

**Docket Number:** 19/8673

**Appellant:** McKee Auto Center, Inc.  
Anthony McKee  
5095 NE 14<sup>th</sup> Street  
Des Moines, IA 50313

**Appeal:** Variance request to reduce the Minimum Open Space Ratio (OSR) from 35% to 10% on the subject property of 5095 NE 14<sup>th</sup> Street, Des Moines, Section 13 of Saylor Township.

**Appeal Given:** For the complete Variance appeal packet, please refer to *Attachment 'A'*. The following are excerpts from *Attachment 'A'*:

*“McKee Auto owns 5095 NE 14<sup>th</sup> Street, the property subject to this variance application, as well as the two contiguous parcels immediately to the north across NE 51<sup>st</sup> Street, 5125 NE 14<sup>th</sup> Street and 5145 NE 14<sup>th</sup> Street. 5125 NE 14<sup>th</sup> Street is also used as a pre-owned auto lot, while the other parcel is vacant.”*

*“McKee Auto requests a reduction in the green-space requirement at 5095 NE 14<sup>th</sup> Street, from 35% to 10%, which will allow it to expand its auto lot to the east into a current grass area, increasing its use of the property by approximately the same number of square feet of land impacted by the DOT condemnation. If this variance request is granted, all use of the property will be within the confines of all setback requirements. The approximate area of expansion is identified on the included map.”*

*“The special conditions and circumstances of the condemnation do not exist generally on other properties, and the current 35% green-space requirement makes it exceptionally difficult for McKee Auto to use the property for its intended use as a pre-owned auto center due to the limitations on the number of vehicles McKee Auto can store at the property.”*

*“This variance application did not result from the actions of the appellant, but because of the DOT condemnation, and the variance will not void the natural resource protection requirements of the zoning ordinance.”*

Please see *Attachment 'B'* for the conceptual site plan identifying the proposal.

### **Background**

The subject property is zoned “GC” General Commercial District. The existing use as a pre-owned auto lot is an allowed use within the GC zoning district. The subject property consists of one (1) tax parcel totaling approximately 29,744 square feet and is legally described as follows:

A part of the Northwest  $\frac{1}{4}$  of Section 13, Township 79 North, Range 24 West of the 5<sup>th</sup> P.M., Polk County, Iowa, described as follows: Beginning at the intersection of the South Right-of-Way line of 51<sup>st</sup> Street, extended (Lot “E” of the recorded plat of Iowa Fund, Inc., Polk County, Iowa) and the East Right-of-Way line of Northeast 14<sup>th</sup> Street (U.S. Highway No. 69), said point being 614.27 feet North and 108.73 feet East of the Southwest corner of the Northwest  $\frac{1}{4}$  of Section 13-79-24 West

of the 5<sup>th</sup> P.M., Polk County, Iowa; thence N 89° 39' E, 225.27 feet along said South Right-of-Way line extended to the West Right-of-Way line extended of Northeast 15<sup>th</sup> Street (Lot "A" of the recorded plat of Iowa Fund, Inc.); thence S 00° 00' E, 135.0 feet along said West Right-of-Way line extended; thence S 89° 39' W, 216.19 feet to the East Right-of-Way line of Northeast 14<sup>th</sup> Street (U.S. Highway 69); thence N 3° 50' W, 135.3 feet along said East Right-of-Way line to the point of beginning.

The subject property is located at the southeast corner of the NE 14<sup>th</sup> Street and NE 51<sup>st</sup> Avenue intersection and currently has approximately 130-feet of frontage along NE 14<sup>th</sup> Street and approximately 210-feet of frontage along NE 51<sup>st</sup> Avenue. The property has an existing auto sales office building containing approximately 1,380 square feet. This building was constructed in approximately 1964 based on estimates from the Polk County Assessor's webpage. The Zoning Ordinance established during this time did not require maximum Floor Area Ratio (FAR) or minimum OSR standards. The surrounding property adjacent to the east and south was platted in 1968 as Ellis Heights recorded in Book 139. The subject property will be impacted by DOT Project No. NHSN-069-4(107)-2R-77 that will allow for widening of the adjacent NE 14<sup>th</sup> Street / Highway 69 right-of-way by the Iowa Department of Transportation. This project will allow the condemnation and acquisition of approximately 2,613.16-square feet (.06-acres) of the subject property. McKee Auto also owns two contiguous parcels adjacent to the north across NE 51<sup>st</sup> Street. The parcel closest to the adjacent property currently operates as a pre-owned auto lot however, the property is under contract to sell to Kwik Trip, Inc., for a modern convenience store. McKee Auto is reconfiguring the auto lot due to these changes and is proposing to add paving to the subject property to extend their auto lot.

The adjacent properties to the north, south and east are all zoned "GC" and developed as commercial properties. The adjacent properties across NE 14<sup>th</sup> Street to the west are zoned "GC" and developed commercially with one property being located within the City of Des Moines corporate limits. A vicinity map is attached as *Attachment 'C'*. If this Variance is approved, the proposed site improvements will also require approval of a detailed Site Plan prior to commencement of construction.

### **Summary of Request**

The Appellant is proposing to construct paving within the existing open space on the subject property for additional parking to be used by the auto lot. The proposed extension of the parking lot would cover approximately 11,761-square feet of the existing approximately 13,068-square feet of open space. The Appellant is therefore requesting a Variance of 25% (from 35% to 10%) to the required minimum Open Space Ratio to allow a paved parking lot to be constructed in the location of the existing open space on the subject property.

The Polk County Zoning Ordinance, *Article 5: District Performance Standards, Division 4: Non-Residential Standards, Table 5.2 Non-Residential Development Performance Standards*, states that the Minimum Open Space Ratio (OSR) for nonresidential structures in the "GC" General Commercial District is 35%.

The Appellant identifies in the application that they are requesting the Variance from 35% to 10% to improve and expand the parking area to the southeast and increase the number of used autos for sale on the property. A concept drawing prepared by Abaci Consulting Inc. (*Attachment 'B'*) was submitted to support the request and shows a proposed parking lot addition with 27 parking stalls on the eastern portion of the subject property within the existing open space. The proposal also identifies areas of open space located along the northern and southern boundary of the parking lot and within the parking lot that could allow for landscaping and stormwater management. The submitted justification identifies that McKee Auto Center was impacted by DOT Project No. NHSN-069-4(107)-2R-77 on the subject property as well as the two adjacent owned parcels to the north. They note that the increased expansion on the subject property would be approximately the same amount of square feet of land from all three parcels owned by McKee Auto Center that are impacted by the DOT condemnation. The impact of the acquisition on the subject property is a reduction of the total site area by approximately 8.7%.

### **Natural Resources**

According to topographic maps, the topography across the property varies with a high elevation of 906-feet in the northwest corner and a low point of 898-feet in the southeast corner. The subject property is not located within the mapped floodplain. Aerial review indicates that the site has been mostly unchanged since the 1964 construction of the building and pavement. Approximately 43% of the site is open space entirely located along the eastern portion of the property. During a review of the site and associated proposal, staff concerns were identified regarding stormwater management on the property. The existing conditions on the property do not address stormwater management on site. The proposal would create an increase in the impervious surface on site and therefore create an increase in stormwater. If a stormwater control basin will be provided within the remaining open space then staff is requiring that it is not a wet bottom basin. No landscaping currently exists on site. Future site improvements will require that a light street bufferyard be added along with parking lot landscape islands.

### **Roads/Utilities**

The subject property is located at the southeast corner of the NE 14<sup>th</sup> Street and NE 51<sup>st</sup> Avenue intersection and currently has approximately 130-feet of frontage along NE 14<sup>th</sup> Street and approximately 210-feet of frontage along NE 51<sup>st</sup> Avenue. NE 14<sup>th</sup> Street is a paved state road and is classified as an Other Principal Arterial. NE 51<sup>st</sup> Avenue is a paved County Road classified as a Minor Arterial. A traffic signal is located at the intersection of NE 14<sup>th</sup> Street and NE 51<sup>st</sup> Avenue. The subject property has two existing access locations with one located along NE 51<sup>st</sup> Avenue and one to the south along an existing frontage drive created by the 1968 recorded plat of Ellis Heights in Book 139. The subject property is located less than ¼ mile north of I-35 / I-80.

The Appellant has provided supporting documentation that indicates the subject property is currently connected and served by the City of Des Moines sanitary sewer along NE 14<sup>th</sup> Street / Highway 69. Des Moines Water Works provides water service in this area with an 8-inch water main on the west side of NE 14<sup>th</sup> Street. Electric and gas service is provided by MidAmerican Energy.

**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?

No. The Appellant's use of the subject property is permitted in the Zoning District. The property currently meets the required open space requirement with approximately 43% open space. The DOT condemnation will acquire approximately 2,613-square feet (8.7%) of the subject property however, the site would still be able to maintain the required 35% open space even with an extension of parking lot area in the amount of the condemnation. Other properties in the same zoning district and within the U.S. Highway 69 / NE 14<sup>th</sup> Street corridor are required to meet the current 35% open space requirement.

- 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)

No. The existing use is permitted and allowed to expand within the "GC" General Commercial District subject to a site plan that meets requirements of the Polk County Zoning Ordinance and permit approvals. As properties in this corridor redevelop and make site improvements then they will also be required to meet the OSR for the Zoning District.

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

No. The required OSR allows the site to adequately meet landscaping requirements and stormwater control within the open space on the property. The increase in impervious surface as proposed and reduced open space would limit the options for controlling stormwater runoff on site.

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

No. The current DOT Project No. NHSN-069-4(107)-2R-77 has condemned portions of properties in the U.S. Highway 69 / NE 14<sup>th</sup> Street corridor to extend right-of-way for road widening. The impacts of the project have required adjustments to how current sites operate and how they will continue to operate in the future. The Appellant identifies two additional parcels to the north that they own having

utilized one of them for auto sales. They included in the application that they have a contract to sell those properties and in response have chosen to expand upon the subject property. The Appellant has created the need for the Variance.

- 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 stormwater drainage, erosion control and other environmental provisions of the Polk County Zoning Ordinance. The Appellant will be required to submit a detailed site plan and have an Iowa licensed engineer certify that the use and the proposed OSR will meet the stormwater drainage requirements on site.

The Board of Adjustment may grant a Variance if items 1 through 5 are affirmed. Since items 1-4 were not answered in the affirmative, staff recommends denial of the Variance request to reduce the required Open Space Ratio by 25% (from 35% to 10%).

Staff's recommendation for denial is based upon the fact that although the subject property has been impacted by the acquisition of a portion of the property, the property would still be able to meet the OSR of 35%. The site can continue to function as it has with a smaller extension of the parking lot to allow the auto sales to continue as they have been operating on the subject property. The actions of the Appellant have created the need for the Variance request.

















