PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0039R

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING COMMISSION TO DENY THE APPLICATION FOR A VARIANCE BY CHRIS AND LAURA JACOBSON FROM THE SHORELAND SETBACK OF SECTION 50-18.1 OF THE DULUTH CITY CODE.

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

(a) Chris and Laura Jacobson's property is located at 2401 Hutchinson Road and the proposed structure is within the 150 foot shoreland setback from the ordinary high water level;

(b) On November 5, 2013, the applicant applied for a variance that would allow them to construct a detached accessory structure of 20 feet by 12 feet, to be set back 100 feet from the ordinary high water level. Planning commission, at its December 10, 2013, meeting, considered the request and voted to table it to allow the applicant to provide more information. At its December 17, 2013, meeting, the commission voted to deny the request. The basis for the commission's decision was its conclusion that:

(1) Section 50-37.9.C. of the City Code prohibits the granting of a variance that does not demonstrate a practical difficulty which is unique to the property. The shoreland structure setback of 150 feet limits placement of structures on approximately 50 percent of the lot. The lot does not have wetland, slope, bedrock or other topographical conditions that present a practical difficulty;

(2) The property owner currently enjoys reasonable use of their property with a single family home and a two car detached accessory garage;

(3) The requested variance is not necessary for the preservation and enjoyment of a substantial property right. The requested variance is for the convenience of the applicant;

(c) The applicant was provided written notice of the commission's action on December 18, 2013, and filed an appeal of the commission's decision to the city council on December 23, 2013, pursuant to Section 50-37.1.O.4. of the City Code;

(d) The city council heard the appeal at its January 13, 2014, meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for variance is upheld.

Approved as to form:

Attorney

CCREQ/PLNG JRM:cs 1/3/2014

STATEMENT OF PURPOSE: This resolution affirms the decision of the planning commission to deny the application by Chris and Laura Jacobson to construct a detached accessory structure within the 150 foot shoreland setback from the ordinary high water level, at a 100 feet setback from the ordinary high water level, as required by Section 50-18.1 of the City Code. *(Resolution overturning the planning commission decision is 14-0040R.)*

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	PL 13-153	**Contact**	Steven Robertson, (218) 730-5295		
Application Type	Shoreland Variance	**Planning Commission Date**	December 10, 2013		
Deadline for Action	**Application Date**	November 5, 2013	**60 Days**	January 4, 2014	
	Date Extension Letter Mailed	November 19, 2013	**120 Days**	March 5, 2014	
Location of Subject	2401 Hutchinson Rd				
Applicant	Chris and Laura Jacobson	**Contact**	chris.jacobson@tlcofduluth.com		
Agent		**Contact**			
Legal Description	010-0262-00160				
Site Visit Date	November 16, 2013	**Sign Notice Date**	November 26, 2013		
Neighbor Letter Date	November 20, 2013	**Number of Letters Sent**	39		

Proposal

Applicant is seeking a variance to construct a detached accessory structure (20 ft x 12 ft) 100 feet from the Ordinary High Watermark of a tributary of Merrit Creek. The structure setback for Coldwater Rivers is 150 feet.

	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	Undeveloped/Residential	Preservation/Traditional Neighborhood

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

50-18.1 Natural Resources Overlay: maintain 150 ft. setback for structures.

Sec. 50-37.9. B - Variances. Procedures. "The Planning Commission shall . . . make a decision on the application based on the criteria in subsections 50-37.9.C through M . . . .

Sec. 50-37.9.C. - General Variance Criteria (paraphrased here): 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 they are 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 Standards for Variances in Shorelands. 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 Findings (Governing Principle and/or Policies) and Current History (if applicable):

Traditional Neighborhood Future Land Use. Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

The Shoreland Setback rules were introduced with the UDC in 2010, as a replacement for the Water Resources Management Ordinance (WRMO). The WRMO limited impervious surface as a way to reduce water run-off, sedimentation of water ways, and the increase in temperature of coldwater streams (which is detrimental to trout). MN Statute 6264.0050 lists Merritt Creek as a trout stream.

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

1) The applicant is seeking a variance to construct a detached accessory structure (20 x 12) 100 feet from the Ordinary High Watermark of a tributary of Merrit Creek. The structure setback for a Coldwater River is 150 feet. The applicant intends to use the accessory structure additional storage of lawn maintenance and related items.

2) According to the City Assessor, the home was built in 1960 and the garage was built in 1975. The subdivision, Beverly Hill First Addition, was platted in 1957. The lot is approximately 69 feet x 125 feet (the NW lot line is 20 feet shorter than the SW lot line). There is a 10 foot utility easement in the rear of the lot.

3) The proposed structure will not have a negative impact on the neighborhood, as the proposed structure is a modest size and is not out of character with other similar properties in the neighborhood.

4) The property owner currently enjoys reasonable the use of their property with a single family home and a two car detached accessory garage. If the variance was denied, it would not deprive the property owner of a substantial property right.

5) The shoreland structure setback of 150 feet limits placement of structures on approximately 50% of the lot (the home is just outside the shoreland setback). The lot does not have wetland, slope, bedrock, or other topographical conditions that present a practical difficulty.

6) No City Department or Public Agency comments were received on this application. Three citizens contacted the City to inquire about the nature of the variance, and the potential impact to Merrit Creek and/or the trees in the wooded area around Merrit Creek.

7) The requested variance is not necessary for the preservation and enjoyment of a substantial property right. The requested variance is for the convenience of the applicant. The applicant does not have a practical difficulty that would require a variance to enjoy the use of the property.

8) Approved variances lapse if the project or activity authorized is not begun within one year of approval.

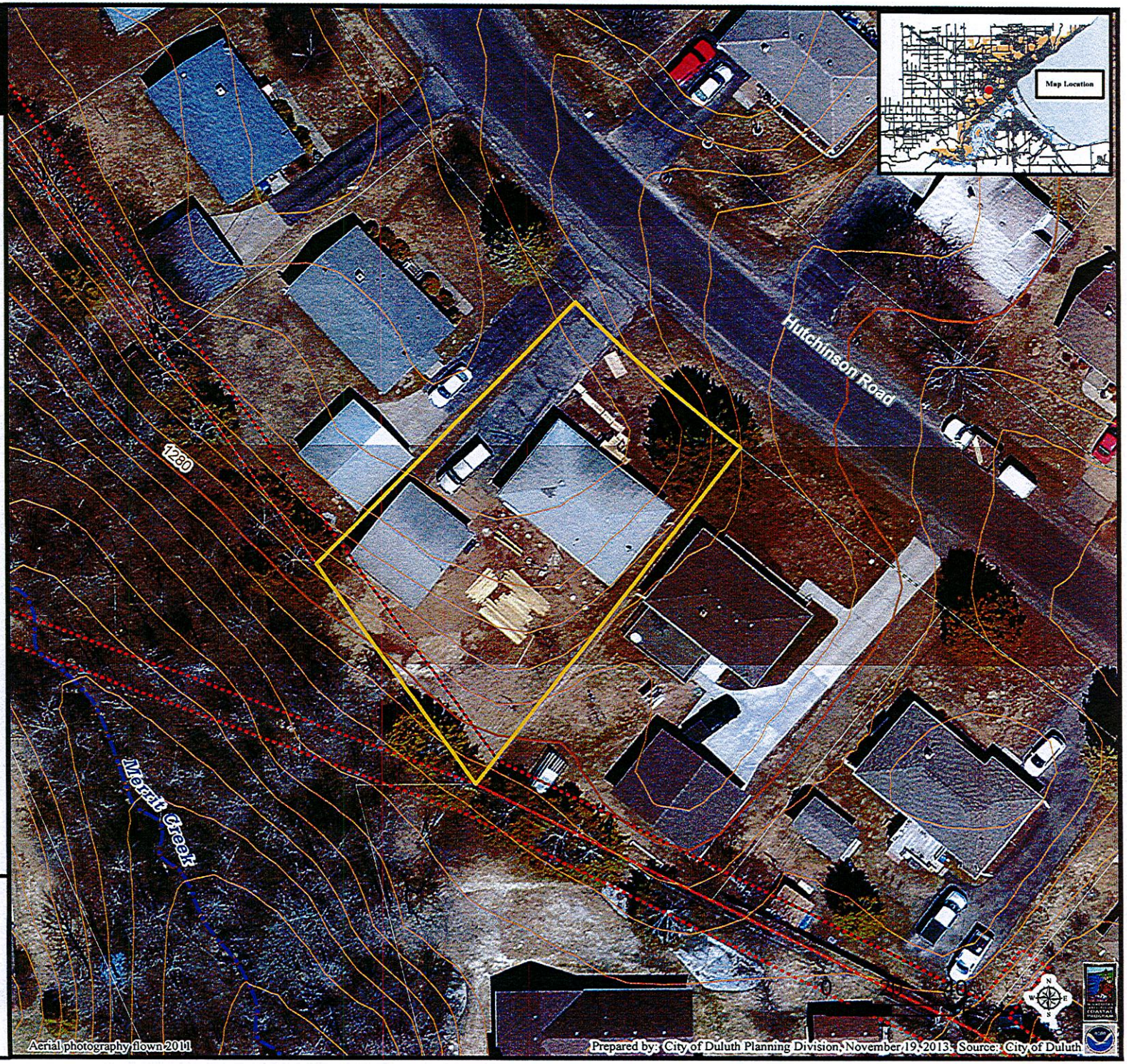
Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Based on the above findings, Staff finds that the requested variance does not meet the criteria established in 50-37.9. The application does not meet the standards for a variance and therefore staff recommends denial.

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

City Planning

PL 13-153
Shoreland Variance
2401 Hutchinson Road



Legend

Contours 1 Ft

Index_

- Intermediate
- Index

Stream Type

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

Right-of-Way Type

- Road or Alley ROW

Easement Type

- Utility Easement
- Other Easement

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.

I-3

City Planning

PL 13-153
Shoreland Variance
2401 Hutchinson Road

Legend

Stream Type

TROUT_FLAG

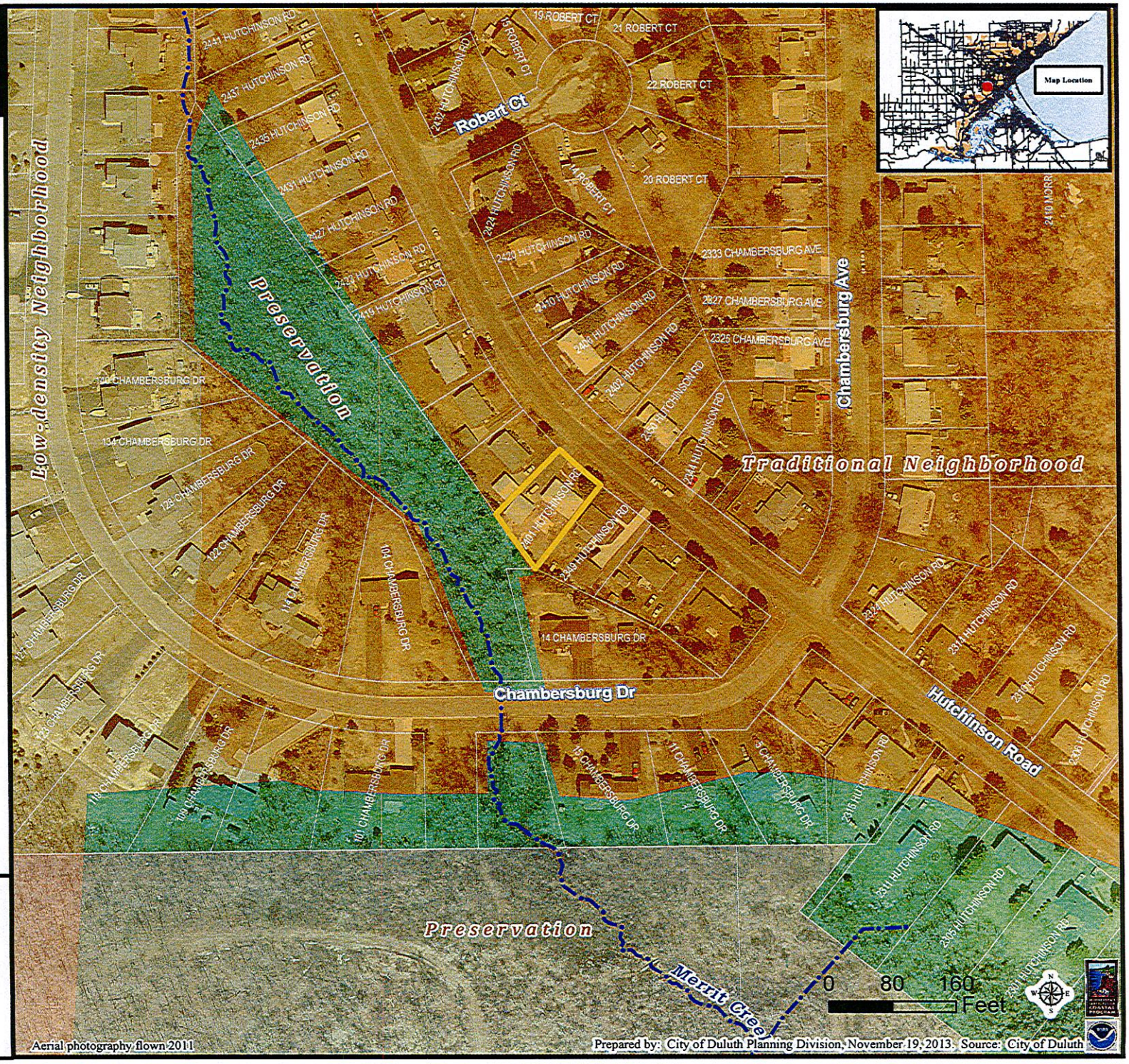
- Trout Stream (GPS)
- Other Stream (GPS)

Future Land Use - Plus

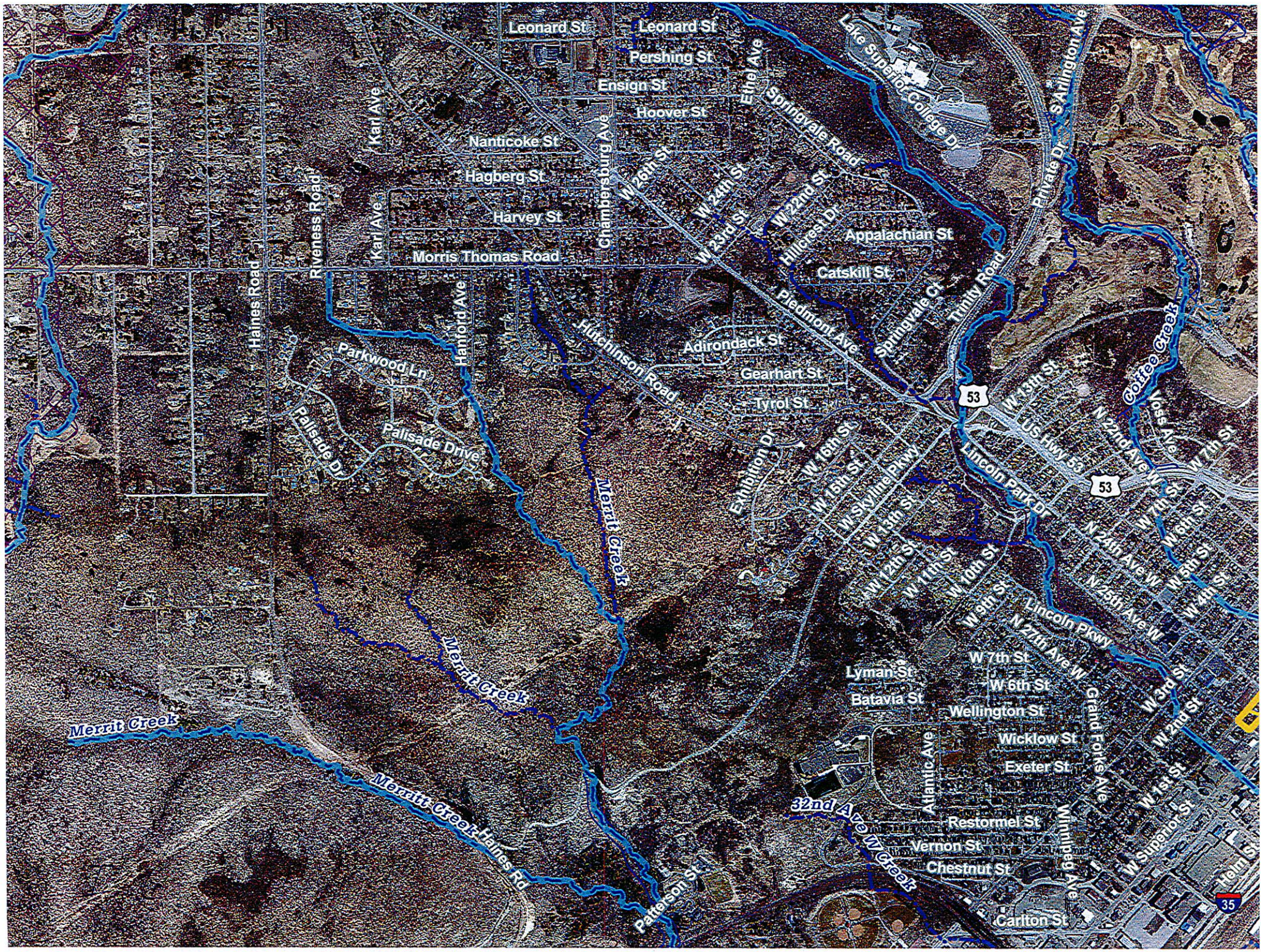
Future Land Use

- Preservation
- Recreation
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Neighborhood Mixed Use
- General Mixed Use
- Central Business Secondary
- Central Business Primary
- Auto Oriented Commercial
- Large-scale Commercial
- Business Park
- Tourism/Entertainment District
- Medical District
- Institutional
- Commercial Waterfront
- Industrial Waterfront
- Light Industrial
- General Industrial
- Transportation and Utilities

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.



I-4


Leonard St
Leonard St
Pershing St
Ensign St
Hoover St
Nanticoke St
Hagberg St
Harvey St
Morris Thomas Road
Karl Ave
Karl Ave
Riveness Road
Haines Road
Chamberlsburg Ave
W 26th St
W 24th St
W 23rd St
W 22nd St
Ethel Ave
Springvale Road
Lake Superior College Dr
Hillcrest Dr
Appalachian St
Catskill St
Piedmont Ave
Springvale Ct
Trinity Road
Private Dr
S Arlington Ave
Hutchinson Road
Adirondack St
Gearhart St
Tyrol St
Hanford Ave
Parkwood Ln
Palisade Dr
Palisade Drive
Exhibition Dr
W 16th St
W 15th St
W Skyline Pkwy
W 13th St
W 12th St
W 11th St
W 10th St
W 9th St
W 13th St
US Hwy 53
53
53
Lincoln Park Dr
Lincoln Pkwy
N 22nd Ave W
N 24th Ave W
N 25th Ave W
N 27th Ave W
Coffee Creek
Coffee Creek
W 7th St
W 7th St
W 6th St
W 5th St
W 4th St
W 3rd St
W 2nd St
W 1st St
W Superior St
Helena St
Merrit Creek
Merrit Creek
Merrit Creek
Merrit Creek-Haines Rd
Patterson St
32nd Ave W Creek
Lyman St
Batavia St
W 7th St
W 6th St
Wellington St
Wicklow St
Exeter St
Restormel St
Vernon St
Chestnut St
Carlton St
Atlantic Ave
Grand Forks Ave
Winnipeg Ave
35

11/16/2013

Steven Robertson

From: Laura Jacobson <laura.jacobson@tlcofduluth.com>
Sent: Wednesday, November 27, 2013 12:58 PM
To: Steven Robertson
Subject: Re: Hello

Negative Impact:
The building of our shed will have no negative impact. The shed, in comparison to other garages and homes in the neighborhood, is relatively small. In addition, Merritt "Creek" is historically devoid of water much of the time.

Practical Difficulty:
Placing the shed in any other area is not practical due to steep slopes behind and beside our current garage. Our back sidewalk to the garage and concrete patio also makes it impractical to place the shed anywhere else. Placing the shed "in the middle of the back yard" would totally eliminate any safe space for our future children to play and still be away from traffic (front yard).

Reduce Impact on Site:
We have chosen to place the shed on blocks rather than our first choice of a slab in order to eliminate creating an impervious surface. Doing so will reduce the impact on shore land area to Merritt "Creek", which is, again, historically devoid of water most of the time.

Thank you.

Laura

On Tuesday, November 26, 2013, Steven Robertson wrote:

Thank you.

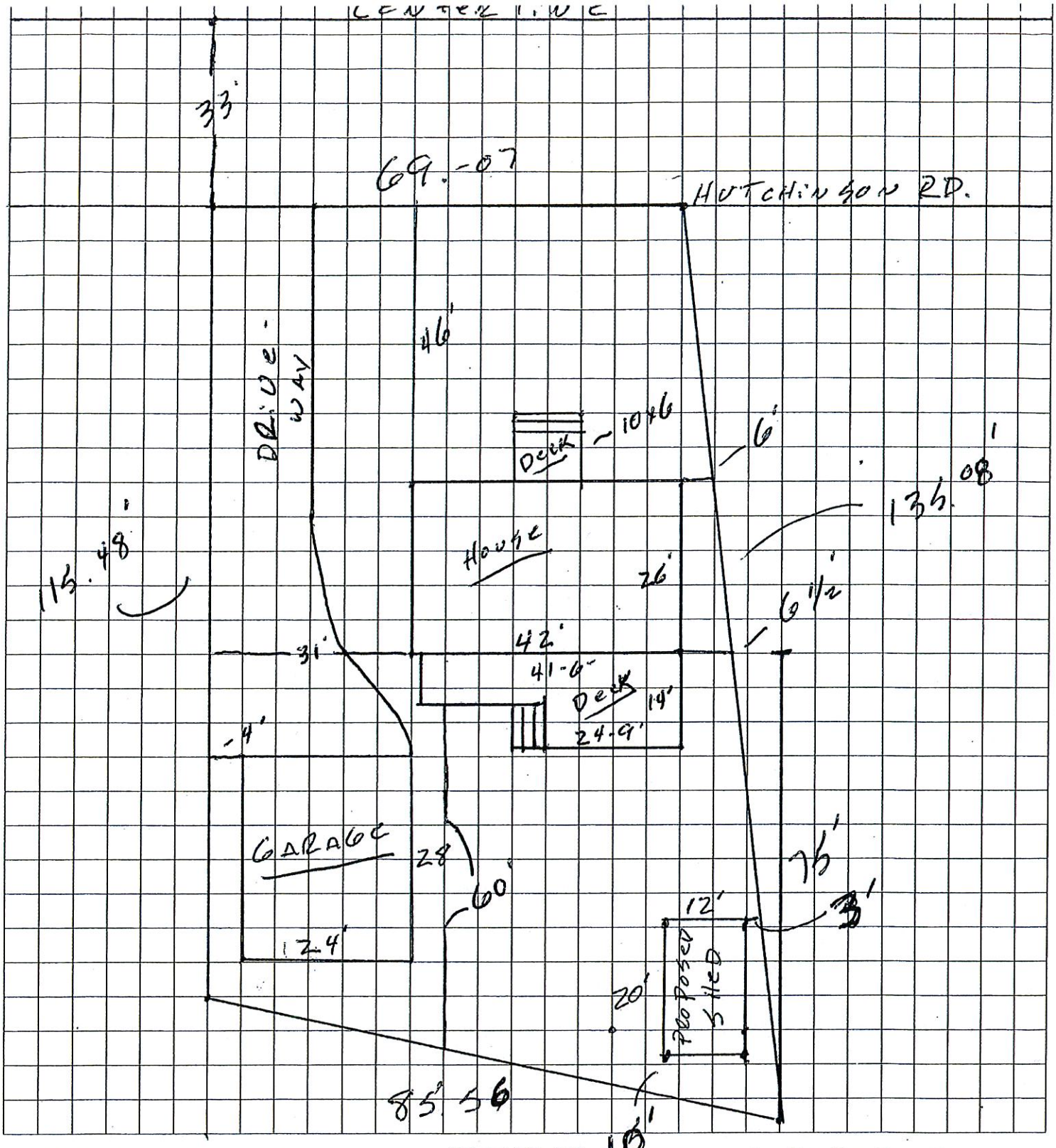
Steven Robertson, Senior Planner (218-730-5295)

City of Duluth, Planning Division

411 W 1st Street, Room 208

Duluth, MN 55802

From: Laura Jacobson [mailto:laura.jacobson@tlcofduluth.com]
Sent: Tuesday, November 26, 2013 5:31 PM
To: Steven Robertson
Subject: Re: Hello



North Arrow Required

SITE PLAN

Do Not Use Pencil

Site Address: 2401 HUTCHINSON

Owner's Name: CHRIS JACOBSON

This Site Plan is an accurate and complete representation of the footprint(s) of all existing and proposed structure(s) and their location(s) on the subject property.

Applicant's Signature: RECEIVED NOV 05 2013

Plat / Parcel No. 0100262 0016

Grid is 4 squares per inch

Scale: 1" = 20 **Feet**

Date: 11-5-2013

Dear Planning Commission Members,

Thank you for considering the variance for a shed in the back yard of our home at 2401 Hutchinson Road. We want to satisfy the concerns expressed at your meeting on Tuesday, December 10 and believe we have done so with the new placement of the shed and addition of a water garden.

Under the new plan the shed will be moved approximately 23 feet further from the platted but non-existent Miller Creek. That means the shed will be about 115 feet from it.

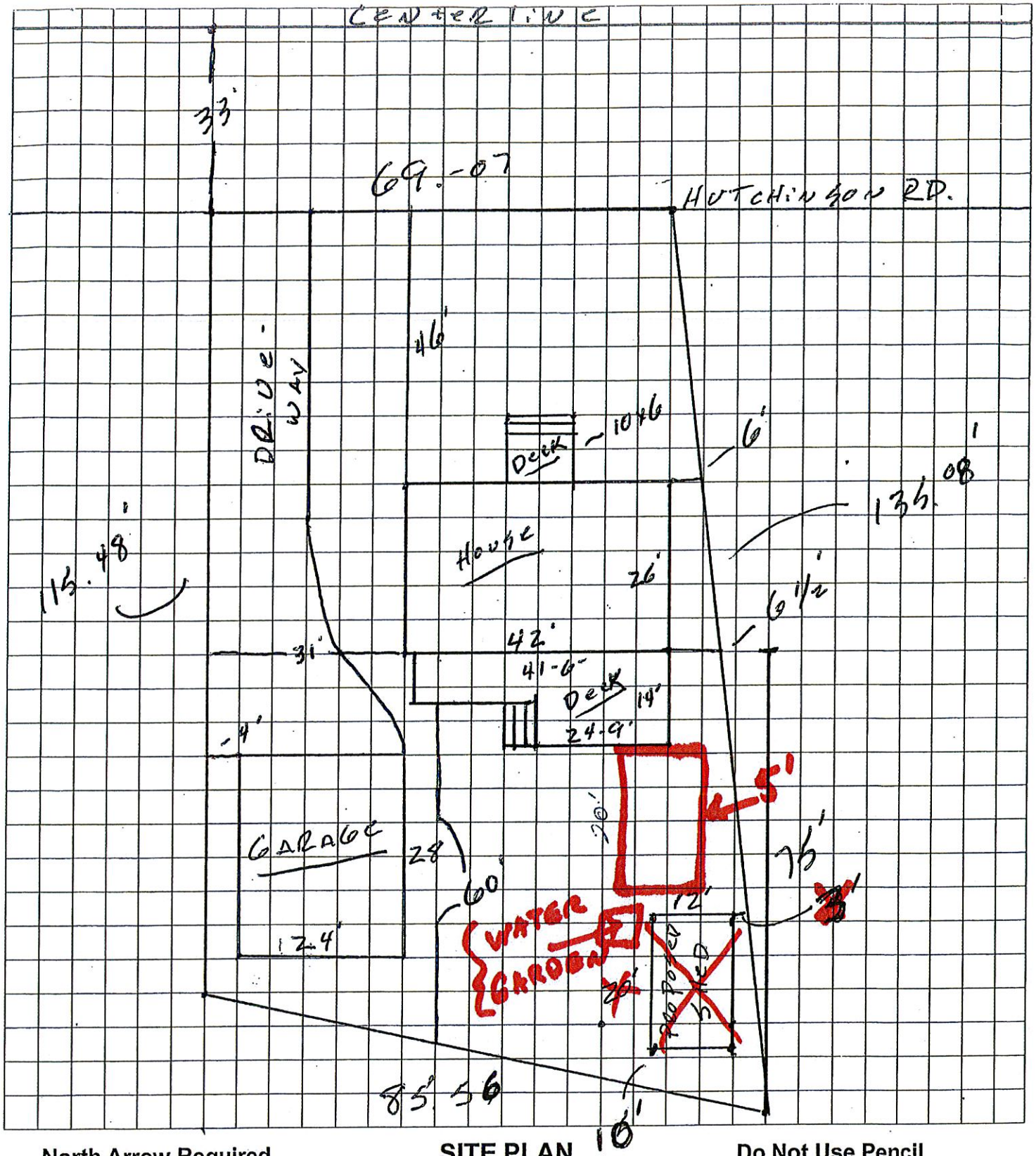
On Wednesday we met with R.C. Boheim who is the District Manager for the South St. Louis County Soil and Water Conservation District. He had no concerns from his perspective and helped us determine what size water garden needs to be done to accommodate water runoff. As you can see from the enclosed e-mail exchange he suggested using a clay soil determination which is beyond what would really be necessary because the consistency is average soil and not clay. While it is in excess of what is required we are happy to exceed expectations. We will either construct an 8X10 or 10X10 water garden with the appropriate depth to satisfy the requirement. Of course as part of the water garden we will add gutters to the shed to direct water to it.

We hope our plan will satisfy the concerns you expressed. Chris will be at your meeting on Tuesday, December 17 to answer questions you may have.

Thank you.

Sincerely,

Chris and Laura Jacobson



North Arrow Required

SITE PLAN

Do Not Use Pencil

Site Address: 2401 HUTCHINSON

Owner's Name: CHRIS JACOBSON

This Site Plan is an accurate and complete representation of the footprint(s) of all existing and proposed structure(s) and their location(s) on the subject property.

Applicant's Signature:

RECEIVED NOV 05 2013

Plat / Parcel No. 0100262.0016

Grid is 4 squares per inch

Scale: 1" = 20 **Feet**

Date: 11-5-2013

gld

[Quoted text hidden]

R.C. Boheim <R.Boheim@southstlouisswcd.org> Wed, Dec 11, 2013 at 4:24 PM
To: Gary Doty <gdoty@dotydevelopment.com>

I would use Clayey soil, or 0.43 (3-5 inches deep) for 103.2 sq. ft. of .32 if they want to go 6-7 inches deep.

From: Gary Doty [mailto:gdoty@dotydevelopment.com]
Sent: Wednesday, December 11, 2013 3:58 PM
To: R.C. Boheim
Subject: Re: Rain garden stuff

Thanks for your help.

Would you please open the attachment dnr.wi.gov etc...and scroll down to page 9. Am I figuring right based on their example that for a 12x20 foot shed the rain garden needs to be 60 square feet?

240 square feet X .025 = 60 square feet or roughly 10X6.

gld

On Wed, Dec 11, 2013 at 3:31 PM, R.C. Boheim <R.Boheim@southstlouisswcd.org> wrote:

Check this out:

http://bluethumb.org/raingardens/

http://dnr.wi.gov/topic/shorelandzoning/documents/rgmanual.pdf

R.C. Boheim

South St. Louis

Soil & Water Conservation District

(218) 723-4629

www.southstlouisswcd.org