Docket Number: 21/10389

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

Request: Conditional Use Permit to replace the previously approved Moderate Industry use of an Excavation Contractor with the Light Industry use of Septic Tank and Related Services, while keeping in place the previously approved Light Industry use of Trucking and Warehousing without outdoor storage

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 SW¼ of the NE¼ of the NW¼, except the south 25 feet thereof, and except legally established highways, and the West 3 acres of the SE¼ of the NE¼ of the NW¼ 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 recently 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 (¼) 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 are 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 current 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 feet building located at the southern end of the property with partial office and repair space, an approximately 9,056 square feet 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 feet 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.

In early 2020 staff was in contact with the previous property owner, specifically regarding the property at 4475 NE 3rd Street. The family was exploring options for redeveloping or selling this property. Through those conversations, the family stated the property has been most recently utilized and leased by various transportation companies from 1981 thru the present. In April of
2020, staff prepared a zoning certification letter for the property at 4475 NE 3rd Street at the request of the prior owner. The result of that research indicated that no transportation service use(s) were ever legally established on that property. There were no approved site plans, certificates of use, change of use or other permits or documentation approving any use on the 4475 NE 3rd Street property, except for the aforementioned batch plant (now removed) and existing communication tower.

Additionally, there are limited records for the portion of the subject property located to the north on Lots 91 thru 98 of Freehold along NE 45th Place. There is an existing 972 square feet mobile home utilized as office space as well as a large gravel storage area used for semi-truck and trailer parking as well as employee parking for an apparent ongoing transportation use. County records indicate this area was conditionally approved for a transportation use back in 1981. However, the approval was subject to hard surfacing and storm water improvements, as well as the submittal of an as-built site plan certifying completion. Documented enforcement action from Polk County, historical aerial photography, the lack of an as-built site plan file, and a recent site visit together conclude that these improvements/conditions were never completed/satisfied. Yet this portion of the subject property has continued to be utilized in a nonconforming manner for apparent various transportation services uses over the last approximately 40 years.

While clearly large portions of the subject property have been utilized for transportation service uses, including repair and large amounts of outdoor storage, over the last approximately 40 years, these uses were not legally established under the Polk County Zoning Ordinance and permitting and review processes required. Prior to any future redevelopment, existing nonconformities must be addressed. This will require removal of the gravel surfacing that has been installed and expanded over time without approval, as well as removal or relocation of all vehicle and trailer parking to a paved surface.

In October of 2020, the Board of Adjustment approved a Conditional Use Permit request by Bret Nehring, 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. That Conditional Use Permit approval was specific to the uses requested at that time, and required an amended Conditional Use Permit for any modifications to the proposed uses. Since that approval, 6450, LLC, represented by Bret Nehring, has purchased the subject property. The applicant now requests to replace the previously approved Moderate Industry use of an Excavation Contractor with the Light Industry use of Septic Tank and Related Services. The previously approved Light Industry use of Trucking and Warehousing without outdoor storage would remain in place.

**Application**
The Polk County Zoning Ordinance, Article 4: Use Regulations, Division 2, Table 4.1, Table of Uses permits Light Industry 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 to replace the previously approved Moderate Industry use of an Excavation Contractor with the Light Industry use of Septic Tank and Related Services, while keeping in place the previously approved Light Industry use of Trucking and Warehousing without outdoor storage. See Attachment B at the end of this report for the description of the proposed future
uses, as well as Attachment C for a copy of the proposed future layout, as provided by the applicant’s representative. The application indicates that the southern area of the property is proposed for a future portable restroom business, including office space, maintenance shop and outdoor storage of portable restrooms, trailers and pump trucks. The northern portion of the property, as indicated on Attachment C, is proposed for continued use as Trucking and Warehousing without outdoor storage. Additional areas of the subject property to the northwest, southwest and east are indicated as future development. Per the Polk County Zoning Ordinance, all outdoor storage must be fully screened (opacity of 1.0) and cover no more than 15% of the property.

Public Testimony
Staff mailed out a total of 78 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 received one (1) response in support, and zero (0) responses in opposition.

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. However, these uses did not receive the required approvals or make required site improvements. While this application proposes a continued light industrial transportation use, and an additional light industrial use of a septic tank/related services contractor, the proposed redevelopment will trigger phasing out of the 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 future 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 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 an occupancy permit.

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 used for the last several decades by a number of nonconforming trucking/transportation businesses. The transportation businesses would have been allowed under the previous zoning if the proper processes had been followed and improvements made. The redevelopment proposed by this application provides an opportunity to bring the site into compliance with the provisions of the Ordinance.

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 engineered site plan and site improvements are required. Also, all existing nonconforming aspects of the site must be addressed prior to any redevelopment. The benefits of site redevelopment will aid in protecting surrounding properties through required storm water, surfacing, landscaping and other site improvements, while simultaneously maintaining the industrial tax base of the subject property. Polk County Environmental Health has reviewed this application and commented that the proposed portable restroom use will need to indicate where portable units will be cleaned and washed, including containment during washing. This information is required prior to future redevelopment whether or not the washing activity occurs onsite or offsite. See staff’s recommendation and conditions of approval at the end of this report, which includes this condition.

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, removal of existing nonconformities, 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. This request removes the previously established Moderate Industry use of an Excavation Contractor, which is a more intensive use than those proposed.
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 ensure that longstanding nonconformities are corrected, and require new site 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.

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 a 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 Conditional Use Permit to replace the previously approved Moderate Industry use of an Excavation Contractor with the Light Industry use of Septic Tank and Related Services, while keeping in place the previously approved Light Industry use of Trucking and Warehousing without outdoor storage. Approval is subject to the following conditions:

1. Approval is only valid for the applicant and current property owner, 6450, LLC. Any change in ownership requires a new/amended Conditional Use Permit.

2. Approval is only valid for the Light Industry use of Septic Tank and Related Services, and the Light Industry use of Trucking and Warehousing without outdoor storage within the approximate areas identified for each use on the provided concept plan *Attachment C*. Any future expansion beyond those limits, any development of Light and/or Moderate Industry uses within the areas labeled “Future Development,” or any additional Light or Moderate Industry use(s) requested in the future, will require a new/amended Conditional Use Permit. This Conditional Use Permit replaces the previously approved Conditional Use Permit from October of 2020, identified as case #20/9522.

3. The existing transportation/trucking uses on the site shall be brought into compliance prior to any further permits or approvals being granted for the property. Compliance requires removal of all granular surfaces and relocation of all vehicle and trailer parking to a paved surface.

4. Prior to any redevelopment activity on the property, the applicant shall gain County approval of an engineered Major Site Plan. Prior to issuance of an occupancy permit all required site improvements shall be completed.

5. 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.

6. Prior to any redevelopment of the property for the proposed Light Industry use of Septic Tank and Related Services, the applicant or future tenant is required to provide written documentation to Polk County indicating where portable restroom units will be cleaned and washed, including containment during washing. This information is required prior to future redevelopment whether or not the washing activity occurs onsite or offsite.
Subject Property

Attachment A
Vicinity Map

0 750 1,500 3,000 Feet

Subject Property

Attachment A<br>Vicinity Map
Bryant Use of the Property Narrative:

The property will have a mix of uses with the southern area defined for “Potable Restroom Operation” that shall consist of a business that utilizes the property for office and maintenance shop purposes within the building and will have both customer and employee parking on site along with the parking and storage of their equipment that shall consist of clean portable restrooms, potable restroom trailers & pump trucks. The storage of this equipment will be contained to the east side of the building and be considered outdoor storage for the property and will have a fully opaque fence to enclose the area to the view of the public ROW.

The northern area of the site shall consist of a logistics and trucking use with office and storage within the existing buildings and will have both customer and employee parking on site. There is also existing van trailers on site that will be stored periodically and are currently on a granular surface and will remain until the current lease expires in August of 2021. After that date any parking of van trailers or licensed vehicles will be on a paved surface.

The remaining ground on the site will be available for future development and shall conform to any and all standards and uses with in the current zoning district at the time of future development.