



Staff Report for PLVAR-2602-0003

Application Information:

Application Type: Shoreland Variance

Location of Subject: 3821 W 7th St

Legal Description: 010-0480-02860

Applicant: Randy Gafner

Applicant Contact: n/a

Agent: n/a

Agent Contact: n/a

Staff Contact: Reina Owecke, rowecke@duluthmn.gov

Deadline for Action:

Application Date: May 5, 2026

Date Extension Letter Mailed: May 6, 2026

60 Days: July 4, 2026

120 Days: September 2, 2026

Site Visit Date: June 1, 2026

Sign Notice Date: May 26, 2026

Neighbor Letter Date: May 20, 2026

Number of Letters Sent: 53 Letters

Proposal:

The applicant is seeking a variance from shoreland setbacks from the required 150' to 27' for an existing chain link fence.

Recommended Action:

Staff recommends that the Planning Commission approve the variance with conditions.

Zoning and Land Use:

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Residential	Traditional Neighborhood
West	R-1	Residential	Open Space

Summary of Code Requirements:

UDC Section 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 practical difficulties. The Planning Commission must find the following for a variance to be granted:

1. That the landowner is proposing to use the property in a reasonable manner;
2. That the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner;
3. That granting the variance will not alter the essential character of the area;
4. That granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

UDC Section 50-37.9.L – Standards for Variances in Shorelands: No variance shall be granted that compromises the general purpose or intent of Section 50-18.1.D or result 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):

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: The property is currently occupied by a single-family home. In 2019, the property owner installed a chain link fence in the rear yard without permits, as the fence is 4 feet tall and didn't require a fence permit. A zoning enforcement case was opened in December of 2024 after a complaint was received concerning the placement of the fence within the shoreland setback. Staff conducted site visits and confirmed that the fence was located within the regulated shoreland setback area.

Review and Discussion Items:

Staff finds:

1. The applicant is seeking a shoreland variance from minimum shoreland standards so that an existing chain link fence can remain and come into compliance.
2. The applicant requests to reduce the required structure setback for Coldwater Rivers from 150' to 27'.
3. A zoning enforcement case was created in December of 2024 after a complaint was received regarding the location of the fence. It was confirmed that the fence was located within the 150' shoreland setback. After warning letters were sent, and a citation was issued, the variance request was submitted to bring the fence into compliance. Without a variance request, the property owner would either continue to receive citations from our office or be required to remove the fence.
4. Variance Criteria #1 (exceptional narrowness, shallowness, or shape): The subject property exhibits unique constraints due to the location of the Ordinary High Water Level. The entire property lies not only within the shoreland area but within the 150' setback. Strict application of the standard shoreland setback requirements would limit reasonable use of the property.
5. Variance Criteria #2 (circumstances unique to the property, not created by the property owner): The circumstances necessitating the shoreland variance are unique to the property and were not created by the property owner. The extent of the shoreland setback from Merritt Creek, across the entirety of the property, creates unique site constraints that limit feasible fence placement in the rear yard area.
6. Variance Criteria #3 (circumstances are peculiar to this property and do not apply generally to other land or buildings): The proximity to Merritt Creek, and the unusually deep reach of the shoreland setback across the lot creates conditions not generally shared by surrounding properties. These physical characteristics are peculiar to this site and directly limit where a fence can be placed.
7. Variance Criteria #4 (proposes to use in a reasonable manner not permitted by code): The existing fence represents a reasonable residential use that is typical for properties in the district, providing safety and enclosure without altering natural features. Allowing this low-impact structure to remain in its existing location constitutes a reasonable use of the property.
8. Variance Criteria #5 (not impair light/air, increase congestion, or impair public safety or property values): The fence is a low-profile structure that does not obstruct light or air, affect traffic or access, or create any public safety concerns. Because it is typical of residential properties and does not alter views, the fence is not expected to negatively impact property values or the surrounding area.
9. Variance Criteria #6 (will not impair the intent of this Chapter or alter the essential character of the locality): Allowing the existing fence to remain will not impair the intent of the UDC, as it does not disturb vegetation,

alter drainage, or affect the ecological function of the shoreland area. The fence is typical of residential properties in the neighborhood, so it will not alter the essential character of the locality.

10. Standards for variances in shorelands (does not compromise intent of shoreland regulations and mitigates impacts). The proposed shoreland variance will not result in adverse consequences. The applicant will create a “no-mow” area between the fence and the Ordinary High Water Level which will remain undisturbed and will allow for natural growth along the creek bank. Although the fence is located within the flood fringe of Merritt Creek, after communication with the DNR, it was determined that the location of the fence will not affect the 1% annual chance flood elevation or the carrying capacity of the associated flood plain.
11. Variance criteria #7-9 do not apply to this application.
12. One public comment was received that was in opposition of the requested shoreland variance stating that the required shoreland setback is vital in maintaining the integrity of Merritt Creek. No other City, agency, or public comments were received.
13. Staff find that the applicant has demonstrated practical difficulty due to the necessity of bringing the existing fence into compliance. Strict compliance with the shoreland setback would prevent reasonable use of the property.
14. Per UDC Section 50-37.1.N, approved variances lapse if the project or activity authorized by the permit has not begun within one year.

Staff Recommendation:

Based on the above findings, Staff recommends that Planning Commission approve the variance request with the following conditions:

1. The project be constructed according to the survey and mitigation plan that was submitted with this application.
2. Applicant shall place permanent signage designating the “no-mow” area between the fence and the Ordinary High Water Level. Applicant shall further affirmatively advise any successor in interest of the “no-mow” condition at the time of sale or other conveyance of the subject property to another party.
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 action; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.

Map for PLVAR-2602-0003:

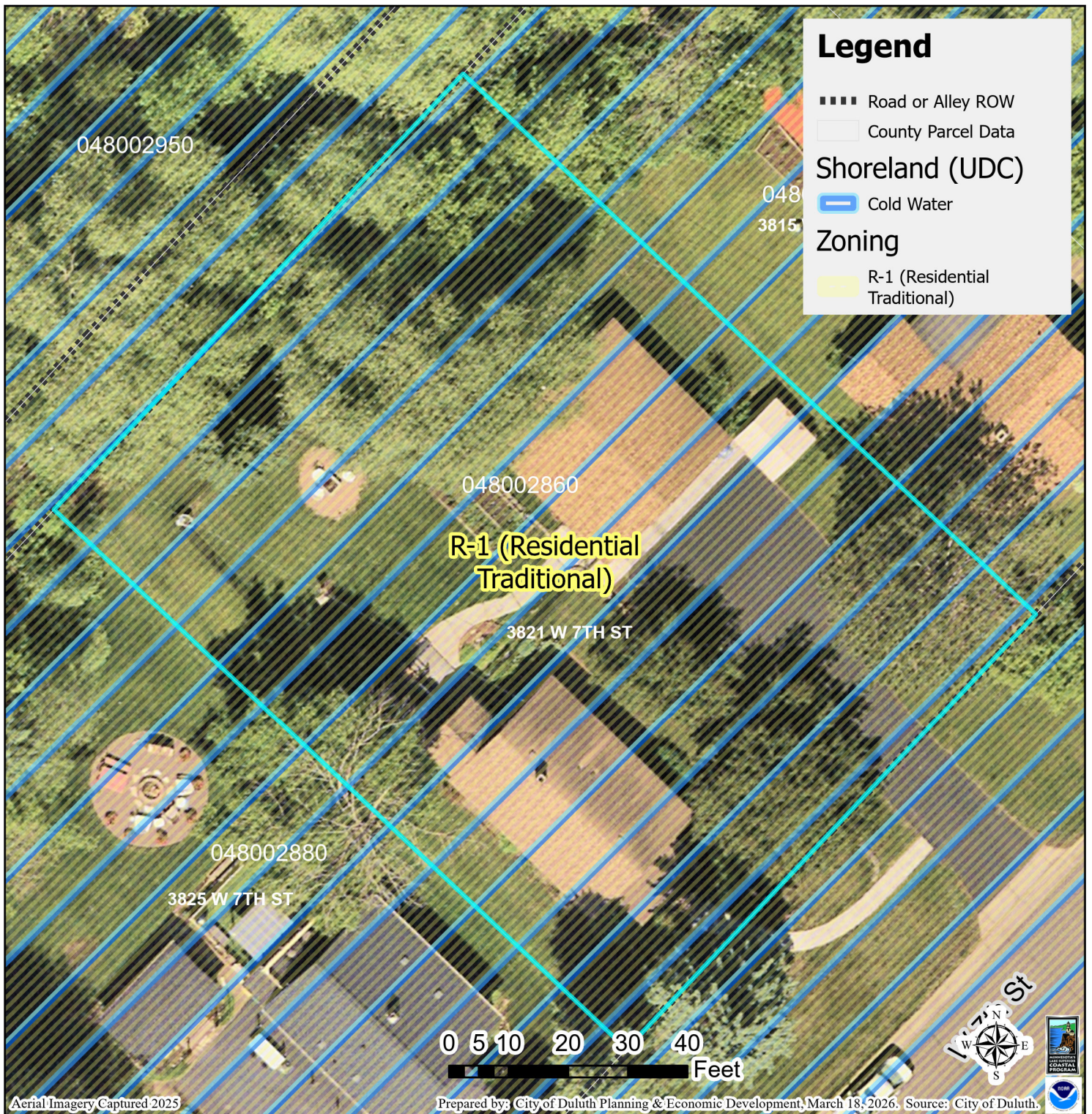
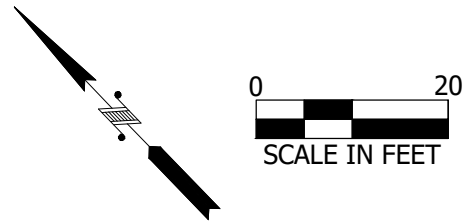


Figure 1.

Aerial imagery captured in 2025, showing Parcel #010-0480-02860 along the northern side of W 7th St.

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.



LEGEND

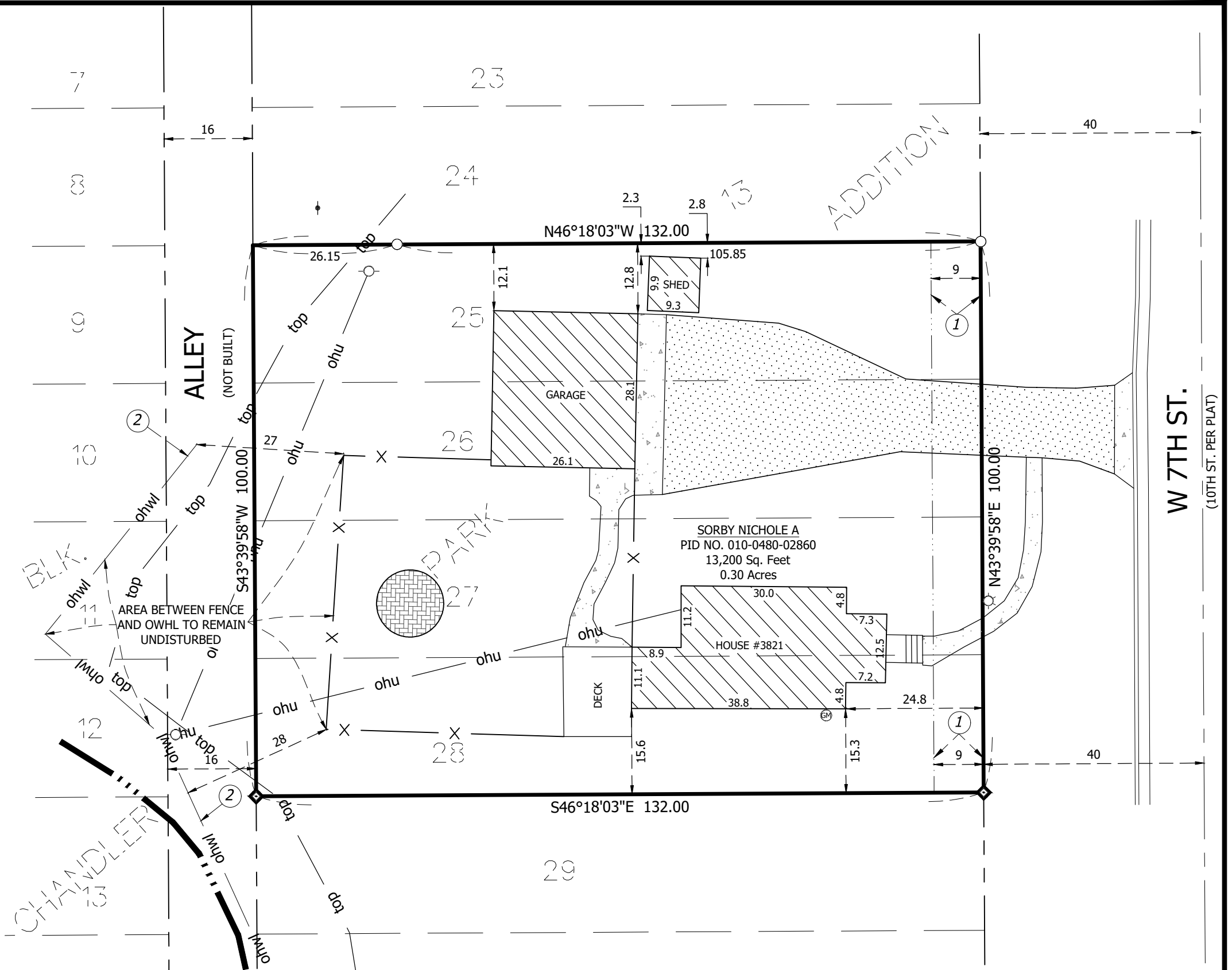
- | | | | |
|--|--------------------|--|-----------------------------------|
| | CONCRETE SURFACE | | TOP OF BANK OR GRADE BREAK |
| | BITUMINOUS SURFACE | | CENTERLINE OF CREEK |
| | PAVER SURFACE | | CONCRETE CURB & GUTTER |
| | EXISTING BUILDINGS | | FENCE LINE |
| | GAS METER | | ORDINARY HIGH WATER LEVEL |
| | UTILITY POLE | | OVERHEAD UTILITIES |
| | | | CENTER LINE |
| | | | RIGHT OF WAY LINE |
| | | | EXISTING EASEMENT LINE |
| | | | BOUNDARY LINE AS SURVEYED |
| | | | EXISTING PLAT LINE |
| | | | REFER TO SURVEYOR'S NOTES |
| | | | FOUND CAPPED REBAR RLS. NO. 49505 |
| | | | SET CAPPED REBAR RLS. NO. 49505 |

LEGAL DESCRIPTION PER DOCUMENT NO. 678724
 Lots Twenty-five (25) and Twenty-six (26), in Block Thirteen (13), CHANDLER PARK ADDITION TO DULUTH, according to the plat thereof, on file and of record in the office of the Register of Deeds in and for said County and State.

LEGAL DESCRIPTION PER DOCUMENT NO. 625012
 Lots numbered Twenty-seven (27) and Twenty-eight (28), in Block numbered Thirteen (13), CHANDLER PARK ADDITION TO DULUTH, according to the plat thereof, on file and of record in the office of the Register of Deeds in and for said County and State.

SURVEYOR'S NOTES

- 9 FOOT WIDE BUILDING LINE EASEMENT PER DOCUMENT NO. 8144.
- ORDINARY HIGH WATER LEVEL LOCATED BY MN/DNR
- THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY. THE SURVEYOR ASSUMES NO RESPONSIBILITY FOR SHOWING THE LOCATION OF RECORDED OR UNRECORDED EASEMENTS OR OTHER ENCUMBRANCES NOT PROVIDED TO THE SURVEYOR AS OF THE DATE OF THE SURVEY.
- BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
- BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY. SEE ARCHITECTURAL PLAN FOR BUILDING FOUNDATION DIMENSIONS.
- NO SPECIFIC SOILS INVESTIGATION HAS BEEN COMPLETED ON THIS LOT BY ALTA LAND SURVEY COMPANY. THE SUITABILITY OF SOILS TO SUPPORT THE SPECIFIC STRUCTURE PROPOSED IS NOT THE RESPONSIBILITY OF ALTA LAND SURVEY COMPANY OR THE SURVEYOR.
- DUE TO SNOW AND ICE COVERAGE, SOME FEATURES MAY NOT HAVE BEEN VISIBLE DURING THE COURSE OF THIS SURVEY.



CERTIFICATE OF SURVEY

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.
David R. Evanson
 David R. Evanson
 MN License #49505
 DATE: 04-28-2026

CLIENT: RANDY GAFNER
 ADDRESS: 3821 WEST 7TH STREET
 DULUTH, MN 55807
 DATE: 04-28-2026

REVISIONS:

JOB NO: 26-106 SHEET 1 OF 1



May 22, 2026

Planning & Economic Development Division
411 West First Street
Room 160
Duluth, Minnesota 55802

Re: Notice of Public Hearing for a Variance from Setbacks in a Shoreland Area at
3821 West 7th St (PLVAR-2602-0003)

Dear Sir or Madam:

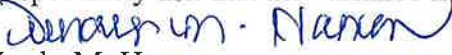
I received your letter dated May 20, 2026 (attached) with reference to the above matter for construction of a chain link fence in the rear yard of 3821 West 7th Street.

I have lived at 3815 West 7th Street for the past 33 years (and before that time my family owned this property since 1959). I was surprised at the notice that my neighbor would like a variance to construct a chain link fence in the setback area close to the banks of Merritt Creek (a designated trout stream). I cannot imagine what the need or hardship for this request would entail. The creek has remained much the same for all of the years I have lived here and before that all of the years I was growing up at this property.

During the flood of 2012 the creek flooded my home and property (my home sustained significant damage requiring that I move from my home for five months to repair my home). It took me several years to fully restore my yard, garage and home back to where it was pre-flood. I did have flood insurance (one of the few homeowners in Duluth so repairs to my home were readily made) but flood insurance does not cover your yard or outbuildings so that was another story. I worked with Don Ness (Mayor of Duluth at the time) and people that he recommended at the City to restore the banks of Merritt Creek behind my home (Soil & Water made significant repairs to the upper part of the creek, but not behind my home). The repairs necessitated bringing in large machinery to dig dirt, rocks, etc. to create a new bank and then they planted native plants and trees which ten plus years are thriving to maintain a solid new creek bank. They workers stressed that these native trees and plants and area right next to the creek would bring in more wildlife (I believe it has) and keep the creek in its natural state. If a fence had been in this setback area at that time the City would have had to remove it just to gain access to the bank. Having the setback is vital to maintaining the integrity of Merritt Creek and changing this setback to accommodate an unnecessary chain link fence violates the integrity and purpose of this setback and also creates a precedent that goes against the protections these setbacks provide.

The neighborhood where Merritt Creek is located has many trees, much wildlife and the creek – all are a part of living in this neighborhood. I am very concerned that granting this variance will set a precedent for others to follow suit. The setbacks were created to protect the creek and granting variances for frivolous requests is something that should not be allowed.

I respectfully ask that the variance not be granted.


Wendy M. Hamm