



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

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**SPECIAL EXCEPTION STAFF REPORT**

**SUMMARY OF REQUEST**

**Case No.:** 22-22

**Hearing Date:** November 29, 2022

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

**Applicant**

DeWilliams Property Management  
10668 263<sup>rd</sup> Street  
Clear Lake, IA 50428

**Owner**

Same, also Sandra & David Devries  
208 N Lindon  
Joice, IA 50446

**Property Address:** 5168 Southshore Drive

**Brief Legal Description:** Lot 9, Block 4, Crane and Hills

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

**Background**

The original hearing for this request was on October 25, 2022. No representative was in attendance for the case. As a result, the Board tabled the request.

The applicant proposes to construct a 17'x12' deck on the north side of the house (rear side) and a 6'x8' deck on the south side of the house (front side) that will replace the existing entrance into the house (See Figures 1 & 2). The rear deck will act as a typical outdoor gathering space at the top level of the house (See Figure 1). The front deck, along with a replace gable roofline and awning will repair and replace the dilapidated entrance into the house (See Figure 2).

| SPECIAL EXCEPTION REQUEST* |                           |   |
|----------------------------|---------------------------|---|
| Structure                  | Request(s)                | Requirement(s)  |
| North side deck            | 3' west side yard setback | 6' side yard setback (11.6-B)                           |
| South side deck            | 9' front yard setback     | 15.1' front yard setback, due to setback average (6.11) |

\*See Figures 3-6

## FINDINGS OF FACT

1. DeWilliams Properties, LLC and Sandra and David Devries are the owners of the subject property.
2. DeWilliams Properties, LLC are applying on behalf of all owners of the property.
3. The property is zoned R-3 Single Family Residential
4. The proposed north side deck is 3' from the west side lot line. The proposed south side deck is 9' from the front lot line.
5. A 6' side yard setback is required in the R-3 District. A 15.1' front yard setback is required, per the average of front yard setbacks of buildings within 200'.
6. The application was filed on September 15, 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 existing house was constructed 1' from the west side lot line. The applicant had the option to request a special exception for an existing non-conforming setback under Article 6.2 of the Zoning Ordinance (a provision when a legally non-conforming building setback for an existing structure is closer than 50 percent of an applicable existing building setback) but considered encroachment concerns from staff so as not to exacerbate an extremely close setback along the west side lot line. Additionally, the lot was only platted at 30' wide, so almost any improvements to the property would require a variance or special exception to be completed.

The proposed north deck (rear) is 3' from the west side lot line. A 6' side yard setback is required in the R-3 District (See Figures 3 & 4). This is less than fifty percent (50%) of the requirement.

The existing house was constructed closer than most houses within the block. The existing entrance to the front entrance is in rough condition and in need of repair or replacement (See Figure 2). As a result, some sort of improvement and maintenance is necessary as a matter of safety and aesthetics. Due to the close proximity that the existing house was constructed to Southshore Drive, no reconstruction of any portion of the front entrance could be replaced without some sort of variance or special exception.

The proposed south deck (front) is 9' from the front lot line (See Figures 5 & 6). A 15.1' front yard setback is required, per the average of front yard setbacks within 200' in the block. This is less than fifty percent (50%) of the requirement.

Due to the width of the lot and positioning of the house—not to mention safety hazard the current condition that the front entrance is—staff believes this request has a borderline hardship. 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.***

The deck is considered as a part of the dwelling, which 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 discussed, the practical difficulty is due to the lot size and location of the existing house. These improvements would not be able to be completed without a special exception or variance otherwise. 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.***

Maintenance and/or replacement of the front entrance is necessary from a safety and aesthetic standpoint. The proposed south deck (front) to repair the entrance is clearly a reasonable request.

Regarding the north deck (rear), the applicant voluntarily requested a lesser setback from the west side lot line than they could have otherwise requested, which can be requested under Article 6.2 of the Zoning Ordinance for existing legally non-conforming buildings regarding setbacks. The applicant considered concerns expressed in conversations by staff due to the close 1' setback encroachment of the existing house to the west side lot line. The standard appears to be met.

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

The request is limited to the location of the existing house. The front entrance needs replacement due to the dilapidated condition as well. The standard appears to be met.

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

Decks and entryways are a common feature in residential neighborhoods. The standard appears to be met.

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

Typically, the biggest concern with this type of request is the encroachment of buildings to neighboring properties. However, there are no foreseeable negative impacts due to the proposed addition.

### **Staff Conclusions and Recommendation**

All six of the standards appear to be met. Staff recommends approval of the request.

## **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 DeWilliams Properties, LLC, 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.

### **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 DeWilliams Properties, LLC for the following reasons:  
[STATE REASONS FOR DENIAL]

## **EXHIBITS**

- Exhibit 1: Figures
- Exhibit 2: Special Exception Application
- Exhibit 3: Site plan
- Exhibit 4: Aerial photo of site

**Figure 1**

Looking at the proposed location for the north side (rear) deck



Spring 2021, Pictometry Aerial Imagery

**Figure 2**

Looking at the proposed location for the south side (front) deck



September 29, 2022, J. Robbins

**Figure 3**

Looking north along the west side lot line



September 29, 2022, J. Robbins

**Figure 4**

Looking south along the west side lot line



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**Figure 5**  
Looking west along the front lot line



September 29, 2022, J. Robbins

**Figure 6**  
Looking east along the front lot line



September 29, 2022, J. Robbins

SPECIAL EXCEPTION APPEAL

APPLICATION

Date Filed 09/15/22

Date Set for Hearing 10/25/22

Case Number: 22-22

Applicant Name: Cody Williams Phone: 641-243-9300 E-Mail: codywilliams0623@gmail.com

Mailing Address: 10668 263rd St. Clear Lake IA 50428

Property Owner Name: Dewilliams Properties Phone: 641-243-9300 E-Mail: \_\_\_\_\_

Property Owner Address: 10668 263rd St Clear Lake IA 50428

Property Description (Not to be used on legal documents): Parcel # 052331800408 Township Clear Lake

Property Address: 5168 South Shore Dr. Clear Lake IA 50428 Zoning: R

Brief Legal Description: L9 BLK 4 Crane + Hills 1st ADD To Oakwood Park

Project Description

Decision Date: 08/18/2022

- Addition of Rear Deck Raised
- Replace + put New Deck on front of house to enter Home

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

See Attachment 1

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

See Attachment 1

I am the  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 09/09/2022



**SPECIAL EXCEPTION APPEAL**

**ADDITIONAL INFORMATION**

Please provide any additional details below needed to fully address the standards for review and any potential impacts to the immediate vicinity that may directly result from the special exception requested.

See Attachments 2,3,4

# Attachment 1

## STANDARDS FOR REVIEW

It is the applicant's responsibility to prove to the Board of Adjustment that the appeal meets the standards for review of the Ordinance.

### *Special Exception for Bulk Provisions*

All special exception requests for bulk provisions of the Zoning Ordinance (e.g. setbacks, frontage, height, size, dimensions, coverage area, etc.) will be reviewed under the following standards:

- 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;
  - **RESPONSE:**
    - **Front of property:** The proposed structure on the front of the property would replace the front entry of the house, which is currently supported by loose field stones and rubble. The current structure is not stable and must be replaced for safety of individuals and longevity of the house. The proposed structure would replace the enclosed vestibule with a 6'x 8' sturdy front entrance platform/deck and improved gable roofline/awning.
    - **Back of property:** The proposed structure for the back (north end) of the property would add additional outdoor living space and is requested to be set 3 foot in from the west property line. The west property line, unfortunately, aligns with the west side of the foundation of the house, however, there is a 20' foot open space between the proposed structure and the structure on the neighboring property. The proposed structure will not impede on the privacy or rights of the neighboring property owners. A maximum of 3-foot offset is required to provide space for a doorway to access the structure from the interior of the home.
- 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;
  - **RESPONSE:**
    - **Front of property:** The proposed structure for the front of the property is an updated front entry structure- 6' x 8' platform entry with a gabled overhang roof. Replacing the current dilapidated structure.
    - **Back of property:** The proposed structure for the rear of the property as a 17' x 12' foot raised deck.

# Attachment 1

- 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:
  - Topographical conditions;
  - Surroundings;
  - Size and shape of the property;
    - RESPONSE:
      - Property width
        - This property is very narrow and the original structure was built incredibly close to the property lines. With the property width of 30 feet any adaptation to the structure, such as the proposed structures, unfortunately have the challenge of close property lines. Fortunately the dwelling on the property to the west is off set significantly from the property line (attachment 3) and the property to the east would not be impacted to the north/south directionality of the proposed structures and is owned by us.
      - Property alignment
        - The frontage line of the south roadway is unavoidable. The dwelling needs an updated entry structure and unfortunately the dwelling was built within 10 feet of the frontage line.
    - Location of public utilities or improvements on or adjacent to the subject property;
    - Shoreline and bank conditions (lake lots);
    - Other extraordinary or exceptional situations.
- 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;
  - RESPONSE:
    - Front of property: The front of the dwelling cannot avoid the frontage line of the roadway. We are requesting to simply replace the current structure with something more stable.
    - Back of property: The back of the property has space available to build to the north, but the east property line is unfortunately only 1 foot from east side of the dwelling. We are requesting a 3 foot setback from the east property line.

# Attachment 1

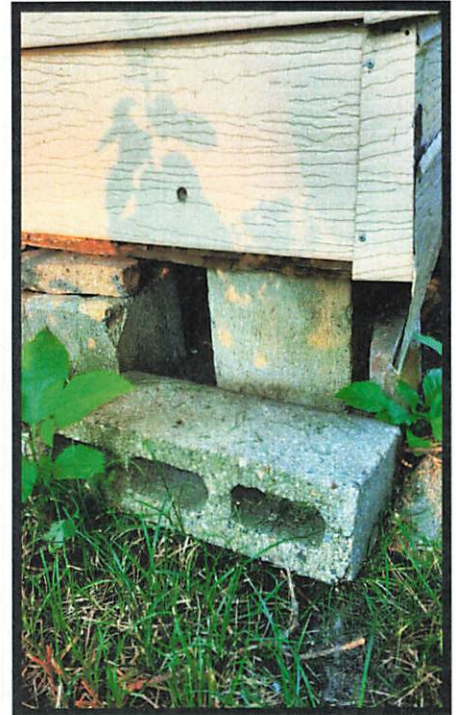
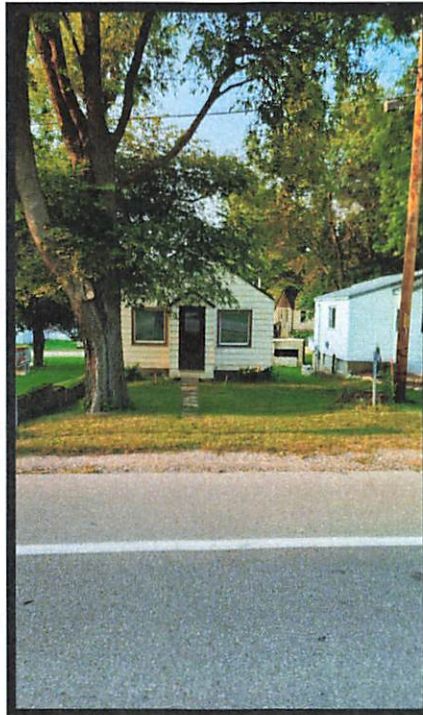
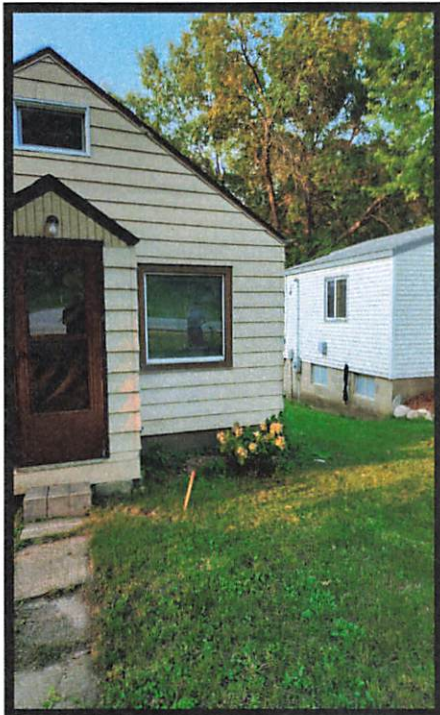
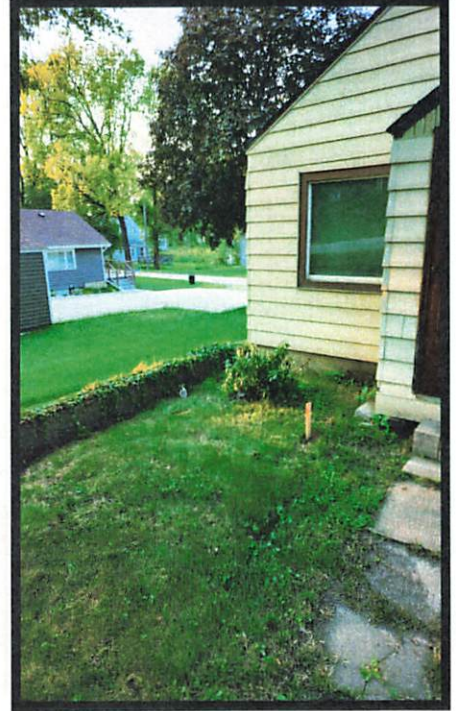
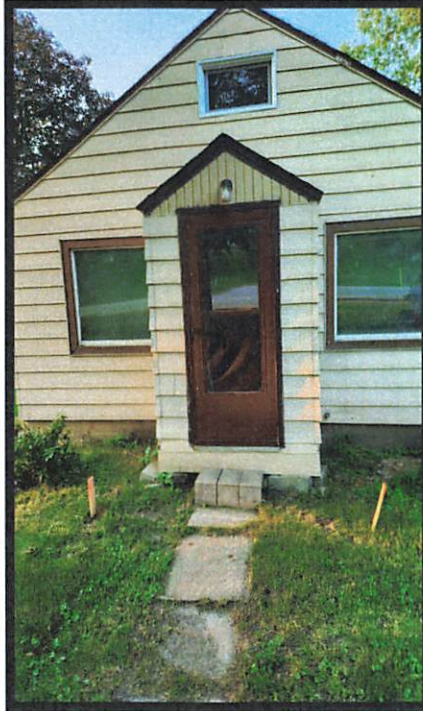
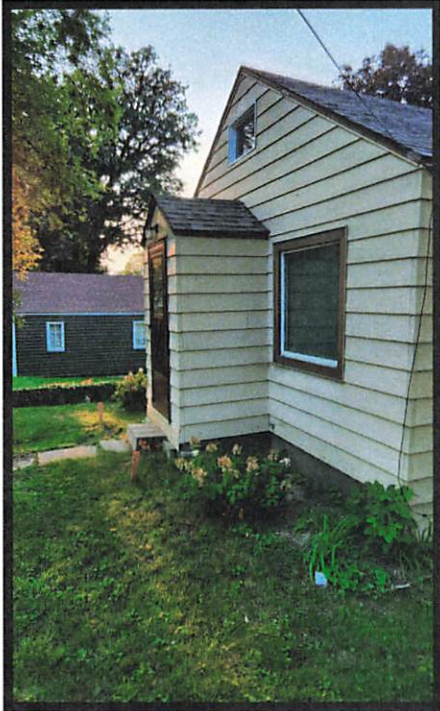
- Such practical difficulties cannot be overcome by any feasible alternative means other than an exception
  - RESPONSE:
    - Front of property: The current structure must be updated to increase the longevity of the overall dwelling. It is not built on a stable foundation and the proposed structure will be adhered to the front of the dwelling so we have very limited options on adjusting the footprint of the front entry.
    - Back of property: The rear of the property has sufficient space to add the proposed deck structure, unfortunately there is only 1 foot of space between the dwelling and the east property line. Any structure building will be a challenge to overcome with this narrow of a property.
- Relief can be granted in a manner that will not alter the essential character of the locality.
  - RESPONSE:
    - Front of property: The proposed structure of the property will only add positive alternations to the property. This structure will not only add cosmetic updates to the property, but it will also add significant safety and stability attributes to the dwelling. The proposed structure will not have any negative impacts on the property, the property of the neighbors or the character of the dwelling.
    - Back of property: The proposed structure will not have any negative impacts on the character of the property or the adjoined properties.

## Other Special Exceptions

There are various other allowable special exceptions provided for specific situations contained within the Zoning Ordinance. All applicable special exception requests will be reviewed under the standards as provided for within the Ordinance.

In addition to the above standards, as applicable, above, the applicant must address any potential impacts to neighbors and the general area around the property, as the Board of Adjustment reserves the right to establish certain conditions upon any special exception granted to mitigate potential impacts. The applicant should address such potential impacts as encroachment to neighbors, dust, drainage, glare, traffic, odors, noise, safety, or other potential impacts that may be caused as a direct result from the requested special exception being granted.

Attachment 2



Attachment 3



Attachment 4



Clock St.

10'

30'

28'

Proposed Deck

121

3'

80' Lot Line

152

5'168  
5'5hort

9'

3'

5'180  
5'5hort

Proposed Deck

71'

151

151

91

30' Front Lot Line

20'

South Shore Drive



CLARK ST

23

SOUTHSHORE DR

