

PLANNING AND DEVELOPMENT COMMITTEE

12-071-0

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO RITCH MAKOWSKY A CONCURRENT USE PERMIT FOR CONSTRUCTION OF AN ACCESSIBLE RAMP TO PROJECT INTO THE NORTH 29TH AVENUE WEST RIGHT OF WAY.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is granted to Ritch Makowsky and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following: an accessible ramp structure located four-and-one-half feet from the property line, as shown in public document_____.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

- (a) homeowners liability insurance in an amount not less than \$300,000; and
- (b) insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and
- (c) the insurance policy shall be approved by the city attorney; and
- (d) the policy shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and
- (e) the city of Duluth shall be named as an additional insured; and
- (f) the certificate shall also reference this ordinance by its ordinance

number.

Permittee shall cause a current version of the required insurance certificate to be filed with the city clerk while permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee thirty (30) days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its agents, representatives, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public

improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five (5) days of such transfer. The permittee's successor(s) in interest shall file with the city clerk within (10) days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten (10) days written notice, delivered as provided in Section 3, above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3 above.

Section 8. The permittee shall observe the following conditions:

(a) permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on Public Document No. _____; and

(b) permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) the failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) the failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(c) the failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. This ordinance shall take effect and be in force 30 days from and after its passage and publication.

Approved as to form:



Attorney

PLANNING SR:ek 11/15/2012

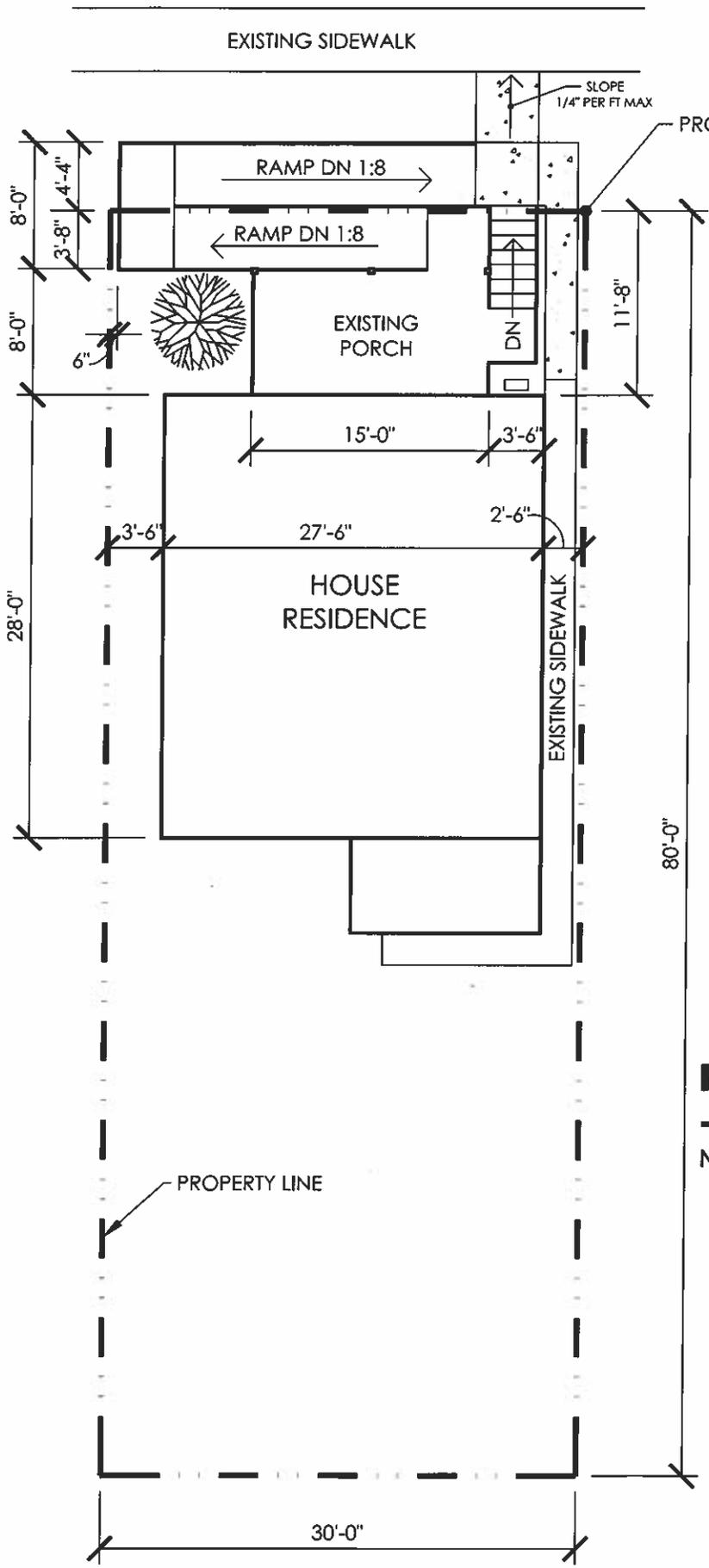
STATEMENT OF PURPOSE: On November 13, 2012, the planning commission held a public meeting on the proposal, and voted 7 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets as requested.

Petition Received: October 26, 2012

Action Deadline: There is no action deadline for this resolution.

Applicant:

Ritch Makowsky
103 N 29th Avenue W
Duluth, MN 55806



LEGEND

-  NEW CONCRETE SIDEWALK
-  PROPERTY LINE
-  EXISTING TREE

LEGAL DESCRIPTION

N 30FT OF S 80FT OF LOTS 17, 18, 19 AND
 E 5FT OF N 30FT OF S 80FT OF LOT 20
 BLOCK 24 MARINE DIVISION OF DULUTH

**MAKOWSKY RESIDENCE
 - ACCESSIBLE RAMP**

NOVEMBER 14, 2012



SCALZO ARCHITECTS, LTD.

1901 South Street
 Duluth, Minnesota 55812

Tele: 218.722.4319
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CITY OF DULUTH
 Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
 Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	PL12-165	Contact	Steven Robertson, 218-730-5295	
Application Type	Concurrent Use of Streets Permit	Planning Commission Date	November 13, 2012	
Deadline for Action	Application Date	October 26, 2012	60 Days	N/A
	Date Extension Letter Mailed	N/A	120 Days	N/A
Location of Subject	103 North 29 Avenue West			
Applicant	Ritch Makowsky	Contact	ritchlm@gmail.com	
Agent	William Scalzo	Contact	wscalzo@scalzoarchitects.com	
Legal Description	N 30ft of S 80ft of Lots 17,18, and 19 and E 5ft of N 30ft of S80ft of Lot 20 Block 24 Marine Division			
Site Visit Date	November 4, 2012	Sign Notice Date	October 29, 2012	
Neighbor Letter Date	N/A	Number of Letters Sent	N/A	

Proposal

Applicant requesting a Concurrent Use of Streets Permit to allow the construction of an accessible ramp structure to provide access to the existing front entry of the home from the sidewalk at 103 North 29 Avenue West. The proximity of the front of the home to the property line requires that the ramp extend beyond the front property line.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-2	Residential	Neighborhood Mixed Use
North	R-2	Residential	Neighborhood Mixed Use
South	MU-B	Commercial	General Mixed Use
East	MU-B	Commercial	General Mixed Use
West	R-2	Residential	Neighborhood Mixed Use

Summary of Code Requirements (reference section with a brief description):

UDC Section. 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

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

Neighborhood Mixed Use is a transitional use between more intensive commercial uses and purely residential neighborhoods. Includes conversions of houses to office or live-work spaces. May include limited commercial-only space oriented to neighborhood or specialty retail markets.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

1. The applicant is interested in constructing a handicap accessibility structure (ramp) on the property, zoned R-2. Due to the small size of the lot and lack of alley access, the property owner will need to use some of the public right of way if they wish to construct a handicap accessibility structure that meets building code standards.
2. While the right of way is currently being physically used by the public, the proposal project will not interfere with the public's ability to use the right of way (sidewalk or street).
3. No comments were received from citizens. There was a request from government agencies to clarify the distance that the ramp would be from the sidewalk. It looked about 4 feet, but it wasn't clear on the exhibit (2 of 2). According to the applicant's representative, "the distance is indeed approximately 4'-0" from the return ramp to the edge of the sidewalk. Please note that the dimension of 12'-6" shown from the property line to the sidewalk is incorrect on the site plan (page 1 of 2). It should read 8'-6" as the actual dimension from the porch to the sidewalk is 12'-6"."

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Staff recommends that the Planning Commission recommend approval of the requested Concurrent Use Permit to the City Council for the following reasons:

- 1) The proposal will not harm or inconvenience the health, safety and general welfare of the city.
- 2) The proposal is a reasonable use of public right of way and can be terminated at any time if the City of Duluth desires to use the area for any public purpose.

Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



Legend

Streams

- Trout Stream (GPS)
- Other Stream (GPS)

Water Distribution System

- 30 - 60" Water Pipe
- 16 - 24" Water Pipe
- 4 - 6" Water Pipe

Sanitary Sewer Collection System

- Sanitary Sewer Collector
- Sanitary Sewer Interceptor
- Sanitary Sewer Forced Main

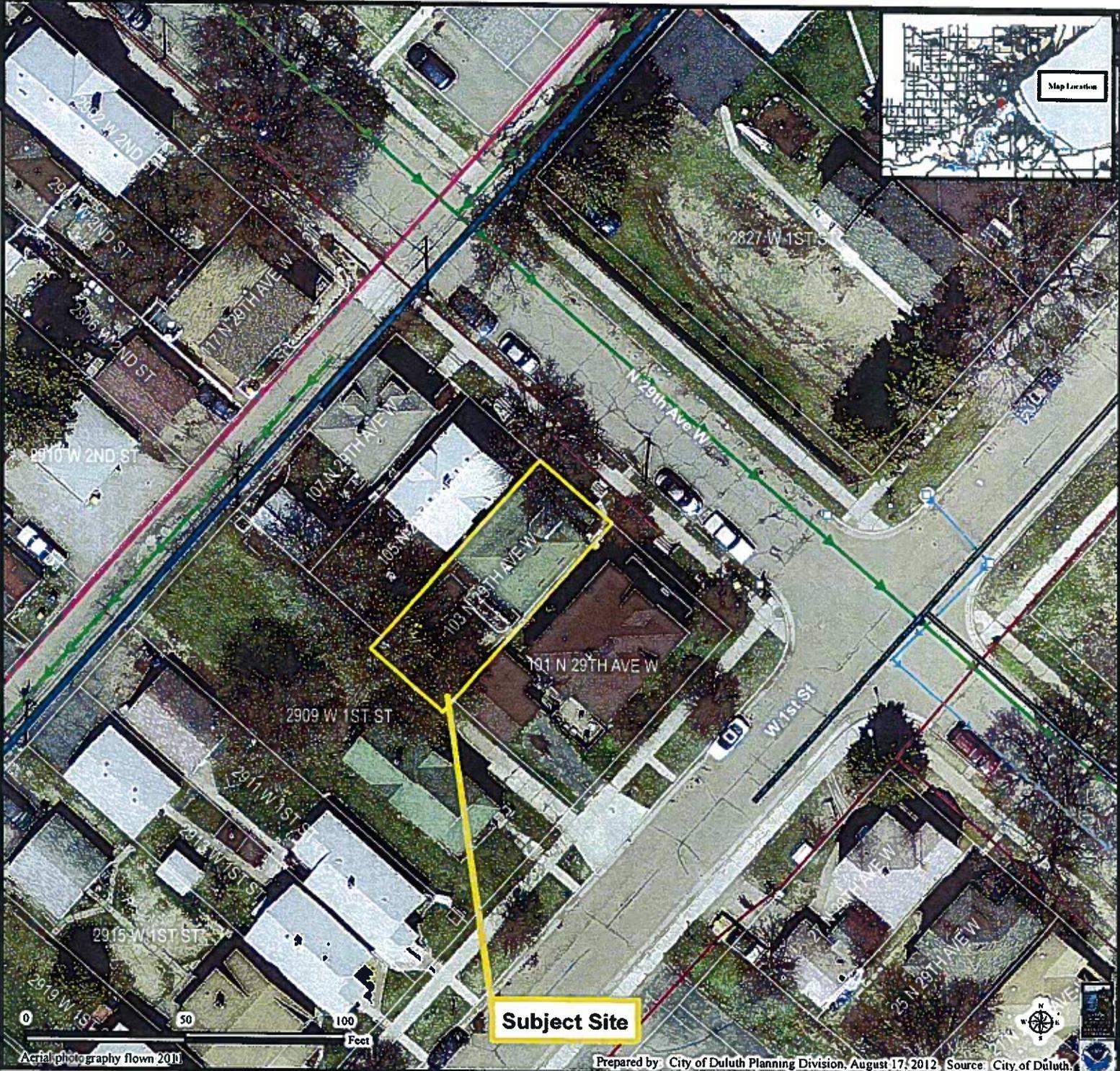
- Storage Basin
- Pump Station

Gas Distribution Main

- 8" - 16" Gas Pipes
- 4" - 6" Gas Pipes
- 0" - 4" Gas Pipes

Storm Sewer Collection System

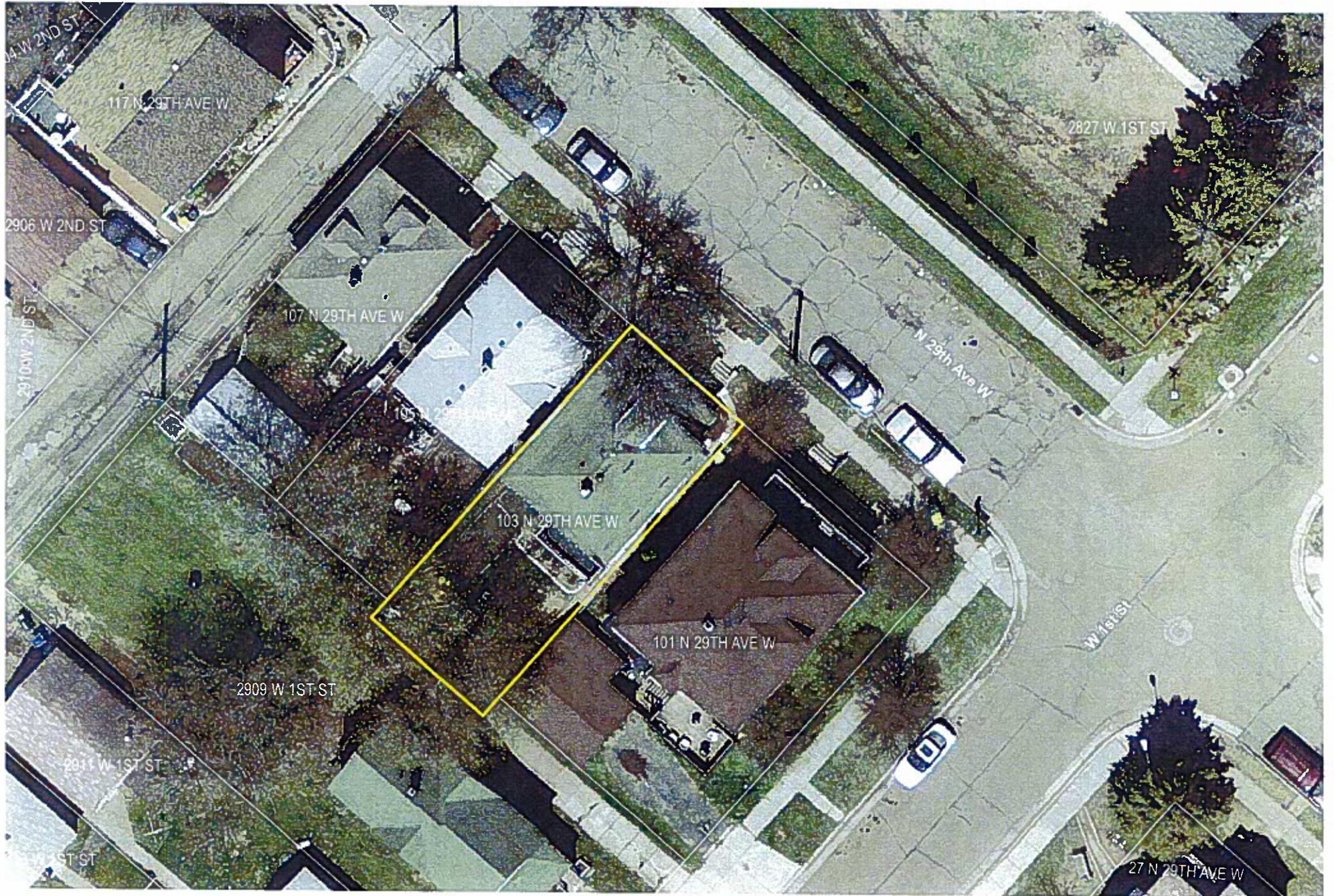
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge_Points



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.

Subject Site

Aerial photography flown 2011



114 W 2ND ST

117 N 29TH AVE W

2827 W 1ST ST

2906 W 2ND ST

107 N 29TH AVE W

N 29th Ave W

2910 W 2ND ST

103 N 29TH AVE W

101 N 29TH AVE W

W 1st St

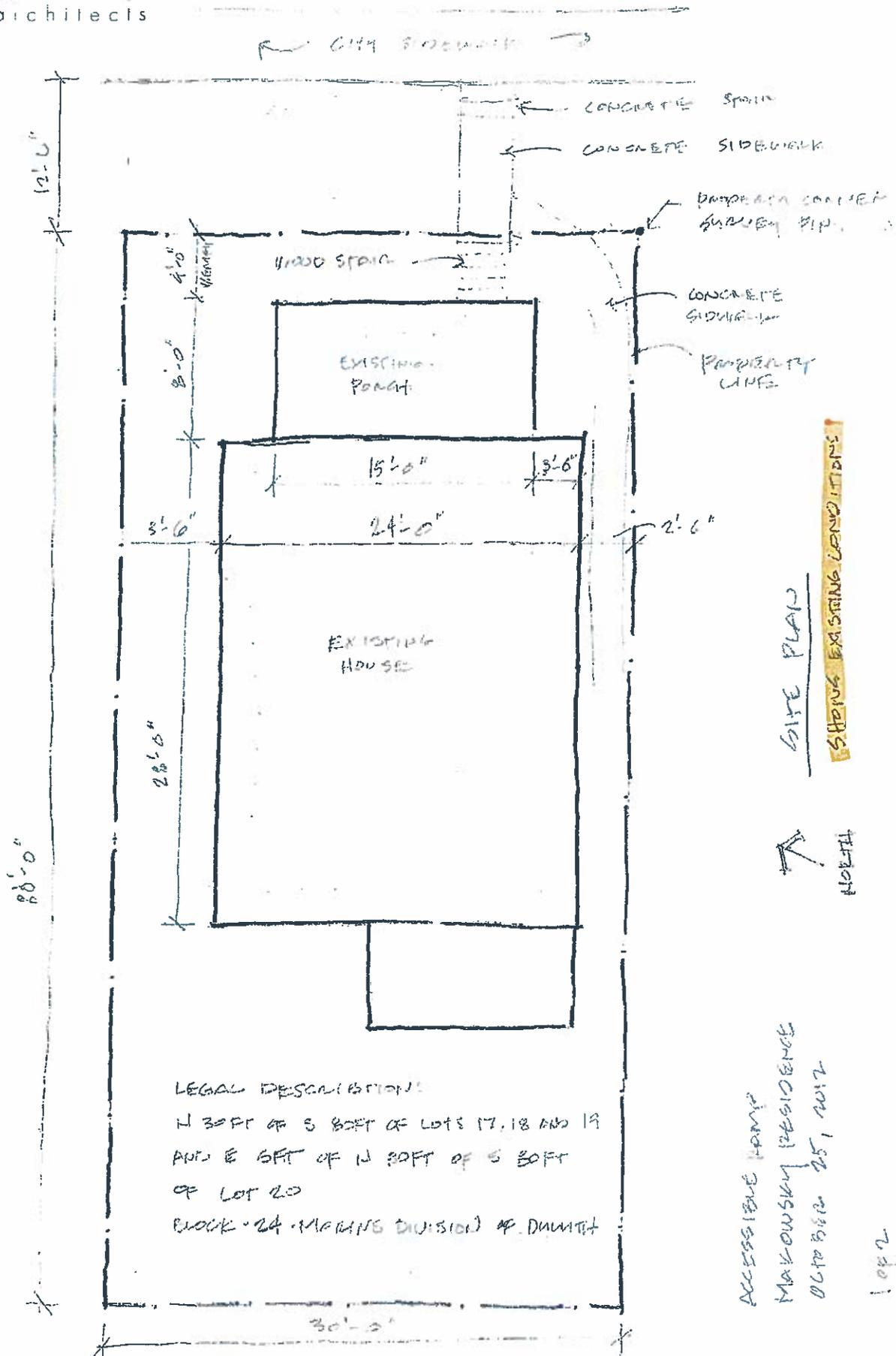
2909 W 1ST ST

2901 W 1ST ST

W 1ST ST

27 N 29TH AVE W





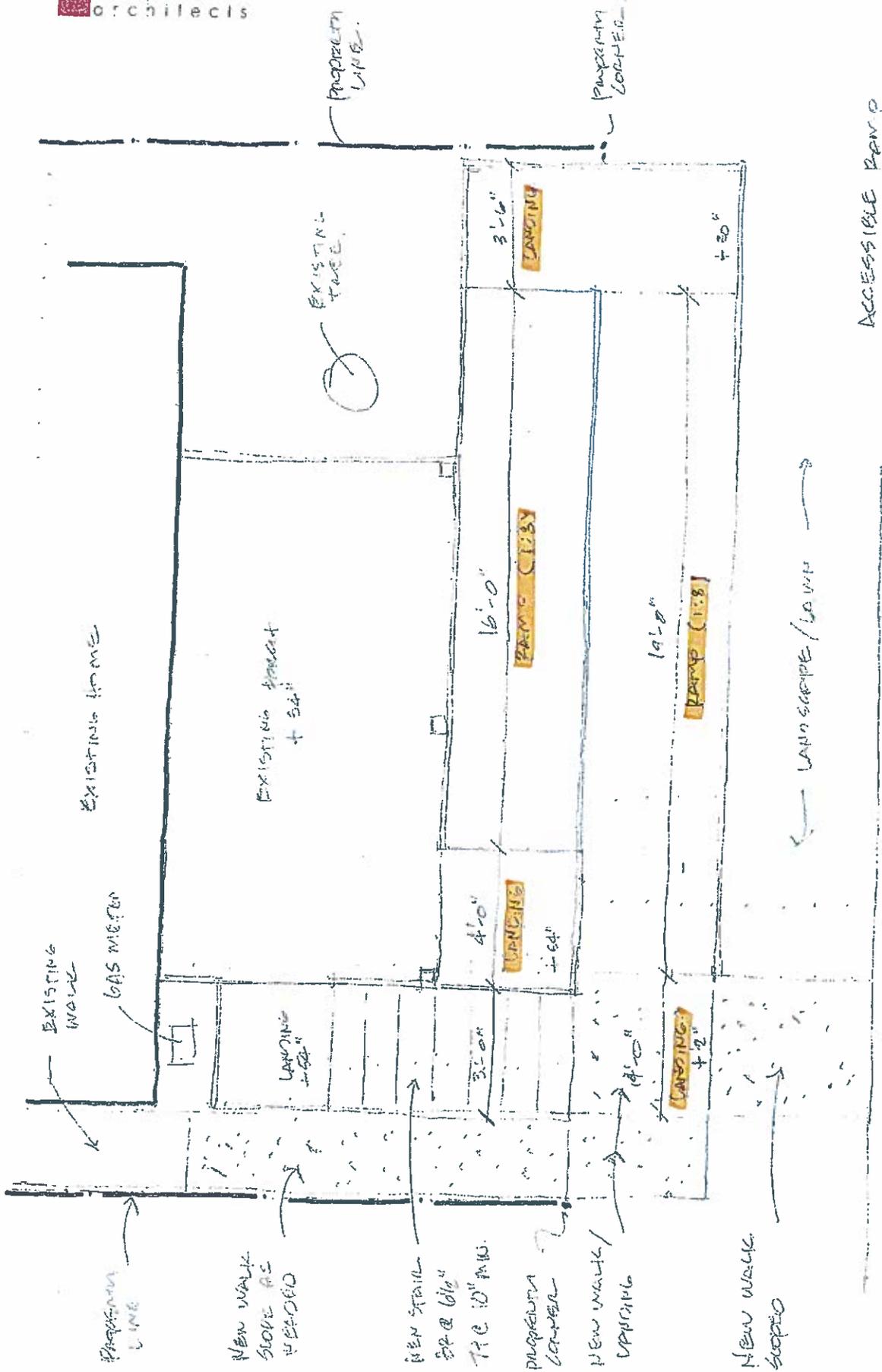
LEGAL DESCRIPTION:
 N 30FT OF S 80FT OF LOTS 17, 18 AND 19
 AND E 80FT OF N 30FT OF S 80FT
 OF LOT 20
 BLOCK - 24 - MARINE DIVISION OF DUMMIT

ACCESSIBLE RAMP
 MAKOWSKY RESIDENCE
 OCTOBER 25, 2012

SITE PLAN

SHOWS EXISTING CONDITIONS





ACCESSIBLE RAMP
MAKOWSKY RESIDENCE
OCTOBER 25, 2012

Plot 2

NOTE: INDICATES SPOT
ELEVATION BASED ON
SIDEWALK @ 0'

SIDEWALK

LANDSCAPE / GRASS

RAMP (1:8)

19'-8"

RAMP (1:3)

16'-0"

LANDING

4'-0"

± 54"

LANDING

3'-0"

± 30"

EXISTING
T.A.S.E.

PROPERTY
LINE

PROPERTY
CORNER

EXISTING FRAME

EXISTING PORCH
± 54"

EXISTING
WALK

GAS METER

PROPERTY
LINE

NEW WALK
SLOPE AS
PER CODE

NEW STAIRS
@ 6/10

TIE 10" MIN.

PROPERTY
CORNER

NEW WALK/
UPPING

NEW WALK
SLOPE

LANDING
± 2"

19'-0"

± 54"

LANDING
± 54"

± 54"







Attachment to the Application for Concurrent Use of Street Permit.

Briefly Describe the Reason for this Request:

The request for " concurrent use permit" is to allow the construction of an accessible ramp structure to provides access from the public sidewalk to the front entry of the home located at 109 north 29th avenue west. The lot size and the proximity of the front of the home to the property line requires that the ramp extend beyond the front property line into the street easement (right of way). Refer to the attached site plan,

Funding for the construction of the exterior ramp and interior accessible improvements is provided through St. Louis County Public Health and Human Services.