Appeal: The appellant requests a variance to allow a proposed accessory building to be located in front of the principal dwelling at a front yard setback of approximately 64 feet.

Background
The subject property is located at 8538 SE 13th Avenue, Runnells, and is legally described as Lot 1 of Triple Creek Estates Plat 1, within Section 7 of Township 78 North, Range 22 West of the 5th P.M. (Camp Township). The property is approximately 1.03 acres in size and is zoned “RR” Rural Residential District. The subject property is located approximately one (1) mile southeast of the corporate limits of the City of Pleasant Hill where they extend along SE 6th Avenue. The property is located on the north side of SE 13th Avenue between SE 82nd Street and SE 88th Street. Surrounding properties are also zoned “RR” Rural Residential District and primarily contain existing single-family residences. There are also some tracts of undeveloped farm ground in the surrounding area, which remain in row crop production. The plat of Triple Creek Estates Plat 1 was recorded in 2005 and created seven (7) total single-family lots along the north side of SE 13th Avenue. The subject property is the furthest lot east within this development. See Attachment A for a vicinity map of the subject property and surrounding area.

History / Property Details
The subject property contains an existing single-family residence constructed in 2006, as well as a number of accessory structures. The accessory structures include a 1,200 square foot pole building constructed in 2010, three (3) approximately 10’ x 12’ sheds added between 2010 and 2013, and two (2) shipping containers added in 2020. An addition was constructed onto the east side of the pole building between 2014 and 2016. A separate addition was also constructed onto the southwest corner of the pole building in 2016. Both additions were completed without the required building permits from Polk County, and the eastern addition appears to encroach into the required ten (10) foot side yard setback along the eastern property line. The 10’ x 12’ sheds do not require a building permit based on their size, and appear to meet the required side yard setback of five (5) feet from the eastern lot line. The shipping containers were placed on the property without the required building permits. Under the Polk County Zoning Ordinance, shipping containers may only be used as accessory buildings if certified by an engineer that they are structurally sound to withstand snow load and wind speed requirements of the Polk County Construction Code.

Regardless of the decision on this variance appeal, these outstanding items must be brought into compliance by the owner in order to avoid further enforcement action. The shipping containers shall be removed, or the appropriate permits and engineering certification provided. The additions to the pole building will also need to be permitted and an accurate site plan provided. It may be necessary for the owner to hire a professional surveyor or engineer to verify the side yard setback for the easterly addition. Any portion of that addition which encroaches into the side yard setback would need to be removed. The appellant purchased the property in 2010, and is responsible for the placement of these accessory structures and additions without permits.
In addition to the building and setback issues discussed above, the appellant operates an antique business from the property. In conversations with the appellant, and from our recent site inspection, staff understands the business involves the storage, repair and sale of antique items from the subject property. The Polk County Zoning Ordinance allows home-based businesses, or what are known as home occupations, only if specific criteria are met. One of the main requirements is that no more than 20% of the floor area of the principal dwelling may be used for the home occupation. The area allowed for the business may be located within the dwelling, attached garage, and/or accessory building(s). Additionally, no materials or equipment used for the business may be stored outdoors. Recent inspection of the property with the appellant revealed that significant portions of the existing attached garage and accessory structures are dedicated to the storage and repair aspects of the antique business. This does not appear to be in compliance with the maximum 20% allowance under the home occupation standards. Regardless of the decision on this variance, the owner will be required to complete a Home Occupation Permit Application and demonstrate compliance. It would appear that significant downsizing of the business would need to occur to meet the home occupation standards. Furthermore, staff has concerns that approval of this variance to allow an additional accessory building would facilitate expansion of the existing illegal home occupation.

**Summary of Request**

The Polk County Zoning Ordinance, Article 4: Use Regulations, Division 6: Accessory Regulations, Section 1.J stipulates that an accessory structure may not be located in front of the principal building unless the accessory structure: (1) Is setback a minimum of 100 feet from front property lines; and (2) There is a maximum separation distance between the principal building and accessory structure of 150 feet. The appellant is proposing to construct an 800 square foot accessory building in the front yard of the subject property, being located south and east of the existing principal residence and between the residence and the southern, front property line adjacent to SE 13th Avenue. The location meets the second criteria being located approximately 14 feet from the existing dwelling. The first criteria however is not met and would require a variance, as the proposed building location would observe a front yard setback of approximately 64 feet as measured from the southern, front property line, in lieu of the required 100-foot front setback. The existing residence observes a front yard setback of approximately 100 feet, and therefore any accessory structure in front of the house would not be able to meet the first criteria and would require a variance. The submitted application and site plan for this appeal can be found as Attachment B.

Staff mailed out six (6) 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 zero (0) responses in support, and one (1) response in opposition, of this Appeal. The response in opposition is from the adjacent property owner to the east at 8576 SE 13th Avenue, and included written comments. Concerns outlined by the written comments include potential erosion from the new building and slab, as the appellant is proposing flatwork along the shared property line with this adjacent east property. The written comments also include concerns regarding existing structures, setback encroachments and the operation of a business by the appellant. A majority of these issues were also identified during staff’s review, and have been adequately discussed in this report and taken into account regarding our recommendation.
**Natural Resources**
The subject property contains varying topography. The property slopes downward in elevation moving north and west across the site. There is a high elevation of approximately 892 feet in the southeast corner and a low elevation of approximately 864 feet in the northwest corner. The elevation drops off more precipitously in the rear yard of the property north of the house. The property contains a substantial area of woodlands located in the rear yard north of the residence, and also extending along the side and front of the residence along the western lot line. There are also some mature trees in the southeast corner of the property, a few of which would have to be removed to make room for the proposed accessory building. There are no areas of floodplain or other environmental hazards or features on the site.

**Roads & Utilities**
SE 13th Avenue is a hard surfaced local roadway maintained by Polk County. The roadway provides local access and connectivity west to SE 82nd Street and SE 80th Street, as well as east to SE 92nd Street. Public water is provided by Des Moines Water Works. There is an existing four-inch (4") water main located along the north side of SE 13th Avenue, including an existing 32-foot wide water main easement across the front of the subject property. There is also a 10-foot wide public utility easement parallel to the water main easement. Neither easement would be impacted by the proposed building location. Wastewater treatment for the subject property is provided by a private onsite septic system, which County records indicate is located west and south of the dwelling. Ten (10) feet of separation must be maintained between any portion of the septic system and the proposed building. Based on the proposed building location, there would be no conflict with the septic system or the required separation.

**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 sloping topography, existing woodlands and septic system location constitute an exceptional circumstance limiting additional accessory structures to within the front yard requiring a variance. However, the intent of the accessory regulations is to allow for the keeping of materials and equipment for property maintenance and personal storage. The subject property contains multiple existing accessory structures, including a large pole building, that provide more than a reasonable area for residential accessory storage under this intent. The majority of this existing accessory storage space is being utilized for an illegal home occupation.

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 property currently contains an illegal home occupation. Approval of the variance would facilitate expansion of this noncompliant use of the property.
3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
No. Approval of the requested variance would promote expansion of an existing illegal home occupation on the property.

4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. The appellant is responsible for all existing accessory structures on the property, including placement and additions without permits. The placement of these existing structures created the unique circumstance limiting any future buildable areas to in front of the principal residence. Furthermore, the appellant conducts an illegal home occupation on the property, which utilizes the majority of the existing accessory structure space creating the need for an additional building.

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. A few existing trees on the subject property will have to be removed, however the proposal would comply with the Natural Resource Protection and Stormwater and Erosion Control sections of the Ordinance.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends denial of the requested variance.
Attachment A
Vicinity Map

Subject Property
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)
   [Area for parking the boat and pick-up]

2. Subject Property Address: 8538 SE 13th Ave, Kunneis, IA

3. Subject Property Zoning District: __________________________

4. District and Parcel Number: __________________________

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

6. Filing Fee: $319 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

   [Name]

   [Signature]

   [Date]

   [Email]

   [Address, City, State and Zip]

   [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

   [Applicant Representative (Print Name)]

   [Firm or Business Name]

   [Address, City, State and Zip]

   [Email]

   [Phone]

   [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)

Byron D. Hemingston
(Print Name)
Signature
7/20/21 date

Judy A. Hemingston
(Print Name)
Signature
7/20/21 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.

This area doesn't have septic system under it.
It would on the West side of the house. The closest to electrical is in the East side of the garage.
and handy for parking both the pickup and the boat.

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 Email: PublicWorks@polkcountyiowa.gov
Forms available online http://www.polkcountyiowa.gov/PublicWorks/ BOA Calendar CALENDAR

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