



**CITY OF DULUTH**  
Community Planning Division

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

<b>File Number</b>	PL16-086	<b>Contact</b>	Kate Van Daele (730-5301)	
<b>Type</b>	Variance, Shoreline Setback	<b>Planning Commission Date</b>	August 6, 2016	
<b>Deadline for Action</b>	<b>Application Date</b>	July 12, 2016	<b>60 Days</b>	September 10, 2016
	<b>Date Extension Letter Mailed</b>	July 21, 2016	<b>120 Days</b>	November 11, 2016
<b>Location of Subject</b>	5327 Kingston Street			
<b>Applicant</b>	James & Janice Larson	<b>Contact</b>	<a href="mailto:Jameslarson69@hotmail.com">Jameslarson69@hotmail.com</a>	
<b>Agent</b>	Dan Morin	<b>Contact</b>	<a href="mailto:dan@morinasbc.com">dan@morinasbc.com</a>	
<b>Legal Description</b>	Lots 1992 thru 1925			
<b>Site Visit Date</b>	July 25, 2016	<b>Sign Notice Date</b>	July 26, 2016	
<b>Neighbor Letter Date</b>	July 21, 2016	<b>Number of Letters Sent</b>	26	

**Proposal**

Applicant proposes construction of an 8' x 8' deck on the second story of their home within the Shoreland Overlay. To proceed, Applicant has applied for a Shoreland Variance to the requirements of UDC Section 50-18.1 (D), "Shorelands." The closest corner of the deck would be 102' from the East Branch of Amity Creek, a cold-water trout stream. The minimum shoreland setback is 150'. All of the proposed deck would be within the setback. The applicant is requesting the deck: 1) to be able to enjoy the backyard; 2) because a second deck would be easier for Applicant and his wife to use because of a heart condition and knee replacements; and 3) for safety reasons as there have been wolf and bear present in this area of the city.

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

**Summary of Code Requirements**

Section 50-18.1(D)– Minimum Shoreland Area Standards: maintain 150' setback from cold water streams and rivers.

Section 50-37.9.(C) – General Variance Criteria (paraphrased): 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 a landowner is proposing to use the property in a reasonable manner, b) that the need for relief for 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.

Section 50-37.9. D. – Variance Procedures "The Planning Commission shall ...make a decision on the application based on the criteria in subsections 50-37.9. C-M..."

Section 50-37.9. L – Standards for Variance 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 Governing Principle and/or Policies and Current History (if applicable):**

Traditional Residential Future Land Use: Characterized by grid or connected street pattern, house orientated 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.

Shoreland setback rules were introduced in 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 the water ways, and increase the temperature of cold-water streams, which is detrimental to trout.

**Review and Discussion Items**

Staff finds that:

- 1) Applicant is seeking a shoreland variance to build an 8' x 8' deck off of their second story in the back of their property. The furthest Northeast corner is 102' from the East Branch of Amnity Creek which is a cold-water trout stream.
- 2) The home was built in 1988. The lot size is approximately 100' x 138' or 0.317 acres.
- 3) On the first floor of the home there is a 16' x 30' deck. The second deck that is being proposed would be located on the second floor of the home outside of the applicant's bedroom. If the variance is denied, it would not deprive the applicants of substantial property right.
- 4) The proposed deck would not remove any vegetation for the structure to be built. The applicant intends to install helical pier footings that they claim have little impact on current landscaping and drainage.
- 5) Applicant intends to plant hostas around the base of the new deck, and will transplant a maple tree from the east side of the garage to the back corner of the property.
- 6) In addition to their home, Applicant has a 20' x 20' two-story building that was approved before shoreland regulations were adopted in 2010. This building includes a screened in porch located on the side of the building for additional views of Applicant's property. Based on a GIS review, this building is larger than 20' x 20' and may be constructed over the applicant's property line, in addition to one smaller shed which also may be over the property line.
- 7) The requested variance is not necessary for the preservation and/ or enjoyment of the applicant's substantial property right. The applicant does not demonstrate a practical difficulty that would require a variance to enjoy the use of the property. The property already has two decks on the property; the third deck will not alter their ability to use the property.
- 8) In 2003, the applicant constructed a 12' x 22' sunroom and side addition on the first floor of the home. This sunroom adds to Applicant's reasonable use of the property. The variance therefore is not needed to preserve a substantial property right.
- 9) Health considerations are not included in the adopted Ordinance or State Statute pertaining to variances.

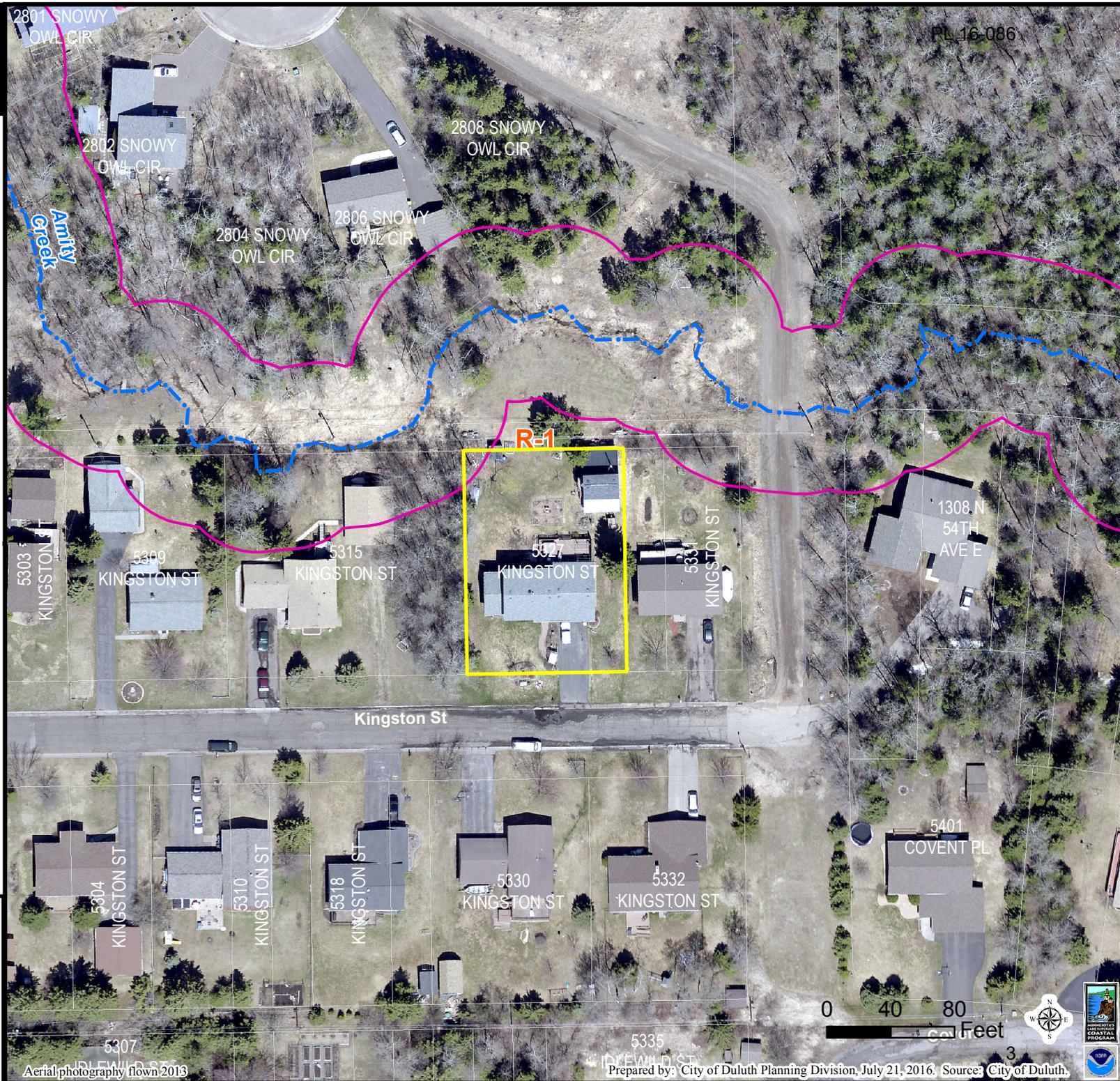
**Staff Recommendation**

Based on the above review, discussion and inclusive of all supporting documentation in Planning Case file PL-16-086, staff finds that the proposed variance does not meet the criteria established in UDC 50-37.9 and recommends denial. Should the Planning Commission recommend approval of the variance, staff recommends the following conditions:

- 1) All sheds and additional structures shall be moved onto Applicant's property and be compliant with the 5' rear year setback.
- 2) Applicant should stop mowing the yard in rear of their property to allow the 50' wide naturally vegetative stream buffer to return, and provide a natural filter for the trout stream.

**Legend**

-  Stream Buffer
- DuluthStream\_cl**
- TROUT\_FLAG**
-  Trout Stream (GPS)
-  Other Stream (GPS)
- Zoning Boundaries**
-  Zoning Boundaries



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.





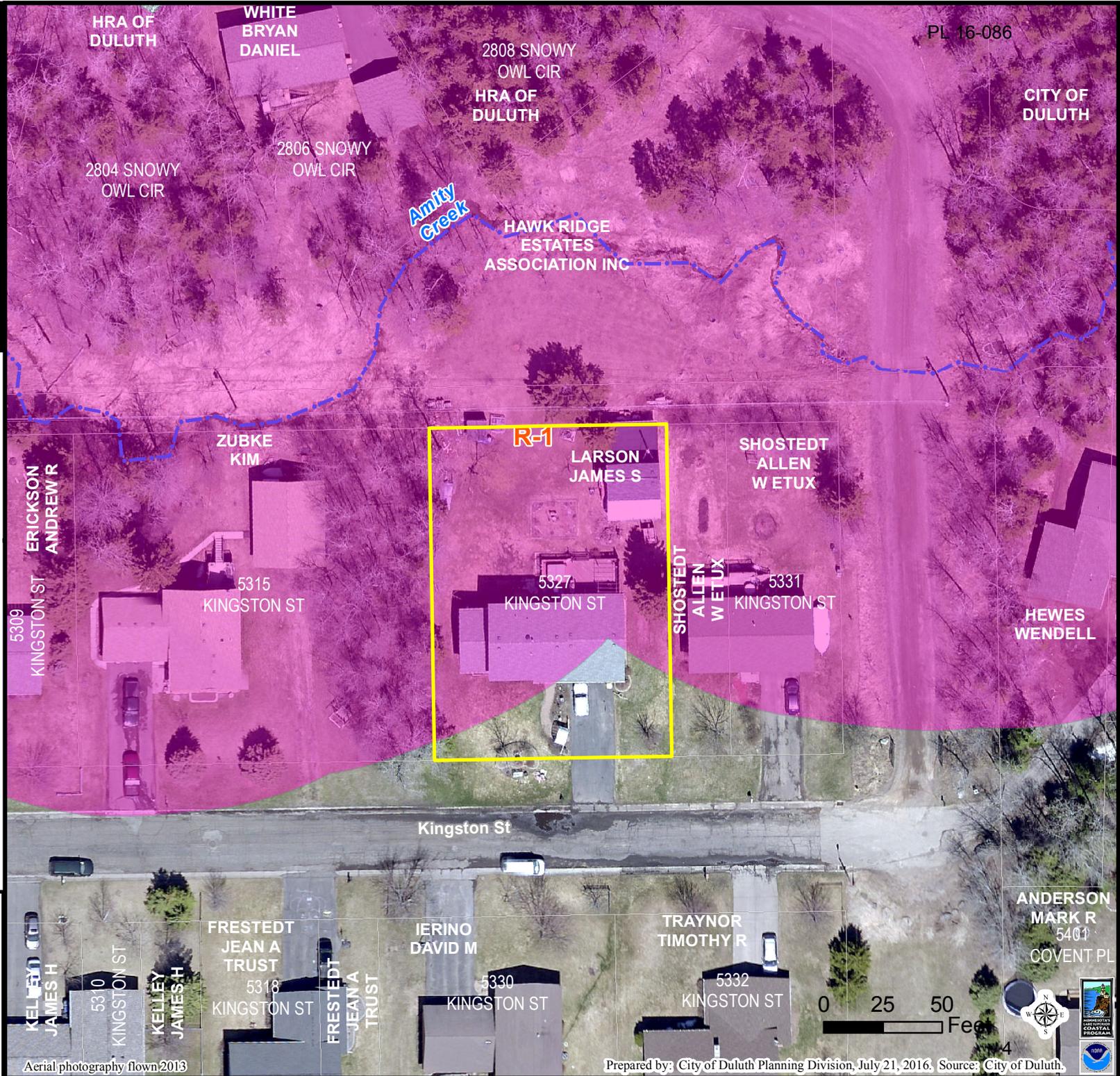
**City Planning**  
 PL16-086  
 5327 Kingston  
 Stream Buffer

**Legend**

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

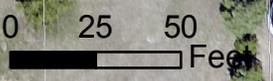
**Zoning Boundaries**

-  Zoning Boundaries



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Aerial photography flown 2013



Prepared by: City of Duluth Planning Division, July 21, 2016. Source: City of Duluth.

**Legend**

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The screenshot displays a web browser window with the following elements:

- Browser Address Bar:** <http://explorer.pictometry.com/index.php>
- Browser Tabs:** New ULI Report Looks at How..., Chop Sueyl - System of a D..., CONNECTExplorer™
- CONNECTEXPLORER Header:** Includes navigation icons and a search icon.
- Search Panel (Right):**
  - Search by Address -
  - Input field: 5327 kingston rd
  - Search results (2):
    - Kingston Rd, Duluth, MN 55803
    - 5327 Kingston St, Duluth, MN 55804-1162 (highlighted)
- Main Content:** Aerial photograph of a residential area. A blue rectangular bounding box highlights a property containing several buildings and a driveway. A green pin is visible on the roof of one of the buildings. The street name 'Kingston St' is visible on the left side of the image.
- Map Controls (Left):** Includes a compass, a zoom slider, and a 'Workspaces' dropdown menu.
- Map Footer:** © 2016 Pictometry, map: Auto, 05/12/2013 Select Date, < image 1 of 8 >
- Windows Taskbar (Bottom):** Shows the system tray with the time 2:33 PM and date 7/21/2016, along with various application icons.

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### 5327 Kingston Site Visit Pictures



Back view of the home with the current deck on ground level



Back of the house looking back towards the East Branch Amity Creek

## 5327 Kingston Site Visit Pictures Continued



View from behind the barn and storage shed looking at the creek.



View from creek to the property line of the shed and barn.



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Remaining natural buffer.