

**Docket Number:** 20/9437

**Appellant:** STJ Properties, Inc., 1627 18<sup>th</sup> Street,  
West Des Moines, IA 50265 (Property Owner),  
represented by Scott Jayne

**Appeal:** The appellant requests a front yard setback variance for a proposed residential accessory building to be located within the secondary front yard at less than the required front yard setback of 30 feet.

### **Background**

The subject property is located at 310 NE 43<sup>rd</sup> Avenue, Des Moines, and is legally described as Lot 11 of Liberty Acres, within Section 23 of Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township). The property is approximately 18,933 square feet (0.44 acres) in size and is zoned "MDR" Medium Density Residential District. The subject property is located one (1) block north of the City of Des Moines corporate limits where they extend north to NE Aurora Avenue, and two (2) blocks east of NW 2<sup>nd</sup> Street (Hwy 415). The property is a corner lot located at the northeast corner of NE 3<sup>rd</sup> Street and NE 43<sup>rd</sup> Avenue. Surrounding properties in the immediate area are all zoned "MDR" Medium Density Residential District and primarily developed with single-family residences. There is a local church, The Hmong Alliance Church, located just northwest of the subject property on the west side of NE 3<sup>rd</sup> Street. Further south of NE Aurora Avenue within the City of Des Moines is the residential neighborhood of Highland Park. Further north of the subject property, lying north of NE 44<sup>th</sup> Avenue, the land use transitions to established commercial and industrial uses, with some existing residential uses as well, primarily zoned "MU" Mixed Use District.

The subject property is a corner lot with approximately 64 feet frontage to the south onto NE 43<sup>rd</sup> Avenue, and approximately 297 feet of frontage to the west onto NE 3<sup>rd</sup> Street. Primary access to the property is taken from the south onto NE 43<sup>rd</sup> Avenue. The property contains an existing single-family dwelling, approximately 972 square feet in size, which according to County records was originally constructed in 1936. The property also contains an existing detached garage, approximately 280 square feet in size, originally constructed in 1954 according to County records. During staff's recent site visit to the property it appeared exterior improvements have been made to both existing structures, including new roof, windows, siding and gutters. The appellant is requesting a variance to construct a new 40' x 60' (2,400 square feet) accessory building on the property located approximately 11 feet and 9 inches (11' - 9") from the western, front property line adjacent to NE 3<sup>rd</sup> Street, in lieu of the required 30 feet of front setback.

The subject property is a corner lot with two (2) street frontages. The Ordinance permits accessory structures to be located in front of the principal structure on corner lots if it is within the secondary front yard, defined as the yard without primary access, and if the underlying front yard setback for the zoning district is met.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6, Accessory Regulations, Section 1(K)* permits accessory buildings in front of the principal building on corner lots or lots with multiple front yards if the accessory building is located in the yard which does not contain primary access and if it meets the minimum front setback for the underlying zoning district.

*Article 6: Bulk and Use Standards, Division 2, Table 6.1* requires a minimum front yard setback of 30 feet within the “MDR” Medium Density Residential District. The subject property is a corner lot, with primary access taken from the south onto NE 43<sup>rd</sup> Avenue. The appellant is proposing a new accessory building, approximately 40’ x 60’ (2,400 square feet), to be located in front of the principal dwelling at a front yard setback of approximately 11 feet and 9 inches (11’- 9”) from the western, front property line adjacent to NE 3<sup>rd</sup> Street, in lieu of the required front yard setback of 30 feet. See *Attachment A* at the end of this report for a copy of the site plan showing the proposed accessory structure location and setbacks.

Staff mailed out 31 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 two (2) responses in support, and zero (0) responses in opposition, of this Appeal.

### **Natural Resources**

The subject property contains no floodplain, wetlands or other environmental hazards or features. The site topography is flat with little to no change in elevation. There is little vegetation or tree cover on the property.

### **Roads & Utilities**

The property has frontage and primary access to the south onto NE 43<sup>rd</sup> Avenue, which is a hard surfaced two-lane local roadway maintained by Polk County. The property also has frontage onto NE 3<sup>rd</sup> Street to the west, which is a paved, two-lane collector roadway also maintained by Polk County. There is a ten (10) feet wide public utility easement adjacent to the southern property line along NE 43<sup>rd</sup> Avenue. Public water is provided by Des Moines Water Works (DMWW). The latest available data from DMWW indicates there is an eight-inch (8”) water main located adjacent to the south of the property along the north side of NE 43<sup>rd</sup> Avenue, as well as an eight-inch (8”) water main transitioning to a six-inch (6”) water main located adjacent to the west of the property lying on the east side of NE 3<sup>rd</sup> Street.

According to County records the property is served by an existing septic system located north of the dwelling, including two (2) 100-foot long laterals extending to the north. Any future accessory structure must be separated a minimum of ten (10) feet from any portion of the septic system. The appellant has indicated that he wishes to connect the property to sanitary sewer in the future. Polk County Engineering has confirmed that there is an existing Polk County sanitary sewer main located adjacent to the south of the subject property. Polk County would provide a service stub once the owner pays the required connection fee. At that time, the owner would also be required abandon the existing septic system, including a permit and inspection from Polk County Environmental Health.

### **Recommendation**

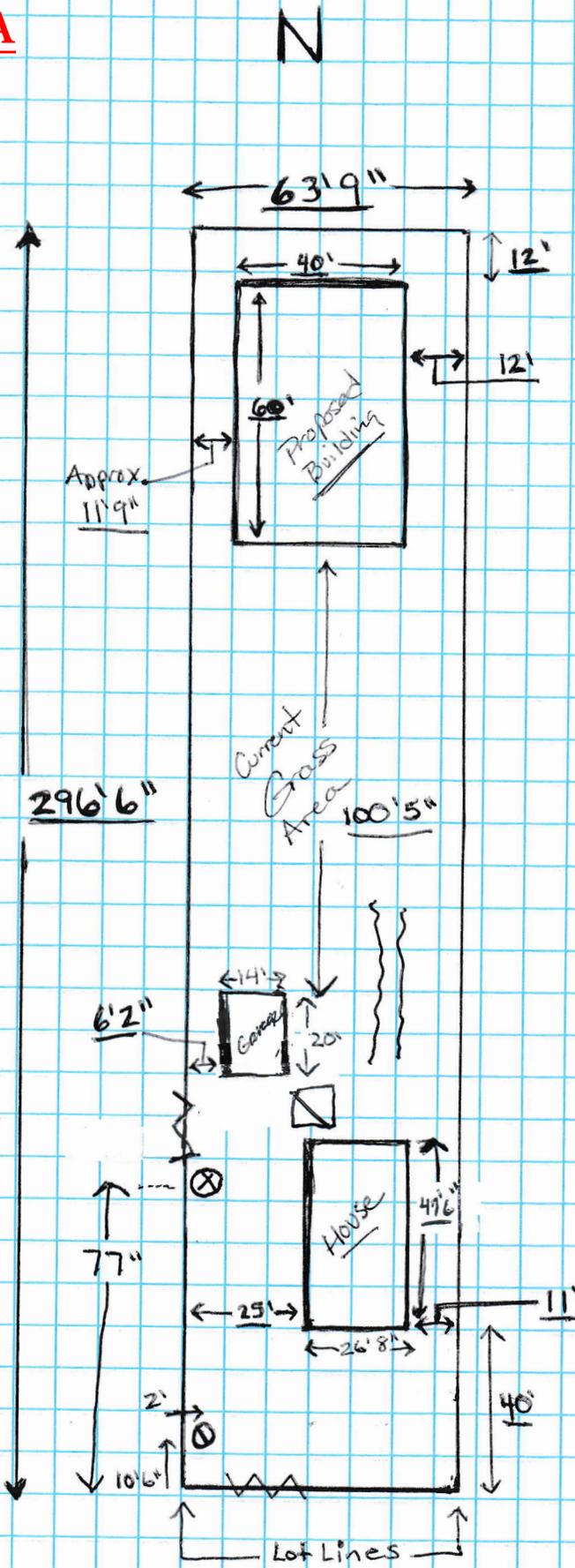
**The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.**

- 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 subject property has an extremely narrow width (measured east to west) compared to its depth (measured north to south). This narrow width, in conjunction with the property's configuration as a corner lot with two (2) street frontages and required front yard setbacks, greatly reduces the area available to place an accessory structure in a conforming location.
- 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. Residential accessory structures are a permitted use within the "MDR" Medium Density Residential District.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
- Yes. See staff's recommendation below to require a minimum 20 feet of front yard setback from the western property line, and not the approximately 11 feet and 9 inches (11'- 9") requested by the appellant. A minimum front yard setback of 20 feet will preserve the existing front building line established by the residences directly adjacent to the north.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
- Yes. The configuration of the lot, including narrow width and multiple street frontages, is an existing condition not created by the appellant.
- 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 environmental areas are anticipated to be impacted by this proposal.

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, modified from the original request, to allow a future accessory structure to be located approximately 20 feet from the western, front property line (**not** the 11 feet and 9 inches requested), in lieu of the required 30 feet of front setback. Staff's recommendation to modify the appellant's request is based on the fact that the requested 11 feet and 9 inches of front setback would place the accessory building closer to the street than other residences within the neighborhood which also front NE 3<sup>rd</sup> Street. A front setback of 20 feet helps preserve a more uniform front building line, particularly in relation to the nearest residences located directly north of the subject property.

Attachment A



- = 10'
- ⊙ = Fire Hydrant
- W = Driveway
- ⊗ = Utility Pole
- ▣ = Septic Tank
- ~~~~~ = Lateral Lines

Parcel: 270.01795.000.000  
 310 NE 43RD AVE  
 DES MOINES, IA 50313

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