

**Docket Number:** 23/12835

**Appellants:** Melinda and Larry Ginger, 260 NW 54<sup>th</sup> Avenue, Des Moines 50313 (Property Owners) and Nicole Martin, 5890 NW 2<sup>nd</sup> Street, Des Moines 50313 (Applicant)

**Appeal:** The appellants request a front setback variance to allow the construction of a covered entryway located approximately 46 feet from the front property line, in lieu of the required 75 feet.

### **Background**

The subject property is located at 5890 NW 2<sup>nd</sup> Street, Des Moines, and is legally described as the north 85 feet of Lot 8 Botsford Acres, being located within Section 10, Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township). The property is just over one-half ( $\frac{1}{2}$ ) acre at 0.57 acres in size and is zoned "GC" General Commercial District. The subject property is located approximately 2 miles north of the corporate limits of the City of Des Moines and approximately one and three quarters ( $1\frac{3}{4}$ ) mile south of the City of Ankeny corporate limits along NW 2<sup>nd</sup> Street. The adjacent properties to the north, west, and south are all zoned "GC" General Commercial District and contain various commercial businesses. The property to the east across NW 2<sup>nd</sup> Street contains the Highland Memory Gardens cemetery and it is zoned "LDR" Low Density Residential. The larger unincorporated surrounding area consists of commercial uses adjacent to NW 2<sup>nd</sup> Street with single family developments occupying the areas further to the East and West of NW 2<sup>nd</sup> Street. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is rectangular shaped having approximately 85 feet of width north to south, and 294 feet of depth east to west. The property has frontage to the east onto NW 2<sup>nd</sup> Street. The main commercial building furthest to the east was constructed in 1954 and a detached garage was constructed in 1988 west of the main building. The applicant operates a hair salon out of the main, front building, and with the consent of the property owners, is proposing to remove a glass atrium on the front of the building and replace it with a covered entryway within the same footprint. The main building is considered a legal, non-conforming structure as it is within the 75-foot required setback along NW 2<sup>nd</sup> Street. Non-conforming structures are allowed to continue but cannot be expanded upon in a way that would increase their non-conformity. Even though the covered entryway is proposed to be established in the same footprint as the glass atrium, the variance is needed as it is still a new encroachment into the required setback after the removal of the glass atrium.

### **Summary of Request**

The Polk County Zoning Ordinance, Article 6: Bulk and Use Standards, Division 5, Non-Residential Bulk Standards, Table 6.9 requires a minimum setback of 75 feet for buildings on lots adjacent to a principal arterial street within the "GC" General Commercial District. A variance of 29 feet is requested to allow for the construction of a 12.5' x 9' covered entryway to be located approximately 46 feet from the front property line, in lieu of the required 75 feet. The submitted application and site plan for this appeal can be found as *Attachment B*.

Staff mailed out eleven (11) 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 zero (0) in opposition of this Appeal.

### **Natural Resources**

The property is relatively flat with only two (2) feet of elevation change from the east side of the property at an elevation of 906 to the west side of the property at an elevation 908. The property contains only a few mature trees spread throughout the property. The proposed expansion will not affect any of the mature trees on site. The property is located outside any floodplain areas and contains no other environmental hazards or features.

### **Roads & Utilities**

The property has frontage to the east along NW 2<sup>nd</sup> Street, which is a paved four-lane principal arterial roadway maintained by the Iowa Department of Transportation. Water service is provided by Des Moines Water Works. The property is served by a private onsite septic system, which Polk County records indicate is located west of the main building. Polk County Environmental Health regulations require that all structures maintain a minimum separation of ten (10) feet from all components of the wastewater treatment system. The location of the proposed covered entryway meets this requirement.

### **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 building was established in 1954 before the current zoning and setback restrictions were in place. Although the variance is necessary for establishing the covered entryway, it will not encroach any further than the existing glass atrium. The covered entryway will provide a more approachable entryway and would not provide the same function if it were to be placed anywhere else.
- 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 hair salon commercial business is a permitted use on the subject property.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
  
Yes. The proposed addition would have little effect on adjacent property owners. The covered entryway will be in the same footprint as the existing glass atrium.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  
  
Yes. The location and orientation of the buildings on site and state of the existing glass atrium are not results of actions of the applicant.

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.

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.

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)

Take current atrium out and replace with covered canopy entrance.

(time stamp)  
Official Use Only

2. Subject Property Address: 5890 NW 2nd St.

3. Subject Property Zoning District: 270/00838-000-000 ←

4. District and Parcel Number: Sawyer Township ←

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

6. Filing Fee: \$353.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Nicole A. Martin  
Applicant (Print Name)

[Signature]  
Signature

5-24-2023  
date

Renter  
Interest in Property (owner, renter, prospective buyer, etc.)

nicoleandjohn515@msn.com  
Email

5890 NW 2nd St Des Moines, IA 50313  
Address, City, State and Zip

515-491-3611  
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)

X MELINDA S. GINGER (Print Name)	 Signature	5-24-23 date
X LARRY GINGER (Print Name)	 Signature	5-24-23 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.

Building currently has glass atrium that is very poor condition, we would like to replace it with a covered canopy and new entrance in the same spot and set back as the atrium.

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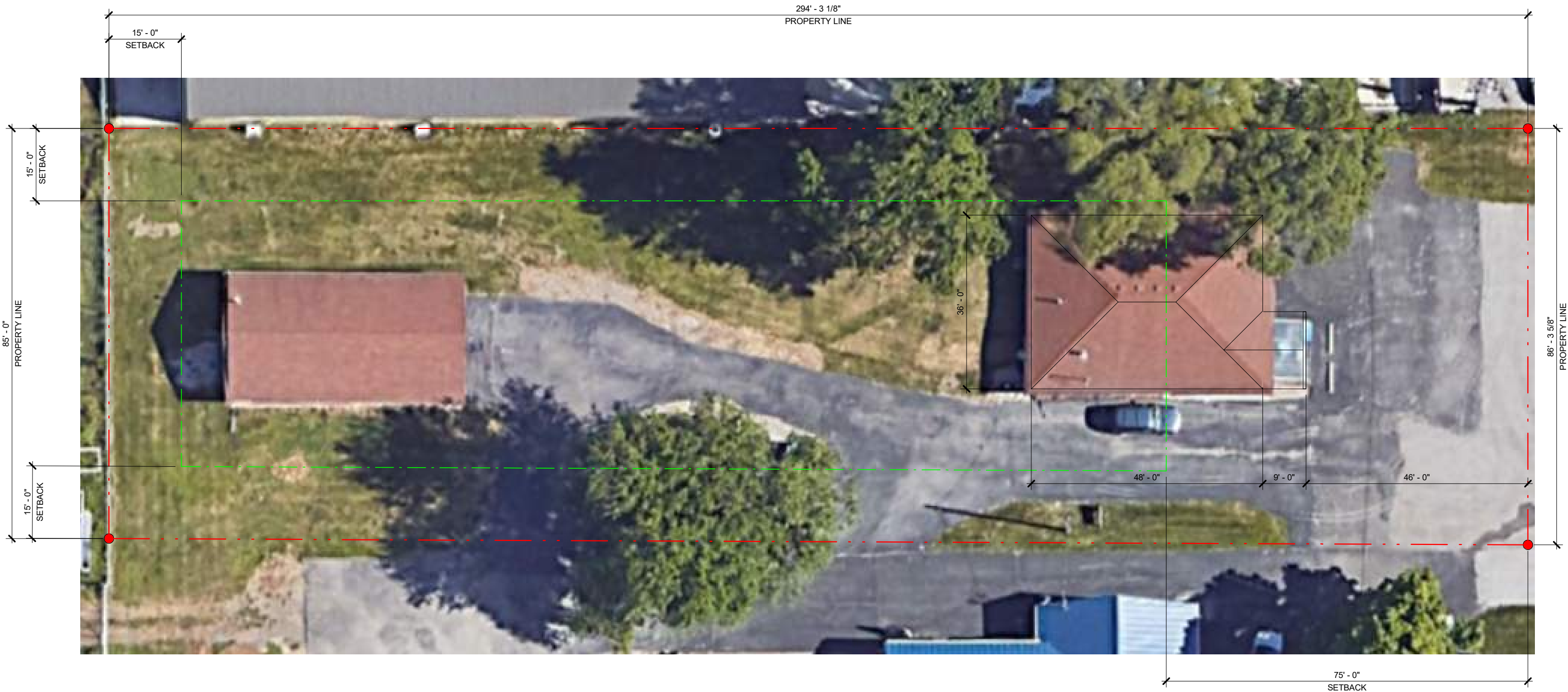
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**A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.**

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 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	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N





**1** ARCHITECTURAL SITE PLAN  
SCALE: 1" = 20'-0"



# 5890 NW 2ND STREET BUILDING ADDITION

THESE DOCUMENTS HAVE BEEN PREPARED SPECIFICALLY FOR THE REFERENCED PROJECT. THEY ARE NOT SUITABLE FOR USE ON OTHER PROJECTS OR IN OTHER LOCATIONS WITHOUT THE EXPRESS WRITTEN APPROVAL AND PARTICIPATION OF SVP ARCHITECTS INC. REPRODUCTION IS PROHIBITED.

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DATE: 05/24/2023 PROJECT NUMBER: 23039

ARCHITECTURAL SITE PLAN

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