



PLANNING AND ZONING Cerro Gordo County Courthouse

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VARIANCE STAFF REPORT

SUMMARY OF REQUEST

Case No.: 22-18

Hearing Date: September 27, 2022

Staff Contact: John Robbins, Planning and Zoning Administrator

Applicant

Oakwood Park Water Association
735 190th Street
Britt, IA 50423

Owner

Robert & Janice Purcell
5253 Lakeview Drive
Clear Lake, IA 50428

Property Address: 5257 Lakeview Drive

Brief Legal Description: Parcel F within Lot 4, Block 23, Oakwood Park

Zoning: R-3 Single Family Residential

Background

The Oakwood Park Water Association (Association) operates a public water supply well, permitted with the Iowa DNR, on the subject property that supplies potable water to 33 homes in the Oakwood Park subdivision (See Figure 1). The well house and well sit on the Purcell's property on the adjacent parcel (Lot 4) to the south of their home (See Figure 2). The Association holds an easement on Lot 4 for the location of the well house.

The Association wishes to ensure that water service to all applicable properties remains uninterrupted well into the future. It is staff's understanding that the current easement on the Purcell property is not a permanent easement that runs with the land, so there is concern for guaranteed water service into the future in the event of a change of ownership of the property. As a result, the Association proposes to take ownership of the proposed Parcel F, containing the well and wellhouse, to eliminate all potential legal impediments and guarantee future water service to all applicable properties.

The existing well house was issued a Zoning Permit on August 7, 2003 and constructed shortly thereafter. The well house was permitted with what was supposed to be a 3' rear yard setback. However, the well house was constructed within the required 3' rear yard for a detached accessory building and 0.8' within the alley right-of-way easement running behind the property in error—not as permitted at the time (See Figures 2 & 3). The Association is in the process of entering into agreement with Cerro Gordo County regarding the encroachment within the alley right-of-way.

VARIANCE REQUEST*		
Structure	Request(s)	Requirement(s)
Parcel F	Lot area of 658 square feet	Minimum lot size of 5,000 square feet (Art. 11.1)
Well house	0' rear yard setback 1'-7" northwest side setback	3' rear yard setback for detached accessory buildings (6.9-A) 6' side yard setback (11.6-B)

*See Figures 1 & 3-6

FINDINGS OF FACT

1. Robert and Janice Purcell are the owners of the subject property.
2. The Oakwood Park Water Association is the applicant for the proposed Parcel F and requested setback variances. The association intends to purchase the proposed Parcel F from the Purcells if approved.
3. The property is zoned R-3 Single Family Residential.
4. The proposed Parcel F is 658 square feet in area. The existing well house runs over the existing rear lot line into the adjacent public alley right-of-way easement and is 1'-7" from the proposed northwest side lot line of the proposed Parcel F.
5. A minimum lot size of 5,000 square feet is required in the R-3 District. A 3' rear yard setback is required for detached accessory structures in residential districts. A 6' side yard setback is required in the R-3 District.
6. The application was filed on August 30, 2022 with the Planning and Zoning Office.

ANALYSIS

The Board of Adjustment is provided the power to grant variance under Section 24.4(A)(3) of the Zoning Ordinance. The Board may grant variance from the provisions of the ordinance where, in its judgement, a literal enforcement of the rules will result in an unnecessary hardship as established by the standards in Section 24.4(A)(3). In its review, the Board may attach certain conditions to any variance 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 variance.

Discussion of Standards of Review

The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone.

The well house is an accessory utility use to 33 lots within the Oakwood Park subdivision, providing potable water to properties as required for dwellings under Cerro Gordo County's health ordinances. This is an essential service that protects the health and safety of the neighborhood's residents. Any significant interruption of service to these properties for an extended period of time could potentially present a concern as a result.

The well house has existed onsite since 2003. The Association holds a construction easement for the well house location. It is staff's understanding that this easement is not perpetual nor runs with the land. If there is ever a dispute over this easement in the future with a future property owner, water service to properties being served by the well could be threatened for an extended period of time.

Staff has no ability to speculate on the nature or result of any potential future legal issues over the location of the well house. However, it is clear that having the Association own the land on which the well house sits would be beneficial to all properties served. Any potential future issues with water service would strip not just this property of reasonable use but all properties served by the well.

Affected property owners would have the option to drill their own private wells off of the public water supply in the future. However, this is how potable water is currently accessed for these properties. By having the Association take ownership of the well house land, reasonable use of 33 properties will be ensured for the life of the well.

The standard appears to be met.

The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself.

The requested variances relate entirely to the well house location and nature of the easement that the Association holds. It is specific to the water service by the public well that is serving area properties and not the general conditions of the neighborhood. The standard appears to be met.

The use to be authorized by the variance will not alter the essential character of the locality.

The requested variances relate entirely to an existing use, which is a permitted accessory use in the R-3 Single Family Residential District. Wells and well houses are a common occurrence through Oakwood Park, such as the Grandview neighborhood well house mentioned in the application. The standard appears to be met.

Discussion of Potential Impacts to Immediate Area

Approval of the requested variances will effectively allow for the Association to fully take ownership of the land (proposed Parcel F) on which the well house sits on Lot 4. Dan Ries, Senior Environment Health Specialist with CG Public Health, states that he sees no negative impact to the neighborhood as a result of the requested variances.

Carl Berg, Senior Environmental Specialist with the Iowa DNR, states that the Association is required to have legal control of land 200' around the public water supply. While they are not required to own the land, ownership only further helps to meet that requirement.

Ownership of the land will improve the status of the well significantly into the future. However, at the end of the life of the well, the Association will have to address the drilling of a new well or other solution at that time. The existing well should last for many decades and will ensure protection of water service for the foreseeable future.

The well encroaches 0.8' into the public alley right-of-way behind the property. This must be addressed due to the well not being originally constructed as permitted in 2003, which should have been 3' from the rear lot line of the existing lot. Forced removal of the wellhouse is not an ideal solution and could potentially create stoppage of service for an extended period of time.

The Association is currently working with Cerro Gordo County to develop an encroachment agreement to address the matter. This should be made a condition of any approval.

Splitting the proposed Parcel F will not create any non-conformities under the Zoning Ordinance for the remaining portion of Lot 4 that will remain owned by the Purcells.

Staff Conclusions and Recommendation

It will be beneficial to the applicable 33 properties for the Association to take ownership of the land on which the well house and well sits. While there are no current hardships, the nature of the current easement risks the reasonable use of the properties served by the well in the event of a dispute with a future owner of the property, which would be prevented with direct ownership by the Association.

It appears that all standards of review are met. Staff recommends approval of all variances as requested.

BOARD DECISION

The Board of Adjustment may consider the following alternatives:

Alternatives

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

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 variance as requested by the Oakwood Park Water Association, subject to the following conditions:
 1. The Oakwood Park Water Association shall enter into agreement as necessary with the Cerro Gordo County regarding the well house encroachment and meet all requirements of the County Engineer's Office.

Provided motion of denial:

- I move to adopt the staff report as the Board's findings and to deny the variance as requested by the Oakwood Park Water Association for the following reasons:
[STATE REASONS FOR DENIAL]

EXHIBITS

- Exhibit 1: Figures
- Exhibit 2: Variance Application
- Exhibit 3: Application exhibits
- Exhibit 4: Site plan
- Exhibit 5: Aerial photo of site

Figure 1
Looking at the proposed Parcel F



September 15, 2022, J. Robbins

Figure 2
Looking at the Purcell's home, current owners of Lot 4



September 15, 2022, J. Robbins

Figure 3

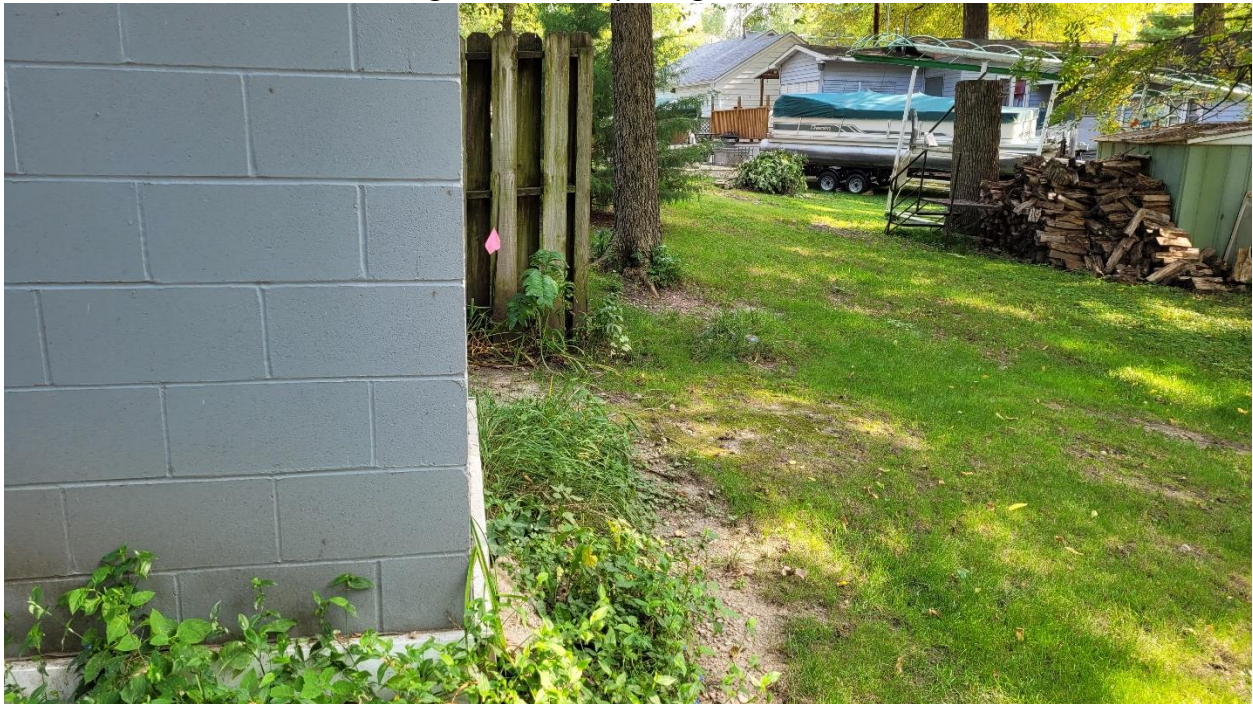
Looking southeasterly along the public alley right-of-way



September 15, 2022, J. Robbins

Figure 4

Looking southeasterly along the rear lot line



September 15, 2022, J. Robbins

Figure 5

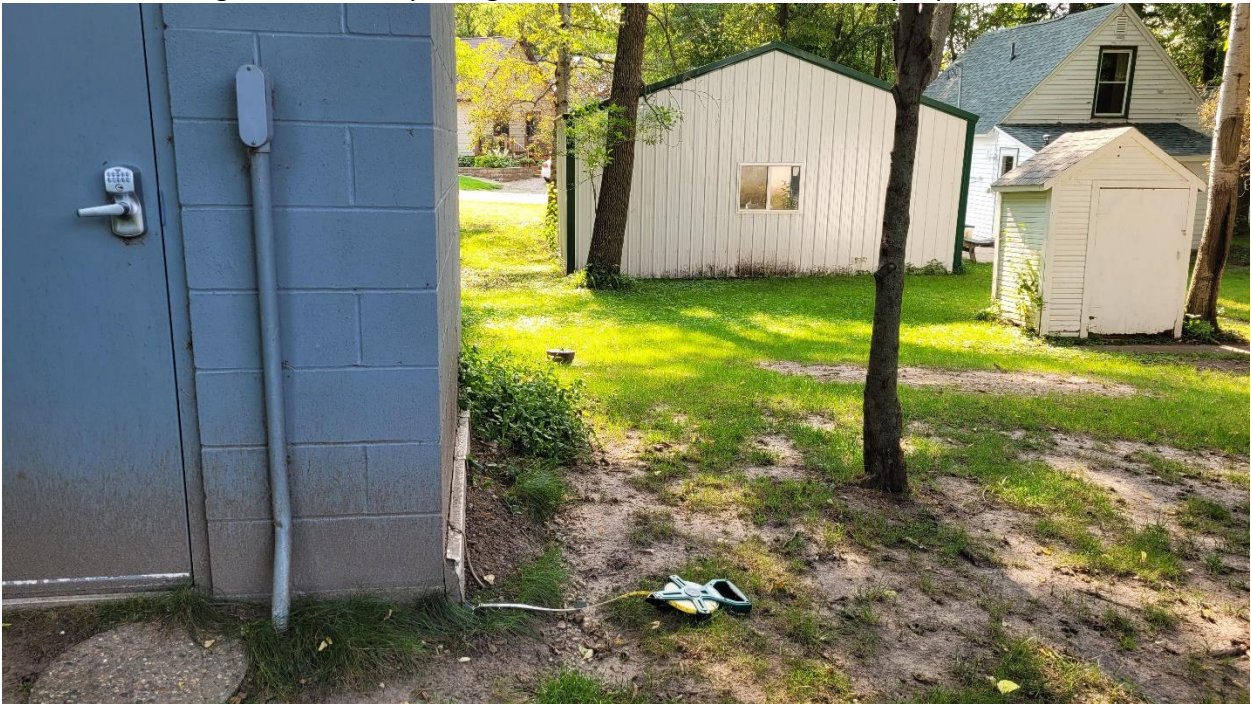
Looking northeasterly along the northwest side lot line of proposed Parcel F



September 15, 2022, J. Robbins

Figure 6

Looking southwesterly along the northwest side lot line of proposed Parcel F



September 15, 2022, J. Robbins

VARIANCE APPEAL

APPLICATION

Date Filed 8/30/22 Date Set for Hearing 9/27/22 Case Number: 22-18

Applicant Name: Oakwood Park Water Association Phone: 319-750-2041 E-Mail: owpa50428@gmail.com

Mailing Address: 735 190th Street, Britt, IA 50423

Property Owner Name: Robert + Janice Purcell Phone: 641-425-6776 E-Mail: rgjc.purcell@gmail.com

Property Owner Address: 5253 Lakeview Dr, Clear Lake, IA 50428

Property Description (Not to be used on legal documents): Parcel # 052331961000 Township Clear Lake

Property Address: 5257 Lakeview Dr, Clear Lake, IA 50428 Zoning: R-3 Residential

Brief Legal Description: Lot (4) part, Block twenty-three (23), in Oakwood Park, Cass County Iowa

Project Description Separation and transfer of Proposed Parcel F from Lot 4 in Block 23, Oakwood Park Decision Date: August 23, 2022

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

See attached Exhibit A

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

See attached Exhibit B

I am the [] Owner [] Contract Purchaser [X] Other (Explain) President of Oakwood Park Water Association 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 John B Johnson

Date August 25 2022

EXHIBIT A

Oakwood Park Water Association (“OPWA”) is seeking a variance for the determination that proposed Parcel F, which is currently part of Lot Four (4), Block twenty-three (23) in Oakwood Park, Cerro Gordo County, Iowa, does not meet the three requirements of the Cerro Gordo County Zoning Ordinances, and therefore the Platt of Survey for the proposed parcel split was rejected. OPWA seeks a variance for all three determinations found immediately below. A complete copy of the determination is found in the remaining pages of Exhibit A.

However, the proposed “Parcel F” will not meet the following requirements of the Cerro Gordo County Zoning Ordinance:

1. The total area of the proposed parcel is 658 square feet. The minimum size of a lot in the R-3 District is 5,000 square feet.
2. The wellhouse runs over the rear lot line of the proposed parcel into the alley public right-of-way easement behind the lot. Article 6.9 requires a 3’ rear yard setback for accessory buildings in residential districts.
3. The wellhouse is 1’-7” inches from the northwest side lot line of the proposed parcel. A 6’ side yard setback is required in the R-3 District.

EXHIBIT B

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone.

This variance is necessary to avoid the decrease in value resulting from the inability to transfer a part of Lot 4, Block 23, in Oakwood Park, Cerro Gordo County, Iowa ("Lot 4") to Parcel F and to ensure an uninterrupted supply of potable water to the parcel at issue, as well as to 33 surrounding homes. The application of the regulation in question to this property greatly decreases its value for any permitted use and its application bears so little relationship to the purposes of zoning that the regulation is in effect confiscatory, arbitrary, capricious, and constitutes an unnecessary, unwarranted, and unjust invasion of, and interference with, a fundamental right of property.

Cerro Gordo County Ordinance #23(2.24) provides that the area from Dogwood Avenue on the west, to Raven Avenue on the east, and from Highway 18/122/265th street on the north, to 220th Street on the south, has a known arsenic contamination and provides special requirements for wells in this area. Lot 4 falls within Ordinance 23. Located on the parcel at issue is a well which is 265 feet deep, which does not contain arsenic, and a pump house. These two improvements are owned by Oakwood Park Water Association ("OPWA") and currently serve 33 homes surrounding Lot 4. OPWA has an easement for these improvements and the use of water from Parcel 4 which has been recorded as Document #2003-8674. OPWA performs a daily test to ensure sufficient chlorine is added to the water from this well as a safeguard to its potability.

Several parts of OPWA's waterlines are located on private property. OPWA is working to ensure that its ability to transfer water through private property is not interrupted. At this point, OPWA believes the best way to ensure an uninterrupted supply of water is through appurtenant easements because this type of easement will automatically pass to future owners. *See McKeon v. Brammer*, 29 N.W.2d 518 (Iowa). However, appurtenant easements require a dominant and servient estate. Separating Parcel F from Parcel 4 (which the current owners have agreed to transfer to OPWA) would confirm OPWA's ability to obtain appurtenant easement to ensure all 33 homes currently served by water OPWA obtains from the well locate on Lot 4. This use is essentially to the value of Lot 4 vis-à-vis OPWA.

If Parcel F cannot be split from Lot 4 and transferred to OPWA, then any potential buyer of Lot 4 would have to consider its obligation to serve the need for potable water of 33 homeowners along with all other obligations that flow from the easement recorded as Document #2003-8674. In addition, OPWA would not be able to rely on Parcel F (well is to be transferred to OPWA if this variance is granted) as a basis for appurtenant easements for its water lines.

Thus, the location of this well and pump house on Parcel 4, and these improvements' proximity to the Lot 4 property line, greatly decrease its value as a lot for building of a single-family home and its use as a source of water for OPWA. Separating Parcel F from Lot 4 to allow Parcel F to be transferred to OPWA, and approving the location of improvements, would remove the qualities of Parcel 4 which negatively affect its value as use for a residence and at the

same time maximize the value of Parcel F for use by OPWA. The current zoning ordinances which prevent separating Parcel F from Lot 4, and restriction of the location of OPWA's well and pump house, do the opposite that those ordinances intended, they decrease the value of Lot 4 and its ability to be used for residential purposes and at the same time for use as a source of potable water. Issuing a variance in this case would resolve this issue and restore the value of Lot 4.

- 2. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself.**

Lot 4 is unique in that a well which is free of arsenic and a pump house able to serve the potable water needs of over 30 households is located on the property and these improvements have been serving several neighbors for years. It is unlikely that another similar well could be dug which is arsenic free as Lot 4 is in the a know arsenic contamination as referenced by Ordinance 23. Further, the need to remove improvements located near the property line of Lot 4 is also not workable. This work would require water to be shut off to 33 homes for an extended period which would be further aggravated by the current supply change disruptions resulting from the Covid-19 pandemic. Granting a variance for separation of Parcel F and for the location of improvements will remove this plight.

- 3. The use to be authorized by variance will not alter the essential character of the locality.**

The essential character of the locality will be unchanged by authorization of this variance. Private wells and well houses have been a part of residential properties on the south side of Clear Lake for decades. For example, OPWA has been supplying water to homes for over 75 years. Prior to obtaining water from the well located at Lot 4, OPWA obtained water from a lot located at 15204 Linden Street which was 64 square feet (parcel 052337700700). However, water from this well began to contain arsenic, so OPWA moved to using the well located in Lot 4.

Separately, Grandview Point Water System owns a well and pump house two blocks west of Parcel 4. Grandview Point Water System's improvements are located on a 392 square foot lot on parcel number 052331500800. This lot was split from parcel 052331500700 which now measures 4,574 square feet. Moreover, each property in the neighborhood that does not obtain water from a shared well either has a well on their own property or shares a well with one to several neighbors. Thus, the essential character of the locality will be unchanged by authorization of this variance.

- 4. Potential impacts to neighbors in the general area around the property.**

Granting this variance will not result in any encroachments to neighbors, dust, drainage issues, glare, traffic, odor, noise, safety, or other potential impacts. It will simply support the continued supply of potable water to 33 homes on the south side of Clear Lake. Indeed, the well and pump house at issue have been in their present location for nearly a decade with no complaints.

However, if OPWA's ability to supply water to the current 33 residences is compromised these 33 homeowners would each have to dig their own well at a cost of over \$500,000 (\$15,000 to \$18,000 per well).

INDEX LEGEND

LOCATION

PARCEL 'F' BEING PART OF
LOT 4 BLOCK 23 OAKWOOD PARK,
CERRO GORDO COUNTY, IOWA

PROPRIETOR

ROBERT G. PURCELL
JANICE C. PURCELL

SURVEY REQUESTED BY

JOHN JOHNSON

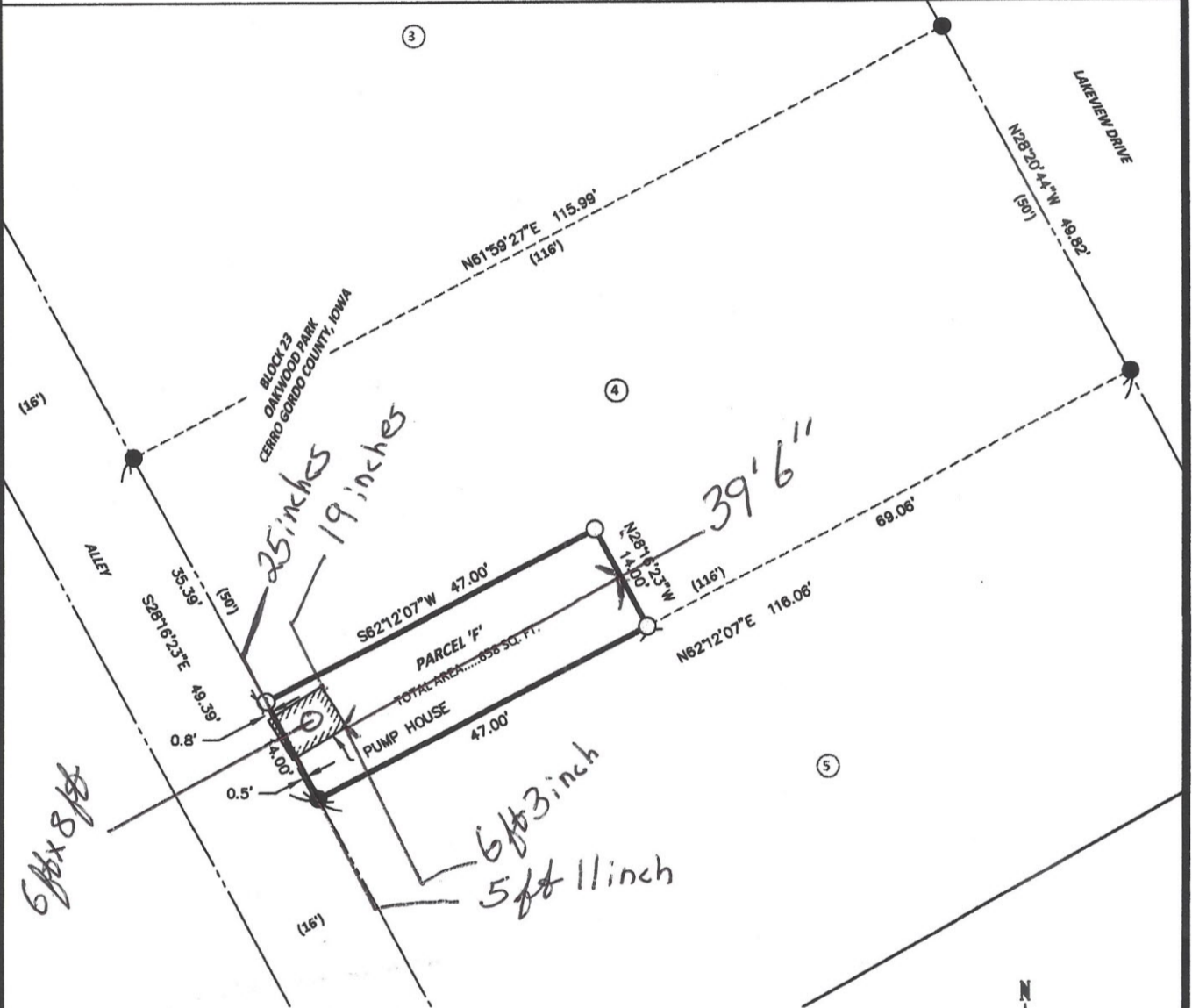
SURVEYOR COMPANY

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

PLAT OF SURVEY



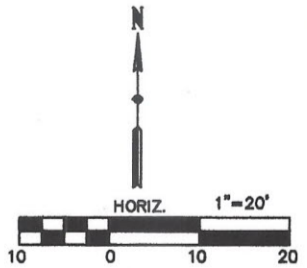
DESCRIPTION

A PARCEL OF LAND DESIGNATED AS PARCEL 'F' BEING PART OF LOT FOUR (4) BLOCK TWENTY-THREE (23) IN OAKWOOD PARK, CERRO GORDO COUNTY, IOWA MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE SOUTHERLY FOURTEEN (14) FEET OF THE WESTERLY FORTY-SEVEN (47) FEET OF SAID LOT FOUR (4). SAID PARCEL 'F' CONTAINS 656 SQUARE FEET, AND IS SUBJECT TO ANY EASEMENTS WRITTEN OR OTHERWISE.

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 3/4" PIPE W/ YPC 3862 MONUMENT UNLESS NOTED
- ▲ FOUND SECTION CORNER AS NOTED (65) LOT NUMBER
- X CUT 'X' (0.00') RECORD MEASUREMENT

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.#2017-3408,
DOC.#9909695, DOC.#0101484
DEED: DOC.#2012-3752



DATE SURVEYED	8-5-22
SCALE:	AS SHOWN
PROJECT NO.:	22283
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

8-9-22
Date

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

**STARK
SURVEYING
INC.**



23

LAKEVIEW DR