



Staff Report for PLVAR-2605-0013

Application Information:

Application Type: Variance from Side Yard Setbacks

Location of Subject: 828 E 2nd St

Legal Description: 010-3830-05600

Applicant: Emma Hamilton

Applicant Contact: n/a

Agent: n/a

Agent Contact: n/a

Staff Contact: Chris Lee, clee@duluthmn.gov

Deadline for Action:

Application Date: May 5, 2026

Date Extension Letter Mailed: May 15, 2026

60 Days: July 4, 2026

120 Days: September 2, 2026

Site Visit Date: May 25, 2026

Sign Notice Date: May 26, 2026

Neighbor Letter Date: May 20, 2026

Number of Letters Sent: 26

Proposal:

The applicant is seeking a variance from side yard setbacks from the required 5' to 0.3' for construction of a replacement deck.

Recommended Action:

Staff recommends approval with conditions.

Zoning and Land Use:

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N	Residential	Urban Residential
North	R-2	Residential	Urban Residential
South	MU-N	Residential	Urban Residential
East	MU-N	Residential	Urban Residential
West	MU-N	Residential	Urban Residential

Summary of Code Requirements:

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.

50-37.9.H – Variances to reduce setbacks: When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated

landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Principle #5 – Promote reinvestment in neighborhoods – This request will allow the property owner to make investments into their property to increase values.

Housing Policy #4, Strategy 2 – Improve the quality of the city’s housing stock and neighborhoods – Promote curb appeal of neighborhoods, with consideration of elements such as lighting, trees and boulevards, streets and sidewalks, and well-maintained structures.

Future Land Use: Urban Residential – Greatest variety of residential building types, medium to high densities. Applicable to larger infill areas close to downtown, entertainment or activity centers, and waterfront residential areas. May include student housing areas, live/work units, and limited neighborhood retail.

History: The property was constructed in 1901 and has two stories containing 1,608 square feet. This property is part of a 5-unit townhouse complex. A previous deck of similar dimensions in approximately the same location was removed in 2024 for safety concerns, due to deterioration.

Review and Discussion Items:

Staff finds:

1. The applicant is seeking a variance from minimum side yard setback standards for open sided decks (UDC 50-21.3) from 5’ to 0.3’ to construct a 5’9” x 16’11” deck on the side of the property. The two-bedroom, one-family residence was built as a townhome with shared walls and zero foot setbacks for the structure.
2. *Variance Criteria #1 (exceptional narrowness, shallowness, or shape):* The subject property exhibits unique constraints due to it being a townhome with a party wall. The existing residence was constructed in 1901, predating the current zoning standards and is a legal non-conforming lot with less than 20’ of frontage. The available side yard does not allow enough room for a building-code compliant deck to be built while meeting setbacks. Therefore, a variance is required in order to build a deck in this location.
3. *Variance Criteria #2 (circumstances unique to the property, not created by the property owner):* The existing townhouse was constructed prior to current zoning code. The combination of the lot dimensions and the shape of the structure create conditions that are inherent to the site rather than the result of any action by the property owner or the City.
4. *Variance Criteria #3 (circumstances are peculiar to this property and do not apply generally to other land or buildings):* The circumstances prompting this request are unique to the shape and type of structure which is constrained by the narrow lot.
5. *Variance Criteria #4 (proposes to use in a reasonable manner not permitted by code):* The proposed deck is a reasonable use of the property and is consistent with residential property. With the proposed deck plan, the applicant will maintain a setback similar to the party wall. Given the site’s physical constraints, the proposal constitutes an appropriate reinvestment in the property.
6. *Variance Criteria #5 (will not impair light/air, increase congestion, or impair public safety or property values):* The construction of the deck will occur entirely within the width of the current residence and will not introduce new structures and uses that would alter natural light and air access. The deck will not increase congestion. This

reinvestment in a residential zone district is expected to maintain or improve the value of the property without adverse impacts on surrounding properties.

7. *Variance Criteria #6 (will not impair intent of this Chapter or alter the essential character of the locality)*. The essential character of the area will not be altered since the use of the property is not changing. Neighboring townhouse units in the same complex have similar decks. The property itself previously featured a similar deck, which was removed in 2024 due to physical deterioration. The previously situated deck access door on the side wall remains in place and will be repurposed for the contemplated replacement deck.
8. No landscaping or buffering is recommended due to limited space in the side yard between townhouse units.
9. No City or agency comments were received.
10. Staff finds the applicant has demonstrated practical difficulty due to this being the only feasible location to construct a deck that maintains safe conditions, meets accessibility and code requirements, and continues to provide an active residential use on the property. Strict compliance with the minimum side yard setback would prevent reasonable use of the residential property.
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 approve the variance with the following conditions:

1. The project must be constructed and limited to plans submitted with the application, allowing a reduced side yard setback of no less than 0.3 feet.
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 approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Map for PLVAR-2605-0013

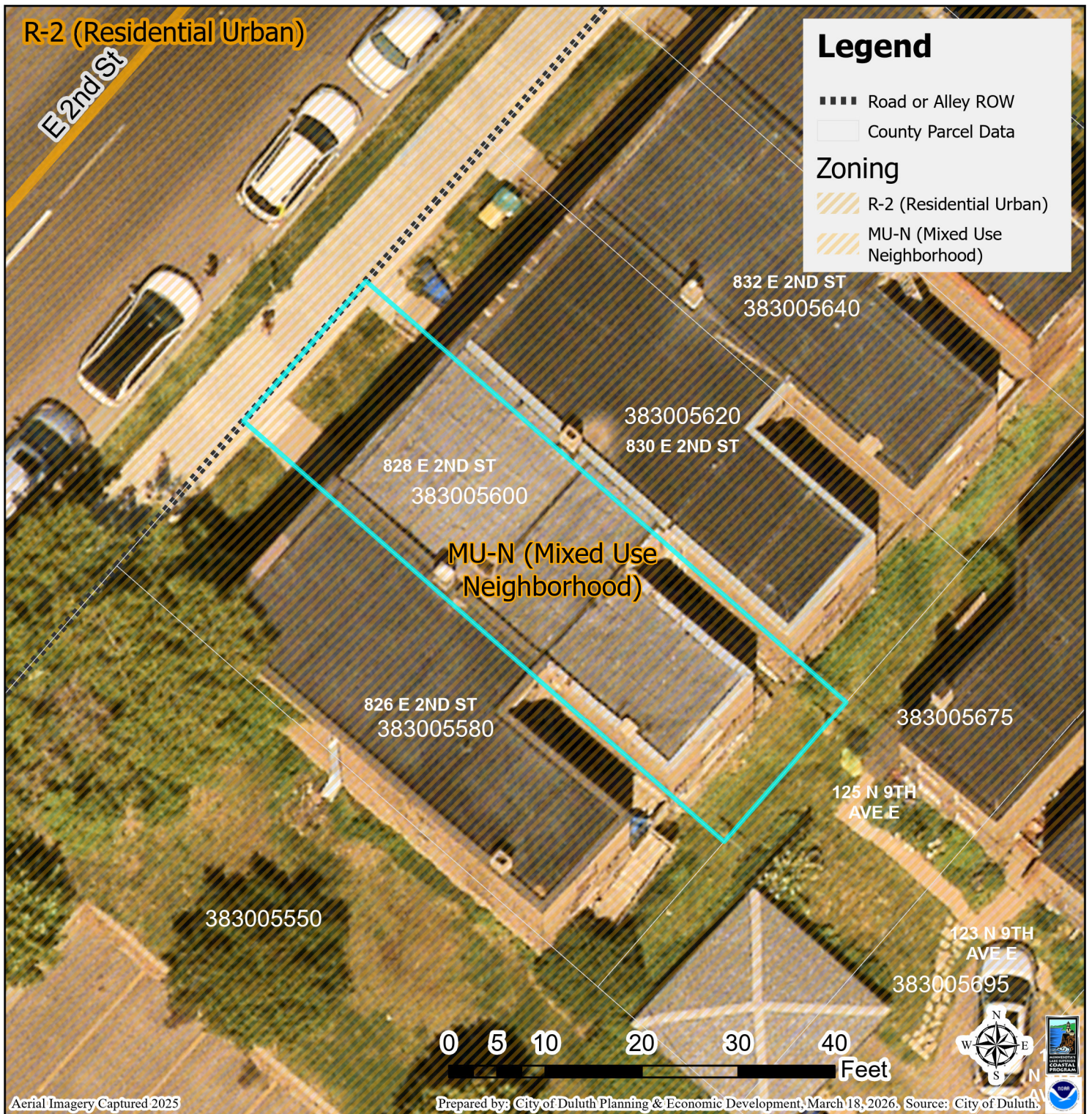
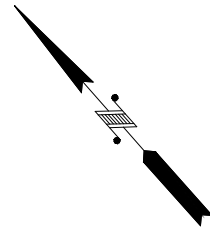


Figure 1.

Aerial imagery captured in 2025, showing the property at 828 E 2nd St. highlighted.

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.



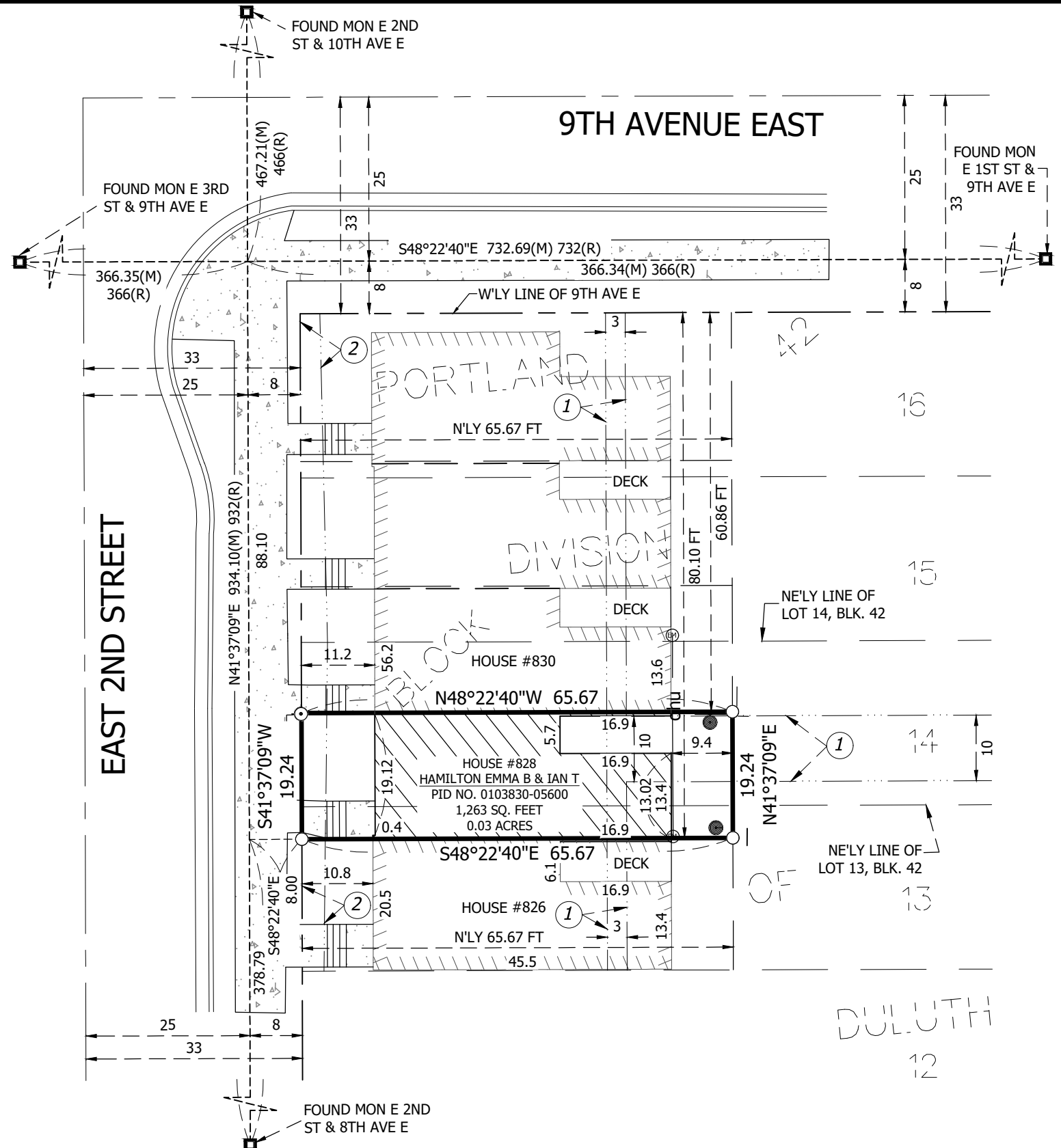
LEGEND

	CONCRETE SURFACE	(M)-FIELD MEASURED DIMENSION (R)-RECORD DIMENSION
	BITUMINOUS SURFACE	EXISTING BUILDING LINE
	EXISTING BUILDINGS	CONCRETE CURB & GUTTER
	ELEC METER	OHU OVERHEAD UTILITIES
	POST/BOLLARD	CENTER LINE
	REFER TO SURVEYOR'S NOTES	RIGHT OF WAY LINE
	FOUND SURVEY MONUMENT	EXISTING EASEMENT LINE
	SET MAG NAIL	SURVEY LINE
	SET CAPPED REBAR RLS. NO. 49505	BOUNDARY LINE AS SURVEYED
		EXISTING PLAT LINE
		ADJACENT PARCEL LINE

LEGAL DESCRIPTION PER CERTIFICATE OF TITLE NO. 366606
 All that part of Lots 13 and 14 Block 42 PORTLAND DIVISION OF DULUTH lying and being between two lines parallel with the Westerly line of Ninth Avenue East as shown on said plat and distant respectively 60.86 feet and 80.10 feet Westerly therefrom and within 65.67 feet of the Southerly line of East Second Street as shown on said plat.

SURVEYOR'S NOTES

- EASEMENT FOR RIGHT OF INGRESS, EGRESS AND DRIVEWAY PER CERTIFICATE OF TITLE NO. 366606.
- EASEMENT FOR SLOPES AND FILLS ALONG SECOND STREET EAST PER BOOK C OF PLATS PAGE 321, DATED FEBRUARY 7, 1891 AS SHOWN ON CERTIFICATE OF TITLE NO. 366606.
- 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.
- DUE TO SNOW AND ICE COVERAGE, SOME FEATURES MAY NOT HAVE BEEN VISIBLE DURING THE COURSE OF THIS SURVEY.



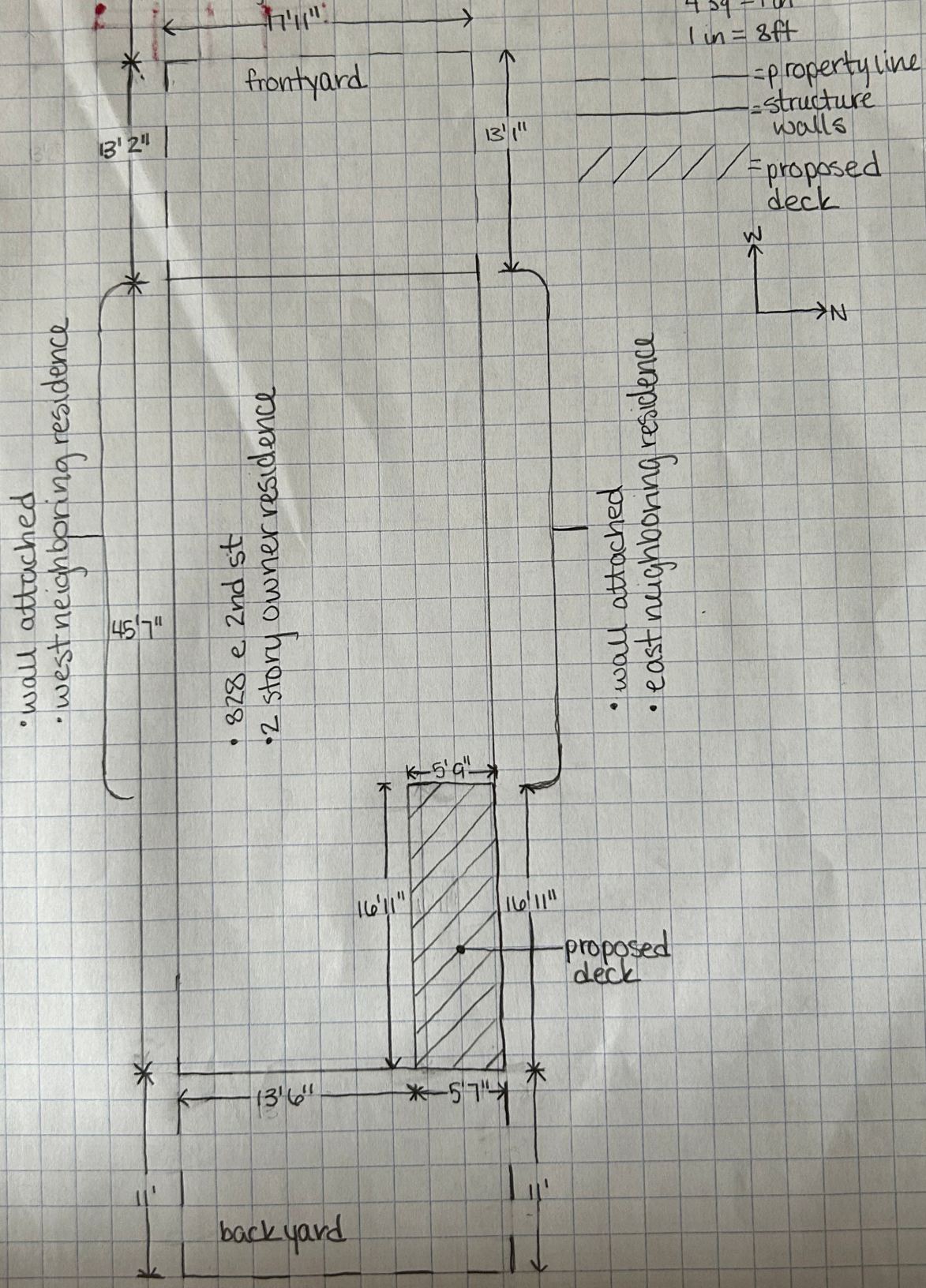
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. David R. Evanson MN License #49505 DATE: 04-15-2026		CERTIFICATE OF SURVEY		 ALTA LAND SURVEY COMPANY PHONE: 218-727-5211 LICENSED IN MN & WI WWW.ALTLANDSURVEYDULUTH.COM
CLIENT: EMMA HAMILTON	REVISIONS:	ADDRESS: 828 E 2ND STREET DULUTH, MN 55805	DATE: 04-15-2026 JOB NO: 26-072 SHEET 1 OF 1	

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Planning & Development Division
Planning & Economic Development Department

Room 160 • 411 West First Street • Duluth, Minnesota 55802
218-730-5580 • www.duluthmn.gov



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"):

50-21.3 Exceptions and Encroachments - open sided porch, deck, or paved terrace, no closer than 5 ft from any property line

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:

This variance is sought to build a deck up to the property line on the northwest side of the building. The space in which the deck would be placed is only five feet nine-inches wide. Following strict application of the UDC five-foot setback, the remaining nine inches is not enough space to build a deck, set of stairs, or even small balcony.

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 building on this property was originally constructed in 1901, before any known zoning codes were created. The building has an interior/exterior doorway that is significantly elevated from the ground (roughly five to six feet). This indicates that the building was designed to have some sort of structure in place to provide egress for the doorway. When I purchased the property in 2024, there was already a small deck in this space that extended to the property line. It currently does not exist because it was more very old and improperly supported.

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:

My building is one of five connected townhomes located on the block. Of those five, mine is one of four that has an elevated doorway leading to the exterior of the home. The other homes with this doorway have a platform or deck providing egress for the doorway. Other properties I have seen have no need for platform or stair access, since the doors are closer to ground level. Other properties nearby also have greater space between properties, allowing more building room before breaching

a five-foot setback.

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:

Building a deck will provide a safe space to walk out of an elevated doorway and enjoy the small outdoor space of the property. It will also match the style and structure of connected neighboring townhomes that have the same amenities.

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 deck will only be accessible from inside a private residence. The deck will only broach the five-foot setback of one side of the property, already established by a brick wall. The brick wall does not contain any doors or windows that allow entry to or exit from the neighboring townhome, so no access will be blocked by the deck. The deck is in the rear of the property, away from public sidewalks, right of ways, or roads. It will not be visible from the street. The deck would be a nice home feature matching the attached homes, which should not impair property values or the neighborhood character.

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 proposed deck will be for private use by a private residence. It will not change the general appearance or structure of the home or neighboring properties. It will not change the use of the property or the official zoning map.

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)?

No.