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	15-160		**Contact**	Steven Robertson, 218 730 5295	
Application Type	Concurrent Use Permit		**Planning Commission Date**	October 13, 2015	
Deadline for Action	**Application Date**		September 24, 2015	**60 Days**	
	Date Extension Letter Mailed			**120 Days**	
Location of Subject	South 5th Avenue West, Between West Michigan Street and Depot Road				
Applicant	Montessori School of Duluth, Inc		**Contact**		
Agent	Jim Goodman, Board President		**Contact**	jim.goodman@montessoriduluthmn.org	
Legal Description	Lots 19 to 27, Block 8, Princeton Place Addition to Duluth				
Site Visit Date	September 29, 2015		**Sign Notice Date**	September 29, 2015	
Neighbor Letter Date	September 29, 2015		**Number of Letters Sent**	N/A	

Proposal

Applicant is proposing to place private parking spaces and a small fence in the platted public right of way of Mygatt Street, and fencing in the platted right of way of Silcox Avenue.

The applicant's project is remove much of the existing parking surface (some of which is partially in the platted public right of way of Mygatt Avenue) with a smaller, but better designed, parking area. The overall impervious surface on the site will be reduced by approximately 50%, but the amount of parking area in the public right of way will remain the same.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Institutional	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Residential	Traditional Neighborhood
West	R-1	Residential	Traditional Neighborhood

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.

II. D-1

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

Future Land Use - Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys.

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

-Proposal: Applicant wishes to place private obstructions in the platted right of way.
-Issue/Item for Review: Private obstructions in the public right of way an only be approved by City Council (via ordinance), after a public hearing is conducted, and a recommendation is made, by the Planning Commission.

1) Applicant is proposing to place private parking spaces and a small fence in the platted public right of way of Mygatt Street, and fencing in the platted right of way of Silcox Avenue. The applicant's project is remove much of the existing parking surface (some of which is partially in the platted public right of way of Mygatt Avenue) with a smaller, but better designed, parking area. The overall impervious surface on the site will be reduced by approximately 50%, but the amount of parking area in the public right of way will remain the same.

2) The structure was originally constructed in 1962, as a church for the Jehovah's Witnesses. In 1991, the Montessori School of Duluth purchased the property and expanded the structure (per Board of Zoning Appeals Board Variance 91036).

3) The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.

4) The area proposed for concurrent use permit will not take away from the public's (pedestrians) ability to use the public right of way. Existing underground utilities will not be impacted.

5) The City of Duluth requires Concurrent Use Permits to include liability insurance to indemnify the City against occurrences in the right of way.

6) Concurrent Use Permits are approved by the City Council via an ordinance. Unlike street right of way vacations, concurrent use permits are not recorded at the County as they are voidable agreements between the city and property owners.

7) Per UDC Sec. 50-37.1.N, approved concurrent use permits lapse if the project or activity authorized by the permit is not begun within 1 year.

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

Based on the above findings, Staff recommends that Planning Commission recommend approval of the Concurrent Use Permit with the following conditions:

1) Applicant construct and maintain the project as identified in exhibit dated 9/23/15 (C101).
2) Applicant provide proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
3) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.
4) Fencing will be removed at the applicant's expense in the event that a public sidewalk is constructed at any time in the future in the platted right of way of either Mygatt Avenue or Silcox Avenue.
5) Fencing must comply with UDC standards (no chain link fencing is allowed in front yards).
6) 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.

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

City Planning

PL 15-160

Legend

Zoning Boundaries

- Zoning Boundaries
- Wetlands (NRRI)
- Vacated ROW

Easement Type

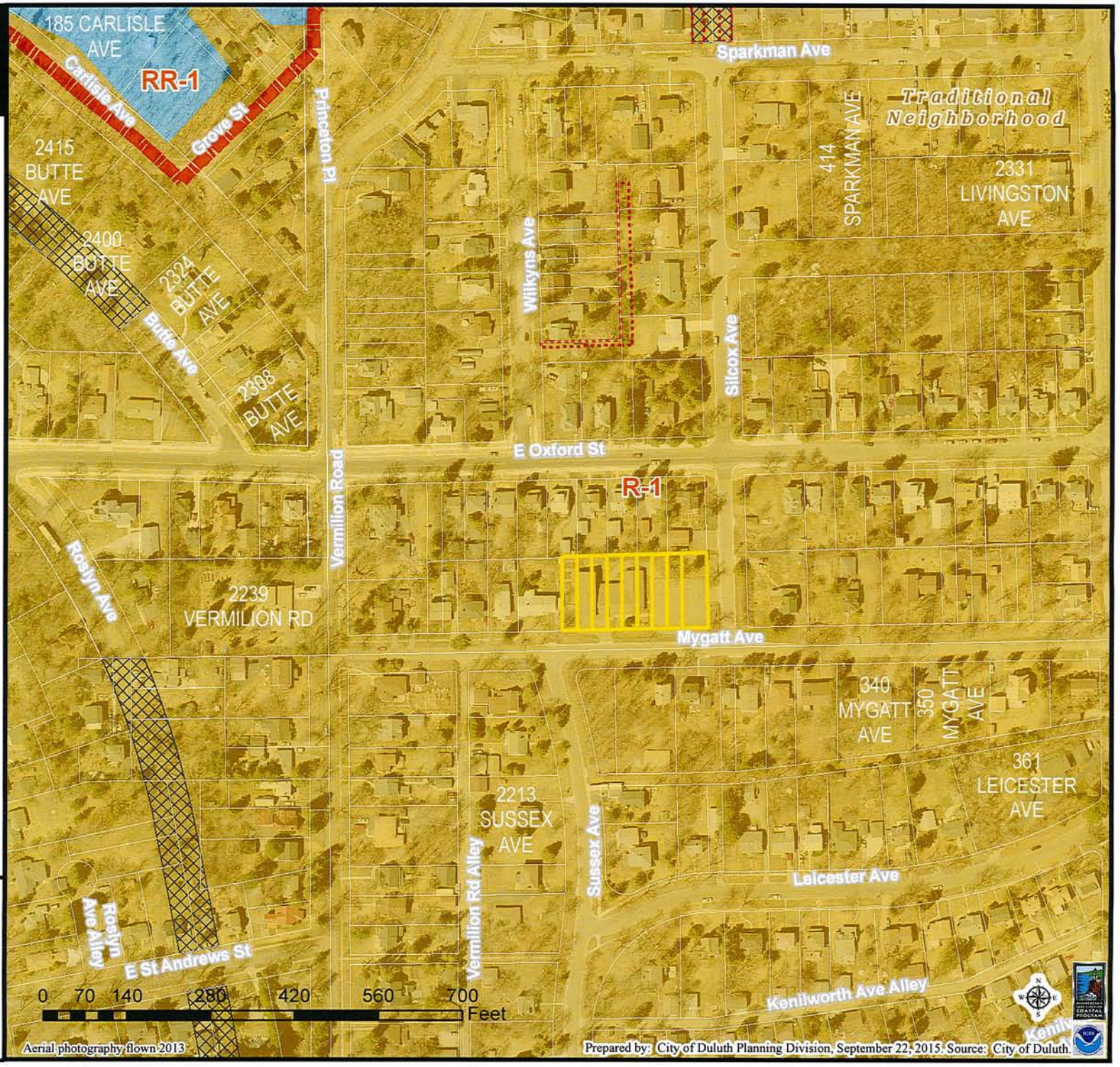
- Utility Easement
- Other Easement

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.

D3



City Planning

PL 15-160

Legend

Contours 1 Ft

Index_

- Intermediate
- Index

Zoning Boundaries

- Zoning Boundaries

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
- PS 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
- Wetlands (NRRI)
- Vacated ROW

Easement Type

- Utility Easement
- Other Easement

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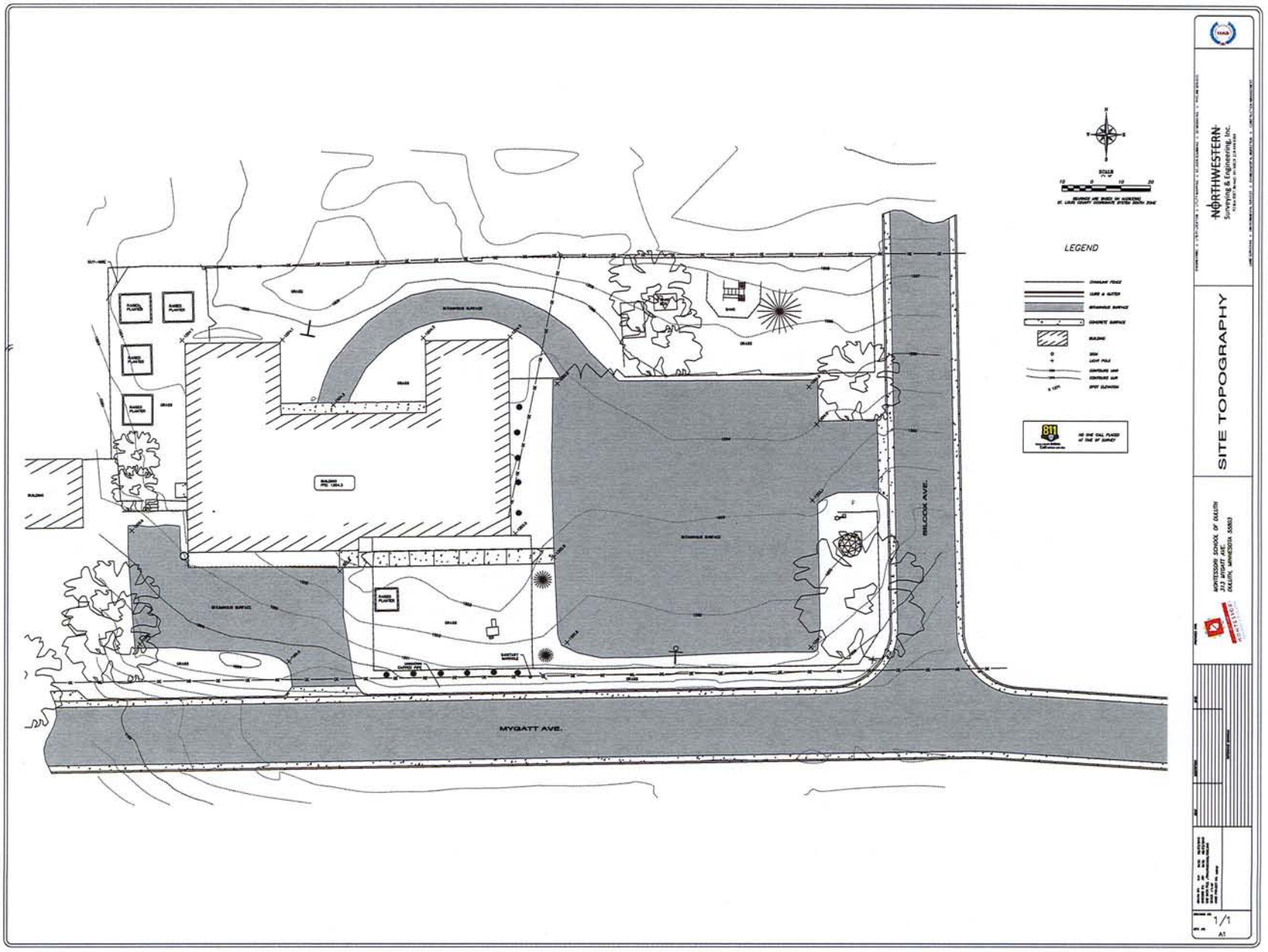
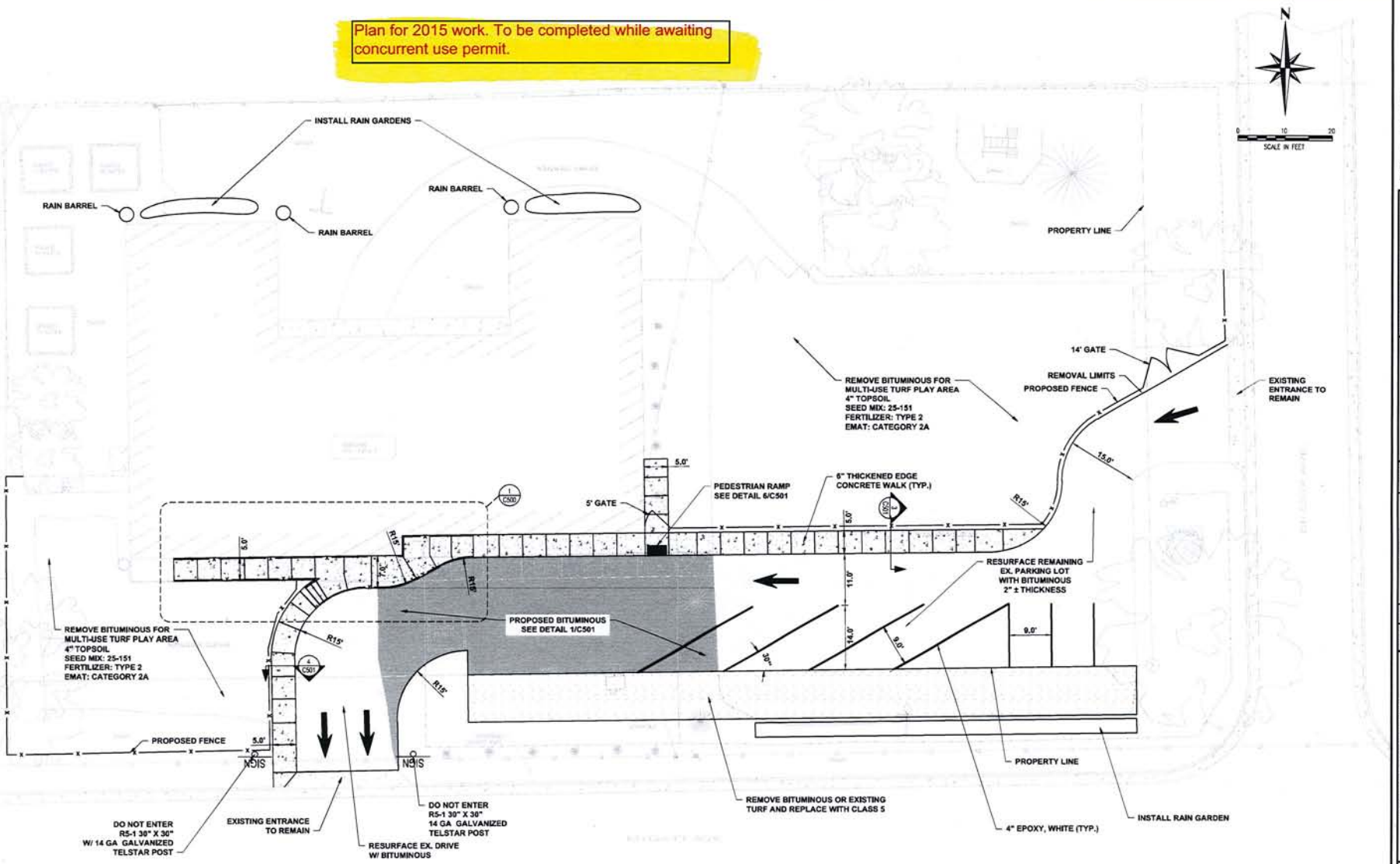
D-4



SHEET C100

D-5

Plan for 2015 work. To be completed while awaiting concurrent use permit.



KRECH OJARD & ASSOCIATES, INC. Engineers & Architects

MAIN OFFICE: 227 WEST FIRST STREET, SUITE 300, DULUTH, MINNESOTA 55802 Ph: 218.727.5202 Fx: 218.727.5203

REGIONAL OFFICE: 910 DIAMOND AVENUE, SUITE 100, HIBBING, MN 55746 Ph: 218.262.4424 Fx: 218.262.4426 www.kreckojard.com

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

NAME: SCOTT T. STEMPIHAR

SIGNATURE:

DATE: 9-17-15

LIC. No. 47565

ISSUED FOR BIDDING AND PERMITTING

DATE	REV	DESCRIPTION	REV. BY
9-24-15	1	REVISED PARKING LOT LAYOUT	STS

MONTESSORI SCHOOL OF DULUTH
SITE IMPROVEMENTS
DULUTH, MINNESOTA

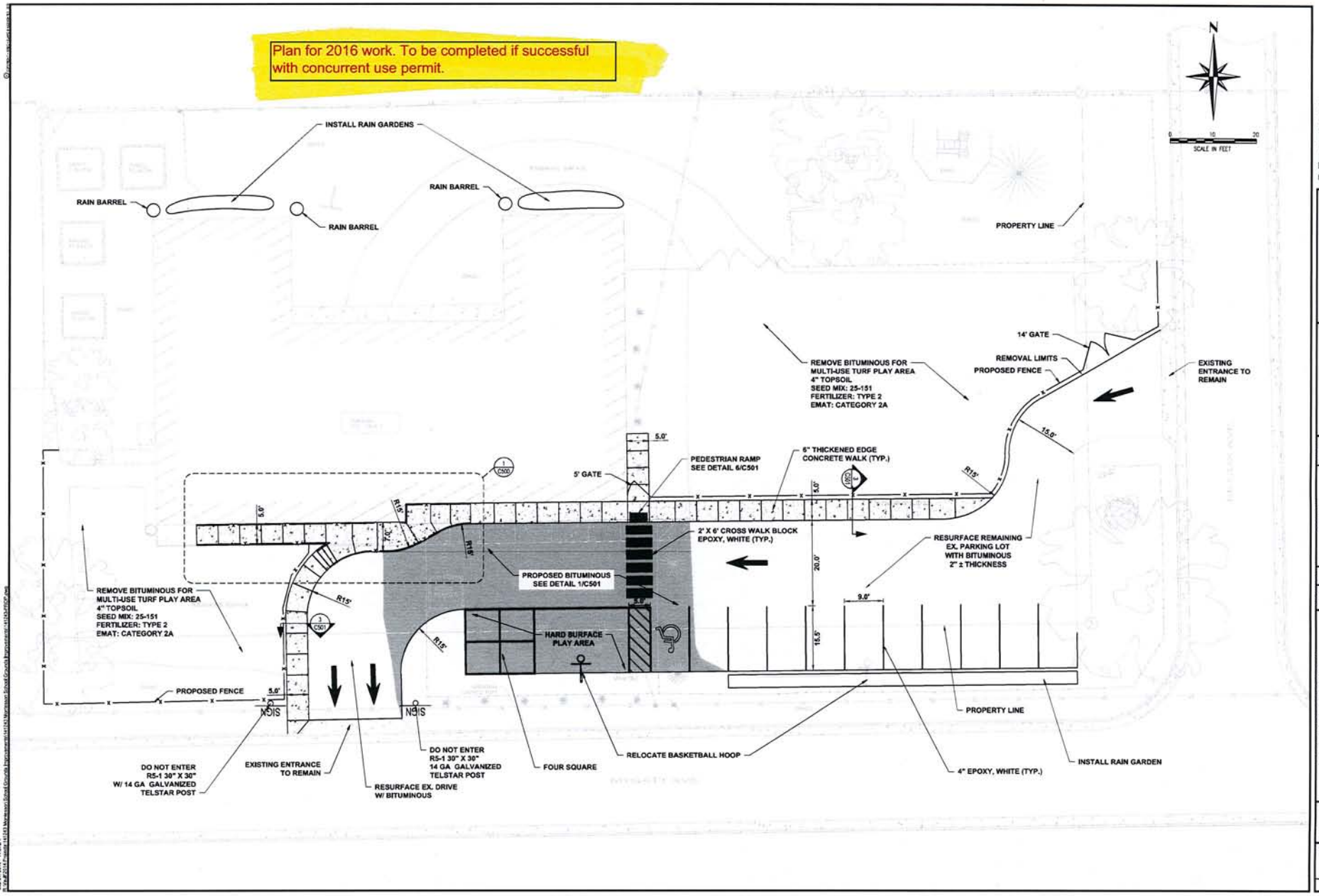
SITE PLAN

JOB No: 141243
DATE: 9-16-15
DRAWN BY: STS
CHECKED BY: STS

SHEET: C101

D-6

Plan for 2016 work. To be completed if successful with concurrent use permit.



KRECH OJARD & ASSOCIATES, INC. Engineers & Architects

MAIN OFFICE: 22 WEST FIRST STREET, SUITE 302, DULUTH, MINNESOTA 55802, Ph: 218.722.5302, Fx: 218.722.5314

REGIONAL OFFICE: 916 HAMMOND AVENUE, SUPERIOR, WI 54880, Ph: 715.392.4474, Fx: 715.392.5154

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

NAME: SCOTT T. STEMPIHAR

SIGNATURE:

DATE: 9-17-15 LIC. No. 47565

ISSUED FOR BIDDING AND PERMITTING

DATE	REV.	DESCRIPTION	REV. BY
9-25-15	1	REVISED PARKING LOT LAYOUT	

MONTESSORI SCHOOL OF DULUTH
SITE IMPROVEMENTS
DULUTH, MINNESOTA

SITE PLAN

JOB No: 141243
DATE: 9-16-15
DRAWN BY: STS
CHECKED BY: STS

SHEET: C101

D-7

NOTES:

1. CONSTRUCTION SHALL BE IN ACCORDANCE WITH MNDOT STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2015 EDITION.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR IMPLEMENTATION OF THE EROSION CONTROL PLAN AND THE INSTALLATION, INSPECTION, AND MAINTENANCE OF THE EROSION AND SEDIMENT CONTROL BMPS BEFORE AND DURING CONSTRUCTION.

3. THE CONTRACTOR IS RESPONSIBLE FOR PROCEEDING WITH CONSTRUCTION PHASING TO MINIMIZE EROSION AND SEDIMENTATION. ALL DOWN-GRADIENT SEDIMENT CONTROL DEVICES MUST BE ESTABLISHED AS INDICATED ON THE PLANS PRIOR TO BEGINNING ANY UP-GRADIENT LAND DISTURBANCE ACTIVITIES.

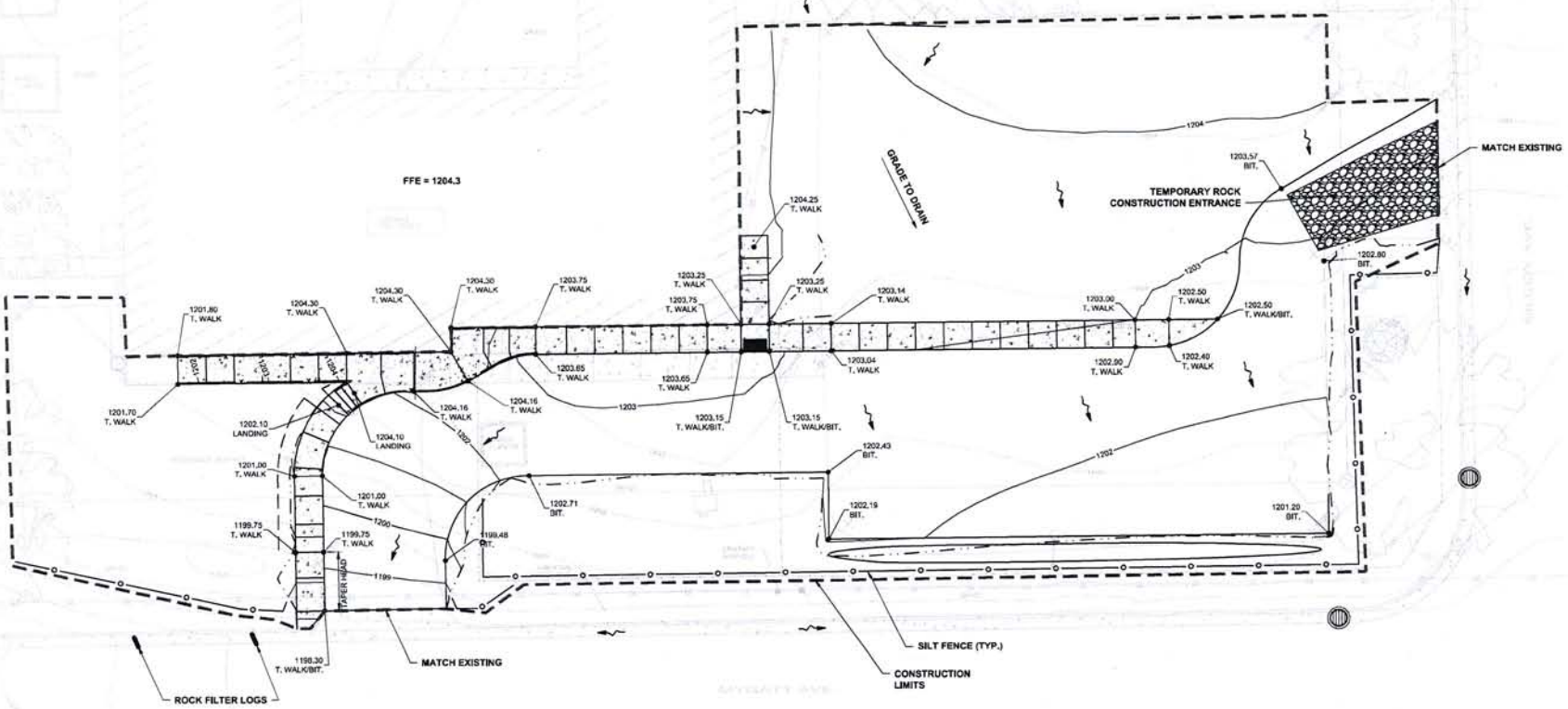
4.CONTRACTOR SHALL NOT DISTURBE AREAS OUTSIDE OF THE CONSTRUCTION LIMITS. ANY DAMAGE DONE SHALL BE REPAIRED AT THE CONTRACTORS EXPENSE.

N

0 10 20
SCALE IN FEET

LEGEND

- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- SWALE
- DAYLIGHT LINE
- SPOT ELEVATION
- FLOW ARROW
- BIT = BITUMINOUS
- T.WALK = TOP OF WALK
- FFE = FINISHED FLOOR ELEVATION
- FG = FINISHED GROUND
- FL = FLOW LINE
- GRAV = GRAVEL
- TC = TOP OF CURB (AT BACK)
- STABILIZED CONSTRUCTION ENTRANCE
- SILT FENCE
- PROJECT AREA
- INLET PROTECTION



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I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

NAME: SCOTT T. STEMPIHAR
SIGNATURE:
DATE: 9-17-15
LIC. No. 47565

ISSUED FOR BIDDING AND PERMITTING

DATE	REV.	DESCRIPTION	REV. BY

MONTESSORI SCHOOL OF DULUTH
SITE IMPROVEMENTS
DULUTH, MINNESOTA

GRADING AND SEDIMENT CONTROL

JOB No: 141243
DATE: 9-16-15
DRAWN BY: STS
CHECKED BY: STS

SHEET: C102

D-8

Date: June 14, 1991 **BUILDING INSPECTION DEPARTMENT** **File No.:** 91036

ZONING APPEAL **See Also:**

The Board of Zoning Appeals has received the appeal of:

1. **Applicant:** Montessori School of Duluth by: Albert Nephew, Business Manager
   Address: 1532 E. 8th St.
   Duluth, MN 55812

2. **Location:** 313 Mygatt Ave.

3. **Legal Description:** Lots 19-27 incl., Block 8, Princeton Place Addition

4. **Proposed Use:** convert former church building (Jehovah's Witness) into Montessori Elementary School for 70 students at present - 90 total possible in the future

5. **The reason that the Board of Zoning Appeals is considering this matter is that the Duluth Zoning Regulations (Chapter 50 of the City Code):** Section 50-56(f) requires a 40' side-yard and rear-yard setback for schools. On corner lots a 25' side-yard setback is permitted along Mygatt Ave. frontage (Sec. 50-23(a) The appellant proposes a 25½' side-yard setback from the north property line (36% short) and a 25' rear-yard setback from west property line (37% short). NOTE: The existing building provides a 110' front-yard setback from Silcox Ave. (30' required).

6. **Need for Appeal: Appellant states that,**

" THE LOCATION: The existing property at 313 Mygatt Ave. was a Jehovah's Witnesses church from its construction in 1962 until we bought it 12/31/91. The property is on the corner of Mygatt and Silcox, the southeast corner of the block, with the long side on Mygatt. One wall of the building is 26 feet from the north side property line (the roof peak extends two feet closer than 25 feet from the north side property line).

THE REQUEST: To allow us to change the use of the building from a church to a school. This requires an easing of the setback rule in our case. We ask that the setback requirement of 40 feet for a school be reduced to 25 feet for the existing building as well as for the addition we must build to adequately house our school. As shown on the attached drawing, the setback would thus be reduced to 25 feet for the north side, where the existing building is already about 25 feet away, and for the west property line, the rear of the lot .

THE SCHOOL: The Montessori School of Duluth was begun in 1981 as the Montessori Elementary School, and incorporated in 1982 as a non-profit, tax exempt corporation under both names. The school rented at the Park Point Community Center (formerly Park Point School) for two years until 1983, when it moved to new rental quarters at the then Duluth Cathedral School, (now The Marshall School). With this move we opened a second classroom, this one for kindergarten and preschool children. The school grew to the present size of 53 children, all but 16 of them in elementary (K-6).

In 1990 the Duluth Community College Center asked The Marshall School for our rooms as part of their proposed occupation of all of F-wing. Marshall agreed to that and tried to find us other space on their property, unsuccessfully. In October we were asked to leave by January 1, 1991.We could only find one place that was anywhere in our price range, either rental or purchase. We bought it, though it was not large enough for our present two classes, and asked to stay at Marshall until June.

The Mygatt property is suited to our needs in many ways, including the low traffic, the adequate, safely situated play space that would result if we build as we propose, convenient location for families, proximity of parks and ball fields to be used occasionally, and off-street parking. We plan a low, wood frame building that would fit in as well as possible with the residential character of the neighborhood.

Interest on the part of parents of prospective students suggests to us that our school might some day grow to about 90 total, though only at best 70 this coming year. 70% would be K-6. There would be about 6 or 7 staff, some part-time. At any time we might have to park 5 or 6 staff cars. The school will be open from 7 AM until about 5:30 PM, for parents who need to bring their children early or pick them up late, but the large majority of children would come during the regular school hours from 8:30 AM until 3:00 PM, most of them by school bus or on foot. The youngest children would have only a 3 hour school session, until 11:30 AM. We operate on the same schedule as the public schools, including vacation periods off. We only have an occasional evening meeting. "

D-9

7. **Present Zoning of Property:** "R-1-B"

8. **Existing Area Zoning:** "R-1-B"

9. **Existing Area Development:** One-family homes

10. **Site Conditions of the Property:**

Dimensions: 124' x 243'
Topography: generally level, slopes downward to abutting streets
Vegetation: grass around perimeter
Structures: 1-story former church building (building has been vacant for approx. 1 year)

11. **History:**

On May 23, 1962 a permit was issued to construct a church building.

12. **Reactions of Various Neighbors**

13. **Conclusions**

Points in favor:

1. The existing building is centrally located on the property which limits building expansion options in compliance with the requirement setbacks.
2. The existing building and proposed addition is proposed to be a low profile residential charactor type building which should blend into the area.

Points in opposition:

1. The City Code requires 40' side and rear-yard setbacks for schools. The requested variances are 36% and 37% short respectively.
2. Changing the church building into a school building use makes the building non-conforming as it relates to requirement setbacks.

Suggested conditions:

D-10

B O A R D O F Z O N I N G A P P E A L S

210 City Hall

Duluth, Minnesota 55802

ACTION OF THE BOARD OF ZONING APPEALS

Date: June 26, 1991

File Number 91036

Appellant: Montessori School of Duluth, Albert Nephew

Location: 313 Mygatt Ave.

Legal Description: Lots 19-27 incl., Block 8, Princeton Place Addition

The above matter came on for hearing before the Board of Zoning Appeals in the City Hall on June 25, 1991 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 40' side-yard and rear-yard setback requirement for schools to 25½' side-yard setback from the north property line and 25' rear-yard setback from west property line for the conversion of a former church building into a Montessori Elementary School for 70 students at present - 90 total possible in the future - on property which is located at 313 Mygatt Ave.

This action granting said appeal shall not be valid after June 25, 1992 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 June 25, 1991.

BY ORDER OF THE BOARD OF ZONING APPEALS

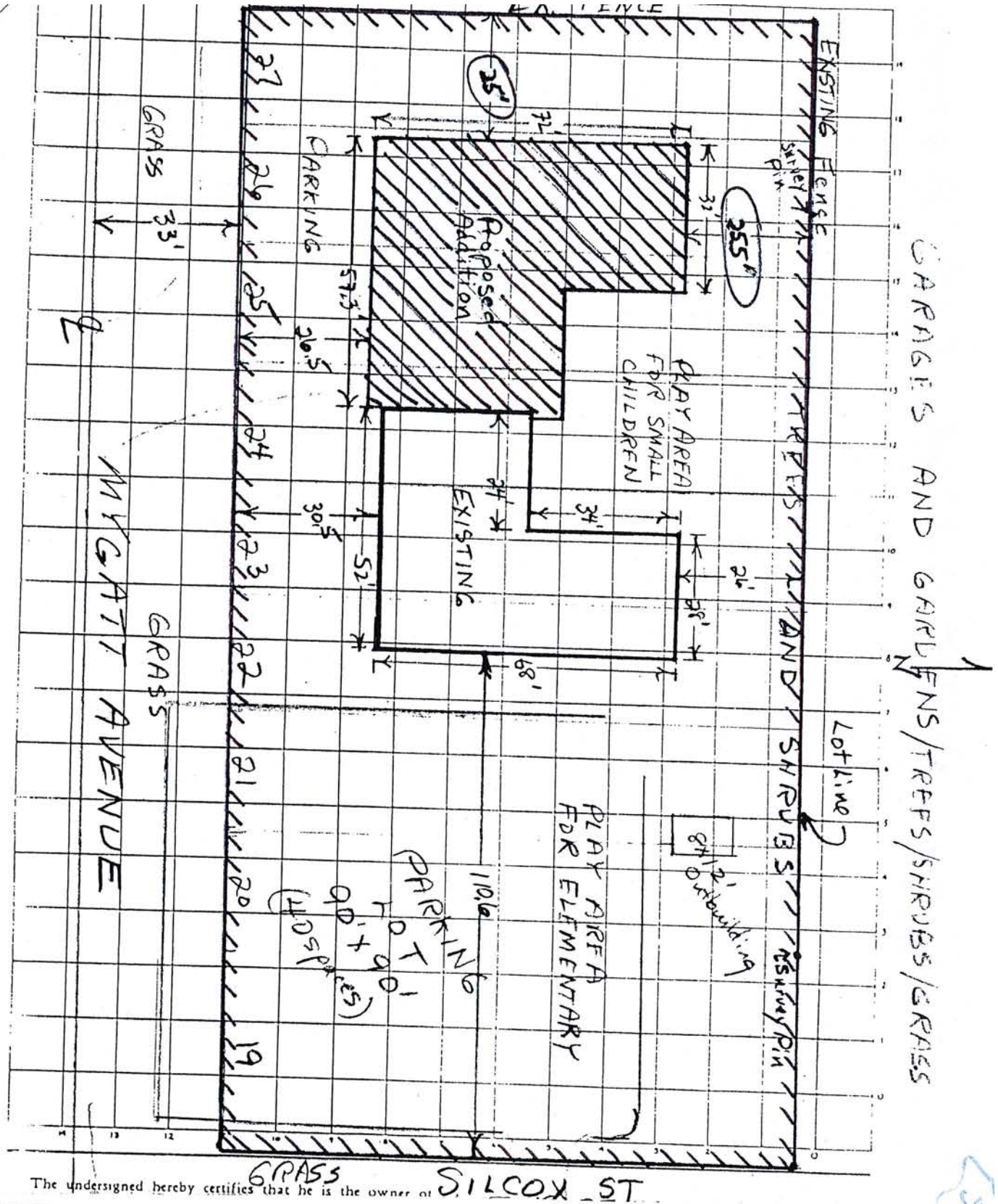
Jim Maijala

Jim Maijala, Secretary

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 of Duluth affected by this decision. Such appeal shall be addressed to the City Council, stating the grounds upon which a 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.

(1/91)



The undersigned hereby certifies that he is the owner of

APPLICANT: Montessori School of Duluth

Property under Consideration

PURPOSE: Appeal

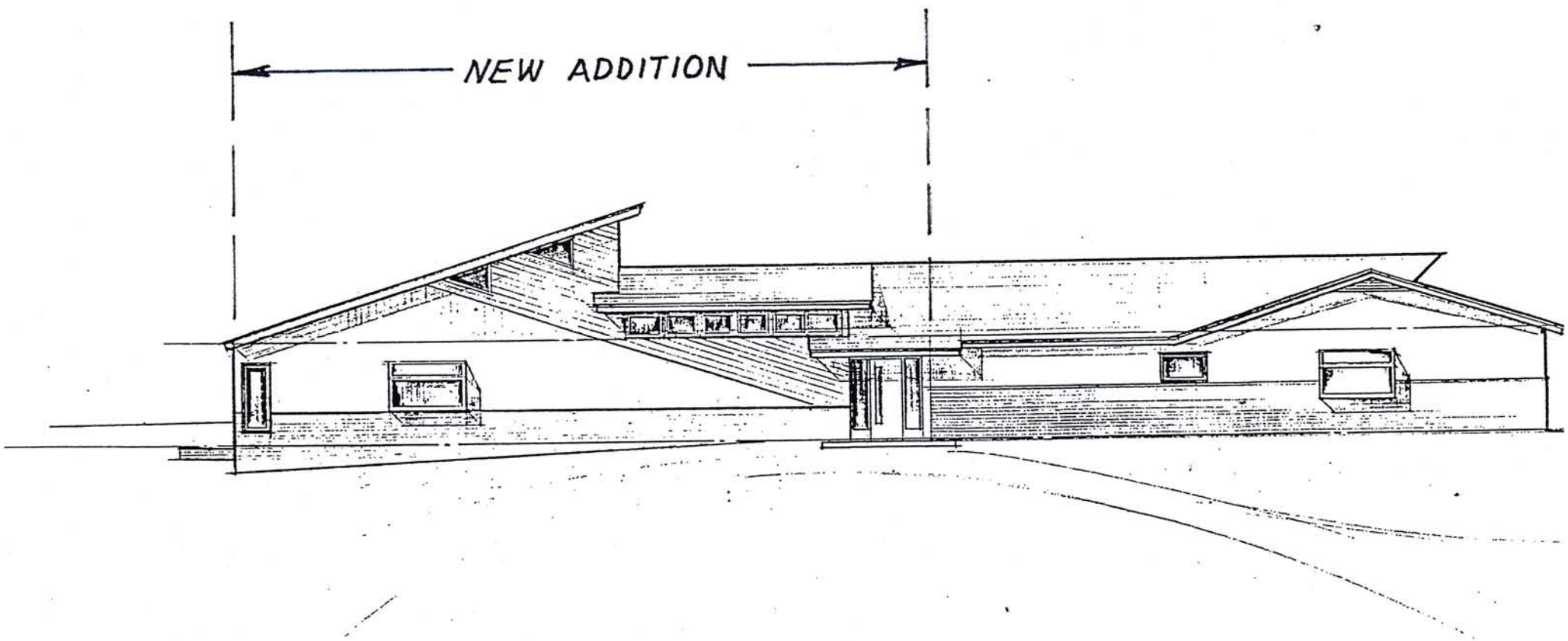
FILE NO: 91036

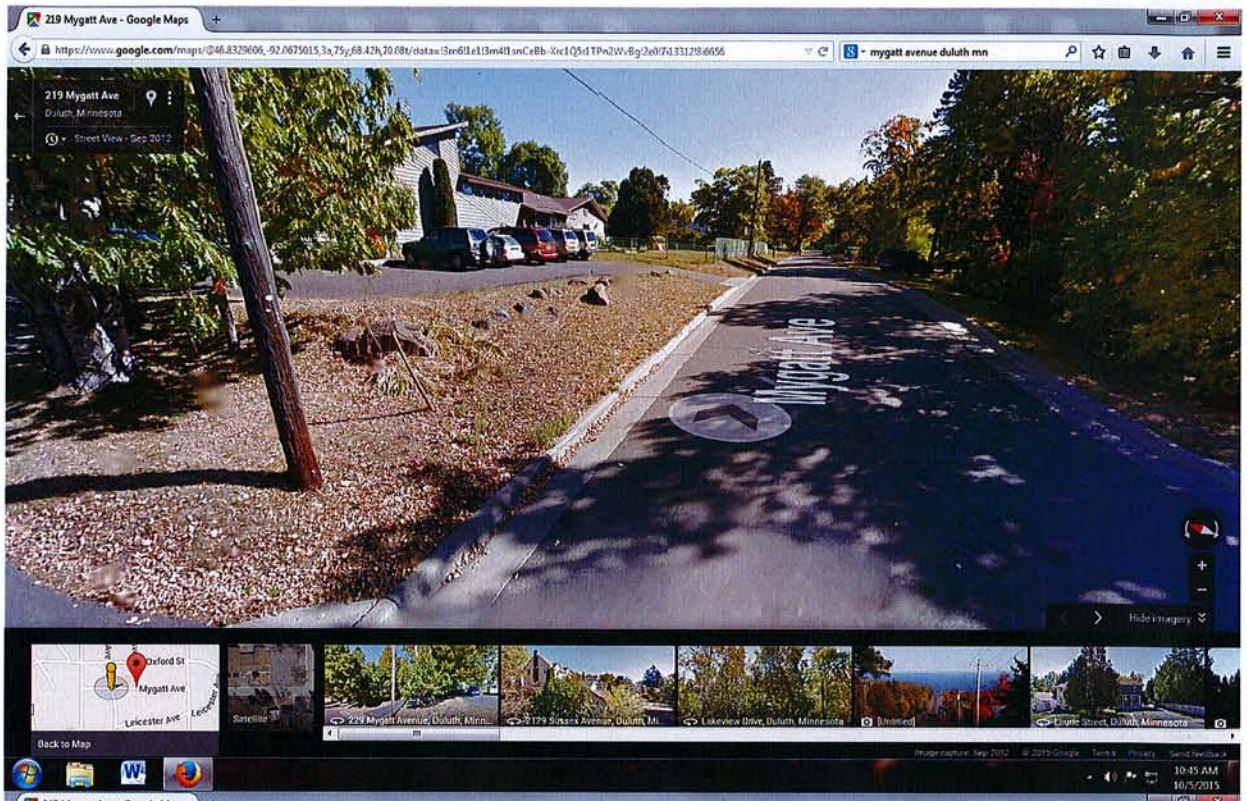
SCALE: 1" = 30' DATE: June 14, 1991

DIVISION OF BUILDING INSPECTION

STAFF MAP

D-13

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mygatt avenue duluth mn
219 Mygatt Ave
Duluth, Minnesota
Street View - Sep 2012
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Fourth Street, Duluth, Minnesota
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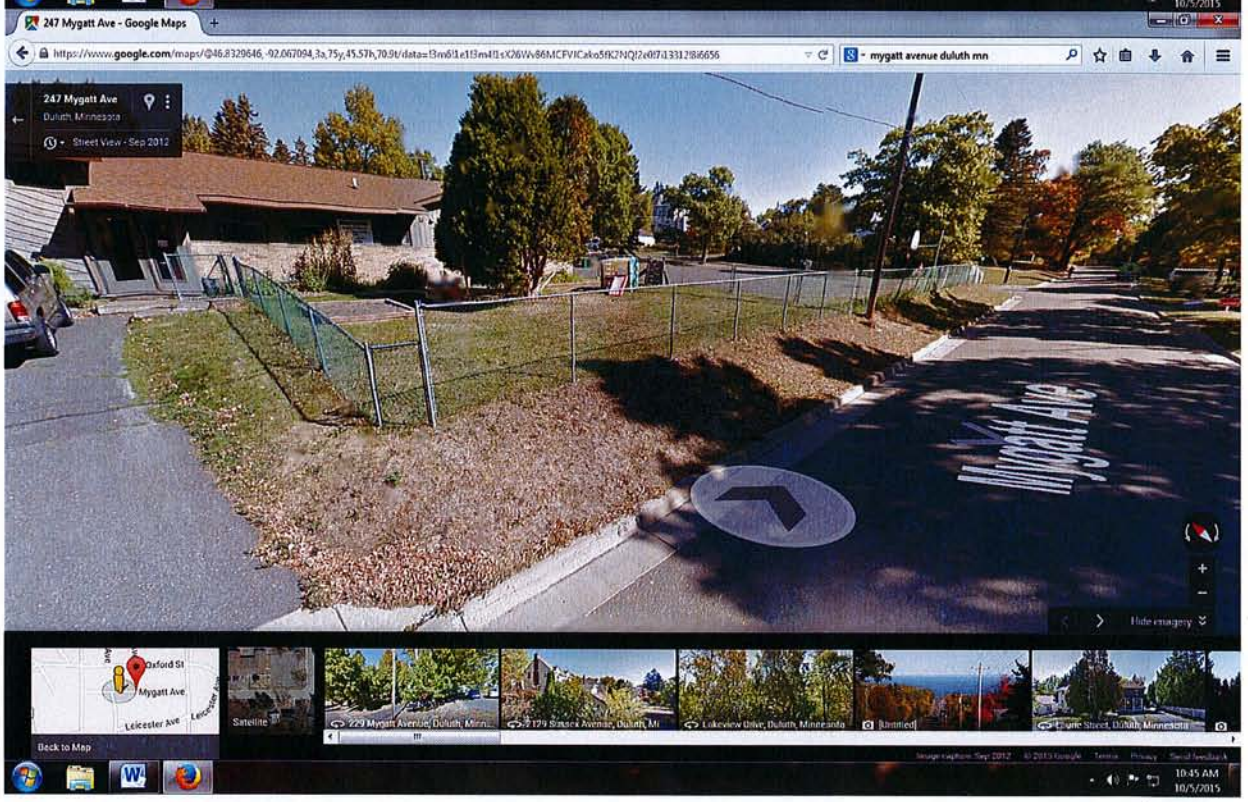
10/5/2015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mygatt avenue duluth mn
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Duluth, Minnesota
Street View - Sep 2012
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179 Sussex Avenue, Duluth, Mi...
Lakeview Drive, Duluth, Minnesota
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Fourth Street, Duluth, Minnesota
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10/5/2015

D-14

301 Mygatt Ave - Google Maps
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301 Mygatt Ave
Duluth, Minnesota
Street View - Sep 2012
Mygatt Ave
Silcox Ave
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Mygatt Ave
Leicester Ave
Back to Map
Satellite
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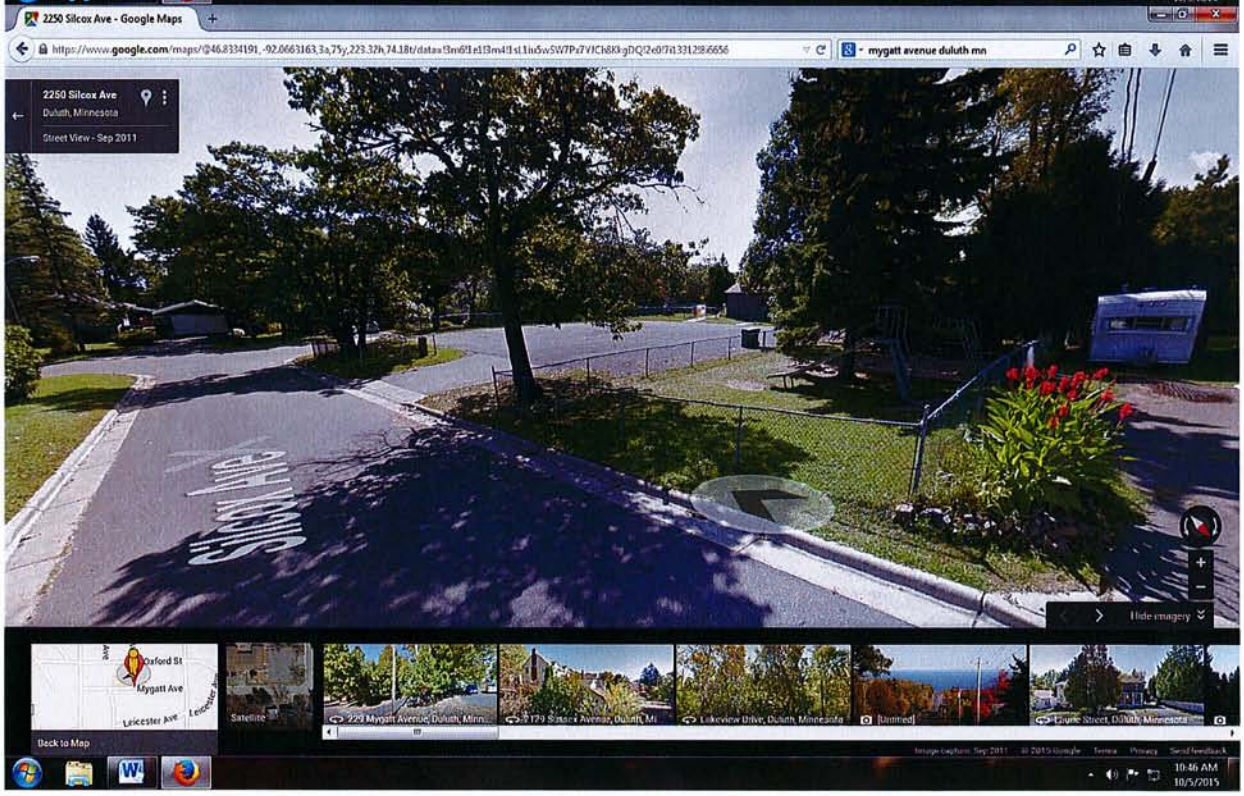
Laurie Street, Duluth, Minnesota
10:45 AM
10/5/2015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mygatt avenue duluth mn
2250 Silcox Ave
Duluth, Minnesota
Street View - Sep 2011
Silcox Ave
Hide imagery
Oxford St
Mygatt Ave
Leicester Ave
Back to Map
Satellite
Lakeview Drive, Duluth, Minnesota
Laurie Street, Duluth, Minnesota
10:46 AM
10/5/2015

D-15

Steven Robertson

From: Jim Goodman <jimgoodman@montessoriduluthmn.org>
Sent: Monday, October 05, 2015 3:34 PM
To: Steven Robertson; Jennifer Moses
Cc: Jim Nephew
Subject: Please see Cover Letter Below

Steven and Jennifer,

The Montessori School of Duluth is a non-profit preschool and elementary Montessori school, serving the Duluth area for almost 35 years. The school has been at its current campus at 313 Mygatt for over 20 years and the current parking and green space configuration has remained the same during that time. This has posed several problems:

1. Excessive impervious surfaces and inadequate storm water treatment
2. Deteriorating blacktop
3. Excessive parking for the needs of the school
4. Poorly designed drop-off and pick-up designs.

Enbridge Energy has provided a generous grant to aid the school's efforts to minimize and treat stormwater contributions to the Tischer Creek and 34th Avenue Creek watersheds. The resulting project also serves the school's needs by way of providing a new parking design to provide a safer drop-off and pick-up of students, new hard surface play space, more green space for gross motor activity and additionally safety provided by the strategic placement of fencing.

The concurrent use permit would provide a safer and more efficient parking configuration by limiting the available parking spots to meet the need of the school staff (in addition to an ADA parking space and a single visitor spot) in addition to fostering a one-way configuration to more efficiently and safely accommodate drop-off and pick-up of children.Fencing will maximize safety for the students by containing the children and their balls and toys.

As it has historically been, the school property will continue to be a neighborhood resource by providing recreational spaces but also now as an example of responsible environmental stewardship, exhibited most obviously by the planned rain garden installations.

This concurrent use permit will allow the Montessori School of Duluth to minimize its environmental footprint on the creek watersheds but also streamline its parents' and students' use of the Hunter's Park/Morley Heights neighborhoods.

Thank you for your consideration.

Kind Regards,

Jim

--

Jim Goodman, Board President
Montessori School of Duluth
MontessoriDuluthMN.org
office: 218.728.4600
mobile: 612-360-9720

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