



**PLANNING AND ZONING**  
**Cerro Gordo County Courthouse**

220 N Washington Ave  
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**SPECIAL EXCEPTION STAFF REPORT**

**SUMMARY OF REQUEST**

**Case No.:** 22-16 **Hearing Date:** July 26, 2022

**Staff Contact:** John Robbins, Planning and Zoning Administrator

**Applicant** **Owner**

Daniel & Lori Winegarden Same  
15357 Oakwood Avenue  
Clear Lake, IA 50428

**Property Address:** 15357 Oakwood Avenue

**Brief Legal Description:** Lots 12-14 & 27-29, Block 2, Bayside

**Zoning:** R-3 Single Family Residential

**Background**

The applicants propose to construct a 40'x24' deck (varying dimensions as indicated by site plan) on the rear side of the existing house (See Figure 1). Though it was historically believed that the existing house is 4' from the north side lot line, the applicants recently had the property surveyed to confirm the existing setback of the house is 1.3'. The deck will be slightly offset than the house about 4" further from the north side lot line. The applicants own the unimproved lots behind the house adjacent to Bayside Avenue, so there is no concern with rear yard setback requirements.

There is an 8'x12' pump room at the northeast corner that the proposed deck is designed to act as cover from rain and exterior water (See Figure 1 and enclosed photo exhibits). The applicants state they are having issues with water penetrating into the pump room . The applicants will have appropriate drainage facilities installed to prevent potential water damage in the future, and the deck will protect the pump room further. A smaller deck previously existed over the pump room that acted in the same capacity.

SPECIAL EXCEPTION REQUEST*		
Structure	Request(s)	Requirement(s)
Deck	1'-8" north side yard setback	8' (10% of lot width; 6' minimum, 12' maximum) (11.6-B)

\*See Figures 2 & 3

## FINDINGS OF FACT

1. Daniel and Lori Winegarden are the owners of the subject property, located on Lots 12-14 and 27-29, Block 2, Bayside.
2. The property is zoned R-3 Single Family Residential.
3. The proposed deck is 1'-8" from the north side lot line.
4. An 8' side yard setback is required. The R-3 District has a side yard setback requirement of 10% of the lot width, with a minimum of 6' up to a maximum of 12'.
5. The application was filed on May 9, 2022 with the Planning and Zoning Office.

## ANALYSIS

The Board of Adjustment is provided the power to grant special exception under Article 6.2 of the Zoning Ordinance. The Board may grant special exception to an existing non-conforming building setback under the ordinance if, in its judgement, the standards established in Article 6.2 and the remaining standards under Section 24.4(A)(2)(a) are met. In its review, the Board may attach certain conditions to any special exception granted in order to observe the spirit of the Zoning Ordinance and Comprehensive Plan and mitigate any potential impacts that may directly result from the requested special exception.

### **Discussion of Standards of Review**

***Article 6.2 (Existing non-conforming building setback): The particular setback requirement in question is not reduced beyond the existing yard dimension if closer than 50 percent of the applicable setback requirement and all other standards established under Section 24.4(A)(2)(a) of this ordinance are satisfied.***

The existing setback for the house is 1.3'. The proposed deck is 1'-8" feet from the north side lot line. The proposed setback for the deck is not closer than the existing setback for the house. The standard appears to be met.

### **Additional Standards under Section 24.4(A)(2)(a)**

***The exception relates entirely to a permitted use (principal, special, or accessory) classified by applicable district regulations, or to a permitted sign or off-street parking or loading areas accessory to such a permitted use.***

The proposed deck is an incidental use to a single family residential use, which is a permitted use in the R-3 District. The standard appears to be met.

***The practical difficulty is due to circumstances specific to the property and prohibits the use of the subject property in a manner reasonably similar to that of other property in the same district.***

The condition of the pumphouse necessitates maintenance to prevent water damage. Due to its location, there is a practical difficulty to build over the pumphouse or otherwise.

The practical difficulty is due to the location of the pumphouse and need for protection from exterior water. Decks are a common residential feature in the neighborhood and acts as a reasonable method to achieve the needed result. The standard appears to be met.

***A grant of the special exception applied for, or a lesser relaxation of the restriction than applied for, is reasonably necessary due to practical difficulties related to the land in question and would do substantial justice to an applicant as well as to other property owners in the locality.***

As aforementioned, the need for protection from water damage is due to the existing location of the sump pump room. The deck as a method to achieve that protection would be similar in use as the previous deck that used to exist in the same location. While larger than the previous one, decks of a similar size are a common feature in the neighborhood, and the remainder of the deck otherwise meets setback requirements. The standard appears to be met.

***Such practical difficulties cannot be overcome by any feasible alternative means other than an exception.***

This is only the location that works to achieve the needed result to protect from water damage. While a smaller deck may suffice, the size of the deck is negligible in terms of an alternative and potential impact. The standard appears to be met.

***Relief can be granted in a manner that will not alter the essential character of the locality.***

The proposed deck will not alter the character of the neighborhood. The standard appears to be met.

#### **Discussion of Potential Impacts to Immediate Area**

The property is a grouping of three contiguous tax parcels. Due to the location and size of the existing house, the proposed deck will be close to the central property line. The rear yard setback requirement will be met for the deck since all three of the parcels are owned by the applicant. However, combining the three parcels into one is necessary to ensure a non-conforming setback is not created if the vacant parcels along Bayside Avenue would ever be sold off separately.

#### **Staff Conclusions and Recommendation**

All standards of review appear to be met. Staff recommends approval of the request.

<b>BOARD DECISION</b>
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The Board of Adjustment may consider the following alternatives:

#### **Alternatives**

1. Grant the requested special exception subject to any condition as deemed necessary by the Board.
2. Grant relief less or different from the requested special exception.
3. Deny the requested special exception.

The following motions are provided for the Board's consideration:

Provided motion of approval:

- I move to adopt the staff report as the Board's findings and to approve the special exception as requested by Daniel and Lori Winegarden, subject to the following conditions:
  1. All construction shall comply with the site plan submitted with the application.
  2. No construction shall begin until a Zoning Permit has been issued by the Planning and Zoning Office.
  3. The Winegardens shall combine all three parcels with the County Auditor's Office.

Provided motion of denial:

- I move to adopt the staff report as the Board's findings and to deny the special exception as requested by Daniel and Lori Winegarden for the following reasons:  
[STATE REASONS FOR DENIAL]

<b>EXHIBITS</b>
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- Exhibit 1: Figures
- Exhibit 2: Special Exception Application
- Exhibit 3: Supplemental Description (Non-conforming setback under Article 6.2)
- Exhibit 4: Application photos
- Exhibit 5: Site plan
- Exhibit 6: Plat of Survey
- Exhibit 7: Aerial photo of site



**Figure 1**  
Looking at the proposed deck location



June 3, 2022, J. Robbins

**Figure 2**  
Looking west along the north side lot line



July 7, 2022, J. Robbins



**Figure 3**

Looking east along the north side lot line



July 7, 2022, J. Robbins

SPECIAL EXCEPTION APPEAL

APPLICATION

Date Filed 5/9/22 Date Set for Hearing 6/28/22 Case Number: ~~22-16~~ 22-16

Applicant Name: Daniel & Lori Winegardner Phone: 515-724-8420 E-Mail: daniel.winegardner@gmail.com

Mailing Address: 15357 Oakwood Ave, Clear Lake, IA 50428

Property Owner Name: Daniel and Lori Winegardner Phone: 641-781-0232 E-Mail: lori.winegardner@gmail.com

Property Owner Address: 15357 Oakwood Ave, Clear Lake, IA 50428

Property Description (Not to be used on legal documents): Parcel # 052331100500 Township C Lake

Property Address: 15357 Oakwood Ave, Clear Lake, IA 50428 Zoning: R3

Brief Legal Description: L'S 12-13-14 BLK 2 Bayside Exc S10' L 14

Project Description

Decision Date: 5/5/22

Wrap around external entry deck to East and South doors, replacing prior deck on NE corner and entry stoop on S door

Special Exception(s) Requested (As cited on results from denied Zoning Permit Application)

1/2 of 10% of lot width (8' / 2 = 4') to North property line

Criteria Justifying Special Exception under Standards for Review (You may add more details in the Additional Information)

1920s original cabin located approx 4' from N. Property line. Prior NE corner deck extended East same distance from property line. Existing and grandfathered pump room w/ concrete cap in this location - so already in violation beyond "current" zoning standards. (also grandfathered) Replacing deck will provide better water drainage over pump room and prevent water intrusion into basement. Stake surveying scheduled to definitively establish line - over >

I am the [X] Owner [ ] Contract Purchaser [ ] Other (Explain) \_\_\_\_\_ of the property affected.

I, the applicant, being duly sworn, depose and say that I am the owner, or that I am authorized and empowered to make affidavit for the owner, who makes the accompanying application; and that the information provided is true and correct and actual construction will proceed in accordance with the purposes herein stated and any conditions and/or requirements the Board of Adjustment may stipulate. The Planning & Zoning staff and Board of Adjustment members are also given permission to enter the above property in reviewing this Application.

Applicant Signature [Signature] Date 5/9/22

## SPECIAL EXCEPTION APPEAL

### ADDITIONAL INFORMATION

Please provide any additional details below needed to fully address the standards for review and any potential impacts to the immediate vicinity that may directly result from the special exception requested.

Owners of the parcel also own the two adjacent parcels to the East (through to Bayside from Oakwood). These two lots are "empty" - no structures, so the East boundary of the 8' x 12' deck is well within East setback requirements.

The <sup>open</sup> deck section affected by the special exception request is approximately 8' x 24' = 192 sq/ft.  
East/West N/S

The key portion for defending (roofing) the pump room is the 8' x 12' NW corner of the proposed <sup>open</sup> deck. (The deck becomes the <sup>level</sup> roof of the pump room.) An <sup>open</sup> deck will architecturally look better than a <sup>low</sup> roof over the pump room to shed water and protect the basement.

Currently getting water intrusion into basement when it rains so have to do something. Ugly <sup>low</sup> shed roof or attractive deck.

Site plan drawing previously supplied w/ permit application. In our view we are only replacing a prior deck w/ new structurally sound deck. 3 architectural/functional goals:

1. Attractive water shedding over leaky pump room.
2. Entry deck for doors
3. Connecting East and S doors with deck to eliminate dirt splashing on East facade and create a mud-free path.

Proposal fits w/in the special exception standard.

Duplicates the house N setback or 4' whichever is established by planned/scheduled survey by Starke.

Prior structurally rotted deck ~~was~~ went to same setback as grandfathered house and approximately the special exception setback.

(We plan underdeck water control over the pump room so it is effectively a water shedding roof, not just open slats.)



## **Robbins, John**

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**From:** Daniel Pitts Winegarden <daniel.winegarden@gmail.com>  
**Sent:** Tuesday, June 14, 2022 10:53 AM  
**To:** Robbins, John  
**Cc:** Lori Pitts Winegarden  
**Subject:** Appeal of Special Exception for June 28

External Email WARNING: DO NOT open attachments or click links from unknown senders or unexpected emails. Questions? Call 3-HELP.

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We are appealing the denial of the special exception on two bases:

1. We have an existing structure (the pump room) that is already non-compliant with the setbacks. The new deck covering the pump room would protect the pump room with a roof against water intrusion. (A current problem.) The deck solution is a more affordable option than entirely rebuilding the subterranean corner niche of the cabin, which would still be noncompliant, but grandfathered. And a deck covering is consistent with the treatment of other old pump rooms in our lakeside neighborhood. The proximity of the north foundation wall to the boundary line is a function of platting that happened after the original cabin was built in the mid-1920s. And we can't change that. We need some type of cover on the pump room. We are trying to implement a functional and aesthetic solution that complements the neighborhood and our house. Functionally, deck footings must be outside the perimeter of the pump room's concrete ceiling cap, effectively in line with the main North structure of the cabin.

2. The spirit of the lot-width special exception also supports this appeal. We're not asking to go closer to the north lot line than other portions of the historic 1920s cabin already occupies. There was a prior deck in poor repair with rotting wood in the same location. We removed it in the course of insulating the foundation and the walls and residing before we were aware of the permitting process. Of course, removing the deck

revealed its role in shedding water away from the pump room below. Water intrusion into the basement increased substantially without the old deck. We have surveyed the property. The property line is closer to our North foundation than prior owners assumed. Landscape edging is 4' from the foundation. (See photos.) The surveyed line is closer to 2'. We'd like to go the full width of the ledger board. But staying back 4' from the property line will provide the minimum coverage over the pump room. (See Stark's survey.) Albeit, it will look architecturally odd. Alternatively, we could taper or curve the transition to the planned entry deck to keep the average distance at least 4' back from the North property line. But architecturally starting the deck at the NE corner of the structure's ledger board (minus the 6' vertical corner trim) makes the most sense and provides the best weather shelter to the pump room. The edge of the deck could pull back after clearing the pump room.

We ask for your support to make a value-improving addition with both functional and aesthetic qualities that will enhance both our property and the neighborhood.

Daniel Pitts Winegarden

15357 Oakwood Ave

Clear Lake, IA 50428

515/724-8420 mobile

[daniel.winegarden@gmail.com](mailto:daniel.winegarden@gmail.com)

**Ducendi Ad Astra -- Leading to the Stars**



Winegarden 15357 Oakwood Ave, Clear Lake, IA 50428  
N property line special exception request for proposed replacement deck



NE Corner of property, pump room concrete cap in niche, pre-existing AC condenser and rock bed (before our 2007 purchase) extend approximately 4' from N edge of foundation. This is the East door.



Facing East, shows E distance to Bayside street. N special exception of  $\frac{1}{2}$  of 10% of lot width matches the approximate 4' setback of the existing house and will yield an architecturally attractive open deck and functional result. Reseeding resulting from removal of old patio that drained back into the house.



Winegarden 15357 Oakwood Ave, Clear Lake, IA 50428  
N property line special exception request for proposed replacement deck



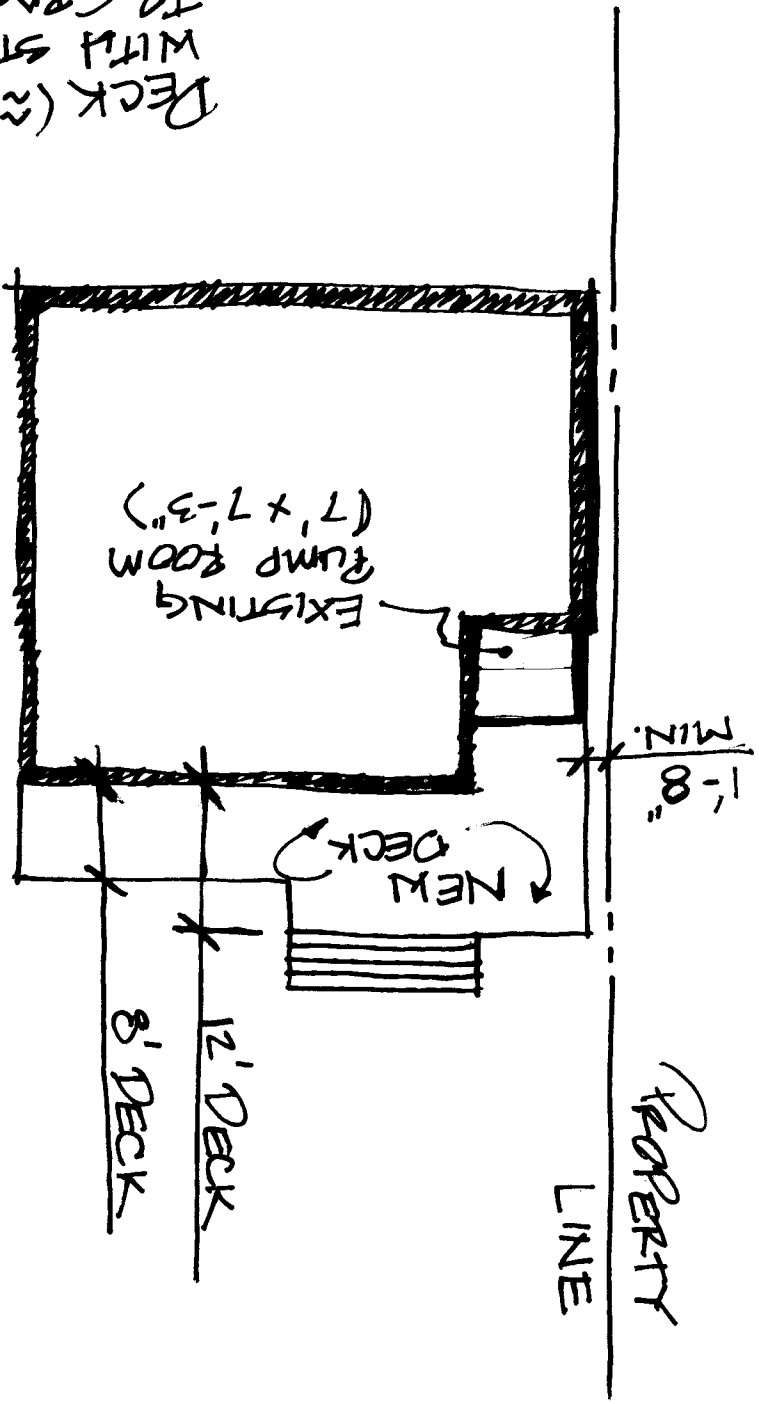
Facing South. Pump room concrete cap in niche. Deck walkway will extend along East façade to the fence on the South side of the cabin. Drainage away from leaking pump room foundation key objective.



Concrete pump room cap in NE niche to be covered by proposed deck which will follow the East/West line defined by the house or 4' setback whichever is more restrictive. Pre-existing old deck covered same space. Pre-existing rock border and AC condenser extend 50" from house foundation (approximately 4').



DECK (≈ 500 SF)  
WITH STAIRS  
TO GRADE



EXISTING  
PUMP ROOM  
(7' x 7'-3")

NEW DECK

12' DECK  
8' DECK

1'-8" MIN.

PROPERTY  
LINE

**INDEX LEGEND**  
**LOCATION**  
 LOTS 12, 13, 28, 29 AND THE NORTH 20 FT. OF LOT 14, 27 ALL IN BLOCK 2 IN BAYSIDE, CERRO GORDO COUNTY, IOWA

**PROPRIETOR**  
 LORI PITTS WINEGARDEN  
 DANIEL PITTS WINEGARDEN  
 DANIEL J. PITTS WINEGARDEN

**SURVEY REQUESTED BY**  
 LORI WINEGARDEN

**SURVEYOR COMPANY**  
 STARK SURVEYING INC.  
 1622 S. TAFT AVE.  
 MASON CITY, IOWA, 50401  
 PHONE: 641-423-7847

**RETURN TO:**  
 BENJAMIN STARK  
 1822 S. TAFT AVE.  
 MASON CITY, IOWA, 50401

*12.09/10x*

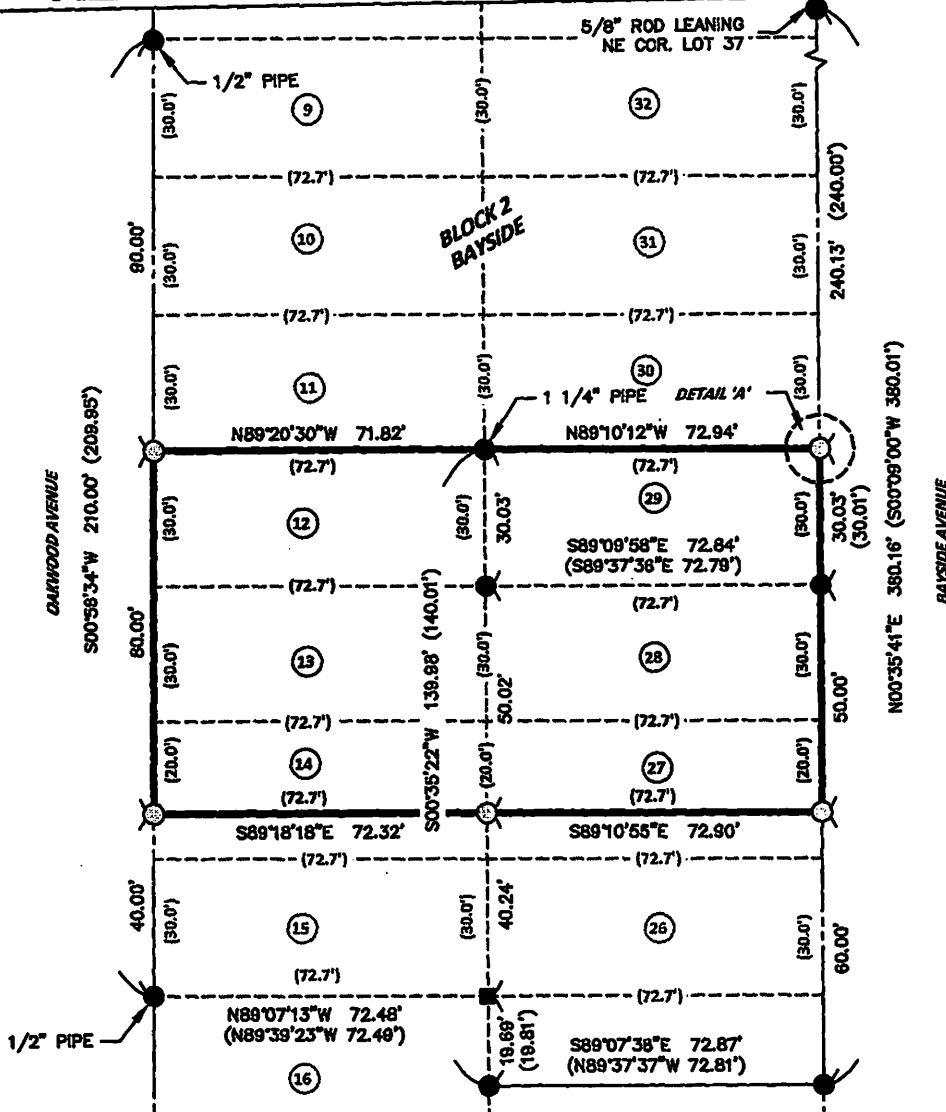
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 R: \$10.00 - Tf: \$0.00 - M: \$1.00 - Tc: \$1 - N: \$0  
 Pymt: Check

AnnMarie Legler, Cerro Gordo County Recorder



*aud*

**RETRACEMENT PLAT OF SURVEY**



**AREA CALCULATIONS**  
 TOTAL AREA.....11,604 SQ. FT.

**DESCRIPTION OF RECORD DOC.#2020-5151**

THE NORTH 20 FEET OF LOT TWENTY-SEVEN (27) AND ALL OF LOT TWENTY-EIGHT (28), IN BLOCK TWO (2) BAYSIDE, CERRO GORDO COUNTY, IOWA.

**DESCRIPTION OF RECORD DOC.#2007-5018**

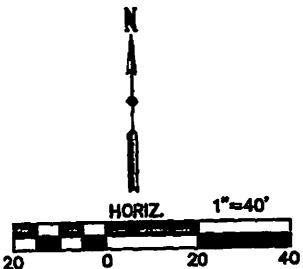
LOTS TWELVE (12), THIRTEEN (13) AND THE NORTH TWENTY (20) FEET OF LOT FOURTEEN (14) AND LOT TWENTY-NINE (29), ALL IN BLOCK TWO (2) IN BAYSIDE, CERRO GORDO COUNTY, IOWA.

**LEGEND**

- ▲ SET SECTION CORNER AS NOTED (P.O.C.) POINT OF COMMENCEMENT
- SET 1/2" REBAR 24" LONG YPC 23709 (P.O.B.) POINT OF BEGINNING
- FOUND 5/8" REBAR W/ BPC 13644 MONUMENT UNLESS NOTED
- ▲ FOUND SECTION CORNER AS NOTED (0.00") RECORD MEASUREMENT
- ⊗ SET MAG NAIL
- ⊙ LOT NUMBER
- FOUND 1/2" REBAR W/ YPC 10888

**SURVEYOR'S NOTES:**  
 1) ICRS ZONE 2 IS THE BASIS OF BEARING FOR THE PURPOSE OF THIS SURVEY.

**DOCUMENTS USED FOR THIS SURVEY**  
 PLATS: DOC.#2017-4216, DOC.#2018-1423  
 DEED: DOC.#2007-5018, DOC.#2020-5151



DATE SURVEYED	6-9-22
SCALE:	AS SHOWN
PROJECT NO.:	22262
DRAWN BY:	BVS
CHECKED BY:	BVS
SHEET	1 of 2



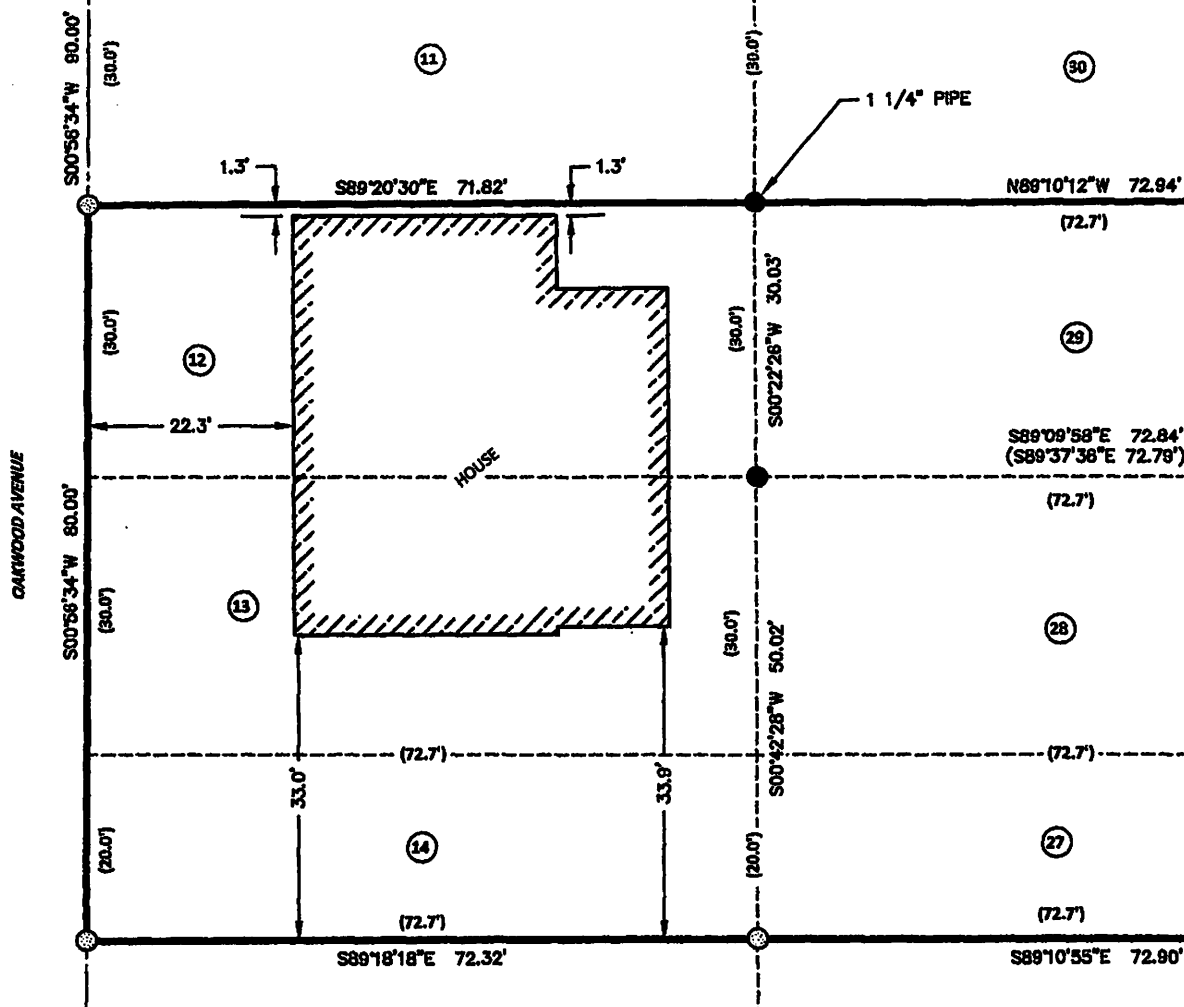
I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

*Benjamin Stark*  
 Benjamin Stark  
 Date: 6-14-22

License number 23709 Sheets covered by this seat: 2  
 My license renewal date is December 31, 2023

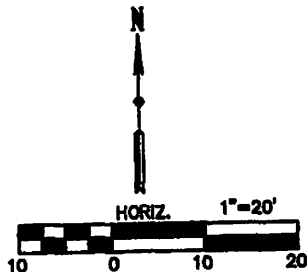
**STARK SURVEYING INC.**

# RETRACEMENT PLAT OF SURVEY

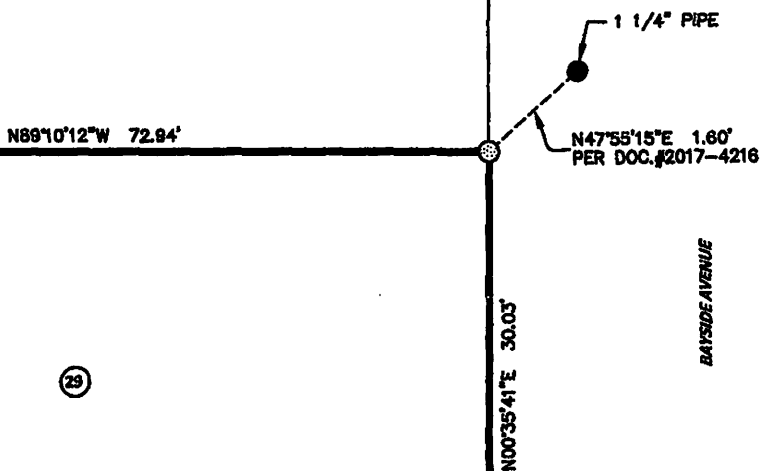


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## DETAIL 'A' NOT TO SCALE

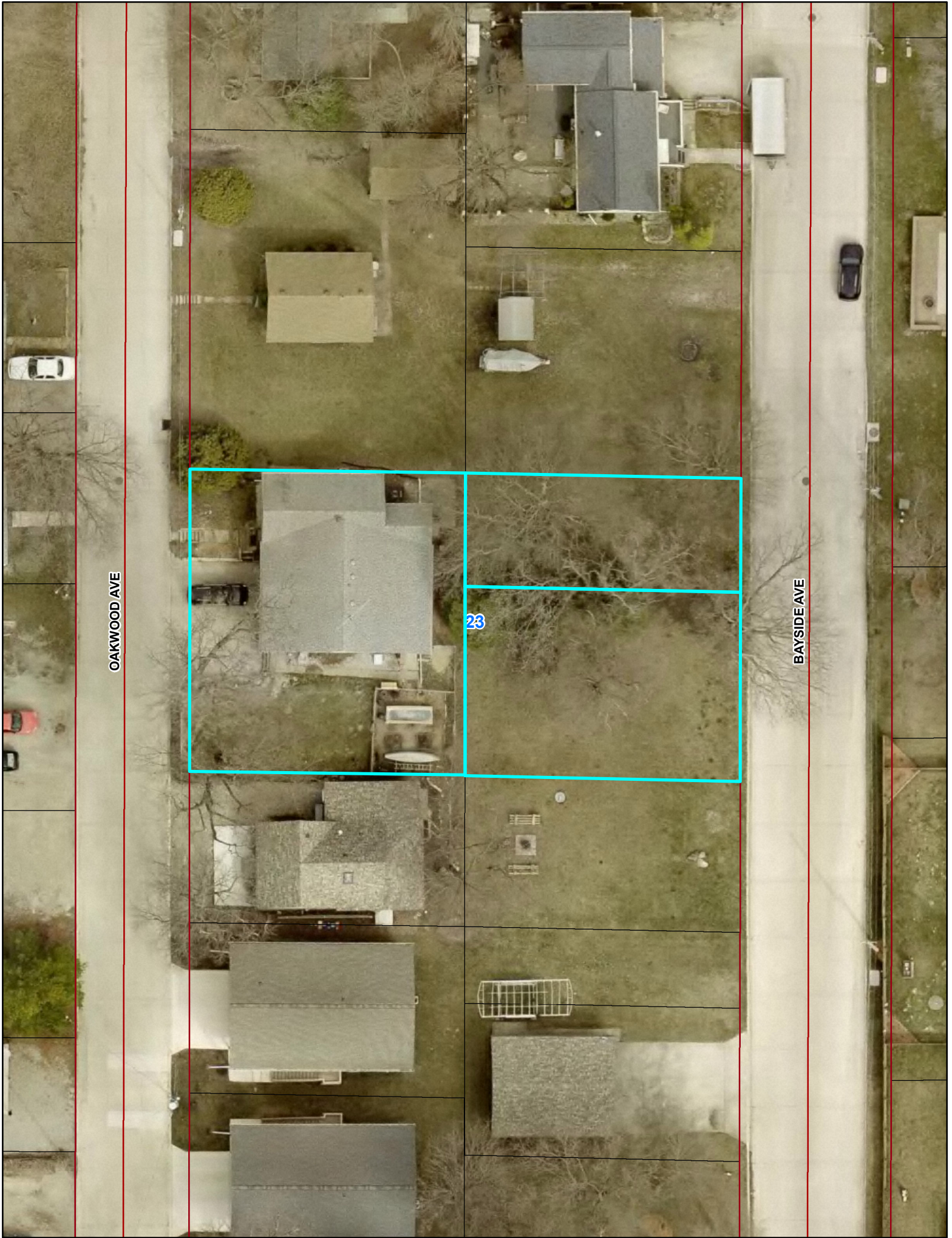


DATE SURVEYED	6-8-22
SCALE:	AS SHOWN
PROJECT NO.:	22262
DRAWN BY:	BVS
CHECKED BY:	BVS
SHEET	2 of 2

### LEGEND

- ▲ SET SECTION CORNER AS NOTED (P.O.C.) POINT OF COMMENCEMENT
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- ▲ FOUND SECTION CORNER AS NOTED
- ⊗ SET MAG NAIL
- ⊙ (65) LOT NUMBER
- (0.00') RECORD MEASUREMENT
- FOUND 1/2" REBAR W/ YPC 10888

STARK  
SURVEYING  
INC.



OAKWOOD AVE

23

BAYSIDE AVE