

**Docket Number:** 20/9522

**Applicant:** Bret Nehring (prospective buyer), 4300 NE 14<sup>th</sup> Street, Des Moines, IA 50313, represented by Eric Cannon with Snyder & Associates, 2727 Snyder Blvd, Ankeny, IA 50023

**Request:** Conditional Use Permit to allow the Moderate Industry use of an Excavation Contractor, as well as the 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 5<sup>th</sup> P.M. (Saylor Township). The subject property includes the main address of 4475 NE 3<sup>rd</sup> Street, Des Moines, IA 50313, as well as the addresses of 520 NE 44<sup>th</sup> Avenue, and 325, 355, 375, 425, 445, 465, 485 and 525 NE 45<sup>th</sup> Place. The subject properties are zoned “MU” Mixed Use District.

The subject property is primarily owned by Billy H. Bryant, and what is now Billy H. Bryant Trust, with the exception of the portion of the subject property at 520 NE 44<sup>th</sup> Avenue. This property is owned by Roberto Castaneda and Imelda Campos-De Castaneda. In contrast to the rest of the subject property area, the parcel at 520 NE 44<sup>th</sup> Avenue is used residentially, including an existing single-family residence and accessory structures. These owners have consented to this Conditional Use Permit application, understanding that the request is for future redevelopment of the larger subject property, including their land.

The subject property is located on the east side of NE 3<sup>rd</sup> Street, lying north of NE 44<sup>th</sup> Avenue and south of NE 45<sup>th</sup> 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 2<sup>nd</sup> Street, east to the NE 14<sup>th</sup> 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 3<sup>rd</sup> 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 45<sup>th</sup> 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 44<sup>th</sup> Avenue and the adjacent railroad tracks along NE 43<sup>rd</sup> 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, 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 3<sup>rd</sup> 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 recent months staff has been in contact with the family of the current owner, Billy H. Bryant, specifically regarding the property at 4475 NE 3<sup>rd</sup> Street. The family has been exploring options for redeveloping or selling this property. Through those conversations the family has stated that the property has been most recently utilized and leased by various transportation companies

from 1981 thru the present. In April of this year staff prepared a zoning certification letter for the property at 4475 NE 3<sup>rd</sup> Street at the request of the owner's son, Steven Bryant. 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 3<sup>rd</sup> 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 45<sup>th</sup> 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. This current request proposes to redevelop the site with new Light and Moderate Industry uses, including trucking and warehousing without outdoor storage. 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.

### **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 allow for future redevelopment of the subject property with the following uses – Moderate Industry use of an excavation contractor, as well as the 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. Any future outdoor storage is limited to no more than 15% and must be fully screened.

### **Public Testimony**

Staff mailed out a total of 82 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 3<sup>rd</sup> Street and 520 NE 44<sup>th</sup> Avenue, and a low elevation of approximately 830 feet along the western boundary adjacent to NE 3<sup>rd</sup> Street. There are some small areas of woodlands located along the shared property line of 4475 NE 3<sup>rd</sup> Street and 520 NE 44<sup>th</sup> Avenue, as well as within the northern portion and along the eastern boundary of 520 NE 44<sup>th</sup> Avenue.

## **Roads / Utilities**

The subject property is located on the east side of NE 3<sup>rd</sup> Street, lying north of NE 44<sup>th</sup> Avenue and south of NE 45<sup>th</sup> Place. NE 3<sup>rd</sup> Street is classified as a collector roadway, and NE 44<sup>th</sup> Avenue and NE 45<sup>th</sup> 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 residential parcel of the subject property at 520 NE 44<sup>th</sup> Avenue has its own access onto NE 44<sup>th</sup> Avenue as well. Water service is available through by Des Moines Water Works (DMWW). The latest available mapping from DMWW indicates there is an eight-inch (8") PVC main located to the north along NE 45<sup>th</sup> Place. It is assumed that the existing buildings and uses are served by this public water utility. The past and current sewage disposal method is unknown. However, Polk County sanitary sewer is available to the property along both NE 3<sup>rd</sup> Street and NE 45<sup>th</sup> 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 which did not receive the required approvals or make required site improvements. While this application proposes a continued light industrial transportation use, and a slightly more intensive moderate industry use of an excavation 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 is a prospective buyer and 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've 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.

**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 and Moderate Industry uses are allowed within the “MU” Mixed Use District subject to approval by the Board of Adjustment.
  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 addressed, 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 3<sup>rd</sup> Street is a collector roadway connecting south to the City of Des Moines along Aurora Avenue and north to NE 46<sup>th</sup> (Broadway) Avenue. NE 46<sup>th</sup> (Broadway) Avenue provides further connection to NW 2<sup>nd</sup> Street (Hwy 415) and NE 14<sup>th</sup> 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**

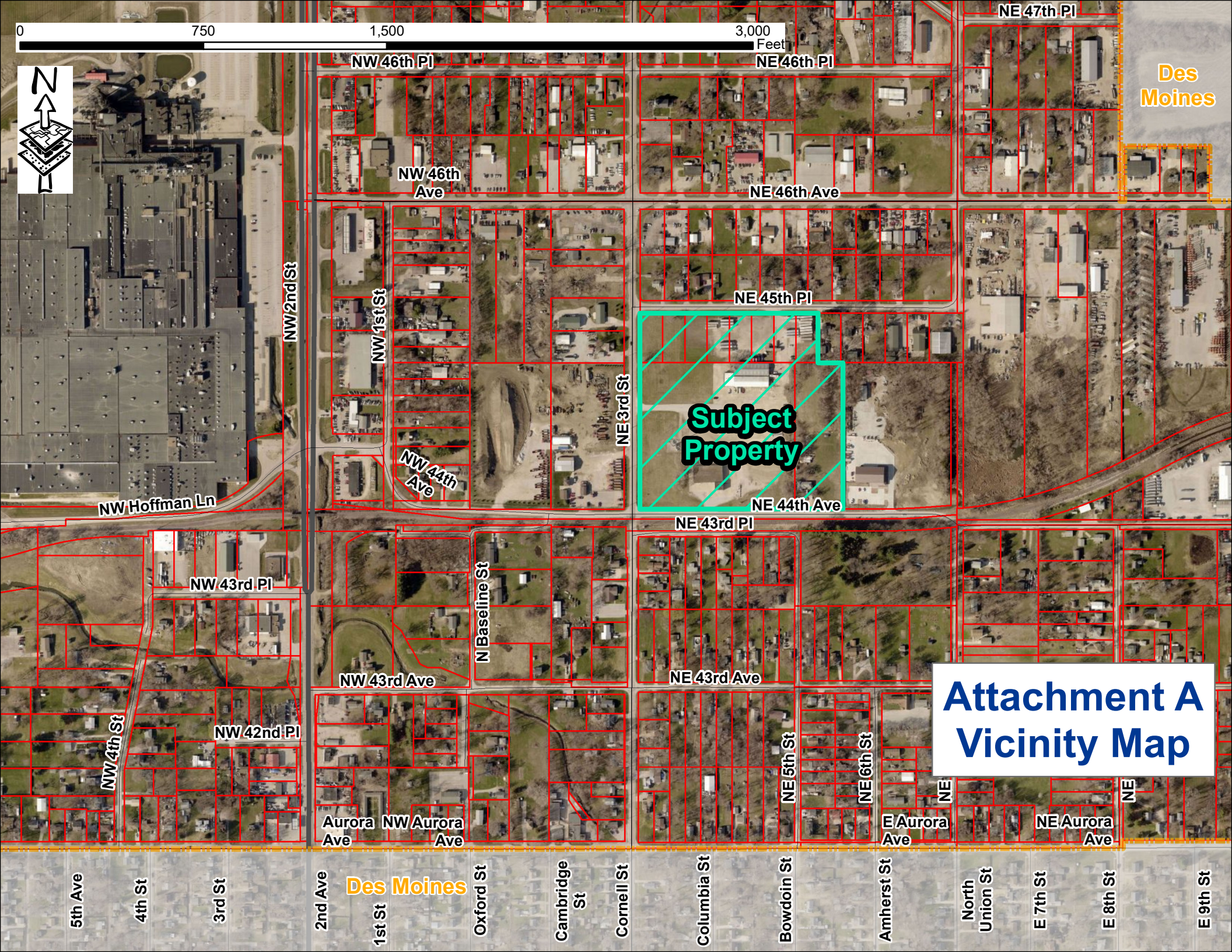
Staff recommends approval of the Conditional Use Permit to allow the Moderate Industry use of an Excavation Contractor, and the Light Industry use of Trucking and Warehousing without outdoor storage, on the subject property. Approval is subject to the following conditions:

1. Approval is only valid for the applicant, Bret Nehring, to serve as the developer. This includes site plan approval and related building construction and site improvements for the uses approved under this Conditional Use Permit. Any change in the developer throughout any of these processes requires a new/amended Conditional Use Permit.
2. Approval is only valid for the Moderate Industry use of an Excavation Contractor, 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 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.

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 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 3<sup>rd</sup> Street north to NE 46<sup>th</sup> (Broadway) Avenue.







## **Attachment B**

### **Bryant Use of the Property Narrative:**

The property will have a mix of uses with the southern area defined for “Excavation Contractor Uses” that shall consist of a contractor that will perform grading and excavation work and shall utilize 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 bulldozers, excavators and dump 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 12’ tall fully opaque screen 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.



NE 45TH PL

NE 3RD ST

NE 44TH AVE

FUTURE DEVELOPMENT

LOGISTICS AND TRUCKING USE

EXCAVATION CONTRACTOR USE

OUTDOOR STORAGE AREA TO BE FENCED AND SCREENED

FUTURE DEVELOPMENT

0 50 FEET

NE 45TH PL

NE 44TH AVE

NE 3RD ST

FUTURE DEVELOPMENT

LOGISTICS AND TRUCKING USE

EXCAVATION CONTRACTOR USE

OUTDOOR STORAGE AREA TO BE FENCED AND SCREENED

FUTURE DEVELOPMENT

0 50 FEET

| MARK                 | REVISION        | DATE           | BY |
|----------------------|-----------------|----------------|----|
| Engineer: LMW        | Checked By: EDC | Scale: 1"= 50' |    |
| Technician: TJS      | Date: 09/23/20  | Field Bk: Pg:  |    |
| Project No: 120.0896 |                 | Sheet C100     |    |

**BRYANT INDUSTRIAL (4475 NE 3RD STREET)**

# CONDITIONAL USE PERMIT CONCEPT PLAN

**DES MOINES, IOWA**

**SNYDER & ASSOCIATES, INC.**

2727 S.W. SNYDER BLVD.  
ANKENY, IOWA 50023  
515-964-2020 | [www.snyder-associates.com](http://www.snyder-associates.com)



Project No: 120.0896

Sheet C100