

**Appeal:** The Appellants requests a Variance of two-feet six-inches (2'6") to allow a previously constructed covered deck that is attached to the principal residence to remain with a five-foot six-inch (5'6") setback from the side (northern) property line, in lieu of the required eight (8) foot side yard setback for a principal residence in the "MDR" Medium Density Residential District.

**Appeal Given:** "We request the variance appeal because we though the deck on the North side of our house could be 5-feet from the lot line and discovered later it was supposed to be 8-feet. It is approximately 5 ½ feet from the lot line. Our neighbors, Wilbur and Sheryl Van Houten, are aware of the situation and do not have any objections as the deck does not sit on their property at all. We feel the roof on the deck turned out very nice and it is an asset to the neighborhood."

### **Background**

The subject property is located at 4310 NW 11<sup>th</sup> Court, Des Moines, and is legally described as Lot 3, Raintree Heights, which is located in Section 22, Saylor Township. The subject property is 9,666 square feet in area (0.222 acres) and contains a single-family residential dwelling, and two (2) detached accessory structures (one garage, and one carport).

The subject property is zoned "MDR" Medium Density Residential District, as are the surrounding properties. The subject property is located approximately 375 feet east and 730 feet north of separate sections of the corporate boundary of the City of Des Moines. The area is residential in nature, with a majority of properties containing single-family residential structures. See *Attachment A* at the end of this report for an aerial vicinity map of the subject property and surrounding area.

The subject property is located approximately 710-feet north of the intersection of Aurora Avenue and NW 11<sup>th</sup> Court. The residence on the subject property was constructed in 1961 according to Polk County Assessors records, with several home additions and detached structure permits being issued by Polk County since the original construction of the home. At the time of the construction of the residence, the property was located in a zoning district known as "R-3: Multiple Family Residential", and as a single-family structure would have been subject to the same 8-foot side yard setback of the current Ordinance.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Table 6.1 Table of Single-Family Bulk Standards* establishes a side yard setback of eight (8) feet from a principal structure to the property line. The applicant states as a part of their appeal that they assumed the a deck would have the same side-yard setback as an accessory structure, which is five (5) feet if the accessory structure has a floor area of less than 720 square feet. The applicants did not complete an application for a building permit prior to the construction of the subject covered deck.

The covered deck on the property extends 10-feet from the main portion of the home, and is 12-feet wide. The deck has a roof, but is not enclosed. In order for the deck to remain as built, a two-foot six-inch (2'6") variance will be required to allow the deck and cover to encroach into the required 8-foot side yard setback. See *Attachment B* for a copy of the submitted site plan.

Staff mailed out twenty-two (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 three (3) responses in support of the request, and no responses in opposition. Included in the responses of support is a letter from the adjacent property owner to the north, who's property is most affected by the proposed variance. That letter is included as *Attachment C*.

### **Natural Resources**

The subject property is not located within a mapped floodplain. The site features a slight slope in the front yard, with the house sitting approximately five (5) feet higher than the street, and a steeper slope in the north-side yard, with the subject property sitting approximately three (3) feet higher than the adjacent property to the north.

### **Roads & Utilities**

The subject property has 70 feet of frontage along NW 11<sup>th</sup> Court, and takes access from a single driveway near the southern property line. Access and visibility from the roadway will not change with this proposed variance. The home is connected to a Polk County sanitary sewer line that is located in the right-of-way of NW 11<sup>th</sup> Court. There is an 6-inch Des Moines Water Works water main running adjacent to the subject property, and is also located in the right-of-way of NW 11<sup>th</sup> Court.

### **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 door on the north side of the home sits approximately two-feet off the ground, and due to the slope of the side yard away from the house, a deck would be a requirement for the door to be accessible. The roof over the deck and the increased area of the wider projection increases the usability of the deck for the occupants of the home. The adjacent property to the north is minimally affected due to the subject deck being nearest to the driveway of the neighboring property, and the neighboring property having a lower elevation than the subject property.
- 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 residential use of the property is an allowable use in the "MDR" district, and the covered deck which is attached to the home would be allowed if it met all setback requirements.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
Yes. The proposed home addition will be located in the side of the existing house, and will have minimal impact upon adjacent property owners or those passing by the home. The property owners most directly impacted by the home addition, the owners of 4346 NW 11<sup>th</sup> Court, submitted a letter of support of the proposed variance.

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

Yes. The applicants constructed the deck and roofed projecting to access the side entrance to their home. If a building permit were submitted, staff would have informed the property owner of setback requirements. The property owners stated they assumed the setback requirements for a deck were the same as a detached accessory structure, and adhered to the setback requirements they assumed to be correct.

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. It does not appear that any environmentally sensitive areas will be impacted by this proposal.

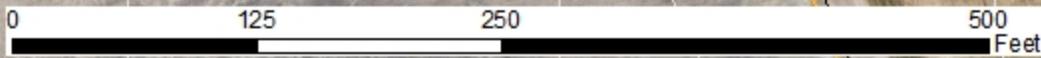
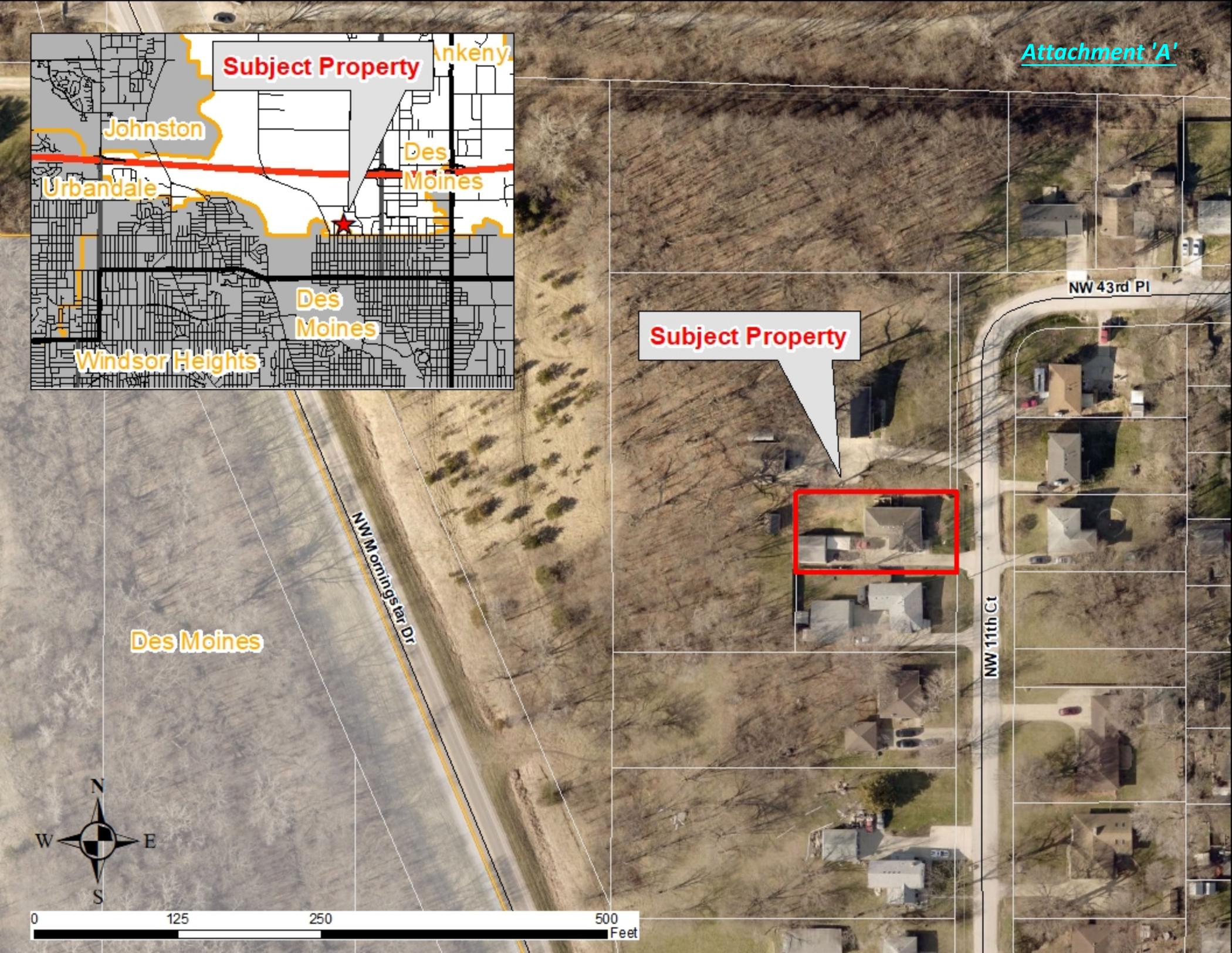
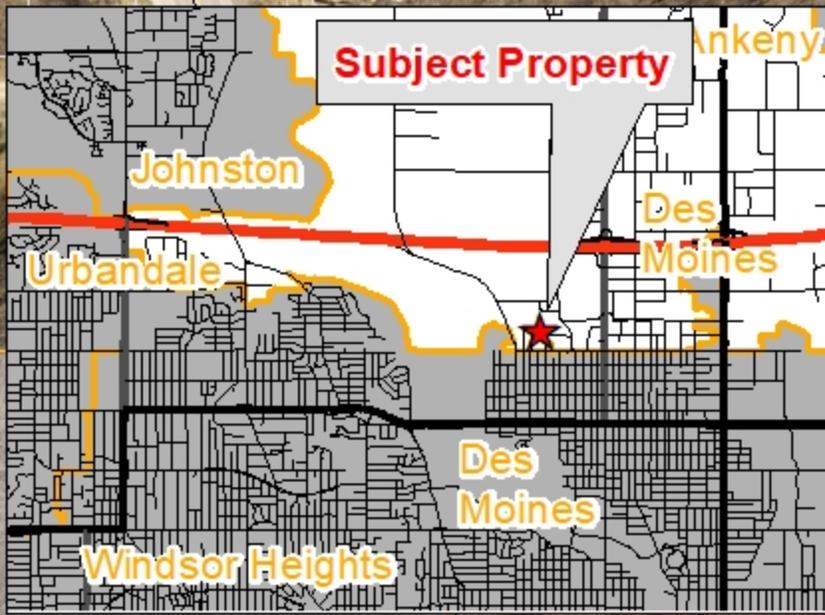
The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance.

**Attachments:**

**Attachment A:** Aerial/Vicinity Map

**Attachment B:** Site Plan

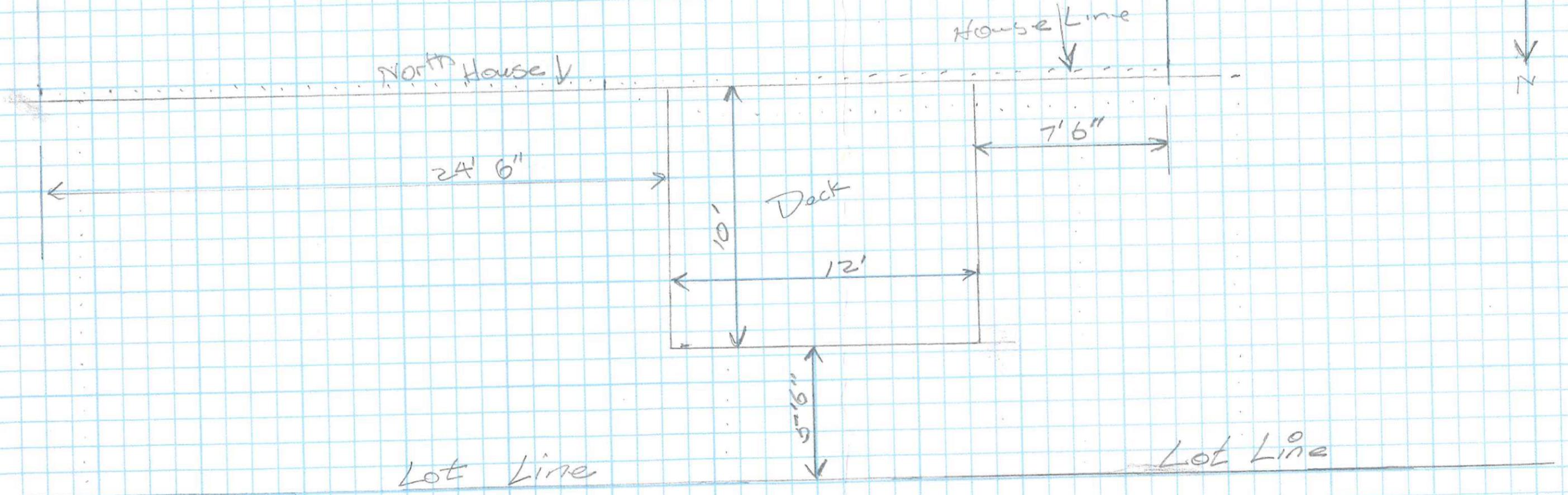
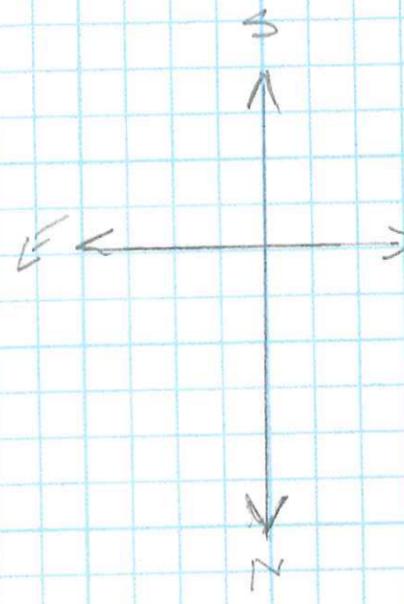
**Attachment C:** Letter of Support from Wilbur and Sheryl Van Houten



Attachment 'B'  
House Front

$\frac{1}{4}'' = 1'$

Back House



Property owned by  
Wilbur F Van Houten + Sherie A Van Houten

Attachment 'C'

Wilbur & Sheryl Van Houten  
4346 NW 11th Ct  
Des Moines, IA 50313

August 23, 2021

Polk County Public Works  
Planning Division  
5885 NE 14th St  
Des Moines, IA 50313

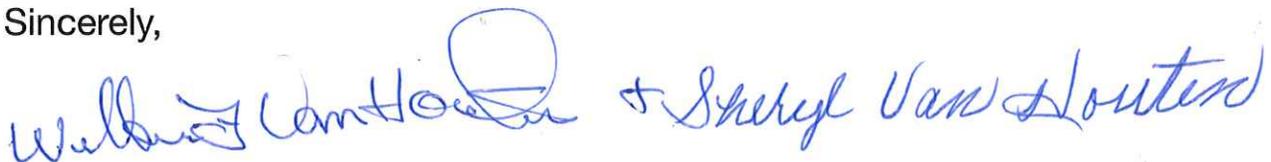
Dear Polk Count Public Works,

This letter is in regards to the Variance Appeal Application for William and Martha Watson. Our property is located at 4346 NW 11th Ct next door to the North of Watson's @ 4310 NW 11th Ct in Saylor township. We understand the deck off the North side of the Watson's house is only set back 5'6" from the property line and not the required 8' variance. We are writing to let you know we are fine with the location of the deck on the North side of their property. We feel the deck is an asset to their property and our neighborhood.

If you have any questions you can reach us at 515-240-3134 (Wilbur) or 515-314-4960 (Sheryl).

Thank you for your time in this matter.

Sincerely,



Wilbur & Sheryl Van Houten