the City's Comprehensive Land use Plan related thereto, the Planning Commission hereby finds that the rezoning of the subject property from Mixed Use Neighborhood (MU-N) to Mixed Use Business Park (MU-B):

1. is not consistent with the comprehensive land use plan.
2. Is not reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use. The uses allowed by this district are provided for more conveniently elsewhere in the community, and in areas that are clearly designed to function as a business park.
3. Is not required by public necessity, convenience, or general welfare, or good zoning practice; and
4. Can be reasonably be expected to create material adverse impacts on nearby properties, which cannot be mitigated to the extent necessary so as to not result in such material negative impacts, which impacts may include noise, pollution, odor, heavy vehicle traffic, and other potential impacts anticipated from land uses allowed in the MU-B district. The uses allowed are generally not compatible with the adjacent one and two family zoning and development pattern of the neighborhood.

FURTHER RESOLVED that the Commission recommend that the application of applicant to rezone the subject property from Mixed Use Neighborhood (MU-N) to Mixed Use Business Park (MU-B) be denied.





*Low-density  
Neighborhood*

*Miller  
Creek*

**R-P  
(Residential  
Plan)**

*Urban  
Residential*

Request to Rezone 3802 Trinity Road from  
Mixed Use Neighborhood (MU-N) to  
Mixed Use Business Park (MU-B)

*Open Space*

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

*Low-density  
Neighborhood*

*Traditional  
Neighborhood*

**R-1 (Residential  
Traditional)**

*Traditional  
Neighborhood*

*Miller Creek*





Miller  
Creek

Miller Creek





Fountain Green Drive

Trinity Road (US 53)

Anderson Road

Chambersburg Avenue

Chambersburg Ave



# **CITY OF DULUTH**

## **ZONING MAP AMENDMENT PETITION**

File No. \_\_\_\_\_

Date \_\_\_\_\_

### **Section I**

We, the undersigned property owners, petition to reclassify from Mixed Use – Neighborhood (MU-N) to Mixed Use – Business (MU-B) the property legally described in Exhibit A, attached hereto.

### **Section II**

A map of the area is attached hereto as Exhibit B.

### **Section III**

We believe that this rezoning will be in the public interest because this is a unique property in the Trinity Road corridor which represents a substantial investment and was operated as an auto repair and service facility/gas station/convenience store for a number of years. It financially failed and was foreclosed on by Republic Bank. Republic Bank has entered into a purchase agreement with Trinity Building, LLC, which agreement commits them to support this rezoning. The rezoning to MU-B would create the opportunity to continue an auto repair and service facility and to sell automobiles at the site.

In meeting with Planning Department staff, we have been advised that the staff is concerned because this is an unusual small commercial piece of property. It is unusual and that is based on the history. The fact is that there has been a substantial investment here. The lender is prepared to take a loss from the foreclosure purchase to allow this sale and the sale, to a respected multi-store auto retail operation will permit the property to be appropriately maintained and used and to continue to produce commerce, employment and tax income to the City.

The alternative would be a sale to some other user who might try to operate a gas station/convenience store which is unlikely, based on history, to succeed and could result in a negative insofar as neighborhood appearance and values are concerned.

The property owner intends to work with the neighbor immediately to its east to reduce the impact on them of the proposed operation.

The Petition accepts that this rezoning would not be approved if this was a residential zone. It is not and, by the nature of the improvements there, it will remain commercial. The traffic generated by the auto repair and service/auto sales operation will be significantly less than that produced by the gas station/convenience store, thus lessening the impact on the neighborhood.

#### Section IV

**Petitioners: Owners of property requested to be rezoned (all property owners must sign)**

NAME	ADDRESS
REPUBLIC BANK, INC. By: Mall Auto, LLC, Purchaser Under authorization and Purchase Agreement By: <i>Myra J. Boud Skutta</i> Its: <i>President</i>	1701 W. Michigan Street Duluth, MN 55802

Copy to:

William M. Burns

Hanft Fride,

A Professional Association

130 W. Superior St #1000

Duluth, MN 55802

#### Section V

**(Not Applicable – Not requesting a change from a Residential District).**

**PLANNING DIVISION  
WATER RESOURCES MANAGEMENT ORDINANCE  
VARIANCE and SPECIAL USE PERMIT REQUEST  
AMENDED REPORT**

Meeting Date: Wednesday, March 14, 2006

Report Prepared By: Charles Froseth

1. APPLICANT: Scott and Susan Hansen  
3802 Trinity Road (Business Location)  
Duluth, MN 55811  
Phone Numbers: Work Phone 218-723-8236  
Cell Phone 218-391-5278  
FAX 218-723-4047  
Email Scott@hansenautoservice.com
2. PROPOSED USE: Due to the reconstruction of Trinity Road in 2006, Hansen's Auto Service and Convenience Store will be displaced. The Hansen's wish to continue business at this location and are proposing a new facility. This proposed use requires a rezoning (see FN 06022), a variance for impervious surface coverage and a special use permit of grading & filling.
  - 2.a. Action Deadline: June 16, 2006
  - 3.a. VARIANCE REQUESTED: Standards for shoreland permits and special use permits subsection Sec. 51-29(c)(1) Area, setback, etc., standards.  
Request calls for 71.0 % impervious coverage in a 30% zone; existing condition is 35.4 % for the entire site. Note: the entire site includes Hansen's property and property he will be acquiring from MnDOT.
  - 3.b. SPECIAL USE PERMIT: Grading, filling or excavating of more than 50 cubic yards within the Shoreland area is a special use permit is required under Sec. 51-28  
Amounts requested are dependent on progress of improvements to Trinity Road. The maximum is 12,770 cubic yards of cutting and filling of 2,135 cubic yards.
4. LOCATION: The northeast corner of Trinity Road and Anderson Road - 3802 Trinity Road
5. LEGAL DESCRIPTION: See attached Exhibit A
6. NUMBER OF SURROUNDING PROPERTY OWNERS NOTIFIED:  
Twenty property owners (03/03/06) and District 4
7. FIELD INSPECTION: Charles Froseth on March 9, 2006.
8. BACKGROUND DATA:
  1. Duluth Economic Development Authority (DEDA) on Monday, March 6, 2006 approved a land transfer from MnDOT to DEDA to Hansen's for economic development purposes subject to rezoning, a WRMO variance and a special use permit.
  2. The Zoning Board of Appeals (ZBA) on April 27, 1993 denied a request by Paul's Automotive (previous name of the business) to construct a canopy with reduced setbacks. Decision was appealed to City Council on May 25, 1993. Council overturned the ZBA's decision to permit the canopy. FN 93018

Planning Commission: Action

City Council: Action

Date

Date

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III E1

C-2. Carlson had build the service station and nearby home in 1930 and the zoning code of 1958 placed his service station in a residential district. He was concerned with future leasing of the station and, if more than 60% of the building was destroyed, he could not rebuild. His request was denied.

5. This property was zoned R-1-B in 1958.

9. REACTIONS FROM VARIOUS AGENCIES, GROUPS AND INDIVIDUALS: As of preparation of this staff report the following no comments or reactions have been received.

10. <u>EXISTING ZONING</u> :	<u>Zoning</u>	<u>Land Use</u>
North	R-1-B	Residential / Undeveloped
East	R-1-B	Residential
South	R-1-B	Residential
West	R-1-B	Trinity Road / Miller Creek

11. EXISTING AREA DEVELOPMENT: The site is currently a convenience store with a service station. To the north and east the land use is residential with some undeveloped land. To the west is Trinity Road and Miller Creek. Trinity Road is also known as Highway 53, a major traffic route. South of the site the land use is primarily residential

12. SITE CHARACTERISTICS: The site is located on at the northeast corner of Trinity Road and Anderson Road. The current site includes a service station with a convenience store, parking, and a canopy over two fuel pumps with access to Trinity and Anderson Roads. In addition to service station one home on Anderson Road and two homes on Trinity are scheduled for demolition by MnDOT for Trinity Road improvements. This also includes garages and other structures. See attached air photo.

13. CODE REQUIREMENTS AND STANDARDS:

**Sec. 51-29. Standards for shoreland permits and special use permits.**

(e) Area, setback, etc., standards. The following standards shall apply to the development of shoreland areas, except as provided in (3) of this Subsection, and further provided that any more stringent requirements in Chapter 50 of this Code shall supersede requirements set forth herein: (1) Sewered areas;

Natural Environmental I Shoreland Zone,

Maximum total lot area covered by impervious surface (percent) 30;

**Sec. 51-28. Same--Permitted uses and special uses.**

Subject to the standards set forth in this Article, permitted and special uses in any shoreland area shall be the same as those specified for such area in the applicable zoning district in Chapter 50 of this Code, except that grading, filling and excavating of more than 50 cubic yards of earth shall require a special use permit. The building official and city engineer shall impose any requirements or conditions they deem necessary on permits for permitted uses to insure the standards and the purposes of this Article are carried out. (Ord. No. 8501, 1-28-1980, § 1; Ord. No. 8828, 3-23-1987, § 1; Ord. No. 9128, 2-22-1993, § 1.)

**Sec. 51-29. Standards for shoreland permits and special use permits.**

(b) Grading and filling. Grading, filling and excavating in shoreland areas are subject to the following provisions:

(1) A grading and/or filling and/or excavating plan, including cross sections and contours, specific work methodology, time factors relating to specific work elements, specific erosion prevention methods, and other information deemed applicable to these provisions by the building official, shall be presented along with applications for permits and all such activities shall be done in conformance with standards contained in this Section, in Chapter 70 of the State Building Code and in any other applicable law or regulation;

- (2) The smallest amount of bare ground shall be exposed for as short a time as feasible;
- (3) Temporary ground cover, such as mulch, shall be used and permanent ground cover, such as sod, planted as soon as possible;
- (4) Methods to prevent erosion and trap sediment shall be employed;
- (5) Fill shall be the minimum necessary for the project, and shall not adversely affect adjacent properties;

**Sec. 51-30. Standards for variances in shorelands.**

Variances shall be granted only upon a showing of hardship. No variance shall be granted that compromises the general purposes or intent of this Article or results in adverse consequences to the environment.

**Staff Evaluation of Criteria for Variance and Special Use Permit**

Staff offers the following responses to the above cited criteria:

**Variance for Impervious Surface**

Plan Review for Imperious Surfaces: The existing impervious surface totals 18,488 square feet or 35.4% for the entire project area. This includes property owned by Hansen and property he will be purchasing. The new development calls for impervious surface coverage of 37,113 sq. ft. (.85 acres) or 71% of the property. The central question is hardship, is it clearly shown? Past practice has been to approve impervious surfaces currently existing and not to encourage additional impervious surfaces. ~~Staff is recommending pervious pavers for the parking spaces that will decrease the impervious coverage by 29,430 sq. ft. to a total impervious coverage of 8,313 sq. ft.~~

	Size of Site	Percent Impervious Coverage
Allowed	1.2 acres	30 % (15,681 sq. ft.) impervious coverage
<del>Currently</del>	1.2 acres	35 % (18,488 (sq. ft.) impervious coverage
Proposed	1.2 acres	71 % (37,113 (sq. ft.) impervious coverage
Recommendation	1.2 acres	15 % (8,313 sq. ft.) impervious coverage

Staff has worked with Hansen in preparing the site plan that has lead to plantings and drainage swales. ~~and a pond for stormwater.~~ The development will need to meet stormwater management guidelines prior to development.

**Special Use Permit for Grading, Filling and Excavating**

Applicant has provided information based on two scenarios. The first is if MnDOT completes their work before Hansen builds his facility and the second is based on his starting before MnDOT begins their project. See attached.

Standards for this special use permit are shown above. He will also need a permit from the Building Inspection Office for filling and grading.

Given the topography of the site grading and filling will be needed. Staff recommends the maximums of 12,770 cubic yards of cutting and filling of 2,135 cubic yards.

**14. CONCLUSIONS:**

Variance Request:

The Planning Commission finds that the ordinance governing the application is Chapter 51, Duluth City Code; that compliance with that ordinance requires a showing of a hardship; that the following facts, features, or events show;

~~Use of pervious pavers will decrease the impervious area to 15 % which is acceptable and meets code requirements.~~

Points in favor:

1. With the use of "pervious" surfaces the project can be developed as requested. However for service stations pervious pavers allow direct infiltration of gas, oil, and other liquids directly into the



groundwater.

Points in opposition:

1. None noted.

Special Use Permit Request:

The Planning Commission finds that the special use permit application is Chapter 51, Duluth City Code; that compliance with that ordinance requires meeting standards of Sec. 51-29. It appears this standards can be meet.

Point in favor:

1. Project can proceed provided standards of Sec. 51-29 are meet or exceeded.

Point in opposition:

1. None noted.

15. Recommendations for Planning Commission approval:

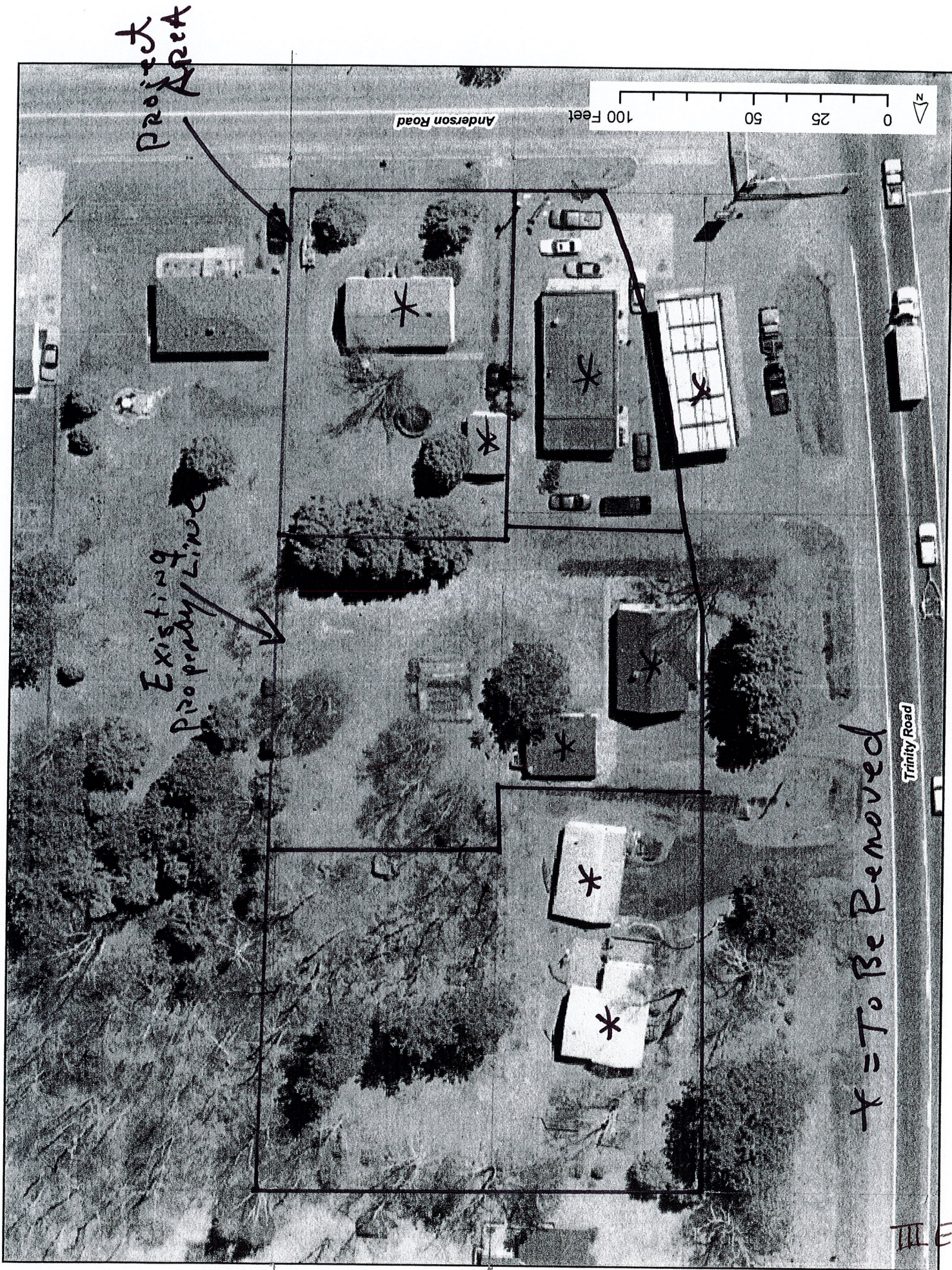
~~A variance not be granted to allow redevelopment of the site not as use of pervious will negates the need for a variance.~~

A variance be granted to allow development of the site not to exceed 71% of the surface area as the site characteristics are unique given the proposed development.

A special use permit for grading, filling and excavating be granted not to exceed maximums of 12,770 cubic yards of cutting and filling of 2,135 cubic yards with the following conditions:

1. Standards of Sec 51-29 are to be followed.





FN 06019



3-10-06



NE Corner of Anderson & Trinity

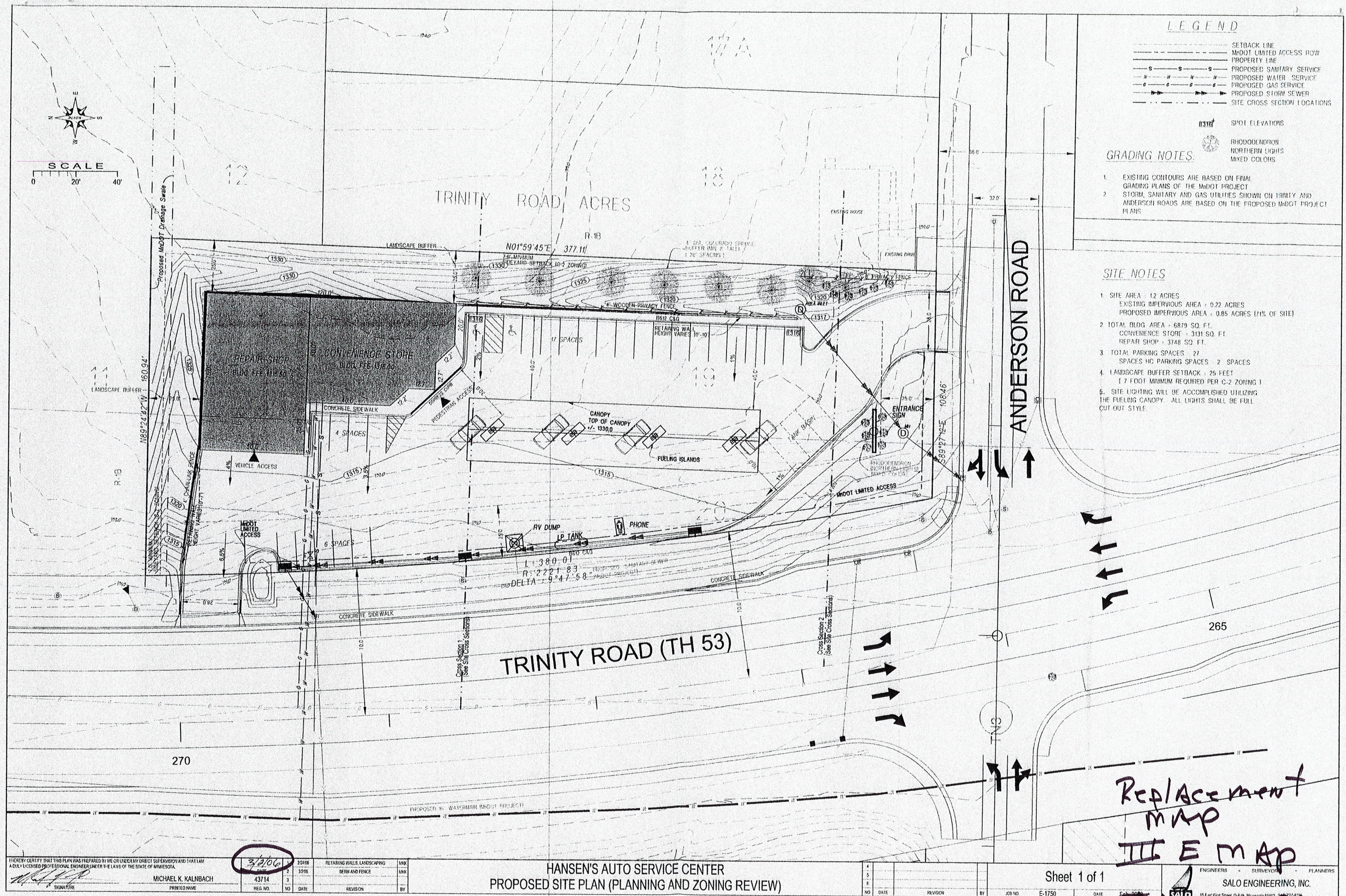
NE Corner of Anderson & Trinity



Former Home site on Trinity

NE Corner of Anderson & Trinity





Replacement  
map  
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Feb. 2002 **SALE** 15 East First Street, Duluth, Minnesota 55802 218/727-1234  
**ZN 06019**