



**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 24-002	<b>Contact</b>	Jason Mozol, jmozol@duluthmn.gov	
<b>Type</b>	Variance from shoreland setback	<b>Planning Commission Date</b>	February 13, 2024	
<b>Deadline for Action</b>	<b>Application Date</b>	January 4, 2024	<b>60 Days</b>	March 4, 2024
	<b>Date Extension Letter Mailed</b>	January 12, 2024	<b>120 Days</b>	May 3, 2024
<b>Location of Subject</b>	9502 Congdon Blvd			
<b>Applicant</b>	Matt and Peggy Van Hoomissen	<b>Contact</b>		
<b>Agent</b>	Jody Keppers	<b>Contact</b>		
<b>Legal Description</b>	010-0300-01160	<b>Sign Notice Date</b>	January 22, 2024	
<b>Site Visit Date</b>	January 31, 2024	<b>Number of Letters Sent</b>	15	

**Proposal**

The applicant is requesting a variance to reduce the 75' structure setback from natural environment waters (50-18.1.D-1). The applicant is proposing to reduce the setback by 75' to 61'.

**Staff Recommendation**

Staff recommends that the Planning Commission approve the variance.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	RR-2	Residential	Rural Residential/Open Space
<b>North</b>	RR-2	Residential	Rural Residential/Open Space
<b>South</b>	N/A	Lake	N/A
<b>East</b>	RR-2	Residential	Open Space
<b>West</b>	RR-2	Residential	Rural Residential/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. 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 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):**

#10 Take actions that enhance the environment, economic and social well-being of the community. The buffer area between the creek and the existing structure will be increased from 46' to 61' for the proposed structure.

Future Land Use

Rural Residential: Areas of single-family lots of at least five acres. Limits the extension of municipal utilities for new development. Includes existing rural density areas with lots as small as an acre now served by municipal utilities but not planned for further subdivision.

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.

History

The property contains a 425 square foot home built in 1948 and an existing 25'x25' garage.

**Review and Discussion Items:**

- 1) The applicant is seeking a variance to reduce the 75' shoreland setback to 95<sup>th</sup> Ave e Creek to build a principal structure.
- 2) The applicant is proposing to construct a three-bedroom, single-family home with an attached garage. The total building footprint will be 2,141 sq ft and reduce the shoreland setback to 61'. The existing home and garage will be removed.
- 3) Staff finds the applicant has practical difficulty due to the small, irregular building area available after accounting for setbacks from the front and side of the property and the adjacent creek. The applicant is proposing to use the property in a reasonable manner by constructing a three-bedroom home.
- 4) As required by Section 50-37.9.L, the applicant must mitigate impacts to shoreland areas and maintain a 50' vegetative buffer in the shore impact zone. The applicant has submitted a landscaping plan that largely improves the current conditions by installing a concrete revetment along Lake Superior to stabilize an eroding shoreline and replaces the turf yard with native plants. The applicant has proposed to remove a stand of 16 conifers; however, 14 of the trees in the stand are in the 50' shore impact zone and removal is in conflict with Section 50-18.1.D-2.e. Removal of the two trees outside the shore impact zone is allowable. Staff recommends that, during construction, the applicant install fencing or similar product outside the root zone of the 14 trees to ensure protection from construction equipment and digging. The variance approval is conditional to preservation of the 14 trees in the shore impact zone.
- 5) The revetment has been permitted by the MN DNR and other City departments.
- 6) The applicant's practical difficulty was not created by the landowner but rather is due to the way the property was initially developed and its proximity to Lake Superior and the adjacent creek.
- 7) The variance will not alter the essential character of the neighborhood where there are a number of homes of similar size.
- 8) The variance allowing a reduction of a setback will not impair an adequate supply of light and air to adjacent properties.
- 9) The proposal will not increase congestion in public streets or unreasonably diminish or impair established property values within the surrounding areas.
- 10) One comment was received from the public in support of the project. No comments from outside agencies or the City were received.
- 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 the Planning Commission approve the variance with the following conditions:

- 1) The project be limited to the plans submitted with the proposed home no closer than 61' from the ordinary high water line of 95<sup>th</sup> Ave E Creek.
- 2) Existing trees within 50' shore impact zones of Lake Superior and 95<sup>th</sup> Ave E Creek may not be removed.
- 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.



PL24-001 and PL24-002  
 9502 Congdon Blvd  
 Front Yard and Shoreland Variances



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, October 23, 2023; Source: City of Duluth

**PRELIMINARY -  
NOT FOR  
CONSTRUCTION**

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IF THE ADJACENT DIMENSION DOES NOT MEASURE ONE INCH (1") EXACTLY, THIS DRAWING WILL HAVE BEEN ENLARGED OR REDUCED, AFFECTING ALL LABELED SCALES

**Van Hoomissen**  
9502 Congdon Blvd Duluth MN 55804

ISSUED:  
2023-10-18 PRELIM  
2023-11-21 OHWL  
2023-11-22 OHWL-SETBACKS  
2023-11-29 OHWL  
2023-12-12 Prelim Bldg  
2023-12-15 Prelim  
2023-12-18 Prelim  
2023-12-19 Prelim  
2023-12-27 Prelim  
2023-12-28 Prelim Vegetation Plan  
2024-01-05 Variance

Cover Sheet and Site Plan

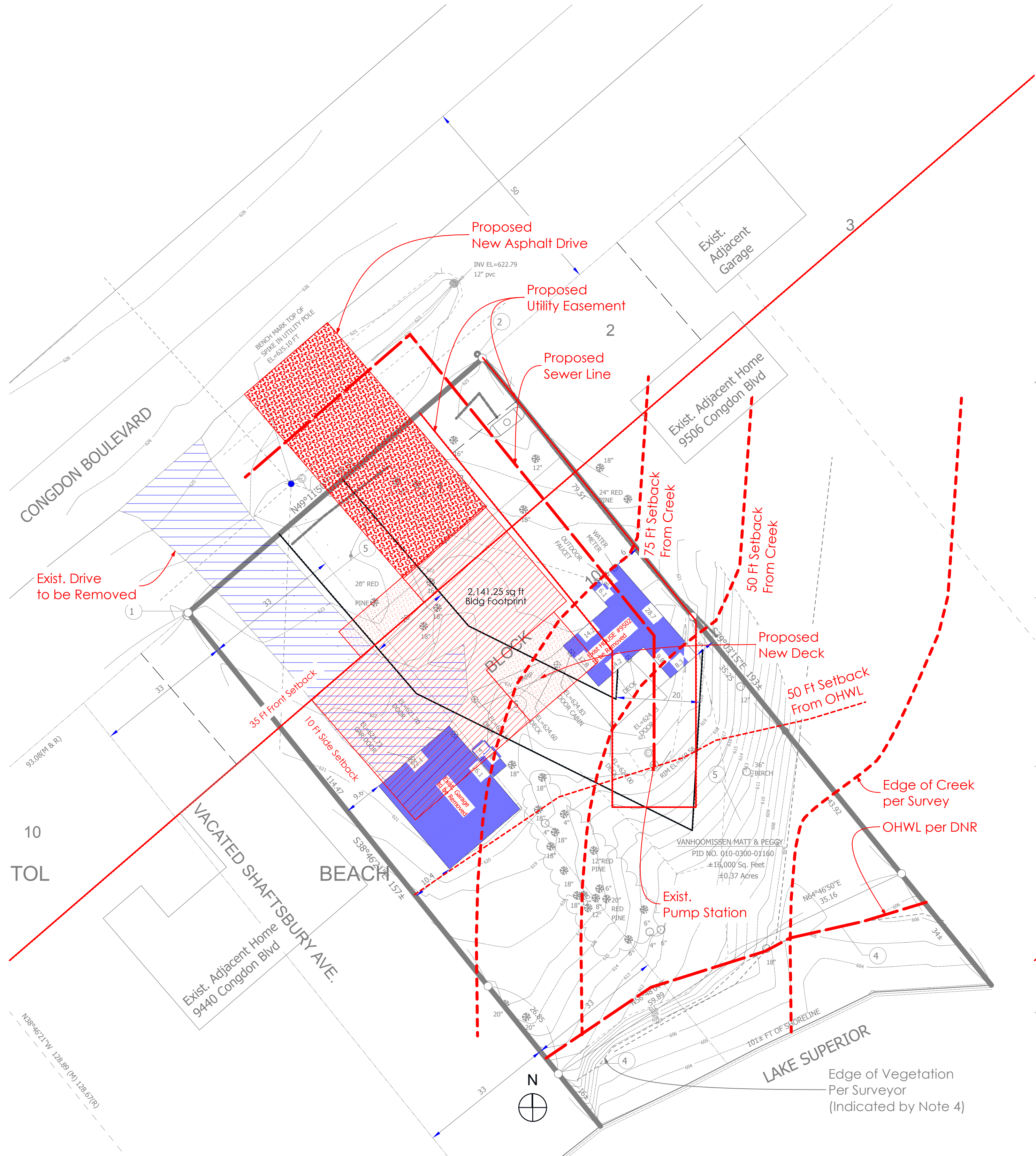
Van Hoomissen.pln

**A001**

ID: 2023008 Printed: 1/5/24

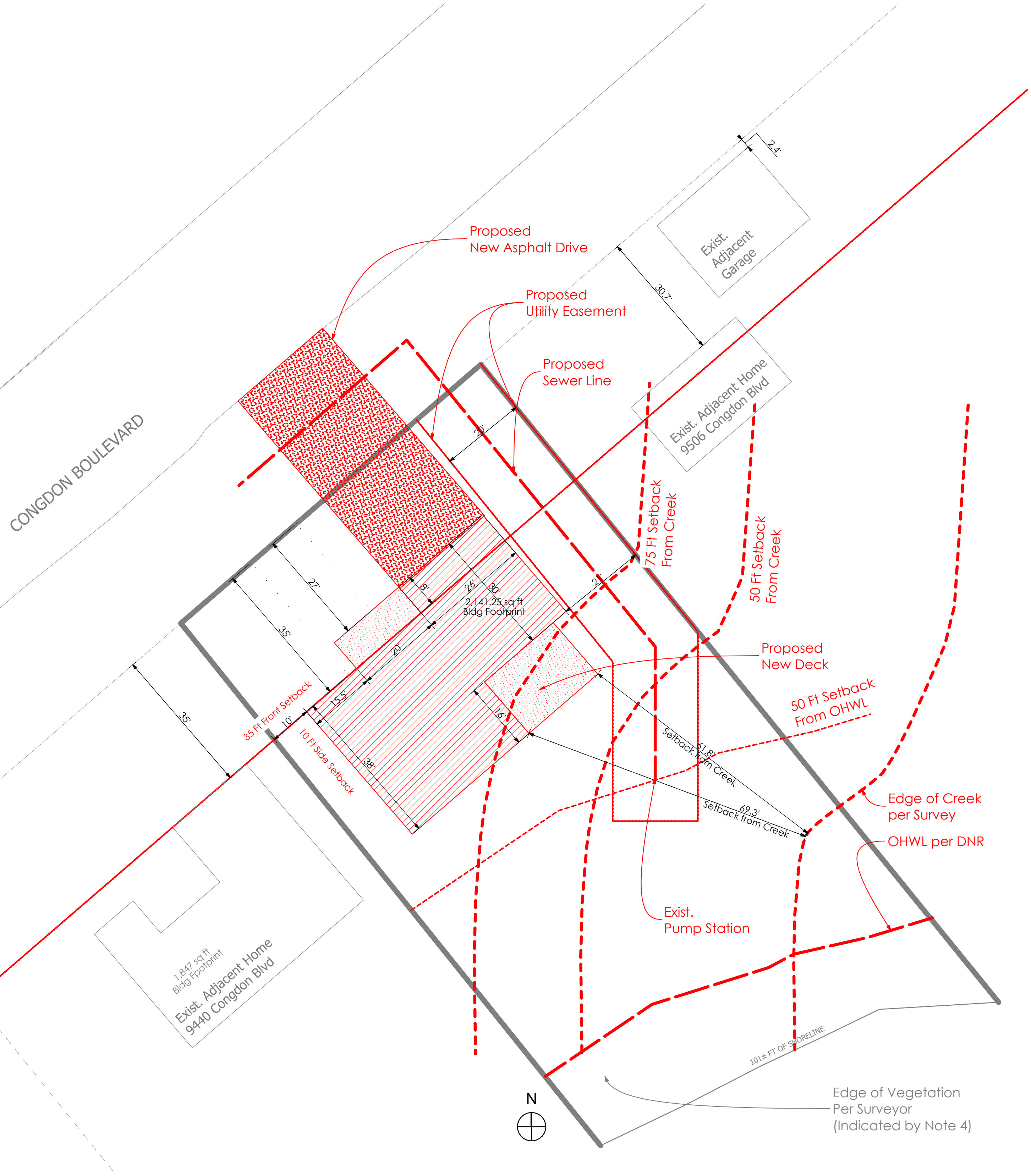
LEGEND	
	BITUMINOUS SURFACE
	EXISTING BUILDINGS
	LP GAS TANK
	(M)-FIELD MEASURED DIMENSION (R)-RECORD DIMENSION
	TOE OF BANK OR GRADE BREAK
	TOP OF BANK OR GRADE BREAK
	TREE/BRUSH LINE
	FENCE LINE
	OVERHEAD UTILITIES
	DITCH/SWALE
	SHORELINE
	CENTER LINE
	RIGHT OF WAY LINE
	EXISTING EASEMENT LINE
	SURVEY LINE
	BOUNDARY LINE AS SURVEYED
	EXISTING PLAT LINE
	VEGETATION LINE
	TELECOM PEDESTAL
	CONIFEROUS TREE
	DECIDUOUS TREE
	SPOT ELEVATION
	REFER TO SURVEYOR'S NOTES
	FOUND CHISELED X
	FOUND T-STAKE MONUMENT
	FOUND 3/4" REBAR
	SET CAPPED REBAR RLS. NO. 49505
	ELEC PEDESTAL
	ELEC METER
	UTILITY POLE
	MISC MANHOLE
	CULVERT

Variance	
Site Plan and Schedules	
A001	Cover Sheet and Site Plan
A002	Survey
A003	Vegetation Concept Plan
Plans	
A101	Ground Level Plan
A102	Upper Level Plan
Exterior Elevations	
A201	Exterior Elevations
A202	Exterior Views



**1**  
A001  
Site Plan with Setbacks  
SCALE: 1/16" = 1'-0"  
0 8' 16' 32'

Legal description: Bristol Beach 1st Division, Block 10 Lot 01  
Property ID: 010-0300-01160  
Address: 9502 Congdon Blvd



**2**  
A001  
Proposed Setback Plan  
SCALE: 1/16" = 1'-0"  
0 8' 16' 32'

## Jason Mozol

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**From:** Sue Allen <[REDACTED]>  
**Sent:** Saturday, January 27, 2024 7:57 AM  
**To:** planning  
**Cc:** [REDACTED]  
**Subject:** PL24-001, PL24-002

We live adjacent to the property seeking the variances. We fully support the variances and ask that the Planning Commission grant their request.

The new owners have been transparent with us about their plans. They have also been incredibly thoughtful as they designed their new home in order to minimize variances as much as possible. In fact the home currently existing on the lot is 100% in the 95th St. Creek shoreline setback. It seems to us that their proposal is a more prudent lot layout.

The new owners are bringing a much needed upgrade to the lot and the neighborhood. We fully support their proposal and ask you to approve their request.

Suzanne and James Allen  
9440 Congdon Blvd  
Duluth