



**Planning & Development Division**  
*Planning & Economic Development Department*

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 Duluth, Minnesota 55802

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<b>File Number</b>	PL 21-026	<b>Contact</b>	Kyle Deming – <a href="mailto:kdeming@duluthmn.gov">kdeming@duluthmn.gov</a>	
<b>Type</b>	Concurrent Use Permit	<b>Planning Commission Date</b>	April 13, 2021	
<b>Deadline for Action</b>	<b>Application Date</b>	March 10, 2021	<b>60 Days</b>	May 9, 2021
	<b>Date Extension Letter Mailed</b>	March 24, 2021	<b>120 Days</b>	July 8, 2021
<b>Location of Subject</b>	2727 E. 5 <sup>th</sup> St. (Congdon Park)			
<b>Applicant</b>	Ray E. and Beatrice D. Ruoho	<b>Contact</b>		
<b>Agent</b>	Johnston Masonry	<b>Contact</b>	Kurt Granger	
<b>Legal Description</b>	Lots 14-16, except 8,350 sq. ft. for Wallace Ave., Block 6, Willard's Addition (PID 010-4600-00630)			
<b>Site Visit Date</b>	March 31, 2021	<b>Sign Notice Date</b>	March 25, 2021	
<b>Neighbor Letter Date</b>	N/A	<b>Number of Letters Sent</b>	N/A	

**Proposal:** A Concurrent Use Permit for a brick pillar, retaining wall, fence, and heat tubing in the driveway apron, sidewalk, and driveway in the easement for Wallace Ave.

**Staff Recommendation:** Staff recommends that Planning Commission recommend approval to City Council.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Residential	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential and church	Traditional Neighborhood
<b>East</b>	R-1	Undeveloped park	Traditional Neighborhood
<b>West</b>	R-1	Residential	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 (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.

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. Includes many of Duluth’s older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

#### **History:**

1887 – Willard’s Addition plat filed.

1895 – 66 foot wide strip of land from 4<sup>th</sup> St. to St. Marie St. was condemned for Wallace Ave.

1931 – Home was constructed.

### **Review and Discussion Items**

Staff finds that:

- 1.) The home was constructed in 1931 with a tuck-under garage and driveway to Wallace Ave.
- 2.) In 2020, the driveway was repaved, a snowmelt system was installed in the pavement, and a short retaining wall with fence and brick pillar was constructed.
- 3.) A portion of these features are within a 20 foot x 25 foot area of the street easement shown on the attached exhibit.
- 4.) Underground private improvements consist of ½ inch diameter PEX tubing embedded in a 6 inch thick reinforced concrete slab in the driveway, public sidewalk, and driveway apron. A heat transfer fluid will be circulated through the tubing for snow melting.
- 5.) Although St. Louis County has jurisdiction over the roadway, the roadway easement was dedicated to the City as part of a condemnation action in 1895, so the City’s Concurrent Use Permit process applies.
- 6.) Ordinarily, the City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. This requirement has been waived by the Land Use Supervisor based on the type of private infrastructure installed in the street easement and its location, after consultation with the City Attorney’s office.
- 7.) The City Engineering office does not take responsibility for locating buried private improvements in the public easement, so the applicant has been informed of the need to sign up with Gopher State One Call to be notified of underground excavation projects in the area. The applicant will need to disclose this to future buyers of the property so they can register as well. It is recommended that this be a condition of approval for the concurrent use permit.
- 8.) The City’s Property and Facilities Management (PFM) office has commented that, although the condemnation for Wallace Avenue was recorded with St. Louis County, it wasn’t memorialized on the applicant’s Certificate of Title, which creates a title issue for the portion of Wallace Avenue abutting the applicant’s property. PFM recommends that resolving this title issue be a condition for approval of the concurrent use permit. PFM will prepare the required documents and pay any associated recording fees, but will need the applicant’s cooperation and consent on the paperwork.
- 9.) The area proposed for the concurrent use permit will not diminish 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.
- 10.) No other public, agency, or other comments have been received as of March 31, 2021.

### **Staff Recommendation**

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

- 1.) Applicant shall maintain the project as identified in the attached exhibits.
- 2.) Applicant register with Gopher State One Call and disclose to future owners the requirement to locate the underground improvements in the public street easement.
- 3.) Applicant participate with the City’s Property and Facilities Management Department to memorialize the condemnation for Wallace Avenue onto the applicant’s Certificate of Title or, in the alternative, grant a new easement for Wallace Avenue.

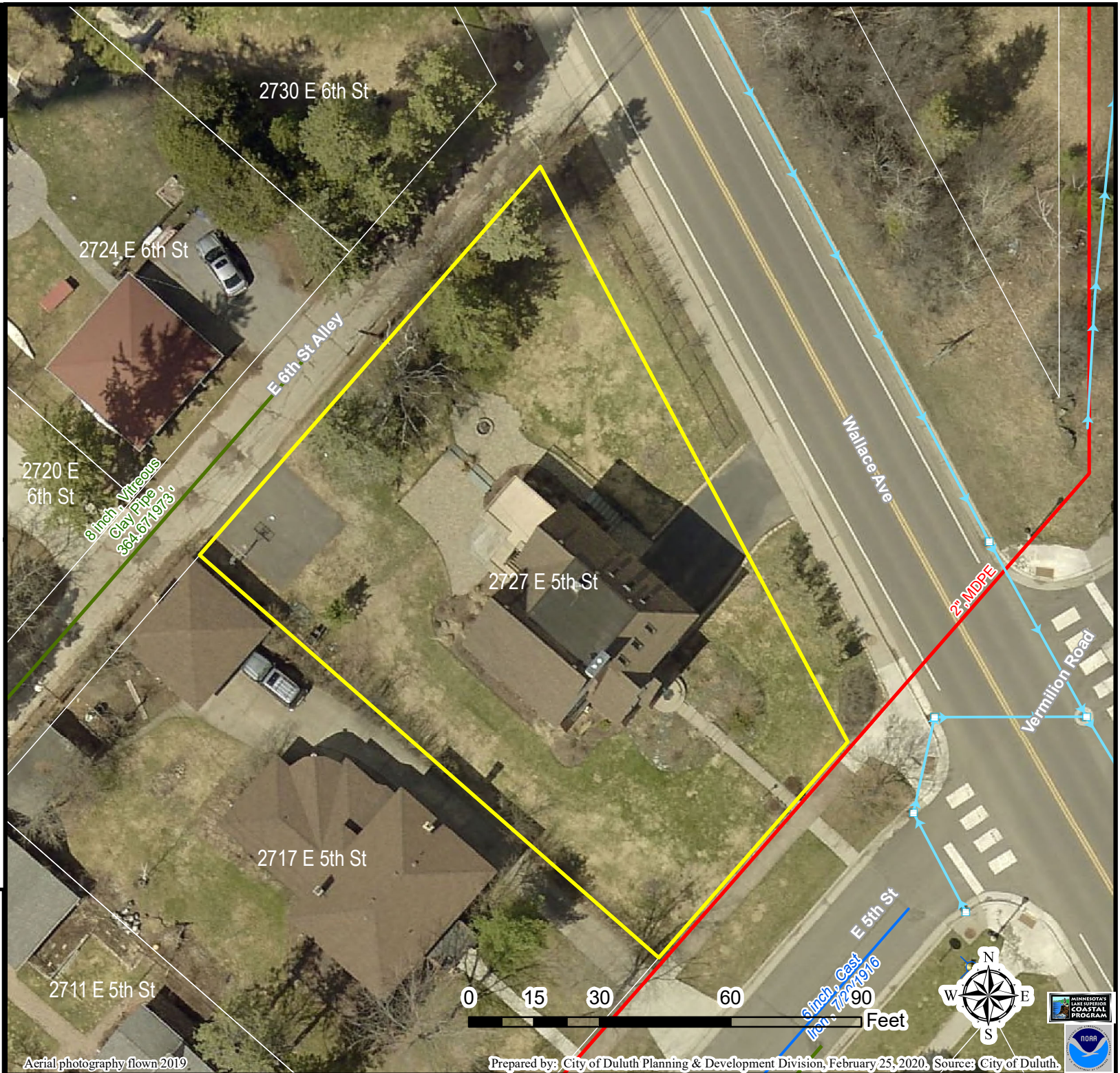
4.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 21-026  
Concurrent Use Permit  
2727 E 5th 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

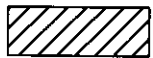
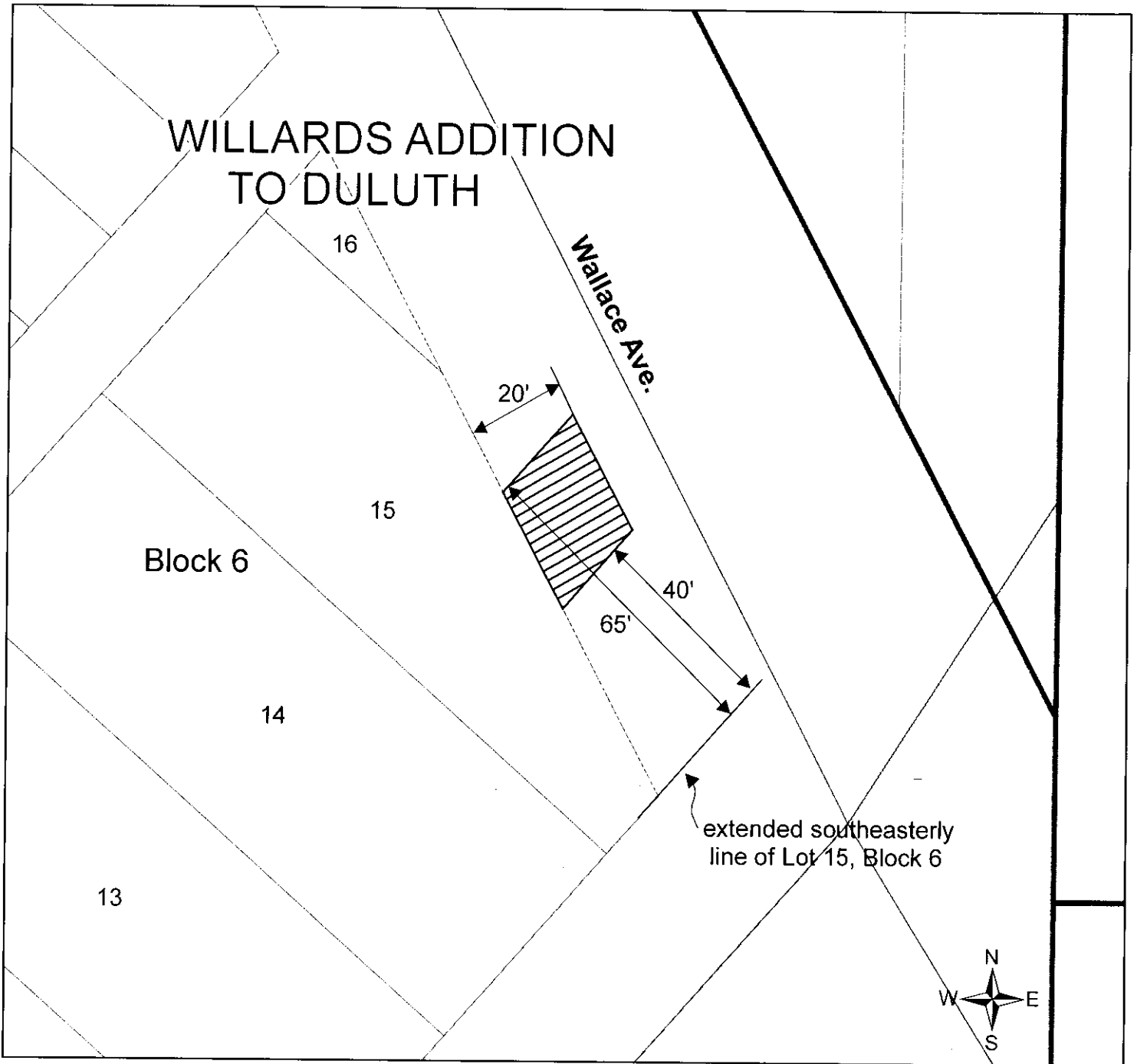


Aerial photography flown 2019

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

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.

# Exhibit A



Concurrent Use Area

A strip of land over, under, and across the southwesterly 20 feet of Wallace Ave., as condemned by that document found in the Office of the Register of Deeds in Book 1 of Condemnation Plats on Page 54, St. Louis County, Minnesota; bounded on the northwest by a line that is parallel to and distant 65' northwesterly from the extended southeasterly line of Lot 15, Block 6, Willards Addition to Duluth and bounded on the southeast by a line that is parallel to and distant 40' northwesterly from the extended southeasterly line of said Lot 15.

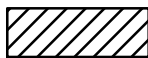
APPROVED BY CITY ENGINEER

11-4-20

DATE

# Exhibit A



 Concurrent Use Area

0 30  
 Feet

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APPROVED BY CITY ENGINEER

DATE



E 5th St

Johnston  
Mason  
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Your All Service Masonry



E 5th St

Johnson Mercury



CURB

Wallace Ave

Sidewalk

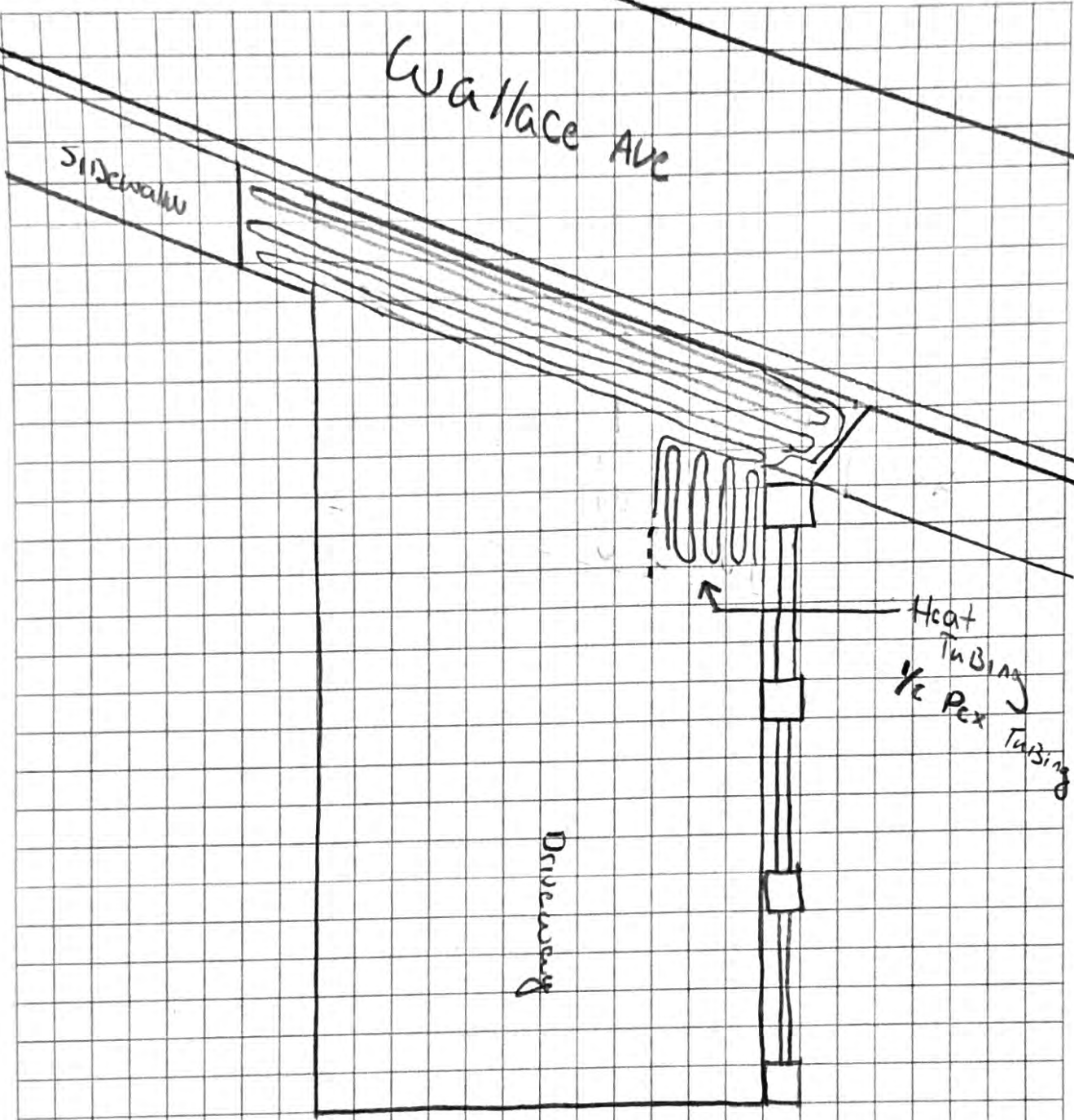
Over Drive

Driveway

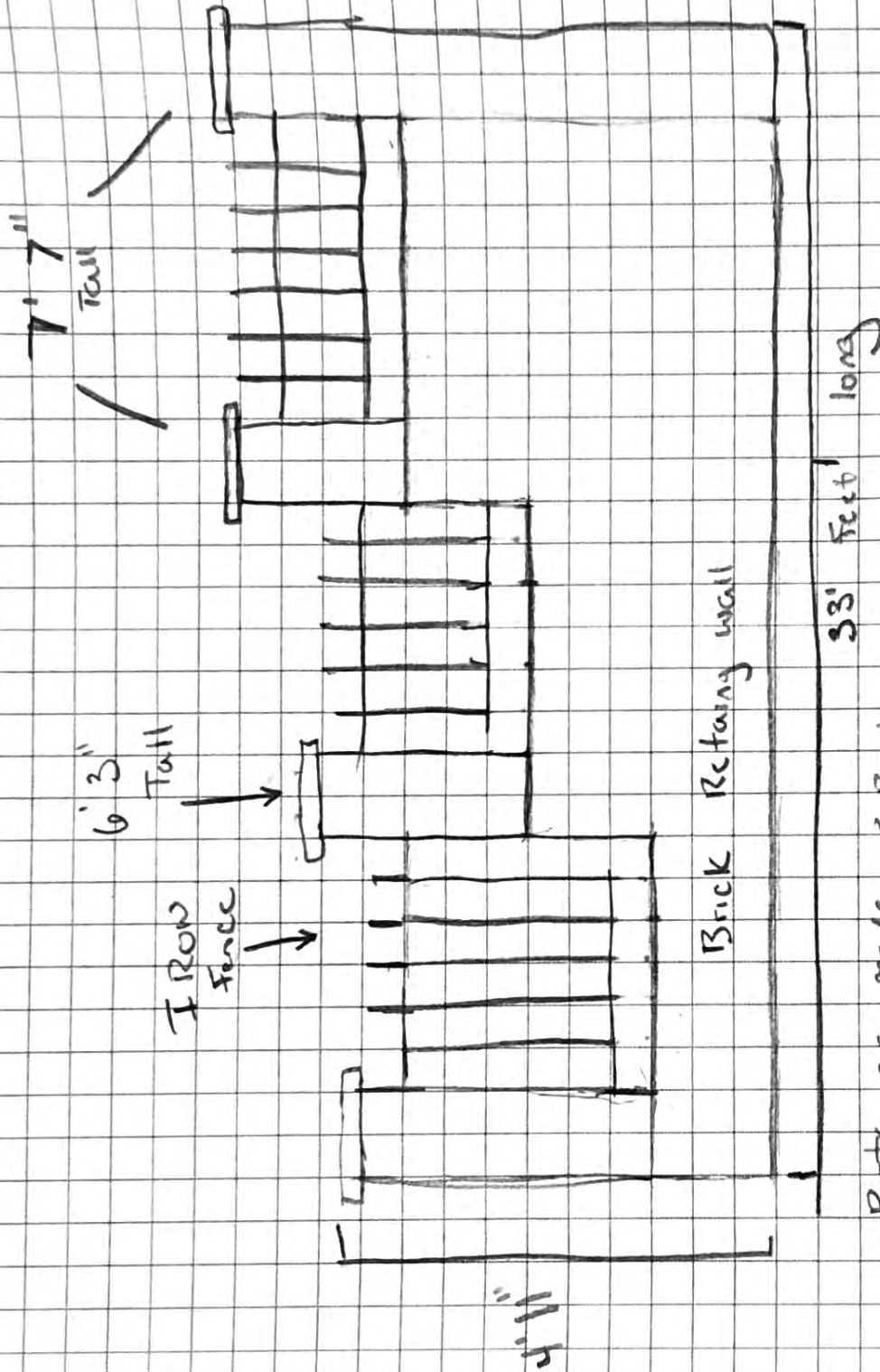
Heat Tubing  
1/2 Pex Tubing

### Pex Tubing

- Plastic Pex Tubing 1/2 inch Diameter
- Rhogard ultra 50% & 50% water
- Pipe runs into the sidewalk & stop at the curb



# Cross Section



# Elevation

