



**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 20-151	Contact	Kyle Deming, <a href="mailto:kdeming@duluthmn.gov">kdeming@duluthmn.gov</a>	
Type	Variance – fence setback, height, and transparency	Planning Commission Date		October 13, 2020
Deadline for Action	Application Date	September 15, 2020	60 Days	November 15, 2020
	Date Extension Letter Mailed	October 6, 2020	120 Days	January 13, 2021
Location of Subject		460 Jean Duluth Rd. (Hunters Park)		
Applicant	Paul Miner	Contact		
Agent	Hanft Fride P.A.	Contact	William Burns/Terri Crossmon	
Legal Description		See attached (010-3330-01520)		
Site Visit Date	October 2, 2020	Sign Notice Date		September 29, 2020
Neighbor Letter Date	October 2, 2020	Number of Letters Sent		28

**Proposal**

Three variances related to the infilling of a legal, nonconforming fence along the street easement for Skyline Parkway:

1. Transparency – fences that exceed the elevation of Skyline Parkway plus 3 feet must be at least 75% transparent and the proposed fence infill is to be 100% opaque like the existing fence.
2. Setback – fences are to be 3 feet back from the street easement line and the proposed fence infill is to be at the easement line in alignment with the existing fence.
3. Height – opaque fences between the house and street are required to be less than 4 feet tall and the proposed fence infill is to match the existing fence at that location, which is 5 feet – 8 inches tall.

**Recommended Action:** Approve variance with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1, Skyline Pkwy Overlay	Dwelling	Open Space
<b>North</b>	R-1, Skyline Pkwy Overlay	Vacant/Undeveloped	Traditional Neighborhood
<b>South</b>	R-1	Dwellings	Traditional Neighborhood
<b>East</b>	R-1, Skyline Pkwy Overlay	Vacant/Undeveloped	Open Space
<b>West</b>	R-1, Skyline Pkwy Overlay	Vacant/Undeveloped	Open Space

**Summary of Code Requirements**

Sec. 50-18.4.D.7 – “All portions of a fence located within 50 feet of horizontal distance from the property line along Skyline Parkway and extending more than three feet above the elevation of the centerline of Skyline Parkway shall be at least 75 percent transparent. No more than 25 percent of the area bounded by the top, bottom, and sides of the fence may be constructed of solid or opaque materials.”

Sec. 50-21.3 – “Fences may not be located closer than 3 ft. to any publicly maintained right-of-way and meet the standards of 50-26.4.”

Sec. 50-26.4.A.1(a) – “No fence or wall located between the principal structure on a lot and the front property line shall exceed four feet in height. If a fence is constructed with an ornamental material, such as wrought iron, a six foot high fence may be allowed with an approved zoning permit provided that the fence is at least 50 percent open or transparent.”

Sec. 50-37.9. B – Variance Procedures. “The Planning Commission shall...make a decision on the application based on the criteria in subsections 50-37.9. C – M...”

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 for 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.

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

Governing Principle #5 – Promote reinvestment in neighborhoods.

Housing Policy #4 – Improve the quality of the city’s housing stock and neighborhoods

Zoning – Residential-Traditional (R-1): traditional neighborhoods of single-family, duplexes and townhouses on moderately sized lots. Intended to be used primarily in established neighborhoods. Dimensional standards require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas.

Zoning – Skyline Parkway Overlay - The purpose of this Section is to protect the unique character and visual qualities of Skyline Parkway as documented in the Skyline Parkway corridor management plan and the comprehensive land use plan while protecting the property rights of private property owners affected by these regulations. One key purpose is to protect views from Skyline Parkway toward Lake Superior, the St. Louis River, and the harbor, from a wide variety of vantage points along the Parkway and to encourage the construction of narrower buildings located farther from the Skyline Parkway rather than wider buildings located closer to the parkway;

Future Land Use – 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. Low intensity uses such as trails and recreation, viewshed protection and access, water access, with some parking and support facilities

Future Land Use – Traditional Neighborhood - Characterized by grid/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. 4-8 units/acre, mix of housing types (i.e. town homes and 4-plexes).

#### **Review and Discussion Items**

Staff finds that:

- 1) The applicant’s dwelling and yard is separated from Skyline Parkway by masonry fence built at the street easement line that is 5 feet – 8 inches tall. This fence has two gaps in it that allow access via a semi-circular driveway and the proposal is to close off one leg of the driveway and to infill the wall at the same height and in alignment with the existing, legal nonconforming fence.
- 2) The property is zoned R-1, Residential-Traditional, which limits the height of an opaque fence to 4 feet and requires it be setback from the street easement 3 feet. The property is also in the Skyline Parkway Overlay which is intended to preserve views of the lake through a number of means relating to structures placement, including limiting the height of opaque fences to less than 3 feet above Skyline Parkway elevation and requiring any fences that exceed Skyline Parkway +3 feet to be no more than 75% opaque.

3. The applicant is proposing to use the property in a reasonable manner through simplifying their property access and providing additional screening to their property at the corner of Jean Duluth Rd., an arterial roadway with moderate traffic levels at times. In addition, it is reasonable to do the screening via infilling the existing legal, nonconforming fence in alignment with the rest of the fence that extends across 280 feet of their property along the street.
4. This property is unique to this 0.8 mile long segment of Skyline Parkway (that is also Jean Duluth Rd.) from Lakeview Ave. to Glenwood St. in that is the only home on the lake side of the Parkway. The uniqueness extends to the location on a corner and the need to provide appropriate screening from traffic.
5. The need for the variance, while being undertaken by the current landowner, is not the result of the landowner's actions since the opaque fence was constructed long before the fence setback and Skyline Parkway Overlay requirements were enacted in 2010. The infilling in alignment with the existing fence is a normal design response, though not the only option. The applicant considered (see Page 2 of the attached 9/18/2020 letter from Bill Burns) providing the screening via a means that would comply with the viewshed and setback ordinance requirements and estimated the cost at 2-3 times the cost of the current proposal.
6. Modifying the location of the existing fence, rather than constructing the infill segment as proposed, would constitute a practical difficulty as it would require extensive topographic modifications to the applicant's property to provide for usable yard area, and would result in unnecessary destruction of existing trees and vegetation that would otherwise be preserved.
7. Granting the variance will not alter the essential character of the area since the view to Lake Superior is already obstructed by the position of the home when viewed through the gaps in the fence and the fence itself. Additionally, the proposed infill will be the same material and height and will be in line with the existing fence.
8. Granting the variances won't affect access to light and air for surrounding properties due to the quantity of open space surrounding the property. Additionally, the variance won't affect the provision of emergency services to the public and it will reduce potential traffic congestion by eliminating one of the driveways on to Jean Duluth Rd.
9. The variance, if granted, would not impair established property values in the surrounding area since the fence does not impact private property views.
10. The variance, if granted, would not impair the intent of the UDC expressed in Sec. 50-2. The variance is consistent with the Comprehensive Plan designation of the property as Traditional Neighborhood and housing policy that seeks to foster opportunities for creative housing types and concepts.
11. No additional landscaping is recommended as mitigation for the reduced setback per Sec. 50-37.9. H since landscaping is not required for one-family dwellings.
12. One comment from a neighbor, no City staff, or any other comments were received regarding the application.
13. 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 according to plans provided by the applicant;
- 2) 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.



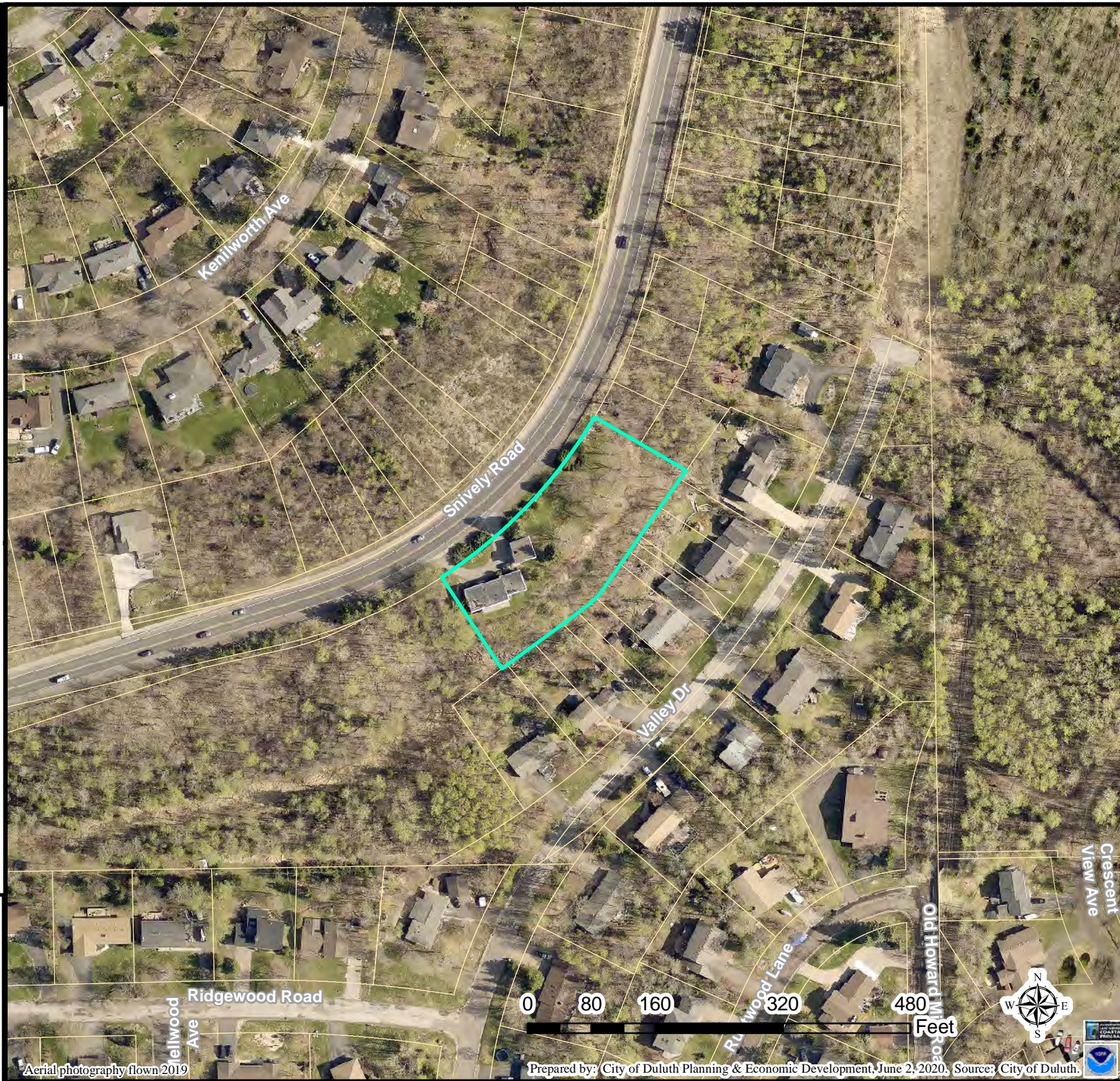


PL 20-151  
460 Jean Duluth Rd.  
Fence Variance

**Legend**

- Subject Parcel
- Parcel Boundaries

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.







PL 20-151  
460 Jean Duluth Rd.  
Fence Variance

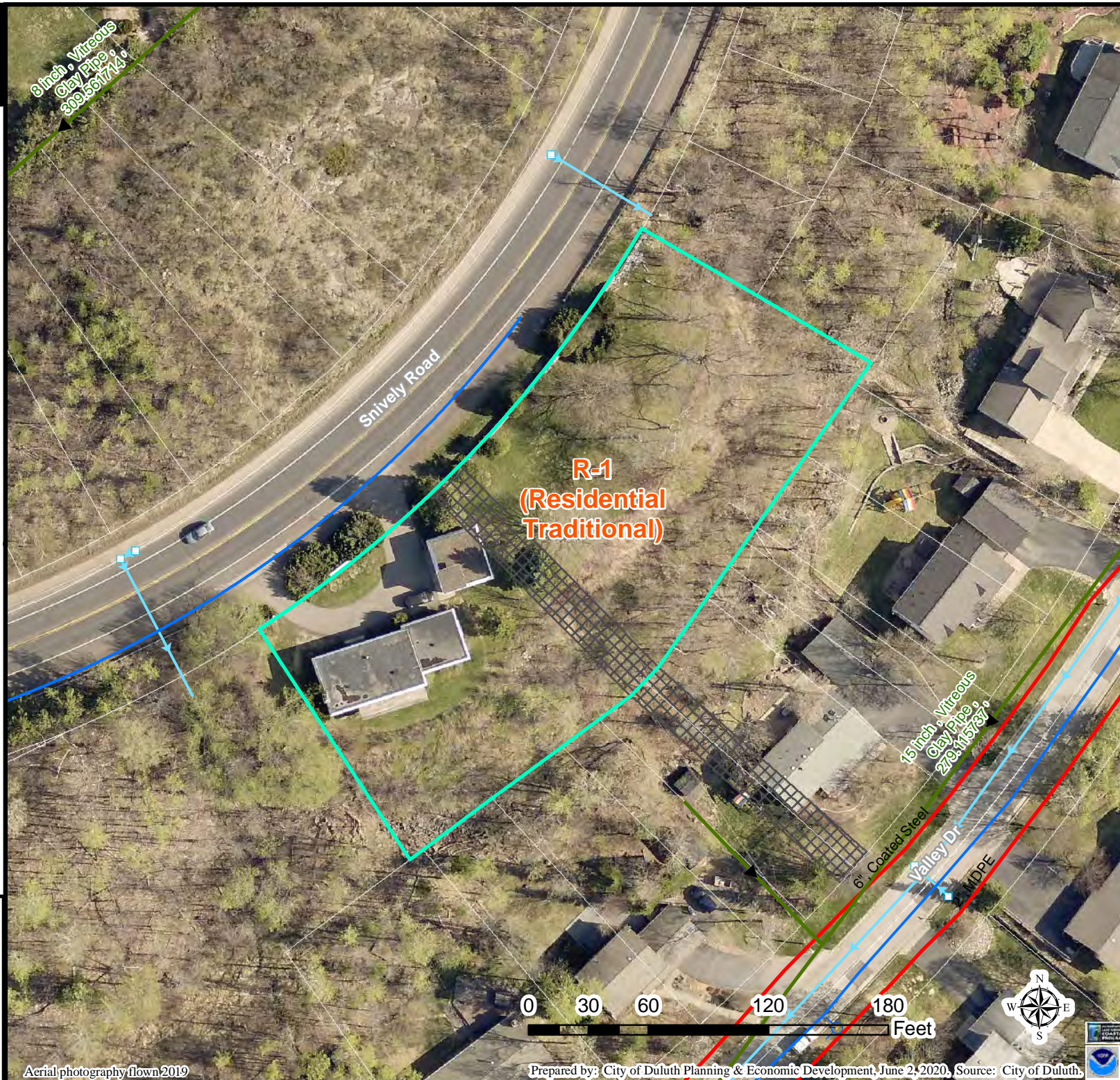
**Legend**

- Subject Parcel
- Gas Main
- Water Main
- Hydrant

**Sanitary Sewer Mains**

- CITY OF DULUTH
- Storm Sewer Mains
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Vacated ROW
- Zoning Boundaries

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A PROFESSIONAL ASSOCIATION

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☐ REPLY TO CLOQUET OFFICE

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September 18, 2020

GILBERT W. HARRIES\*  
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JOHN D. KELLY\*  
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R. THOMAS TORGERSON\*  
CHERYL M. PRINCE\*  
ROBIN C. MERRITT\*  
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RICHARD R. BURNS,\* OF COUNSEL  
CHARLES H. ANDRESEN, OF COUNSEL

\*ALSO ADMITTED IN WISCONSIN

**Via Email Only**

Ms. Jenn Reed Moses  
City of Duluth Planning Division  
411 West First Street, Room 110  
Duluth, MN 55802

Re: Paul Miner Variance/460 Jean Duluth Road  
Our File No. 33954.000

Dear Jenn:

I am following up here to address questions regarding the nature of the variance application which we filed on behalf of Paul Miner. Mr. Fulton suggested that I might write you to add some clarity and perhaps better define our position, and I am happy to do so. Here is exactly what is contemplated:

1. Do keep in mind that the applicant has significantly modified design of this home, grandfathered as is, to eliminate any need for variances with respect to the structures on the property. You have been very helpful in simplifying these issues and in assisting us to move into compliance.
2. The existent fence/wall will not be replaced. Per the UDC, it will be repaired in place but not rebuilt and no change in height will occur. We all agree that it was a legal fence/wall when built and is totally grandfathered.
3. There are currently two entrances to the property off the busy road in front. They are shown in the pictures which are a part of the enclosed application. The only request here is to in-fill one of these two openings. That request requires a variance because even though the fence/wall is totally grandfathered, the two gaps could not be filled in without a variance because of the current setback requirements. This extension, however, is just a continuation of the existing fence/wall.

September 18, 2020

Page 2

4. Since there is no viewshed here because of the legal grandfathered wall and the dense foliage, there is no public entrance to protect and the in-fill will serve the public in fact by eliminating a curb cut on the busy road.
5. Based on the application and the above, we believe that the practical difficulty test that is part of your variance standards is easily met here. To achieve the result of appropriately eliminating this curb cut, without impacting the viewshed, the property owner would need to construct a fence/wall of two or three times the length of the in-fill area three feet from the property line. This would be an inordinate expense given the insignificant/no impact of the in-fill itself. There would be no betterment to the property or the grandfathered situation from this, but there would be significant more cost and a less attractive aesthetic situation.

The cost of the alternative wall is estimated at roughly three times the cost of the in-fill. The in-fill wall would be at the same height and have the same appearance as the existing fence/wall.

You have heard my position before with respect to practical difficulties. We believe that is more fairly interpreted as does it make sense to do it the way the Code may dictate or more sense to do it in another way that requires a variance but does not run into any of the basic philosophies of the Code and is more efficient and has no impact on the neighborhood. We feel that test is clearly met here.

Please contact me if there are any further questions or if you need additional information.

Very truly yours,

A handwritten signature in blue ink that reads "Bill".

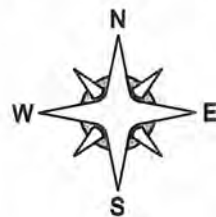
William M. Burns

WMB:dar

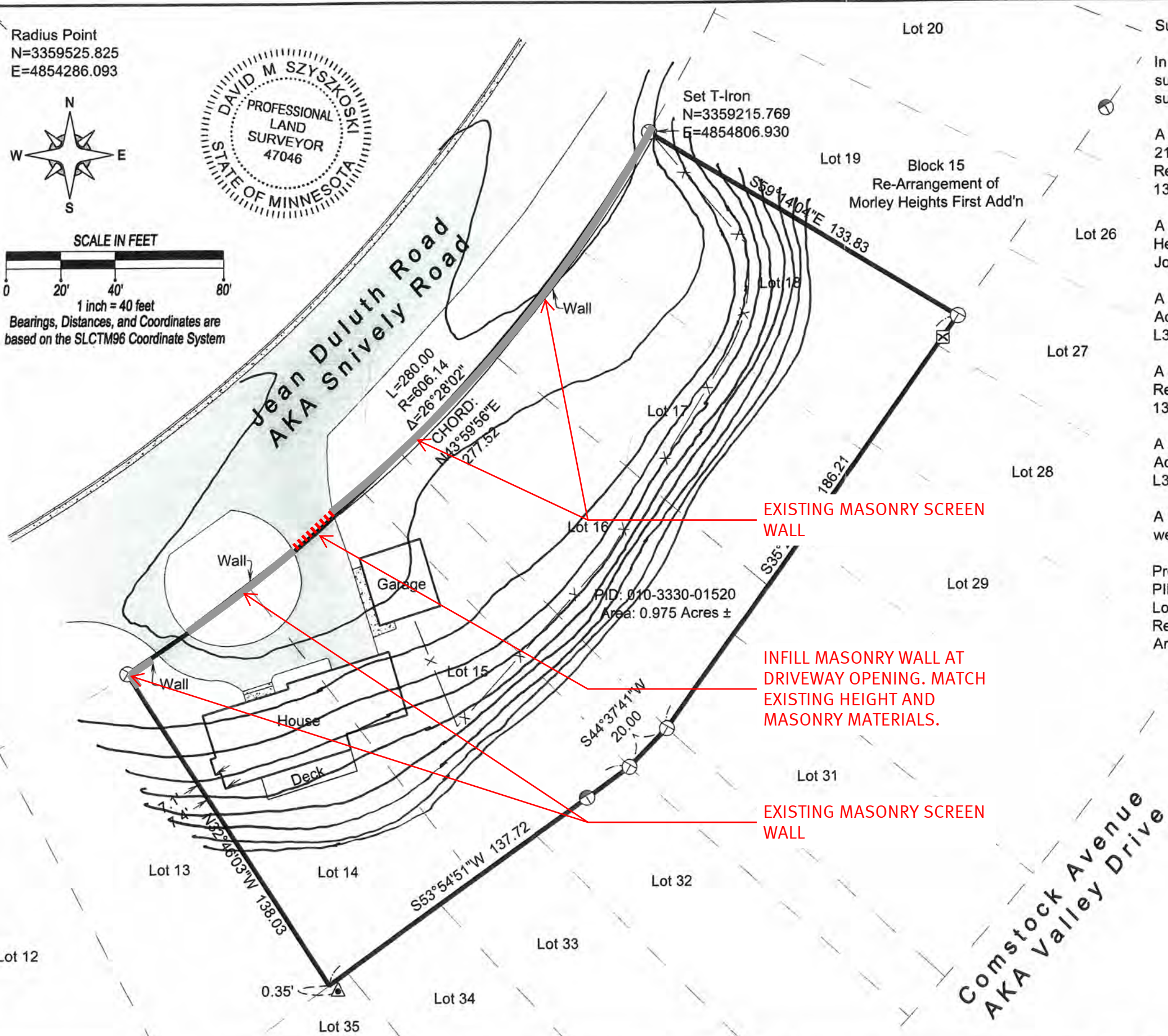
c: Kyle Deming  
Adam Fulton



Radius Point  
N=3359525.825  
E=4854286.093



SCALE IN FEET  
0 20' 40' 80'  
1 inch = 40 feet  
Bearings, Distances, and Coordinates are based on the SLCTM96 Coordinate System



Surveyors Notes:

In addition to "Re-Arrangement of Morley Heights First Add'n", the following surveys were researched and retraced as a part of performing this boundary survey:

A survey of Lot 23, Lot 24, the North Half of Lot 25, the Easterly Half of Lots 21 & 22, and the North Half of the East Half of Lot 20, all in Block 15, Re-Arrangement of Morley Heights First Add'n, by Dale L Berntsen, MN PLS 13794, Salo Engineering Job Number L3320, dated 5/17/1988

A survey of the North line of Lot 28, Block 15, Re-Arrangement of Morley Heights First Add'n, by Dale L Berntsen, MN PLS 13794, Salo Engineering Job Number L3321, dated 5/17/1988

A survey of Lot 35 & 36, Block 15, Re-Arrangement of Morley Heights First Add'n, by Dale L Berntsen, MN PLS 13794, Salo Engineering Job Number L3391, dated 11/27/1989

A survey of the Westerly 23 feet of Lot 32 and all of Lots 33 & 34, Block 15, Re-Arrangement of Morley Heights First Add'n, by Dale L Berntsen, MN PLS 13794, Salo Engineering Job Number L3505, dated 5/18/1992

A survey of part of Lot 30, Block 15, Re-Arrangement of Morley Heights First Add'n, by Dale L Berntsen, MN PLS 13794, Salo Engineering Job Number L3644, dated 9/1/1994

A total of fourteen pins set, found or referenced on the above mentioned jobs were found and used for this boundary computation.

Property Information

PID: 010-3330-01520  
Lots 14, 15, 16, 17, 18, and part of vacated alley adjacent, Block 15, Re-Arrangement of Morley Heights First Add'n  
Area: 0.975 Acres ±

LEGEND

- PROPERTY LINE
- PLAT LINE
- FENCE
- BITUMINOUS
- CURB AND GUTTER
- CONCRETE
- FOUND CHISELED "X" IN ROCK
- FOUND TEE W/ CAP NO. 13794
- FOUND NAIL IN ROCK
- SET TEE W/ CAP NO. 47046

4560 Norway Pines Place  
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tkda.com

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, 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.

DATE 8/21/2014

DAVID SZYSZKOSKI

MINNESOTA LICENSE NUMBER 47046

1  
2  
3

NO  
DATE

REVISION

Boundary Survey of Lots 14, 15, 16, 17, 18, and part of vacated alley adjacent, Block 15, Re-Arrangement of Morley Heights First Add'n, Section 12, T50N, R14W, St. Louis County, MN  
For: Paul Miner

JOB NO. 15513.070

FILE NO. L4749

DATE OF FIELD WORK: 8/20/14



EXISTING MASONRY  
SCREEN WALL

INFILL MASONRY  
WALL AT DRIVEWAY  
OPENING. MATCH  
EXISTING HEIGHT  
AND MASONRY  
MATERIALS.









**From:** [planning](#)  
**To:** [Kyle Deming](#)  
**Subject:** FW: Variance for 460 Jane Duluth Road  
**Date:** Tuesday, October 6, 2020 12:26:22 PM

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**From:** Mike Seyfer <mseyfer@haileysault.com>  
**Sent:** Tuesday, October 6, 2020 11:23 AM  
**To:** planning <planning@DuluthMN.gov>  
**Subject:** Variance for 460 Jane Duluth Road

Good morning:

Thank you for the notice of the hearing regarding the variance for 460 Jean Duluth Road. I am familiar with the property, as we live immediately below it on Valley Drive. If what you are describing as filling the eastern driveway entrance at the same height, and same distance from the road, then I do not see any reason the variance shouldn't be approved.

Thank you.

Mike Seyfer  
Partner | [Hailey Sault](#)  
(c) 218-340-4791