

**Docket Number:** 22/11287

**Applicant:** Nova Enterprises (property owner), represented by Robert Briles, Jr., 1205 NE 52<sup>nd</sup> Avenue, Des Moines, IA 50313

**Request:** Approval of a Conditional Use Permit to allow the Light Industry use of Specialty Trade Contractors (NAICS Code 238), and the Moderate Industry use of Site Preparation Contractors (NAICS Code 238910) – specifically for a concrete contractor at the subject property.

**Subject Property / Surrounding Land Uses:**

The subject property includes two (2) existing tax parcels addressed as 749 and 751 NE 46<sup>th</sup> (Broadway) Avenue, Des Moines. Together the parcels total approximately 6.72 acres, and are legally described as Lot 2 of Stickler Heights, being located within Section 23 of Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township). The properties are zoned “MU” Mixed Use District. All surrounding properties are zoned “MU” Mixed Use District and primarily developed with existing commercial and industrial uses. The subject property has approximately 257 feet of width and frontage onto NE 46<sup>th</sup> Avenue to the north, and has between 1,100 and 1,200 feet of depth measured north to south. The property is bordered to the north by NE 46<sup>th</sup> Avenue, to the south by an active Union Pacific railroad line, and to the east and west by existing commercial and industrial uses. There are a few existing residences located to the north on the north side of NE 46<sup>th</sup> Avenue, also zoned “MU” Mixed Use District. The larger surrounding neighborhood was platted and largely developed prior to current zoning and site development standards being adopted by the County, and includes a mix of existing single-family residential and commercial/industrial uses. The City of Des Moines corporate limits are located a few hundred feet to the northeast where they extend north along the west side of NE 14<sup>th</sup> Street (Hwy 69) and along Interstate 80/35. See *Attachment A* for a vicinity map of the subject property and surrounding area.

**Application**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 2 Table of Uses*, permits Light and Moderate 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 requesting approval of the following Light and Moderate Industry uses. Light Industry use of Specialty Trade Contractors (NAICS Code 238), and Moderate Industry use of Site Preparation Contractors (NAICS Code 238910) – specifically for a concrete contractor. The property currently contains an auto sales and service use, as well as sign contractor, carpentry contractor and concrete contractor. The auto sales and service use is classified as commercial, and permitted by right within the “MU” Mixed Use District, and does not require a Conditional Use Permit. Sign and carpentry contractors would be covered by the requested Light Industry category for Specialty Trade Contractors, and the concrete contractor would be covered by the requested Moderate Industry category for that use. See *Attachment B* at the end of this report for a copy of the application and exhibit

**Property History**

The subject property contains three (3) existing commercial buildings. The building located at 749 NE 46<sup>th</sup> Avenue totals 6,360 square feet, and was constructed in 1956. The building contains partial warehouse and office space. The north half of the building is currently occupied by an auto sales use and repair use. The south half of the building is currently occupied by a

construction contracting tenant. The property at 751 NE 46<sup>th</sup> Avenue contains a 7,200 square foot warehouse building with an attached 864 square foot office, and was constructed in 1974. The north half of the warehouse building and the office space is currently occupied by a sign contractor business, and the south half of the warehouse building is currently vacant. The 751 property also contains an additional 3,840 square foot warehouse building with 800 square foot interior mezzanine area, originally constructed in 1983. This building is currently occupied by a concrete contractor use.

There are limited building and site plan records on file for the subject property. This is largely due to the fact that many of the existing buildings, site improvements and historical uses were constructed and established prior to the County's adoption of zoning. While some of the later buildings, constructed in the 1970's and 1980's, pre-date the County's current Zoning Ordinance and development standards for commercial and industrial uses. The subject property has been occupied by a number of different commercial and industrial tenants over its history. Under prior versions of the Zoning Ordinance, specifically prior to 2007, the subject property and surrounding area was zoned Light Business District which permitted a number of industrial uses by right. However, staff has been in contact with the applicant and property owner over the last several months regarding proposed new uses and tenants for the property, as the current uses and tenants were all established within the last few years. Staff has encouraged the property owner to make application for this Conditional Use Permit in order to legitimize the existing Light and Moderate Industry uses. The owner will also be required to provide an engineered site plan to bring the site into compliance with applicable standards for paving, storm water, outdoor storage, landscaping, etc. Even though the existing buildings and certain past uses were established prior to current zoning development standards, recent changes in use and site improvements have occurred outside the required site plan and permitting process. This process provides an opportunity to correct these issues and bring the uses and site into full compliance.

### **Public Testimony**

Staff mailed out a total of 45 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 500-foot notification boundary. To-date staff has zero (0) responses.

### **Natural Resources / Environmental**

The subject property is not located within a mapped floodplain. However, the site has very flat and low-lying topography with subsequent drainage challenges, including difficulty adequately conveying storm water. Given the age of the site and its development prior to storm water detention requirements, there is no detention currently provided. Through the future site plan review, staff will determine what additional storm water improvements may be required. The site has a high elevation of approximately 842 feet to the north along NE 46<sup>th</sup> Avenue and a low elevation of approximately 836 feet at its southern boundary. The southern half of the property is currently open space containing an area of woodlands as well as mapped freshwater forested/shrub and freshwater emergent wetlands.

### **Roads / Utilities**

The subject property has approximately 257 feet of frontage to the north onto NE 46<sup>th</sup> avenue, which is a two-lane paved rural-cross section minor arterial roadway owned and maintained by

Polk County. NE 46<sup>th</sup> Avenue, also known as NE Broadway Avenue, provides connectivity west to NW 2<sup>nd</sup> Street (Hwy 415) and east all the way to NE Hubbell Avenue near the intersection with the Highway 65 Bypass. Polk County is currently in the process of designing a roadway improvement project for this entire stretch of NE 46<sup>th</sup> Avenue. The project would widen the roadway, provide a curb and gutter profile, including turn lanes and a multi-use trail on the north side of the street. The bidding and construction timeline is not finalized at this time, but construction is anticipated to start within the next year to 18 months and would occur in phases. Properties along NE 46<sup>th</sup> Avenue, including the subject property, may be impacted by this project in terms of easements needed for construction and possible reconstruction or relocation of existing entrances. Existing water service is provided by Des Moines Water Works. Current mapping identifies an existing 12-inch (12") water main located on the north side of NE 46<sup>th</sup> avenue. Public sanitary sewer service is not currently available to the property, and existing wastewater treatment is provided by an onsite septic system.

### **Analysis**

The Board of Adjustment in reviewing an application for a Conditional Use permit shall consider the proposal in terms of the following:

- 1. Existing zoning and land use in the vicinity of the uses.**  
The subject property and surrounding area are zoned "MU" Mixed Use District, and contain existing commercial and industrial development, with some limited residential uses as well.
- 2. Planned and proposed public and private development, which may be adversely affected by the proposed use.**  
Future reconstruction of NE 46<sup>th</sup> Avenue would not be negatively impacted by the proposed uses.
- 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 historically been utilized by a variety of commercial and industrial uses. The location of the subject property relative to adjacent roadways and major transportation corridors (NE 14<sup>th</sup> Street, NW 2<sup>nd</sup> Street and Interstate 80/35) provides a suitable and desirable location for continued industrial uses.
- 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 property has historically been utilized by similar uses, and the owner will be required to complete an engineered site plan to bring the property into compliance with applicable site development standards.

## **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.**  
Following approval of the Conditional Use Permit the applicant is required to gain approval of an engineered site plan and make necessary paving and other site improvements to bring the property into compliance with applicable development standards.
- 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 was originally developed and has been historically utilized for commercial and industrial uses. Future site plan review and approval will ensure compliance with all applicable development requirements.
- 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.**  
Future site plan review and approval process will ensure all requirements for the proposed uses are met, with the intent of protecting the public health, safety and welfare.

**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 use pending approval of this Conditional Use Permit by the Board of Adjustment, and pending future approval of an engineered site plan and completion of required site improvements.
  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. The property is located within the North Central Area, and is designated as future Mixed Use on the Future Land Use Map. Furthermore, the proposed uses and required site improvements to the property support the North Central Area goals of growing the tax base, character of development and economic development.
  2. **Polk County Zoning Ordinance:** Light and Moderate Industry uses are allowed within the “MU” Mixed Use District, subject to approval of a Conditional Use Permit by the Board of Adjustment.
  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 also zoned Mixed Use, and developed with existing commercial and industrial uses. There are a few residential properties located in close proximity, but they will not be further impacted by the proposal. The required future site plan and site improvements will bring the site into compliance with the Ordinance and reduce the impact of the site upon adjacent properties. All property owners within 500 feet were notified of this request.
  2. **Character of the neighborhood:** The surrounding area is entirely zoned “MU” Mixed Use District and primarily developed with existing commercial and industrial uses. The few nearby residential uses have been long established in this area. Furthermore, the Zoning Ordinance, Map and Future Land Use Plan acknowledge this historic development pattern and coexistence of existing residential uses alongside existing commercial and industrial uses in this portion of the County. The subject property is required to provide an updated site plan and construct required site improvements that will assist in mitigating any negative impacts on adjacent properties.
  3. **Traffic conditions:** NE 46<sup>th</sup> Avenue is a minor arterial roadway capable of handling current and future commercial and industrial traffic from the subject property and the larger corridor.
  4. **Parking:** Parking needs are currently met onsite. Parking will be evaluated as part of the future site plan review and approval process.
  5. **Public improvements:** No impact upon future public improvements is anticipated.

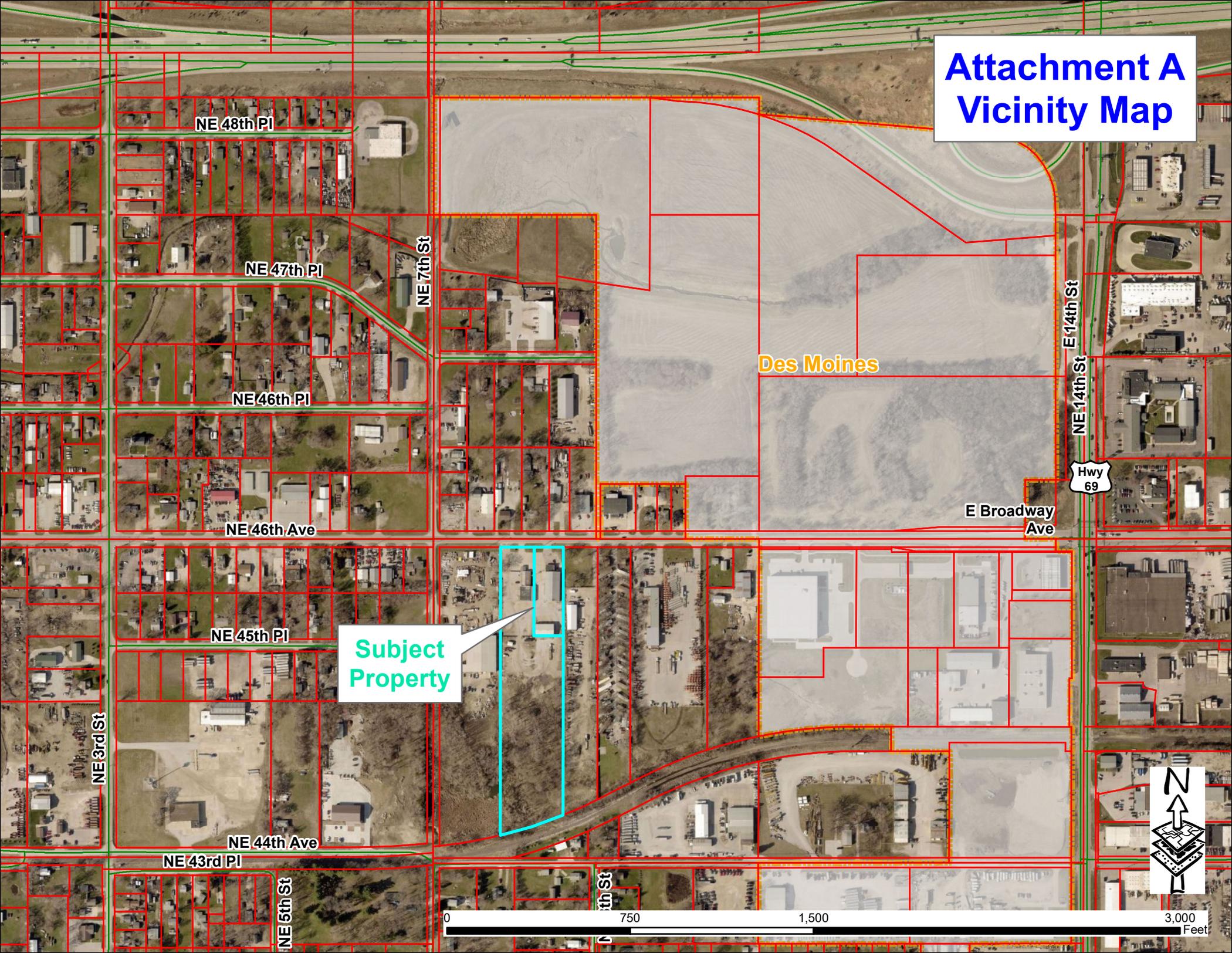
6. **Public sites or rights-of-way:** No impact upon public sites or adjacent rights-of-way is anticipated.
  7. **Other matters affecting the public health, safety, and general welfare:** None.
- D. **The proposed use in the proposed area is not adequately served by or imposes an undue burden on any 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 Conditional Use Permit to allow the Light Industry use of Specialty Trade Contractors (NAICS Code 238), and the Moderate Industry use of Site Preparation Contractors (NAICS Code 238910) – specifically for a concrete contractor at the subject property.

1. A Minor Site Plan shall be completed by a licensed engineer and a complete application shall be submitted to the Polk County Public Works Department. The site plan shall identify all existing and proposed improvements to demonstrate compliance with all Polk County site plan standards and Zoning Ordinance requirements for the site and uses.
2. Any proposed modifications to the existing buildings or structures shall require review and approval of a Commercial Building Permit Application by Polk County Public Works, and subsequent inspections and occupancy permits.
3. This Conditional Use Permit is only valid for the subject property as described in this report, and is only valid for the Light Industry use of Specialty Trade Contractors (NAICS Code 238) and the Moderate Industry use of Site Preparation Contractors (NAICS Code 238910) – specifically for a concrete contractor. Any additional Light or Moderate Industry uses proposed shall first require review and approval of another Conditional Use Permit Application.

# Attachment A Vicinity Map



NE 48th PI

NE 47th PI

NE 46th PI

NE 46th Ave

NE 45th PI

NE 44th Ave

NE 43rd PI

NE 3rd St

NE 5th St

NE 7th St

6th St

E 14th St

NE 14th St

Hwy 69

E Broadway Ave

Des Moines

Subject Property

0 750 1,500 3,000 Feet



**Conditional Use Permit Application**

Proj. #571  
Plan #11287



Conditional Uses are those uses which may have a special impact or uniqueness demanding closer scrutiny and analysis to the site and the surrounding environment. When such a use is proposed, a review and report by Planning Division staff of the location, design, configuration, and impact will be conducted, comparing the proposed use to fixed standards and presented to the Board of Adjustment for action at a public hearing. Notices of the request are mailed to all property owners located within 500 feet of the subject property.

Please complete the entire application, submit with fee and review the standards on page 3.

To: **Polk County Board of Adjustment**

1. The undersigned Petitioners request that the Board consider this application for a Conditional Use Permit for the following use: (Describe briefly the nature of the use.)

From MV to LF to use as approved for service related businesses as required, cabinet shop, plumbing shop ect.

2. Subject Property Address: 749, 751 NE Broadway Ave

3. Subject Property District and Parcel Number: 270/02450-003-001-002

4. Subject Property Legal Description (attach if necessary):  
\_\_\_\_\_  
\_\_\_\_\_

(time stamp)  
Official Use Only

5. Filing Fee: - \$413.00

6. Applicant(s) Information: Nova Enterprise

Robert (Bob) E. Briles Jr  
Applicant (Print Name)

[Signature]  
Signature

2-23-22  
Date

owner/partner  
Interest in Property (owner, renter, perspective buyer, etc.)

Bobbriles@gmail.com  
Email

1205 NE 52<sup>nd</sup> Ave DSM Ia 50313  
Address, City, State and Zip

575-240-5707  
Phone Fax

7. 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

8. 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)

Robert E Briles Jr  
(Print Name)

[Signature]  
Signature

2-23-22  
Date

Sue Briles  
(Print Name)

[Signature]  
Signature

2-23-22  
Date

9. Written description:

Please provide a written description providing specific detail and reasons for the proposed Conditional Use Permit. (attach if necessary)

See other page "Project Description"

10. Required Information: (must be included prior to making submittal)

- A. Complete Application including the detailed description of requested Conditional Use Permit, including specific information about the request.
- B. Submit six (6) copies of a fully dimensioned, to scale site plan meeting site plan requirements, as required.
  - 1. Provide additional information as required by Zoning Ordinance specific to the use requested.
  - 2. Submit a reduced size, 11"X17" site plan that is legible that can be reproduced.

**A completed application with required information and filing fee must be submitted. Incomplete submittals will not be processed and will be returned to the Applicant.**

Return forms to: Polk County Public Works, Planning & Development Division 5885 NE 14<sup>th</sup> Street  
Des Moines, IA 50313  
▪ Phone (515) 286-3705 ▪ Fax (515) 286-3437 ▪  
email: PublicWorks@polkcountyiowa.gov

Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar Calendar

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

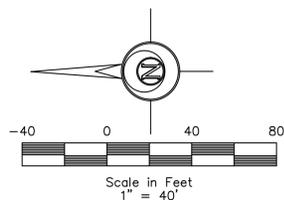
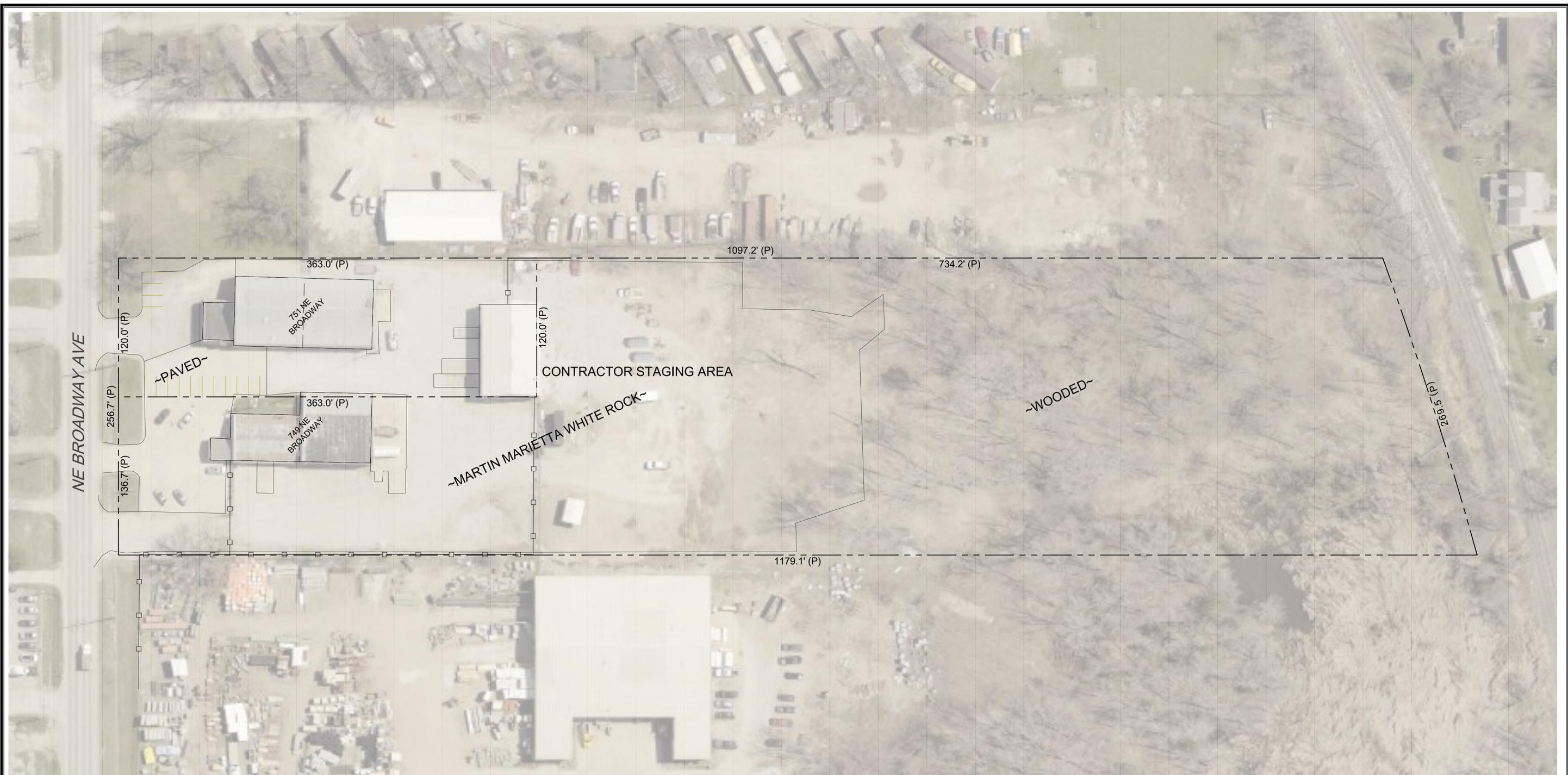
## Project Description:

Nova Enterprise (Bob & Sue Briles) owns 3 buildings at 749 and 751 NE Broadway Avenue in unincorporated Polk County, Iowa. These buildings have been owned with ground lease by Nova Enterprise since 1995 and have been leased to many various tenants. The zoning code and map of Polk County have changed several times since then and so have the allowed uses at these sites. (M1 at purchase, 2007-Light Industrial, 2008 Mixed Use comprehensive plan to date.) Though light industrial uses have been located here (cabinet shop, plumbing shop, heating & cooling, handyman, countertop, ect) and surrounding properties all around me for some time, the area has been rezoned such that light industrial (home services) uses are only conditionally permitted.

The existing site has been out of conformance with zoning code for some time, but this fact has just recently come to the attention of a tenant as the County is now requiring them to obtain a conditional use permit in order to continue the present use of the building. We are applying for this conditional use permit in order to use the site as we have for years. We are not proposing to change the use of the site, but to allow the present use to continue as it has for some time.

The conditional uses are a sign contractor-graphic designer, cement contractor, auto sales, fence and deck contractor, and plumbing contractor at the properties. These uses are consistent with the neighborhood, with historical use of the site, and with existing uses of the surrounding properties. The uses are also consistent with mixed use zoning district as part of this district is to "[recognize] existing areas developed with a mix of 3(owner occupied) residential, commercial and industrial uses" (Polk Co. Ordinance Division 3 article 3 Section 3) This description fits the neighborhood of 749 and 751 Broadway Ave as many industrial and commercial uses surround the properties and a trailer park nearby. It is our opinion that the existing uses well-conform to the character of the neighborhood and intent of the mixed-use zoning district. Therefore it is our opinion that a conditional use permit should be granted to these properties.

Bob and Sue Briles % Nova Enterprise



**LEGEND:**  
 (P) PLATTED DIMENSION  
 +/- MORE OR LESS  
 —○—○—○—○— FENCE LINE

**ELDS DESIGN SERVICES**  
 Architecture | Engineering | Surveying  
 2323 Dixon Street, Des Moines, Iowa 50316 | PO Box 4626, Des Moines, Iowa 50305 | Ph: 515 265 8196

**CONDITIONAL USE PERMIT**  
**749 & 751 NE BROADWAY AVE**  
**DES MOINES, IA 50313**

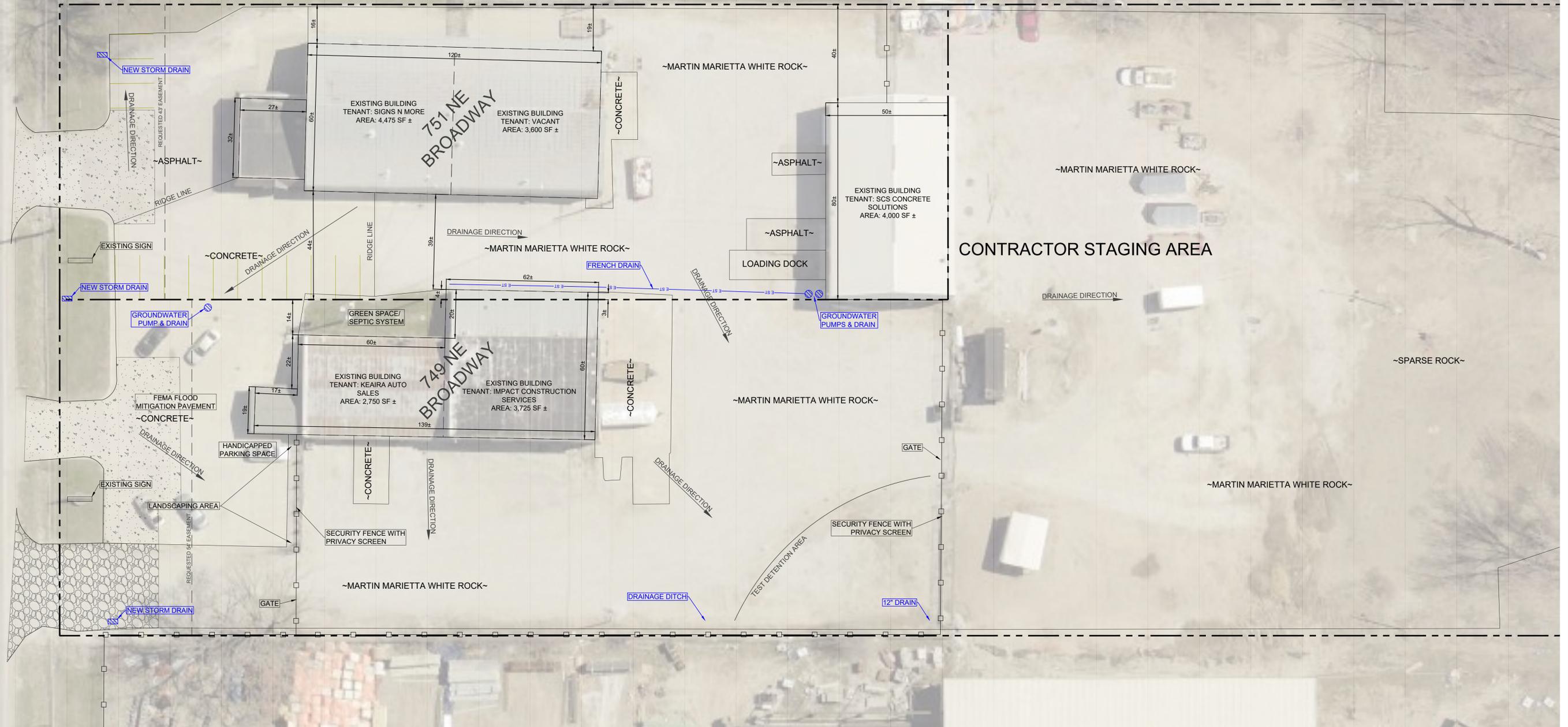
**PRELIMINARY**

DATE: 11/20/22	DRAWN BY: B. SHORT	SCALE: 1"=40'	LATEST REVISION: 1	DRAWING NO: 22-018
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**SITE OVERVIEW**

NE BROADWAY AVE



 BROADWAY GRAVEL REPLACEMENT (APPROXIMATED FROM PLAN BY SNYDER)

 BROADWAY PAVEMENT REPLACEMENT (APPROXIMATED FROM PLAN BY SNYDER)

**OWNER CONTACT INFORMATION:**

NOVA ENTERPRISE  
 ROBERT (BOB) BRILES  
 515-240-5707  
 1205 NE 52ND AVE  
 DES MOINES, IA 50313

DISTRICT/PARCEL NO - 270/02456-003-001 & 2  
 749 AND/OR 751 PROPERTY & BUILDING  
 NON-CONFORMING AS BUILT, IN EXISTING USE AS  
 SHOWN.

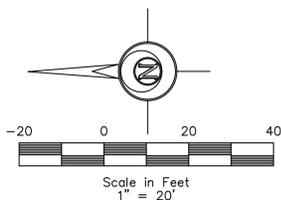
**SITE PLAN REFERENCE AND ZONING HISTORY:**

- BISHOP ENGINEERING 1982 #82 42-5 - **M1 ZONING**
- ASSOCIATED ENGINEERING 1983 #30 31-45 - **M1 ZONING**
- POLK COUNTY ASSESSOR 2007 - **INDUSTRIAL LIGHT ZONING**
- POLK COUNTY COMPREHENSIVE PLAN 2008-CURRENT - **MIXED USE ZONING**

**FEMA INFORMATION:**

FEDERAL DISASTER PROCLAMATION 6-1-2010 8/31/2010  
 FEMA REGISTRATION NUMBER: #393417613 11/17/2010  
 FEMA CERTIFIED ENGINEER: LES DELINSKI, ST. LOUIS 11/29/2010  
 FEMA/SBA "FLOOD MITIGATION LOAN" - #0004413966

- 9/29/2011 - MEETING WITH POLK COUNTY - RICK WHITMAN, DOUG DOLASH, JERRY MOORE, VIC (ASSOCIATED ENGINEERING)
- 10/31/2011 - GRADING PLAN - VIC ASSOCIATED ENGINEERING #204225
- 6/22/2020 - CONSENT AGREEMENT FOR CAR LOT
- 4/2021 - MEETING WITH BRENT CULP SNYDER & ASSOCIATES - GROUNDWATER, REAR DRAINAGE, BROADWAY ROAD PROJECT
- 6 MEETINGS TO DATE WITH SNYDER & ASSOCIATES - BROADWAY ROAD PROJECT, 749 & 751 3 DRAIN BOXES, STREET ELEVATIONS, DRAINAGE WATER TABLE CONCERNS, IMPROVEMENTS GOING FORWARD



**LEGEND:**  
 +/- MORE OR LESS  
 - - - - - FENCE LINE



**PELDS DESIGN SERVICES**  
 Architecture | Engineering | Surveying  
 2323 Dixon Street, Des Moines, Iowa 50316 | PO Box 4626, Des Moines, Iowa 50305 | Ph: 515 265 8196

**CONDITIONAL USE PERMIT**  
**749 & 751 NE BROADWAY AVE**  
**DES MOINES, IA 50313**

PRELIMINARY

DRAWN BY: B. SHORT	SCALE: 1"=20'	LATEST REVISION: *****	DRAWING NO: *****
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SITE LAYOUT