

---

# CITY OF LITTLE FALLS

---

## BOARD OF ADJUSTMENT/ PLANNING COMMISSION

September 11, 2017





**AGENDA**  
**PLANNING COMMISSION**  
 Conference Room, City Hall  
 September 11, 2017, 6:30 p.m.

P	A	Member	P	A	Member
		Kleinschmidt, James			Schulte, Ray
		Esse, Robert			Czech, Joe
		Gosiak, Frank			Oleson, Ben (Zoning Administrator)
		Hanfler, Jeremy			Kimman, Greg (City Engineer)
		Schilling, Kara			

**CALL TO ORDER:** Planning Commission Chairperson

**ADOPT THE AGENDA:** August 14, 2017

**APPROVAL OF MINUTES:** July 10, 2017

**PUBLIC HEARINGS:**

- 1) Request to vacate public right of way legally described as that portion of the platted road lying north of Lot 8, Block 40, Searle's Addition to Little Falls, Morrison County, Minnesota, according to the recorded plat of record in the Office of the Morrison County Recorder.
- 2) Variance to construct an approx. 5 x 17.5 ft dwelling addition and 3' x 5' covered entry to north side of existing dwelling approx. 4 ft from property line (min. 30 ft required).
  - a. Property Owner: Aaron and Becky Olson
  - b. Property address: 601 2<sup>nd</sup> St SE, Little Falls
  - c. Parcel number(s): 48.0205.000
- 3) After-the-fact variance to allow for a 4-6 ft tall fence in a front yard (max. 4 ft allowed) and within restricted distance of intersecting street right-of-way lines (max. 2.5 ft allowed).
  - a. Property Owner: Aaron and Becky Olson
  - b. Property address: 601 2<sup>nd</sup> St SE, Little Falls
  - c. Parcel number(s): 48.0205.000

**OLD BUSINESS:**

**NEW BUSINESS:**

- 1) Informational public meeting – CRVST trail along Lindbergh Drive

**NEXT REGULAR MEETING:** Monday, October 9, 2017

**ADJOURNMENT:**



## STAFF REPORT

---

**Application:** Request to vacate public right of way legally described as that portion of the platted road lying north of Lot 8, Block 40, Searle's Addition to Little Falls, Morrison County, Minnesota, according to the recorded plat of record in the Office of the Morrison County Recorder.

**Applicant:** Michael Kayala

---

### **Background Information:**

) **Proposal:** The applicant is requesting that the City vacate that portion of the 9<sup>th</sup> Street SW public right of way that lies west of 13<sup>th</sup> Street NW. The right of way does not currently have any public utilities or an actual road surface. The land immediately to the west of the right of way are two relatively narrow (approx. 100 ft) parcels of privately owned land that is located within the City boundaries. Just west of that, is a privately owned farm (approx. 64 acres) that is located outside of City boundaries.

---

### **Applicable Statutes/Ordinances:**

#### **Minnesota Statutes**

462.356 PROCEDURE TO EFFECT PLAN: GENERALLY.

#### **SUBD. 2.COMPLIANCE WITH PLAN.**

After a comprehensive municipal plan or section thereof has been recommended by the planning agency and a copy filed with the governing body, **no publicly owned interest in real property within the municipality shall be acquired or disposed of,** nor shall any capital improvement be authorized by the municipality or special district or agency thereof or any other political subdivision having jurisdiction within the municipality **until after the planning agency has reviewed the proposed acquisition, disposal, or capital improvement and reported in writing to the governing body or other special district or agency or political subdivision concerned, its findings as to compliance of the proposed acquisition, disposal or improvement with the comprehensive municipal plan.** Failure of the planning agency to report on the proposal within 45 days after such a reference, or such other period as may be designated by the governing body shall be deemed to have satisfied the requirements of this subdivision. The governing body may, by resolution adopted by two-thirds vote dispense with the requirements of this subdivision when in its judgment it finds that the proposed acquisition or disposal of real property or capital improvement has no relationship to the comprehensive municipal plan.

#### **Little Falls Comprehensive Plan (2007)**

The City's 2007 Comprehensive Plan identifies the area to the west of 9<sup>th</sup> Ave SW as Country & Suburban Residential, which has a planned density of 1-3 dwelling units per acre.

---

**Planning Commission/Board of Adjustment Direction:** The Planning Commission may recommend to the Council approval or denial of the proposed public right-of-way vacation with findings relating to how such vacation would be compliant with the City's Comprehensive Plan. If the Commission wishes to take more time for review of the proposed vacation and/or require additional information, it may table the request.

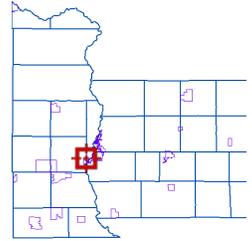
---

**Staff Comments:** As the Planning Commission/Board of Adjustment considers this application, Staff would make the following comments:

1. The primary question with vacating this right-of-way is how likely the right-of-way would be for the future extension of roads and/or utilities to service property to the west. At this time, the land immediately to the west of the public right-of-way is in the City of Little Falls. It does not provide the only access to that land, as other rights-of-way abut those properties. However, vacating the right-of-way would limit access for that landowner and limit the potential of those properties to be subdivided. Further, there is a 60+ acre farm immediately to the west of those parcels that would lose some of its potential access to the City street and public utility system, although it does have other points of possible connection should it ever be subdivided.



**Overview**



**Legend**

- Parcels
- Road Centerlines
- Rights of Way
- Streams**
- <all other values>
- Protected Stream
- Protected Stream/County Ditch
- Original Path
- County Ditch

**Disclaimer:** The maps and data available for access at this website are provided "as is" without warranty or any representation of accuracy, timeliness, or completeness. There are no warranties, expressed or implied, as to the appropriate use of the maps and data or the fitness for a particular purpose. The maps and associated data at this website do not represent a survey. No liability is assumed for the accuracy of the data delineated on any map, either expressed or implied.

This imagery is displayed at a scale of 1 inch=9 inch pixel resolution, (9 inches on the ground is 1 pixel on your screen). In the areas of Pierz and the NW/NE lakes, the image is 1 inch=4 inch pixel resolution and is the highest quality imagery on this site. These images were flown by Pictometry in the spring of 2013.

Date created: 9/6/2017  
 Last Data Uploaded: 9/5/2017 4:18:18 AM



## STAFF REPORT

---

**Application:** Variance to construct an approx. 5 x 17.5 ft dwelling addition and 3' x 5' covered entry to north side of existing dwelling approx. 4 ft from property line (min. 30 ft required).

**Applicant:** Aaron and Becky Olson

---

### Background Information:

) **Proposal:** The applicant is proposing to construct an addition to the north side of their existing dwelling that would be located approximately 4 feet from the front property line (min. 30 ft required). The existing dwelling on the property was originally constructed approximately 12 feet from the north property line prior to in 1892 according to Assessor's records and is considered a legal nonconformity.

) **Location:**

- o Property address: 601 2<sup>nd</sup> St SE, Little Falls
- o Legal Description: Lot 1, Block 25, Original Plat of Little Falls
- o Parcel number(s): 48.0205.000

) **Zoning:** R1 - One and Two Family District

---

### Applicable Statutes/Ordinances:

#### Minnesota Statutes

#### 462.357 (2011) OFFICIAL CONTROLS: ZONING ORDINANCE.

##### Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic

considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

**Little Falls City Code**

**11.04: ADMINISTRATION AND ENFORCEMENT**

**C. Variances:**

1. The timelines for variance requests shall be governed by Minnesota Statute 15.99, as amended from time to time.
2. The processing of variances shall be governed by Minnesota Statute 462.357, as amended from time to time.
3. No variance permitting the erection or alteration of a building shall be valid for a period longer than six [6] months, unless a building permit is issued and the construction actually begun within that period, and is thereafter diligently pursued to completion.
4. A variance shall lapse and become void if the variance for which a permit has been granted is discontinued for a period of one year, or if a variance is no longer required by the provisions of this chapter.
4. Revocation: A variance may be revoked by following the requirements and procedures in Section 11.04.H of the City Code.

**11.05: ZONING DISTRICTS AND MAP:**

**D. R-1 One- And Two-Family Residential District:**

**4. Lot Area, Floor Area, Height, Lot Width And Yard Requirements:**

b. The following minimum requirements shall be observed subject to additional requirements, exceptions and modifications contained in this chapter:

Lot Size		Lot Width		Front Yard	Rear Yard	Side Yard	
Interior	Corner	Interior	Corner			Interior	Corner

11,000 square feet	12,000 square feet	80 feet	80 feet	30 feet	35 feet	10 feet	15 feet
--------------------	--------------------	---------	---------	---------	---------	---------	---------

11.02: DEFINITIONS:

**FRONT YARD:** A yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right of way line to a depth required in the yard regulations for the district in which such lot is located.

**LOT LINE, FRONT:** That boundary of a lot which abuts an existing or dedicated public street and, in case of a corner lot, it shall be the shortest dimension on a public street, except that a corner lot in a nonresidential area shall be deemed to have frontage on both streets.

11.03: GENERAL PROVISIONS:

E. Required Yards And Open Space:

3. The following shall not be considered to be encroachments on yard requirements:

a. Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, mechanical devices, cornices, eaves, gutters and the like, provided they do not extend more than two and one-half feet (2<sup>1</sup>/<sub>2</sub>'), and off street parking, except as hereinafter regulated.

---

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Planning Commission:

1) **Current Zoning:**

- o Subject Property: R-1 One- and Two-Family Residential Zoning District
- o Surrounding Properties: R-1 One- and Two-Family Residential Zoning District

2) **Current Land Use:**

- o Subject Property: Single-family dwelling
- o Surrounding Properties: Single-family dwellings

3) **Lot size:** Approx. 75 ft. x 80 ft. (6,000 sq ft).

- o Existing impervious surface: Approx. 1,609 sq. ft. (26.8%)
- o Proposed impervious surface: Approx. 1,700 sq. ft. (28.3%)
- o Maximum allowed impervious surface: 75%

4) **Sewer/Water:** The property is served with City sewer/water.

5) **Natural Features:**

- Floodplain: The location of the proposed garage does not appear to be within an identified floodplain.
- Bluff/Steep Slopes: The property does not contain any bluffs or steep slopes in the location of the proposed garage.
- Wetlands: There do not appear to be any wetlands on the property that would impact the proposed garage.

6) **Will the granting of the variance be in harmony with the general purposes and intent of the Zoning and/or Subdivision Ordinance?**

The general intent of a front yard setback for structures is to help ensure adequate space for road maintenance activities (i.e. snowplowing, etc...), to prevent damage to property and promote public safety should a vehicle drive off the road and to allow adequate space for parking of vehicles on driveways without endangering public safety.

In this case, the lot is a corner lot, which allows for a min. front yard setback of 30 feet and a min. corner side lot setback of 15 feet. The addition would be in the front yard, by definition, and would not meet either the 30 ft or 15 ft setbacks.

Given that the existing dwelling was already located approximately 12 feet from the front lot line, and has been since the late 1800s according to Assessor's records, the home has not impeded maintenance of the road or had any history of accidents with vehicles going off the road as far as Staff is aware. The addition would, however, put even more structure within the required setback than what exists now.

7) **Will the granting of the variance be consistent with the City of Little Falls' Comprehensive Plan?**

The Comprehensive Plan does not directly address applications such as these.

8) **Is the proposed use of the property reasonable?**

The requested variance is reasonable in that the reasoning for the addition is to make the home more livable - particularly for persons having difficulty navigating stairs. However, the Board of Adjustment should discuss whether it is less reasonable given the proximity of the addition to the front lot line.

9) **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

The need for the variance would appear to primarily be related to the existing layout of the home on the lot and the lot size.

10) **Will the variance, if granted, alter the essential character of the locality?**

The use of the property would remain very similar in character to what already exists.

**11) Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

Economic considerations do not appear to play a significant factor in the requested variance, except that an addition to another part of the home to allow for a bathroom and other improvements would not work as well with the interior layout.

**12) Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?**

To avoid the need for a variance, the applicant would have to construct an addition on a different side of the home. This does appear possible, although it would need to be discussed with the applicants why they feel it is not feasible or practical.

---

**Board of Adjustment Direction:** The Board of Adjustment may recommend to the Council approval of the variance request, denial of the request, or tabling of the request if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

---

**Staff Comments:** As the Planning Commission/Board of Adjustment considers this application, Staff would make the following comments:

1. Staff has received one verbal comment from the public in favor of the request. Any additional comments received before the meeting will be presented to the Planning Commission/Board of Adjustment at the hearing.

August 9, 2017

City of Little Falls  
100 NE 7<sup>th</sup> Ave  
Little Falls, MN 56345

Dear Council members, zoning & city staff,

We would like to add a main floor bathroom onto our home. Our family of four currently has only one upstairs bathroom. In addition, Becky is often in pain due to chronic knee pain (she is scheduled to visit the orthopedics this fall) so limiting the number of trips she has to make up and down stairs (both upstairs to the bathroom & downstairs to the basement laundry) is important. In addition each of our parents are restricted in the time they can visit our family because our only bathroom is up a steep narrow flight of stairs, thus is inaccessible to them.

The addition is planned to go out the north side of our home (off the kitchen). We have worked with a local architect to make plans for an addition that is as small as possible, yet includes a bathroom, laundry & entry. We have worked through several different drafts & options of the layout, but the outer footprint of the addition would be the same.

The addition would extend 5' further than the current north wall of the house, which is within a couple of inches of the distance the next door neighbor's porch extends to the north (see picture). The north side of the house is the only direction we can add this addition without significantly impacting the minimal yard space we have for our family, with two growing sons, to garden, recreate & enjoy.

Our desire would be to have an overhang just above the door similar to the one over our west door, just big enough to keep rain off us as we unlock the door. The large tree next to the driveway would be removed, but no other trees would be affected by the addition.

In addition to the addition, we request variance of the existing fence on the north & west side of the house (see attached documentation on the application, detailed plans, approval & inquiry of the fence).

Sincerely,



Aaron & Becky Olson  
601 2<sup>nd</sup> St SE  
Little Falls, MN 56345

(cell) (320) 232-8205



Phone: 320-616-5500  
Fax: 320-616-5505

Fee Paid 325<sup>00</sup>

Date Filed 8-

Receipt Number 8 5237

**Application For: REZONING, VARIANCE AND CONDITIONAL USE**

Have you reviewed Chapter 11, Section 11.04 of the City Code dealing with zoning laws of the City of Little Falls? (available online: www.cityoflittlefalls.com)

Yes  No

Street Address of Property 601 2<sup>nd</sup> St SE, Little Falls

Legal Description of Property House on corner of 2nd St + 5<sup>th</sup> Ave SE, LF.  
SEE ATTACHED

Parcel Identification Number \_\_\_\_\_

Owner - Name Becky + Aaron Olson Phone (320)632-8330  
Address 601 2<sup>nd</sup> St SE  
City Little Falls State MN Zip 56345

Applicant (if other than owner) -

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Request - Rezoning \_\_\_\_\_ Variance  Conditional Use \_\_\_\_\_ Other \_\_\_\_\_

Description of Request Addition of main floor bathroom  
onto the north side of our house. Includes removal of  
existing porch overhang. In addition, variance approval of existing fence.

Reason for Request Our family of 4 lives in a home with only 1 upstairs bathroom  
Physically, Becky's knees are in need of repair and minimizing the trips up & the  
stairs (both upstairs & to the basement laundry) is very important. In addition,  
both sets of parents are limited in the time they can visit because the bathro  
is upstairs and inaccessible to them. Anyone who is injured in our home (i.e. leg)

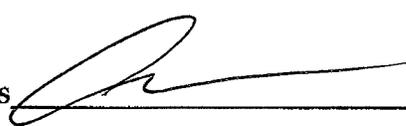
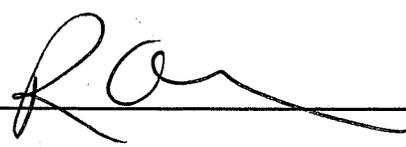
Present Zoning Classification residential won't be able to get to the bathroom by  
our steep, narrow stairwell.

Existing Use of Property residential

Existing Use and Zoning of the Surrounding Area (two blocks) residential with  
the start of businesses to the NW.

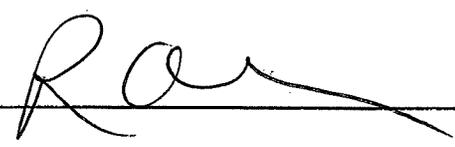
Has a request for a variance, special use permit, or rezoning on the subject site - or any part thereof - been previously sought?

Yes \_\_\_\_\_ No \_\_\_\_\_ When \_\_\_\_\_

Signature of Applicant/s  

Date 8/9/2017

I am the legal fee owner of the property described on this application and I consent to this application

Signature of owner/s  

Approved \_\_\_\_\_ Denied \_\_\_\_\_ by the Planning Commission on \_\_\_\_\_  
Date

Approved \_\_\_\_\_ Denied \_\_\_\_\_ by the City Council on \_\_\_\_\_  
Date

Mailing Address: City of Little Falls, P.O. Box 244, Little Falls, MN 56345

The following questions must be answered.

1. What changes are you proposing to make to this property?

Building: Bathroom addition on north side of house

Landscaping: <sup>Variance</sup> Approval of existing fence on n-r-w side of house

Parking/Signs: \_\_\_\_\_

2. Describe the character of the area and the existing patterns and use of development in the area. How is the proposal consistent with those patterns and uses? Our house

is located in a residential area with significant tree cover. Many homes are older with additions to provide more space. This small addition will fit in. Various houses in neighborhood have privacy fences of a variety of sizes.

3. Describe the impact on the character of the neighborhood in which the property is located. This small addition will not negatively impact

the character of our neighborhood. The house east of us has a small porch that extends out north towards the street a distance just 3" shy of this addition.

4. Describe the impact to the traffic on roads and highways in the vicinity, and the expected traffic generated by the proposed use. Is there adequate off-street parking available to accommodate the proposal? None. Neither the addition nor

fence impact traffic or parking.

5. What part of the City Zoning Ordinance creates a practical difficulty to the property in question? What is the practical difficulty that prevents the land to be used in a reasonable way? The need for this variance request is the setback from

5th Ave, which is actually ~~in~~ lies w/in our existing home! The yard to the north ideally allows for this addition (connecting w/ our kitchen & basement) and does not interfere with our backyard, garden or other interior rooms.

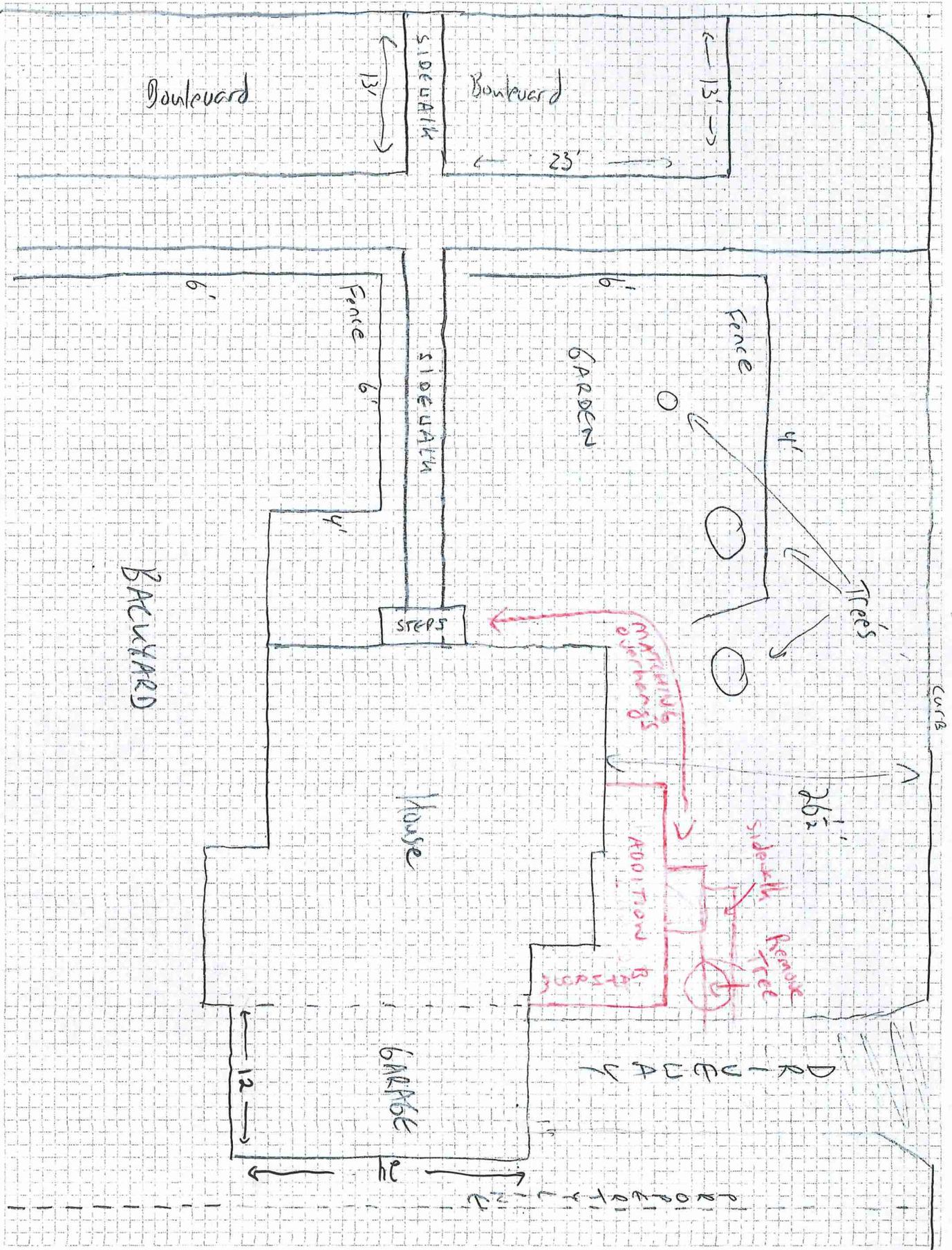
Use other side of page if necessary.

2nd St SE

NE ↑

1 square = 1'

SE 1/4 SE



CORRECT (Arrow)

Neighbors Patch



- Legend**
-  Political Township
  -  Parcels
  -  Road Centerlines
  - Streams**
  -  <all other values>
  -  Protected Stream
  -  Protected Stream/County Ditch
  -  Original Path
  -  County Ditch
  -  Protected Ditch
  -  Protected Ditch/County Ditch

<b>Parcel ID</b>	480205000	<b>Alternate ID</b>	n/a	<b>Owner Address</b>	REBECCA BOLLIN
<b>Sec/Twp/Rng</b>	n/a	<b>Class</b>	1A-Residential Homestead		601 2ND ST SE
<b>Property Address</b>	601 2ND ST SE	<b>Acreage</b>	n/a		LITTLE FALLS MN 56345
	LITTLE FALLS MN 56345				

**District** LITTLE FALLS EAST-#482-HRA

**Brief Tax Description** ORIGINAL PLAT LITTLE FALLS

 Lot 001 Block 025 of ORIGINAL PLAT LITTLE FALLS

THAT PT OF LOT 1 BLK 25 LYING WLY OF LN DRAWN BET MIDPTS OF NLY & SLY LNS OF LOT 1, BEING W1/2 OF SAID LOT 1

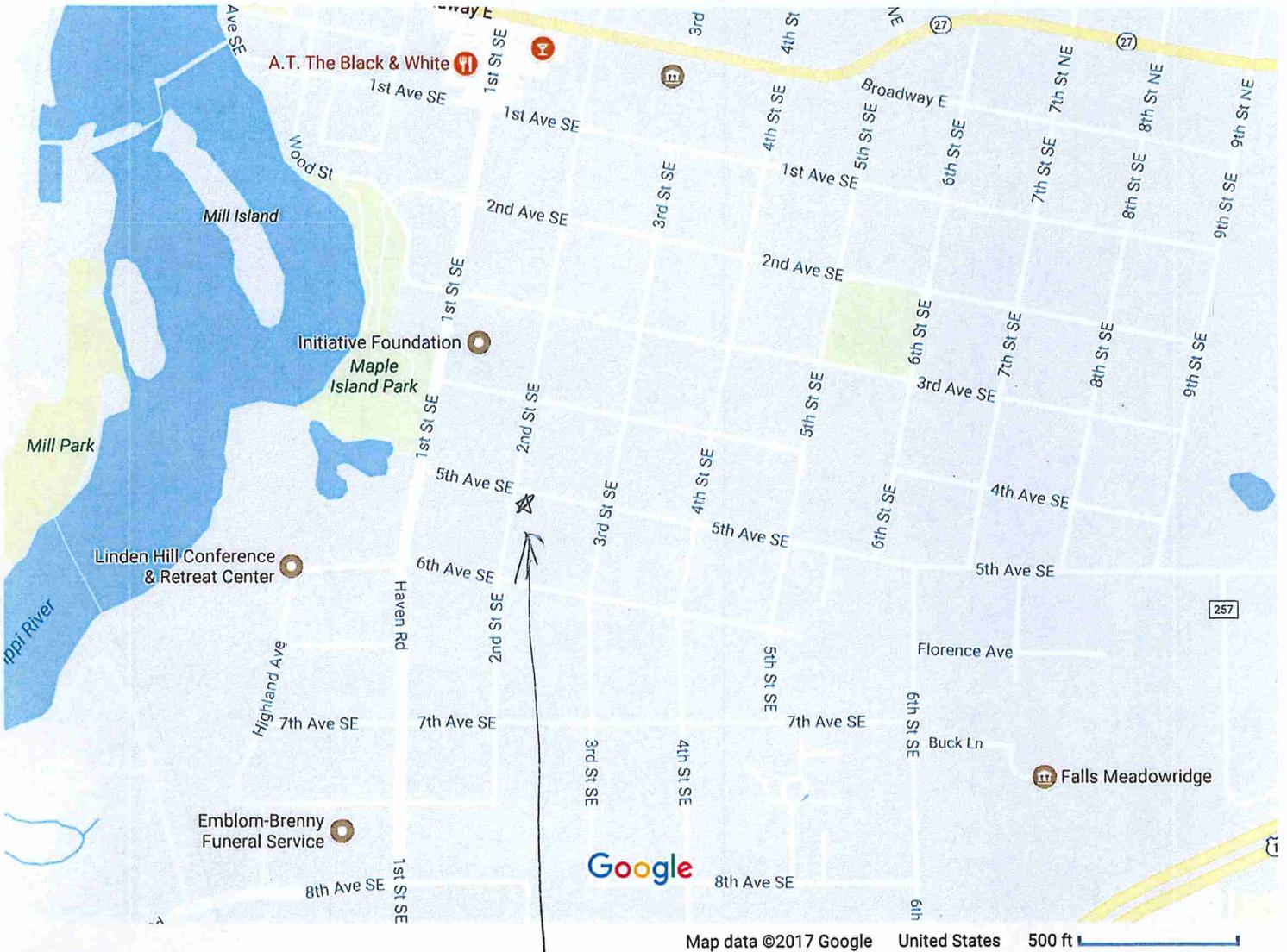
**(Note: Not to be used on legal documents)**

**Disclaimer:** The maps and data available for access at this website are provided "as is" without warranty or any representation of accuracy, timeliness, or completeness. There are no warranties, expressed or implied, as to the appropriate use of the maps and data or the fitness for a particular purpose. The maps and associated data at this website do not represent a survey. No liability is assumed for the accuracy of the data delineated on any map, either expressed or implied.

This imagery is displayed at a scale of 1 inch=9 inch pixel resolution, (9 inches on the ground is 1 pixel on your screen). In the areas of Pierz and the NWNE lakes, the image is 1 inch=4 inch pixel resolution and is the highest quality imagery on this site. These images were flown by Pictometry in the spring of 2013.

Date created: 8/10/2017  
 Last Data Uploaded: 8/10/2017 4:17:01 AM

# Google Maps Little Falls



Aaron + Bradley Olson  
 601 2nd St SE  
 Little Falls, MN 56345

# DRAFT ONLY BUT Correct Footprint

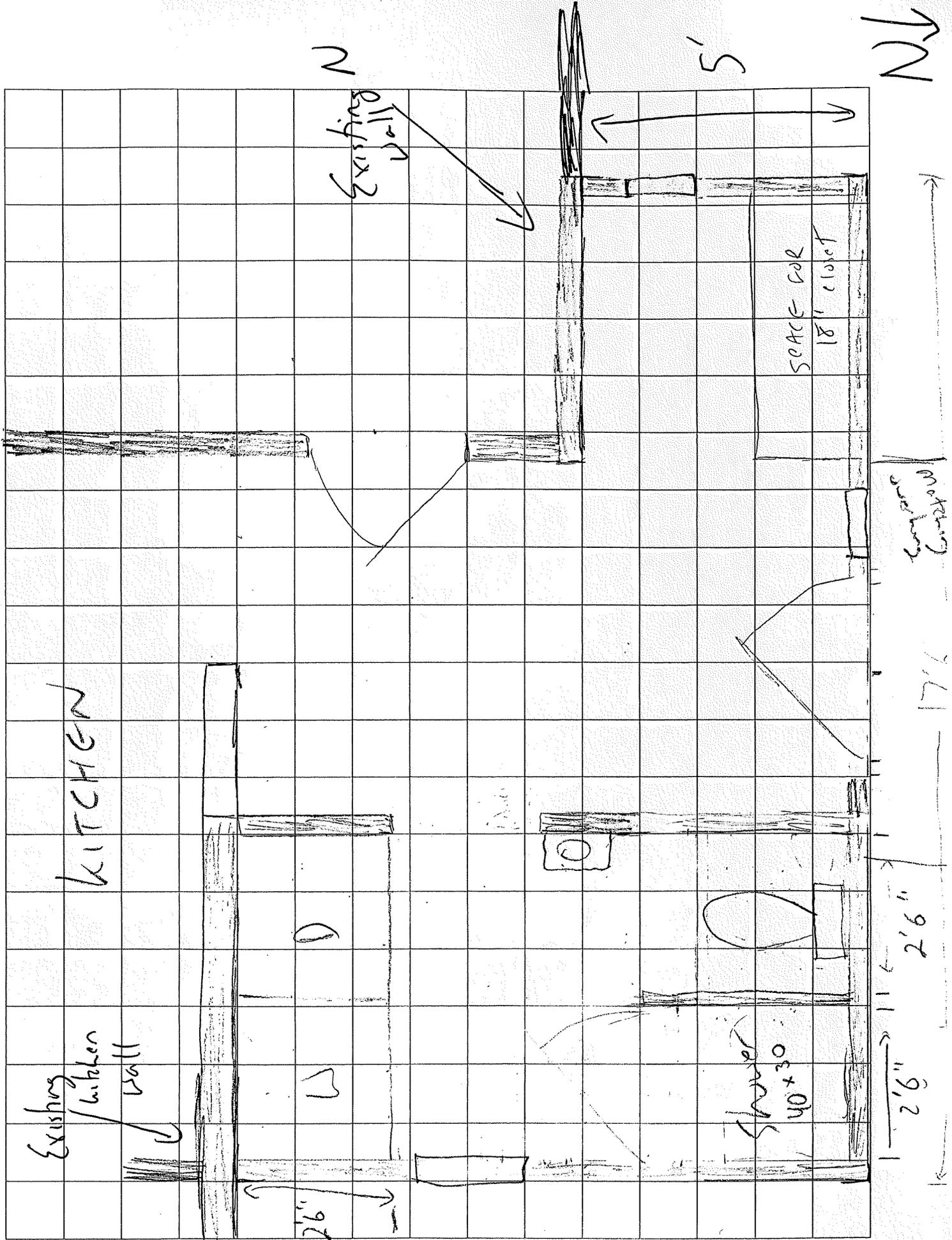
TO meet the req  
de solid wood backing and blocking for tower base,  
c. Siding, soffit, fascia and exterior trim shall  
be Owner. All cabinet and countertop work shall  
be Owner.



## FRONT ELEVATION

1/4" = 1'-0"

Each square = 1'



# Google Maps 220 5th Ave SE

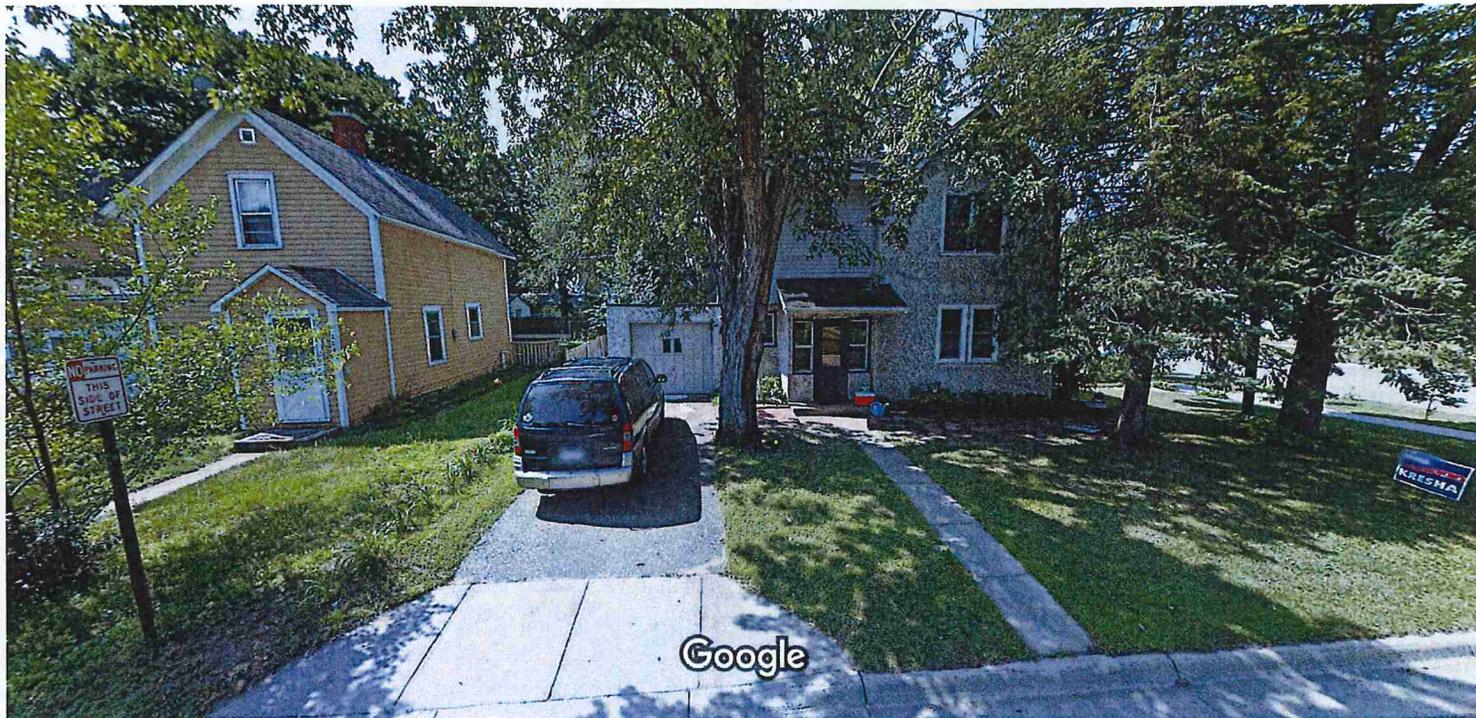


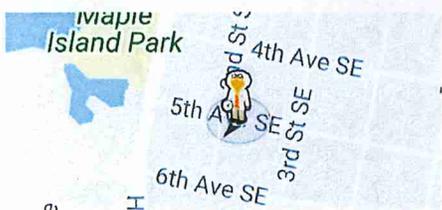
Image capture: Jul 2014 © 2017 Google United States

Little Falls, Minnesota

Street View - Jul 2014



Currently shown: Jul 2014





## STAFF REPORT

---

**Application:** After-the-fact variance to allow for a 4-6 ft tall fence in a front yard (max. 4 ft allowed) and within restricted distance of intersecting street right-of-way lines (max. 2.5 ft allowed).

**Applicant:** Aaron and Becky Olson

---

### Background Information:

) **Proposal:** The applicant constructed a fence in the Spring of 2016 to enclose their front and corner side yards. They applied for a fence that was to be 6 ft along the side (west) property line and 4 ft tall along the front (north) property line. These height limits were as allowed by ordinance, except that the area of the yard near where the two streets meet was – by ordinance – not to be taller than 2.5 feet (30 inches) so as not to impede vision for approaching vehicles. The permit was incorrectly issued by the Zoning Administrator in that it was not compliant with this requirement. The applicants are now asking for an after-the-fact variance to allow the fence height to exceed 2.5 ft (30”) in the “site triangle” area.

**Note:** At the time of the fence construction, the requirement was that the fence height be limited to 30” 25 feet from the street intersecting right of way lines. This would require that it be no more than 30 inches approximately back to their sidewalk on the west side. Since that time, the City has finalized proposed amendments to that section of the City Code and adopted new, less restrictive regulations that would require the 30” maximum height only for a distance of 10 feet back from the street intersecting right of way lines. The existing fence would not meet either of these setbacks.

) **Location:**

- o Property address: 601 2<sup>nd</sup> St SE, Little Falls
- o Legal Description: Lot 1, Block 25, Original Plat of Little Falls
- o Parcel number(s): 48.0205.000

) **Zoning:** R1 – One and Two Family District

---

### Applicable Statutes/Ordinances:

#### Minnesota Statutes

#### 462.357 (2011) OFFICIAL CONTROLS: ZONING ORDINANCE.

##### Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

### **Little Falls City Code**

#### **11.04: ADMINISTRATION AND ENFORCEMENT**

##### **C. Variances:**

1. The timelines for variance requests shall be governed by Minnesota Statute 15.99, as amended from time to time.
2. The processing of variances shall be governed by Minnesota Statute 462.357, as amended from time to time.
3. No variance permitting the erection or alteration of a building shall be valid for a period longer than six [6] months, unless a building permit is issued and the construction actually begun within that period, and is thereafter diligently pursued to completion.
4. A variance shall lapse and become void if the variance for which a permit has been granted is discontinued for a period of one year, or if a variance is no longer required by the provisions of this chapter.

4. Revocation: A variance may be revoked by following the requirements and procedures in Section 11.04.H of the City Code.

11.03: GENERAL PROVISIONS:

(Old language at time of permit issuance)

4. On a corner lot, nothing shall be placed or allowed to grow in such a manner as materially to impede vision between a height of two and one-half feet (2<sup>1</sup>/<sub>2</sub>') and ten feet (10') above the centerline grades of the intersecting streets within twenty five feet (25') of the street intersecting right of way lines.

(New language recently adopted by City Council)

4. On a corner lot, nothing shall be placed or allowed to grow in such a manner as to materially impede vision between a height of two and one-half feet (2-1/2') and ten feet (10') above the centerline grades of the intersecting streets. For uncontrolled intersections, the regulated area shall extend to the triangle created by connecting the end points of the lines within twenty-five feet (25') of the street intersecting right-of-way lines and for controlled intersections within ten feet (10') of the street intersecting right-of-way lines.

**Minnesota Supreme Court**

In a 2008 ruling of a case known as “Stadsvold v. Otter Tail County”, the court addressed an after-the-fact variance request where a house and garage were built closer to a side lot line than had been approved. In that case, the County had inspected the construction several times as it was being done and ultimately approved the permit. No survey had been provided or required as part of the permitting process. It was later questioned whether the side yard setback was being met and a survey of the lot indicated that it was not. The Stadsvold’s applied for a variance to leave the house where it was and were denied.

The Court, as part of their ruling to send the case back to the Otter Tail County Board of Adjustment for consideration of factors not originally considered, noted that after-the-fact variances should consider factors the Supreme Court had previously laid out in a 1985 case known as “Kenney v. Stearns County Board of Adjustment” for after-the-fact variances. These considerations were:

1. Appellant acted in good faith;
2. Appellant attempted to comply with the law by obtaining a building permit;
3. The Township’s building permit violated Minn. Stat. 394.33 (1978);
4. Appellant has made a substantial investment in the property;
5. The repairs were completed before appellant was informed of their impropriety;
6. The nature of the property is residential/recreational and not commercial;
7. There are similar structures on the lake;

8. The minimum benefits to the County appear to be far outweighed by the detriment appellant would suffer if forced to remove his boathouse.

The Minnesota Counties Insurance Trust (MCIT), which represents and provides advice to counties in legal matters, summarized the criteria set out by the Supreme Court as follows:

1. The applicant acted in good faith;
2. The applicant attempted to comply with the law by obtaining a building permit;
3. The applicant obtained a permit from another entity that violated the law;
4. The applicant made a substantial investment in the property;
5. The applicant completed the repairs/construction before the applicant was informed of the impropriety;
6. The nature of property is residential/recreational and not commercial;
7. There are other similar structures on the lake;
8. The minimum benefits to the county appear to be far outweighed by the detriment appellant would suffer forced to remove the structure.

While that case applied to counties, which are under a different set of statutes than cities, presumably the Court would find that the same types of questions would apply in an after-the-fact variance that occurs in a city.

---

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Planning Commission:

**1) Current Zoning:**

- o Subject Property: R-1 One- and Two-Family Residential Zoning District
- o Surrounding Properties: R-1 One- and Two-Family Residential Zoning District

**2) Current Land Use:**

- o Subject Property: Single-family dwelling
- o Surrounding Properties: Single-family dwellings

**3) Lot size:** Approx. 75 ft. x 80 ft. (6,000 sq ft).

**4) Will the granting of the variance be in harmony with the general purposes and intent of the Zoning and/or Subdivision Ordinance?**

The general intent of the height limit in close proximity to intersecting streets is to ensure that sight-lines are not obstructed as cars approach an intersection. This is intended to prevent accidents between vehicles or between vehicles and pedestrians. The existing fence has been in place for more than a year and as far as Staff is aware, no accidents have occurred. The intersection is a controlled intersection with a four-way stop required by vehicles, bicyclists and pedestrians. So long as vehicles are

stopping at the intersection, the site lines of all corners is not significantly obstructed. The largest potential for an accident would come from either drivers or bicyclists or pedestrians not stopping at the stop sign and there being an accident as a result.

5) **Will the granting of the variance be consistent with the City of Little Falls' Comprehensive Plan?**

The Comprehensive Plan does not directly address applications such as these.

6) **Is the proposed use of the property reasonable?**

The requested variance is reasonable in that the fence was erected in good faith after the applicants applied for, and were approved for a permit. The applicants have indicated that they are seeking privacy on their busy corner lot and that a 30" tall fence in that location would eliminate their privacy and that moving the taller fence further back would eliminate most of their yard area that they would otherwise use.

7) **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

The need for the variance would appear to primarily be related to the existing layout of the home on the lot, the lot size, and the desire to have privacy in their yard while at the same time maximizing the area that can be used inside the fence.

8) **Will the variance, if granted, alter the essential character of the locality?**

The use of the property would remain very similar in character to what already exists.

9) **Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

Economic considerations do not appear to play a significant factor in the requested variance, as the applicants indicate it has more to do with maximizing use of their yard and achieving more privacy than the cost of moving the fence.

10) **Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?**

To avoid the need for a variance, the applicant would have to move the existing fence further back into the yard and/or reduce the height of the fence in its existing location.

---

**Additional Considerations for 'After-the-Fact' Variance Requests:**

**1. The applicant acted in good faith;**

**Yes.** The applicant applied for a permit to construct the fence and that application included a site plan that clearly identified the proposed height and distance from the street intersecting right of way line. That fence permit was clearly issued with no mention of the need to limit the height to 30" in the site triangle area.

**2. The applicant attempted to comply with the law by obtaining a building permit;**

**Yes.** The applicant did apply for a building permit and said permit was approved.

**3. The applicant obtained a permit from another entity that violated the law;**

**No.** The applicant did not appear to try and obtain a permit from any other entity as none would be required.

**4. The applicant made a substantial investment in the property;**

**Needs discussion.** The applicant has clearly made an investment in the property in erecting the fence (as well as installing a garden in the area that would be lost if the fence were to be removed). Whether that investment is “substantial” is one that could be debated.

**5. The applicant completed the repairs/construction before the applicant was informed of the impropriety;**

**Yes.** The fence was completed by the time they were informed that it was not in compliance with the City Code.

**6. The nature of property is residential/recreational and not commercial;**

**Yes.** The use of the property is residential.

**7. There are other similar structures in the area;**

**Yes:** There are numerous other intersections throughout the city where buildings, fences or trees/shrubs block the view at intersections.

**8. The minimum benefits to the City appear to be far outweighed by the detriment appellant would suffer forced to remove the structure.**

**Needs discussion.** The costs to the landowner would be in removing all or a portion of the constructed fence so that it meets the required setback or height. The City’s concern would primarily have to do with public safety and possibly setting a precedent of allowing for such obstructions.

---

**Board of Adjustment Direction:** The Board of Adjustment may recommend to the Council approval of the variance request, denial of the request, or tabling of the request if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

---

**Staff Comments:** As the Planning Commission/Board of Adjustment considers this application, Staff would make the following comments:

1. It may be useful for the Board of Adjustment to first consider whether they would have granted a variance if it had been requested prior to the construction of the fence (i.e. if the applicants had been told initially that their fence was too high at the corner and decided to apply for a variance at that time.

2. Staff would recommend that the City consider the specific criteria that apply to after-the-fact variances, as laid out by the Minnesota Supreme Court, and determine how those apply to this situation.

August 9, 2017

City of Little Falls  
100 NE 7<sup>th</sup> Ave  
Little Falls, MN 56345

Dear Council members, zoning & city staff,

We have owned an old home (built in the 1890's) at 601 2<sup>nd</sup> St SE for close to 25 years. Over the years we have done various things to the house and yard to provide space and privacy for a growing family. The house is located on a busy intersection and when outside in the front yard, we are very much "under the microscope" of passing vehicles.

Spring of 2016 we researched installing a fence in our front yard. Our desire was to provide a sense of privacy for us when we are in the front yard, from passing cars, especially those coming from the west on 5<sup>th</sup> Avenue who would stop at the stop sign and be facing our front yard directly. It was our understanding that a fence on that west side (being 40' from the centerline of 2<sup>nd</sup> street) could be 6' tall. This provided the privacy we desired. On the north side we were limited to a fence (being 30' from the centerline of 5<sup>th</sup> avenue) of only 4' tall. While this wasn't as high as we desired, we decided to plant shrubs to the north to help with privacy. With research done, we submitted an application to build a fence. Included with the application was a detailed drawing (enclosed) depicting height and length of the proposed fence. Our application was approved.

At that point we invested significant time & money to purchase fence, posts & hardware and then installed the fence as was detailed in the application. At the same time, we laid out a vegetable garden behind the new fence, an area that was previously unused by us as anything other than an empty front yard. We finished the fence, planted the garden and thoroughly began to enjoy the fruits of our labor and investment.

At the same time, we heard many many positive comments from people we knew, or who just passed by, who admired the fence and the improvements to our yard. One person even asked for details as to how we constructed it as they desired to replicate it.

And then came a letter from Ben Oleson, the City of Little Falls Zoning Administrator, who was responding to an "inquiry" the city had received about our fence (enclosed). The letter stated that there "may possibly have been a misunderstanding..." in regards to setbacks and fence height. Mr. Oleson met at our home and measured the fence and setback. The fence was installed as we described and was approved in our application.

We had sought "approval" to build a fence for privacy for our family using our front yard. We drew detailed plans describing the measurements that we understood as being code. Those plans were submitted and approved, and then we built the fence to match.

As I stated to Mr. Oleson when we met discussing his letter, had we known that the fence section providing privacy from the intersection would have to be significantly shorter, we would not have built the fence. We would not have invested the time & financial resources into building a fence that could be seen right over. Our desire was to build a nice looking privacy fence.

This letter comes as the City looks at changing the code in regards to fence setback & height at controlled intersections like ours. We request that our fence remains in place, unaltered from the detailed plan that was submitted and approved. We have not witnessed nor heard of any accident at our intersection as a result of blocked view. Below are pictures showing the intersection from a vehicle stopped in the lane of traffic at the stop sign. From the south (left picture), there is a parking lane between the vehicle and the curb, providing an even further field of view. From the east (right picture) the entire intersection is easily seen. The fence does not block the intersection from any direction.



Sincerely,

A handwritten signature in black ink, appearing to read "Aaron &amp; Becky Olson". The signature is stylized and spans across the width of the page.

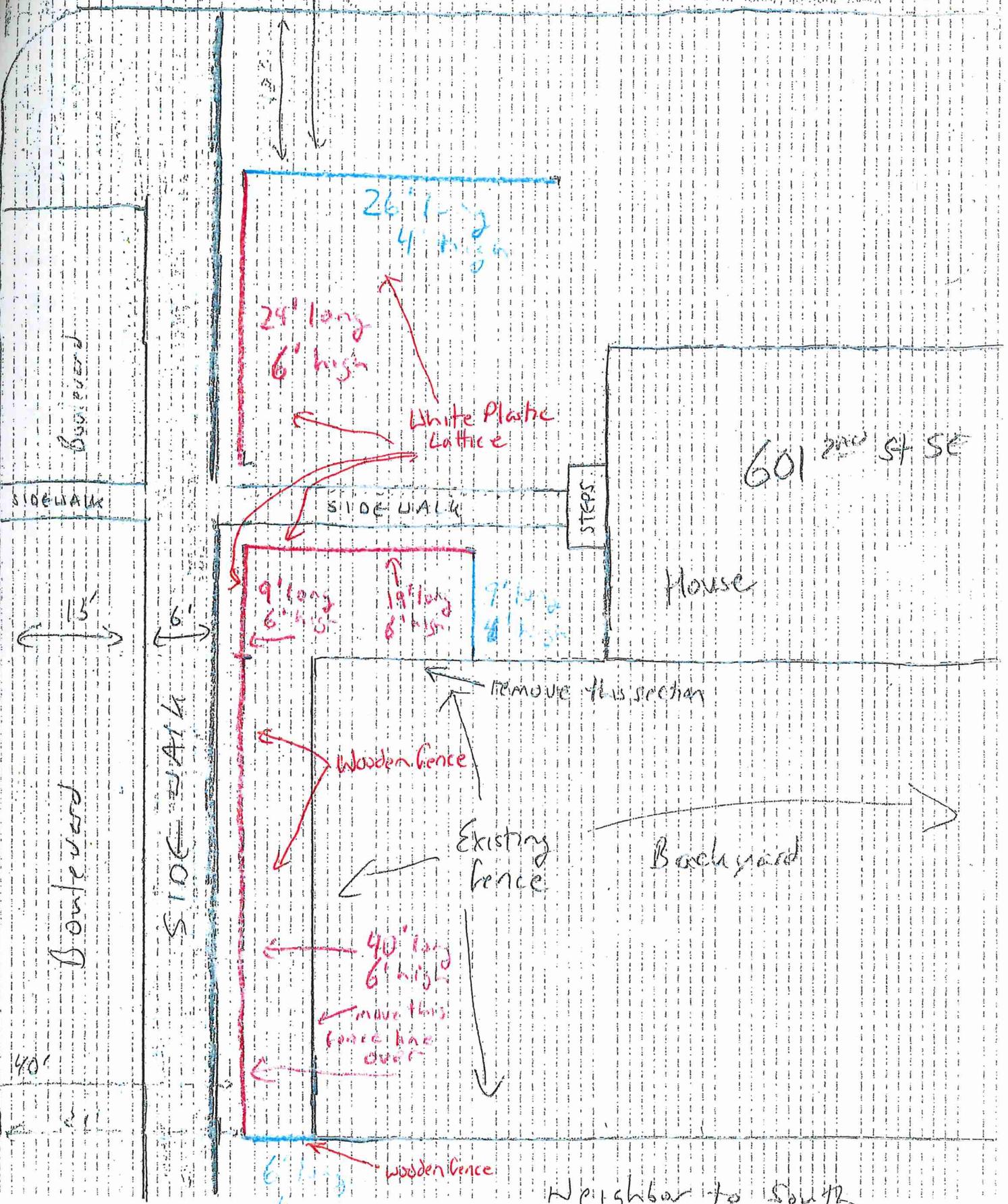
Aaron & Becky Olson  
601 2<sup>nd</sup> St SE  
Little Falls, Mn 56345

10 ST 56

Centerline

515 Ave SE

601 2nd St SE





Established in 1849  
"Where Minnesota History Begins"

July 1, 2016

Aaron and Becky Olson  
601 2<sup>nd</sup> Street SE  
Little Falls, MN 56345

Dear Mr. and Mrs. Olson:

The City of Little Falls has recently received an inquiry as to whether certain activities or structures on your property comply with the requirements of the City's ordinances. The property in question is:

- 601 2<sup>nd</sup> Street SE, Parcel ID 48.0205.000

The subject of the inquiry is:

- Fence constructed exceeding height limits.

It is the responsibility of the City Zoning Administrator to determine whether a violation has occurred or not.

In reviewing your application and recalling our phone conversations, it appears there may possibly have been a misunderstanding regarding the 30 ft front yard setback measurement from 5<sup>th</sup> Avenue. The requirement of the City Code for fences within the first 30 feet of the front yard is that they not exceed 4 feet in height within that area. The 30 feet is measured from your property line along 5<sup>th</sup> Avenue – not the center of the street itself. While your fence parallel to 5<sup>th</sup> Avenue was indicated as being 4 feet in height and would appear to meet the requirements, the fence parallel to 2<sup>nd</sup> Street was indicated at 6 feet. It appears a portion of that fence may need to be lowered in height – to either 30 inches or 4 feet depending on the distance from the intersection.

Please contact me toll-free at 888-439-9793 or at 320-759-1560 to discuss this matter at your earliest convenience. We can meet on-site, if necessary, or discuss via phone.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Oleson". The signature is stylized and somewhat cursive.

Ben Oleson  
Hometown Planning  
City of Little Falls Zoning Administrator



FENCE PERMIT
For
ZONING APPROVAL

Permit #: LF16-126

Owner/Applicant Aaron + Becky Olson Telephone 632-8330
Mailing Street Address 601 2nd st SE
City/State/Zip Code Little Falls, mn 56345
Address where fence is to be installed 601 2nd st SE
Parcel number 48-0205.000

A building permit is also required for construction of a fence or wall that will be more than 7 feet in height above grade, or for construction of a retaining wall that is more than 4 feet in height from the bottom of the footing to the top of the wall.

SUBMITTAL REQUIRMENTS FOR FENCE PERMIT

- Site Plan showing lot dimensions and locations of existing and proposed structure(s) including location of proposed fence or wall gates.
Cross Section and/or Elevations of side views showing:
Height of the fence itself (the "body" of the fence)
Height of fence posts
Spacing from ground surface to bottom of fence body
Certificate of Survey from a licensed surveyor indicating the location of the property line and the proposed fence, unless:
The proposed fence will clearly be located entirely on the subject property and meet all required setbacks; OR
Stakes from a previously completed survey are in place and marked; OR
A signed, written statement from the neighboring property owner is submitted indicating that they do not dispute the location of the fence.
If the fence is over seven (7) feet in height, also provide:
Depth and type of footings
Spacing of intermediate rails when serving as a swimming pool barrier
Type of lumber or other material and design of fence or wall

Applicant Signature [Signature] Date 5/10/2016

For Office Use Only

Fee: 30.00 Zoning District R-1
Fence Permit approved by: [Signature] Zoning Enforcement Officer Date 5-12-2016
Type of payment: Cash Check 11545 Receipt # 82022

Revision: August 2015

PLEASE COMPLETE THE INFORMATION ON THE NEXT PAGE

**NOTES:**

- **The “good” side of the fence is required to face toward your neighbor or the street:** That side of the fence considered to be the face, the side not attached to the primary structural supports, shall face the abutting property or street right of way.
- **Allowable fencing material:** Approved fencing materials include stone, brick, finished wood, rigid plastic, chainlink, split rail fences or other materials commonly used for fencing. Other materials may only be approved by conditional use permit, except that the following types of fences are prohibited unless specifically allowed otherwise: barbed wire, electrical fencing, razor wire, creosote lumber, chicken wire (unless used for the enclosure of gardens), concrete block or poured concrete, plastic webbing, plywood or pressed wood. Notwithstanding the above prohibitions, commercially available snow fencing may be allowed between November 1 and March 15 of each calendar year.

\*\*\*\*\*

**PLEASE COMPLETE THE FOLLOWING:**

Wooden fence 6' on west, 4' on south  
Plastic Lattice 6' on west, 4' on north

**Proposed Fencing Material** (circle one):

Wood Split Rail Stone/Brick Plastic/PVC Chain Link Other Metal/Iron

Other (please specify): \_\_\_\_\_

