Docket Number: 22/11983 **Appellants:** Michael & Tracey Ihle (Property Owners), 5265 NW 158th Avenue, Polk City, IA 50226

Appeal: The appellants request a front yard setback Variance for an existing deck attached to a single-family dwelling, which establishes the front yard setback at approximately 34 feet.

Background

The subject property is located at 5265 NW 158th Avenue, Polk City. The property is approximately 1.79 acres in size, and is legally described as Parcel 'B' from the plat of survey recorded in Book 8165, Page 429 in the Office of the Polk County Recorder, Polk County, Iowa, being the South 246 feet of the West 365 feet of the East 903.80 feet of the E ½ of the SW ¼, less 0.276 acres of roadway easement, within Section 6 of Township 81 North, Range 24 West of the 5th P.M. (Lincoln Township). The property is zoned "AG" Agricultural District, and is located approximately one (1) mile south of the City of Sheldahl, and approximately one-half (½) mile east of the intersection of NW 158th Avenue and NW 58th Street. Surrounding properties are zoned Agricultural and primarily in row crop production. The closest residence is over 500 feet to the southeast. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is rectangular shaped, having approximately 365 feet of frontage and lot width, including frontage along NW 158th Avenue, and approximately 213 feet of lot depth measured north to south. The property was created by Rural Survey in 1999 in accordance with the Polk County Zoning Ordinance. The remaining ground adjacent to the property remains in agricultural production and is separately owned. The subject property contains an existing single-family dwelling, including attached garage as well as an accessory pole building structure. According to County records, the dwelling was originally constructed in 1916. Access is taken from NW 158th Avenue to the south. The appellants and current property owners purchased the property in 1999. The appellants recently applied for a building permit for an accessory swimming pool, and during that review staff noted that a deck, attached to the dwelling, had been recently constructed without a permit. The deck encroaches into the previously established front setback of the dwelling, and requires a variance to remain as constructed.

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 front yard setback of 50 feet for principal dwellings within the "AG" Agricultural District. The appellants recently constructed an attached deck to the principal dwelling, including a portion onto the south, front façade. The deck addition encroaches into the previous front yard setback established by the dwelling, and establishes a new front setback at approximately 34 feet from the south, front property line adjacent to NW 158th Avenue. The appellants request a Variance to allow the attached deck to remain as constructed, legally establishing the front yard setback for the principal dwelling at approximately 34 feet. See *Attachment B* for a copy of the site plan showing the existing deck and front setback.

Staff mailed out two (2) 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 one (1) phone call in support and zero (0) responses in opposition of this Appeal.

Natural Resources

The subject property is relatively flat with little to no change in elevation. The property contains a few mature trees throughout. The property is not located within a floodplain and contains no other known environmental hazards or features.

Roads & Utilities

The property has existing frontage and driveway access to the south onto NW 158th Avenue. NW 158th Avenue is a paved, two-lane rural cross-section minor collector roadway maintained by Polk County. Water service provision is unknown, but would not be impacted by this proposal. Current available mapping shows there is a three-inch (3") rural water line located on the opposite, south side of NW 158th Avenue, which is operated by Des Moines Water Works. Wastewater treatment is currently provided by an onsite septic system of which there is no record.

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 residence was originally constructed over 100 years ago prior to zoning and setback requirements. Absent the attached deck, the residence itself has a legal, nonconforming front setback at less than the required 50 feet. The Polk County Zoning Ordinance allows uncovered porches and decks to encroach up to five (5) feet into the front setback without needing a variance. However, due to the age of the dwelling and its construction prior to setback requirements the property cannot take advantage of this allowance, and any addition to the front of the residence requires a setback variance.

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. The property and zoning allows one (1) single-family residence and attachments/accessory structures.

3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. There is only one (1) residence in the area, and it is located over 500 feet away and on the opposite side of the road. Approval of this request will have no visual impact on adjacent properties.

4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. While the appellants constructed the attached deck with approvals and permits

from Polk County, the existing nonconforming setback of the dwelling was established prior to zoning requirements and prior to the appellants owning the property.

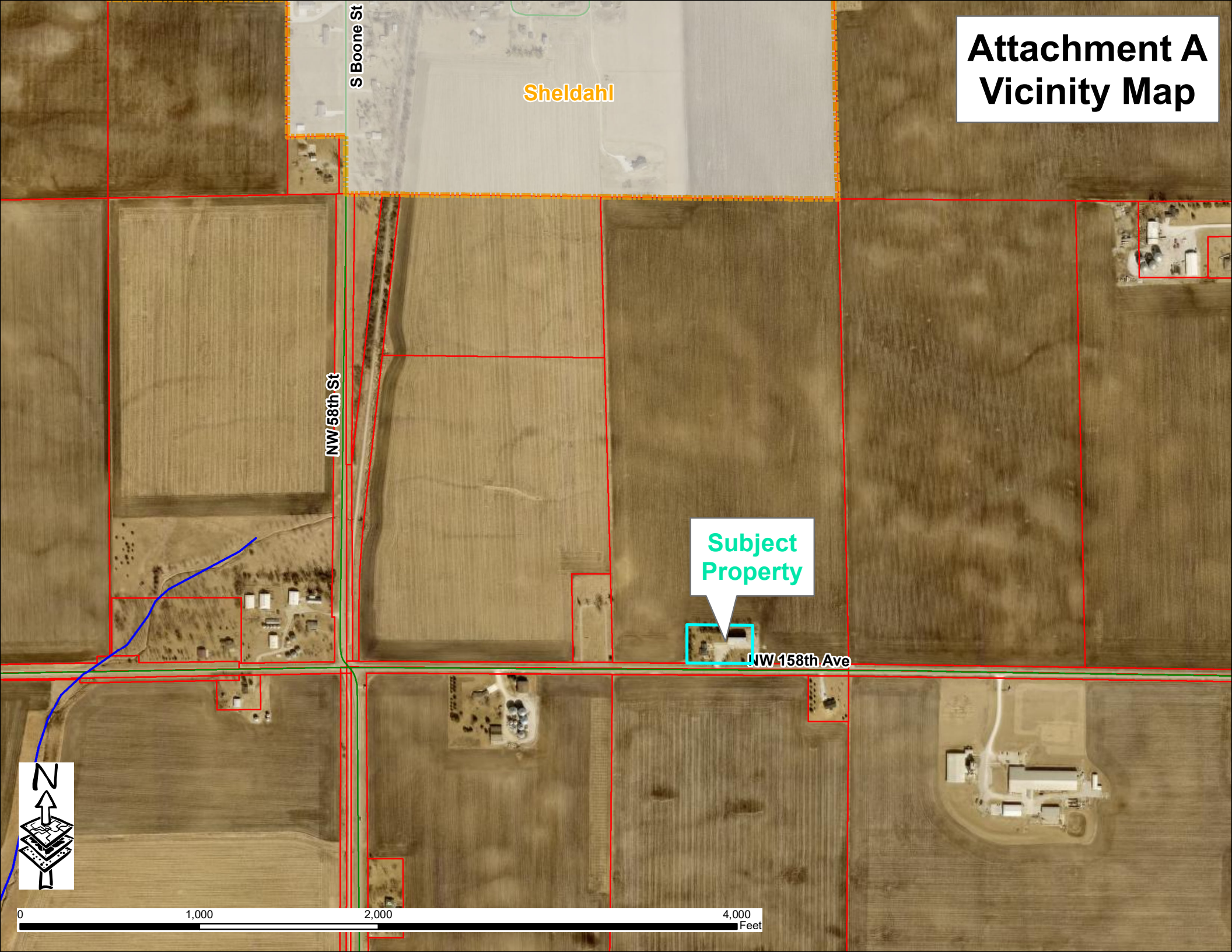
5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No such provisions will be impacted by this variance request.

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, subject to the following condition:

1. The appellants are required to obtain a retroactive Building Permit and receive inspections from Polk County Public Works for the existing deck. They are furthermore required to make any changes to the deck to meet Code as determined by the Polk County Building Inspector(s) and Building Official.

Attachment A
Vicinity Map



Attachment B