

**Docket Number:** 19/8506

**Appellant:** Earl Williams representing Crown Holdings, LLC, 1210 NE 45<sup>th</sup> Street, Ankeny, IA 50021 (Contract Buyer), represented by Vic Piagentini with Associated Engineering Company of Iowa, 1830 SE Princeton Drive, Suite M, Grimes, IA 50111 (Consultant)

**Appeal:** The appellant requests a variance to the parking standards for an existing commercial use, more specifically the request is to provide 103 total parking spaces in lieu of the minimum required number of approximately 148 spaces.

## **Background**

### **Subject Property Details**

The subject property is located at 1510 NE 46<sup>th</sup> (NE Broadway) Avenue, Des Moines, and is legally described as Lot 2 of Goode Trust Plat, except the east 40 feet and the west 50 thereof, and Lot 6 of Goode Trust Plat, except the west 418.23 feet thereof, all within Section 13 of Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township). The subject property consists of two (2) tax parcels totaling approximately 4.18 acres, and is zoned "HI" Heavy Industrial District. The southerly tax parcel has approximately 240 feet of frontage onto NE 46<sup>th</sup> (NE Broadway) Avenue, and contains a 12,000 square foot building and associated parking lot. The building contains adult uses, including an adult bookstore, adult dance club (known as the Minx Show Palace), and a proposed bar. There is also a portion of the building utilized for personal storage by the appellant.

The northern tax parcel is landlocked, and was purchased on contract by the appellant in 2011, with the contract being fulfilled in June of 2019. This tax parcel is largely open space, but also contains a portion of the parking lot for the southern part of the subject property. It also has a private access drive serving the adjacent property to the east at 1556 NE 46<sup>th</sup> Avenue, as well as a parking lot encroachment from the hotel property to the west at 4685 NE 14<sup>th</sup> Street. This northern parcel also contains storm water improvements, including an intake and tile line, that appear to benefit the adjacent hotel property to the west at 4685 NE 14<sup>th</sup> Street. Through property research, staff understands that previous ownership of the hotel property also owned this northern tax parcel, which served as additional open space and provided secondary access to NE 46<sup>th</sup> Avenue. However, through a prior foreclosure process, the property became separately held and eventually sold to the appellant on contract.

### **Surrounding Area**

The subject property is located approximately 750 feet east of the intersection of NE 14<sup>th</sup> Street (Hwy 69) and NE 46<sup>th</sup> (NE Broadway) Avenue. This area of unincorporated Polk County consists of primarily interstate-related transportation service and convenience businesses, transitioning to more conventional commercial and industrial uses. In the area immediately surrounding the subject property there are multi-tenant commercial and industrial buildings, a hotel, truck and automotive repair and sales uses, and a utility pole supply company. All properties lying east of NE 14<sup>th</sup> Street in this area of unincorporated Polk County are zoned "HI" Heavy Industrial District. See *Attachment A* at the end of this report for a vicinity map of the subject property and surrounding area.

## **History**

The southern tax parcel was originally developed in 2001-2002. In 2001, a site plan was approved for a 60' x 120' building for warehouse and flex space, including associated site improvements. An updated site plan was approved in 2002 to convert a portion of the building for an adult use. Approval of this 2002 updated site plan established that the subject property was in compliance with the required amount of onsite parking as calculated under the applicable standards at that time. Another updated site plan was approved in 2004 to show a future building, parking lot expansion and storm water improvements onto the northern tax parcel of the subject property; these additional improvements were never constructed. Prior to 2007 the property was zoned General Business District. Following the County's adoption of an updated Comprehensive Plan and revised Zoning Ordinance and Map in 2006-2007, the property was reclassified to the "HI" Heavy Industrial District. The current adult uses on the property are considered legal and conforming, as they were legally established through an approved site plan process, and are permitted within the "HI" Heavy Industrial District.

In 2013, the appellant submitted an updated site plan to add a proposed bar use to the existing building. Through review of this updated site plan, it has been determined there is a lack of adequate onsite parking under the present Ordinance standards. The existing uses and their occupied areas of the building require approximately 148 parking spaces under the current parking standards, which are based on gross floor area and maximum number of employees. See the "Summary of Request" section of the report below for a full detail of the required parking. To-date, this updated site plan has not been approved due to the inability of the appellant and engineer to show compliance with the current parking standards. The appellant has attempted to obtain a shared parking easement with the hotel property adjacent to the west at 4685 NE 14<sup>th</sup> Street; however, an agreement could not be reached. The appellant is now proposing to construct an additional 48 parking spaces and associated storm water improvements on the northern portion of the subject property. This would bring the total number of onsite parking spaces to 103. The appellant is requesting a variance in order to provide the proposed 103 spaces in lieu of the minimum required number of approximately 148 spaces. Following the decision on this variance, the appellant will need to gain approval of an updated engineered site plan, and install the required number of parking spaces. See staff's recommended conditions of approval at the end of the report which require an updated site plan be completed within six (6) months, and all required site improvements completed within one (1) year of the site plan approval. If this is not achieved, Polk County will initiate enforcement action against the property.

It is important to note there are significant drainage and storm water constraints that limit further development of the northern parcel of the subject property. Due to these issues, staff requested and received a proposed storm water management plan with the variance application for the proposed parking lot expansion and additional 48 spaces. Staff has reviewed the storm water design and provided detailed review comments to the appellant and his engineer. The storm water design will need to be updated to address these comments and included with the required updated site plan. Ultimately, the solution to the storm water issues may require cooperation with the adjacent hotel property at 4685 NE 14<sup>th</sup> Street.

## **Public Notification**

Staff mailed out ten (10) 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) response in support and one (1) response in opposition of this Appeal.

### **Summary of Request**

Under the provisions of the Polk County Zoning Ordinance, *Article 13: Off-Street Parking and Loading, Division 1. Off-Street Parking Standards, Section 2 Required Number of Parking Spaces, C.15* requires one (1) space per 400 square feet of gross floor area plus one (1) space per employee on the largest work shift for commercial and entertainment businesses attracting customers. Subsection C.11 requires one (1) space per 50 square feet of gross floor area plus one (1) space per employee on the largest work shift for Adult Uses, including taverns, dance halls, nightclubs and lounges. The appellant operates the following uses out of the existing building on the property: A retail adult bookstore (~2,314 square feet), an adult dance club and proposed bar (~6,101 square feet), and a private storage use (~4,600 square feet). These use areas represent the best information available given the most recent updated site plan submittal as well as information obtained through this variance application. The required updated site plan will need to confirm and establish all use areas and the minimum number of parking spaces required.

The private storage use requires zero (0) parking spaces. The retail adult bookstore square footage requires six (6) spaces. The adult dance club and proposed bar area square footage requires 122 spaces. The application originally stated there were a maximum of ten (10) employees on the largest work shift. However, after further discussions with the appellant, staff understands there are approximately 20 total employees on the largest work shift for all uses. Therefore, approximately 148 total parking spaces are required. The subject property currently provides 55 parking spaces, and the appellant is proposing 48 additional spaces and associated storm water improvements. A variance is requested to allow for the provision of 103 total parking spaces in lieu of the minimum required number of approximately 148 spaces. See *Attachment B* at the end of this report for a copy of the site plan submitted with the variance application.

### **Natural Resources**

The subject property contains no areas of mapped floodplain, wetlands or other environmental hazards or features. The site topography is relatively flat; however, the northern parcel contains a lower elevation of approximately 860 feet in the southwest corner compared to an elevation of approximately 866 to 868 feet for the rest of the subject property. The southern parcel is largely developed and contains the existing building and businesses, a paved parking lot, storm water detention basin, exterior lighting and signage. In contrast, the northern parcel contains a small portion of the existing parking lot, but is otherwise largely open space. As stated previously, there are significant constraints to developing the northern property as it pertains to drainage and storm water. These issues will have to be resolved as part of the required updated site plan for the subject property.

### **Roads & Utilities**

The property has approximately 240 feet of frontage to the south onto NE 46<sup>th</sup> (Broadway) Avenue. NE 46<sup>th</sup> Avenue is a hard surfaced two-lane minor arterial roadway maintained by Polk County. The subject property is connected to Polk County sanitary sewer, and Des Moines Water Works provides water service.

## **Recommendation**

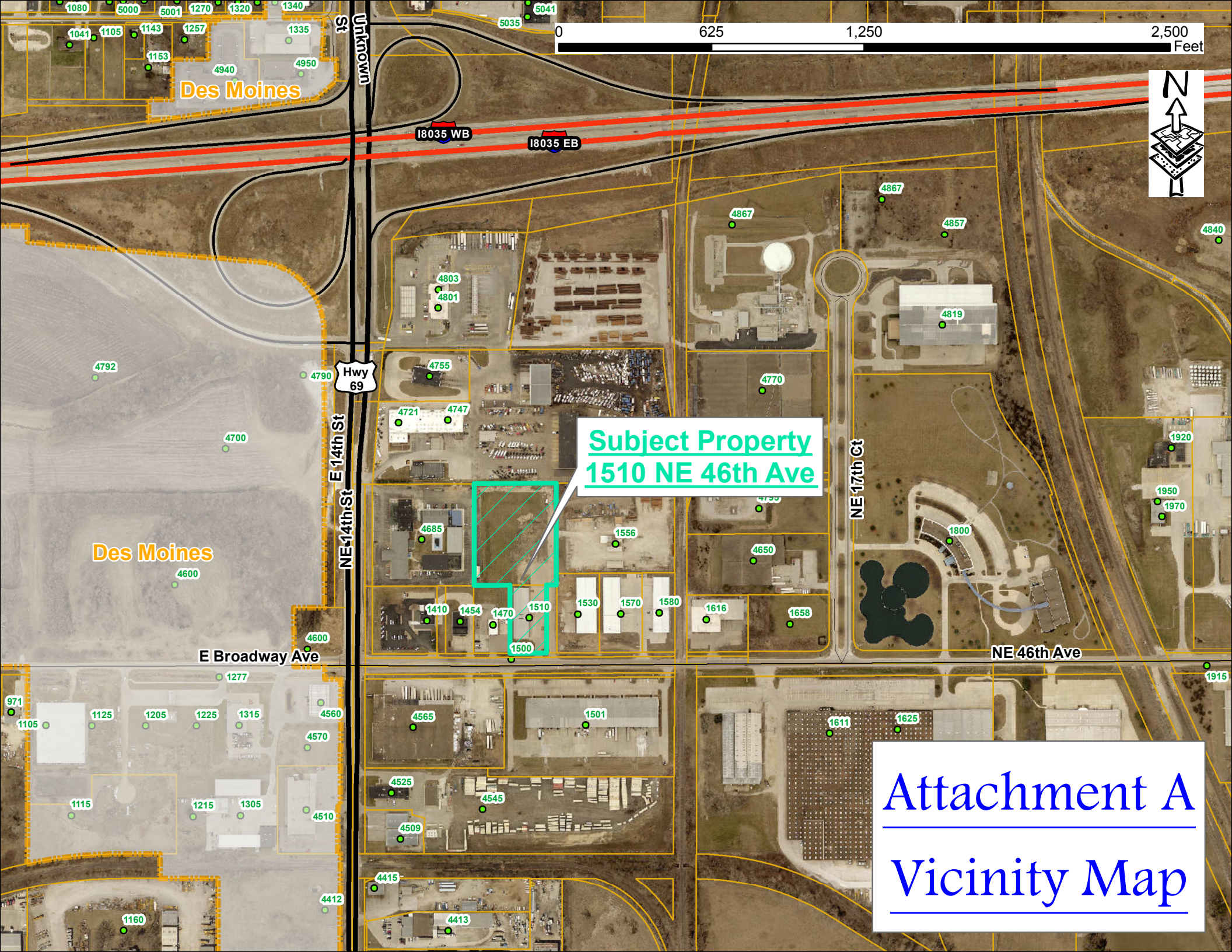
### **The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.**

- 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 main, south parcel of the subject property is fully developed with no additional space available to accommodate further parking improvements. The adjacent northern parcel of the subject property has a limited ability to accommodate additional impervious surface due to its existing grade, drainage issues, and challenges in meeting the County's Storm Water Management Ordinance.
- 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 current uses are permitted within the "HI" Heavy Industrial District, and are considered conforming uses as established on the subject property.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
Yes. The variance will provide a path forward for the subject property to comply with the County's site plan and parking requirements. The appellant will be required to complete an updated site plan for the property, including a precise calculation of the minimum number of parking spaces required. The appellant will then be held to installing either the minimum number of spaces determined (if less than 103), or a minimum of 103 spaces per this variance (if the number required is determined to be greater than 103). In either scenario, there will be an increase in the onsite parking capacity beyond the existing 55 spaces.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  
Yes. The existing building and site layout was constructed by a previous property owner, and originally developed as flex space. Furthermore, the fully developed nature of the southern portion of the property as well as the storm water challenges on the northern portion of the site predate the appellant, and together effectively prevent the required onsite parking from being fully realized.
- 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 environmentally sensitive areas of the property are impacted by this proposal. The required updated site plan must include a revised storm water report for additional parking spaces, and Polk County is required to

review and approve the storm water design.

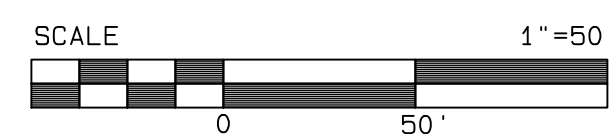
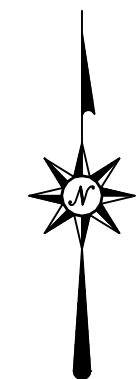
The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance subject to the following conditions of approval.

1. This variance only applies to the current adult use(s) on the subject property, including the adult bookstore, dance club and proposed bar. Any future change in use, or expansion of the existing use(s), will require applicable minimum parking requirements be met for those uses.
2. An updated site plan shall be completed within six (6) months of the approval of this variance, and all required site improvements shall be completed within one (1) year of the site plan approval date. Failure to comply with this condition will lead to immediate enforcement action against the property by Polk County.



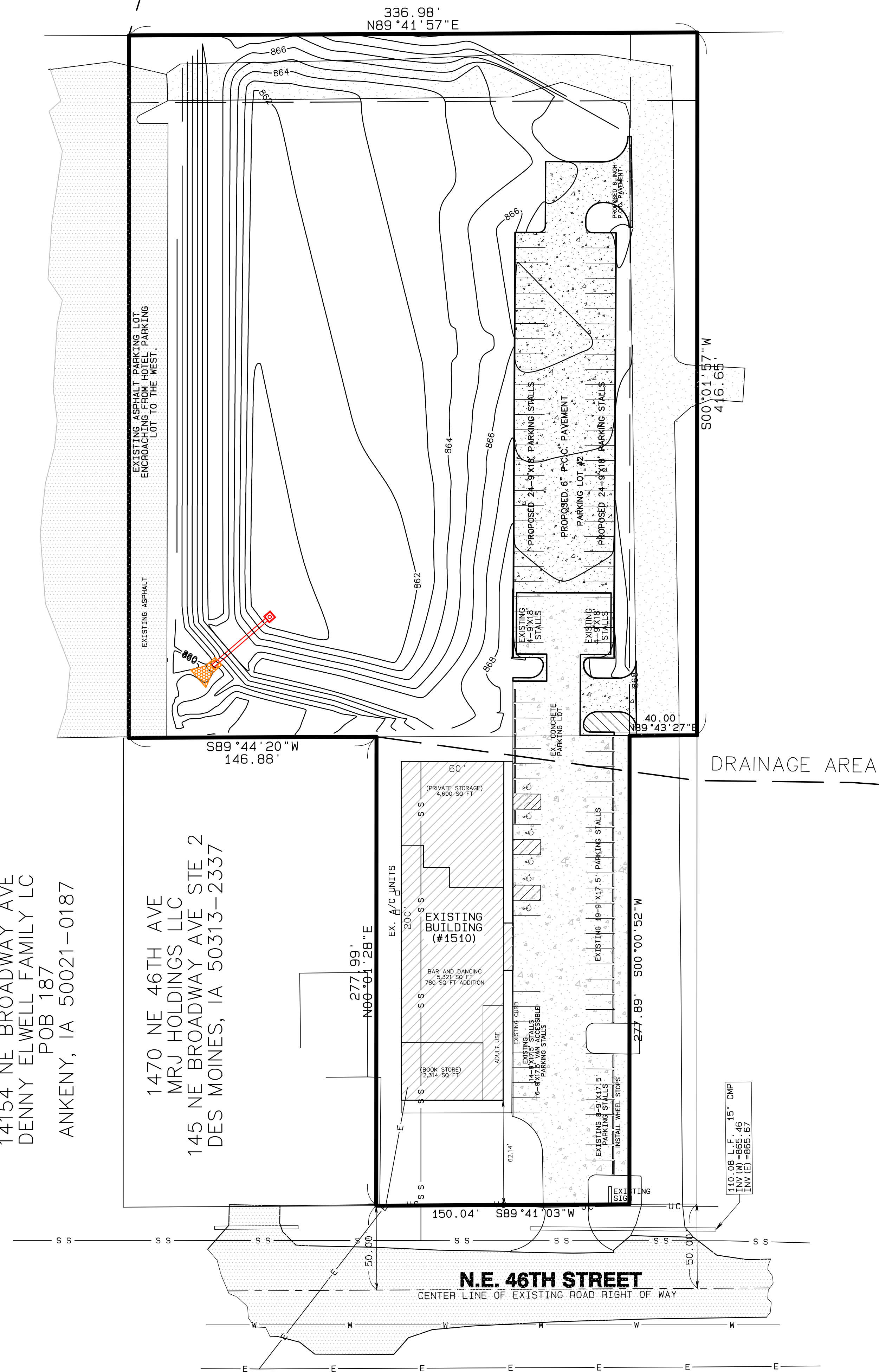
**Subject Property**  
**1510 NE 46th Ave**

**Attachment A**  
**Vicinity Map**



14154 NE BROADWAY AVE  
DENNY ELWELL FAMILY LC  
POB 187  
ANKENY, IA 50021-0187

1470 NE 46TH AVE  
MRJ HOLDINGS LLC  
145 NE BROADWAY AVE STE 2  
DES MOINES, IA 50313-2337



**CONTACT INFORMATION**

OWNER  
EARL WILLIAMS  
102 NW GREENWOOD STREET  
ANKENY, IA 50023

CONTACT  
EARL WILLIAMS  
PHONE: (515) 554-6552

ENGINEERING  
ASSOCIATED ENGINEERING COMPANY OF IOWA  
2917 MARTIN LUTHER KING JR. PARKWAY  
DES MOINES, IOWA 50310  
ATTN: VICTOR PIAGENTINI  
PHONE (515) 255-3156 ext. 2

**SITE ADDRESS**

1510 NE 46TH AVENUE  
DES MOINES, IOWA 50313

**LEGAL DESCRIPTION**

**ZONING INFORMATION**

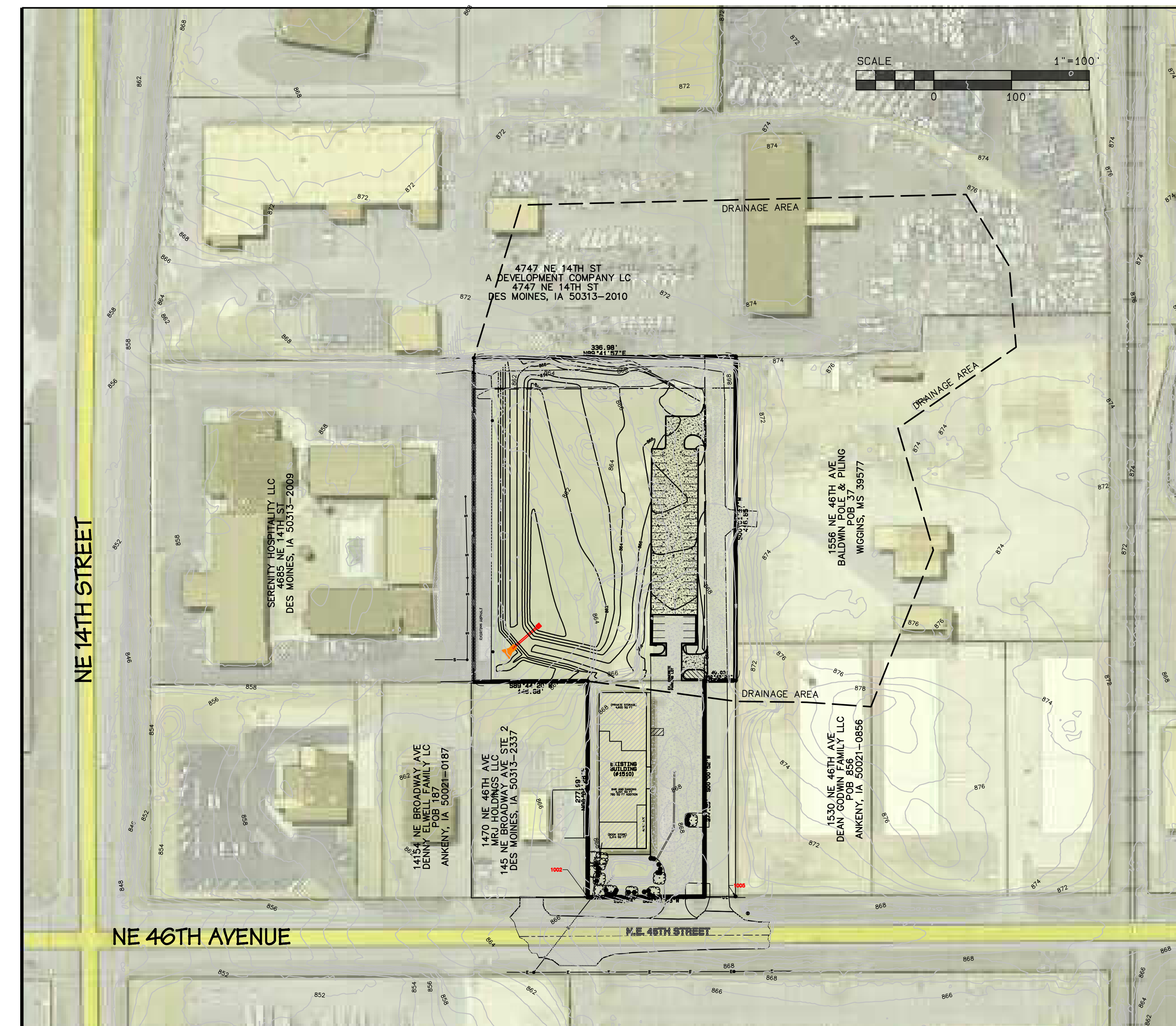
ZONING: HI (HEAVY INDUSTRIAL DISTRICT)

**PARKING REQUIREMENTS**

REQUIRED PARKING STALLS = 122 STALLS  
MAX EMPLOYEES ON SHIFT = 10 EMPLOYEES  
TOTAL STALLS REQUIRED = 132 STALLS  
PROVIDED = 103 STALLS

REVISIONS

**ASSOCIATED ENGINEERING  
COMPANY OF IOWA**  
1830 SE PRINCETON DRIVE, SUITE M, GRIMES, IOWA 50111  
Phone: (515) 255-3156 Fax: (515) 255-3157



*Celebrity*

PARKING LOT ADDITION - Parking Count Variance

**Attachment B**