



**CITY OF DULUTH**  
 Planning Division

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

**STAFF REPORT**

<b>File Number</b>	PL 13-020	<b>Contact</b>	Steven Robertson, 218 730 5295	
<b>Application Type</b>	Variance from Front Yard Setback	<b>Planning Commission Date</b>	March 26, 2013	
<b>Deadline for Action</b>	<b>Application Date</b>	February 5, 2013	<b>60 Days</b>	April 6, 2013
	<b>Date Extension Letter Mailed</b>	January 17, 2013	<b>120 Days</b>	June 5, 2013
<b>Location of Subject</b>	120 Bruce Street			
<b>Applicant</b>	Marie Kelsey	<b>Contact</b>	218 724 1428	
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	010-1870-00017			
<b>Site Visit Date</b>	February 4, 2013	<b>Sign Notice Date</b>	March 8, 2013	
<b>Neighbor Letter Date</b>	March 11, 2013	<b>Number of Letters Sent</b>	29	

**Proposal**

Variance to construct new structure 9 feet from the front lot line, instead of 25 feet as required by R-1.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Residential	Preservation
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential	Preservation
<b>East</b>	R-1	Residential	Preservation/Traditional Neighborhood
<b>West</b>	R-1	Residential	Preservation/Traditional Neighborhood

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

Sec. 50-14.5 - Residential-Traditional District. Minimum depth of front yard: the smaller of 25 feet, or the average of adjacent developed lots facing the same street

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. See UDC pages 5-29 through 5-33 (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.

1-1

**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.

-Preservation Future Land Use. 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.

-Guiding Principle #2 - Declare the necessity and secure the future of undeveloped places. Undeveloped areas are an essential part of Duluth's municipal fabric - urban plazas, neighborhood parks, large tracts of public ownership and private lands zoned for minimal development. These minimally or undeveloped areas collectively create an open space system. These areas contribute to Duluth's cultural, health, recreational, and economic value and community identity. This open space system provides vistas, encourages active recreation, provides natural infrastructure as storm water retention...

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

- 1) Applicant is proposing to expand the existing structure by adding a 11.5 feet by 22 feet addition.
- 2) The property slopes steeply from north to south, resulting in an elevation change of about 15 feet over a distance of 120 feet. Topography of this type however, does not alone demonstrate practical difficulty. It should be noted, however, that the property is bounded by Tischer Creek to the south, which has a 150 setback and causes limitations on future development on this site (the applicant is also seeking a shoreland setback variance).
- 3) Adding a modest expansion to a residential property is a reasonable use of the property, and conditions on the property were not created by the applicant. The structure was built, with lawful building permit, to close to the front lot line by a previous owner.
- 4) Applicant's contractor states that placing the expansion to the south would not make as much sense as it would create longer corridors and add more square footage without creating more useable area. Economic and design considerations alone do not demonstrate practical difficulty.
- 5) Because many sites in Duluth are built on steep slopes and/or may be near water features, the need for relief is not peculiar to this property and does not by itself demonstrate practical difficulty.
- 6) The applicant indicates other variances that were granted by the Board of Zoning Appeals in the recent past. Since the Planning Division was not involved in recommendations to the BZA, Staff do not feel qualified to comment on past actions. Be that as it may, each zoning application needs to stand on its own merits.
- 7) It should be noted that if this variance were granted, it would likely not impair an adequate supply of light and air to adjacent properties, will not substantially impair the intent of the UDC, nor unreasonably increase the congestion in public streets.
- 8) The applicant's use of the property and expansion project is reasonable, and the applicant has no other good location to expand the home. The location proposed is the least impactful on the visual character of the neighborhood and the farthest from the shoreland setback.
- 9) No comments were received from the public, or city or government agencies on this proposal.
- 10) Per UDC Sec. 50-37.1.N, approved variances lapse if the project or activity authorized by the permit or variance is not begun within 1 year of the permit date.

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

Based on the above findings, Staff finds that the standard for variance has been met and, therefore, recommends the Planning Commission approve the requested variance, subject to the following condition:

- 1) Applicant construct the project in accordance with plan submitted by Architecture Advantage, dated February 5, 2013.

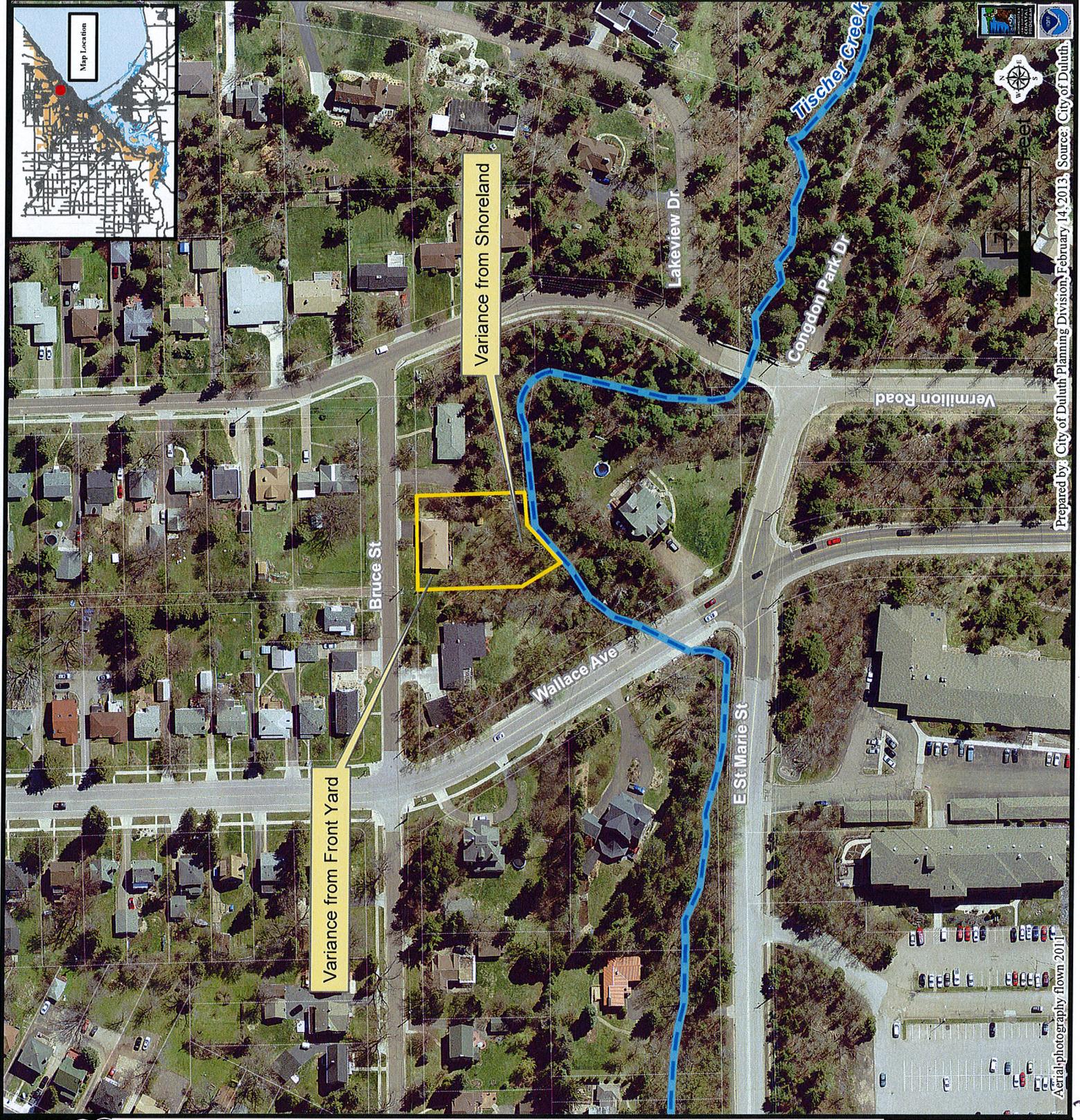
2-7

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



# City Planning

120 Bruce Street, Marie Kelsey  
Variance from Shoreland (13-021)  
Variance from Front Yard (13-020)



**Legend**

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

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.



Prepared by: City of Duluth Planning Division, February 14, 2013, Source: City of Duluth

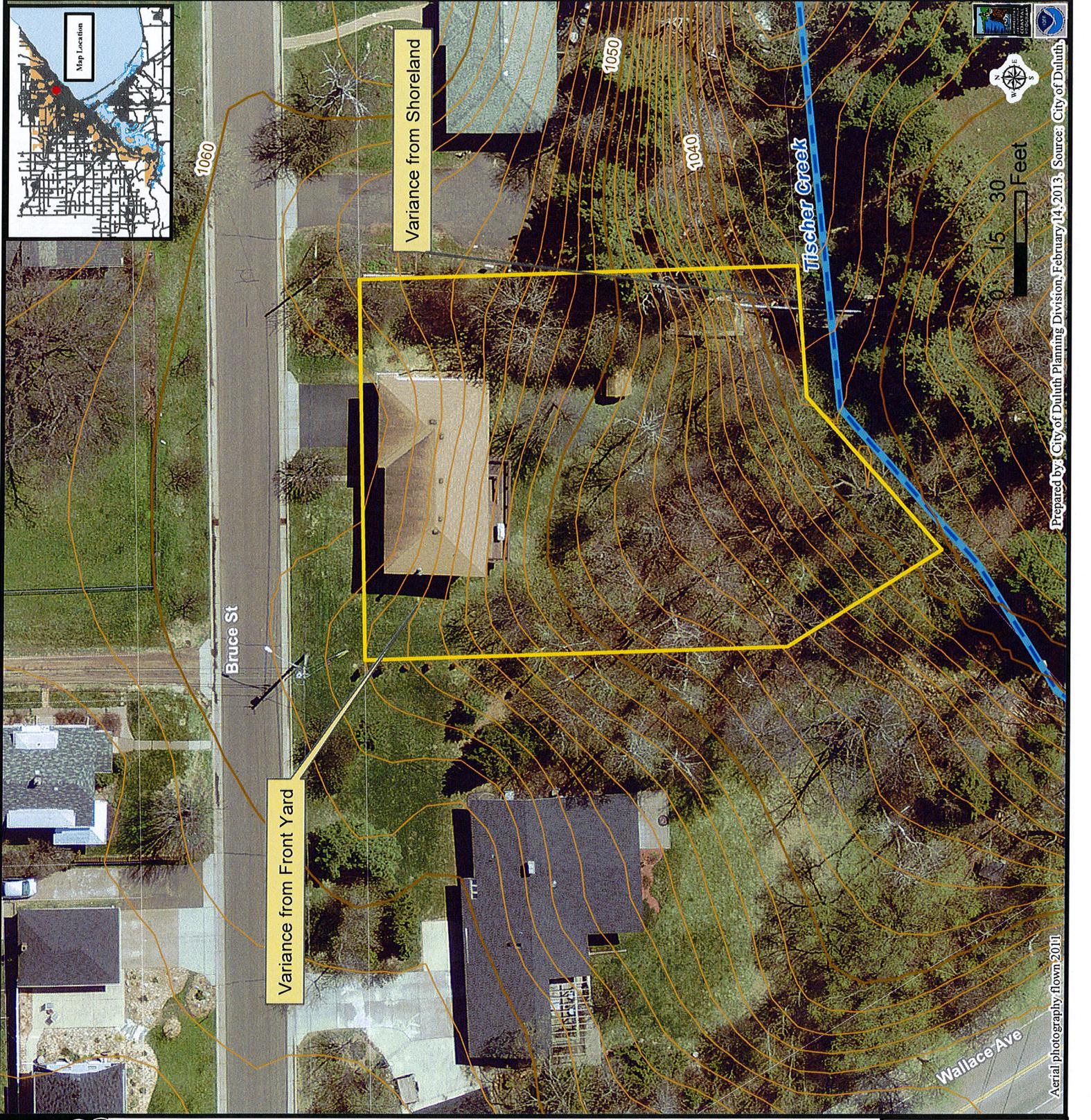
Aerial photography flown 2011

I-3



# City Planning

120 Bruce Street, Marie Kelsey  
Variance from Shoreland (13-021)  
Variance from Front Yard (13-020)



**Legend**

Contours 1 Ft

Index

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

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# City Planning

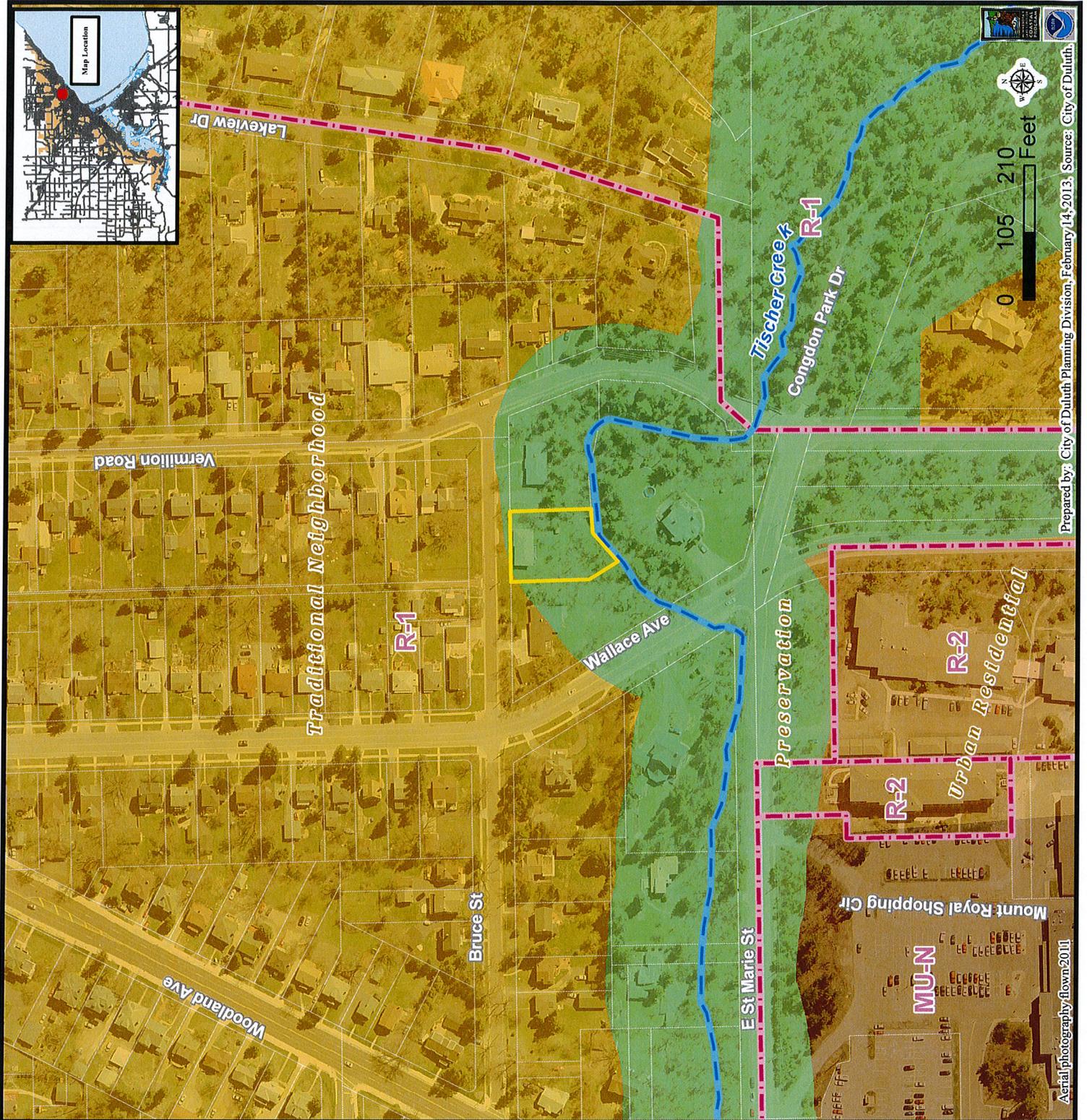
120 Bruce Street, Marie Kelsey  
Variance from Shoreland (13-021)  
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## Legend

- 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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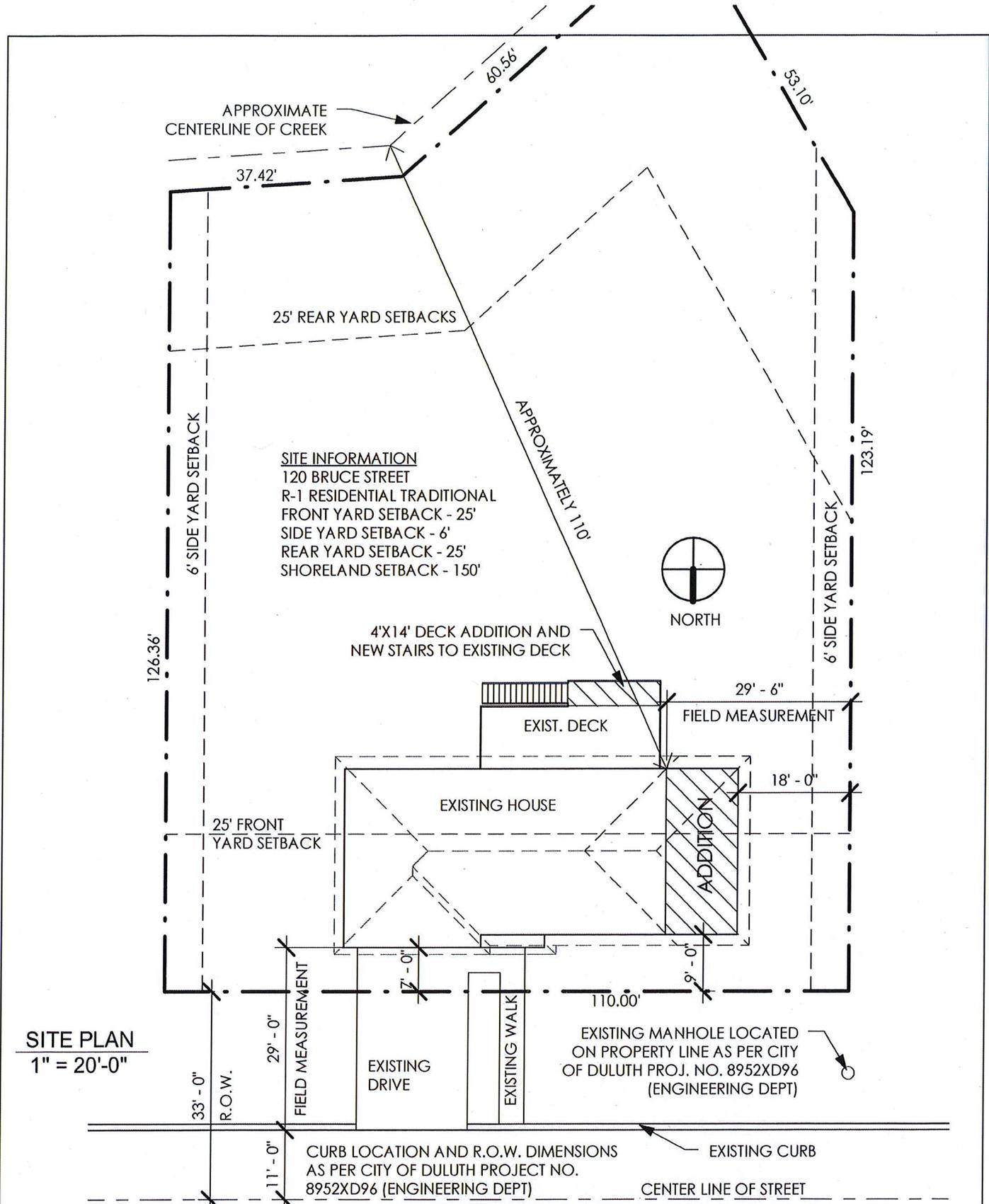
1-5



Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, February 14, 2013. Source: City of Duluth.

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**SITE PLAN**  
 1" = 20'-0"

**Kelsey Residence**

120 Bruce Street Duluth, MN

PROJECT NO: R141

DRAWN BY:

CHECKED BY:



**architecture**  
 ADVANTAGE

limited liability company

1411 London Road - Duluth, Minnesota 55805-2428  
 Phone: 218.724.5508 - Fax: 218.724.5580; Email: info@architectureadvantage.com

RELEASE DATE: 01/28/13

REVISIONS: 02.05.13

SHEET NO.

**SITE**

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Marie Kelsey  
120 Bruce St.  
Duluth, MN 55803

**Reason for My Request for a Front Yard Variance.**

I would like to put an 11.5 foot long by 22 feet wide addition on the west side of my house (12 Bruce St.) which faces north on Bruce St. in the Hunter's Park area of Duluth. It is the middle house of three houses which occupy large lots on that block, all of which are backed by Tischer Creek. (See separate variance application regarding the creek setback). I am seeking a variance to the "encroaching front yard setback" because my house is not within the required 25 foot setback from my property line. Here is a description and discussion of my "practical difficulties and undue hardship" case.

**Design and Content of the Addition**

By adding on 11.5 feet off the west side of the house I will be able to have a formal dining room and enlarge my living room on the first floor. I also plan to remodel the entire kitchen and the entry way to the house. There will be no basement dug, only footings will be used. (See **Item 1**, photos of the house and where the addition would go and the distance from the proposed addition to west property line).

The second floor will also be expanded in the same 11.5 ft. addition. The two existing bathrooms in that area will be re-sized and remodeled. One bedroom will be significantly enlarged and a walk-in closet added. Another bedroom will also be enlarged. This will make the bedrooms much more accommodating to friends and family members who occasionally stay with me (kids and grandkids).

The entire house is out of compliance with today's required setbacks, which are 25 feet from the front property line and 150 feet from a stream (at the back of my property).

**C1. "Exceptional topographic or other conditions related to the property." Why a side extension is better than a back extension.**

Building on the south side (back) of the house is not feasible for reasons relating to my need for a shoreland variance which I have addressed in a second application. A south side addition would encroach even more on the creek.

Aside from that restriction, it is also not practically feasible because the result would be more square footage with less usable area. (See **Item 2**, the letter from Raymond J. Blesener, Architect).

The house is on sloping property and has a walkout basement. (See **Item 3**, photos of the south side of the house). An addition of off the back would entail complicated foundation construction to avoid additional space not needed for the basement. An addition off of the back of the house would possibly eliminate the existing deck or, move it out further, closer to the stream. The entire roof of the house would have to be re-built instead of only extended at the west side. These are large problems that would not occur in a west side addition.

L.T

**C2. "Special Circumstances or Conditions That create the Need for Relief Were Not Directly or Indirectly Created by the Action or Inaction of the Property Owner or Applicant."**

**History of the House.**

This house was built in 1977-78. I asked the gentleman at the desk in the City Planning Office to locate the building permit for me, but he could not find it. I have looked in my materials at home and cannot locate a copy of it, although I do have the original building plans (given to me by the former owner). None of those architectural plans indicates distances to property lines.

My house is significantly closer to the street than the two houses situated on either side of me. The actual property line runs parallel to the houses, through the front yards of all three properties rather than at the street curb. My house is the newest of the three houses and I do not know what the setback rule was in 1977 (was it 30 feet?). My husband (now deceased) and I bought the house in January of 1984. See the map of the neighborhood and property lines in the pouch at the front of this portfolio. Note the large easement on both sides of Bruce St. cutting through everyone's front yards.

**1984 Condition vs. 1997 Street Improvement**

See the photos (**Item 4**) demonstrating the 1984 street front conditions and compare them with the photo from 2006, taking particular note of the length of the sidewalk leading up to the front door and the length of the driveway. Both were much longer in 1984 in spite of the actual property line being much closer to the house.

In 1997 some of the frontage was consumed by the city's re-building of the street and the addition of a curb (cost to us: \$5,000). I do not know the exact amount of footage, but you can see from the photo of the house in 2006 what the result was.

My point here is that my front yard was obviously considerably deeper in 1984 (street to front door) than it is now. However, I imagine the setback was probably 30 feet, and if the builder did not realize the actual property line was not the street, but a line much further into the front property, I can see where he believed he was building within the 30 ft. setback. Again, we do not know anything for certain without a building permit. Today, after the street improvement, my house lies 29 feet from the curb. So there was a substantial amount of front yard footage out there before the street improvement (as demonstrated by the photos), possibly leading to builder error in deciding where the house could be placed when it was constructed.

**C2. Continued – Precedents to My Building Request**

**First West Neighbor – 102 Bruce Street, Currently Owned by Bill and Christine Seitz – Two variances approved in 2002. See photos, Item 5. See Variances Granted, Item 6.**

1. This property is directly next door to me on my west side. It was owned by Eric and Ann Neetenbeek who obtained a variance in 2002 to build a *detached* two-car garage at the front west corner of their property within a few feet of the actual property line fronting Bruce St. (See the aerial map of the

2-1

property with property lines, the photo of this garage and its placement on the neighboring property, and the building permit)

Thus, precedent exists for utilization of property outside of the setback limit *right next door to me*. They already had a two car *attached* garage on their house, but were given two variances to add this second two-car garage within a few feet of the actual property lines on Bruce and Wallace.

My addition is not extending in the direction of the front property line and Bruce Street as the garage discussed above was. The planned addition is an east-west extension onto the west end of a house that already is positioned in an east-west direction, parallel to the street and *well within my west side property line*.

**Second West Neighbor - Corner of Wallace and Bruce, Address 1802 Wallace, House Faces Bruce St. See photos, Item 7. See Variance Granted, Item 8.**

1. Former owners (John and Donna Pegors) were granted a "side yard corner lot" variance in 1996 to add onto their house lengthwise. Current owner is Pam Bjorklund.

2. This is the same thing I am requesting, a lengthwise addition, but my property is much larger than 1802 Wallace and my addition smaller. They added 308 feet per story (2 story house) for a total of 616 square feet. My own request is for a footprint of 276 square feet on the lower level with 299 square feet on upper level for a total footage of 575 square feet.

**C3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity.**

Quite the opposite is the case. Everyone in the neighborhood has the same "close to the house" property line running through their front yards. Yet people have been allowed to build very close to those lines (2 examples are at C2).

**C4. Why the Relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant.**

1. When my husband and I bought this house in 1984 I was not completely enthusiastic about it because the house lacks a formal dining room. Having an area to serve guests a meal outside of a kitchen is very important to me and I have lived for 29 years in this house without having that amenity. While there is a large kitchen in this house as it is now, it is not a dining room and tends to become very cramped for space when I have friends and family here. I have wanted a dining room for nearly 30 years and have now reached the time in my life when I can afford it and want to enjoy it for years to come. The addition would add a dining room and increase the size of the living room. I am now retired and have no plans to move anywhere else, but wish to stay here and enjoy my house and property.

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2. I have been planning this addition for years and have considered all sorts of designs (in consultation with a number of contractors), including building on to the back (south), but the logistics of that would be prohibitive and the resulting design would not really fit my vision for the house. Also, that would bring the house closer to the stream, which I see as a larger issue than extending the house in a westerly direction.

**C5. The relief will not impair an adequate supply of light ... 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.**

My proposed addition is well within my side yard setback and would in no way block the sun from my neighbor's yard or cause any other adverse conditions.

There is an eclectic variety of homes in this neighborhood ranging from small to large and even some that can be called mansions. A tasteful addition to my own home would in no way have an impact on any other homeowner other than possibly raising their property values.

See email from my neighbor to the west, Bill Seitz, **Item 9**, attesting to his feelings about the project.

See Letter from Ray Belesener, **Item 2**, attesting to the fact that the addition would have no detrimental effect on the neighborhood

**C6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map.**

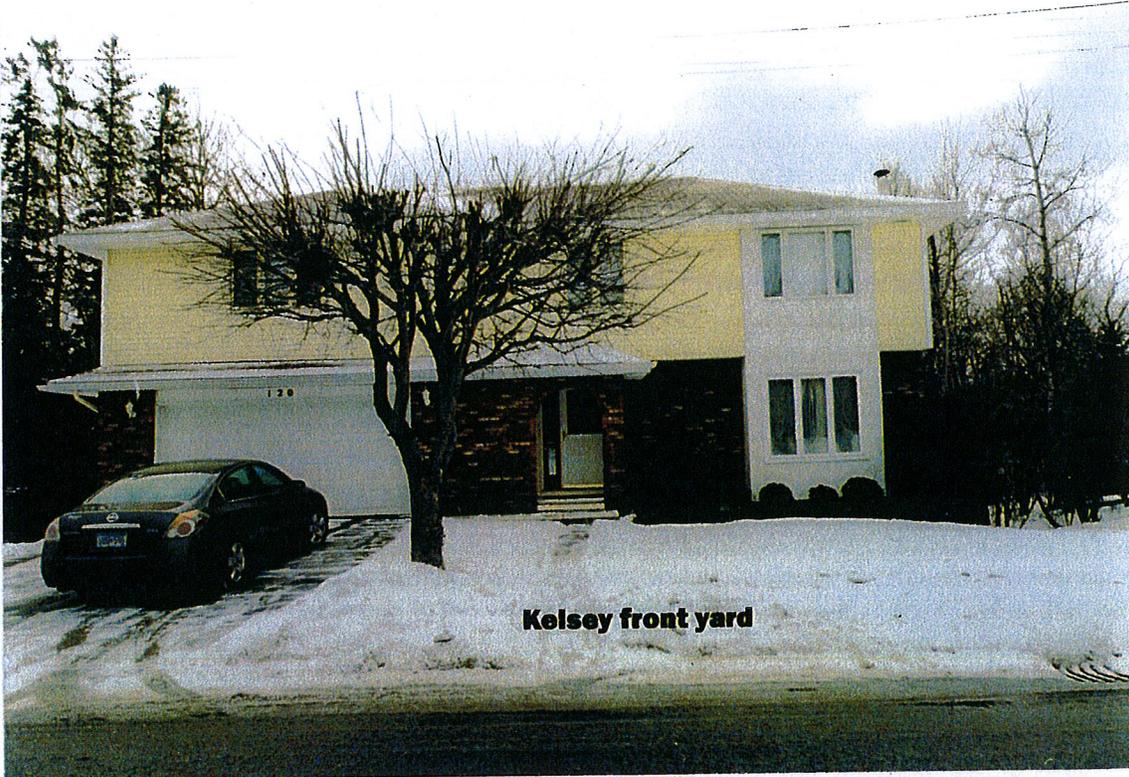
I firmly believe my proposed addition is well-justified and would not substantially impair the intent of the zoning for the area. The addition will not take up much space on the property and will run in the same direction the current house now runs, parallel to the street. In that direction I am within the setback for the side property. If I were building closer to the street or closer to the stream, those would be a much more substantial challenge to the current zoning and building rules.

**C7. N/A**

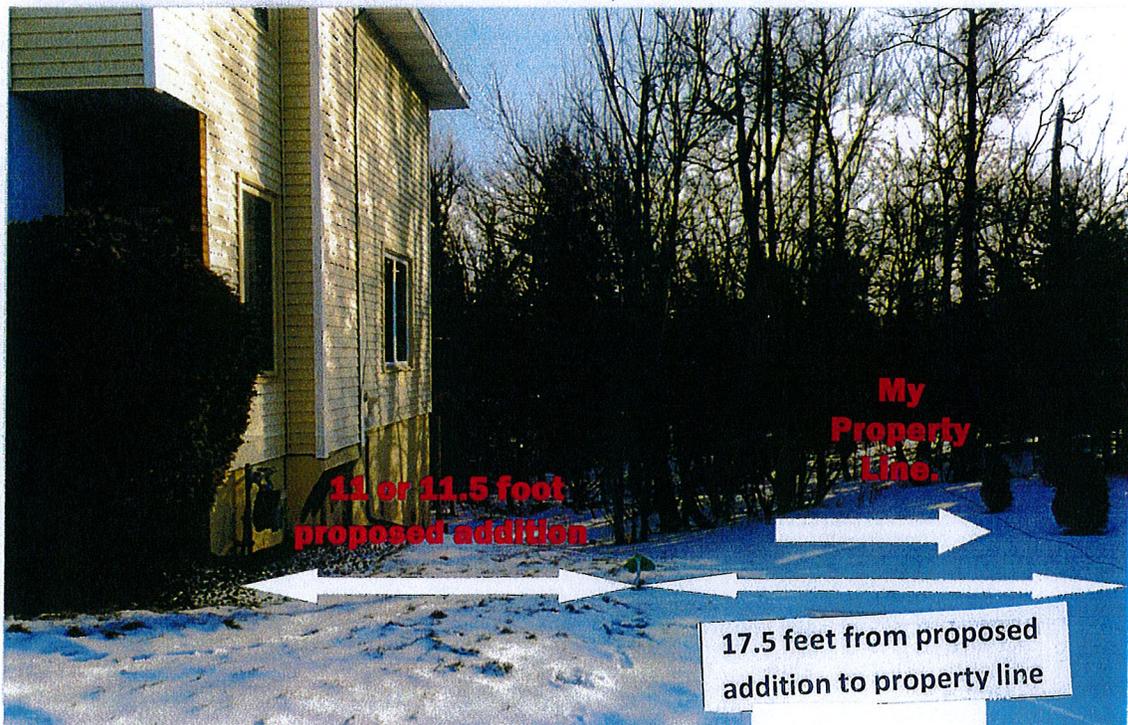
**C.8.** See application for Shoreland Variance.

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Item 1



Kelsey front yard



11 or 11.5 foot  
proposed addition

My  
Property  
Line.

17.5 feet from proposed  
addition to property line

I-11

## Item 2. Letter from Architect Ray Blesener

January 31, 2013

Ms. Marie Kelsey  
120 Bruce Street  
Duluth, MN 55803

RE: Kelsey Residence

Dear Marie:

Initially, after programming your needs and desires for your addition, we decided the most logical way to expand your residence was to the west. This remains our opinion after giving this second thoughts. As you know we looked at placing the addition on the south side of the existing residence towards the creek as an option but the flow within the spaces does not work nearly as well. Views are interrupted and after the last major storm we definitely do not want to build closer to Chester Creek. Adjoining properties along the creek were devastated from high water. *Tischer*

An addition to the west allows an easy expansion to the present living room and allows a formal dining room without completely relocating the present kitchen. Expansion of the living room and creating a formal dining room are two of the reasons for the addition. On the upper level by placing the addition on the west bedrooms can be enlarged and new bathrooms would be created in the addition simplifying construction. Adding to the south would create longer corridors to the bedrooms and adds more square footage with less usable area. The addition is small and we can meet the 6' side yard setback requirement with the addition to the west.

Although we are encroaching on the front yard setback, since the existing residence is in the setback, we are not building any closer to the street than you are at present. Other buildings along Bruce street also encroach on the present 25' front yard requirement so we do not see any detrimental effect on the neighborhood.

We are convinced building to the west is the most logical and efficient addition. We trust you will be successful in your meetings with them.

Sincerely,



Raymond J. Blesener  
FARA

1411 London Road  
Duluth, Minnesota 55805  
218.724.5568 phone  
218.724.5569 fax  
info@architectureadvantage.com



architecture  
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Item 3. Southside of house, demonstrating sloping yard and walkout basement.



F-13

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em 4  
006 Photo shows shorter  
riveway and front walk  
ian 1984 property photo.



F-14

1984 Photos of Property at 120  
Bruce St.



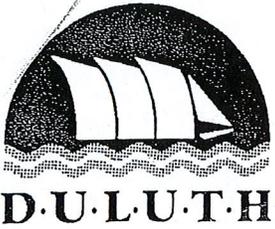
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Item 5. Photos. Neighbor on the West (Neetenbeek, now Seitz, 102 Bruce St.) received 2 Variances to build a detached two-car garage in 2002.



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BOARD OF ZONING APPEALS ACTION

210 City Hall  
Duluth, MN 55802

Item 6. Two Variances for 102 Bruce St.  
in 2002.

Date: July 24, 2002  
File Number: 02022  
Green Number: 5-110-3

Appellant: Eric & Ann Neetenbeek  
Location: 102 Bruce St.

Legal Description: Part of SW¼ of SW¼, Section 12-50-14

The above matter came on for hearing before the Board of Zoning Appeals in City Hall on July 23, 2002, notice of said hearing having been given to all interested parties in accordance with the rules of said Board. All parties interested in the matter having been heard at such hearing and the premises affected by the appeal having been inspected by the Board in accordance with its rules, the Board of Zoning Appeals now makes the findings and conclusions as indicated below:

**Appeal Approved:** To relax the minimum front yard setback requirement from 30' to 11' and to relax the minimum side yard setback on a corner lot from 20' to 15' for the construction of a 24' x 24' detached garage, as per plans submitted by the applicant.

This action granting said appeal shall not be valid after July 23, 2003 unless a building permit for such construction is obtained by said date, and unless such construction is substantially started and executed in accordance with the terms of said building permit.

Decided at Duluth, Minnesota on July 23, 2002.

BY ORDER OF THE BOARD OF ZONING APPEALS,

Cindy Hall  
Zoning Coordinator

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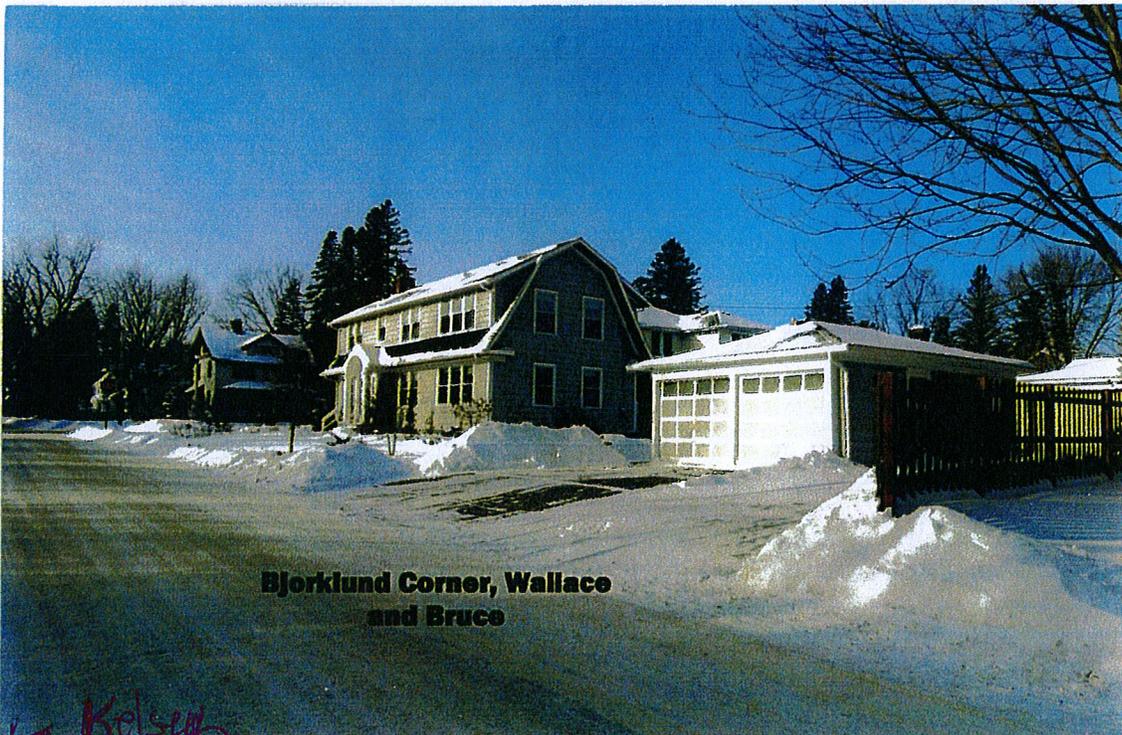
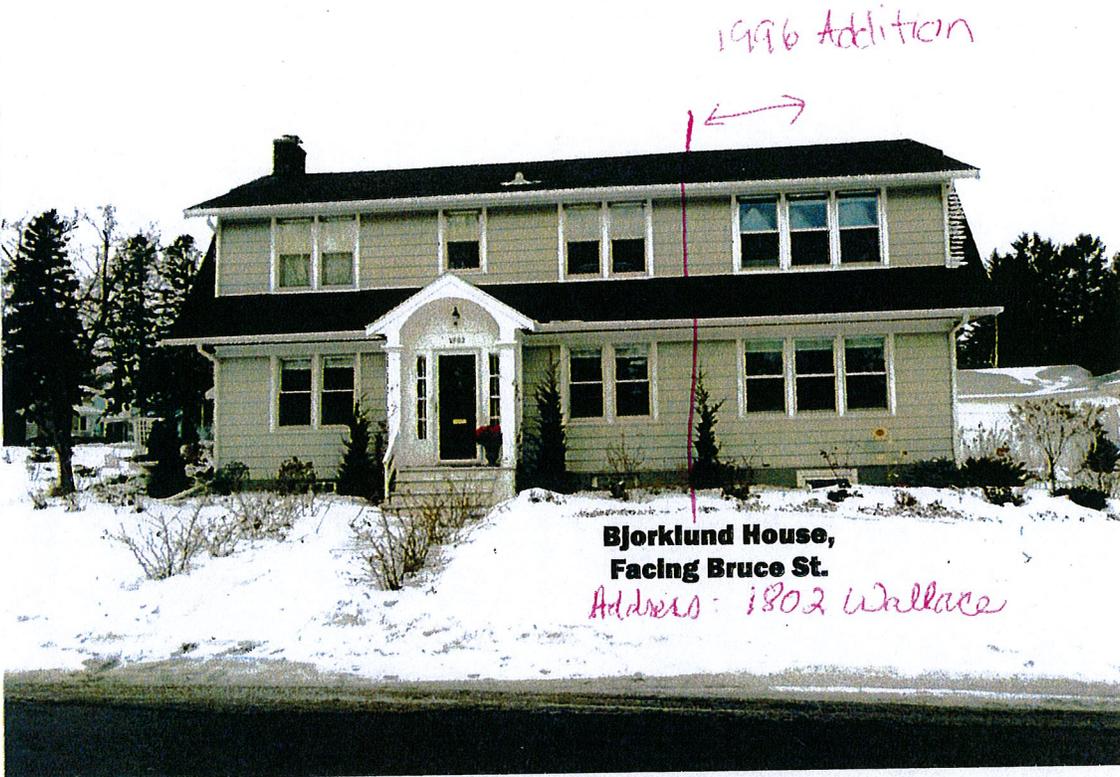
NOTE: The action taken herein by this Board shall be final unless within ten (10) days of mailing of this notice, a further appeal is filed with the Building Inspector by any person aggrieved or by any officer, agency, department, board or bureau of the City Council, stating the grounds upon which further appeal to the City Council is desired. However, the City Council is also required to make the findings as stated above. The law does not allow each person who lives near a particular land use, or proposed use, to appeal the city's action that approved or rejected the land use. Nor does the law allow any individuals or groups that believe they are helping a cause, or the public interest, to appeal. Only an "aggrieved person" can appeal. The courts have held that a person becomes an "aggrieved person" when the city's action operates to damage his/her rights of property, or bears directly upon his/her personal interest and damages it. In other words, in order to appeal, a person must show that his/her land or possessions are lost or damaged; or that his/her money, or ability to use his/her land or personal rights are adversely affected. This adverse effect must be personal and unique and not the same effect that will be experienced by the public. In the case of an appeal to the City Council, the appellant must explain the loss that has made them an "aggrieved person," as set out above. In the case of an approved appeal, action of this Board does not in itself constitute a building permit. Your permit must be procured from the Building Safety Division after the ten (10) day period stipulated immediately above has expired.

CH:ek

See Permit # 83984 issued 8/8/2

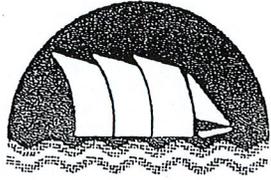
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Item 7. Photos of 1802 Wallace, facing South on Bruce St. This is Kitty-Corner from My House. Owners obtained a "side yard corner lot setback" in order to put on an addition.



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D·U·L·U·T·H

BOARD OF ZONING APPEALS ACTION

Item 8. Variance for 1802 Wallace approved.  
1996.

Date: May 30, 1996  
File Number: 96031

Appellant: John & Donna Pegors *Now Pam Bjorklund*

Location: 1802 Wallace Ave.

Legal Description: SLY 39' of WLY 130' Lot 16, Block 31, Glen Avon 1st Division

The above matter came on for hearing before the Board of Zoning Appeals in City Hall May 28, 1996, notice of said hearing having been given to all interested parties in accordance with the rules of said Board. All parties interested in the matter having been heard at such hearing and the premises affected by the appeal having been inspected by the Board in accordance with its rules, the Board of Zoning Appeals now makes the findings and conclusions as indicated below:

**Appeal Approved:** To relax the side yard corner lot setback for dwellings from 15' to 9' for the construction of a 14' x 22' two story addition to an existing, nonconforming 22' x 31' dwelling; as per plans submitted by the applicant.

This action granting said appeal shall not be valid after May 30, 1997 unless a building permit for such construction is obtained by said date, and unless such construction is substantially started and executed in accordance with the terms of said building permit.

Decided at Duluth, Minnesota on May 28, 1996.

BY ORDER OF THE BOARD OF ZONING APPEALS,

Sue Hiller  
Zoning Coordinator

*8-1-7*

NOTE: The action taken herein by this Board shall be final unless within ten (10) days of mailing of this notice, a further appeal is filed with the Building Inspector by any person aggrieved or by any officer, agency, department, board or bureau of the City Council, stating the grounds upon which further appeal to the City Council is desired. However, the City Council is also required to make the findings as stated above.

In the case of an approved appeal, action of this Board does not in itself constitute a building permit. Your permit must be procured from the Building Inspection Department after the ten (10) day period stipulated immediately above has expired.

SH:hcj

Item 9. Email from  
Neighbor to the  
West of my House.

Bill Seitz 9:35 PM

to me

Hi Marie, we don't have any problem with you putting on the addition. Good luck.

Bill

**William R. Seitz, CPA**

[bseitz@ksgcpa.com](mailto:bseitz@ksgcpa.com)

*The Power of Planning*

kolquist, seitz & goldman, LLC. [www.ksgcpa.com](http://www.ksgcpa.com)

Certified Public Accountants & Consultants

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