

**Appeal:** The appellant requests a front yard setback variance to allow an existing accessory structure to remain located in front of the principal dwelling at a front yard setback of approximately 56.80 feet.

**Background**

The subject property is located at 9150 NE 94<sup>th</sup> Avenue, Bondurant, and is legally described as Lot 4 of V & V Estates Plat 1, within Section 16 of Township 80 North, Range 22 West of the 5<sup>th</sup> P.M. (Franklin Township). The property is approximately 3.57 acres in size and is zoned “ER” Estate Residential District. The subject property is located approximately one (1) mile north of the corporate limits of Bondurant, where they extend northwest along NE Hubbell Road (Hwy 65). The property is located approximately one-half (½) mile west of the intersection of NE 94<sup>th</sup> Avenue and NE Hubbell Road (Hwy 65). Surrounding properties located on the north side of NE 94<sup>th</sup> Avenue are also zoned “ER” Estate Residential District and contain existing single-family residences. The property directly south, on the south side of NE 94<sup>th</sup> Avenue, is zoned “AG” Agricultural District and remains in agricultural production. The subdivision of V & V Estates Plat 1 was recorded in 2000, and created five (5) single-family residential lots located on the north side of NE 94<sup>th</sup> Avenue. All lots have been developed to-date.

During staff review of a recent Building Permit Application to add onto the existing dwelling on the subject property, it was discovered that the accessory building in question was originally constructed by the appellant in 2003 without a Building Permit. An addition to the building was constructed between 2015 and 2017, also without a Building Permit. The accessory building and addition were constructed at a nonconforming front yard setback. Under the current Ordinance, no residential accessory structure can be placed in front of the principal dwelling unless it has a front yard setback of at least 100 feet. The original construction of the accessory building in 2003 would have been subject to a previous version of the Zoning Ordinance. However, it still would have been required to meet the minimum front yard setback of 75 feet under the Estate District zoning classification and setback requirements at that time. The existing single-family dwelling on the property was legally established and permitted through Polk County in 2001.

In addition to constructing the accessory building and later addition without permits, staff discovered the owner has also been operating an illegal Home Occupation from the property and accessory building. The business is an electrical contractor known as Stewart Electric, Inc. The business activity on the property included office and storage space within the accessory building, as well as outdoor storage and outside employees. The business activity did not comply with the County’s Home Occupation regulations. These regulations are not intended to accommodate large commercial scale contracting businesses, with large areas of indoor and outdoor storage and outside employees. Staff has continued to work with the appellant to remove the business activity from the property. To-date, the appellant has communicated that a new commercial lease has been obtained offsite to accommodate the business, and staff’s most recent site visit confirms that the activity and materials have been removed. The appellant has indicated he would like to continue to utilize a small portion of the accessory structure as a home office for the business. Staff has communicated this requires approval of a Home Occupation Permit.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6, Accessory Regulations, Section 1(J)* stipulates that an accessory building may not be placed in front of the principal building unless said accessory building is setback a minimum of 100 feet from front property lines; and has a maximum separation distance between the principal structure and accessory building of 150 feet. The appellant previously constructed an approximately 40' x 64' (2,560 SF) accessory pole building on the property, including an addition to the structure, both without Building Permits. The accessory building is located in front of the principal dwelling at a front yard setback of approximately 56.80 feet as measured from the southern, front property line adjacent to NE 94<sup>th</sup> Avenue. The first provision is not satisfied as the accessory building is required to be even with or further setback than the principal dwelling, which has a front yard setback of approximately 77 feet. The second provision is satisfied as the accessory building is located approximately 30 feet from the principal dwelling. See *Attachment A* at the end of this report for a copy of the site plan showing the existing structure and setbacks. The site plan indicates a separation of approximately 40 feet between the dwelling and accessory structure. However, the appellant was recently issued a Building Permit to add onto the western side of the dwelling, which will reduce this separation to approximately 30 feet. The existing and proposed separation distances are conforming. A minimum of ten (10) feet and maximum of 150 feet are required.

Staff mailed out five (5) 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) responses in opposition, of this Appeal.

### **Natural Resources**

The subject property contains a drainage way / small creek within the northern portion of the lot. There is a small area of mapped 1% annual chance floodplain Zone 'A' immediately surrounding the creek. The subdivision plat of V & V Estates Plat 1 created a drainage easement roughly encompassing the drainage and floodplain areas of the property. The property has a low elevation between approximately 844 and 852 feet along the creek and floodplain. The existing dwelling and accessory building are located at the far southern end of the lot at elevations between 880 and 890 feet. The elevation drops significantly immediately north of these structures as the landscape transitions to the creek. There is also a sizable area of woodlands located north of the house and accessory building surrounding the creek. None of these environmental features were impacted by the accessory building location.

### **Roads & Utilities**

The property has frontage onto NE 94<sup>th</sup> Avenue, which is a paved two-lane minor arterial roadway maintained by Polk County. The subject property shares a driveway entrance located on the adjacent property to the east at 9162 NE 94<sup>th</sup> Avenue. This shared access and private driveway is located within an existing ingress/egress easement established by the original subdivision plat of V & V Estates Plat 1. The plat also established a 20-foot wide public utility easement parallel to the front property line along NE 94<sup>th</sup> Avenue. The property is served by City of Bondurant public water. Wastewater treatment needs are met by an existing private onsite septic system located north of the dwelling.

## **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 existing topography, floodplain and natural woodlands greatly limit the buildable area available on the subject property. These natural features prevented the dwelling from observing a greater front setback. Together, the existing front yard setback of the dwelling and natural features effectively prevent the location of an accessory structure at a conforming location on the property.
- 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. Staff has followed up with the appellant to remove the previous illegal home occupation on the property.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
Yes. The reduced front yard setback does not negatively impact adjacent properties or views.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  
Yes. While the appellant constructed the building, and added onto it, without the required building permits and approvals, the natural conditions of the property would have warranted the granting of a variance prior to original construction if the proper permitting process had been followed.
- 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 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, subject to the following conditions of approval:

1. The appellant shall obtain a Building Permit and inspections for the existing accessory structure.
2. The appellant shall submit a Home Occupation Permit Application for the proposed home office within the accessory structure.



**Attachment A**

**PROJ:** 9150 NE 94TH AVE, BONDURANT, IOWA

**DESC:** OWNER: TODD AND VICKIE STEWART

**BY:** APPLICANT: TODD STEWART

**DATE:** PHONE 515-238-8108 | 25 AUG 2020

Parcel Search

Map Layers

Landbase

Aerials

- 2002 Certified Ortho Imagery
- 2004 Certified Ortho Imagery
- 2006 Certified Ortho Imagery
- 2008 Certified Ortho Imagery
- 2009 Certified Ortho Imagery
- 2010 Certified Ortho Imagery
- 2011 Certified Ortho Imagery
- 2013 Certified Ortho Imagery
- 2015 Certified Ortho Imagery
- 2017 Certified Ortho Imagery
- 2018 Ortho Imagery

Topo

- ESRI World Topo Map
- Topo Basemap 2011 Iowa Lidar (-/+8")

FEMA Floodplain Data

Aerial Labels

Building and Structure

Political Boundaries

Iowa 511

Reference and Boundary

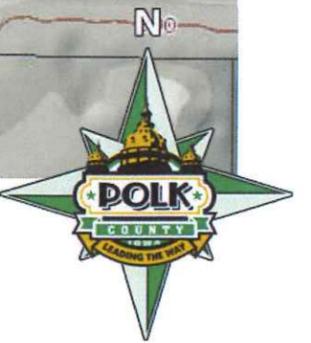
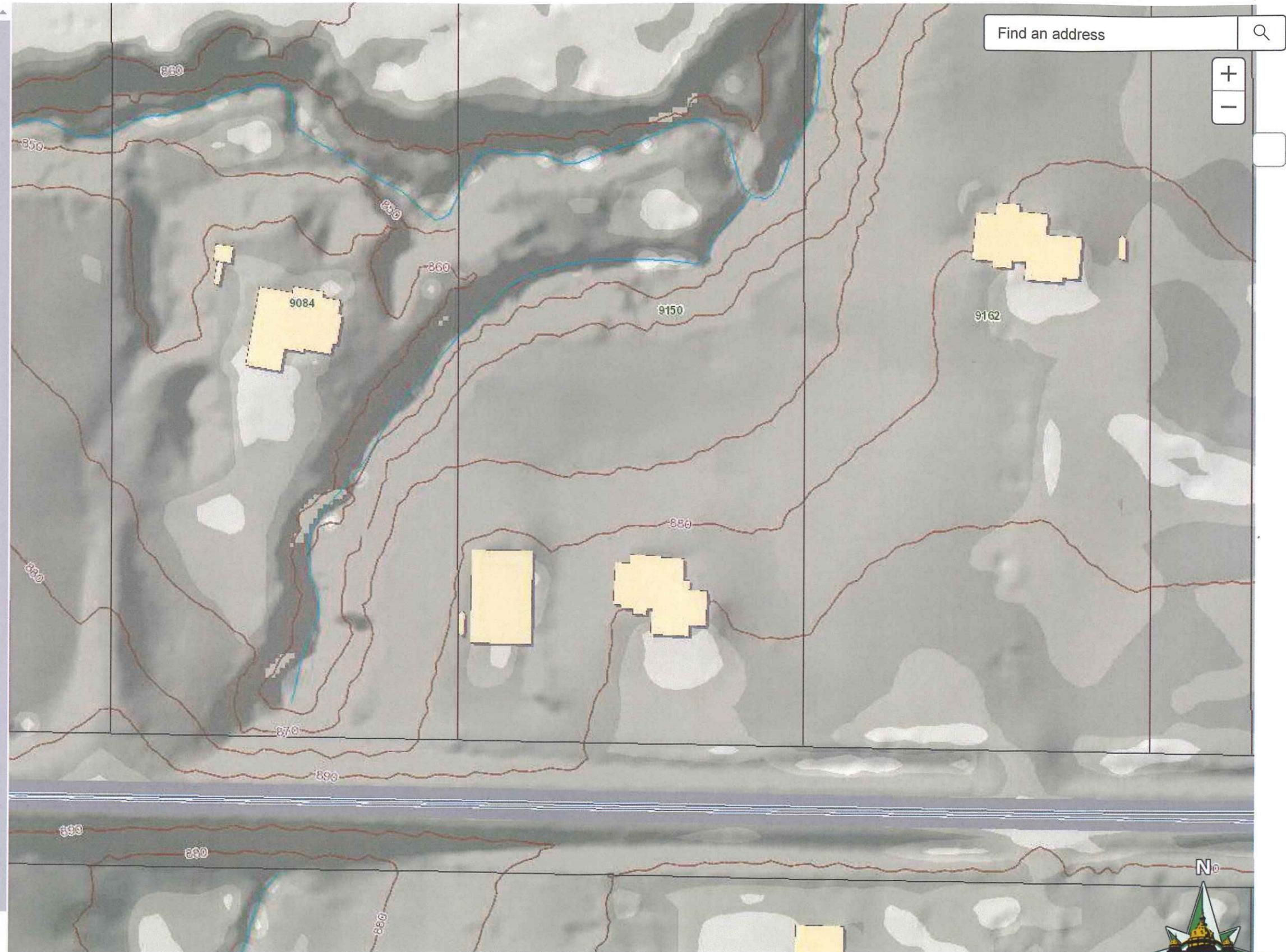
Recreation

Food Pantry/Community Gardens

Electoral Data

City of Des Moines Parking Info

Query Tools



41.733002, -93.416577