

Appeal: A Peripheral Bufferyard setback Variance to allow the reconstruction of commercial building in the same place as the previous building that was damaged by a storm, approximately 20 feet from the southern property line, reducing the Peripheral Bufferyard from 15 feet to approximately five (5) feet located at 5465 NW 1st Street, Des Moines.

Appeal Given: For the complete Variance appeal packet, please refer to Attachment 'A'. The following is an excerpt from Attachment 'A':

Would like to reduce buffer yard from 15' to 5'. This is to replace existing building with new structure. Old building was damaged in storm.

Background

The subject property, addressed as 5465 NW 1st Street, is currently utilized by the Appellant as a Heavy Retail and Heavy Services use. A Heavy Retail and Heavy Services use is an allowed use within the "GC" General Commercial District zone, which is the zoning district of the subject properties. The subject property is developed with an existing commercial building and a fenced and unimproved vehicle and equipment storage lot. Attachment 'B' is an aerial of the site and the surrounding property.

The Appellant has an approved Major Site Plan, approved on August 9, 2019, to improve the existing Heavy Retail and Heavy Services use of the property. Improvements have not yet occurred on this site and the approved Site Plan included retention of the existing building at the same location. Although the existing building is not in compliance with the required Peripheral Bufferyard setback, the building may be retained in its current location. However, upon replacement, the building must comply with all applicable standards, including the Peripheral Bufferyard setback. It appears from Polk County records that a portion of this building was originally established in its current location in 1963 and was added onto in 1969. An excerpt from the approved Site Plan is attached as Attachment 'C', which includes the location of the existing building and the distances to the property line and the proposed improvements.

The existing building was recently damaged by a storm and the Appellant is requesting a Variance to be allowed to replace the existing building in the same place, which is approximately 20 feet from the southern property line. A portion of the southern property line adjoins a property to the south that is zoned "LDR" Low Density Residential District. The portion of the property line that adjoins the "LDR" District zone to the south will require this property to retain a 15-foot setback and an additional 15-foot Peripheral Bufferyard, totaling 30 feet. With the replacement of the commercial building, all setbacks and bufferyards will need to be established, however there will be a total of 20 feet, rather than 30 feet, from the replacement building to the "LDR" District zone. Attachment 'D' shows the subject property with a zoning district overlay.

Summary of Request

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 5: Non-Residential Bulk Standards, Table 6.9 Nonresidential Bulk Standards*, requires a minimum 15-foot Peripheral Setback, in addition to the standard 15-foot minimum side setback. The Appellant proposes to construct a replacement building in the same place which will comply with the 15-foot side setback and will retain an additional 5-foot Peripheral Bufferyard, reducing the Peripheral Bufferyard from 15 feet to five (5) feet.

Natural Resources

The subject property has been utilized as a Heavy Retail and Heavy Services use historically. Floodplain does not exist on the property nor do other natural features that would require preservation.

Roads & Utilities

The subject property has 163 feet of frontage on NW 1st Street. NW 1st Street is County maintained roadway and is designated as a Local street. An 8-inch sanitary sewer and an 8-inch water line are both available in NW 1st Street. Sanitary Sewer is provided by Polk County and water is provided by Des Moines Water Works.

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 proposal is to replace the storm damaged building in place with a new commercial building. The commercial building is an allowed use within the "GC" General Commercial District zone. The Site Plan was approved with the assumption that the commercial building will be retained in place. Further, the Appellant can repair the building without requesting a Variance. The approved site plan, the storm damaged building and the allowance to repair the existing building without a Variance, creates special conditions which apply to this property and do not apply to other properties within the "GC" District zone.
- 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. A Heavy Retail and Heavy Services use is a permitted use within the subject zoning district, "GC" General Commercial District. A commercial building is a typical improvement that is utilized on other properties within this corridor.

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

Yes. The replacement of a commercial building in the same location and of the same size as the storm damaged structure will not adversely affect the adjacent properties. Further, the existing building has been in the current location since 1963 and is a well established site improvement. A new building will be required to be permitted and inspected to confirm that current Building Code standards are met.

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

Yes. The storm that significantly damaged the building was an unforeseen circumstance. If the storm had not damaged the building, the existing building would have been retained in the same place.

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. Compliance with the standards for a Site Plan will mandate compliance with Article 7 and Article 8. The variance request does not affect compliance with the environmental provisions of the Polk County Zoning Ordinance.

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.

Variance Appeal Application

Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.



Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

(time stamp) Official Use Only

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

Structure/Building was damaged during storm. I would like to replace Building with new building verses repairing current Building. New building would be same width & length

2. Subject Property Address: 5465 NW 1ST ST Des Moines, Ia

3. Subject Property Zoning District: GC

4. District and Parcel Number: 270/02041-000-000

5. Subject Property Legal Description (attach if necessary): Replace building with new which is currently 20' off South property line. current code is 30' set back.

6. Filing Fee: \$310 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Mark Kruse Applicant (Print Name) [Signature] Signature 9/23/2019 date

Mark Kruse Interest in Property (owner, renter, prospective buyer, etc.) mark@cceciowa.com Email

7825 NE Morgan Drive Bondurant, Ia Address, City, State and Zip 515-240-7956 515-243-3353 Phone Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

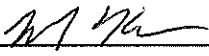
Applicant Representative (Print Name) Firm or Business Name

Address, City, State and Zip

Email Phone Fax

9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

<u>Mark Kruse</u> (Print Name)	<u></u> Signature	<u>9/23/19</u> date
_____ (Print Name)	_____ Signature	_____ date
_____ (Print Name)	_____ Signature	_____ date
_____ (Print Name)	_____ Signature	_____ date

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

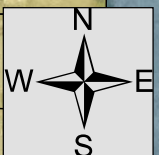
Would like to reduce buffer yard. from 15' to 5'. This is to replace existing building with new structure.

Old building was damaged in storm.

A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 14th Street, Des Moines, IA 50313
 Phone (515) 286-3705 • Fax (515) 286-3437
 Forms and calendar available online <http://www.polkcountyiowa.gov/PublicWorks/>

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N



LDR

E

NW 2nd St

NW 1st St

NE 1st St

NE 3rd St

NE 55th Ave

NE 56th Ave

GC

LDR

NW 54th Ave

NE 54th Ave

HDR