



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

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

<b>File Number</b>	PL 23-004		<b>Contact</b>	Kyle Deming	
<b>Type</b>	Variance – building placement		<b>Planning Commission Date</b>		February 14, 2023
<b>Deadline for Action</b>	<b>Application Date</b>		January 10, 2023	<b>60 Days</b>	March 11, 2023
	<b>Date Extension Letter Mailed</b>		January 20, 2023	<b>120 Days</b>	May 10, 2023
<b>Location of Subject</b>		30 S. 42 <sup>nd</sup> Ave E. (Lakeside-Lester Park)			
<b>Applicant</b>	Jack Shapiro		<b>Contact</b>	on file	
<b>Agent</b>			<b>Contact</b>		
<b>Legal Description</b>		Wly 75 feet of Dock Reservation, except part taken for street, London Addition (010-3070-02640)			
<b>Site Visit Date</b>		January 31, 2023	<b>Sign Notice Date</b>		January 31, 2023
<b>Neighbor Letter Date</b>		January 20, 2023	<b>Number of Letters Sent</b>		16

**Proposal**

A variance to allow placement of a 24-ft. by 28-ft. detached garage in the area between the front of the home and Quebec Ave.

**Recommended Action:** Approve with conditions.

	<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>	N/A	Lake Superior	N/A
<b>East</b>	R-1	Residential	Traditional Neighborhood
<b>West</b>	R-1	Residential	Traditional Neighborhood

**Summary of Code Requirements**

Table 50-21-1: Exceptions and Encroachments – No accessory structure may be located (a) between a street and any façade of a primary building facing that street.

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. 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 Comprehensive Plan.

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

### Comprehensive Plan Governing Principles:

- #1 Reuse previously developed lands. The project would allow construction of a garage to accompany an existing dwelling.
- #5 Promote reinvestment in neighborhoods. The project would result in enhancing the value of an existing dwelling utilizing existing infrastructure.

Comprehensive Plan 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.

### UDC Purpose (Sec. 50-2):

- (h) To enhance property values and the general appearance and natural beauty of the city;
- (k) To promote, preserve, and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development in wetlands, shorelands and floodplains.
- The project would locate all vehicle driving surfaces on the north side of the dwelling away from Lake Superior.

UDC Zone District Purpose – Residential-Traditional (R-1) - Established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods.

### History:

1. 1941 – Existing 1,083 sq. ft., 2-bedroom home constructed with no garage.

## **Review and Discussion Items**

Staff finds that:

1. The lot is 75 feet wide by approximately 315 feet deep due to an undulating Lake Superior shoreline (see property boundary survey). The sanitary sewer service exits the rear (lake side) of the house and runs west to the property boundary and then heads northerly into the City main near the corner of Quebec Ave. and 42<sup>nd</sup> Ave. E. The water and gas services connect at the northwest corner of the house (see property boundary survey). The property is sloped toward the lake declining 18 feet from the street to the top of the bluff where it drops 17 feet to the Lake Superior shore.
2. The proposed detached accessory structure (garage) has overall dimensions of 24 ft. east-west (parallel to Quebec Ave.) by 28 ft. north-south. The garage is located at 6 feet from the east lot line, which results in 24 feet of the home's 42 feet of width being "blocked" by the garage. This garage is a reasonable use and scale for a residential property due to the need to store two vehicles as well as yard and recreational equipment sheltered from Duluth's sometimes harsh weather.
3. The home is sited 100-175 feet from Lake Superior, 6 feet from the east lot line, 105 feet from the north (Quebec Ave.) lot line, and 27 feet from the west (42<sup>nd</sup> Ave. E.) lot line. Since this is a corner lot, the side yard setback from the west property line is 15 feet, leaving an area of only 12 feet in width where the garage could be located in front of the home while complying with UDC requirements. The site plan shows the gas service being located in this area. A twelve-foot-wide garage would not provide the intended vehicle storage space.
4. The proposal is consistent with the Comprehensive Plan principles and UDC purpose by limiting impervious surfaces to the parts of the site furthest from Lake Superior and having a minimal driveway length. The proposed garage is sited to be sensitive to the aesthetics of the site when viewed from Quebec Ave. (see site plan) such that the home will still be highly visible when approaching the property from 42<sup>nd</sup> Ave. E. The applicant is proposing to reuse a previously developed site.
5. The need for a variance is caused by site constraints unique to this site and not caused by the applicant, including shallow subsurface soil conditions and the location of sanitary sewer service. The applicant's 1/19/2023 email (attached) provides professional judgement advising against locating a driveway along the west side of the home, which would be necessary if the garage was located in compliance with the UDC. The corner side yard setback and the presence of the home's gas service in the front yard prevents the garage from being located northeast of the home.

6. Granting the variance will not alter the essential character of the area because the neighbor to the east has a similarly sized garage sited adjacent to the applicant's proposed garage. The neighbor across Quebec Ave. has an approximately 16-foot by 16-foot garage across the street from the proposed garage. Additionally, placement of the garage in this area will be least impactful to views of the applicant's home and Lake Superior when viewed from the home across Quebec Ave.
7. The variance, if granted, will not impair an adequate supply of light or air or add to fire danger because the garage is proposed to exceed the building code's requirement of 5 feet setback from property lines.
8. Granting the variance is not expected to unreasonably diminish established property values in the area because the proposed garage is scaled and sited such that the view from the street to the dwelling is only minimally impacted. The proposed garage is not expected to impact the values of property on the upper side of Quebec Ave. due to the distance and home's elevation approximately 15 feet above grade of the proposed garage.
9. Granting the variance is not expected to increase congestion on public streets or impair the health, safety, or public welfare of inhabitants of the city due to factors identified above.
10. One comment from City Parks asking for consideration of the beach access trail running down the centerline of the platted, but unbuilt, 42<sup>nd</sup> Ave. E. adjacent to the subject property (see black dashed line on the GIS map attached). No other comments from citizens, City staff, or any other entity were received regarding the application.
11. 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, a 24-foot by 28-foot, one-story garage to be located at 6 feet to the east property line and 25 feet to the north property line as shown on the site plan.
- 2) The driveway not extend south of the south wall of the garage.
- 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.





PL 23-004  
Variance  
30 S. 42nd Ave. E.  
Jack Shapiro



### Legend

- Parks
- Trails**
- Hiking
- Multi-Use - Paved
- Municipal Boundary

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 & Economic Development, January 19, 2023. Source: City of Duluth.





PL 23-004  
Variance  
30 S. 42nd Ave. E.  
Jack Shapiro

## Future Land Use

### Legend

#### Future Land Use

- Open Space
- Traditional Neighborhood
- Urban Residential
- Parks

#### Trails

- Hiking
- Multi-Use - Paved
- Municipal Boundary

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Aerial photography flown 2019

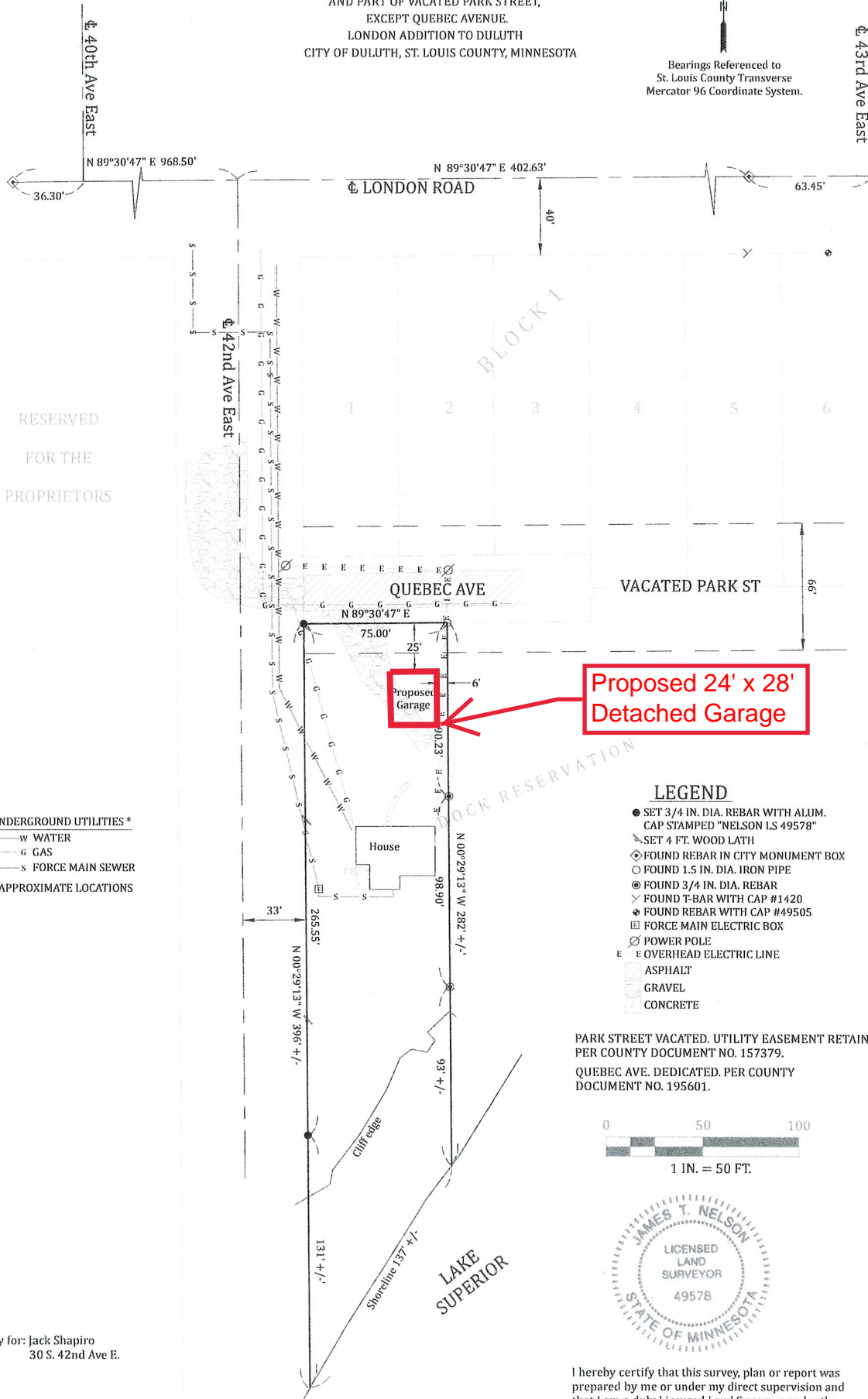
Prepared by: City of Duluth Planning & Economic Development, January 19, 2023. Source: City of Duluth.



# CERTIFICATE OF SURVEY

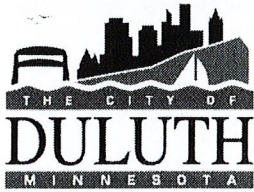
THE WEST 75 FT. OF DOCK RESERVATION  
AND PART OF VACATED PARK STREET,  
EXCEPT QUEBEC AVENUE.  
LONDON ADDITION TO DULUTH  
CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA

Bearings Referenced to  
St. Louis County Transverse  
Mercator 96 Coordinate System.



Survey for: Jack Shapiro  
30 S. 42nd Ave E.

SurveyScience Land Surveying, LLC  
Duluth, Minnesota  
(218) 428-4327



Planning & Development Division  
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Room 160  
411 West First Street  
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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"):

~~Chapter 50 Article IV, Section 50-23.3 Exceptions and Encroachments, and Table 50-21.1 Exceptions and Encroachments, Accessory Structures, a. relief from required front yard setback for an accessory structure in the R-1 zone and Shoreland Overlay District.~~

**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 subject property is a unique parcel among the other 14 parcels between 41st and 43rd Avenues east on the south (or Lake side) of London Road. Eleven (11) of the 14 parcels are developed, and nine (9) have London Road frontage and property access. South 42nd Ave east dead ends at the applicants north property line, but the platted ROW continues to the Lake. The roadway turns 90 degrees east and becomes Quebec Ave to the east line of parcel 010-3070-02655. The applicant's property is a corner lot.~~

**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 subject parcel is a corner lot with dedicated, but unimproved public right of way on the north and west sides of the lot. The UDC R-1 Zoning permits accessory structures with a 15 foot side yard setback and a 25 foot rear yard setback. However, Section 51-23.3 and Table 50.21.1.a-e. states; No Accessory Structure may be located between a street and facade of a primary building facing that street, or closer than 10 feet of a principle structure on any adjacent parcel, or closer than 5' to a rear property line, or closer than 3 feet to any side lot line.~~

**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 10 properties east, west, and north of 30 South 42nd Ave east, are an interesting mix of lot sizes and shapes all intended or working to preserve shoreland characteristics and existing views of Lake Superior. Of the 9 parcels between 41st Ave East and 43rd Ave East that front on London Road, 6 have shoreline frontage and unobstructed views of the lake. The corner lot on the west side of 42nd does not have shoreland frontage but the unimproved right-of way and undeveloped westerly side of the applicants lot provides an unobstructed view corridor and lake shore access for this property. On the south side of Quebec Ave, there are five (5) parcels, two (2) are developed and three (3) are vacant. The two (2) most easterly parcels are owned by properties that front on London Road. The second lot on the southside of Quebec Ave has two Accessory structures both of which are located in front of the facade of the primary structure and have minimal side and rear yard setbacks. These two accessory buildings obstruct the easterly view corridor of parcel 010-2960-00800.~~

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:**

~~The applicant has a practical difficulty using the west side of the lot for a 24' by 28' detached garage. At one time the property had a septic system. When the sanitary sewer was extended to the lot, the septic tank location became a wet well and pump housing, with a six inch force main pumping up gradient to the public sewer in 42nd Ave E. Building over the pressurized sewer pipe is not an option. The owner believes the optimum location for the new garage is the northeast corner of the property with a 6 foot side yard setback, and a 25' foot rear yard setback. The owner also has a practical difficulty with the topography on the west side of the lot, the land slopes sharply to the lake shore, and also slopes west to the undeveloped platted street right-of way, which also contains an intermittent drainage way.~~

**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 variance if granted would allow the applicant reasonable use of a unique R-1 property in the London Road/North Shore/I-35 Corridor and Lake Superior Shoreland Zone. The proposed 24' by 28' garage would impact/disturb less than 1,500 square feet of grassed area and off street parking area. The project will cause a spike in traffic on Quebec and 42nd Avenues during construction. The location will minimally impact 2 adjacent properties, one with temporary construction noise and one with minimal intrusion into existing view corridors. The structure will meet all current building codes and not present a fire danger to any existing occupied dwellings. The project will comply with all shoreland zone requirements for erosion control and stormwater containment and routing. When complete the project will not adversely impact the value of the adjacent properties or impact the health safety or public welfare 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:**

~~The requested variance is for a one half acre, corner lot, in the R-1 Zone, with 75 feet of frontage, on a public street, in a shoreland overlay zone, to allow an accessory structure. The proposed accessory structure will not be visible to other residential development facing London Road, and it will not be visible from the shoreline. The applicants plan has a minimal impact on two adjacent properties, and no impacts on 11 properties within 500 feet of the site. The project protects Lake water quality and shoreland character. The plight of the owner is strict interpretation regarding the applicability of 51-23.3, which only results in more practical difficulties for the owner and unnecessarily increases the cost of the project.~~

**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: \_\_\_\_\_

~~The proposed project meets the specific criteria of Subsection H. Variance to Reduce Setbacks, and Subsection L. Standards for Variances in Shorelands. A landscaping plan for the area between the proposed garage and the right-of-way for Quebec Ave is not required and existing vegetation will remain. The project will not compromise Section 50-18.1 D or result in Adverse Consequences to the environment. Subsection C. Variance Criteria: 1. The location, size and slope of the applicant's land creates unique circumstances warranting a variance. 2. The plight of the owner is due to circumstances unique to the property and are not created by the applicant/owner. 3. The special circumstances and conditions applying to this property are peculiar to the site and do not generally apply to other land and buildings in the vicinity. 4. The owner proposes to use the property in a reasonable manner not permitted by the code. 5. Relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase congestion on public streets, or the danger of fire or imperil public safety, or unreasonably diminish or impair established property values within surrounding areas. or in any other~~



**JACK E. SHAPIRO VARIANCE APPLICATION**

**ADDITIONAL PAGE TO VARIANCE APPLICATION SUPPLEMENTAL FORM, PAGE 2, ITEM IS UNNUMBERED FOLLOWING #6 OF THE FORM.**

**DOES THE VARIANCE REQUEST NEED TO MEET ANY OF THE SPECIFIC CRITERIA IN UDC SECTION 50-39.9, SUBSECTIONS D THROUGH M. etc.**

SUBSECTION C. GENERAL VARIANCE CRITERIA: CONTINUED FROM THE BOTTOM OF PAGE 2.

respect impair the health, safety or public welfare of the inhabitants of the city.

6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map, and will not alter the essential character of the locality.

7. Relief does not allow any type of sign that is not allowed in the zone district where the property is located pursuant to Section 50-27.

8. The relief complies with any additional limitations or criteria applicable to that variance in Subsections D through M.

9. Economic considerations alone do not constitute a practical difficulty.



## Kyle Deming

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**From:** Jack Shapiro <>  
**Sent:** Thursday, January 19, 2023 4:58 PM  
**To:** Kyle Deming  
**Subject:** Variance Request – 30 S 42nd Avenue East, Duluth, MN

Dear Mr. Deming,

The following is some supplemental information pertaining to the above captioned matter that I thought may give you additional insight.

It is my understanding the forced main sewer line extending from the holding tank (wet well and pump housing) on the west side of the dwelling is shallow in nature due to the subsurface soil conditions. The aforementioned was related to me by the contractor who installed the sewer line.

Duane Peterson, Superior Construction said although it is possible to install a driveway above such conditions, it is highly inadvisable due to potential recurring winter frost problems. Bill Bergstrom from City Engineering preferred the term “Not ideal” and concurred with a location that would not incur such potential problems.

Feel free to contact me if you need any additional information or have any more questions or concerns.

Sincerely,

Jack

Jack Shapiro