

**Board of Adjustment Public Hearing
Agenda for Wednesday, September 17th, 2025
5:15 PM**

1. **Board of Adjustment Call to Order**
2. Roll call: **Heil, White, Hernesmaa, Councilor Roose, Palcher, Anderson, Burke.** *Staff Kochendorfer.*
3. **Additions or Deletions from Agenda**
4. **Public Hearing Variance for 48 E James St-** The Ely Board of Adjustment will be holding a public hearing for considering a Variance on Wednesday, September 17th, 2025 at 5:15 pm in the City Hall council chambers to consider the approval of a Variance to allow a zero set-back from the right of way property line on 1st Ave and E James St, as well as a city encroachment of 0-6” on the E James St side.
5. **The applicant or PZ admin will explain the request**
6. **Letters and or phone call comments read into the record**
 - Dave and Jan Merhar, 108 E Boundary St – Support the variance application
7. **Those in support may comment**
8. **Those opposed may comment**
9. **Comments from those who wish to provide any additional information**
10. **Applicant will have the opportunity to answer additional questions**
11. **Closure of the hearing**
12. **Staff Analysis/ Finding of Facts read**
13. **Decision rendered by the Board of Adjustment**
14. **Adjournment**



209 E. Chapman St. Ely, MN 55731

DATE: *September 2, 2025*

SUBJECT: Public Hearing Notice-

The Ely Board of Adjustment will be holding a public hearing for considering a Variance on Wednesday, September 17th, 2025 at 5:15 pm in the City Hall council chambers. At this public hearing the Board of Adjustment will be considering the approval of a Variance Application submitted by Emily and Mike Tschida, proposed location of 48 E James St, Parcel# 030-0070-00070. The applicants are seeking a Variance to allow for a zero set-back from the right of way property line on S 1st Ave E, as well as on E James St for the placement of a fence. The fence may encroach on the City right of way by roughly 4"-6" on the S 1st Ave E side, and the applicants are seeking approval to place a portion of the fence on the City right of way. City code requires a set-back from the city right of way of 18".

Public comment will be heard on the date of the hearing and/or may be submitted to any of the following addresses below before September 15th to be included in the public hearing. Names and addresses must be submitted in order for comments to be recorded into the hearing minutes.

Any questions should be directed to the Planning and Zoning Administrator, 218-365-3224, Ext 3 or email pzadmin@ely.mn.us

Scott Kochendorfer
Zoning Administrator
209 E Chapman St
Ely MN 55731
pzadmin@ely.mn.us
218-365-3224, Ext 3



Scott Kochendorfer <pzadmin@ely.mn.us>

Variance Application for Mike and Emily Tschida

Janet Merhar <janetmerhar@gmail.com>

Sat, Sep 13, 2025 at 4:00 PM

To: pzadmin@ely.mn.us

Dear Mr. Kochendorfer,

My husband and I are neighbors on the next block from the Tschidas at 108 East Boundary St. Unfortunately we are not available on September 17 for the public hearing. However, we would like to submit our approval of their variance application.

Emily walked me through her plan several weeks ago, explaining how it would be set up if approved by the Board of Adjustment. Please know we totally support the Tschidas in this endeavor.

Dave and Jan Merhar

Sent from Merhar Family iPhone

Finding of Facts

Finding of Facts for Variance Application for **48 E James St, on behalf of Owners Michael and Emily Tschida**

FACTS

1. Michael and Emily Tschida are the the owners of a parcel of land located at 48 E James St, Ely, Minnesota; and,
2. The subject properties are legally described as:

PID# 030-0070-00070

Fortiers Addition to Ely, Block 1, Lot 12

3. This Property is located in Residential (R1) zoning district.
4. Michael and Emily Tschida have applied for a variance to allow a zero set-back from the right of way property line on S 1st Ave E, as well as on E James St for the placement of a fence. The fence may encroach on the City right of way by roughly 4"-6" on the S 1st Ave E side, and the applicants are seeking approval to place a portion of the fence on the City right of way, if necessary.
5. The proposal would vary from Section 11.04, city code requires a set-back from the city right of way of 18", and does not allow the placement of fencing in the city right of way.
6. Comments from Neighbors (neighbors located within 350 feet were notified by mail)
 - Dave and Jan Merhar, 108 E Boundary St – Support the variance

APPLICABLE LAW

7. Minnesota Statute Section 462.357, subd. 6 provides:

48 E James St (Fence Variance)

- a) Variances shall only be permitted (a) when they are in harmony with the general purposes and intent of the ordinance and (b) when the variances are consistent with the comprehensive plan.
 - b) 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 (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) the variance, if granted, will not alter the essential character of the locality.
8. Ely City Code Section 11.01, subd. 22 provides: A variance is an appeal for the relief from certain requirements of the Zoning Chapter as deemed necessary by the Board of Adjustment when the strict interpretation of the Zoning Chapter would create practical difficulty because of irregular lot size, topographic or other characteristics of the land. No variance shall have the effect of allowing in any district uses prohibited in that district.

STAFF ANALYSIS

- **FACT:** The property in question will be used in a reasonable manor
 - **FINDING:** The Property is currently being used as a residential dwelling, and will continue to be used as such. The fence will only be 3 feet in height, and will be used to provide safety and security to owner's pets.
- **FACT:** The Plight of the owner of the property in question is due to circumstances unique to their property and not created by the landowner
 - **FINDING:** The owner did not build the house or design the layout of the property. Being a corner lot, it presents the unique challenge. The lot size is currently non-conforming, as it is only 25 feet wide, which is what the original plat was. The house was

built within 3-4 feet of the property line to the E. There is a cement sidewalk that sits on top of the retaining wall that runs parallel with the E side of the house. The retaining wall has been fixed from time to time, but it appears the original retaining wall was installed many years ago, possibly before any zoning restrictions were in place. The house was built in 1938, prior to any zoning codes.

- The retaining wall sits roughly 20 feet from the edge of S 1st Ave.
 - The fence on the north side of the property will be roughly 10 feet from the edge of the sidewalk, and will not inhibit any access to the city utilities.
- **FACT:** If the variance is granted, it will not alter the essential character of the locality
 - **FINDING:** The proposal is in the Residential (R1) Zoning District. The property will continue to be used as a residential dwelling, and will not alter the character of the property. The fence is being erected to securely contain the dogs within the yard, and also prevent falls off the retaining wall on the east side of the property.
 - **FACT:** Economic considerations alone do not constitute a practical difficulty. Practical difficulties include but are not limited to: inadequate access to direct sunlight for solar energy systems.
 - **FINDING:** The placement of the house, and the fact that the house is on a corner, limits where the fence can be placed, as well as the sidewalk on the east side of the residence.
 - Digging up the sidewalk could create further issues, as well as being costly to the homeowners.

- **FACT:** A Variance may not be granted for any use that is not a permitted use under this chapter for property in the district where the affected land is located.
 - **FINDING:** The property will not change uses, and will continue to function as a residential dwelling.

Applicant Reasoning:

1. We propose to use the property in a reasonable manner by installing a fence that provides both safety and functionality. The fence will allow us to securely contain our dogs within the yard and will serve as a protective barrier to prevent falls over the retaining wall on the east side of the property.
2. The lot is non-conforming in size, measuring only 25 feet in width. In addition, there is an existing retaining wall on the east side. The top of this wall is located approximately 52 inches from the house and has a height of 27 inches, creating both spatial and safety challenges that limit compliance with the standard setback requirements.
3. All aspects of construction will conform to the city fencing ordinance, including fence height, materials, and appearance.
4. The planned fence height is 36 inches. Materials will consist of cedar and welded wire, maintaining clear visibility through the fence. Technical anchor sleeves will be used to securely and safely anchor posts above the retaining wall.
5. The property was surveyed in May 2025 by Border Lakes Surveying.

City of Ely Requirements:

1. If the city needs to reconstruct S 1st Ave, or needs access to any of the utilities in the right of way, and the fence restricts the ability to do so, any extra costs to remove the fence will be the sole responsibility of the homeowner.
2. If the current homeowner sells the property, all non-conforming aspects of the fence must be removed prior to sale of the property.

City of Ely Comprehensive Plan

This proposal is in line with the city comprehensive plan, to include some of the following:

1. Promote neighborhood identity, pride, and sense of place
2. Allow uses and activities appropriate to the character of the residential district.
3. Ely provides a safe and friendly atmosphere, in affordable neighborhoods that complement their natural surroundings.

STAFF ANALYSIS RECOMMENDATION

Staff finds that the applicant's proposal meets the practical difficulty threshold. The proposal would not be disruptive or be injurious to the neighborhood, or change the essential character of the locality. Other options have been proposed, but are not feasible, and do not provide an immediate remedy. Staff recommends **APPROVAL** of this variance.

CONCLUSIONS OF LAW No variance shall be granted unless the Board of Adjustment shall find:

- A. The property in question will be used in a reasonable manner
- B. The plight of the owner of the property in question is due to circumstances unique to their property and not created by the landowner
- C. If the variance is granted, it will not alter the essential character of the locality
- D. Economic considerations alone do not constitute a practical difficulty. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems
- E. Variances may be granted for earth sheltered construction as defined by statute, when in harmony with this chapter

F. A variance may not be granted for any use that is not a permitted use under this chapter for property in the district where the affected land is located

G. Provided, however, if a dwelling is damaged (i.e., fire damage) in the Commercial (C1) Zoning District, a replacement dwelling may be constructed per the criteria set forth in City Code 11.43A.

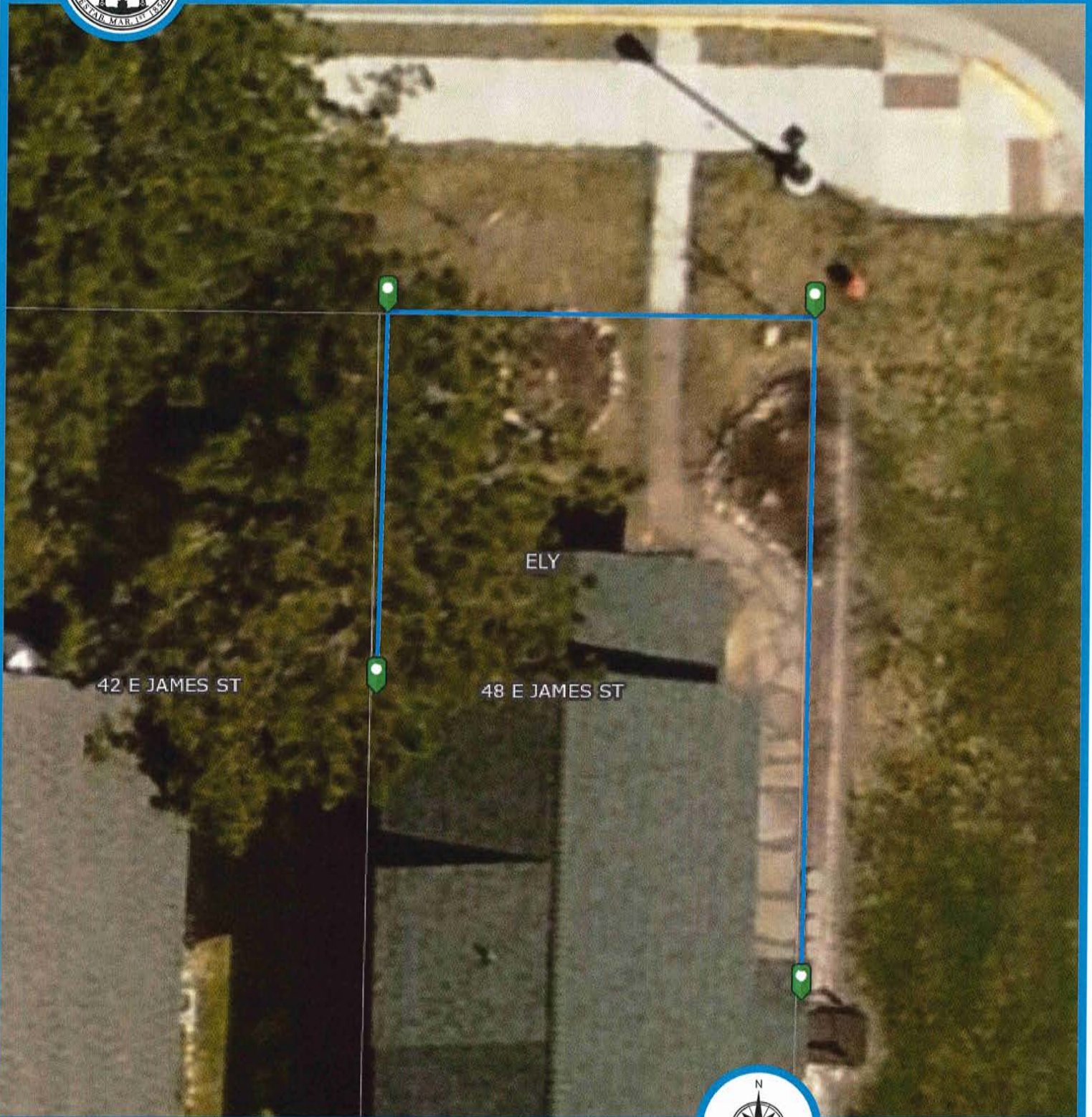


County Land Explorer

St. Louis County, Minnesota



St. Louis County MN



Fence Placement



mi
County Land Explorer

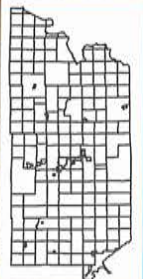
St. Louis County www.stlouiscountymn.gov/explorer Minnesota

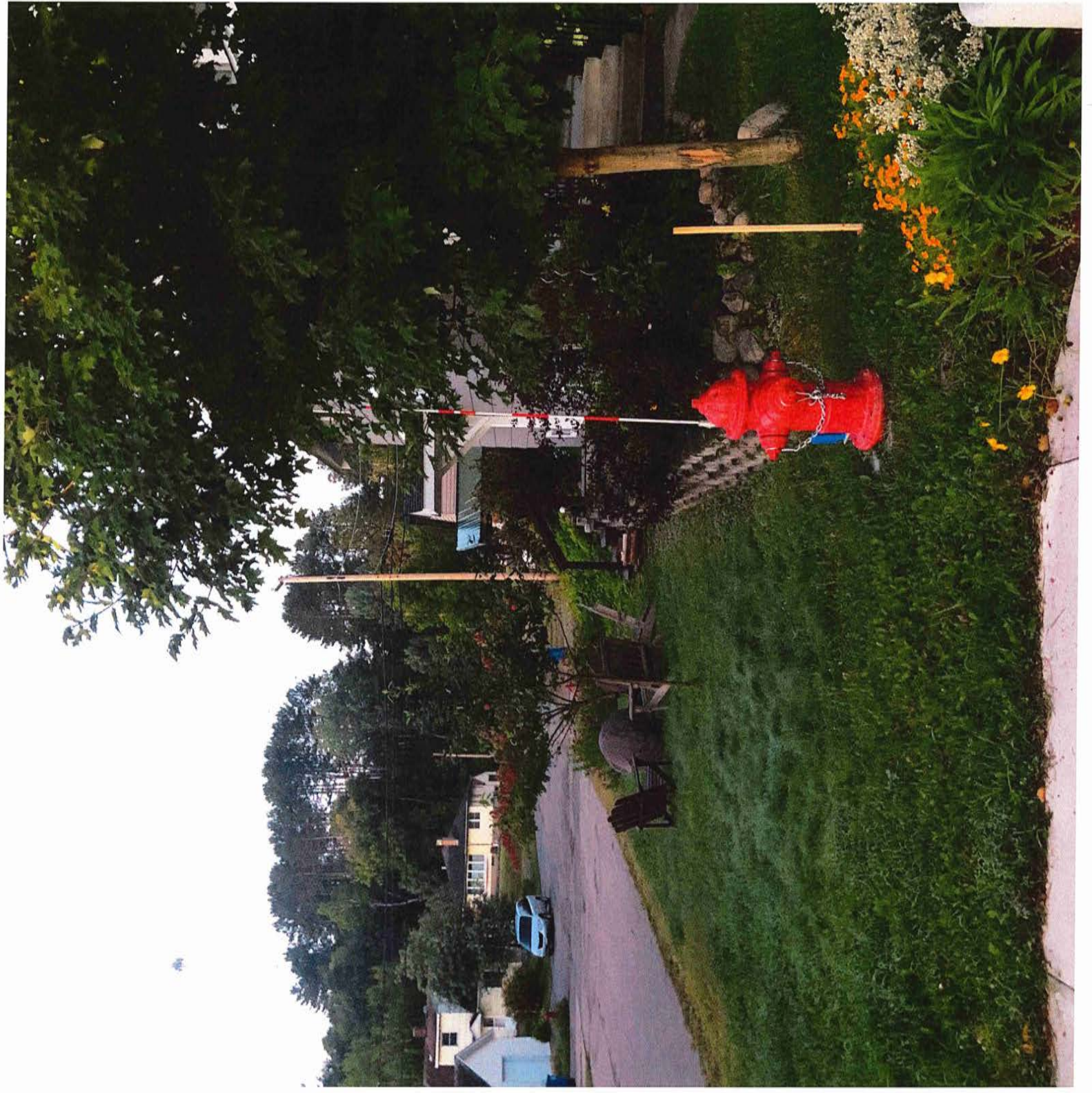
Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer
www.stlouiscountymn.gov/explorer

© Copyright St. Louis County Minnesota | All Rights Reserved Printed: 9/3/2025







PROPERTY DETAILS REPORT

St. Louis County, Minnesota



Date of Report: 9/2/2025 9:05:31 AM

General Details							
Parcel ID:	030-0070-00070						
Document:	Abstract - 01474037						
Document Date:	08/17/2023						
Legal Description Details							
Plat Name:	FORTIERS ADDITION TO ELY						
Section	Township	Range	Lot	Block			
-	-	-	0012	001			
Description:	LOT: 0012 BLOCK:001						
Taxpayer Details							
Taxpayer Name and Address:	TSCHIDA EMILY M & MICHAEL D 48 E JAMES ST ELY MN 55731						
Owner Details							
Owner Name	TSCHIDA EMILY M						
Owner Name	TSCHIDA MICHAEL D						
Payable 2025 Tax Summary							
2025 - Net Tax			\$743.00				
2025 - Special Assessments			\$85.00				
2025 - Total Tax & Special Assessments			\$828.00				
Current Tax Due (as of 9/1/2025)							
Due May 15		Due October 15			Total Due		
2025 - 1st Half Tax	\$414.00	2025 - 2nd Half Tax	\$414.00	2025 - 1st Half Tax Due	\$0.00		
2025 - 1st Half Tax Paid	\$414.00	2025 - 2nd Half Tax Paid	\$0.00	2025 - 2nd Half Tax Due	\$414.00		
2025 - 1st Half Due	\$0.00	2025 - 2nd Half Due	\$414.00	2025 - Total Due	\$414.00		
Parcel Details							
Property Address:	48 E JAMES ST, ELY MN						
School District:	696						
Tax Increment District:	-						
Property/Homesteader:	TSCHIDA, EMILY M & MICHAEL D						
Assessment Details (2025 Payable 2026)							
Class Code (Legend)	Homestead Status	Land EMV	Bldg EMV	Total EMV	Def Land EMV	Def Bldg EMV	Net Tax Capacity
201	1 - Owner Homestead (100.00% total)	\$5,200	\$114,200	\$119,400	\$0	\$0	-
Total:		\$5,200	\$114,200	\$119,400	\$0	\$0	836



PROPERTY DETAILS REPORT

St. Louis County, Minnesota



Date of Report: 9/2/2025 9:05:31 AM

Land Details

Deeded Acres: 0.00
Waterfront: -
Water Front Feet: 0.00
Water Code & Desc: -
Gas Code & Desc: -
Sewer Code & Desc: -
Lot Width: 25.00
Lot Depth: 125.00

The dimensions shown are not guaranteed to be survey quality. Additional lot information can be found at <https://apps.stlouiscountymn.gov/webPlat/frame/frmPlatStatPopUp.aspx>. If there are any questions, please email PropertyTax@stlouiscountymn.gov.

Improvement 1 Details (HOUSE)

Improvement Type	Year Built	Main Floor Ft ²	Gross Area Ft ²	Basement Finish	Style Code & Desc.
HOUSE	1938	468	819	AVG Quality / 440 Ft ²	1S+ - 1+ STORY
Segment	Story	Width	Length	Area	Foundation
BAS	1.7	18	26	468	BASEMENT
OP	1	3	5	15	POST ON GROUND
OP	1	8	13	104	POST ON GROUND
Bath Count	Bedroom Count	Room Count	Fireplace Count	HVAC	
1.75 BATHS	2 BEDROOMS	-	0	CENTRAL, GAS	

Improvement 2 Details (GARAGE)

Improvement Type	Year Built	Main Floor Ft ²	Gross Area Ft ²	Basement Finish	Style Code & Desc.
GARAGE	0	280	280	-	DETACHED
Segment	Story	Width	Length	Area	Foundation
BAS	1	14	20	280	FLOATING SLAB
LT	1	14	21	294	POST ON GROUND

Improvement 3 Details (STONEPATIO)

Improvement Type	Year Built	Main Floor Ft ²	Gross Area Ft ²	Basement Finish	Style Code & Desc.
	2018	338	338	-	STN - STONE
Segment	Story	Width	Length	Area	Foundation
BAS	0	0	0	98	-
BAS	0	10	24	240	-

Sales Reported to the St. Louis County Auditor

Sale Date	Purchase Price	CRV Number
08/2023	\$205,000	255739
02/2017	\$71,500	219889
01/2014	\$67,500	204790
06/2012	\$59,500	198000
12/2005	\$70,050	169079
07/2002	\$58,500	148108
08/2001	\$53,000	141977
05/1995	\$31,900	104568
08/1993	\$16,000	94395



PROPERTY DETAILS REPORT

St. Louis County, Minnesota

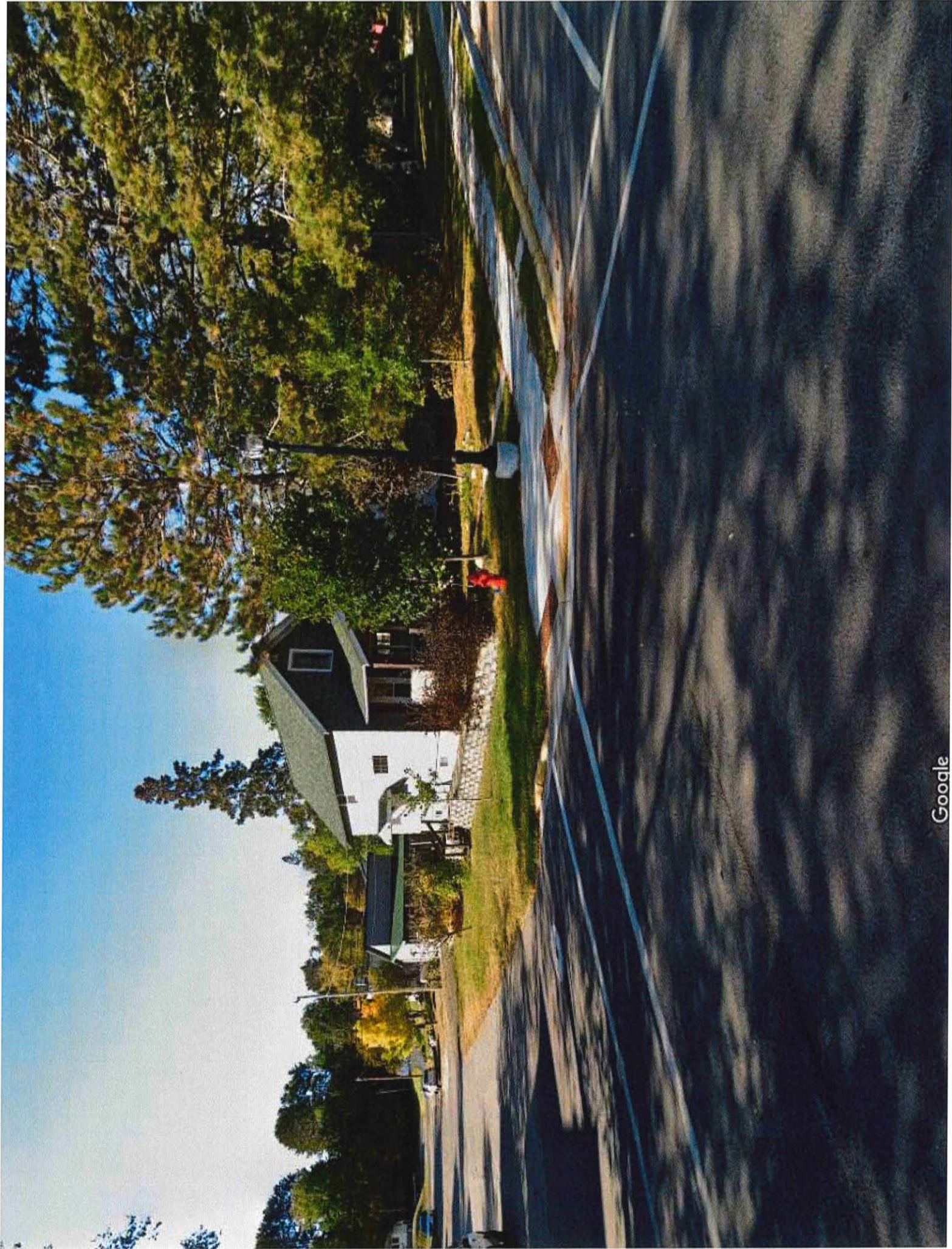


Date of Report: 9/2/2025 9:05:31 AM

Assessment History							
Year	Class Code (Legend)	Land EMV	Bldg EMV	Total EMV	Def Land EMV	Def Bldg EMV	Net Tax Capacity
2024 Payable 2025	201	\$4,900	\$105,500	\$110,400	\$0	\$0	-
	Total	\$4,900	\$105,500	\$110,400	\$0	\$0	738.00
2023 Payable 2024	204	\$4,800	\$80,200	\$85,000	\$0	\$0	-
	Total	\$4,800	\$80,200	\$85,000	\$0	\$0	850.00
2022 Payable 2023	204	\$4,500	\$73,500	\$78,000	\$0	\$0	-
	Total	\$4,500	\$73,500	\$78,000	\$0	\$0	780.00
2021 Payable 2022	204	\$4,100	\$61,200	\$65,300	\$0	\$0	-
	Total	\$4,100	\$61,200	\$65,300	\$0	\$0	653.00
Tax Detail History							
Tax Year	Tax	Special Assessments	Total Tax & Special Assessments	Taxable Land MV	Taxable Building MV	Total Taxable MV	
2024	\$1,335.00	\$85.00	\$1,420.00	\$4,800	\$80,200	\$85,000	
2023	\$1,381.00	\$85.00	\$1,466.00	\$4,500	\$73,500	\$78,000	
2022	\$1,209.00	\$85.00	\$1,294.00	\$4,100	\$61,200	\$65,300	

Disclaimer: St. Louis County makes no representation or warranties, express or implied, with respect to the use or reuse of data provided herewith, regardless of its format or the means of its transmission. THE DATA IS PROVIDED 'AS IS' WITH NO GUARANTEE OR REPRESENTATION ABOUT THE ACCURACY, CURRENCY, SUITABILITY, PERFORMANCE, MERCHANTABILITY, RELIABILITY OR FITNESS OF THIS DATA FOR ANY PARTICULAR PURPOSE. St. Louis County shall not be liable for any direct, indirect, special, incidental, compensatory or consequential damages or third party claims resulting from the use of these data, even if St. Louis County has been advised of the possibility of such potential loss or damage. These data may not be used in states that do not allow the exclusion or limitation of incidental or consequential damages.







209 E. Chapman St. Ely, MN 55731

DATE: September 2nd, 2025

SUBJECT: Public Hearing Notice

To whom it may concern,

The Ely Board of Adjustment will be holding a public hearing for considering a Variance on Wednesday, September 17th, 2025 at 5:15 pm in the City Hall council chambers. At this public hearing the Board of Adjustment will be considering the approval of a Variance Application submitted by Emily and Mike Tschida, proposed location of 48 E James St, Parcel# 030-0070-00070. The applicants are seeking a Variance to allow for a zero set-back from the right of way property line on S 1st Ave E, as well as on E James St for the placement of a fence. The fence may encroach on the City right of way by roughly 4"-6" on the S 1st Ave E side, and the applicants are seeking approval to place a portion of the fence on the City right of way if necessary. City code requires a set-back from the city right of way of 18", and no encroachment of the city right of way.

As a property owner within 350 feet of the proposed action, you are receiving this letter and have the right to comment at the public hearing, and/or submit correspondence relating to this application. The public hearing will take place September 17th, at 5:15 pm in the City Hall council chambers. Names and addresses must be submitted in order for comments to be recorded into the hearing minutes. Correspondence can be submitted to any of the following addresses below before September 15th to be included in the public hearing.

Any questions should be directed to the Planning and Zoning Administrator, 218-365-3224, Ext 3 or email pzadmin@ely.mn.us

Respectfully,

Scott Kochendorfer / Zoning Administrator
209 E Chapman St / Ely MN 55731
pzadmin@ely.mn.us
218-365-3224, Ext 3



Planning and Zoning, 209 E Chapman St, Ely MN 55731

City of Ely Planning & Zoning Variance Application

1. Applicant Information	
Name:	Emily and Mike Tschida
Address:	48 E. James St Ely MN 55731
Telephone#:	_____ Email Address _____
Application#:	_____
Signature of _____	Date: 8/18/2025
Current use _____	
Owner (if different from above): _____	
Address: _____	
Telephone#: _____	Email Address: _____

2. Property Information	
Street Address: 48 E James St Ely MN 55731	
Legal Description (attach additional sheets if necessary): Fortiers Addition to Ely Lot 0012 Block 001	
Parcel#: 030-0070-00070	Zoning District: _____
Shoreland Overlay Zone: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Property Size (square feet or acres): 3,125 square feet	
Applicant to attach detailed plan (drawn to scale)	
2.1 Current lot dimensions: Width: 25 feet Length: 125 feet	
2.2 Dimensions of proposed building or addition: _____ ft. x _____ ft. = _____ Total Square Feet	
Building height _____ ft. = _____ Total Stories	
Total Area (including new) _____ Square Feet	



3. Requested Variance
Zoning Ordinance section Variance is requested from: _____

State exactly what is intended to be done on/or with the property that's described above, and that does not conform with the current Zoning Ordinance:

We are requesting approval to install a fence that does not fully conform with current zoning ordinances. Specifically:

- On the north side of the property, we propose to place the fence directly abutting the city right-of-way.
- On the east side of the property, we propose to place the fence extending approximately 4-6 inches into the city right-of-way.

4. Explain in detail, how your request conforms to the following requirements: (attached additional sheets of necessary)

4.1 That the landowner proposes to use the property in a reasonable manner, currently not permitted by the Zoning Ordinance.

We propose to use the property in a reasonable manner by installing a fence that provides both safety and functionality. The fence will allow us to securely contain our dogs within the yard and will serve as a protective barrier to prevent falls over the retaining wall on the east side of the property.

4.2 That the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

The lot is nonconforming in size, measuring only 25 feet in width. In addition, there is an existing retaining wall on the east side. The top of this wall is located approximately 52 inches from the house and has a height of 27 inches, creating both spatial and safety challenges that limit compliance with the standard setback requirements.

4.3 That the Variance, if granted, will not alter essential character of the locating neighborhood or zoning district in which it is located.

All aspects of construction will conform to the city fencing ordinance, including fence height, materials, and appearance.



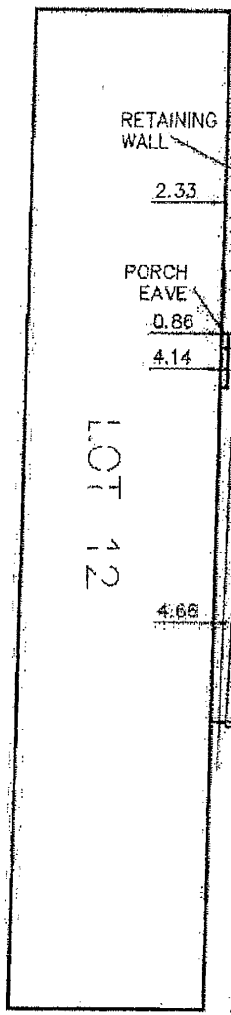
Planning and Zoning, 209 E Chapman St, Ely MN 55731

5. Any other information relevant to your Variance request:

The planned fence height is 36 inches. Materials will consist of cedar and welded wire, maintaining clear visibility through the fence. Technical anchor sleeves will be used to securely and safely anchor posts above the retaining wall.

The property was surveyed in May 2025 by Border Lakes Surveying.

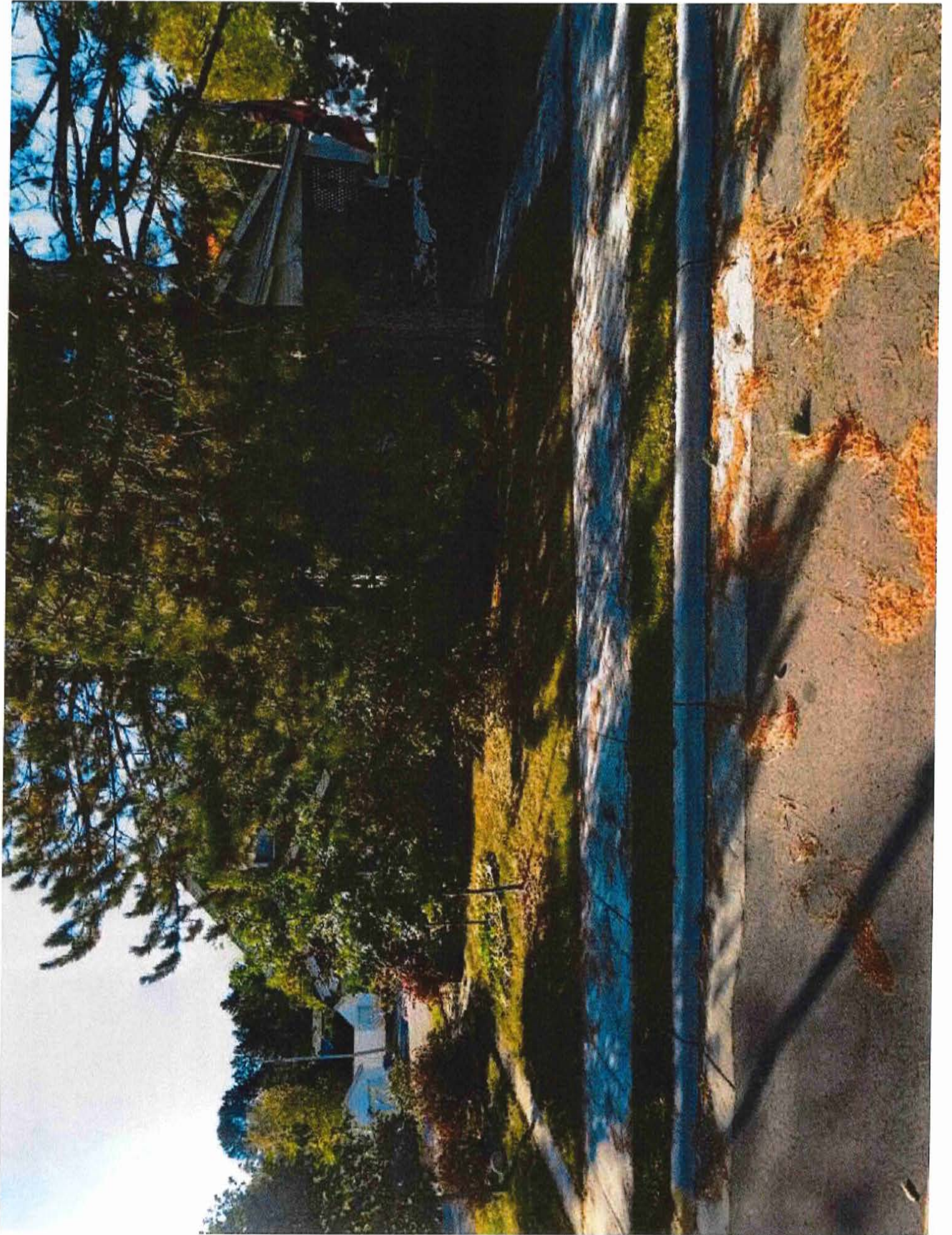
<i>CITY USE ONLY</i>	
Date received by Planning and Zoning Department: _____	
The Variance Application is complete:	<input type="checkbox"/>
The Variance requires the modifications listed below:	<input type="checkbox"/>
Further information needed:	<input type="checkbox"/>
The Variance is not Permitted:	<input type="checkbox"/>
Signature of Zoning Administrator	Date
BOA Hearing Scheduled: _____	Date: _____
Variance (Approved) or (Denied)	Date: _____

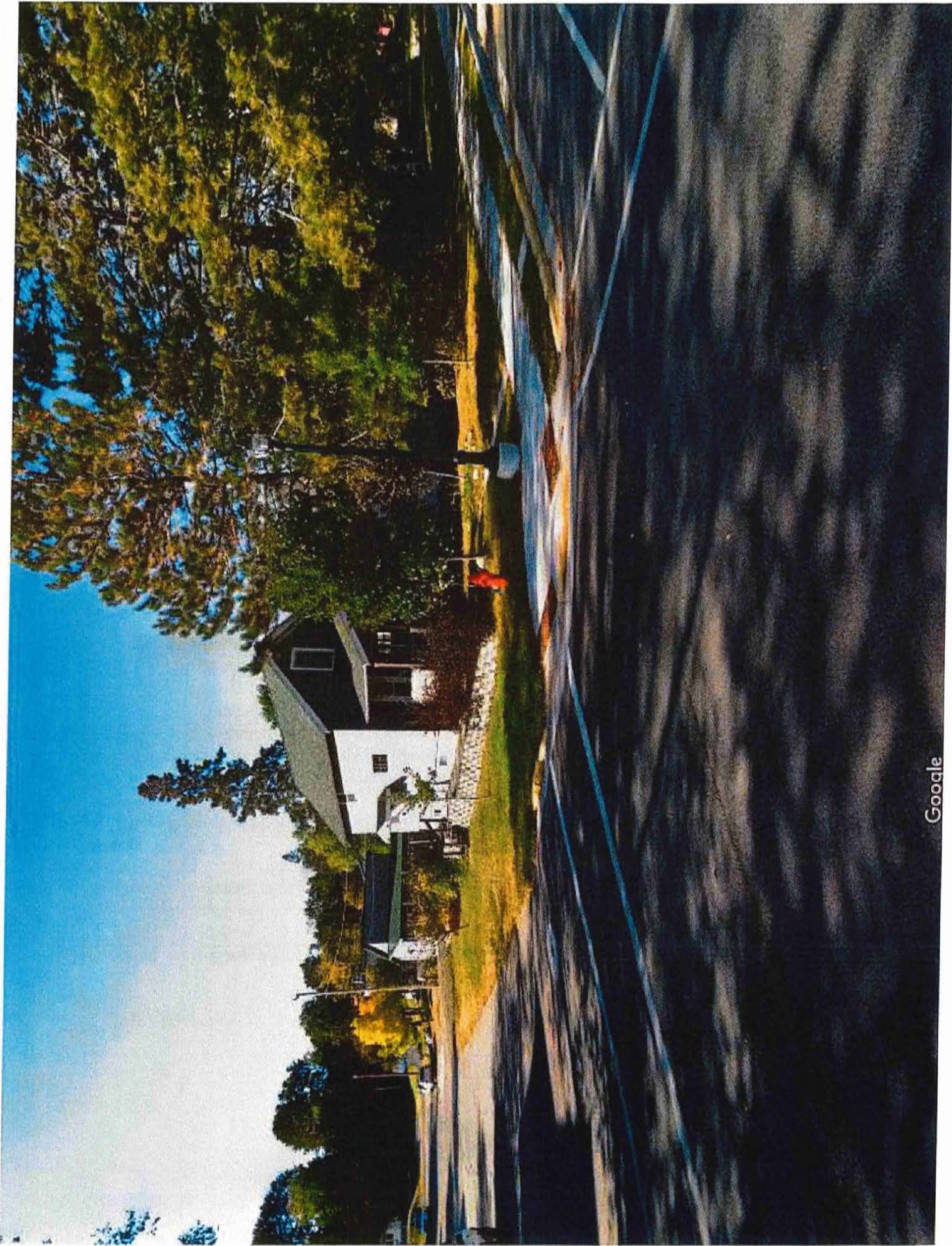


LOT 12

S 1ST

AVENUE





B. Locations. All boundary fences, berms or screens shall be located entirely upon the private property of the persons, firm or corporation placing, constructing or causing the construction of the fence, berm or screen, unless the owner of the property adjoining agrees in writing that the fence, berm or screen may be erected or placed on the division line of the respective properties. The Zoning Administrator may require the property owner desiring to erect or place a fence, berm or screen is required to establish the boundary lines of his or her property by a survey thereof to be made by any registered land surveyor.

C. The side of a fence without primary structural supports shall be considered the finished side and must face outward from the property on which it is constructed towards the adjacent property. If a fence has two (2) similarly finished sides either side may face the adjacent property.

D. Any fence, berm, or screen maintained within a Corner Triangle shall have a maximum height of 36 inches and support post height of 42 inches. A "Corner Triangle" is defined as the triangle formed by the intersection of the front and side lot lines forming the corner of the lot adjacent to the intersection of two or more public right-of-ways. The dimensions of the Corner Triangle are determined from the point of intersection of the front and side lot lines forming the Corner Triangle by three legs measuring (1) 20 feet along the front lot line from the point of intersection, (2) 20 feet along the side lot line from the point of intersection, and (3) the third leg as the line connection the end points of legs one and two. Where there is no sidewalk at the corner, the lot lines are determined by measuring from the center line of the adjacent public right-of-way one-half the distance of the right-of-way as depicted on the official plat map to the lot line.

E. If the property of the person, firm or corporation placing, constructing or causing the construction of a fence, berm or screen borders a sidewalk, it is required to maintain a setback of 18 inches from the sidewalk. Any fence constructed adjacent to street or avenue right of ways shall maintain a setback of 18 inches from the right of way.

F. Barbed wire fences are prohibited in all zoning districts except P1, P2, and M. Electric fences are prohibited.

G. Any fences may not exceed six feet in height, as measured from the ground to the top of the fence with exceptions of a two inch ground clearance and posts not higher than six feet six inches. Fences on any street or avenue may not exceed four feet, structural supports may be four feet six inches in height, as measured from the ground to the top of the fence.

(10-16-2015)

Staff Analysis

Staff Analysis for Variance Application for **48 E James St, on behalf of Owners Michael and Emily Tschida**

FACTS

1. Michael and Emily Tschida are the the owners of a parcel of land located at 48 E James St, Ely, Minnesota; and,
2. The subject properties are legally described as:

PID# 030-0070-00070

Fortiers Addition to Ely, Block 1, Lot 12

3. This Property is located in Residential (R1) zoning district.
4. Michael and Emily Tschida have applied for a variance to allow a zero set-back from the right of way property line on S 1st Ave E, as well as on E James St for the placement of a fence. The fence may encroach on the City right of way by roughly 4"-6" on the S 1st Ave E side, and the applicants are seeking approval to place a portion of the fence on the City right of way, if necessary.
5. The proposal would vary from Section 11.04, city code requires a set-back from the city right of way of 18", and does not allow the placement of fencing in the city right of way.

APPLICABLE LAW

6. Minnesota Statute Section 462.357, subd. 6 provides:
 - a) Variances shall only be permitted (a) when they are in harmony with the general purposes and intent of the ordinance and (b) when the variances are consistent with the comprehensive plan.
 - b) 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 (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) the variance, if granted, will not alter the essential character of the locality.

7. Ely City Code Section 11.01, subd. 22 provides: A variance is an appeal for the relief from certain requirements of the Zoning Chapter as deemed necessary by the Board of Adjustment when the strict interpretation of the Zoning Chapter would create practical difficulty because of irregular lot size, topographic or other characteristics of the land. No variance shall have the effect of allowing in any district uses prohibited in that district.

STAFF ANALYSIS

- **FACT:** The property in question will be used in a reasonable manor
 - **FINDING:** The Property is currently being used as a residential dwelling, and will continue to be used as such. The fence will only be 3 feet in height, and will be used to provide safety and security to owner's pets.
- **FACT:** The Plight of the owner of the property in question is due to circumstances unique to their property and not created by the landowner
 - **FINDING:** The owner did not build the house or design the layout of the property. Being a corner lot, it presents the unique challenge. The lot size is currently non-conforming, as it is only 25 feet wide, which is what the original plat was. The house was built within 3-4 feet of the property line to the E. There is a cement sidewalk that sits on top of the retaining wall that runs parallel with the E side of the house. The retaining wall has been fixed from time to time, but it appears the original retaining wall was

- installed many years ago, possibly before any zoning restrictions were in place. The house was built in 1938, prior to any zoning codes.
- The retaining wall sits roughly 20 feet from the edge of S 1st Ave.
 - The fence on the north side of the property will be roughly 10 feet from the edge of the sidewalk, and will not inhibit any access to the city utilities.
- **FACT:** If the variance is granted, it will not alter the essential character of the locality
 - **FINDING:** The proposal is in the Residential (R1) Zoning District. The property will continue to be used as a residential dwelling, and will not alter the character of the property. The fence is being erected to securely contain the dogs within the yard, and also prevent falls off the retaining wall on the east side of the property.
 - **FACT:** Economic considerations alone do not constitute a practical difficulty. Practical difficulties include but are not limited to: inadequate access to direct sunlight for solar energy systems.
 - **FINDING:** The placement of the house, and the fact that the house is on a corner, limits where the fence can be placed, as well as the sidewalk on the east side of the residence.
 - Digging up the sidewalk could create further issues, as well as being costly to the homeowners.
 - **FACT:** A Variance may not be granted for any use that is not a permitted use under this chapter for property in the district where the affected land is located.
 - **FINDING:** The property will not change uses, and will continue to function as a residential dwelling.

Applicant Reasoning:

1. We propose to use the property in a reasonable manner by installing a fence that provides both safety and functionality. The fence will allow us to securely contain our dogs within the yard and will serve as a protective barrier to prevent falls over the retaining wall on the east side of the property.
2. The lot is non-conforming in size, measuring only 25 feet in width. In addition, there is an existing retaining wall on the east side. The top of this wall is located approximately 52 inches from the house and has a height of 27 inches, creating both spatial and safety challenges that limit compliance with the standard setback requirements.
3. All aspects of construction will conform to the city fencing ordinance, including fence height, materials, and appearance.
4. The planned fence height is 36 inches. Materials will consist of cedar and welded wire, maintaining clear visibility through the fence. Technical anchor sleeves will be used to securely and safely anchor posts above the retaining wall.
5. The property was surveyed in May 2025 by Border Lakes Surveying.

City of Ely Requirements:

1. If the city needs to reconstruct S 1st Ave, or needs access to any of the utilities in the right of way, and the fence restricts the ability to do so, any extra costs to remove the fence will be the sole responsibility of the homeowner.
2. If the current homeowner sells the property, all non-conforming aspects of the fence must be removed prior to sale of the property.

City of Ely Comprehensive Plan

This proposal is in line with the city comprehensive plan, to include some of the following:

1. Promote neighborhood identity, pride, and sense of place
2. Allow uses and activities appropriate to the character of the residential district.
3. Ely provides a safe and friendly atmosphere, in affordable neighborhoods that complement their natural surroundings.

STAFF ANALYSIS RECOMMENDATION

Staff finds that the applicant's proposal meets the practical difficulty threshold. The proposal would not be disruptive or be injurious to the neighborhood, or change the essential character of the locality. Other options have been proposed, but are not feasible, and do not provide an immediate remedy. Staff recommends **APPROVAL** of this variance.

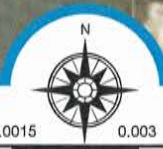
CONCLUSIONS OF LAW No variance shall be granted unless the Board of Adjustment shall find:

- A. The property in question will be used in a reasonable manner
- B. The plight of the owner of the property in question is due to circumstances unique to their property and not created by the landowner
- C. If the variance is granted, it will not alter the essential character of the locality
- D. Economic considerations alone do not constitute a practical difficulty. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems
- E. Variances may be granted for earth sheltered construction as defined by statute, when in harmony with this chapter
- F. A variance may not be granted for any use that is not a permitted use under this chapter for property in the district where the affected land is located
- G. Provided, however, if a dwelling is damaged (i.e., fire damage) in the Commercial (C1) Zoning District, a replacement dwelling may be constructed per the criteria set forth in City Code 11.43A.



County Land Explorer

St. Louis County, Minnesota



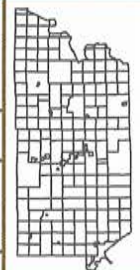
0 0.00075 0.0015 0.003 0.0045
mi

County Land Explorer

St. Louis County www.stlouiscountymn.gov/explorer Minnesota

Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein



Fence Placement

Map created using County Land Explorer
www.stlouiscountymn.gov/explorer

© Copyright St. Louis County Minnesota | All Rights Reserved Printed: 9/3/2025

§ 11.03

Subd. 11. Repository for Documents. The office of the Zoning Administrator is designated as the repository for at least one copy of all studies, reports, recommendations and programs required under this Section. These files will be maintained in accordance with Minnesota Statutes.

Subd. 12. Recording of Heritage Preservation Sites. The office of the Zoning Administrator shall record with the St. Louis County Recorder or the St. Louis County Registrar of Titles the legal descriptions of all buildings, lands or areas designated as Heritage Preservation Sites by the Ely City Council.

Source: Ordinance No. 91, Second Series
Effective Date: February 2, 1999

SECTION 11.04. FENCES

Subd. 1. Definitions. For the purposes of this section, the following terms are defined as follows:

A. Berm: An earthen mound designed to provide visual interest on a site, to screen undesirable views, or to reduce noise.

B. Fence: A structural enclosure or barrier used as a boundary, means of protection, or concealment.

C. Screen: A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

B. Snow Fence: Temporary fencing used to prevent snow from drifting onto walks, driveways or roads.

C. Safety Fence: A barrier which prevents passage into a dangerous area, commonly used within construction areas.

Subd. 2. General Regulations. All fences in all zoning districts are subject to the following requirements:

A. Permit required. No person, firm or corporation, shall hereafter construct or cause to be constructed or erected any fence, wall or similar without first obtaining a permit from the City of Ely.

(10-16-2015)

B. Locations. All boundary fences, berms or screens shall be located entirely upon the private property of the persons, firm or corporation placing, constructing or causing the construction of the fence, berm or screen, unless the owner of the property adjoining agrees in writing that the fence, berm or screen may be erected or placed on the division line of the respective properties. The Zoning Administrator may require the property owner desiring to erect or place a fence, berm or screen is required to establish the boundary lines of his or her property by a survey thereof to be made by any registered land surveyor.

C. The side of a fence without primary structural supports shall be considered the finished side and must face outward from the property on which it is constructed towards the adjacent property. If a fence has two (2) similarly finished sides either side may face the adjacent property.

D. Any fence, berm, or screen maintained within a Corner Triangle shall have a maximum height of 36 inches and support post height of 42 inches. A “Corner Triangle” is defined as the triangle formed by the intersection of the front and side lot lines forming the corner of the lot adjacent to the intersection of two or more public right-of-ways. The dimensions of the Corner Triangle are determined from the point of intersection of the front and side lot lines forming the Corner Triangle by three legs measuring (1) 20 feet along the front lot line from the point of intersection, (2) 20 feet along the side lot line from the point of intersection, and (3) the third leg as the line connection the end points of legs one and two. Where there is no sidewalk at the corner, the lot lines are determined by measuring from the center line of the adjacent public right-of-way one-half the distance of the right-of-way as depicted on the official plat map to the lot line.

E. If the property of the person, firm or corporation placing, constructing or causing the construction of a fence, berm or screen borders a sidewalk, it is required to maintain a setback of 18 inches from the sidewalk. Any fence constructed adjacent to street or avenue right of ways shall maintain a setback of 18 inches from the right of way.

F. Barbed wire fences are prohibited in all zoning districts except P1, P2, and M. Electric fences are prohibited.

G. Any fences may not exceed six feet in height, as measured from the ground to the top of the fence with exceptions of a two inch ground clearance and posts not higher than six feet six inches. Fences on any street or avenue may not exceed four feet, structural supports may be four feet six inches in height, as measured from the ground to the top of the fence.

(10-16-2015)

H. Fences shall be maintained and kept in good repair by property owners. Any hazardous fence or fence in a state of disrepair shall be repaired or removed by the property owner within thirty (30) days of notice by the City of Ely. If a property owner fails to comply with such notice, the City of Ely may remove the fence and assess the property owner the cost of such removal in addition to all other applicable penalties under City Code.

I. Permitted fence materials. Permitted fence materials shall be limited to brick, stone, wood planks, split rail, wrought iron, or chain link, vinyl, or composite material. Materials commonly used for temporary snow or safety fencing shall not be permitted material for a permanent fence.

Subd. 3. Exceptions. Any deviation from this Section shall require a variance in accordance with Section 11.43A of this chapter except the following:

A. Tennis Courts, Basketball Courts, Athletic Fields and Playgrounds in all zoning districts may have a single perimeter fence no higher than ten (10) feet.

A. Fences bordering highways or properties with a P1, P2, and M zoning classification may erect a fence, berm, or screen in excess of three feet in height provided it complies with Subdivision 2 of this ordinance.

B. Snow fencing shall be temporary in nature and may only be issued upon the approval of a permit. Snow fencing shall not be erected prior to October 15th of each year and shall be removed no later than May 30th of each year. Snow fences must comply with all regulations set forth by this chapter.

C. Safety fencing may be erected temporarily, without a permit, only after a building permit has been issued by the building official.

Source: Ordinance No. 252, Second Series

Effective Date: June 30, 2012

Source: Ordinance No. 267, Second Series

Effective Date: December 10, 2012

Source: Ordinance No. 296, Second Series

Effective Date: February 7, 2015

(02-07-2015)