

Docket Number: 20/8782

Appellant: APS DM, LLC., Tony Schmalz
4175 NE 43rd Court
Des Moines, IA 50317-4625

Appeal: Requesting a Variance to allow an approximately 20,000-square foot warehouse to be constructed at a location that is less than 30-feet from existing accessory buildings on the subject property of 4175 NE 43rd Court, Des Moines, Iowa 50317-4625.

Appeal Given:

“A new building is proposed at the Subject Property. The new building will be placed a minimum of 30-feet from the northern property boundary of the Subject Property, which meets the minimum building setback for LI zoning. There are currently two (2) accessory buildings on neighboring properties which encroach upon the Subject Property. The neighboring properties are 4313 NE Aurora Avenue (zoned LDR) and 4175 NE 43rd Court (zoned LI). The separation between the new building and the encroaching accessory buildings is approximately 19-feet. LI zoning requires a minimum building separation of 30-feet and LDR zoning requires a minimum building separation of 10-feet.”

“In the spirit of being a good neighbor, Applicant proposes to grant the neighboring properties encroachment easement to permit the accessory buildings to remain in place until the end of their useful life. The encroachment easements will terminate when the accessory buildings are removed and replacement accessory buildings will not be allowed to be reconstructed within the easements.”

The submittal packet along with an encroachment easement diagram identifying the location of the buildings is attached as *Attachment ‘A’* and *Attachment ‘B’*.

Background

The subject property is zoned “LI” Light Industrial District with conditions. The conditions include the restriction that no outdoor storage is allowed and that moderate industry uses are not permitted, either by right or through a conditional use permit process. The existing use as a warehouse for receiving, delivery and installation services of office furniture called T & M Services is a permitted use within this district. The subject property is described as Lot 27 Capitol Heights Replat located within the Northwest ¼, Southeast ¼, of Section 21 in Delaware Township. The subject property consists of one (1) tax parcel totaling approximately 2.37-acres. The subject property is located approximately 70 feet southeast of the NE 43rd Court and East Aurora Avenue intersection with approximately 295-feet of frontage on NE 43rd Court. The property has an existing warehouse use established in 1952 with a warehouse building constructed in approximately 1959 based on estimates from the Polk County Assessor’s webpage. The adjacent properties to the north, south and east are all developed as single-family residential properties and are zoned “LDR” Low Density Residential District. A vicinity map is attached as *Attachment ‘C’*. If this Variance is approved, the development of the proposed warehouse building will also require approval of a Minor Site Plan prior to commencement of construction.

The proposed approximately 20,000-square foot warehouse building is planned to be constructed on the northern half of the subject property. The warehouse will operate in conjunction with the existing use on the site. The 30-foot bufferyard adjacent to the northern property line is constrained by two existing residential accessory buildings that encroach the subject property from the northern adjacent parcel. The proposed warehouse building is required to comply with the non-residential minimum building separation of 30 feet.

Summary of Request

The Appellant is planning to construct a new warehouse building on the subject property. The current conditions on the subject property include an encroachment of two accessory buildings owned by the adjacent property owner. The Appellant proposed to grant encroachment easements to allow the accessory buildings to remain in place until the end of their useful life. The Appellant is therefore requesting a Variance to allow an approximately 20,000-square foot warehouse to be constructed at a location that is less than 30-feet from the existing accessory buildings on the property. The separation is proposed to be reduced from the required 30-feet to approximately 19-feet from the closest point of the new building to the existing accessory buildings.

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 5: Non-Residential Bulk Standards, Table 6.9 Table of Nonresidential Bulk Standards*, states that the Minimum Building Spacing for nonresidential structures in the “LI” Light Industrial District is 30-feet.

The Variance is requested to allow the construction of a warehouse building to be located approximately 19 feet from the existing accessory buildings, owned by the adjacent property owner, that are located on the subject property.

Natural Resources

Mature woodlands are located along the perimeter of the property providing a partial buffer between the subject property and the adjacent parcels. The topography across the property varies with an elevation of 940-feet in the southwest corner and a low point of 920-feet in the northeast corner. The subject property is not located within the mapped floodplain.

Roads/Utilities

The subject property is located directly east of NE 43rd Court and south approximately 70-feet southeast of the NE 43rd Court and East Aurora Avenue intersection. East Aurora Avenue and NE 43rd Court are both paved and designated as local streets maintained by Polk County. It is likely that the additional industrial building and growth of the business at this location will include an increase in heavy trucks utilizing the current NE 43rd Court roadway. The property has two (2) existing accesses to NE 43rd Court.

The property appears to be currently served by a 1,000-gallon onsite wastewater system with laterals located adjacent to the northern lot line at a setback of approximately eight (8) feet. The only records on file indicate that this system was permitted in 1959. The preliminarily submitted

site plan indicates that a new septic system will be installed on the property to serve the new building. The City of Des Moines provided confirmed that the property is located within the Northeast Four Mile Trunk Sanitary Sewer Connection Fee Benefited District. The closest City of Des Moines owned gravity sanitary sewer to the subject property is an existing eight (8) inch sanitary sewer running northeast/southwest is located in the southeast parking of Hubbell Avenue and approximately 500-feet west of the parcel's west property line. The invert of this eight (8) inch sanitary sewer is approximately 142.5 City Datum. The ground surface elevation of this parcel ranges from approximately 143 to 167 City Datum. Therefore, the existing eight (8) inch sanitary sewer appears to have adequate depth to provide first floor sanitary sewer service and possibly basement sanitary sewer service. The City of Des Moines currently has no plans to construct a sanitary sewer in NE 43rd Court adjacent to this property. The property is located outside the corporate City Limits of Des Moines and if connected to the Des Moines Sanitary Sewer System without being annexed into the City, this property would be responsible for paying double the standard City of Des Moines Sewer Rates.

Des Moines Water Works provides water service in this area with a 4-inch distribution line on the east side of NE 43rd Court.

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 and surrounding properties within this neighborhood were subdivided or platted in approximately 1925. Existing residential accessory structures encroaching the subject property were constructed several years ago and were not built within the boundaries of the adjacent parcel to the north. The age of the neighborhood and construction of existing buildings located on the subject property are a special condition that does not generally exist on other properties in the same zoning district. The non-residential use of the subject property requires a 30-foot separation between buildings whereas residential accessory buildings only require a 10-foot separation. The construction of the proposed warehouse building on the subject property is constrained between the existing accessory buildings and the required location of the proposed building to meet all setback and separation requirements for a non-residential building. This is a unique circumstance and over time the future removal of the accessory buildings at the end of their life will eliminate the separation issue.

- 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. The existing commercial use is permitted and allowed to expand within the "LI" Light Industrial District subject to appropriate site plan and building permit approvals. The property owner has taken into consideration the adjacent property owners and is working with them to minimize the impact of the proposal on the existing structures.

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

Yes. The requested Variance would allow the adjacent property owner to the north to continue to utilize their existing accessory buildings until a future time when the buildings are removed. Residential accessory buildings are required to meet a 10-foot separation from a principal structure. A separation of approximately 19-feet will be met from the closest point of the proposed new warehouse to the accessory buildings. In the future, the accessory buildings will be removed. The minimum required setbacks from the surrounding property lines are all met.

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

Yes. The existing residential accessory buildings that encroach the property along the northern property line are existing conditions and not a result of the actions of 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 granting of the requested variance supports the intent of these provisions.

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 Variance request to reduce the minimum building separation from 30 feet to approximately 19 feet.

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)

Applicant requests a variance from the 30-foot building separation requirement to allow a minimum 10-foot separation between the building proposed to be constructed on the Subject Property and certain accessory buildings on neighboring properties which encroach upon the Subject Property.

2. Subject Property Address: 4175 NE 43rd Court, Des Moines, IA 50317

3. Subject Property Zoning District: LI

4. District and Parcel Number: 190/00617-000-000

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

Lot 27 Capitol Heights Replat

6. Filing Fee: \$315 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Anthony P. Schmalz
Applicant (Print Name)

[Signature]
Signature

2/15/20
date

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

tonys@tmservices.net
Email

4175 NE 43rd Court, Des Moines, IA 50317
Address, City, State and Zip

(515) 306-1984
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

Dustin Creech
Applicant Representative (Print Name)

Engineering Resource Group, Inc.
Firm or Business Name

2413 Grand Avenue, Des Moines, IA 50312
Address, City, State and Zip

dustin@ergcorp.com
Email

(515) 288-4823
Phone

NA
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)

<u>Anthony P. Schmalz</u> (Print Name)	<u></u> Signature	<u>2/15/20</u> date
_____ (Print Name)	_____ Signature	_____ 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.

See attached.

**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 14th Street, Des Moines, IA 50313
Phone (515) 286-3705 • Fax (515) 286-3437
Forms and calendar available online <http://www.polkcountyiowa.gov/PublicWorks/>

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

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

1. Complete Application including the description of requested variance(s) with specific information for the request and state the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance.
2. Submit site drawing as required see details below.

Site Drawing

All variance appeals must submit three (3) 11x17 copies of a site drawing with the application. The site drawing must be fully dimensioned and legible. All required information must be drawn to a scale. The Zoning Administrator may require a petitioner to submit a site plan drawn by an engineer or architect. The site plan shall include the following:

1. Boundary drawing of the lot or area involved.
2. Location, dimensions, height and setbacks of all existing and proposed buildings and structures and the uses of each.
3. Use of the proposed addition to building or structure.
4. Approximate location of the vehicle entrance to the site.
5. Show the approximate location of water and sewer (septic system) facilities, if applicable.
6. Location of parking area and number of stalls required, if applicable.
7. General location of landscaping, buffer areas and screening, if applicable.
8. If the appeal is for a **sign**, the appeal must be accompanied by both a fully dimensioned, to scale elevation and site plan drawing of the sign, showing the exact location and size of the sign.

Variance Regulations

No variance from the provisions or requirements of this ordinance shall be authorized by the Board of Adjustment unless the Board finds beyond reasonable doubt that all the following conditions and circumstances exist. These regulations are found in the Zoning Ordinance, Article 17. Variance. The conditions and circumstances will be addressed by the Polk County Planning Division staff in reviewing the variance(s) request.

1. There must be exceptional or extraordinary circumstances or special conditions applying to the property in question, and do not exist generally on other properties in the same zoning district. By virtue of the unique or special conditions, it is, therefore, exceptionally difficult to place a use permitted in said district on the property.
2. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity and such variances will not permit uses that are prohibited in that district.
3. The authorization of such variance will not be of substantial detriment to adjacent property and will not be contrary to the purpose of this Ordinance and the public interest.
4. That the special conditions or circumstances did not result from the actions of the applicant.
5. The variance will not entirely void the natural resource protection requirements of this Ordinance.

The condition and/or situation of a property for which a variance is sought must be of an unusual nature. A variance shall not be authorized if the condition or situation is of a general or recurrent nature such that adopting a general regulation as an amendment to this Ordinance is a reasonably practicable solution.

The variance granted shall be the minimum necessary to permit a use of the property. A variance shall neither increase the number of permitted dwelling units by more than one (1), nor allow the minimum lot area required for a use to be decreased by more than ten (10) percent. If natural resources are involved, then mitigation for any damage to the environment shall be a condition of the variation.

Item 10

A new building is proposed at the Subject Property. The new building will be placed a minimum of 30-feet from the northern property boundary of the Subject Property, which meets the minimum building setback of LI zoning. There are currently two (2) accessory buildings on neighboring properties which encroach upon the Subject Property. The neighboring properties are 4313 NE Aurora Avenue (zoned LDR) and 4175 NE 43RD Court (zoned LI). The separation between the new building and the encroaching accessory buildings is approximately 19-feet. LI zoning requires a minimum building separation of 30-feet and LDR zoning requires a minimum building separation of 10-feet.

In the spirit of being a good neighbor, Applicant proposes to grant the neighboring properties encroachment easements to permit the accessory buildings to remain in place until the end of their useful life. The encroachment easements will terminate when the accessory buildings are removed and replacement accessory buildings will not be allowed to be reconstructed within the easements.

Applicant requests a variance to allow a minimum 10-foot separation (similar to LDR zoning) between the building proposed to be constructed on the Subject Property and the encroaching accessory buildings. The new building will meet the 30-foot setback from the property boundary as required in LI zoning. The new building will meet the 30-foot building separation requirement after the accessory buildings are removed.

Jennifer Ellison

From: Jennifer Ellison
Sent: Wednesday, February 26, 2020 10:57 AM
To: 'Dustin Creech'
Subject: RE: T&M Services Variance application Follow-up

Hi Dustin,

Thank you for confirming. I will include this information in the notice.

Best Regards,



Jennifer Ellison || Public Works
Planner || jennifer.ellison@polkcountyiowa.gov
5885 NE 14th Street || Des Moines, IA 50313 || USA
O: 515-286-2280
polkcountyiowa.gov

From: Dustin Creech <Dustin@ergcorp.com>
Sent: Wednesday, February 26, 2020 10:53 AM
To: Jennifer Ellison <Jennifer.Ellison@polkcountyiowa.gov>
Subject: T&M Services Variance application Follow-up

Good morning Jennifer,

I am following up in regards to our telephone conversation earlier today. I spoke with my supervisor and updating the request to say *a minimum of approximately 19 feet separation* in lieu of *a minimum 10-foot separation* is fine.

Thank you,
Dustin

Dustin D. Creech, CFM, P.E.



Engineering Resource Group, Inc.
2413 Grand Avenue
Des Moines, Iowa 50312
515-288-4823 Office

EASEMENT DIAGRAM

NE AURORA AVENUE

S. 69' LOT 26
CAPITOL HEIGHTS REPLATFRANZ WAGNER
BK 9530, PG 176

EXISTING STRUCTURES

**PROPOSED
ENCROACHMENT EASEMENTS.
1.0' MIN FROM STRUCTURE.**

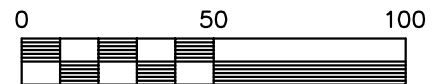
19.8'

22.6'

PROPOSED BUILDING

LOT 27
CAPITOL HEIGHTS REPLATMARY ALICE DAUGHENBAUGH
PROPERTY MANAGEMENT TRUST
BK 17000, PG 82
APS DM LLC
BK 17414, PG 361

NE 43rd COURT



Scale: 1" = 50'

ERGEngineering Resource Group, Inc.
2413 GRAND AVENUE
DES MOINES, IOWA 50312
(515) 288-4823**EASEMENT DIAGRAM**

DATE: 1/28/2020

PROJ. NO.:

DWG: 19-083-BND.DWG

19-083

