



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 22-119	Contact	Brett Crecelius	
Type	Variance – Shoreland structure setback	Planning Commission Date		August 9, 2022
Deadline for Action	Application Date	June 30,2022	60 Days	August 29, 2022
	Date Extension Letter Mailed	N/A	120 Days	October 28, 2022
Location of Subject	3401 Grand Avenue			
Applicant	Brent Dahlstrom	Contact	brent@mergeurbandevelopment.com	
Agent	Chad Ronchetti	Contact	Chad.Ronchetti@krausanderson.com	
Legal Description	Parcels 010-2700-00100, 010-0440-00550; 00610, 00630, 6650, 00420			
Site Visit Date	July 19, 2022	Sign Notice Date	July 26, 2022	
Neighbor Letter Date	July 22, 2022	Number of Letters Sent	27	

Proposal: Applicant is requesting a variance from the shoreland setbacks to build an approximate 90,000 square foot, 80-unit apartment complex comprising of a mix of 1- and 2-bedroom units. Impervious Surface will be 0' from the ordinary high-water level instead of the required 50' in a General Development Shoreland.

Recommended Action: Staff is recommending approval with conditions.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N	Vacant/Brownfield	Open Space/General Mixed Use/Neigh. Comm.
North	R-1	Single Family Homes	Open Space
South	MU-N/R-1	Single Family Homes/Comm.	Neighborhood Commercial
East	MU-B	Commercial	Open Space/General Mixed Use
West	P-1	Recreation/Open Space	Open Space

Summary of Code Requirements:

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 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 Principles

- Principle #1: - Reuse previously developed lands.
 - The proposed site is an old gas station and would be a redevelopment of that lot.
- Principle #4 - Support economic growth sectors.
 - The construction of mixed-use income, particularly in West Duluth, supports the growth of Duluth's economic base.
- Principle #5 - Promote reinvestment in neighborhoods.
 - Development on this lot supports the character of the neighborhood by creating a community that is walkable to the area's recreation infrastructure, and is a reinvestment in a neighborhood that can link Lincoln Park and the Denfeld neighborhoods.
- Principle #7 - Create and maintain connectivity.
 - This project will be designed to maximize pedestrian access to neighborhood amenities and public transportation along the corridor.

Future Land Use

Neighborhood Commercial: Small to moderate scale commercial, serving primarily the adjacent neighborhood. May include specialty retail; community gathering businesses such as coffee shops or lower intensity entertainment; offices; studios or housing above retail. Typically situated in or adjacent to residential neighborhoods. May transition to neighborhood mixed used.

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, primary viewsheds, shorelands of the lake and streams, wetlands and floodplains, and high-value habitat.

Recent History:

The site is the location of a former Holiday Gas Station. After the gas station closed, the site has remained vacant. DEDA has currently acquired the site from the Holiday Company, along with some surrounding parcels from St. Louis County and the City of Duluth, to create an approximate 2-acre site for the development of an affordable multi-family housing complex. The site has recently been transferred to the developer via a Land Sale Agreement in order to facilitate an affordable housing development. DEDA, with assistance from the EPA, has completed a Phase I environmental assessment prior to conveyance to confirm that there are no environmental concerns on the site that need to be addressed.

Review and Discussion Items:

- 1) The applicant is requesting a shoreland variance for an approximate 90,000 square foot 80-unit affordable housing complex. The unnamed creek is on the North side of the existing parcels and continues halfway onto the site the current site where it transitions into an underground culvert underneath Grand Avenue. The stream and culvert are existing to the property and located in an area that will not allow for a multifamily housing development. In order to construct the proposed project, the stream will need to be rerouted into a culvert on the north edge and underneath the parking lot. The impervious surface will be 0' from the ordinary high-water level instead of the required 50' setback.
- 2) The development is a permitted use in the MU-N district; the applicant proposes to use the property in a reasonable manner.
- 3) The proposal will not alter the essential character of the neighborhood as it is a modestly designed building and aligns with the intent of neighborhood layout and design as described in the UDC and Comprehensive Plan.
- 4) Section 50-37.9.L of the UDC requires mitigation for shoreland variances. The Developer has been in contact with City engineering staff to mitigate the proposed stream impact. The Developer has proposed a stream reroute that has been approved by engineering and place the stream into an underground culvert where it connects back to the current culvert on the south side of the property. Stormwater management of the site will ensure that water is treated to City standards and a landscaping plan to provide more shading and cooling effect for any runoff.
- 5) No public, agency, or City comments have been received.
- 6) 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 submitted with the application, dated 6/30/22.
- 2) The stream reroute, stormwater management plan, and landscaping plan shall be approved prior to permits being issued.
- 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.



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Check One Box

Accessory Home Share-\$250

Accessory Vacation Dwelling Unit, Limited -\$250

Appeal to Planning Com. - \$407

Concurrent Use of Streets - \$797

District Plan - \$1,144

EAW or EIS- \$2,856, plus any applicable professional fees

Historic Construction/Demolition - \$59
Resource Designation - \$103

Interim Use Permit \$1,600

Planning Review - \$1,068

Sidewalk Use Permit
New Permit- \$171
Renewal Permit - \$85

Special Use Permit.

General - \$1,606

Special Use Permit, Wireless Telecommunications

Modifying or Co-locating - \$2,856

New Facility or Tower - \$5,718

Escrow Deposit - \$9,717

Subdivision Plat Approval or Amendment:

Concept Plan - \$286

Preliminary Plat - \$1,138

Final Plat- \$457

Minor Subdivision-\$427

Plat Amendment or Boundary Line Adjustment - \$286

Registered Land Survey-\$737

Temporary Use Permit - \$275

UDC Zoning Map

Amendment/Rezoning

General - \$912

MU-P or R-P \$2,578

Vacation of Street or Utility Easement - \$905

(2) Variance - \$855
(\$855 x 2) = \$1,710

Wetland

De Minimus, Delineation, or No Loss - \$227

Exemption-\$177

Replacement Plan - \$851

Zoning Verification Letter-\$96

APPLICATION COVER SHEET

CONTACT INFORMATION:

Applicant/Owner Brent Dahlstrom

Phone 319-406-2494 Email brent@mergeurbandevelopment.com

Address 604 Clay St.

City Cedar Falls State Iowa Zip 50613

Owner's Agent (if applicable) Chad Ronchetti

Phone 218-290-8702 Email chad.ronchetti@krausanderson.com

Address 3716 Oneota St.,

City Duluth State MN Zip 55807

APPLICATION INFORMATION:

Street Address and Zoning of Property 3401 Grand Ave. Duluth, MN 55807 - MU-N

Parcel ID Number 010-2700-00100, 010-0440-00550, 00610, 00630, 00650, 00420

Reason for this Request (*Attach Additional Pages or Cover Letter if Necessary*)

Owner has a proposed multifamily apartment complex. The site has various constraints

requiring multiple planning commission actions. See below.

1) Easement Vacation, Street & Alley Vacation

2) Wetland Delineation Review and Approval

3) Shoreland Setback Variance (50' Vegetative Buffer, Impervious Setback & Structure Setback)

4) Building Setback Variance

The undersigned hereby represents upon all of the penalties of law for the purpose of inducing the City of Duluth to take the action herein requested, that all statements herein and attached are true and that all work herein mentioned will be done in accordance with the Ordinances of the City of Duluth and the laws of the State of Minnesota. Undersigned also understands that all documents provided to the City may be considered public data, per Minnesota Government Data Practices Act.



6/30/22
Date

Signature of Applicant

Variance - \$855
(\$855 x 2) = \$1,710

*Special Use Permit Checklist required to be submitted with this application coversheet.

3.9 Checklist

Variance (SHORELAND)

These types of applications allow for a variance from the terms and provisions of the UDC (typically bulk standards, such as setbacks, structure height, lot area, etc). See UDC Section 50-37.9 for more information.

Starting the Application Process

- Call 218-730-5580 or email planning@duluthmn.gov to schedule a pre-application meeting. The pre-application meeting is intended to discuss the application process and general timeline. A comprehensive review of the proposed project is not possible at this meeting; detailed review of the project will occur once a complete application, with sufficient supporting information and exhibits, is submitted.

Your Application

- Application Cover Sheet, available at <https://duluthmn.gov/planning-development/land-use-zoning-and-applications/applications-checklists/>, and applicable fee
- A survey of the property (required for all variances, unless waived in advance by the Land Use Supervisor). Also, a site plan or exhibit with the location of current structures on the property and the proposed requested variance area (such as proposed location of new structure). This information can also be illustrated on the survey. For shoreland variances, include the location of the Ordinary High Watermark (OHM) of the waterway, and the distance to the subject of the variance (proposed structure, etc)

- A brief written statement affirming that the property has obtained all required City permits (i.e. all the structures on the property have received building permits, where applicable; property owner has a valid rental license, where applicable, etc).

**PRELIMINARY PLAN,
TO COME LATER**

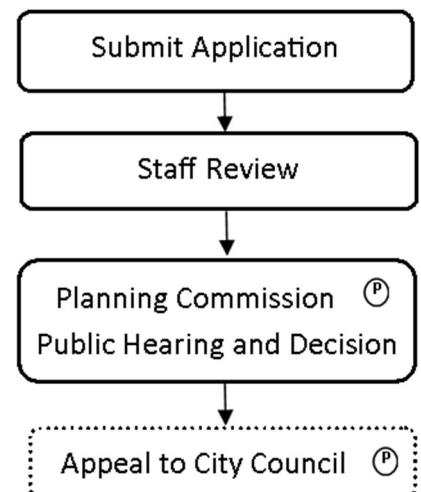
- Variance supplemental application form

- Materials for specific variances:

- Variances to lot size in unsewered areas:* a permit or letter of intent to issue a permit for on-site sewer treatment from the County
- Variances to reduce setbacks:* a landscaping and buffering plan
- Variances to flood plain regulations:* documentation regarding flood levels and flood protection may apply
- Variances to shoreland regulations:* A plan to mitigate the impacts of the variance on shoreland areas

- Variances within Skyline Parkway Overlay:* see Skyline Parkway Materials in [Appendix](#)

Variance



(P) Indicates Public Hearing Required

Important Dates

Application Deadline:

Sign Notice Placed:

Planning Commission:

Effective*:

**Please note that these dates are approximate guidelines and may change*

After Submitting Your Application

1. Determination of Completeness. Within 15 business days of your application, you should expect to:

- Receive an “Applicant Letter,” which acknowledges a complete application, shares the date of the Planning Commission meeting and the assigned staff person, and notifies you of State-mandated deadlines for the City to make a decision, **OR**
- Receive notification that your application is incomplete, with details on further information to submit.

2. Public Notice. A mail notice will be sent by the City to property owners within 350 feet.

You are required to post a sign notice on the property at least two weeks before the date of the public hearing. See UDC Section 50-37.1.H for information on size, placement, and content of each sign; you may want to contact a sign company or printing company to have the sign made. You must provide evidence that the signs were in place; **submit photo(s) of the signs to the Planning Division at least two weeks before the date of the public hearing.**

3. Staff Review. Planning staff will evaluate your application and prepare a staff report. When considering a recommendation for a variance, Planning Staff generally review the legal minimum requirements for a variance establish by State statute (literal interpretation of the UDC would result in exceptional or peculiar practical difficulty, special circumstances exist that are unique to the property, the situation was not created by the applicant, variance is necessary and not simply a convenience to the applicant, etc.), the standards specific to the type of variance being sought, any additional UDC criteria, and other related factors.

➤ You will receive an email with the Planning Commission agenda and a link to this staff report about 5 days prior to the meeting.

4. Planning Commission Hearing and Decision. Planning Commission meetings are scheduled at 5:00 pm on the second Tuesday of each month. **We ask that applicants or an agent attend this meeting.**

The Planning Commission will review the application, conduct a public hearing, and make a decision to approve, approve with modifications, or deny the application.

If approved, you will receive an Action Letter documenting approval.

Note that other City codes may apply to your project. Please be aware of any applicable Building Code (Construction Services Division), Fire Code (Life Safety Division), and stormwater/engineering (Engineering Division) regulations. The zoning approval may be only the first step in a several step process.

If a wetland delineation is needed for the project to proceed, it must be reviewed and approved before any zoning application will be accepted.

If a wetland replacement plan is required for a project to proceed, it must have been submitted and accepted as a complete application before the project zoning application will be accepted.



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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"):

See attached document for expanded responses.

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:

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:

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:

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:

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:

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:

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: _____

Shoreline Variance Supplemental Form

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:

The location of the existing unnamed stream and culvert will severely limit potential redevelopment of this site which has been assembled and presented to us by city staff as a desirable location for this building and project. The existing stream designated a "General Development Water" by the City. The stream is noted on the NR-O map in the UDC and shows that the site is well within the shoreland management zone. The stream designation requires a 50-foot structure setback, 50-foot impervious setback and 50-foot vegetative buffer. With the stream and culvert are located roughly in the middle these setbacks will not be achieved with sizable multifamily development. The stream and culvert were only identified by city staff after the site was presented and the project was selected and awarded ARPA funds.

The proposed solution is to route the stream around the proposed structure. Even with relocation the stream entrance to the culvert the set impervious setback and vegetative buffer setback requirements cannot be met without variance. It should be noted the stream is not a trout stream. Fire access and off-street parking are critical and limited space constraints will not allow for adequate space.

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:

The stream and culvert are existing to the property and located in an area that will not allow a sizable multifamily building configuration in any way to allow it to remain in its current location. In order to construct the building and allow for adequate site access and off-street parking the stream will need to be routed into a culvert just off the north edge of the property and rerouted around the building underneath the parking lot. This reroute of the stream has been discussed with City Engineering staff.

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:

There is an unnamed, non-trout stream on this property transitions to a culvert and underground storm pipe roughly halfway into the property. Once it transitions to the storm sewer pipe it travels underneath Grand Avenue and the property directly to the southeast. As the stream travels through the parcel it transitions to underground piping as necessary and continues toward the St Louis River meandering around and under railroads, roads, buildings, and parking lots.

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:

Capturing the stream at the north edge of the property and rerouting around the proposed structure would create a significant increase in usable space for development while allowing the maximum amount of off-street parking possible. As the stream and underground storm sewer currently sits, any sizeable multifamily housing development would be nearly impossible to accommodate considering building size and necessary off-street parking requirements. The proposed use of this property aligns well with many of the Duluth Governing Principles within the Comprehensive Plan including:

- *Principle #1: - Reuse previously developed lands.*
 - *The proposed site is an old gas station and would be a redevelopment of that lot.*
- *Principle #4 - Support economic growth sectors.*
 - *The construction of mixed-use income, particularly in West Duluth, is a feeder neighborhood to Denfeld schools, and supports the growth of Duluth's economic base.*
- *Principle #5 - Promote reinvestment in neighborhoods.*
 - *Development on this lot supports the character of the neighborhood by creating a community that is walkable to the area's recreation infrastructure, and is a reinvestment in a neighborhood that can link Lincoln Park and the Denfeld neighborhoods.*
- *Principle #7 - Create and maintain connectivity.*
 - *This project will be designed to maximize pedestrian access to neighborhood amenities and public transportation along the corridor.*
- *Principle #8 - Encourage a mix of activities, uses, and densities.*
 - *The project will be a mix of activities for the neighborhood, and in particular for this area, which has a robust base of recreational and commercial activities.*

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:

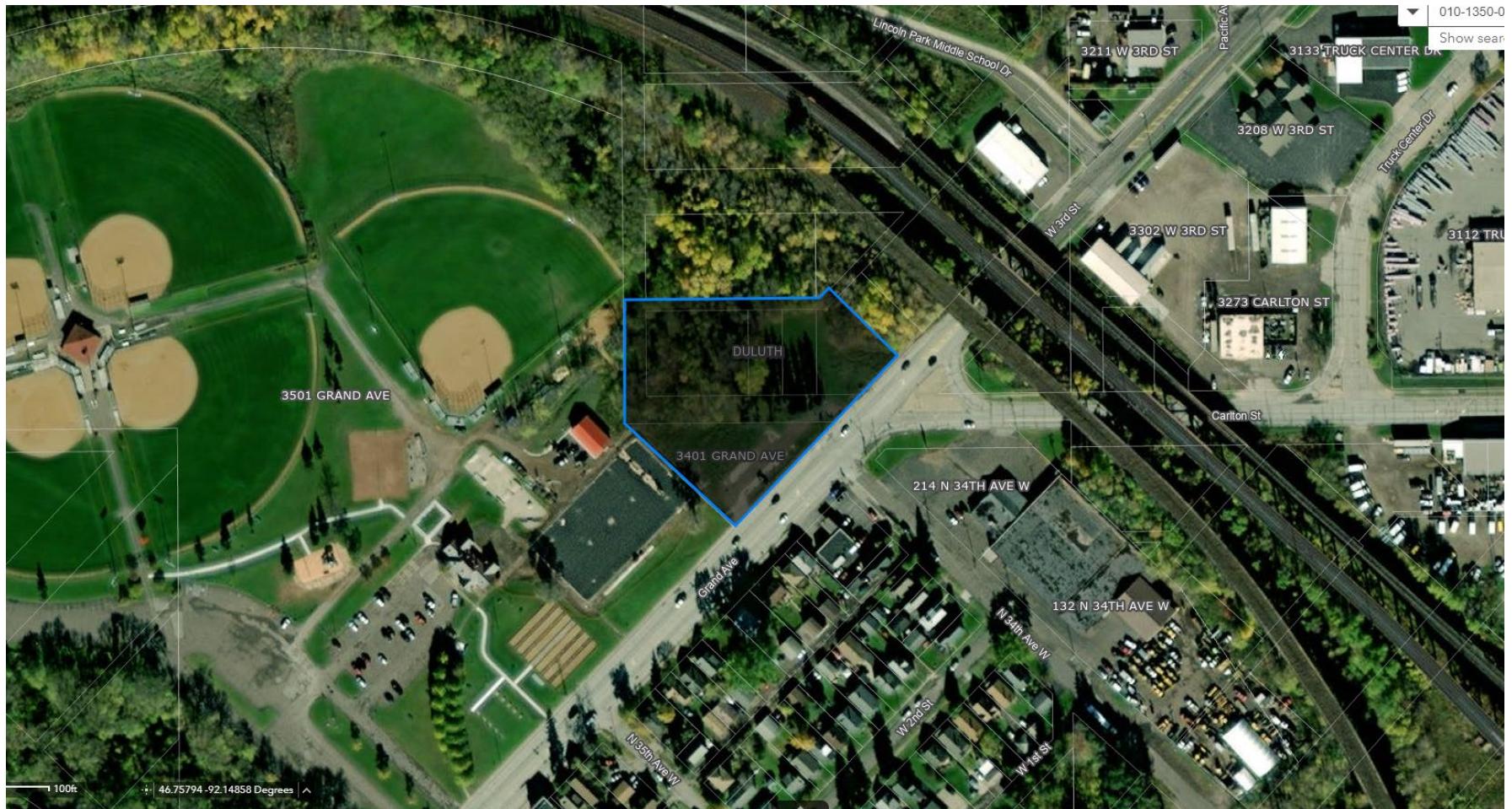
A variance allowing for stream reroute and reduced shoreland setbacks will not impair adequate supply of light or air to any of the adjacent properties. The site is located at an existing traffic signal that would be used to safely control traffic in and out of the parking lot. City Engineering staff has weighed in the use of the existing access location and traffic signal. They are comfortable with the access and understand that existing signal poles will be utilized while upgrading signal timing as required. The building construction would follow appropriate building codes and fire rated assemblies as well as a fire sprinkler and alarm system to diminish the risk of fire or imperil the public safety. Being located just east of the Wheeler Athletic Complex and Park, the project would leverage the city owned recreation facilities for the health of the residents, create a walkable area for the residents to utilize Wade Stadium, and advance the principals of the neighborhood objectives by combining livability with surrounding recreational activities.

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:

Granting of this variance would actually allow the site to be used for the appropriate and existing MU-N zoning and would not alter the essential character of the neighborhood.

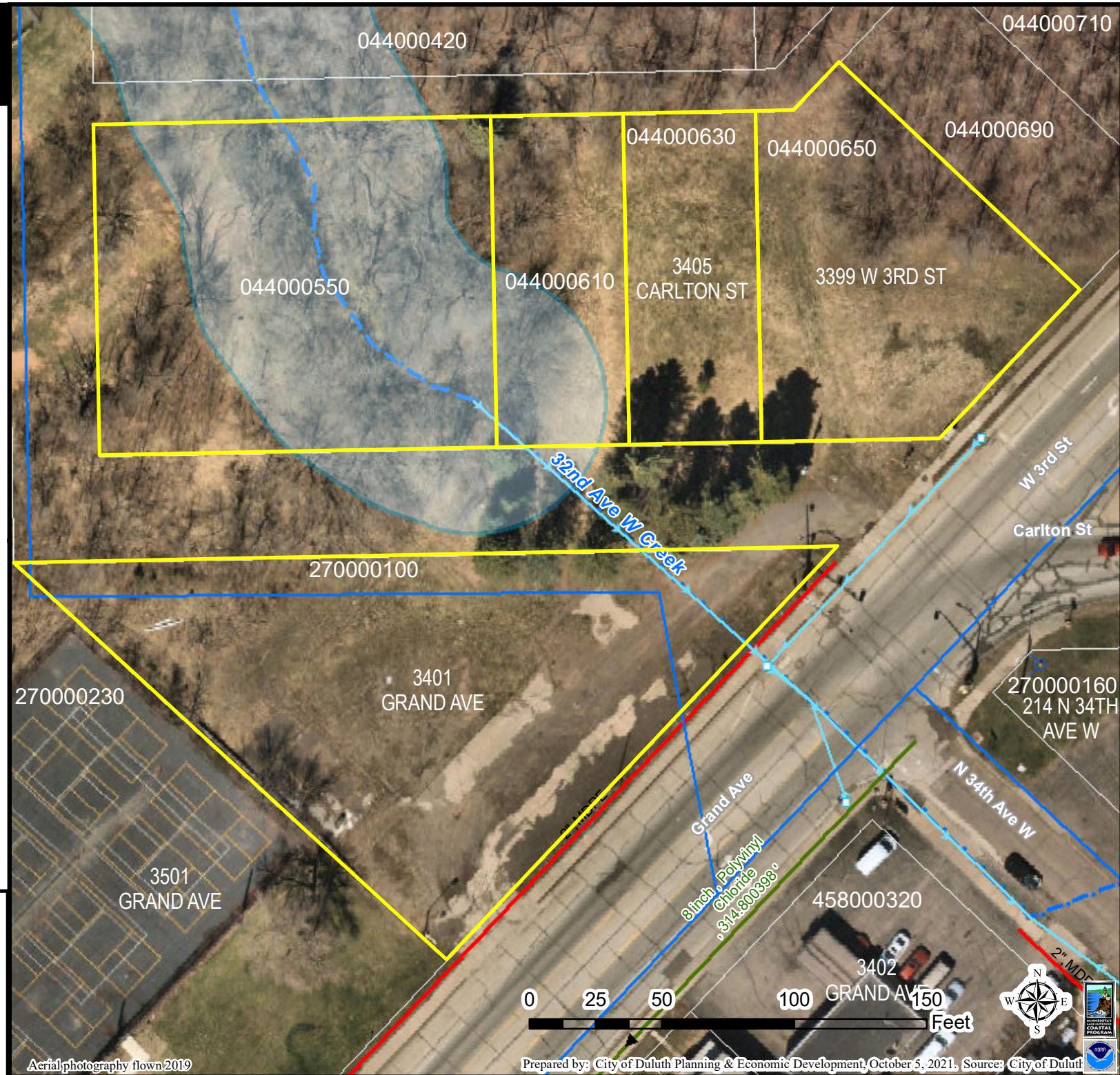
Does your variance request need to meet any of the specific criteria in UDC Section 50-37.9, subsections D through M (E. Unsewered Areas, F. Two Family Dwellings in R-1, G. Parking Regulations, H. Reduce Setbacks, I. MU-C District, J. Airport Overlay, K. Flood Plain Regulations, L. Shorelands, or M.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

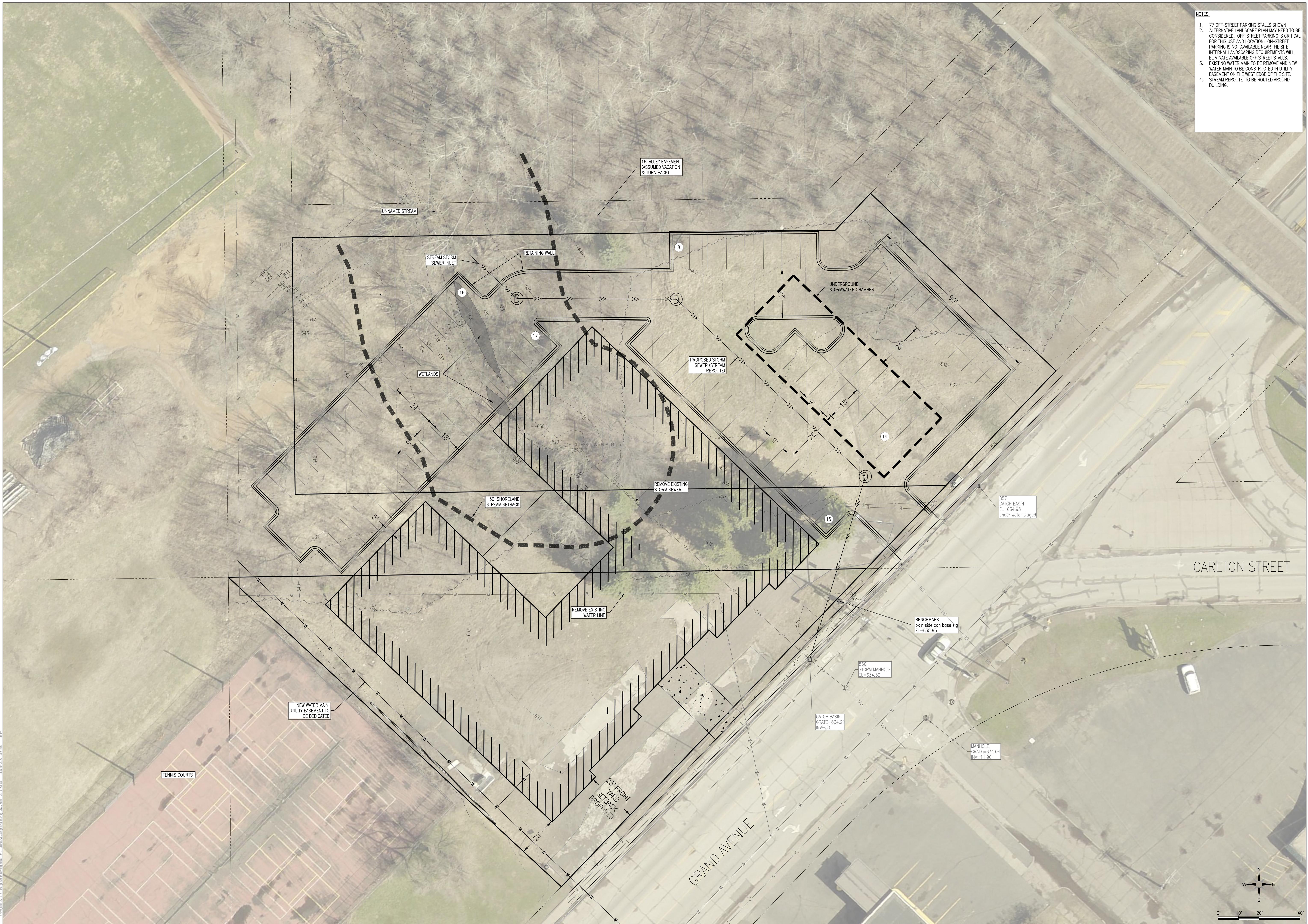
YES, Section 50-37.9.L. Design will require that a portion of the unnamed creek is routed into a storm sewer pipe extended off of the existing storm sewer inlet. The storm water management for the site will ensure that added runoff from the development will be treated to City standards. This redevelopment replaces a fueling station and will provide a cleaner runoff due to use and implementation of permanent storm water management BMPs.





P22-119
Shoreland Variance
3401 Grand Ave





MERGE DEVELOPMENT APARTMENTS

PRELIMINARY SITE
MERGE URBAN DEVELOPMENT
3401 GRAND AVE, DULUTH, MN

Sheet Title

PREL
PRELIMINARY
NOT FOR CONSTRUCTION **XX/XX/XX**
Engineer: Adam R. Zwak Lic. No: 55456

REVIZIÖN:

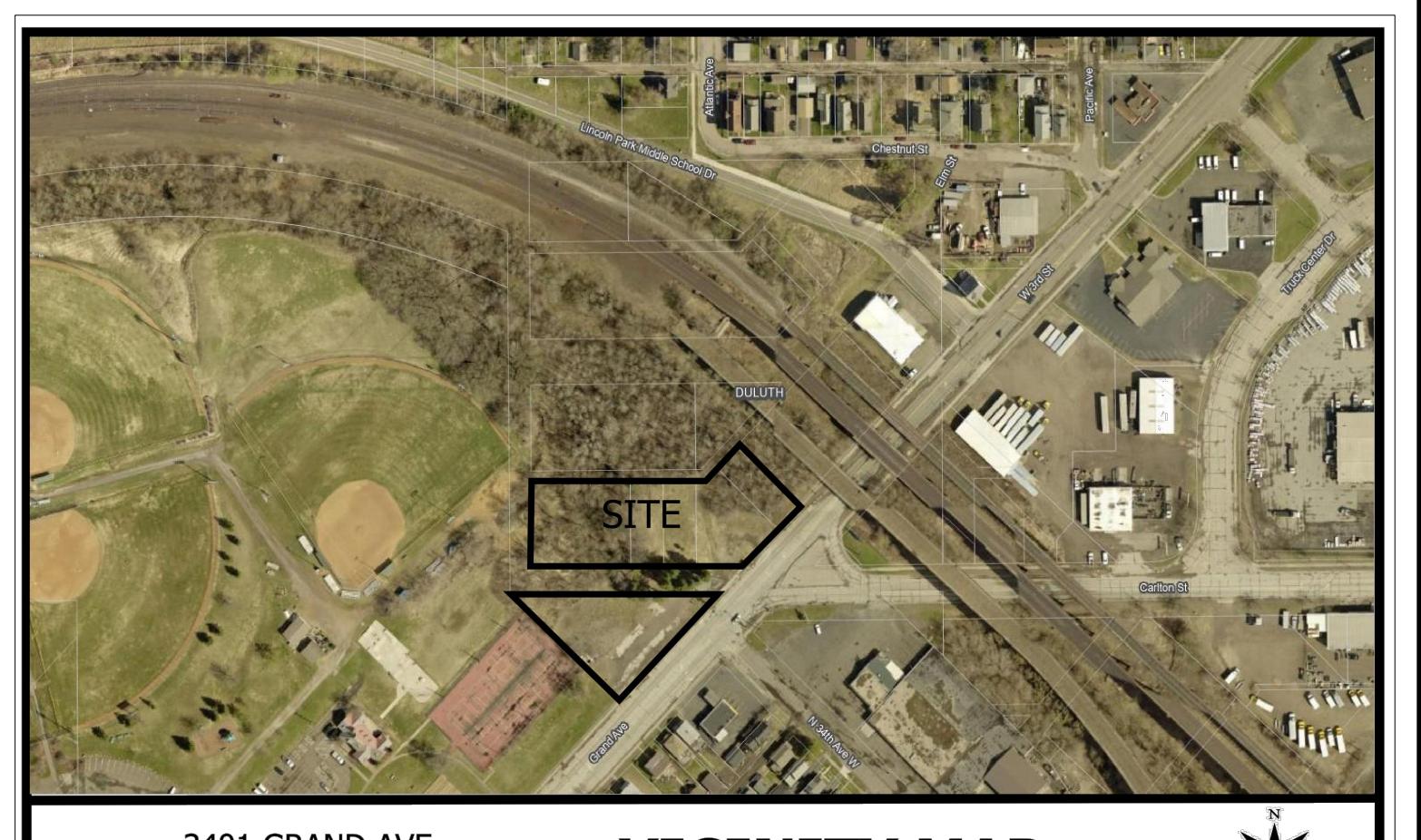
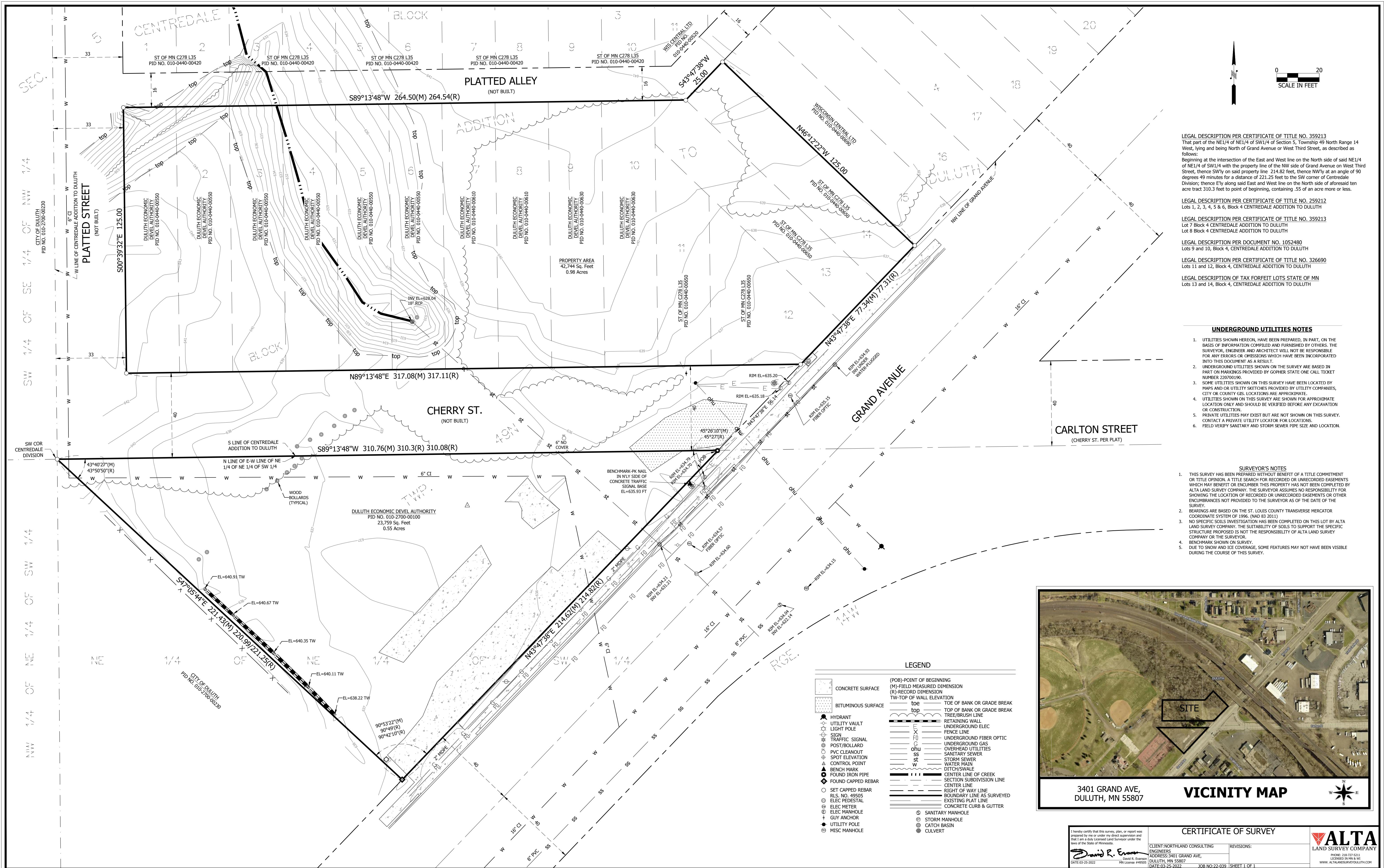
T: 22-118
ED: ARZ
PMR
04/13/22

Sheet Title

YOUT

Sheet Num
[redacted]

EX-1



3401 GRAND AVE,
DULUTH, MN 55807

VICINITY MAP



<p>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.</p> <p></p> <p>DATE: 03-25-2022</p>	<h1>CERTIFICATE OF SURVEY</h1>	 <p>ALTA LAND SURVEY COMPANY</p>
<p>David R. Evanson MN License #49505</p>	<p>CLIENT: NORTHLAND CONSULTING ENGINEERS</p> <p>ADDRESS: 3401 GRAND AVE, DULUTH, MN 55807</p> <p>DATE: 03-25-2022</p>	<p>REVISIONS:</p> <p>JOB NO. 22-020</p> <p>HEET 1 OF 1</p>

From: [Tom Johnson](#)
To: [Brett Crecelius](#)
Subject: RE: Storm Water Confirmation
Date: Tuesday, August 2, 2022 10:46:48 AM

Hi Brett,

The stream is 32nd Ave West Creek. It is a non-trout stream, therefore not a public waters. The stream is not mapped by FEMA for their floodplain program, though flooding risk still remains.

The re-routing of the creek and extended storm sewer system will be privately owned and will be the responsibility of the owner to make sure it remains at full capacity to prevent flooding onto Grand Ave. The creek re-route will be separate from the stormwater management required for the development. The site will need to provide storm water management for the development itself that includes flood control/peak discharge rate control, and water quality – sediment/urban pollutants.

This has been discussed with the Civil Engineer on the project. No plans have been submitted or approvals granted, though the concept has been agreed upon.

Let me know if you need anything further.

Tom Johnson | Senior Engineer P.E. | Public Works and Utilities | City of Duluth
411 West First Street, Room 240, Duluth, MN 55802 | P.E. Lic. in Minnesota
tajohnson@duluthmn.gov

From: Brett Crecelius <bcrecelius@DuluthMN.gov>
Sent: Tuesday, August 02, 2022 8:10 AM
To: Tom Johnson <tajohnson@DuluthMN.gov>
Subject: Storm Water Confirmation

Good Morning Tom,

I'm writing the staff report for the project at 3401 Grand, the site that is re-routing an unnamed stream for a multifamily housing development by wheeler field. I know that have discussed this plan with you and you have approved it thus far. Could you just shoot me an email saying that you have spoken with them and approved the preliminary placement, standards, etc. of their proposed re-route? We need it to verify some things in their shireland variance application.

Thank you,

Brett Crecelius (he/him/his) | Economic Developer, Planning & Economic Development | **City of Duluth** | <411 West First Street, Duluth, MN 55802> | Office: <218-730-5301> Mobile: <218-730-8481> | bcrecelius@duluthmn.gov