

Docket Number: 22/11481

Applicant: 6450, LLC (property owner), represented by Blake Pagliai, 4300 NE 14th Street, Des Moines, IA 50313, being represented by Eric Cannon with Snyder & Associates, 2727 Snyder Blvd, Ankeny, IA 50023

Request: Amendment to existing Conditional Use Permit to allow additional Light Industry uses

Subject Property / Surrounding Land Uses:

The subject property consists of ten (10) adjoining tax parcels totaling approximately 14.82 acres. The area is legally described as the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, except the south 25 feet thereof, and except legally established highways, and the West 3 acres of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ subject to public highway and right-of-way of Inter-Urban Railway Company, and Lots 91 thru 98 of Freehold, an Official Plat in Polk County, Iowa, all located within Section 23 of Township 79 North, Range 24 West of the 5th P.M. (Saylor Township). The subject property includes the main address of 4475 NE 3rd Street, Des Moines, IA 50313, as well as the addresses of 520 NE 44th Avenue, and 325, 355, 375, 425, 445, 465, 485 and 525 NE 45th Place. The subject properties are zoned "MU" Mixed Use District.

The subject property was purchased in December 2020 by the applicant, 6450, LLC. The majority of the parcels consisting of the subject property were purchased from the previous owner Billy H. Bryant Estate. The property at 520 NE 44th Avenue was purchased from a separate titleholder. The property at 520 NE 44th Avenue previously contained a single-family dwelling and accessory structures, which have been recently demolished by the applicant.

The subject property is located on the east side of NE 3rd Street, lying north of NE 44th Avenue and south of NE 45th Place. Surrounding properties include a mixture of residential, commercial and industrial uses. The City of Des Moines corporate limits are located approximately one-quarter ($\frac{1}{4}$) mile south of the subject property where they extend north along Aurora Avenue. See *Attachment A* for a vicinity map of the subject property and surrounding area. The surrounding unincorporated areas lying west to NW 2nd Street, east to the NE 14th Street corridor, and north to Interstate 80/35 is primarily zoned "MU" Mixed Use District. The Mixed Use zoning district recognizes the longstanding mix of commercial and residential uses within this area, many of which pre-date Polk County's adoption of zoning regulations. Uses include single and multi-family residential, heavy retail services such as auto sales and repair, as well as industrial uses.

Adjacent to the west of the subject property on the west side of NE 3rd Street is an existing demolition contracting use, known as DeCarlo Demolition. They recently received approval of a rezoning to Heavy Industrial and approval of a development site plan to legitimize their longstanding use and make improvements to their site, including landscaping, screening, paving and storm water detention. Directly adjacent to the east of the property is a recently developed site for a commercial landscaping contractor, Country Landscapes, zoned "GC" General Commercial District. North of the property along the north side of NE 45th Place are approximately ten (10) single-family residences also zoned "MU" Mixed Use District. There are also a number of single-family residences located to the south, being south of NE 44th Avenue

and the adjacent railroad tracks along NE 43rd Place. These homes are zoned “MDR” Medium Density Residential District.

Property History

The subject property was historically zoned Light Industrial. Following the updated 1990 Zoning Ordinance for Polk County the property was designated as Light Business District, which in practice was simply a new name for the historic Light Industrial District. In 2006-2007 Polk County went through an updated Comprehensive Planning process that resulted in a new Comprehensive Plan, Future Land Use Map and Zoning Ordinance and Map. Through that process, the subject property was reclassified and rezoned to Mixed Use. Currently, the Mixed Use District permits Commercial uses by right, and also permits Light and Moderate Industry uses through a Conditional Use Permit process requiring approval by the Polk County Board of Adjustment.

Polk County records for this property date back to 1966 when a Zoning Certificate was issued establishing the property for use as a concrete batch plant. The owner at that time was referenced as Target Investments, but paperwork also referenced the previous owner, Bill Bryant. Subsequent permits through 1974 also reference a Ready Mix batch plant on the property, referred to as Target Ready Mix. These permits include new buildings/structures and additions for office, warehouse, and shop space as well as fly ash storage, new surfacing, and fuel storage tanks. In 1981, the previous property owner was issued a permit to demolish the two (2) Ready Mix batch plants on the property, including the condition that “all necessary permits shall be obtained before any new structure is again placed on this site.” While the batch plants were removed, several of the buildings have remained on the property since that time. Remaining structures include an approximately 10,168 square foot building located at the southern end of the property with partial office and repair space, an approximately 9,056 square foot building located in the middle of the site with primarily office space and 1,200 square feet of unfinished area, and an approximately 6,720 square foot warehouse building directly adjacent to the north. According to County records, these buildings appear to have been legally permitted under the previous use of the site as a batch plant.

In March of 1999 a Conditional Use Permit was issued by the Polk County Board of Adjustment for the construction and operation of a commercial communication tower under the then Light Business District zoning on the portion of the subject property addressed as 4475 NE 3rd Street. Site plan drawings were approved, and a Building Permit for the 120-foot tall monopole communications tower was issued on April 1, 1999. A Certificate of Use was later issued following completion of the tower. Additional building permits and an updated site plan have been approved in subsequent years permitting new, and swapping out of existing, equipment and antennas on the existing tower.

The previous property owner, Billy H. Bryant Estate, operated a trucking and transportation business from the property from approximately 1981 through 2020. Prior research into this use revealed it was never legally established on the subject property. Several improvements were made for the trucking business without an approved site plan, storm water improvements and hard surfacing. The current applicant and property owner (6450, LLC) committed to correcting these site issues in order to keep the trucking business operational on a portion of the property.

In October of 2020, the Board of Adjustment approved a Conditional Use Permit request by Bret Nehring (part owner of 6450, LLC), at that time acting as the prospective buyer, to permit redevelopment of the site for the Moderate Industry Use of an Excavation Contractor as well as the Light Industry Use of Trucking and Warehousing without outdoor storage for the existing trucking business. Shortly thereafter 6450, LLC represented by Bret Nehring and Blake Pagliai, purchased the property. In June of 2021, they requested, and the Board of Adjustment approved, a new Conditional Use Permit for the property. This replaced the 2020 Conditional Use Permit and kept in place the allowance of the Light Industry use of Trucking and Warehousing without outdoor storage, removed the allowance for Moderate Industry Excavation Contractors, and added the Light Industry use of Septic Tank and Related Services. Since that time, the applicant has received approval of a site plan from Polk County and a portable restroom business now occupies the southern building and portion of the site, while the existing trucking use continues to use the north half of the property. At this time, the property owner is requesting another amendment to the existing Conditional Use Permit to allow continued redevelopment of the property, specifically the site at 520 NE 44th Avenue, for additional Light Industry uses.

Application

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 2, Table 4.1, Table of Uses* permits Light Industry uses within the “MU” Mixed Use District upon the granting of a Conditional Use Permit by the Polk County Board of Adjustment. The applicant is proposing to amend their existing Conditional Use Permit to allow for continued redevelopment of the property, including the following Light Industry uses: General Building (NAICS Code 2361), Lumber and other building materials (NAICS Code 444190), Special Trade Contractors (NAICS Code 238 except Heavy Construction 238910), Instruments and related products (NAICS Code 3345), Miscellaneous Manufacturing Industries (NAICS Code 3399), Trucking and Warehousing without outdoor storage (NAICS Code 484, 4931), Transportation Services (NAICS 488, except airports), Septic Tank and Related Services (NAICS Code 562991), Communications (NAICS Code 515, 517), Wholesale Trade, durable goods (NAICS Code 423, except used parts), Wholesale trade, non-durable goods (NAICS Code 424, except Petroleum & Petroleum Products), Lawn and Garden Services and Ornamental Shrub and Tree Services (NAICS Code 56173), and Commercial Printing (NAICS Code 323). This list is comprehensive and captures both the existing trucking and warehousing use and septic contractor use, as well as would allow flexibility for continued redevelopment of the property for various construction/trade contractors, warehousing and other similar Light Industry uses.

See *Attachment B* at the end of this report for the description provided of the continued redevelopment of the subject property. See *Attachment C* for a copy of the proposed future layout, as provided by the applicant’s representative. The main property at 4475 NE 3rd Street will continue to be used for the existing approved uses of trucking and warehousing, without outdoor storage and Septic Tank and Related Services – which is being utilized by Kings Throne, a portable restroom business, including office and outdoor storage. The application and concept plan (*Attachments B and C*) indicate continued redevelopment of the 4475 NE 3rd property with a future building, paving and outdoor storage in the northwest corner, as well as redevelopment of the area to the east at 520 NE 44th Avenue for a future building, paving, outdoor storage and storm water detention basin.

Requested Light Industry Uses

This request proposes to keep the existing approved Light Industry uses of Trucking and Warehousing, without outdoor storage and Septic Tank and Related Services to accommodate the two (2) existing tenants on the subject property, which are a trucking and logistics company and a portable restroom business. The owners intend to continue further redevelopment of the property, and are requesting approval of several additional Light Industry use categories to accommodate potential future tenants. The requested uses and a brief background/description are listed below for further clarity.

- General Building (NAICS Code 2361): Includes building contractors involved in residential construction. The category would accommodate any number of residential home contractors, including new construction and remodeling. Residential includes single-family and multifamily construction. Non-residential contractors are not included.
- Lumber and other building materials (NAICS Code 444190): Includes industries primarily engaged in retailing specialized lines of lumber and other new building materials. This includes lumber, fencing, glass, doors, plumbing, mechanical and electrical fixtures, cabinets, countertops, and related products. These businesses have a retail component, but are typically for contractors or bulk purchasers in the construction industry.
- Special Trade Contractors (NAICS Code 238, except Heavy Construction 238910): Includes various construction contractors primarily engaged in a specific building construction activity which is similar for all types of construction. Examples include mechanical, plumbing and electrical contractors. This allows for a shop and office space to accommodate their operation, but their work is conducted offsite. Heavy Construction/Site Preparation Contractors are specifically prohibited. This includes contractors such as demolition, grading/excavation, foundation digging, septic system installation, and similar contractors.
- Instruments and related products (NAICS Code 3345): Includes the manufacturing of navigational, measuring, electromedical and control instruments. Involves the assembly of existing parts and materials into a finished product, and does not involve the fabrication of raw materials. All manufacturing processes would be required to be conducted entirely within an enclosed building.
- Miscellaneous Manufacturing Industries (NAICS Code 3399): Similar to the Instruments category above, this includes manufacturing uses primarily engaged in the assembly of existing materials into finished products, and not the fabrication of raw materials. This could be a variety of products. Examples include office supplies (except paper), sporting goods, toys, etc.
- Transportation Services (NAICS Code 488, except airports): Includes a variety of transportation support services such as marine cargo handling, railroad switching, ship repair, etc. A variety of airport support services such as air traffic control services are also permitted. This category does not permit airports themselves.
- Communications (NAICS Code 515, 517): Includes telecommunications services and cable, satellite and television distribution services. These uses are primarily engaged in

operations and providing access to these facilities. This category does not include contractors who install/maintain telecommunication systems.

- Wholesale trade, durable and non-durable goods (NAICS Code 423 & 424, except used parts, petroleum and petroleum products): Includes wholesale or warehousing of durable goods, such as motor vehicles, furniture, construction materials, machinery and equipment, toys, sporting goods, hobby goods, etc. This category excludes used parts wholesaling. Includes the same for non-durable goods, such as paper, chemicals, textiles, groceries, flowers, etc. This category excludes petroleum and petroleum products.
- Lawn and Garden Services and Ornamental Shrub and Tree Services (NAICS Code 56173): Includes industries primarily engaged in providing landscape installation, care and maintenance services. This includes trees, shrubs, plants, lawns and gardens, and also includes design and construction of landscaping such as walkways, retaining walls, decks, fences, ponds, and similar features.
- Commercial Printing (NAICS Code 323): Includes industries in printing and related support activities, such as books, newspapers, labels, business cards, forms, etc. Support activities includes data imaging, bookbinding, etc. which are almost always provided by the actual printing operation.

Public Testimony

Staff mailed out a total of 80 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 500-foot notification boundary. A summary of all testimony received will be provided at the public hearing on May 16, 2022.

Natural Resources / Environmental

The subject property is not located within a mapped floodplain, nor does it contain other mapped environmental hazards or features. The site topography is relatively flat with no significant changes in elevation. The site slopes gradually with a high elevation of approximately 844 feet along the eastern boundary of 4475 NE 3rd Street and 520 NE 44th Avenue, and a low elevation of approximately 830 feet along the western boundary adjacent to NE 3rd Street. There are some small areas of woodlands located along the shared property line of 4475 NE 3rd Street and 520 NE 44th Avenue, as well as within the northern portion and along the eastern boundary of 520 NE 44th Avenue.

Roads / Utilities

The subject property is located on the east side of NE 3rd Street, lying north of NE 44th Avenue and south of NE 45th Place. NE 3rd Street is classified as a collector roadway, and NE 44th Avenue and NE 45th Place are both classified as local roadways. All three roadways are hard surfaced and maintained by Polk County. The site has existing entrances onto all three adjacent roadways. The property at 520 NE 44th Avenue has its own access onto NE 44th Avenue as well. Water service is available through Des Moines Water Works (DMWW). The latest available mapping from DMWW indicates there is an eight-inch (8") PVC water main located to the north along NE 45th Place. It is assumed that the existing buildings and uses are served by this public water utility. The past and current sewage disposal methods for buildings and uses on this site are unknown. However, Polk County sanitary sewer is available to the property along both NE 3rd Street and NE 45th Place. Any

future redevelopment will require connection to the publicly available sewer and abandonment of any existing onsite septic system(s).

Analysis

The Board of Adjustment in reviewing an application for a Conditional Use permit shall consider the proposal in terms of the following (these responses are similar or unchanged from the original 2015 hearing and staff report, as the conditions warranting the original approval are largely unchanged):

1. Existing zoning and land use in the vicinity of the uses.

The subject property and surrounding area is zoned “MU” Mixed Use District, including existing commercial, industrial and single-family residential land uses.

2. Planned and proposed public and private development, which may be adversely affected by the proposed use.

There are no major public or private developments planned in the area.

3. Whether and to what extent the proposed use, at the particular location for which it is suggested, is necessary or desirable to provide a development which is in the interest of the public convenience or which will contribute to the general welfare of the area or Polk County.

The subject property has been utilized by existing light industrial uses for approximately 40 years. This application proposes to continue the existing light industrial uses of a transportation company and a portable restroom contractor, while also requesting additional light industrial uses for continued redevelopment. The proposed redevelopment will help continue to phase out any nonconforming aspects of the site, and require new site improvements to protect surrounding residential properties in the area while maintaining the industrial tax base of the subject property.

4. Whether and to what extent all steps possible have been taken by the developer to minimize any adverse effects of the proposed use on the immediate vicinity and on the public health, safety and welfare in general.

The applicant/property owner would be required to gain approval of an engineered site plan prior to any further redevelopment activities or occupancy.

Findings

The application shall be denied if the Board of Adjustment finds any of the following:

a. The application and record fail to establish compliance with the standard made applicable to the proposed development by the provision of this Ordinance.

The applicant will be required to provide an updated engineered site plan for review and approval by Polk County, as well as additional building and/or site improvement permits and approvals in order to follow through on the required improvements and receive occupancy permits.

b. The proposed use, developed in the proposed manner, and at the proposed location, would be inconsistent with the standards pursuant to the provisions of this Ordinance.

The subject property has historically been utilized as an asphalt batch plant, currently contains a 120-foot tall communication tower, and has been recently redeveloped to retain an existing trucking/transportation business and accommodate a new portable restroom contractor. The applicant complied with the past conditions of the June 2021 Conditional Use Permit, including paving previous gravel storage areas, and gaining approval of an engineered site plan for the property. Continued redevelopment will require an updated version of that site plan to address additional site improvements.

- c. **The adverse impacts on the overall public health, safety and welfare are not balanced by the public or private benefits of the proposal. The Board of Adjustment shall include in this balance, any proposals of the applicant and any conditions that it might impose on the development, pursuant to the provisions of this Ordinance, to ameliorate problems associated with the development.**

See staff's recommended conditions of approval. An updated engineered site plan and site improvements are required. Additionally, staff is not supportive of the requested use of Wholesale Trade and Transportation Services – see recommendation at the end of this report.

In addition, no application for a Conditional Use Permit shall be approved unless the Board of Adjustment specifically finds the proposed conditional use appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

- A. **The proposed use is not in harmony with the general purpose, goals, objectives, and standards of the following:**

1. **Polk County Comprehensive Plan:** The proposal is consistent with the goals and policies of the 2030 Polk County Comprehensive Plan.
2. **Polk County Zoning Ordinance:** The Ordinance allows the proposed uses pending approval of this Conditional Use Permit by the Board of Adjustment, approval of an engineered site plan, completion of site improvements, obtaining permits/inspections, and completing all work satisfactorily to receive an occupancy permit.
3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.

- B. **The proposed location of the use is not consistent with policies or provisions of the following:**

1. **Comprehensive Plan:** The proposed use is consistent with the goals and policies of the 2030 Polk County Comprehensive Plan.
2. **Polk County Zoning Ordinance:** Light Industry uses are allowed within the "MU" Mixed Use District subject to approval by the Board of Adjustment. See staff's recommendation at the end of this report – not all requested uses are supported by staff.

3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.

C. **The proposed use at the proposed location results in a substantial or undue adverse effect on any of the following either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Comprehensive Plan, this Ordinance, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County or other governmental agency having jurisdiction to guide growth and development:**

1. **Adjacent property:** Adjacent properties are similarly zoned and contain a mix of single-family residential, commercial and industrial uses. While there are single-family properties in relative proximity, this is an existing condition of the larger area which developed prior to zoning regulations. Approval of this Conditional Use Permit will require an updated site plan and continued improvements that will enhance screening of the subject property from adjacent residences.
2. **Character of the neighborhood:** The size, location, existing improvements and historic use of the majority of the subject property dictates its highest and best use as continued light industrial. Nearly all surrounding commercial and industrial properties in this neighborhood pre-date zoning and detailed site improvement requirements. Continued light industrial uses are compatible with the character of the neighborhood, and site redevelopment will protect adjacent properties and enhance the site by requiring new and conforming site improvements. Staff is not supporting the requested uses of Wholesale Trade, in an effort to prevent additional semi-truck traffic from impacting the neighborhood, existing residences and adjacent road network.
3. **Traffic conditions:** NE 3rd Street is a collector roadway connecting south to the City of Des Moines along Aurora Avenue and north to NE 46th (Broadway) Avenue. NE 46th (Broadway) Avenue provides further connection to NW 2nd Street (Hwy 415) and NE 14th Street (Hwy 69). See conditions of approval for reference to the approved truck routes.
4. **Parking:** Parking within the public right-of-way along any of the adjacent roadways is prohibited. There is adequate area for onsite parking. This would be addressed through the future site plan review process.
5. **Public improvements:** No impact upon future public improvements is anticipated.
6. **Public sites or rights-of-way:** No impact upon public sites or adjacent rights-of-way is anticipated.
7. **Other matters affecting the public health, safety, and general welfare:** None.

D. The proposed use in the proposed area is not adequately served by or imposes an undue burden on any of the following.

- 1. Public improvements:** Adequate for proposed use.
- 2. Public facilities:** Adequate for proposed use.
- 3. Public utilities:** Adequate for proposed use.
- 4. Public services:** Adequate for proposed use.

Recommendation

Staff recommends approval of the requested amended Conditional Use Permit for the subject property. As outlined in the conditions below, staff supports all of the additional Light Industry uses requested, except Transportation Services and Wholesale of durable and non-durable goods. Transportation Services includes any number of transportation support uses. These uses are not applicable to the local/regional economy and transportation infrastructure, and the subject property is not a suitable location for such uses. Wholesale trade is also not supported, as these uses typically require frequent large semi-truck traffic. Staff is supportive of allowing the existing transportation use to remain as already located on the property under the category of Trucking and Warehousing, without outdoor storage. However, staff is not supportive of allowing continued redevelopment of warehousing uses and heavy truck traffic along the adjacent road network and in close proximity to existing residences in the area. Staff's recommendation for approval is subject to the following conditions below:

1. Approval is only valid for the following Light Industry uses: Trucking and Warehousing without outdoor storage (NAICS Code 484, 4931), Septic Tank and Related Services (NAICS Code 562991), General Building (NAICS Code 2361), Lumber and other building materials (NAICS Code 444190), Special Trade Contractors (NAICS Code 238, except Heavy Construction 238910), Instruments and related products (NAICS Code 3345), Miscellaneous Manufacturing (NAICS Code 3399), Communications (NAICS Code 515, 517), Lawn and Garden Services and Ornamental Shrub and Tree Services (NAICS Code 56173), and Commercial Printing (NAICS Code 323). Any additional Light or Moderate Industry use(s) requested in the future will first require a new/amended Conditional Use Permit. This Conditional Use Permit replaces all previous Conditional Use Permits for the property, including from October of 2020, identified as case #20/9522, and from June of 2021, identified as case #21/10389. The historical Conditional Use Permit granted for the existing communication tower remains valid.
2. Prior to any further redevelopment activity on the property, the applicant shall gain County approval of an updated engineered Major Site Plan for the property. Prior to issuance of occupancy permits, all required site improvements shall be completed.
3. All truck traffic and overweight vehicles (over 5 tons) shall route to and from the subject property using NE 3rd Street north to NE 46th (Broadway) Avenue.

4. In accordance with the previous condition from the June 2021 Conditional Use Permit (Docket #21/10389), any Septic Tank and Related Services use, including the existing Kings Throne portable restroom tenant, shall continue to comply with all Polk County Environmental Health and other regulations regarding washing activity, including containment during washing.

Attachment B

4475 NE 3rd St, Nehring Use of the Property, Narrative:

The property will have a mix of uses.

Currently, the northern area of the site consists of a logistics and trucking use with office and storage within the existing buildings. There is also existing van trailers on site, that will be stored periodically on paved surfaces.

Currently the southern area of the site consists of a portable toilet facility that stores unused portable restrooms within an adjacent screened outdoor storage yard.

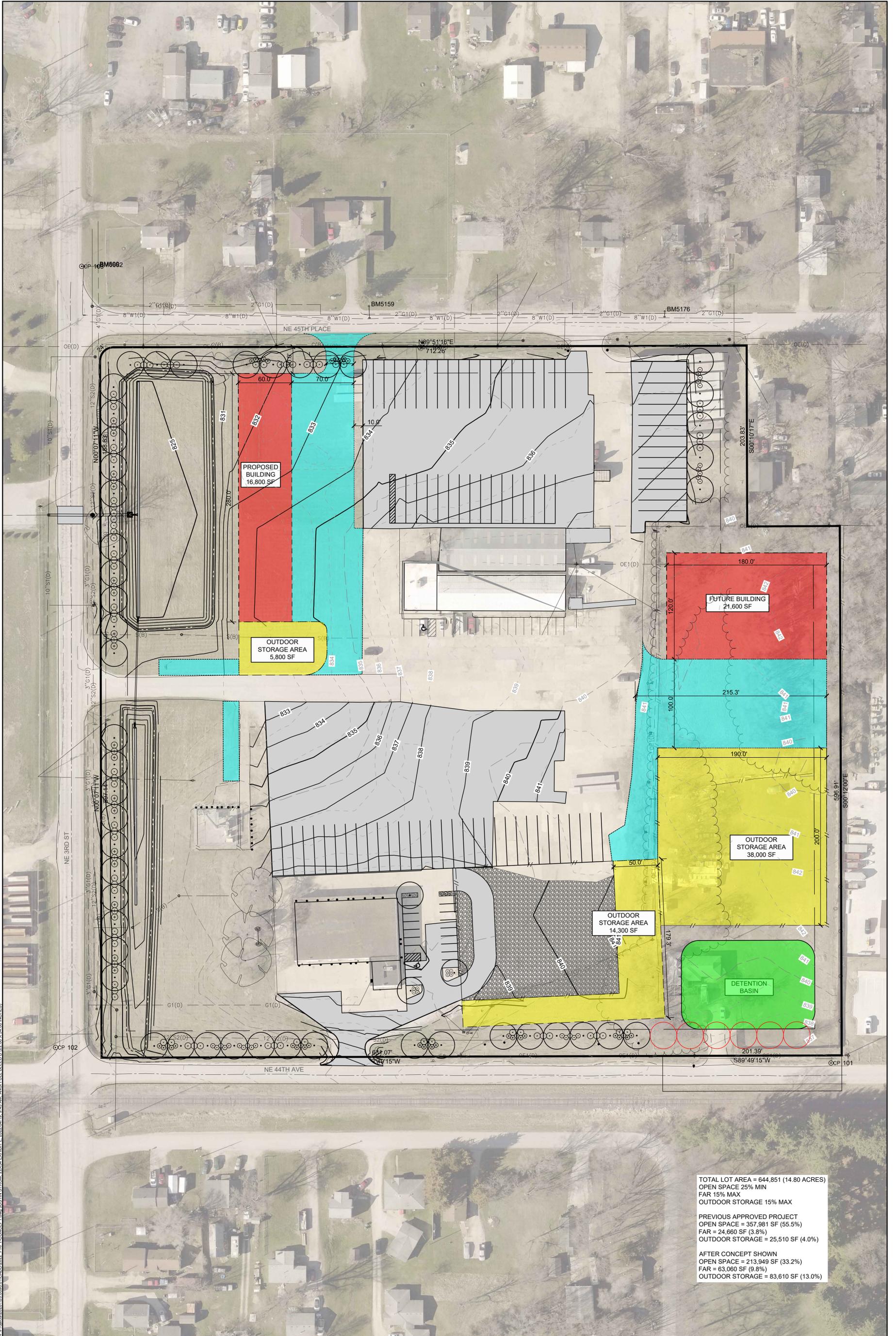
The northwestern area shall be defined for outlined light industrial uses listed below. Some area shall be provided for outdoor storage space for anticipated equipment or material and shall be located adjacent to the building.

The eastern area shall be defined for outlined light industrial uses listed below. Some area shall be provided for outdoor storage space for anticipated equipment or material and shall be located adjacent to the building.

Outlined Light Industrial Uses

- General Building (NAICS 2361)
- Lumber and other building materials (NAICS 444190)
- Special trade contractors (NAICS 238 except Heavy Construction.238910)
- Instruments and related products (NAICS 3345)
- Miscellaneous Manufacturing Industries (NAICS 3399)
- Trucking and Warehousing without outdoor storage (NAICS 484, 4931)
- Transportation Services (NAICS, 488 except airports)
- Septic Tank and Portable Restroom and Related Services (NAICS 562991)
- Communications (NAICS 515, , 517)
- Wholesale trade, durable goods (NAICS 423 except used parts)
- Wholesale trade, non-durable goods (NAICS 424 except Petroleum & Petroleum Products)
- Lawn and Garden Services and Ornamental Shrub and Tree Services (NACIS 56173)
- Commercial Printing (NAICS 323)

Attachment C



TOTAL LOT AREA = 644,851 (14.80 ACRES)
 OPEN SPACE 25% MIN
 FAR 15% MAX
 OUTDOOR STORAGE 15% MAX

PREVIOUS APPROVED PROJECT
 OPEN SPACE = 357,981 SF (55.5%)
 FAR = 24,660 SF (3.8%)
 OUTDOOR STORAGE = 25,510 SF (4.0%)

AFTER CONCEPT SHOWN
 OPEN SPACE = 213,949 SF (33.2%)
 FAR = 63,060 SF (9.8%)
 OUTDOOR STORAGE = 83,610 SF (13.0%)