

**Docket Number:** 23/13376

**Appellants:** Tiger Knight, LLC, represented by Daniel Keough, 4315 NE 32<sup>nd</sup> Court, Des Moines, IA 50317 (Property Owner)

**Appeal:** The appellant requests side yard setback variances for a new single-family dwelling. Specifically, a side yard setback variance of approximately one (1) foot from the north property line, and approximately five (5) feet from the south property line. The request also includes a variance to allow an egress window well to encroach by an additional two and one-half (2 ½) feet into the south side setback.

### **Background**

The subject property is located at 4496 NE 26<sup>th</sup> Street, Des Moines, and is legally described as Lot 32 of Nugent Place, being within Section 19 of Township 79 North, Range 23 West of the 5<sup>th</sup> P.M. (Delaware Township). The subject property is approximately 12,376 square feet in size and is zoned “LDR” Low Density Residential District. The property is located south of NE 46<sup>th</sup> (Broadway) Avenue and north of E. Aurora Avenue. The City of Des Moines corporate limits are located approximately one-half (½) mile to the south where they extend along E. Aurora Avenue. Surrounding properties consist of primarily existing single-family residences zoned Low Density Residential District. The property directly adjacent to the west is zoned “HI” Heavy Industrial District and is vacant adjacent to the subject property. This adjacent property contains an existing auto repair/sales use which is concentrated further to the north along NE 46<sup>th</sup> (Broadway) Avenue. Further to the north along the NE 46<sup>th</sup> (Broadway) Avenue corridor consists of existing businesses, including a mix of industrial and neighborhood business zoning. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is a rectangular shaped lot with 52 feet of width measured north to south, including frontage to the east onto NE 26<sup>th</sup> Street. The property is 238 feet in depth measured east to west. The subdivision of Nugent Place was recorded in 1954, and created 50 total lots located south of NE 46<sup>th</sup> (Broadway) Avenue and north of NE 44<sup>th</sup> Avenue along NE 26<sup>th</sup> Street. The subject property previously contained a single-family residence which was demolished in 1994 according to County records. The appellant proposes to reconstruct a new single-family residence and attached garage, and requests side yard setback variances due to the narrow width of the subject property.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 2: Single-Family Residential Bulk Standards, Table 6.1*, requires a minimum side yard setback of ten (10) feet for single-family dwellings within the “LDR” Low Density Residential District. *Article 6, Division 6: Exceptions to Dimensional Requirements for Buildings and Structures, Section 2.H* permits egress window wells to encroach into the side and rear setback, but they must be setback at least three (3) feet from any property line. The appellants request a side yard setback variance of approximately one (1) foot from the north property line (from 10 feet to 9 feet), and a side yard setback variance of approximately five (5) feet from the south property line (from 10 feet to 5 feet), for a new single-family dwelling. The request also includes a variance to allow an egress window well to be located at approximately two and one-half (2 ½) feet from the

south property line, in lieu of the required three (3) feet. The submitted application and site plan for this appeal can be found as *Attachment B*.

Staff mailed out 22 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received zero (0) responses in regards to this Appeal.

### **Natural Resources**

The subject property is flat with little elevation change. The property slopes slightly downward moving from west to east across the lot, having a high elevation of approximately 924 feet along its western boundary and a low elevation of approximately 916 at its eastern boundary along NE 26<sup>th</sup> Street. The property contains a few mature trees located along the south and western boundaries. The site contains no mapped floodplain or wetlands, nor other known environmental hazards or features.

### **Roads & Utilities**

The subject property has frontage and access to the east onto NE 26<sup>th</sup> Street, which is an existing two-lane paved local roadway maintained by Polk County. NE 26<sup>th</sup> Street extends north providing connectivity to NE 46<sup>th</sup> (Broadway) Avenue, and also extends south to E. Aurora Avenue. Public water service is available through Des Moines Water Works via an existing six-inch (6") water main located along the east side of NE 26<sup>th</sup> Street. Any new dwelling is required to connect to this public water supply. Public sanitary sewer is not available in this neighborhood, therefore the new residence would have to be served by a private onsite wastewater system, to be designed and installed by the property owner. The property has a platted five (5) foot wide utilities easement located adjacent to the western, rear lot line.

### **Recommendation**

**The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.**

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
  - Yes. The subject property has an exceptionally narrow lot width, which makes it extremely difficult to locate a new single-family dwelling on the property which complies with the required side yard setbacks of ten (10) feet each. Some surrounding properties have been developed with two (2) adjacent lots combined, thereby alleviating the narrow lot and side yard setback issue. Additionally, several surrounding properties are also single lots with the same narrow setback as the subject property. However, reasonable side yard setback variances would also be considered for those lots at such time as needed due to the same narrow width.

- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
- Yes. A single-family dwelling is the principal permitted use on the subject property. A modern, site built single-family dwelling cannot be reasonably accommodated on the property but for the granting of a side yard setback variance(s).
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
- Yes. There will be limited impact on adjacent properties. Nine (9) feet of setback will be maintained from the north lot line and five (5) feet maintained from the south lot line. There would be an additional approximately two and one-half (2 ½) feet of encroachment to the south by an egress window well.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
- Yes. The narrow width of the property was created by a subdivision plat recorded nearly 70 years ago, and prior to the County's adoption of zoning regulations. The previous dwelling on the property was removed several decades ago by a prior owner.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?
- Yes. The appellants are required to meet the environmental provisions of the Polk County Zoning Ordinance. No impact on these provisions is anticipated.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.

# Attachment A Vicinity Map

0 500 1,000 2,000 Feet



NE 46th Ave

NE 27th

NE 28th

Subject Property

Interstate  
235

Des Moines

E Aurora Ave

NE Aurora Ave

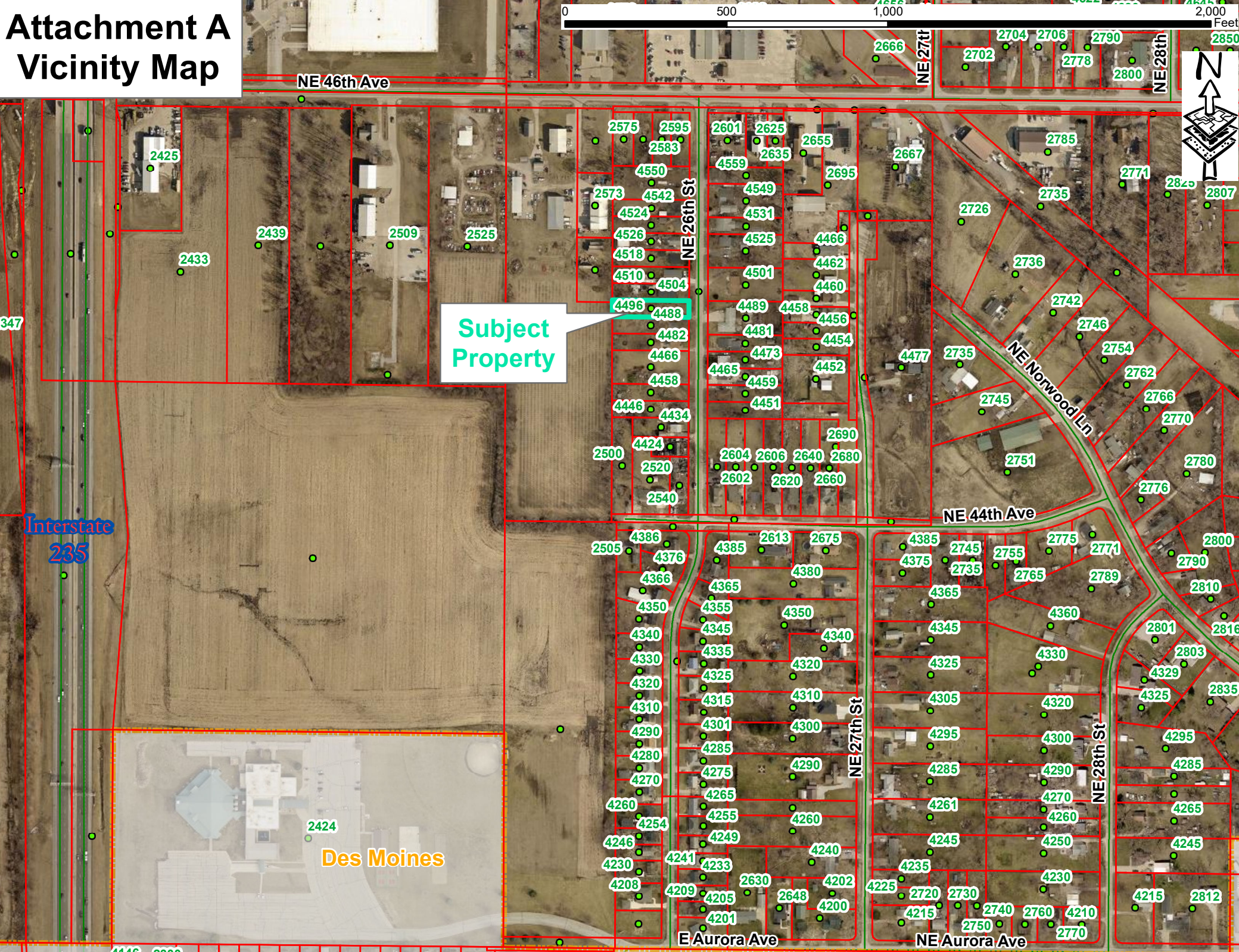
NE 26th St

NE 27th St

NE 28th St

NE 44th Ave

NE Norwood Ln



**Variance Appeal Application**



**Board of Adjustment Authority**

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

(time stamp)  
Official Use Only

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

THE LOT AT 4496 NE 26th IS VERY NARROW, THE HOUSE PLAN WAS THE MOST NARROW WE COULD FIND WHERE LAYOUT AND ORIENTATION MADE SENSE FOR THE LOT. IT LEAVES US WITH A FIVE FOOT EASEMENT.

- 2. Subject Property Address: 4496 NE 26th ST.
- 3. Subject Property Zoning District: LDR
- 4. District and Parcel Number: 19001814000000
- 5. Subject Property Legal Description (attach if necessary):  
LOT 32 NUGENT PLACE

6. Filing Fee: \$353.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

BARRY NELSON  
Applicant (Print Name)

Barry Nelson for Tiger Knight, LLC 10/23/23  
Signature date

OWNER  
Interest in Property (owner, renter, prospective buyer, etc.)

Barry.Nelson@DSRTalent.com  
Email

4496 NE 26th Des Moines, IA 50317  
Address, City, State and Zip

515-360-0577  
Phone

Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

DANIEL KEOUGH  
Applicant Representative (Print Name)

TIGER KNIGHT LLC  
Firm or Business Name

435 NE 32nd Ct Des Moines, IA  
Address, City, State and Zip

dnlkeough@gmail.com  
Email

515-633-7651  
Phone

Fax

9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (If additional signatures are needed please attach)

BARRY NELSON                      Barry Nelson for                      10/23/23  
 (Print Name)                              Signature                              Tiger Knight, LLC                      date

\_\_\_\_\_  
 (Print Name)                              Signature                              date

\_\_\_\_\_  
 (Print Name)                              Signature                              date

\_\_\_\_\_  
 (Print Name)                              Signature                              date

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

EXISTING NARROW LOT. NEW BUILD REQUIRES A 2' ALLOWANCE IN EASEMENT REQUIREMENTS PER SIDE. 10' ON EACH SIDE WOULD BE REDUCED TO 5+9. THE 9' IS REQUIRED FOR UTILITY ACCESS.

**A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.**

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 14<sup>th</sup> Street, Des Moines, IA 50313  
 Phone (515) 286-3705 • Fax (515) 286-3437 Email: PublicWorks@polkcountyiowa.gov  
 Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar CALENDAR

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y/N

# TIGER KNIGHT

## HOUSE SITE PLAN

### LEGAL DESCRIPTION:

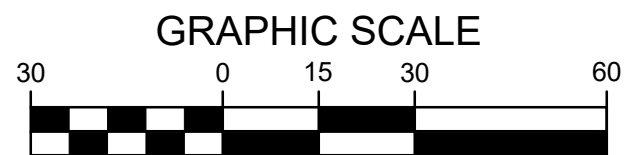
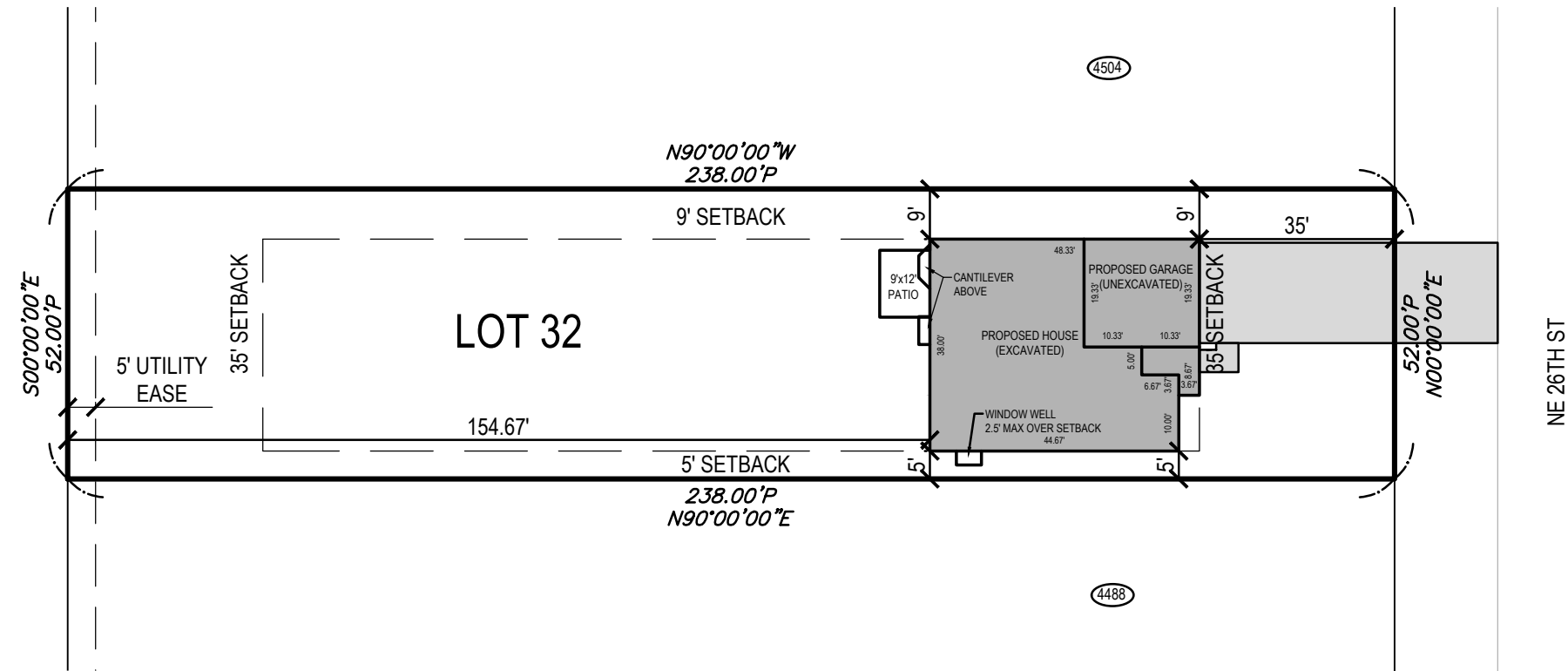
LOT 32 NUGENT PLACE AN OFFICIAL PLAT IN THE CITY OF DES MOINES,  
 POLK COUNTY, IOWA.  
 SAID TRACT OF LAND BEING SUBJECT TO AND TOGETHER WITH ANY  
 AND ALL EASEMENT OF RECORD.  
 SAID TRACT OF LAND CONTAINS 12,376 SF MORE OR LESS.

### ADDRESS:

4496 NE 26TH ST  
 DES MOINES, IOWA 50317

### ZONING:

LDR  
 BUILDING SETBACKS:  
 FRONT=35'  
 SIDE=9' AND 5' WITH VARIANCE APPROVAL  
 REAR=35'



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LOT 32 NUGENT PLACE  
 4496 NE 26TH ST, DES MOINES  
**HOUSE SITE PLAN**

REFERENCE NUMBER:

DRAWN BY:  
 TEB

PROJECT NUMBER:  
 230417

SHEET NUMBER:  
 1 OF 2

DATE PREPARED: 10/23/2023