



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 13-044	Contact	Steven Robertson	
Application Type	Shorleand Variance	Planning Commission Date	April 9, 2013	
Deadline for Action	Application Date	March 8, 2013	60 Days	May 7, 2013
	Date Extension Letter Mailed	March 25, 2013	120 Days	July 6, 2013
Location of Subject	2012 Maple Grove Road			
Applicant	MHM 22, LLC	Contact		
Agent	Sheldon Berg	Contact	sberg@djr-inc.com	
Legal Description	N/A			
Site Visit Date	March 23, 2013	Sign Notice Date	April 23, 2012	
Neighbor Letter Date	March 25, 2013	Number of Letters Sent	17	

Proposal

Applicant intends on demolishing existing structure (Ground Round Restaurant) and constructing 3 additional structures for new retail businesses. Applicant is seeking a variance from the Shoreland standards. According to the applicant, "the setback requirements for the cold water creek adjacent to the property greatly inhibit site....in this revised application, the development has reduced the mount of building in the building area...from the previously approved variance. The plan also makes every effort to improve the storm water quality of the site from existing conditions."

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-C	Commerical	Large-Scale Commercial
North	MU-C	Commerical	Large-Scale Commercial
South	MU-C	Commerical	Large-Scale Commercial/Preservation
East	MU-C	Commerical	Large-Scale Commercial
West	MU-C	Commerical	Preservation/Large-Scale Commercial

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.

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

Future Land Use - Large Scale Commercial. Mall, shopping center and big box retail development, with associated surrounding retail and service uses, but only ancillary office uses and no residential uses. Oriented primarily to the motorist, with planned internal circulation patterns while still accommodating pedestrian movement. Requires access to regional transportation routes. May include regional green infrastructure for watershed protection.

Future Land Use - Preservation. Lands with substantial restrictions. High natural resource or scenic value, or severe development limitations. Primarily public lands but limited private use is anticipated subject to use and design controls. Examples include: most city parklands and primary viewsheds; shorelands of lake, rivers, streams; wetlands and floodplains; high-value habitat; low-intensity private or public uses.

Current History: this site applied for (and recieved) a MU-C Plan Review, easement vacation, boundary line adjustment, and shoreland variance in May 2013. This site experienced flooding during the June 19/20 rain event last summer.

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

- 1) A Shoreland Variance was approved for this site in May 2012. While the Land Use Supervisor was allowed to make amendments to the variance (per approval conditions), it was determined that the scope of changes requested by the applicant were considered significant enough to be a major change. The applicant was directed to apply for seek Planning Commission approval for a new/revised shoreland variance.
- 2) The variance request is to construct a structure 116 feet from the ordinary high watermark.
- 3) The site is already significantly developed with an existing structure (Ground Round restaurant) and parking lot. The existing structure is proposed to be demolished and a new structure is proposed to be located 108 feet from the creek. The neighboring shoe store (former Verizon store) is approximately 90 feet from Miller Creek.
- 4) The site's development area is limited by the shoreland setback and utility easement (note pending vacation request). The special circumstances of this site were not created by the applicant.
- 5) The site was flooded (as much of the general area was) by the June 19/20 rain event. It should be noted that during flood events, items such as dumpsters can float away and eventually block culverts, increasing the severity of local flooding.
- 6) The May 2012 variance was approved partly on the fact that the applicant would remove 1,380 square feet of existing impervious surface from the 75 foot impervious surface setback in order to reduce impacts to Miller Creek. The current variance request, while providing underground water storage to treat stormwater run-off, would increase impervious surface rather than reduce it.
- 7) The applicant can put the property to reasonable use without the need of this variance, especially in the light of the shoreland variance granted in May 2012.
- 8) No citizen, city, or other government agency comments were received concerning this proposed variance.

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

Based on the above findings, Staff recommends Planning Commission deny the application for a variance for the following reasons:

- 1) The property can be put to a reasonable use without the need for a variance.
- 2) Denying this variance will not deprive the property owner of enjoyment of a substantial property right.
- 3) Granting the variance may compromise the general purpose intent of Section 50-18.1.D (natural resources overlay).

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



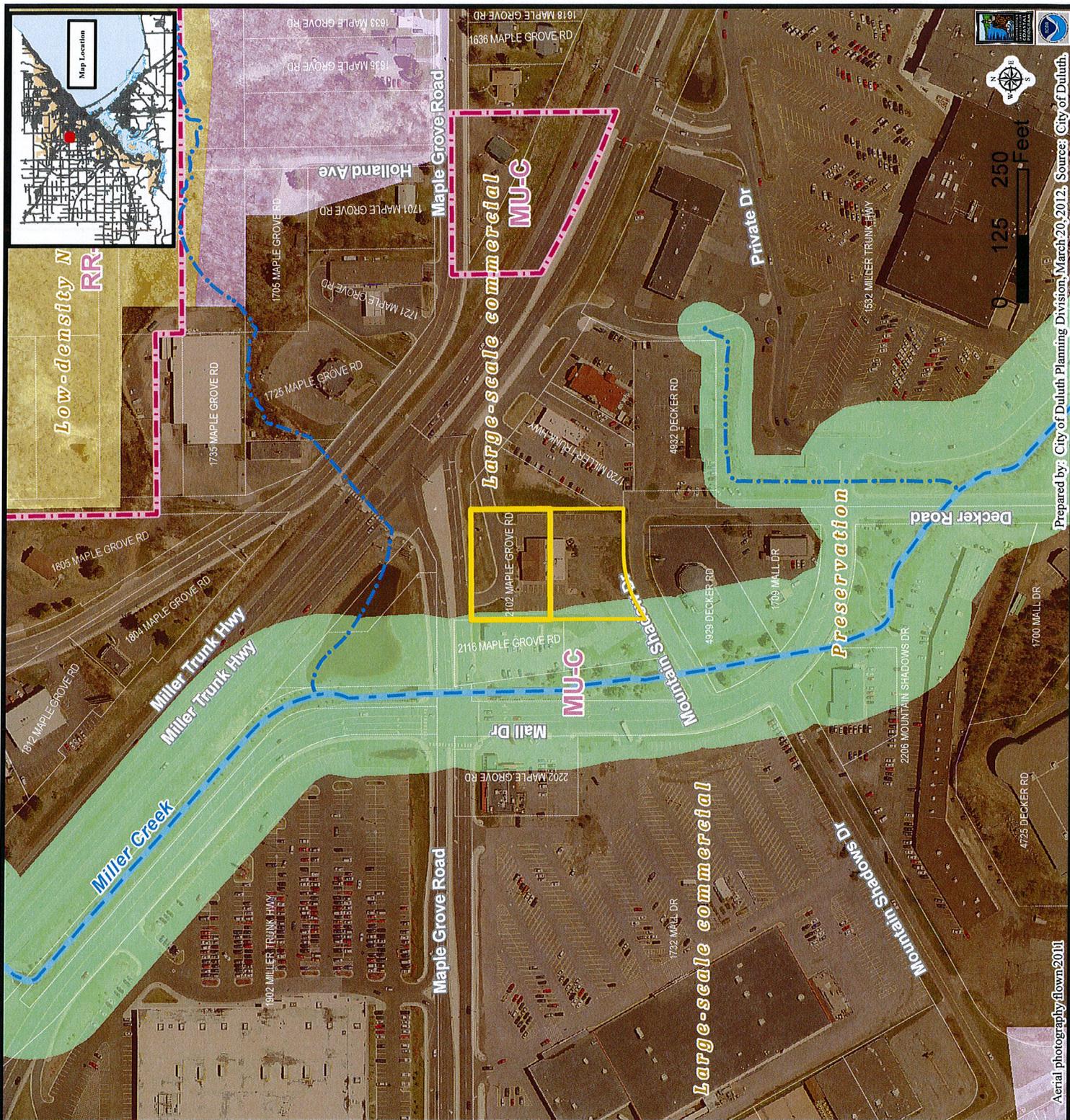
City Planning

PL 13-043, 044, and 046
2102 Maple Grove Road

Legend

- Trout Stream (GPS)
- Other Stream (GPS)
- Zoning (Final)
- 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

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Aerial photography:flovrn2011

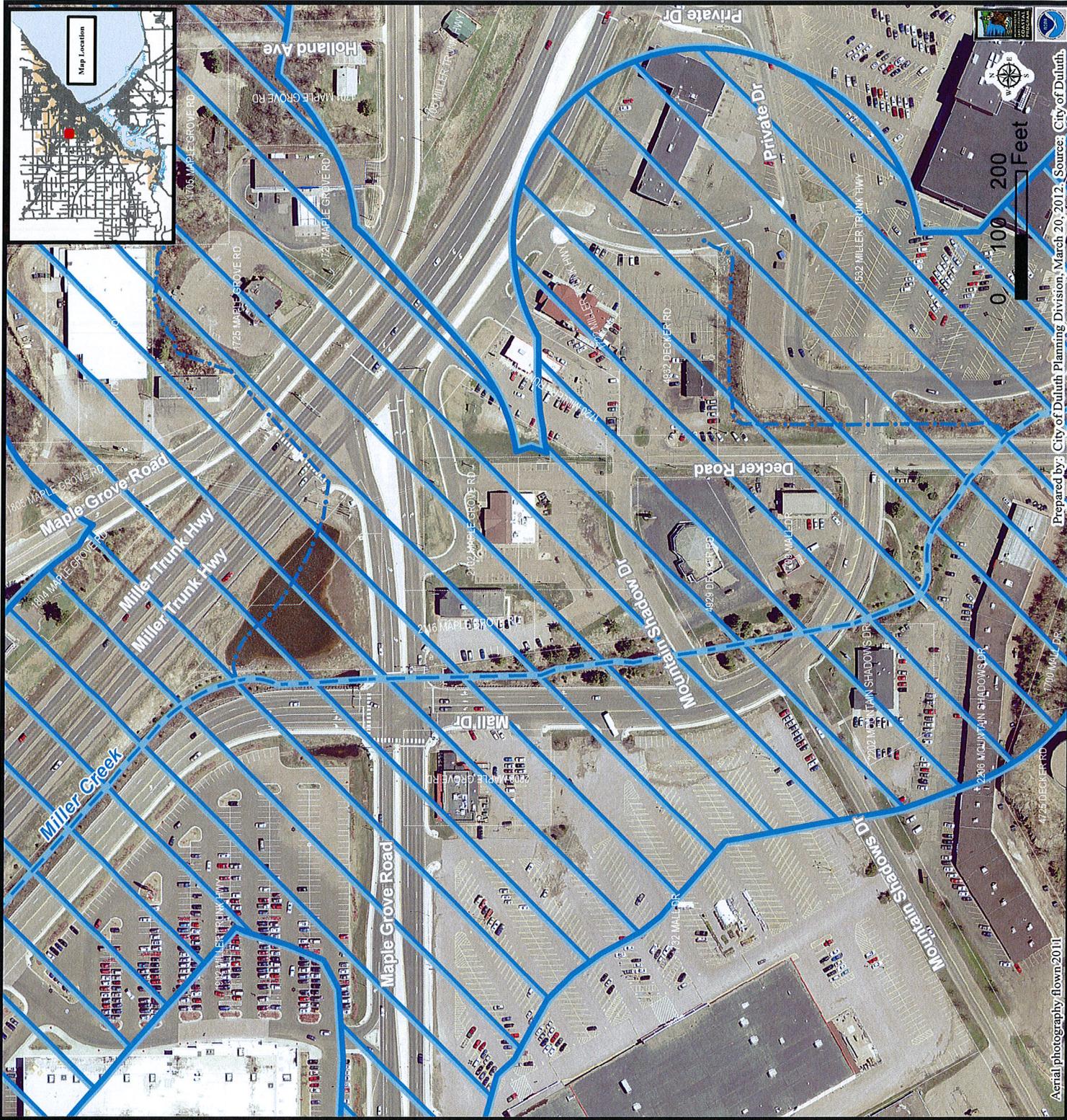
Prepared by: City of Duluth Planning Division, March 20, 2012. Source: City of Duluth.

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City Planning

PL 13-043, 044, and 046
2102 Maple Grove Road



Legend

Trout Stream (GPS)

Other Stream (GPS)

Shoreland Overlay Zone

Cold Water

Natural Environment

General Development

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Aerial photography flown 2011

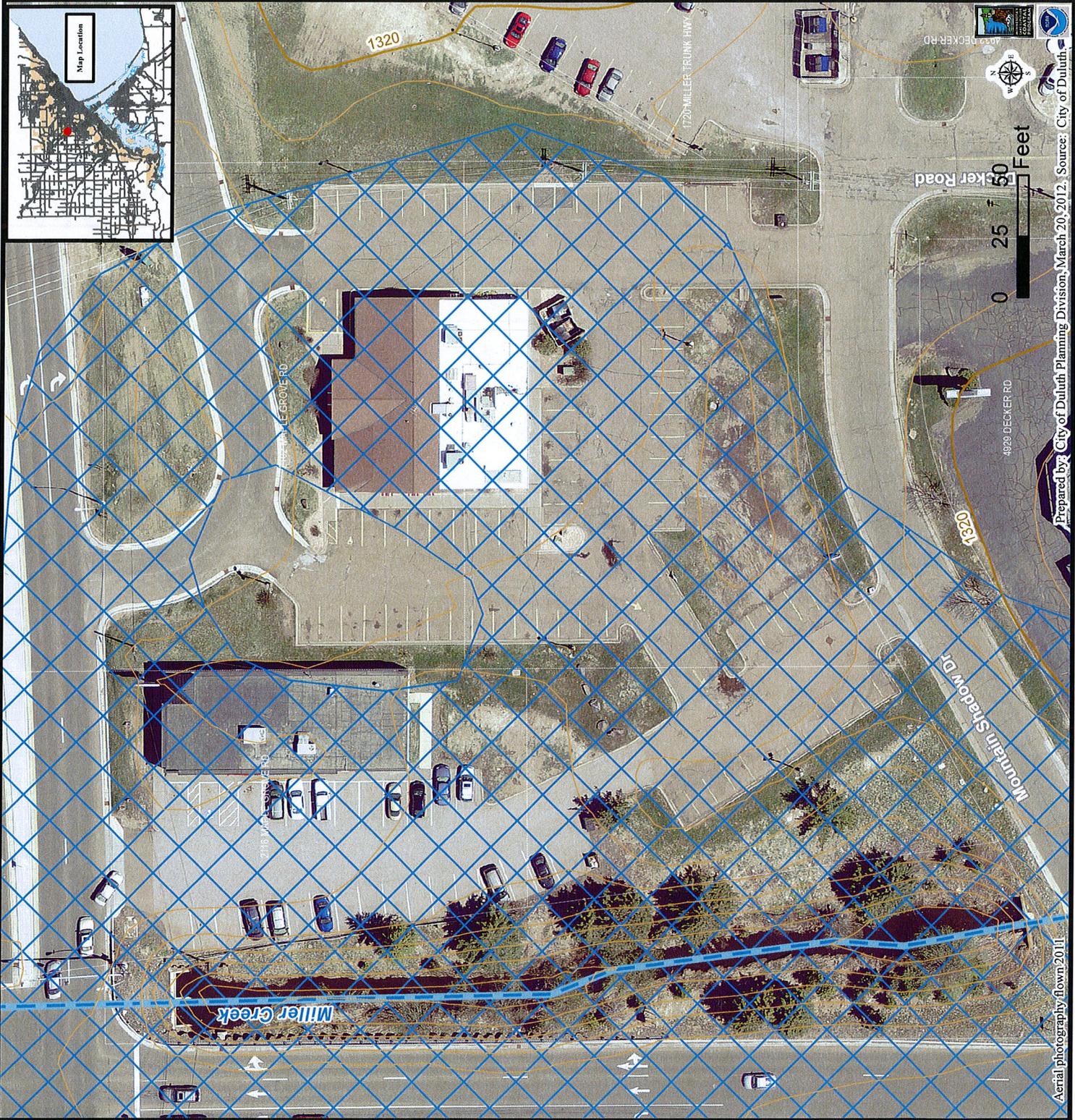
Prepared by: City of Duluth Planning Division, March 20, 2012. Source: City of Duluth.

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City Planning

PL 13-043, 044, and 046
2102 Maple Grove Road



Legend

Contours 1 Ft

Index

- Intermediate
- Index
- Trout Stream (GPS)
- Other Stream (GPS)

Floodplain Type

- General Flood Plain
- Flood Way
- Flood Fringe

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Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, March 20, 2012. Source: City of Duluth

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City Planning

**150' Shoreland Setback
for Structures**

**50' Shoreland Setback
for Impervious Surface**

Legend

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Aerial photography flown 2007

Prepared by: City of Duluth Planning Division, January 5, 2011. Source: City of Duluth, CHANGE REAL ESTATE LLC

SITE

Hansen Center
1014-702 Maple Grove Blvd, Clark, MN 55011

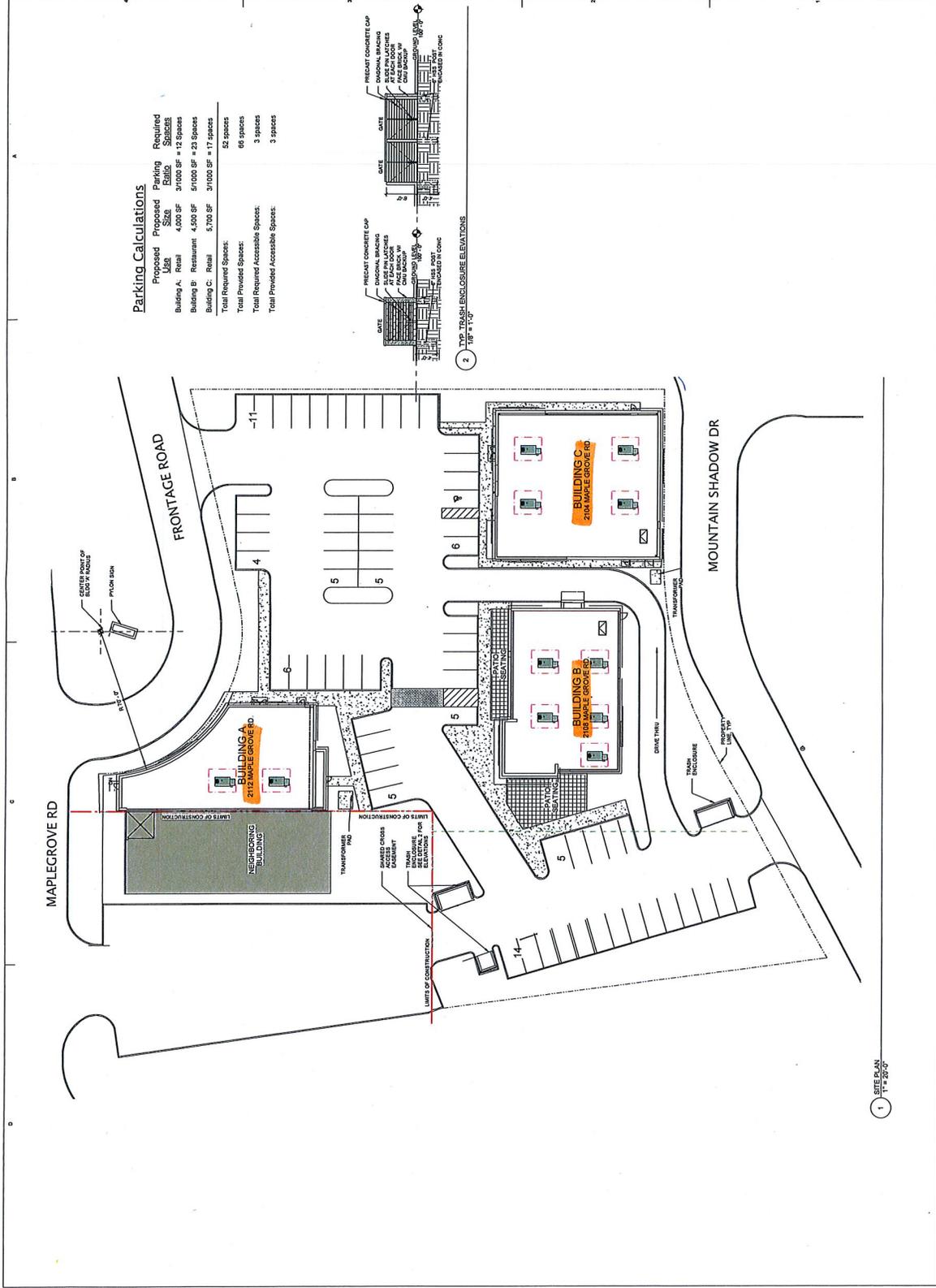
SITE PLAN

Scale: _____
 Date: _____
 Project #: 111-0110
 Client: Hansen Center
 Designer: D J R ARCHITECTURE, INC.
 233 WASHINGTON AVE. SUITE 210
 ANDOVER, MN 55002
 507-435-1111
 www.djrarch.com

CONSTRUCTION NOTES:
 1. VERIFY EXISTING UTILITIES AND RECORD THEM.
 2. ALL UTILITIES SHALL BE DEEPER THAN THE PROPOSED FOUNDATION.
 3. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM 18" CONCRETE COVER.
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 5. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM 18" CONCRETE COVER.

Parking Calculations

Proposed Building	Proposed Area	Parking Required
Building A - Retail	4,500 SF	31,000 SF = 12 spaces
Building B - Restaurant	4,500 SF	31,000 SF = 23 spaces
Building C - Retail	5,700 SF	31,000 SF = 17 spaces
Total Required Spaces:		52 spaces
Total Provided Spaces:		65 spaces
Total Required Accessible Spaces:		3 spaces
Total Provided Accessible Spaces:		3 spaces



1 SITE PLAN
11-2010

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March 5, 2013

Re: Hansen Center
2102 Maple Grove Road
Duluth, MN

Variance Criteria & Statement of Need Establishing Hardship

DJR Architecture and MHM 22, LLC are requesting a variance to the cold water river setback for structures per table 50-18.1.3-1: Minimum Shoreland Area Standards. We are requesting a reduction in the 150'-0" setback to a minimum of 116'-0" feet from the nearest edge of the normal high water mark (top of bank) of Miller Creek. The shoreland setback requirements significantly affect the owner's ability to reasonably use the site due to its restriction on buildable area. If strictly followed, the 150'-0" shoreland structure setback would severely hamper any development of the abandoned site. The proposed project balances a modest reduction in setback combined with multiple improvements to the current buffer area along with storm water management and other mitigation strategies to improve the overall site and its relationship with Miller Creek. (The specific items particular to storm water and Miller Creek mitigation criteria are outlined in subsection L below.)

General Variance Criteria

1. The shoreland setback for structures from the Cold Water River (Miller Creek) encumbers an oddly shaped site, eliminating building construction on the western half of the site. Greatly and exceptionally limit the buildable area on the site. When taken in combination with the 35'-0" utility easement running north-south on the site, over half of the property is unbuildable. The strict application would cause undue hardship to the owner.
2. The setback requirement was not created by the owner, rather by the DNR and city standards following DNR guidelines.
3. The special circumstances are particular to the property. Most other properties in the area are either not affected by the setback or of a size where the setback impacts are minimized.
4. The property, being substantially encumbered by the setback requirement, would not be viable as a commercial property given the site's restrictions due to the setback requirements.
5. The proposed development is modest in scale and meets the other prescriptive requirements of the UDC and will not impair or endanger its neighbors or unreasonably increase traffic congestion.
6. The proposed project is otherwise in compliance with other requirements of the zoning code.
7. The project is not proposing any signage not allowed per the zoning district.
8. The following specific subsections of the variance criteria items particular to the project are outlined below:
 - K. The development proposes to substantially improve the site to address the site's current location in a floodway fringe area by raising the finished floor level of the proposed structures to meet the city's criteria to no longer be susceptible to flooding as required in section 50-18.1.C.3.
 - L. The setback variance for a cold water river requested is mitigated by the following site improvements to the existing property
 - i. The site currently sheet flows across the site with the bulk of surface run-off entering the creek. We are proposing to discharge runoff from the roofs of the Building A directly to an adjacent, existing catch basin in the north access road. Runoff from the

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rooftops of Buildings B and C will discharge into a new storm manhole located between the back of the buildings. Building B will have a patio with pervious pavers and drain tile that will also be routed to the new manhole. Roof temperature is an issue; therefore attempts will be made to provide roofing materials that will mitigate temperature prior to discharge into the storm sewer.

- ii. Runoff from the southwestern driveways and parking lot will be directed to the existing vegetation area in the extreme southwest corner of the site. The grass vegetation area will provide pre-treatment by filtering out larger particles and pollutants prior to discharge into Miller Creek. A 6 inch berm will be constructed near the east bank to attenuate flows and provide pooling in the vegetated area, which will provide cooling of runoff. Existing trees will be salvaged and additional trees will be planted to provide shading to mitigate temperature rise prior to discharge into Miller Creek. Impervious surface in this area is not being reduced from pre-development conditions, however, treatment and temperature mitigation will be provided where currently none exist.
- iii. An underground detention system providing 8,620 cubic feet of storage will reduce peak flows and provide treatment for runoff from the main parking area; it will discharge into an existing MnDOT catch basin approximately 5 feet deep located off the east side of the property. The main parking area has two grass islands with drain tile that will infiltrate some runoff and discharge into the underground detention system. The proposed system will provide a 18% peak flow reduction from pre-development rates for the 2-year storm event; there is no existing peak flow attenuation on this site.

Sincerely,

DJR Architecture, Inc.



Sheldon Berg, AIA, LEED AP
Associate

Cc: File

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Summary of Duluth Flash Flood Event

June 19th-20th 2012

National Weather Service, Duluth, MN

Amanda Graning, Rick Hluchan



On June 18th, the National Weather Service in Duluth issued a flash flood watch for northeast Minnesota, including Duluth, in effect for June 19th and 20th; with a forecast of 2 to 4 inches with locally higher amounts.

Tuesday evening, June 19th, a warm front slowly lifted north over Minnesota and became a focus for ongoing thunderstorms over the western Lake Superior Region. By 700 pm, June 19th, the National Weather Service in Duluth updated the forecast and stated, "A high end and life threatening flash flood event appears to be developing across a large part of northern Minnesota."

By 100 am, Tuesday night, the Duluth Airport had received 4.14 inches of rain and extensive flooding in the Duluth area was reported. This rain fell over a period of roughly 6 hours. The intense rain and thunderstorms persisted through the night and into Wednesday, June 20th. The thunderstorms finally ended when a strong cold front crossed through the region Wednesday afternoon.

The final 2-day rainfall total at the Duluth Airport was 7.25 inches. Locally higher amounts in the 8-10 inch range were reported throughout Duluth neighborhoods. The Duluth Airport set several new records during the June 19-20th, 2012 period. Below is a listing of these new records.

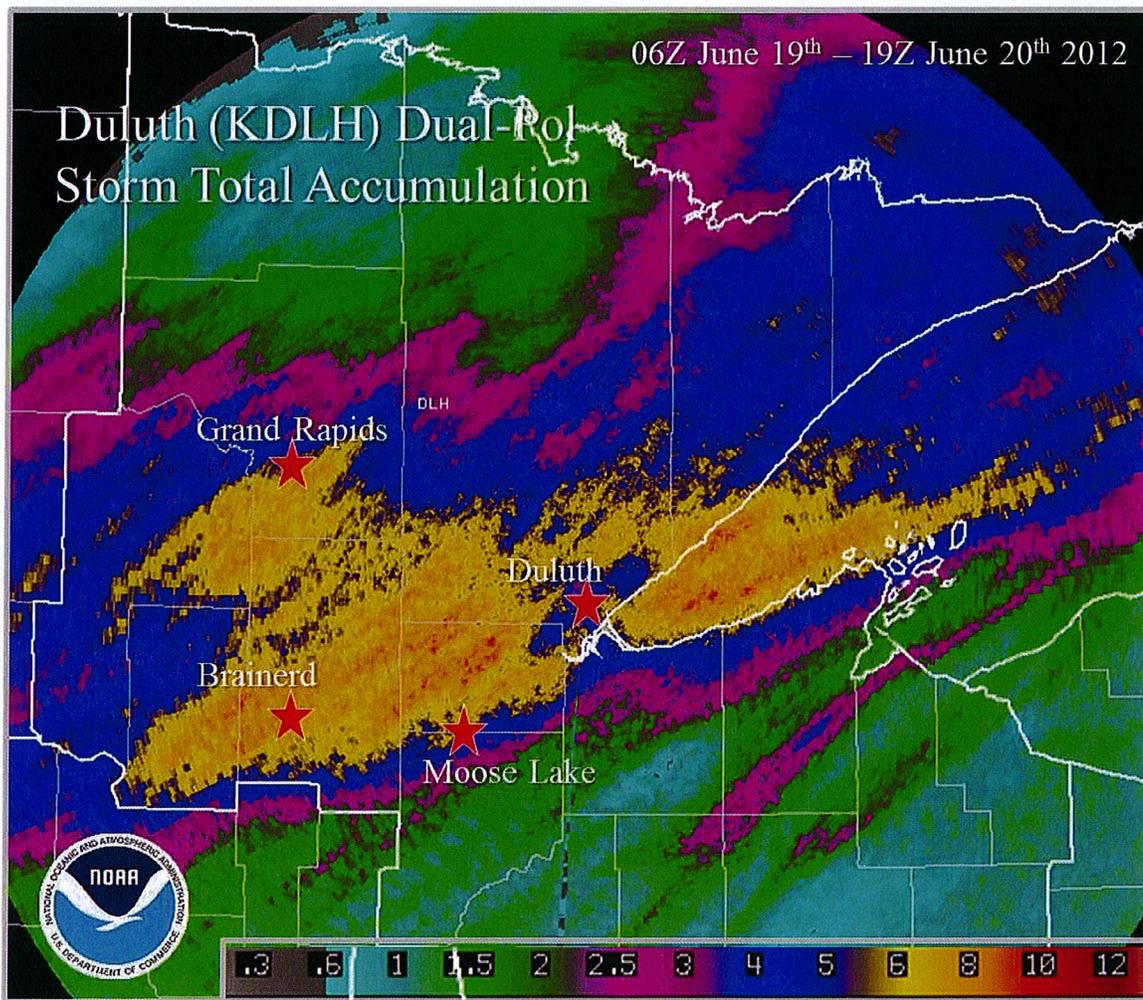
<u>Rainfall Total</u>	<u>Location</u>
10.10	4 NE Duluth
9.49	Morely Heights Neighborhood (5 NE Duluth)
9.00	Denfeld Neighborhood (2 SW Duluth)
8.87	Alborn
8.52	Piedmont Heights Neighborhood (2 WSW Duluth)
7.95	5 NW Two Harbors
7.41	4 E Island Lake
7.31	Hermantown, 1 mile West of Midway on 194
7.25	Duluth Airport (official NWS climate location)
5.75	9 ENE Boulder Lake
5.05	Proctor
4.68	3 E Floodwood

Records Broken	Previous Duluth Record		New Duluth Record	
	Rainfall	Date	Rainfall	Date
Greatest 24-hr Precipitation	5.79"	August 22-23, 1978	6.90"	June 19-20, 2012
Greatest 2 Day Precipitation	6.68"	July 20-21, 1909	7.25"	June 19-20, 2012
Greatest June 24-hr Precipitation	4.00"	June 23, 1876	6.90"	June 19-20, 2012
Greatest Precipitation on a June Calendar Day	4.00"	June 23, 1876	4.14"	June 19, 2012
Greatest Precipitation for June 19th	1.55"	June 19, 1998	4.14"	June 19, 2012
Greatest Precipitation for June 20th	1.77"	June 20, 1926	3.11"	June 20, 2012

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The 24 hour rainfall at the Duluth Airport of 6.90 inches far exceeded the 50, and 100 year flood values which are roughly 4.75 and 5.25 inches respectively.

For perspective, the 30-year climatological normal precipitation for the month of June in Duluth is 4.23 inches. It is worthy of noting that 1.88 inches of rain, nearly half of the monthly normal, was measured at the Duluth Airport during the week preceding this event, proving to have saturated the grounds.



Note:
The area of lower estimated rainfall values around Duluth is not representative. This is an artifact of the radar known as of the "cone of silence". This is due to the radar beam's inability to scan overhead, resulting in an under-estimation since much of the rain is not detected in the immediate proximity of the radar location.

The above image is the Duluth dual-pol radar estimated rainfall accumulation from midnight on June 19th, through the afternoon of June 20th.

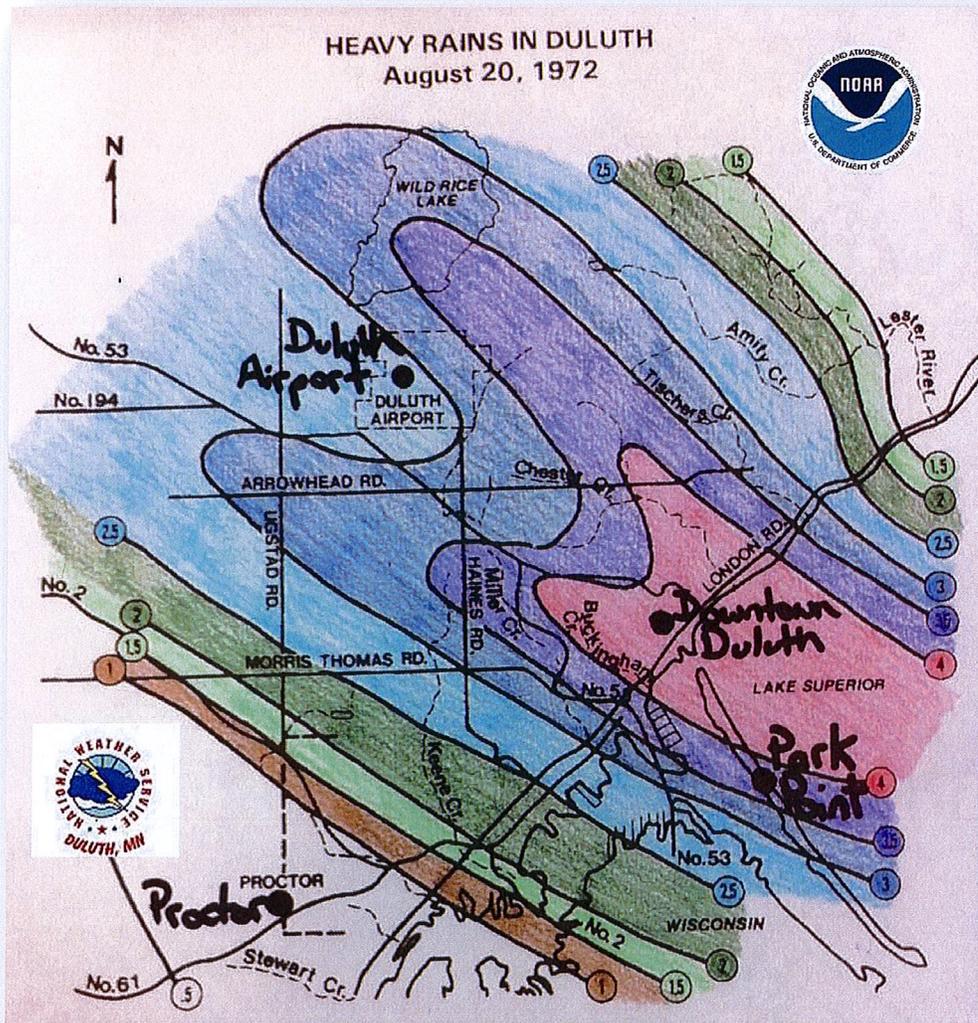
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Comparable rainfall events in Duluth's history would be the thunderstorms of September 5th-6th, 1876 that brought 6.48 inches of rainfall; July 20th-22nd, 1909 that brought 7.83 inches and possibly the most well-known, the flood of August 15th-21st, 1972 that brought 7.91 inches of rain to Duluth.

The image below is a rainfall map from August 20th, 1972; one day of a prolonged rain event. The contours range from 2.5 inches in light blue, to 4 inches in red. This flash flood was unique in that the heavy rains were spread over a 6-day day period. The Duluth weather service office, located at the Duluth Airport reported a storm total of 7.91 inches.



Photo of First Avenue West in Duluth, August 1972



Duluth Airport Rainfall Amounts

- August 15th = 1.31"
- August 16th = 2.51
- August 17th = 0
- August 18th = 0.14
- August 19th = 0
- August 20th = 2.95"
- August 21st = 1.00"

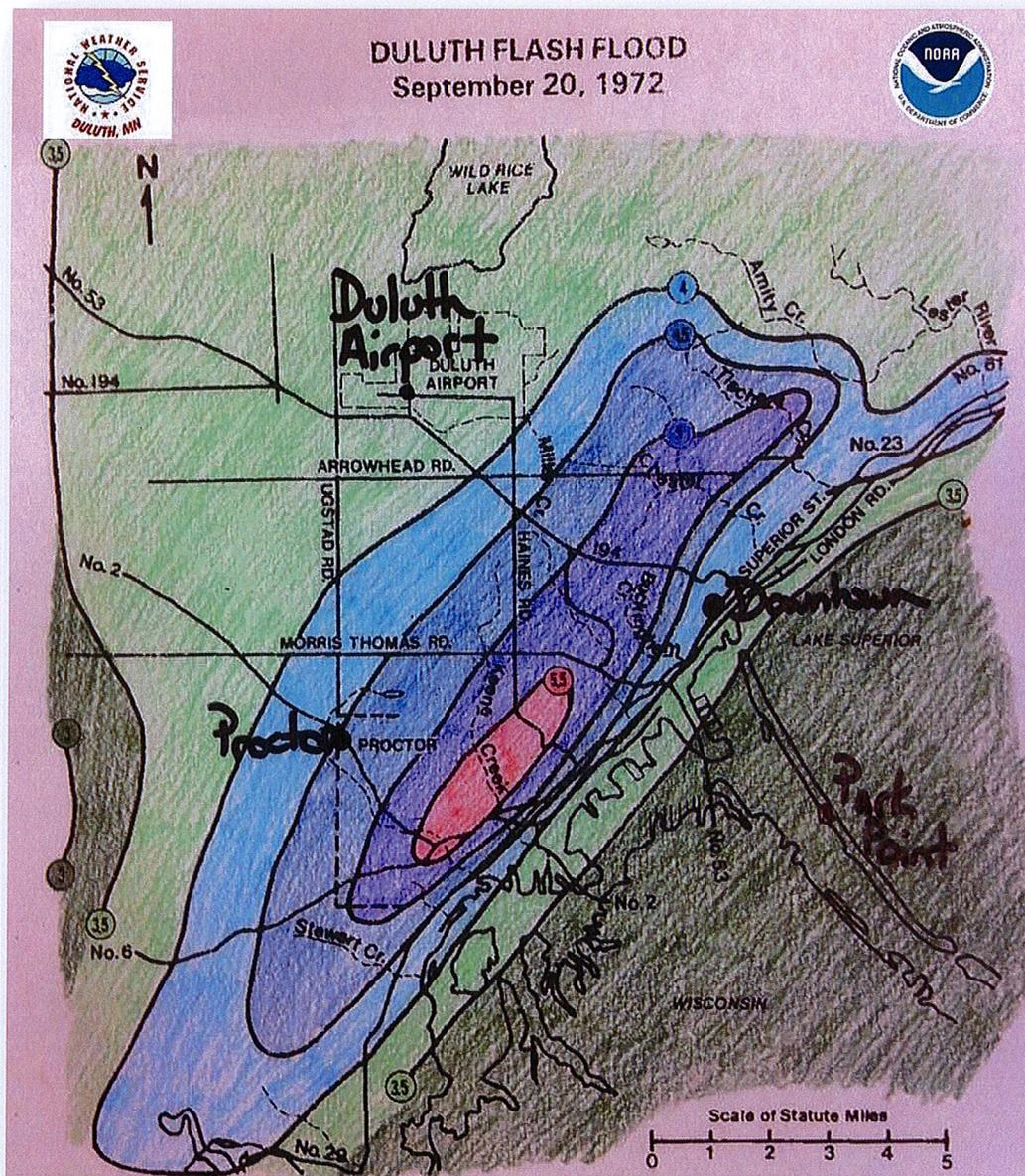
6 Day Storm Total: 7.91"

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Only a month after the August 1972 flood in Duluth, another round of rain brought a swath of 4 to 5.5 inches of rain to the Duluth community between the hours of 4:00 am and 2:00 pm. The Duluth airport recorded a rainfall amount of 3.42 inches during this eight hour period.

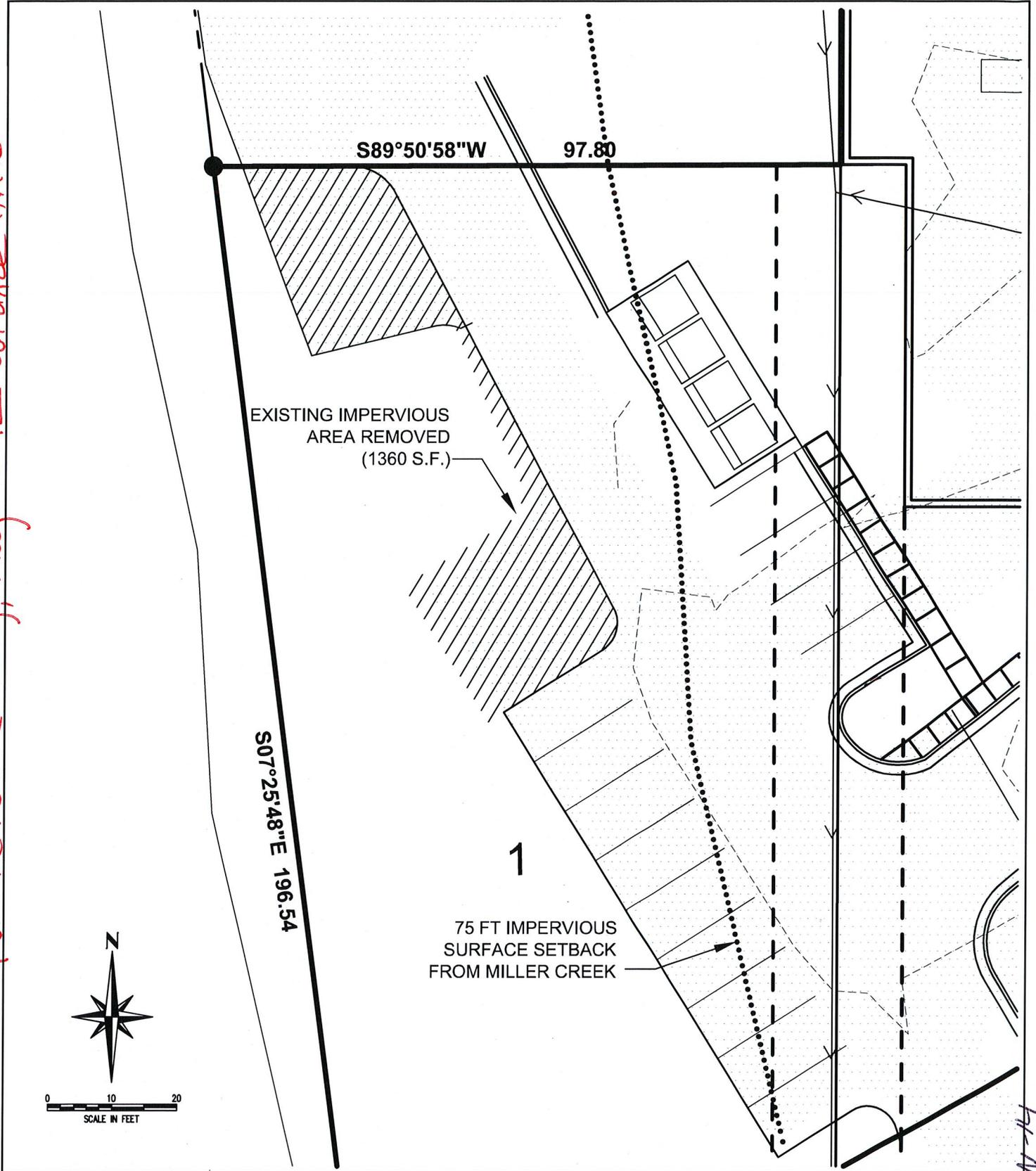
There were two fatalities with this storm and nearly 100 graves were washed up.

The image below is a rainfall map from the flash flood of September 20th, 1972. The contours range from 4 inches in light blue to 5.5 inches in red.



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For Reference Only, May 2012 Variance Into



KRECH OJARD Engineers & Architects
& ASSOCIATES, P.A.

MAIN OFFICE	REGIONAL OFFICE
227 WEST FIRST STREET, SUITE 200 DULUTH, MINNESOTA 55802 Ph: 218.727.3282 Fx: 218.727.1216	916 HAMMOND AVENUE SUPERIOR, WI 54880 Ph: 715.392.4474 Fx: 715.392.3338

HANSEN CENTER

EXISTING IMPERVIOUS AREA REMOVED

JOB No: 121065
DATE: 4/27/2012
DRAWN BY: ADS
SHEET:



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Spring 2012

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Spring 2012

RL-N



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Spring 2012