



CPED STAFF REPORT

Prepared for the Zoning Board of Adjustment
BOA Agenda Item #2
June 9, 2016
BZZ-7668

LAND USE APPLICATION SUMMARY

Property Location: 28 Newton Avenue South
Project Name: 28 Newton Avenue South Pool and Retaining Wall
Prepared By: [Janelle Widmeier](#), Senior City Planner, (612) 673-3156
Applicant: Diego Santos and Tryana V Garza Cruz
Project Contact: Pat Henry, Prestige Pools
Request: In-ground pool and retaining wall.
Required Applications:

Variance	To allow development within 40 feet of the top of a steep slope in the SH Shoreland Overlay District to allow an in-ground pool and a retaining wall.
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SITE DATA

Existing Zoning	RIA Single-Family District SH Shoreland Overlay District
Lot Area	13,681 square feet
Ward(s)	7
Neighborhood(s)	Bryn Mawr Neighborhood Association
Designated Future Land Use	Urban Neighborhood
Land Use Features	Not applicable.
Small Area Plan(s)	Not applicable.

Date Application Deemed Complete	April 28, 2016	Date Extension Letter Sent	Not applicable
End of 60-Day Decision Period	June 27, 2016	End of 120-Day Decision Period	Not applicable

BACKGROUND

SITE DESCRIPTION AND PRESENT USE. The existing use is a single-family dwelling. It was permitted for construction in 1996. The site has frontage on Cedar Lake Parkway and is adjacent to a public alley.

SURROUNDING PROPERTIES AND NEIGHBORHOOD. The surrounding properties are predominately single-family dwellings. Bassett Creek is located opposite from the site across the railroad tracks.

PROJECT DESCRIPTION. The applicant is proposing to construct an in-ground pool behind the existing dwelling located at the property of 28 Newton Avenue South. The site slopes down from south to north. To accommodate the grade change, the applicant is proposing to infill grade around the pool deck and construct a retaining wall on the west and north side of the pool area. The tallest part of the retaining wall would be 3 feet in height. The northerly area of the site is on a steep slope (an average 18 percent slope or greater measured over a horizontal distance of 50 feet or more, with a height of 10 feet or greater). In the SH Overlay District, a variance is required to allow development on a steep slope or within 40 feet of a steep slope. Approximately half of the proposed development would be within 40 feet of the steep slope.

Please note that the landscaping plan indicates that a retaining wall would be constructed along the north side of the property. Because the retaining wall would not retain natural grade and a variance would be required to allow it in the side yard, the applicant revised the proposal and removed it from the survey. However, the landscaping plan was not updated.

RELATED APPROVALS. A variance to allow development on and within 40 feet of a steep slope in the SH Shoreland Overlay District was approved in 1996 to allow the dwelling.

PUBLIC COMMENTS. As of the writing of this report, staff has not received any correspondence from the neighborhood group. Any correspondence received prior to the public meeting will be forwarded on to the Board of Adjustment for consideration.

ANALYSIS

VARIANCE

The Department of Community Planning and Economic Development has analyzed the application for a variance to allow development within 40 feet of the top of a steep slope in the SH Shoreland Overlay District to allow an in-ground pool and a retaining wall, based on the following [findings](#):

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

Practical difficulties exist in complying with the ordinance due to circumstances unique to the property. The site slopes significantly on the north side of the property. Approximately two-thirds of the site is on a steep slope or within 40 feet of the top of the steep slope, including most of the footprint of the existing dwelling. Because the site is located in the SH overlay district, developing in

this area requires a variance. For these reasons, there are limited options for development without needing a variance. Although within 40 feet of the steep slope, the development is proposed to be located on a flatter area of the site.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

The SH Shoreland Overlay District is established to preserve and enhance the environmental qualities of surface waters and the natural and economic values of shoreland areas within the city, to provide for the efficient and beneficial utilization of those waters and shoreland areas, to comply with the requirements of state law regarding the management of shoreland areas, and to protect the public health, safety and welfare. In order to ensure that adverse environmental impacts are minimal, development on or within 40 feet of a steep slope in the SH Overlay District can only be approved through a variance. Development allowed by variance is subject to the following conditions:

1. *Development must currently exist on the steep slope or within forty (40) feet of the top of a steep slope within five hundred (500) feet of the proposed development.*

Development currently exists on the subject property and adjacent properties that are located on the steep slope and within 40 feet of the steep slope.

2. *The foundation and underlying material shall be adequate for the slope condition and soil type.*

The applicant has indicated that a 12-inch thick by 2-inch wide concrete bond beam would be poured around the base of the pool. The retaining wall would be supported by a compacted gravel base. If the variance is approved, the development footings and foundation are required to comply with the building code requirements, which include being founded in material with an embedment and setback from the slope surface sufficient to provide vertical and lateral support for the footing without detrimental settlement. The applicant will be required to work closely with the Construction Code Services Section of CPED during the duration of the development to ensure that all procedures are followed in order to comply with city and other applicable requirements to meet this condition.

3. *The development shall present no danger of falling rock, mud, uprooted trees or other materials.*

A retaining wall is proposed to prevent soil erosion once construction is complete. The applicant has indicated that a silt fence will be located on the slope to prevent erosion and debris from leaving the site during construction. One mature tree would be removed as a result of the proposed development. However, excavation would not occur near trees on the steep slope. After construction, the retaining wall and vegetation would prevent erosion. If the plans are approved and implemented in the manner required by the building code and in accordance with the soil erosion plan, the development should present no danger of falling rock, mud, uprooted trees, or other environmental issues.

4. *The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with the surrounding physical context.*

The subject site is located near Bassett Creek. A railroad corridor is located between the creek and the subject property. The surrounding properties are predominantly single-family dwellings.

There are no nearby historic districts or landmarks. Much of the steep slope has already been altered by development. The proposed retaining wall and pool area would be mostly obscured from view from the creek by the existing dwelling, topography and vegetation.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

Granting the variance would not affect the character of the area or be injurious to the use or enjoyment of other property in the vicinity. Much of the steep slope has already been altered by development. The development is proposed to be located on a flatter area of the site. Only one tree is proposed to be removed to allow for the development. If granted, the proposed variance will not be detrimental to the health, safety or welfare of the public or those utilizing the property provided the proposed construction is built to current building codes and the erosion control is implemented using best practices.

Additional Standards for Variances within the SH Shoreland Overlay District

In addition, the Zoning Board of Adjustment shall consider, but not be limited to, the following [factors](#) when considering conditional use permit or variance requests within the SH Shoreland Overlay District:

1. *Prevention of soil erosion or other possible pollution of public waters, both during and after construction.*

The site is near Bassett Creek. The subject site would not be significantly altered to adversely affect the water quality of the creek. The development is proposed to be located on a flatter area of the site. The applicant has indicated that a silt fence will be located on the slope to prevent erosion and debris from leaving the site during construction. After construction, the retaining wall and vegetation would prevent erosion. Only one mature oak tree is proposed to be removed to allow for the development. Please note that under [section 551.520 of the zoning code](#), clear cutting of vegetation is prohibited except as necessary for an approved development. Removal of any other trees is not approved as part of this development.

2. *Limiting the visibility of structures and other development from protected waters.*

Much of the steep slope has already been altered by development. The proposed retaining wall and pool area would be mostly obscured from view from the creek by the existing dwelling, topography and vegetation.

3. *The suitability of the protected water to safely accommodate types, uses and numbers of watercraft that the development may generate.*

This standard is not applicable for the proposed development.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the Zoning Board of Adjustment adopt staff findings for the application by Diego Santos and Tryana V Garza Cruz for the property located at 28 Newton Avenue South:

A. Variance to allow development within 40 feet of the top of a steep slope in the SH Shoreland Overlay District.

Recommended motion: **Approve** the variance allow development within 40 feet of the top of a steep slope in the SH Shoreland Overlay District to allow an in-ground pool and a retaining wall, subject to the following conditions:

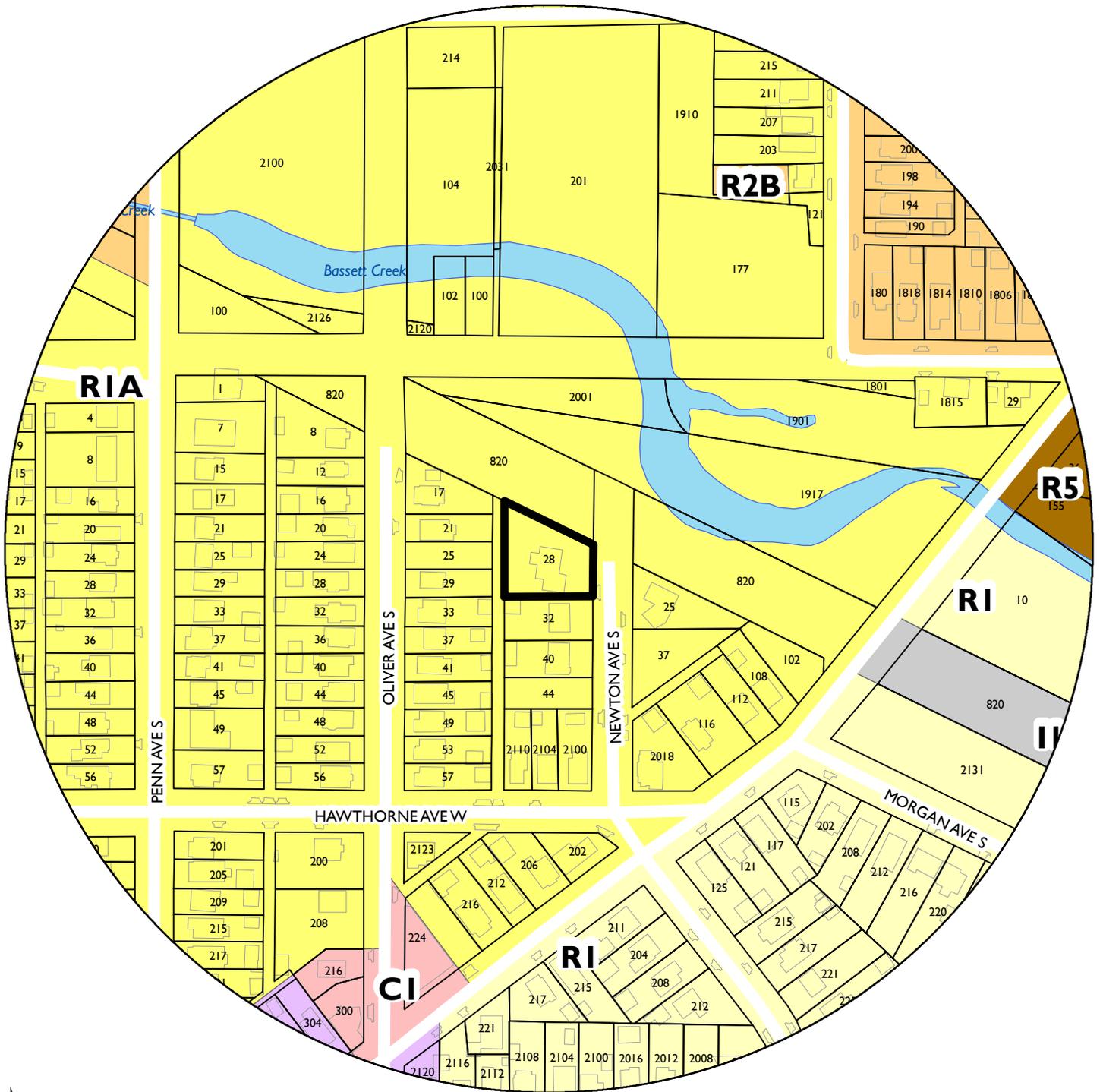
1. Approval of the final site, elevation and floor plans by the Department of Community Planning and Economic Development.
2. All site improvements shall be completed by June 9, 2018, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

ATTACHMENTS

1. Zoning map
2. Written description and findings submitted by applicant
3. Site survey/Site plan
4. Landscaping plan
5. Photos

NAME OF APPLICANT

WARD



PROPERTY ADDRESS

28 Newton Avenue South

FILE NUMBER

BZZ-7668

Responses for City of Minneapolis: General Land Use Application

Page 3: Requirements Checklist

Section 8: Copy of a letter or email...

1. Description of the project:
Proposed installation of a 16' X 32' below ground pool and related landscaping
2. Land use applications that the applicant is aware are needed for the project:
Project falls within 1,000 feet of a protected waterway (SH Shoreland Overlay). Variance required due to that.
3. Address of the property for which zoning approval is sought:
28 Newton Avenue South, Minneapolis, MN 55405
4. Applicant's name, address, telephone number, and e-mail address if available:
Prestige Pools
87 Co. Rd. C. West
St. Paul, MN 55117
ph-pools@hotmail.com

Page 7: Variance

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

The Applicant is requesting a variance to allow development, including the construction of a new below ground swimming pool and related landscaping, on or within 40 feet of the top of a steep slope in the SH Shoreland Overlay District. The sloped area causing the need for the variance on the site is located on the parcel to the north of the subject property. It would not be possible to complete this project on the subject parcel without a variance. This creates a practical difficulty unique to the property. The project currently meets the less than 18% grade code and the setback requirement. When the area sloping into the R.R. easement (not on #28 property) is taken into account the slope requirement is exceeded. The Applicant does not propose changing the R.R. grade, but bringing the grade up 30" between the lot line and the house. This will have the effect of slowing any runoff down and allowing it to more readily soak into the ground.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

The spirit and intent of the SH Shoreland Overlay District ordinance is to protect natural features from development that could have a negative impact on them. The subject property is located within 1,000 feet of the protected water, Bassett Creek. The vegetation and soil on the slope will not be disturbed and an erosion control plan will be

implemented during construction. The pool will not be a visible structure that would impair any of the neighbors' existing views. We believe this improvement is in keeping with the spirit and intent of the ordinance and is in line with many other variances granted in this neighborhood, including the 1996 variance to construct the home.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

The proposed pool and landscape project will address the following items as requested in the city handout.

- **Project will not alter the character of the neighborhood because it will not be visible and will exceed all city setback requirements**
- **Proposed boulder wall along the north side of the property will have the effect of flattening the yard and slowing the runoff rate of water. This, in our opinion, will reduce erosion along the steep hillside created by the railroad many decades ago. This wall will be less than 3' in height and will require no further permitting.**
- **There are no apparent safety issues as the yard will be fenced to code and the pool will have a permanently affixed, electronic, safety cover (ASPC certified).**

Page 8: SH Shoreland Overlay District

1. *The prevention of soil erosion or other possible pollution of public waters, both during and after construction.*

The erosion control plan is specified on the survey. The addition of retaining walls combined with the addition of deep rooted plants and shrubs will help stabilize and prevent soil from eroding. Vegetation and soil on steep slope will remain and not be disturbed during this process.

2. *Limiting the visibility of structures and other development from protected waters.*

The pool will be flush with the ground behind the house and will not be visible from the stream. The aforementioned boulder wall will only be visible in the winter months and will not exceed 3' in height, therefore requiring no further permitting. All products used will be natural to the local environment and will blend with the existing surroundings.

3. *The suitability of the protected water to safely accommodate types, uses and numbers of watercraft that the development may generate.*

The subject site does not have direct access to the protected water and will not require the accommodation of any watercraft.

PRESTIGE POOLS



651.490.1399

prestigepools.com

87 County Road C West • St. Paul, MN • 55117

Thursday, April 28, 2016

Dear Ms. Widemeier,

In response to your letter dated April 22, 2016:

1. *Provide an erosion control plan and identify how much grading or filling is proposed for the project. If the proposed grading or filling will involve more than 10 cubic yards, the erosion control plan will need to comply with Chapter 52 Erosion and Sediment Control and Drainage, section 52.100 and section 551.510 of the zoning code (both are attached for reference). Even if an erosion control permit is not required for the amount of grading/filling proposed, the erosion control plan required for this variance application will need to address the applicable standards of these code sections. E.g. identify which trees would be removed.*

Construction erosion control plan is on the survey. Silt fence will be used to control erosion and provide sediment control during construction. Post construction, sod will be replanted on any disturbed surfaces and retaining wall will be used to hold up soils around swimming pool.

2. *As part of the responses to the variance findings for development within 40 feet of a steep slope, please address how the foundation and underlying material of the proposed pool and retaining walls would be adequate for the slope condition and soil type.*

There will be a 12" thick by 2" wide concrete bond beam poured around the base of the pool, reinforced with 3/8" rebar. This provides stabilization for the base of the pool ensuring that it will not move. The retaining wall will also hold up the grade around the swimming pool. The retaining wall will follow all industry standards for building on a steep slope, which in this case will be a compacted gravel base buried 8" underground.

3. *Show the proposed topography on the survey/site plan. Include the proposed grades for the top and bottom of the proposed retaining walls. Submit one full-sized, one 8.5" x 11" and an electronic copy of the revised plans.*

Survey has been updated to show top and bottom elevations of retaining wall. The electronic copy is attached and hard copies were delivered to Andrew at the zoning desk on 4/28/2016 at 2:00pm.

4. *The information submitted indicates that the grade would be raised and supported by a retaining wall. The proposed retaining wall adjacent to the north lot line would be located in a required interior side yard. Retaining walls not retaining natural grade are not permitted obstructions in required yards. A variance of the minimum interior side yard requirement is required. To apply for the variance, submit responses to the attached findings and a fee of \$675.00 (make check payable to the Minneapolis Finance Department).*

The option of the other retaining wall was revisited with the client. The client has decided not to proceed with that additional retaining wall and it has such been removed from the land survey.

Please let us know if there are any further questions.

Thank you,
Pat Henry

Pat Henry
Prestige Pools

Widmeier, Janelle A.

From: Jeff Schmit <jeff@prestigepools.com>
Sent: Friday, May 06, 2016 2:31 PM
To: Widmeier, Janelle A.
Cc: 'Pat Henry'; asher@outdoorinnovations.com
Subject: RE: Response to Notice of Incomplete Application: 28 Newton Ave S

Hi Janelle –

Asher noted that the 25" oak tree will be the only one impacted.

Let me know if there are any questions.

Thanks!

Jeff Schmit

Prestige Pools
87 W. County Rd. C
St. Paul, MN 55117
651.490.1399
www.prestigepools.com



From: Widmeier, Janelle A. [<mailto:Janelle.Widmeier@minneapolismn.gov>]
Sent: Friday, May 06, 2016 1:48 PM
To: Jeff Schmit
Cc: Pat Henry; asher@outdoorinnovations.com
Subject: RE: Response to Notice of Incomplete Application: 28 Newton Ave S

Hi Jeff,

Some additional information is needed about trees that will be impacted. This is something that the Board of Adjustment typically asks about. It looks as if two mature oak trees (one 24 inches in diameter and one 25 inches in diameter) would be removed. Is that correct?

Janelle Widmeier
Senior City Planner

City of Minneapolis – Community Planning and Economic Development
250 4th Street South – Room 300
Minneapolis, MN 55415

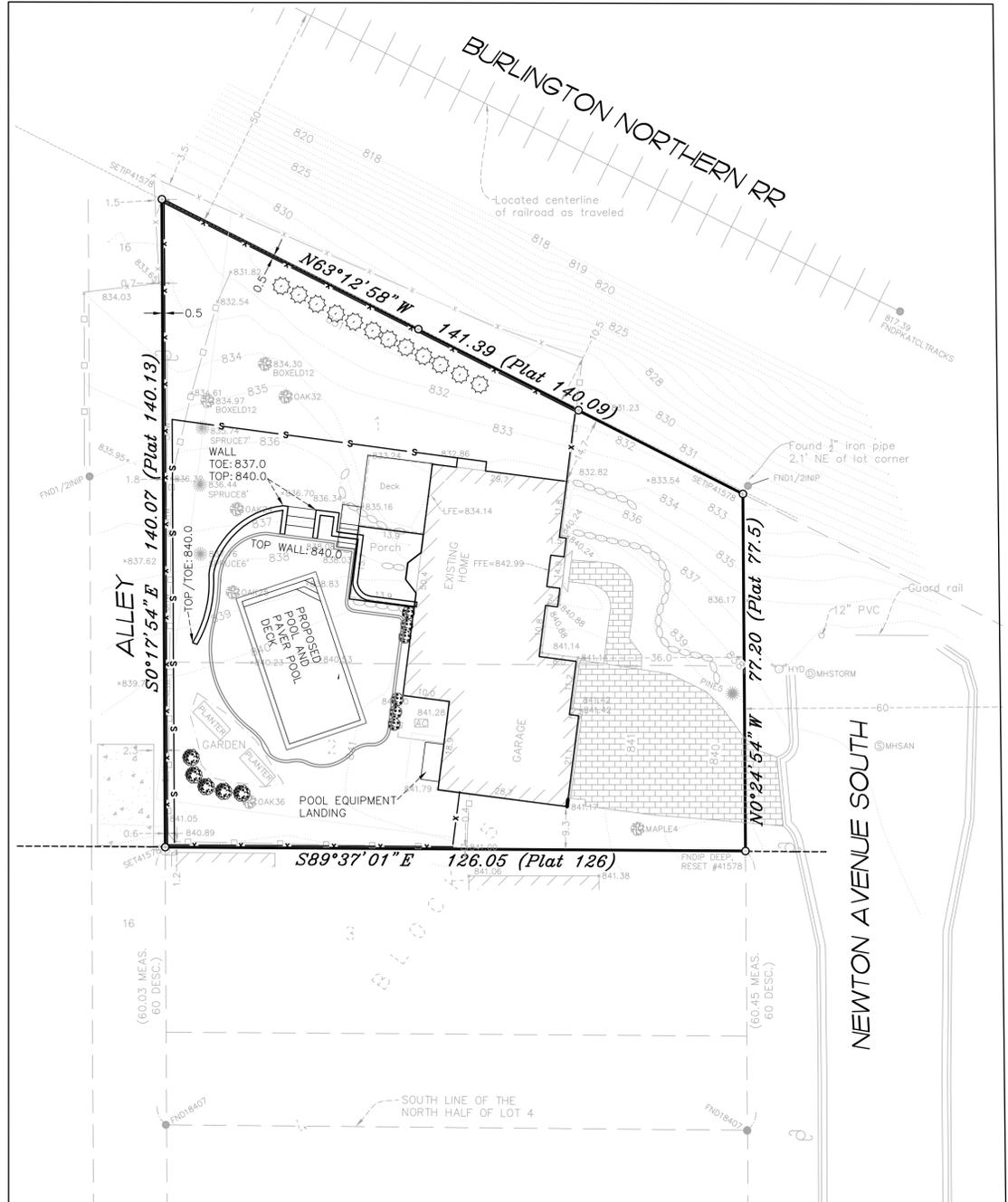
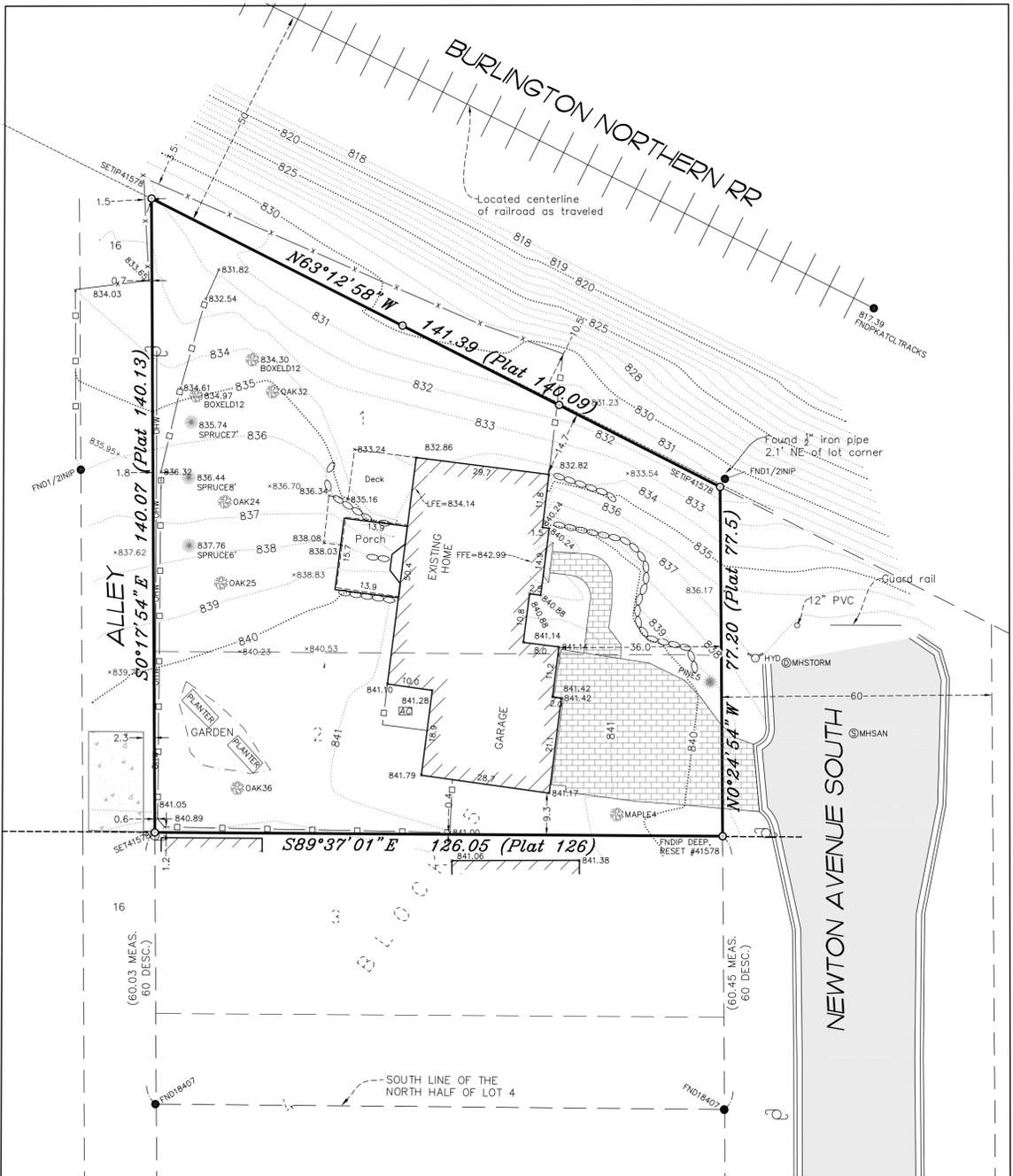
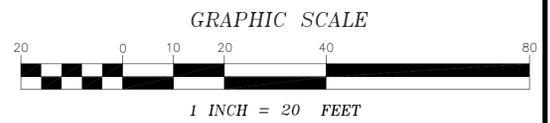
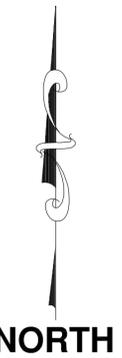
Office: 612-673-3156
janelle.widmeier@minneapolismn.gov
www.minneapolismn.gov/cped

CERTIFICATE OF SURVEY

~for~ Outdoor Innovations
 ~of~ 28 Newton Avenue South
 Minneapolis, MN

EXISTING CONDITIONS SURVEY

PROPOSED IMPROVEMENTS



LEGAL DESCRIPTION

Lots 1 and 2, Block 5, OSWALD'S ADDITION TO MINNEAPOLIS, Hennepin County, Minnesota

LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 41578
- x — x — DENOTES WIRE FENCE
- □ — □ — DENOTES WOOD FENCE
- ○ ○ ○ ○ DENOTES RETAINING WALL
- ▨ DENOTES BITUMINOUS SURFACE
- ▩ DENOTES CONCRETE SURFACE
- ▧ DENOTES PAVER SURFACE
- - - - - DENOTES PROPOSED FENCE
- - - - - DENOTES PROPOSED SILT FENCE

TREE DETAIL

- DENOTES ELEVATION
- DENOTES TREE QUANTITY
- DENOTES TREE SIZE IN INCHES
- DENOTES TREE TYPE

NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 03/31/16.
- Bearings shown are on an assumed datum.
- Curb shots are taken at the top and back of curb.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.
- Proposed site plan and improvements provided by Outdoor Innovations.

E. G. RUD & SONS, INC.
 EST. 1977 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 Lino Lakes, MN 55014
 Tel. (651) 361-8200 Fax (651) 361-8701

TOTAL PARCEL AREA = 13681.5 sq. ft.
Existing Impervious surfaces
 - House/porch = 2,377 sq. ft.
 - Driveway/sidewalk = 1,228 sq. ft.
 Total Impervious Area = 3,605 sq. ft.
 (26% of the lot)

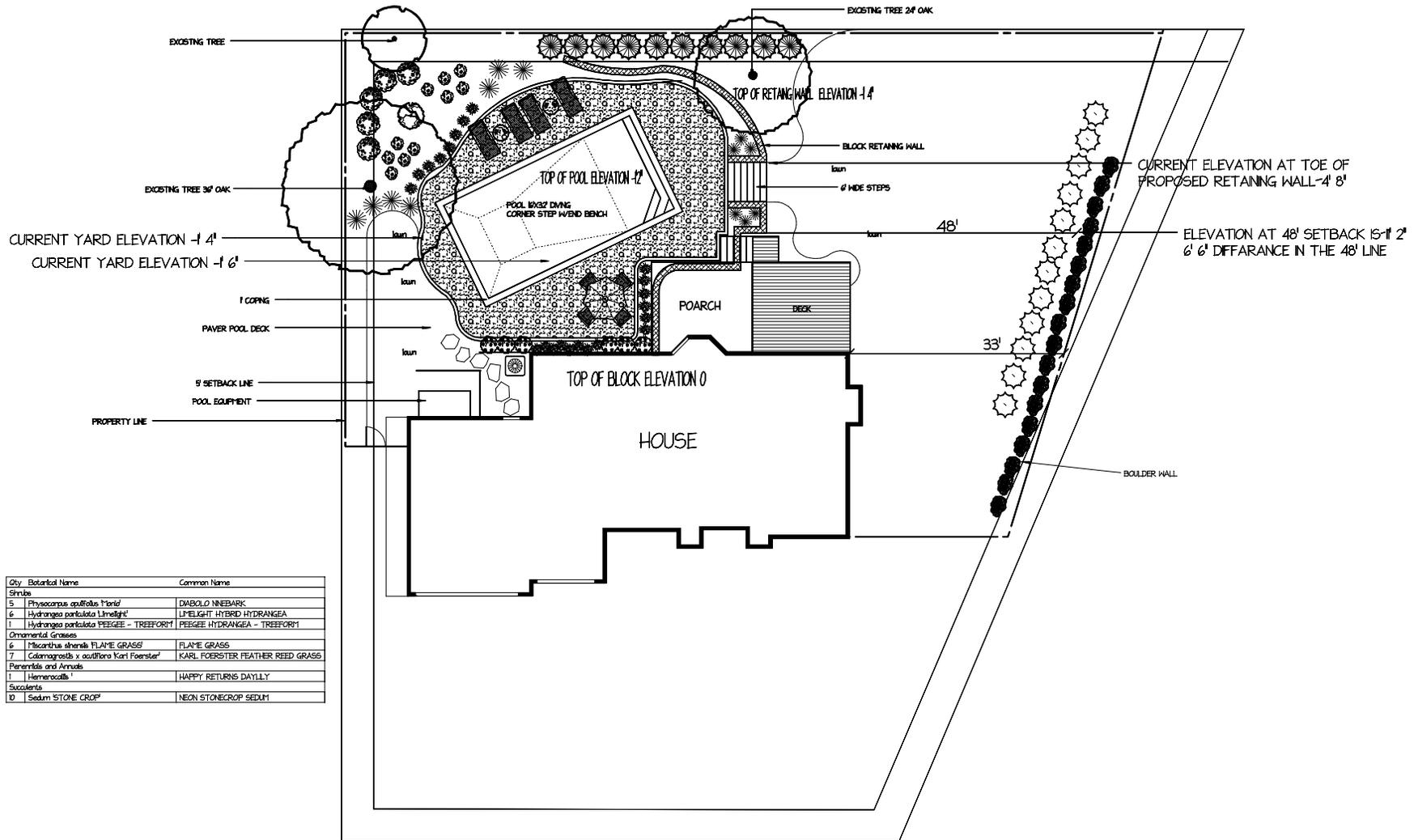
DRAWN BY: SNN	JOB NO: 16219BT	DATE: 4/7/16	
CHECK BY: JER	SCANNED <input type="checkbox"/>		
1	4/28/16	ADDED PROPOSED FENCE/SILT FENCE	BPN
2			
3			
NO.	DATE	DESCRIPTION	BY

Proposed Impervious Area = 1,679 sq. ft.
 (12% of the lot)
 (Includes proposed pool, paver deck, 6 foot steps and pool equipment landing)
 + Existing coverage 3,605 sq. ft.
 Total proposed coverage = 5,284 sq. ft.
 (38.6%)

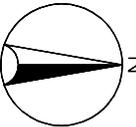
I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
 Date: 4/28/16 License No. 41578

LANDSCAPE PLAN VIEW



Qty	Botanical Name	Common Name
	Shrubs	
5	<i>Physocarpus opulifolius 'Diablo'</i>	DIABLO NINEBARK
6	<i>Hydrangea paniculata 'Limelight'</i>	LIMELIGHT HYBRID HYDRANGEA
1	<i>Hydrangea paniculata 'PeeGee'</i> - TREEFORM	PEEGEE HYDRANGEA - TREEFORM
	Ornamental Grasses	
6	<i>Miscanthus sinensis 'Flame Grass'</i>	FLAME GRASS
7	<i>Calamagrostis x acutiflora 'Karl Foerster'</i>	KARL FOERSTER FEATHER REED GRASS
	Perennials and Annuals	
1	<i>Hemerocallis</i>	HAPPY RETURNS DAYLILY
	Succulents	
10	<i>Sedum 'Stone Crop'</i>	NEON STONECROP SEDUM



SANTOS RESIDENCE
28 NEWTON AVE

SCALE 1"=6'
DATE 3/24/2016
DRAWING # DX17











