



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

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**SPECIAL EXCEPTION STAFF REPORT**

**SUMMARY OF REQUEST**

**Case No.:** 22-26 **Hearing Date:** November 29, 2022

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

<b>Applicant</b>	<b>Owner</b>
Jacob R. Kopriva	Jacob R. Kopriva
471 North Shore Drive, Unit B	1713 Main Avenue
Clear Lake, IA 50428	Clear Lake, IA 50428

**Property Address:** 5028 Clark Street

**Brief Legal Description:** Lot 20, Block 8, Crane and Hills

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

**Background**

The applicant (Kopriva) proposes to construct a 24’x50’ house (See Figures 1 & 2). The property currently has no buildings on it. There was a well house previously that was removed within the last 12 months. There is a well that serves properties as highlighted in the aerial photo with applicable parcels highlighted, titled “Well service properties” (See Figure 3). There is an existing established water line easement for the highlighted properties.

Please note that the front corners of the proposed house as marked by orange flags as seen in the included photos were misplaced approximately 5’ closer to the street than the actual proposal. The proposed front building line will be roughly similar to the respective building lines of the adjacent property to the west and the front line of the garage of house to the east—give or take 1’-2’ north or south (See Figures 3 & 4).

SPECIAL EXCEPTION REQUEST*		
Structure	Request(s)	Requirement(s)
House	3’ east side yard setback 3’ west side yard setback 20’ rear yard setback	6’ side yard setback (11.6-B) Same 30’ rear yard setback (11.6-C)

\*See Figures 6-10

## FINDINGS OF FACT

1. Jacob R. Kopriva is the owner of the subject property and applicant for the request.
2. The property is zoned R-3 Single Family Residential
3. The proposed house is 3' from both the east and west side lot lines and 20' from the rear lot line.
4. A 6' side yard setback is required in the R-3 District. A 30' rear yard setback is required for a principal building in the R-3 District.
5. A variance appeal application was originally filed on September 27, 2022 with the Planning and Zoning Office. Based on needed information prior to being accepted, an amended request was filed for a Special Exception on November 1, 2022 with the Planning and Zoning Office.

## ANALYSIS

The Board of Adjustment is provided the power to grant special exception under Section 24.4(A)(2) of the Zoning Ordinance. The Board may grant special exception to bulk standards of the ordinance if, in its judgement, the standards established in 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**

***Strict compliance with the standards governing setback, frontage, height, or other bulk provisions of this ordinance would result in a practical difficulty upon the owner of such property and only where such exception does not exceed 50 percent of the particular limitation or number in question.***

The proposed house is 3' from both the east and west side lot lines. A 6' side yard setback is required in the R-3 District (See Figures 5-8). The proposed house is 20' from the rear lot line. A 30' rear yard setback is required in the R-3 District (See Figures 9 & 10). In both cases, the proposal is less than 50% of the respective requirements.

The subject lot has a 30' width (See Figure 1). To build within the required side yard setbacks, a house would only be 18'-wide. This would not meet the minimum dimension for a dwelling of 22', which means there is no way to build within the requirements of the ordinance to have a reasonably sized house. There is a clear practical difficulty as a result of the ordinance requirements. The standard appears to be met.

***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.***

A single family dwelling is a principal 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.***

As previously described, the width and size of the lot prevents an average-sized house for the neighborhood from being constructed on the property within the requirements of the Zoning Ordinance. A variance or special exception would be necessary to construct any house on the property. 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.***

The practical difficulty is due to the size of the lot. However, there are some elements to consider in how the request could potentially affect nearby properties in the future.

There is a well located on the north half of the property (See Figure 3). The well services the subject property, the property to the northeast, and a couple properties further north (See "Well Service Properties" map). There is an established waterline agreement between all of the applicable properties. As a result, legal access for any potential future maintenance needed for the well is necessary to ensure water service for the applicable properties. While being a rare occurrence, potential maintenance could possibly need vehicular access with an 8'-10' width.

The property itself creates difficulties for potential access in the event a new house is constructed. There are retaining walls and an approximately 3-4' drop-off along the west and north lot lines that prevent any vehicular access (See Figure 11 & 12). Similarly, a retaining wall runs most of the length of the east side lot line (See Figures 6 & 7). Access to the well from the south will be blocked with the construction of the proposed house.

In regard to potential vehicular access, the aforementioned waterline agreement is between the subject property and the property to the northeast, along with two more properties further north, but this only touches at a singular point with the subject property as marked by the survey stake seen in Figure 13, making legal access for a service trailer or vehicle tenuous at best. There is a narrow, approximately 6'-8' gap that could potentially be modified to be used for service if legal access can be attained for the future (See Figure 13). There is potential to widen the gap with reconstruction of the north retaining wall by moving it further north with fill. However, this would require any service vehicle to cross the adjacent property to the east from the north with which there is no formal access easement agreement in place. While this is a worse case scenario, Kopriva has stated that he is in discussion with the neighbors to the east about a potential agreement. He is also talking with a well service company to assess the actual needs for potential maintenance needs, as the potential need for vehicular access would be the worst-case-scenario, which should be planned for.

Ultimately, the interpretation of “substantial justice” required by the standard is a balance between Kopriva’s right to have a reasonable use of his residential property and the impacts to water service for the applicable properties. While the county does not enforce the terms of the easement itself, it is a consideration when granting an exception to the strict setback rules of the Zoning Ordinance. Given the physical characteristics of the property, there is no trade-off that appears to allow a house to be constructed on the property without blocking access from the south or unreasonably encroaching too close to neighboring lot lines.

As a result, in staff’s judgement, the right to have a reasonable residential use of the property for the purpose for which it is intended outweighs the well access question to an extent. Kopriva has a constitutional right for at least some use of the property for residential purposes. However, conditions can be attached to any potential approval. This question is discussed further below. The standard appears to be met.

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

There does not appear to be a feasible alternative. The size of the lot prevents any alternative that does not necessitate an exception under the rules of the ordinance. 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 house is in line with the character of the neighborhood. The standard appears to be met.

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

There are potentially two main impacts as a result of the proposed house. The first is close encroachment to neighboring property lines. The first standard establishing a minimum of no closer than 50 percent of the applicable setback standard ensures proper separation from the property lines and mitigates encroachment in extreme situations such as this.

As previously discussed, the second major impact is limited access for future well maintenance whenever it may be needed. Kopriva and any future owner of the subject property have a responsibility to ensure the well can be maintained into the future. At the time of this writing, as discussed above, there is tenuous legal access to bring any potential needed maintenance equipment into the property if ever needed, as there is no access easement for any adjacent property including to the east beyond the northeast corner of the property—a single point with the adjacent property to the northeast.

Staff consulted with the North Iowa Water Company, a well servicer based in Clear Lake, to get an idea of what may be needed for potential maintenance. An assessment would be necessary to know the extent of access needs for well maintenance. Not all well maintenance requires vehicular access, but the worse-case-scenario for access needs to be ensured. Equipment needed to service the well, if needed, would require a minimum of 8’-10’ of space for access. As of this writing, Kopriva states he has been in contact with a well servicer regarding the well and the adjacent property owner to the east regarding a potential access easement for well maintenance.

At a minimum, a condition should be attached to any approval that makes it Kopriva's responsibility to ensure water access for all properties served by the well and proper maintenance of the well for the future. In staff's opinion, a well assessment should be conducted prior to the issuance of a Zoning Permit and required by a condition with documentation provided to the Planning and Zoning Office as a part of the review. Any needed improvements to the well should also be completed.

### **Staff Conclusions and Recommendation**

The county does not have the right to force any property owner to enter into an agreement with another, nor can it prevent a reasonable use of a property entirely for which it is intended (i.e. residential use), though reasonable standards, limitations, and conditions can be applied to an approval. The standards for special exception are performance standards applied and adapted to specific requests. In this instance, all of the standards appear to be met, but certain conditions appear to be necessary. Staff recommends approval subject to the conditions below.

### **BOARD DECISION**

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 Jake Kopriva, 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. A well assessment shall be conducted by a qualified well servicer of the onsite well prior to any Zoning Permit being issued on the property. A copy of the well assessment, report, or other documentation of said assessment shall be provided to the Zoning Administrator prior the issuance of a Zoning Permit. All recommendations for improvements and actions for well maintenance and needed access to the well made by said well servicer shall be completed as necessary. It shall be Kopriva's, and any future owner of the subject property, to ensure water service for all properties served by the well, including needed access and maintenance for the useful life of said well.

#### 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 Jake Kopriva for the following reasons:  
[STATE REASONS FOR DENIAL]

## EXHIBITS

- Exhibit 1: Figures
- Exhibit 2: Special Exception Application
- Exhibit 3: Site plan
- Exhibit 4: Floor plan
- Exhibit 5: Plat of survey
- Exhibit 6: “Well service properties” and waterline map
- Exhibit 7: Aerial photo of site

**Figure 1**

Looking north at the location of the proposed house



November 14, 2022, J. Robbins

**Figure 2**

Looking south as the location of the proposed house



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**Figure 3**

Looking at the onsite well located near the end of the property



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**Figure 4**

Looking at the adjacent property to the west



November 14, 2022, J. Robbins



**Figure 5**

Looking at the adjacent property to the east



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**Figure 6**

Looking north along the east side lot line



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**Figure 7**

Looking south along the east side lot line



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**Figure 8**

Looking north along the west side lot line



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**Figure 9**

Looking south along the west side lot line



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**Figure 10**

Looking west along the rear lot line



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**Figure 11**

Looking at the retain wall along the west lot line



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**Figure 12**

Looking at the retaining wall along the north lot line



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**Figure 13**

Looking east at the potential area where possible vehicular access could practically happen at the northeast corner of the property



November 14, 2022, J. Robbins

SPECIAL EXCEPTION APPEAL

Tabled for amended request to November meeting APPLICATION

Date Filed 11/1/22

Date Set for Hearing 11/29/22

Case Number: 22-26

Applicant Name: Jacob R Kopriua Phone: 641 231 1414 E-Mail: jakelkopriua@gmail.com

Mailing Address: 471 N Shore Dr Unit B Clear Lake IA 50428

Property Owner Name: // Phone: E-Mail:

Property Owner Address:

Property Description (Not to be used on legal documents): Parcel # 052330401000 Township CLAKE

Property Address: 5028 Clark St Clear Lake IA 50428 Zoning: Residential

Brief Legal Description: L 20 BLK 8 CRANE & HILLS 1st ADD TO OAKWOOD PARK

Project Description

Decision Date: 9/6/22

New home build

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

- 1 3ft Setback From West and East property lines
2 20ft Setback From rear (North) property line

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

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 10/5/22

## **Special Exceptions Appeal**

-Strict compliance with the standards governing setback, frontage, height, or other bulk provisions of this ordinance would result in a practical difficulty upon the owner of such property and only where such exception does not exceed 50 percent of the particular limitation or number in question;

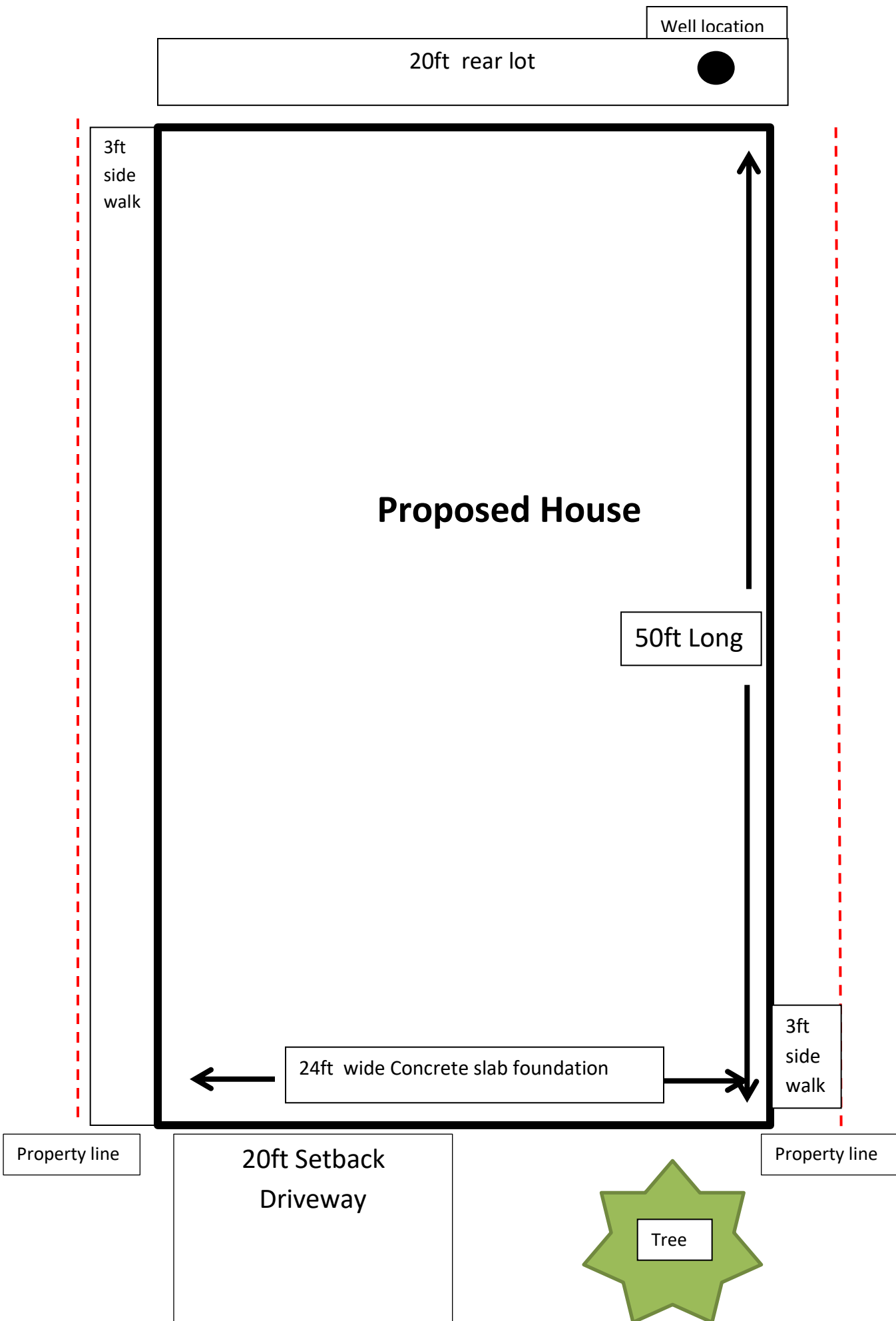
We are asking for a 3ft setback on the side lots. This is 50% of the standard 6ft setback. We are asking for a 20ft setback in the rear of the lot.

-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. Such circumstance may include: Size and shape of the property;

Due to the narrowness of the lot only being 30ft wide, it makes it difficult to meet minimum build size requirements. By allowing us to build a 24ft wide we can meet those requirements and still have access to maintenance on the well in the back of the lot.

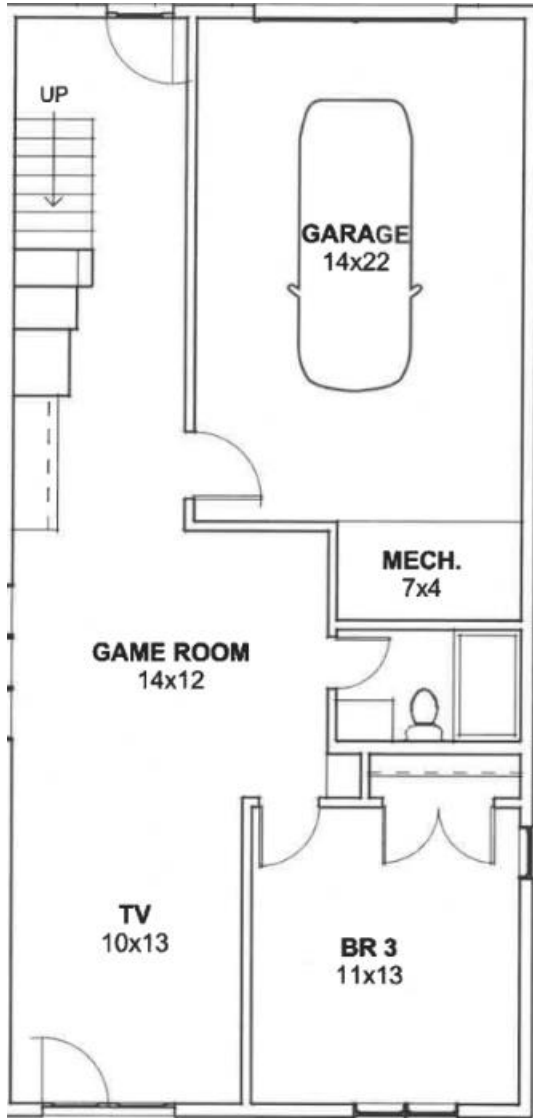
- Relief can be granted in a manner that will not alter the essential character of the locality.

This relief will help allow us to build a quality looking home that fits in with nature of the neighborhood.

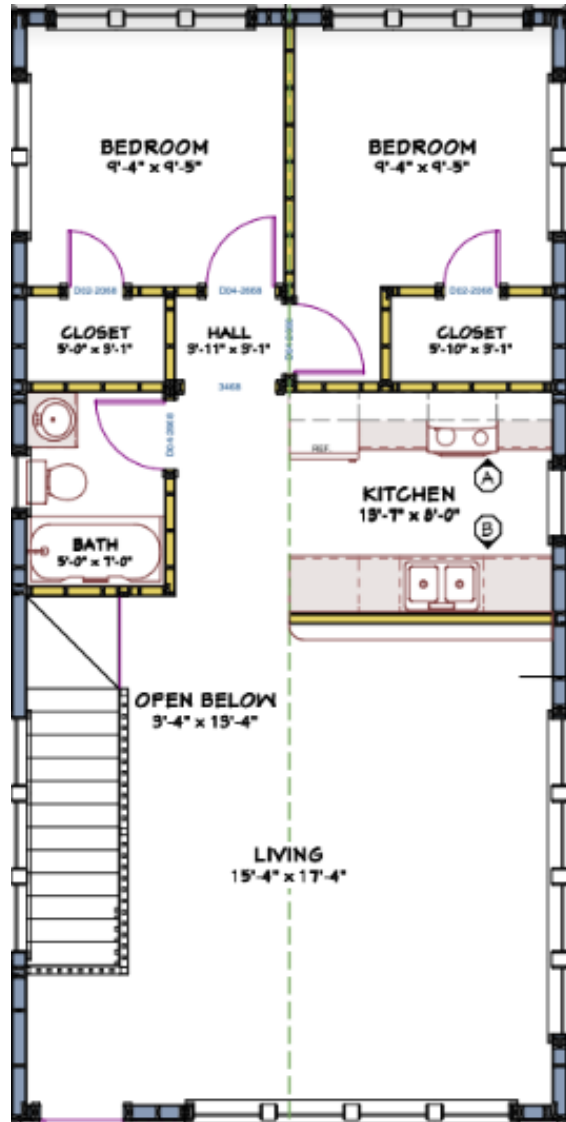




Street Level

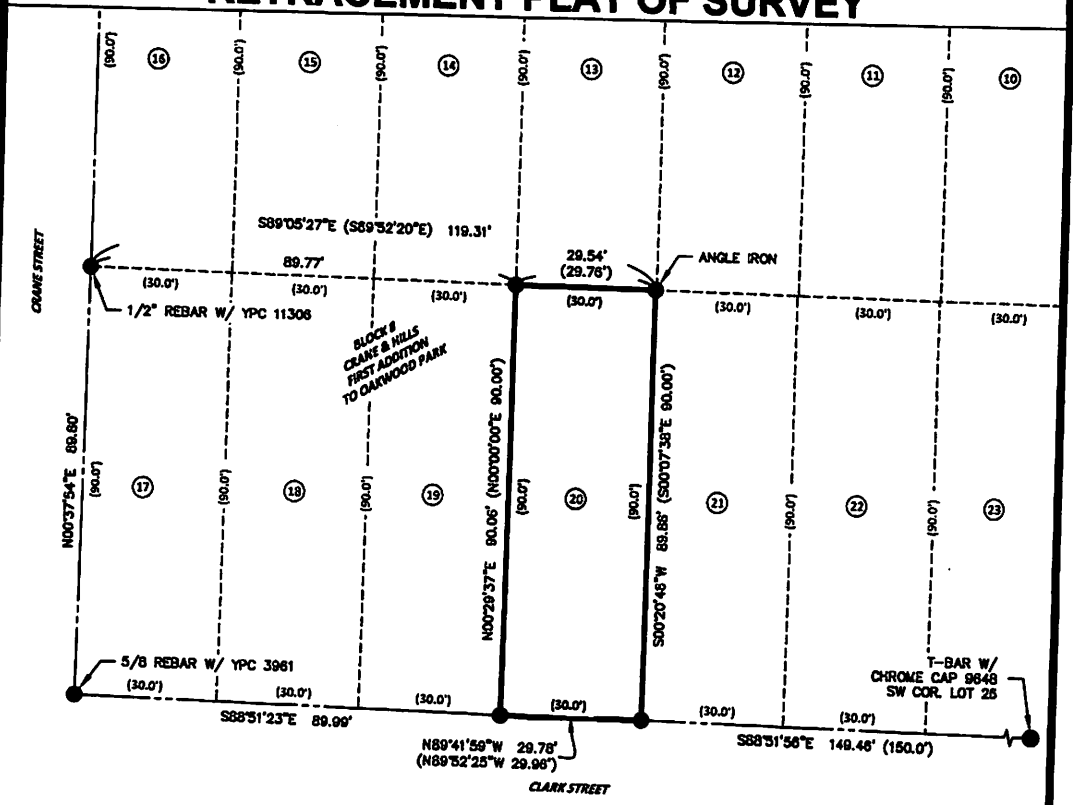


2<sup>nd</sup> Level



**INDEX LEGEND**  
**LOCATION**  
 LOT 20 BLOCK 8  
 CRANE & HILLS FIRST ADD. TO  
 OAKWOOD PARK, AN OFFICIAL PLAT,  
 NOW INCLUDED IN AND FORMING A  
 PART OF CERRO GORDO COUNTY, IOWA  
**PROPRIETOR**  
 JACOB R. KOPRIVA  
**SURVEY REQUESTED BY**  
 JACOB KOPRIVA  
**SURVEYOR COMPANY**  
 STARK SURVEYING INC.  
 1622 S. TAFT AVE.  
 MASON CITY, IOWA, 50401  
 PHONE: 641-423-7947  
**RETURN TO:**  
 BENJAMIN STARK  
 1622 S. TAFT AVE.  
 MASON CITY, IOWA, 50401

## RETRACEMENT PLAT OF SURVEY



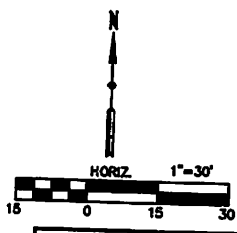
**DESCRIPTION OF RECORD DOC.#2022-1113**

LOT TWENTY (20) IN BLOCK 8, CRANE & HILLS FIRST ADDITION TO OAKWOOD PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF 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/ YPC ILL. MONUMENT UNLESS NOTED
- ▲ FOUND SECTION CORNER AS NOTED
- ⊗ CUT 'X'
- Ⓢ LOT NUMBER
- (0.00') RECORD MEASUREMENT

**SURVEYOR'S NOTES:**  
 1) IGRCS ZONE 2 IS THE BASIS OF BEARING FOR THE PURPOSE OF THIS SURVEY.  
**DOCUMENTS USED FOR THIS SURVEY:**  
 PLATS: DOC.#2004-2270,  
 DOC.#2014-4254  
 DEED: DOC.#2022-1113



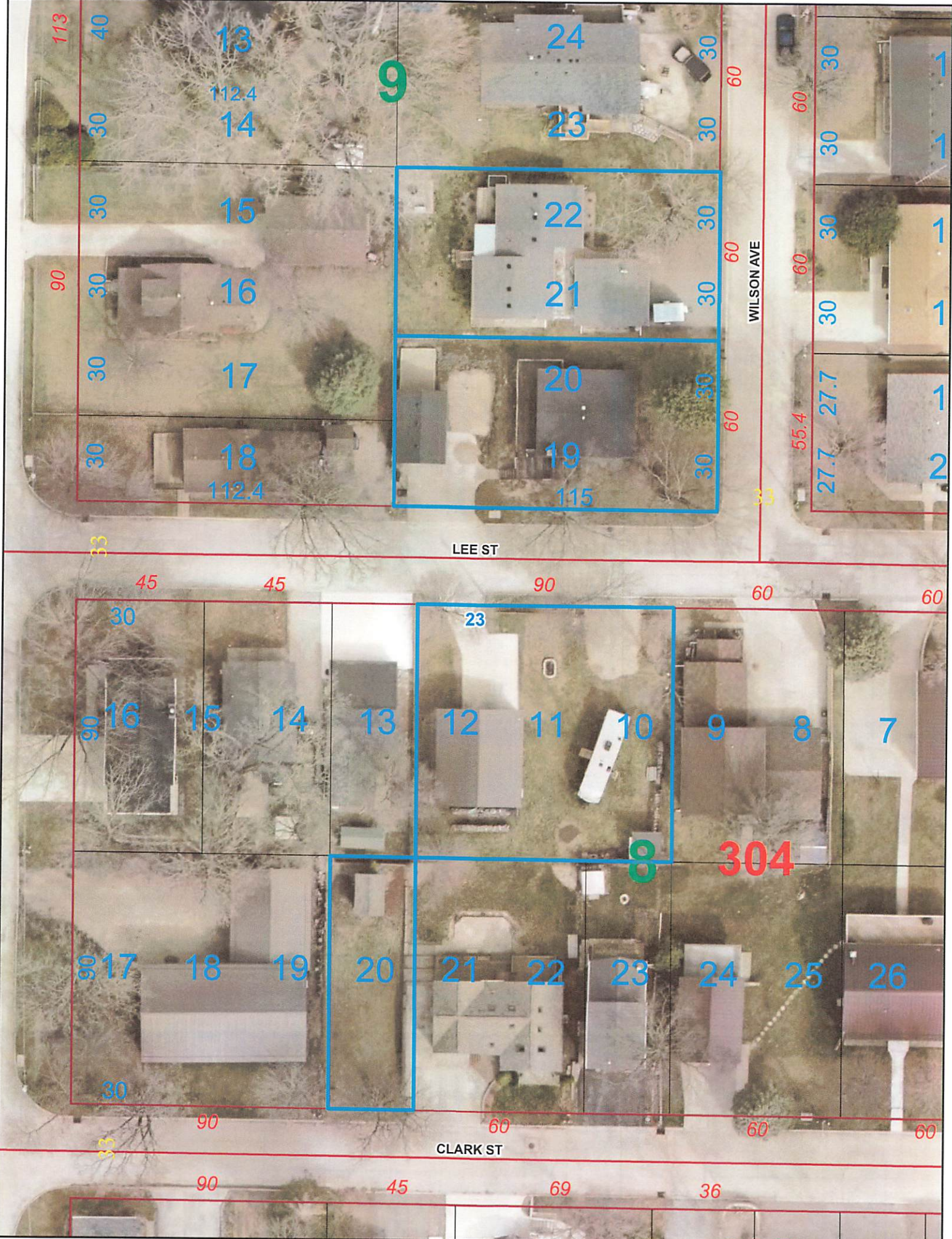
DATE SURVEYED	11-1-22
SCALE:	AS SHOWN
PROJECT NO.:	22324
DRAWN BY:	BVS
CHECKED BY:	BVS
SHEET	1 of 1



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 11-14-22  
 License number 23709  
 Sheets covered by this seal: 1  
 My license renewal date is December 31, 2023

STARK  
SURVEYING  
INC.

Well Service properties







23

CLARK ST