Docket Number: 19/8673

Appellant: McKee Auto Center, Inc.
Anthony McKee
5095 NE 14th Street
Des Moines, IA 50313

Appeal: Variance request to reduce the Minimum Open Space Ratio (OSR) from 35% to 10% on the subject property of 5095 NE 14th Street, Des Moines, Section 13 of Saylor Township.

Appeal Given: For the complete Variance appeal packet, please refer to *Attachment 'A'*. The following are excerpts from *Attachment 'A'*:

"McKee Auto owns 5095 NE 14th Street, the property subject to this variance application, as well as the two contiguous parcels immediately to the north across NE 51st Street, 5125 NE 14th Street and 5145 NE 14th Street. 5125 NE 14th Street is also used as a pre-owned auto lot, while the other parcel is vacant."

"McKee Auto requests a reduction in the green-space requirement at 5095 NE 14th Street, from 35% to 10%, which will allow it to expand its auto lot to the east into a current grass area, increasing its use of the property by approximately the same number of square feet of land impacted by the DOT condemnation. If this variance request is granted, all use of the property will be within the confines of all setback requirements. The approximate area of expansion is identified on the included map."

"The special conditions and circumstances of the condemnation do not exist generally on other properties, and the current 35% green-space requirement makes it exceptionally difficult for McKee Auto to use the property for its intended use as a pre-owned auto center due to the limitations on the number of vehicles McKee Auto can store at the property."

"This variance application did not result from the actions of the appellant, but because of the DOT condemnation, and the variance will not void the natural resource protection requirements of the zoning ordinance."

Please see *Attachment 'B'* for the conceptual site plan identifying the proposal.

Background

The subject property is zoned "GC" General Commercial District. The existing use as a pre-owned auto lot is an allowed use within the GC zoning district. The subject property consists of one (1) tax parcel totaling approximately 29,744 square feet and is legally described as follows:

A part of the Northwest ¼ of Section 13, Township 79 North, Range 24 West of the 5th P.M., Polk County, Iowa, described as follows: Beginning at the intersection of the South Right-of-Way line of 51st Street, extended (Lot "E" of the recorded plat of Iowa Fund, Inc., Polk County, Iowa) and the East Right-of-Way line of Northeast 14th Street (U.S. Highway No. 69), said point being 614.27 feet North and 108.73 feet East of the Southwest corner of the Northwest ¼ of Section 13-79-24 West

of the 5th P.M., Polk County, Iowa; thence N 89˚39ˈE, 225.27 feet along said South Right-of-Way line extended to the West Right-of-Way line extended of Northeast 15th Street (Lot "A" of the recorded plat of Iowa Fund, Inc.,); thence S 00˚00ˈE, 135.0 feet along said West Right-of-Way line extended; thence S 89˚39ˈW, 216.19 feet to the East Right-of-Way line of Northeast 14th Street (U.S. Highway 69); thence N 3˚50ˈW, 135.3 feet along said East Right-of-Way line to the point of beginning.

The subject property is located at the southeast corner of the NE 14th Street and NE 51st Avenue intersection and currently has approximately 130-feet of frontage along NE 14th Street and approximately 210-feet of frontage along NE 51st Avenue. The property has an existing auto sales office building containing approximately 1,380 square feet. This building was constructed in approximately 1964 based on estimates from the Polk County Assessor's webpage. The Zoning Ordinance established during this time did not require maximum Floor Area Ratio (FAR) or minimum OSR standards. The surrounding property adjacent to the east and south was platted in 1968 as Ellis Heights recorded in Book 139. The subject property will be impacted by DOT Project No. NHSN-069-4(107)-2R-77 that will allow for widening of the adjacent NE 14th Street / Highway 69 right-of-way by the Iowa Department of Transportation. This project will allow the condemnation and acquisition of approximately 2,613.16-square feet (.06-acres) of the subject property. McKee Auto also owns two contiguous parcels adjacent to the north across NE 51st Street. The parcel closest to the adjacent property currently operates as a pre-owned auto lot however, the property is under contract to sell to Kwik Trip, Inc., for a modern convenience store. McKee Auto is reconfiguring the auto lot due to these changes and is proposing to add paving to the subject property to extend their auto lot. See *Attachment 'E'* for additional details.

The adjacent properties to the north, south and east are all zoned "GC" and developed as commercial properties. The adjacent properties across NE 14th Street to the west are zoned "GC" and developed commercially with one property being located within the City of Des Moines corporate limits. A vicinity map is attached as *Attachment 'C'*. If this Variance is approved, the proposed site improvements will also require approval of a detailed Site Plan prior to commencement of construction.

Summary of Request

The Appellant is proposing to construct paving within the existing open space on the subject property for additional parking to be used by the auto lot. The proposed extension of the parking lot would cover approximately 11,761-square feet of the existing approximately 13,068-square feet of open space. The Appellant is therefore requesting a Variance of 25% (from 35% to 10%) to the required minimum Open Space Ratio to allow a paved parking lot to be constructed in the location of the existing open space on the subject property.

The Polk County Zoning Ordinance, *Article 5: District Performance Standards, Division 4: Non-Residential Standards, Table 5.2 Non-Residential Development Performance Standards*, states that the Minimum Open Space Ratio (OSR) for nonresidential structures in the "GC" General Commercial District is 35%.

The Appellant identifies in the application that they are requesting the Variance from 35% to 10% to improve and expand the parking area to the southeast and increase the number of used autos for sale on the property. A concept drawing prepared by Abaci Consulting Inc. (*Attachment 'B'*) was submitted to support the request and shows a proposed parking lot addition with 27 parking stalls on the eastern portion of the subject property within the existing open space. The proposal also identifies areas of open space located along the northern and southern boundary of the parking lot and within the parking lot that could allow for landscaping and stormwater management. The submitted justification identifies that McKee Auto Center was impacted by DOT Project No. NHSN-069-4(107)-2R-77 on the subject property as well as the two adjacent owned parcels to the north. They note that the increased expansion on the subject property would be approximately the same amount of square feet of land from all three parcels owned by McKee Auto Center that are impacted by the DOT condemnation. The impact of the acquisition on the subject property is a reduction of the total site area by approximately 8.7%. The Appellant has provided a response to the staff report included as *Attachment 'D'*.

Natural Resources

According to topographic maps, the topography across the property varies with a high elevation of 906-feet in the northwest corner and a low point of 898-feet in the southeast corner. The subject property is not located within the mapped floodplain. Aerial review indicates that the site has been mostly unchanged since the 1964 construction of the building and pavement. Approximately 43%of the site is open space entirely located along the eastern portion of the property. During a review of the site and associated proposal, staff concerns were identified regarding stormwater management on the property. The existing conditions on the property do not address stormwater management on site. The proposal would create an increase in the impervious surface on site and therefore create an increase in stormwater. If a stormwater control basin will be provided within the remaining open space then staff is requiring that it is not a wet bottom basin. No landscaping currently exists on site. Future site improvements will require that a light street bufferyard be added along with parking lot landscape islands.

Roads/Utilities

The subject property is located at the southeast corner of the NE 14th Street and NE 51st Avenue intersection and currently has approximately 130-feet of frontage along NE 14th Street and approximately 210-feet of frontage along NE 51st Avenue. NE 14th Street is a paved state road and is classified as an Other Principal Arterial. NE 51st Avenue is a paved County Road classified as a Minor Arterial. A traffic signal is located at the intersection of NE 14th Street and NE 51st Avenue. The subject property has two existing access locations with one located along NE 51st Avenue and one to the south along an existing frontage drive created by the 1968 recorded plat of Ellis Heights in Book 139. The subject property is located less than ¼ mile north of I-35 / I-80.

The Appellant has provided supporting documentation that indicates the subject property is currently connected and served by the City of Des Moines sanitary sewer along NE 14th Street / Highway 69. Des Moines Water Works provides water service in this area with an 8-inch water main on the west side of NE 14th Street. Electric and gas service is provided by MidAmerican Energy.

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 Appellant's use of the subject property is permitted in the Zoning District. The property currently meets the required open space requirement with approximately 43% open space. The DOT condemnation will acquire approximately 2,613-square feet (8.7%) of the subject property however, the site would still be able to maintain the required 35% open space even with an extension of parking lot area in the amount of the condemnation. Other properties in the same zoning district and within the U.S. Highway 69 / NE 14th Street corridor are required to meet the current 35% open space requirement.

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 existing use is permitted and allowed to expand within the "GC" General Commercial District subject to a site plan that meets requirements of the Polk County Zoning Ordinance and permit approvals. As properties in this corridor redevelop and make site improvements then the they will also be required to meet the OSR for the Zoning District.

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

No. The required OSR allows the site to adequately meet landscaping requirements and stormwater control within the open space on the property. The increase in impervious surface as proposed and reduced open space would limit the options for controlling stormwater runoff on site.

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

No. The current DOT Project No. NHSN-069-4(107)-2R-77 has condemned portions of properties in the U.S. Highway 69 / NE 14th Street corridor to extend right-of-way for road widening. The impacts of the project have required adjustments to how current sites operate and how they will continue to operate in the future. The Appellant identifies two additional parcels to the north that they own having

utilized one of them for auto sales. They included in the application that they have a contract to sell those properties and in response have chosen to expand upon the subject property. The Appellant has created the need for the Variance.

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 stormwater drainage, erosion control and other environmental provisions of the Polk County Zoning Ordinance. The Appellant will be required to submit a detailed site plan and have an Iowa licensed engineer certify that the use and the proposed OSR will meet the stormwater drainage requirements on site.

The Board of Adjustment may grant a Variance if items 1 through 5 are affirmed. Since items 1-4 were not answered in the affirmative, staff recommends denial of the Variance request to reduce the required Open Space Ratio by 25% (from 35% to 10%).

Staff's recommendation for denial is based upon the fact that although the subject property has been impacted by the acquisition of a portion of the property, the property would still be able to meet the OSR of 35%. The site can continue to function as it has with a smaller extension of the parking lot to allow the auto sales to continue as they have been operating on the subject property. The actions of the Appellant have created the need for the Variance request.

Attachment 'A'

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.

POLK COUNTY
Leading the Way

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.

RECEIVED BY POLK COUNTY PUBLIC WORKS
2019 DEC 26 PM 1:14
(time stamp)
Official Use Only

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)
McKee Auto Center requests a variance reducing the green-space requirement from 35% to 10% so that McKee Auto can improve and expand its parking area to the east and increase the number of used autos for sale on the property.

2. Subject Property Address: 5095 NE 14th Street, Des Moines, IA 50313

3. Subject Property Zoning District: Saylor Township

4. District and Parcel Number: 270/00313-008-000

5. Subject Property Legal Description (attach if necessary):
EX HWY EAS COM W 1/4 COR SEC 13 THN N 614.96F E 107.63F TO POB THN E 34.11F SW 37.77F SLY ALGN CRV 68.65F NOW 93.87F TO POB- N 135F S 614.27F E 225.27F W 334F MEAS ON N LINE NW 1/4 SEC 13-79-24

6. Filing Fee: $310 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

McKee Auto Center, Inc.	A. McKee by Attorney Ted Craig	12-23-2019
Applicant (Print Name)	Signature By: Anthony McKee	date
Owner	amckee@mckeeauto.com	
Interest in Property (owner, renter, prospective buyer, etc.)	Email	
5095 NE 14th St., Des Moines, IA 50313	515-305-3876	
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

Theodore W. Craig	Dickinson Law Firm	
Applicant Representative (Print Name)	Firm or Business Name	
699 Walnut, Suite 1600, Des Moines, IA 50309		
Address, City, State and Zip		
tcraig@dickinsonlaw.com	515-244-2600	515-246-4550
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)

McKee Auto Center, Inc.	A. Mckee by Attorney Ted Corio	12-23-2019
(Print Name)	Signature By: Anthony McKee	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.

McKee Auto Center, Inc.'s Variance Appeal Application Section 10 Narrative

Current Use

McKee Auto Center currently uses this property, as well as the property directly north across NE 51st Avenue, 5125 NE 14th Street, as a pre-owned auto lot. The property subject to this appeal contains a 1,380 square foot auto sales office, and the property as a whole is 29,744 square feet, or approximately 0.683 acres. The property is zoned general commercial.

Adjacent Land Use and Zoning

South and East: This single parcel is owned by 5049 NE 14th LLC, zoned general commercial, and operates as Bomgaars and Garner Printing, with a large parking lot surrounding McKee's lot.
North: current use is pre-owned auto lot, owned by McKee Auto. Property is under contract to sell to Kwik Trip, Inc., who will build a modern convenience store at 5125 and 5145 NE 14th Street. Zoned general commercial.
West: Immediately west, across NE 14th and on either side of NE 51st Ave., are a BP service station and a Casey's convenience store, both zoned general commercial.

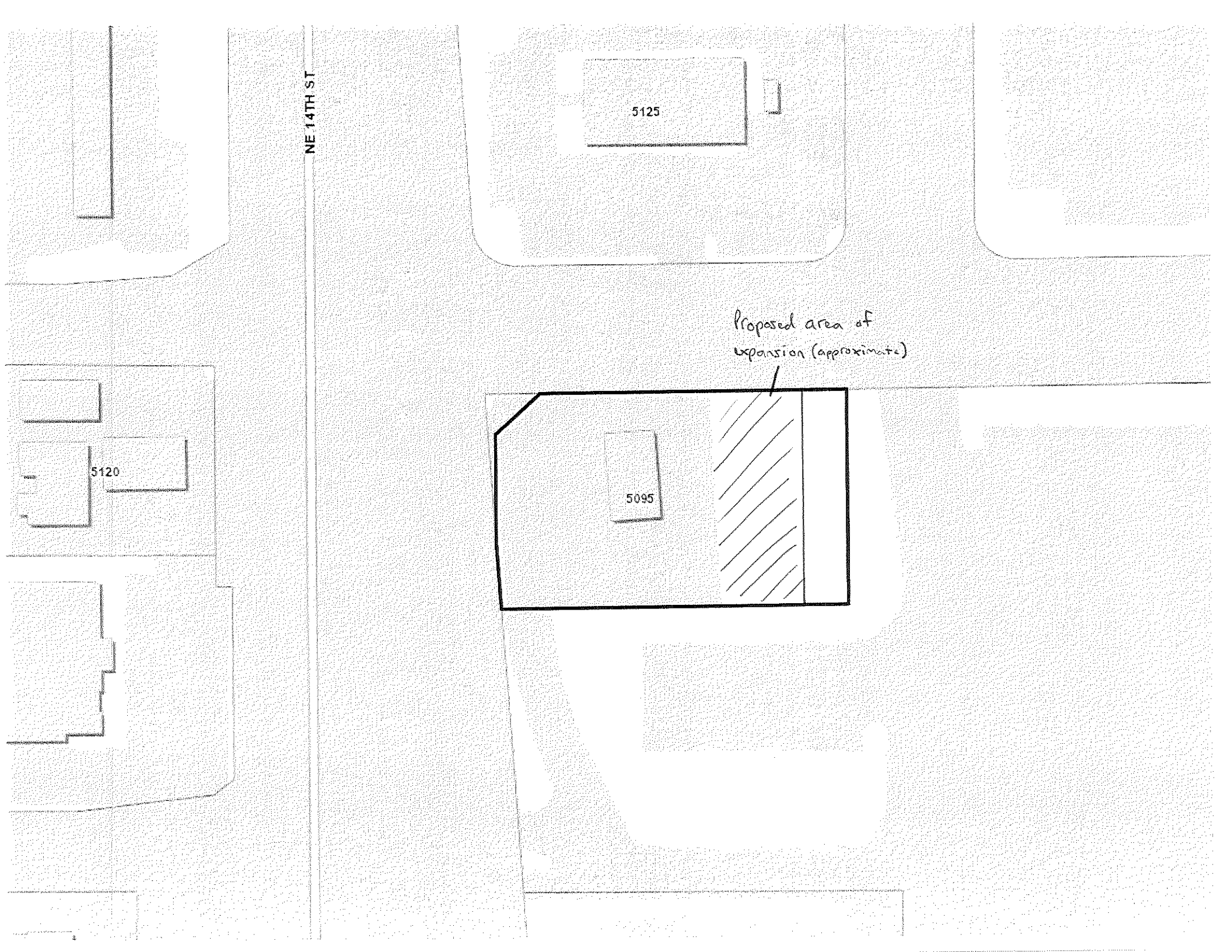
Reasons for Variance Request

McKee Auto owns 5095 NE 14th Street, the property subject to this variance application, as well as the two contiguous parcels immediately to the north across NE 51st Street, 5125 NE 14th Street and 5145 NE 14th Street. 5125 NE 14th Street is also used as a pre-owned auto lot, while the other parcel is vacant.

All parcels were impacted in 2019 by an Iowa Department of Transportation condemnation action, DOT Project No. NHSN-069-4(107)--2R-77, whereby the Iowa DOT acquired certain rights to portions of all of the above-referenced parcels. A total of approximately 6,887 square feet of land is impacted by the condemnation, across the three parcels owned by McKee Auto. McKee Auto requests a reduction in the green-space requirement at 5095 NE 14th Street, from 35% to 10%, which will allow it to expand its auto lot to the east into a current grass area, increasing its use of the property by approximately the same number of square feet of land impacted by the DOT condemnation. If this variance request is granted, all use of the property will be within the confines of all setback requirements. The approximate area of expansion is identified on the included map.

The special conditions and circumstances of the condemnation do not exist generally on other properties, and the current 35% green-space requirement makes it exceptionally difficult for McKee Auto to use the property for its intended use as a pre-owned auto center due to the limitations on the number of vehicles McKee Auto can store at the property. This variance request will not permit uses that are prohibited in the zoning district, and if the variance is granted, the property will fit well into the neighborhood, as no other adjacent parcels in the area have 35% green-space, and the area is dominated by pavement and commercial buildings. Granting this variance application will be a benefit to adjacent properties, improving the overall commercial appeal of the area. This variance application did not result from the actions of the

appellant, but because of the DOT condemnation, and the variance will not void the natural resource protection requirements of the zoning ordinance.


NE 14TH ST
5125
Proposed area of expansion (approximate)
5095
5120

ABACI CONSULTING INC., 3000 SE GRIMES BLVD, STE 800, GRIMES, IA 50111, PH.(515)986-5048

Attachment 'B'

CONCEPTUAL SITE PLAN

PREPARED FOR: McKEE AUTO	DRAWN BY: BB
JOB SITE ADDRESS: 5095 NE 14TH STREET DES MOINES, IA	DATE: 3/5/2020
LEGAL DESCRIPTION:	JOB NO: 20105
	REVISED: 3/11/2020

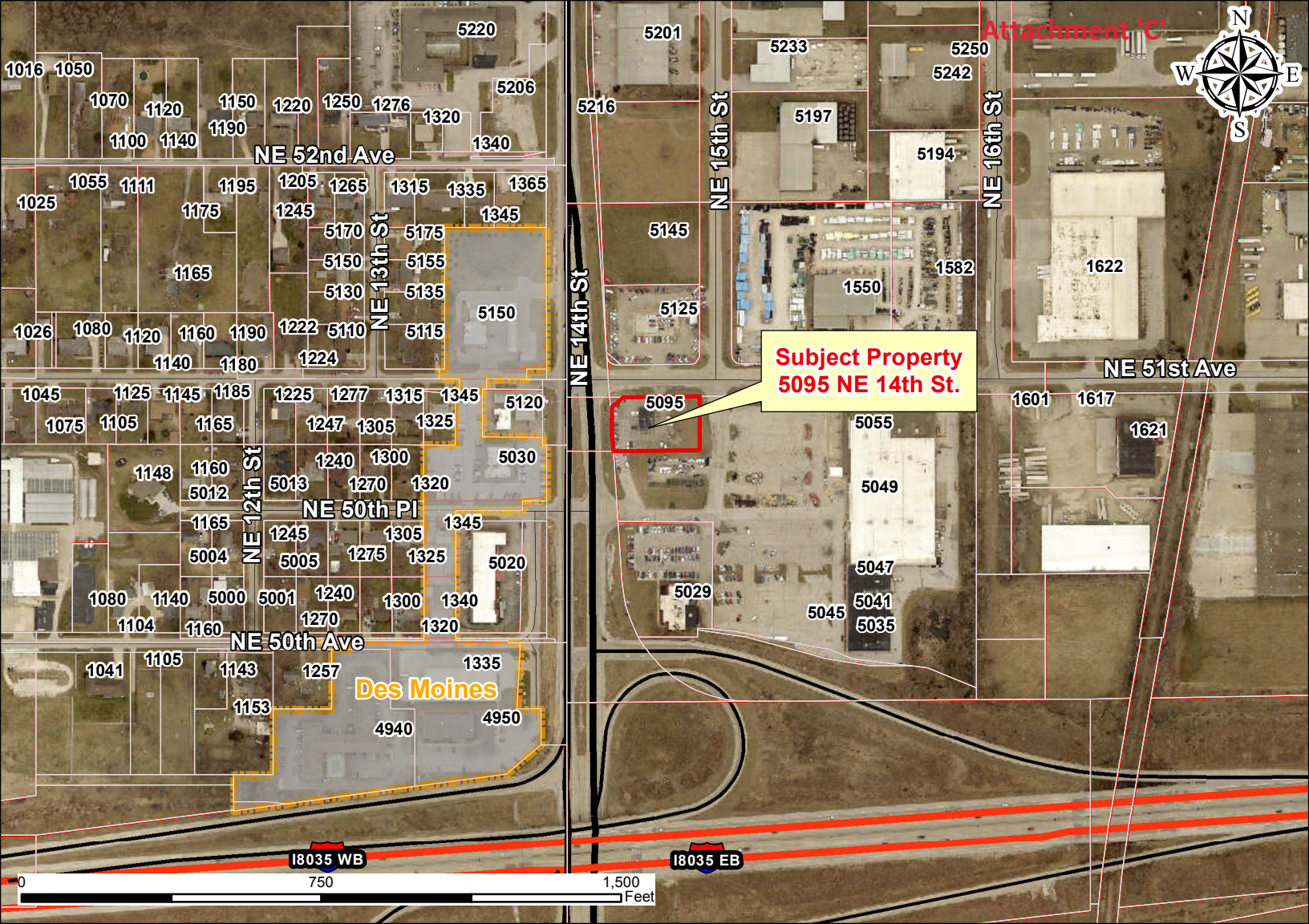
NOTES:

1. THIS CONCEPTUAL SITE PLAN IS INTENDED TO ACCOMPANY THE BOA VARIANCE APPEAL APPLICATION FOR McKEE AUTO CENTER LOCATED AT 5095 NE 14TH ST IN POLK COUNTY, IA. THE VARIANCE APPEAL REQUESTS A VARIANCE REDUCING THE OPEN SPACE REQUIREMENT FROM 35% TO 10% TO EXPAND THE PARKING AREA.
2. THIS CONCEPTUAL SITE PLAN IS NOT INTENDED FOR CONSTRUCTION PURPOSES AND IS ONLY INTENDED AS ACCOMPANYING INFORMATION TO THE PREVIOUSLY REFERENCED McKEE AUTO CENTER BOA VARIANCE APPEAL APPLICATION. ANY CONSTRUCTION WILL REQUIRE A DETAILED SITE PLAN THAT HAS BEEN APPROVED BY POLK COUNTY.
3. THE EXPANDED PARKING AREA SHOWN IS CONCEPTUAL, AND IS ONLY INTENDED TO ILLUSTRATE THAT THE INTENT OF THE OPEN SPACE VARIANCE IS TO ALLOW ADDITIONAL PARKING TO BE CONSTRUCTED. THE EXACT SIZE & CONFIGURATION OF THE ADDITIONAL PARKING AREA IN ADDITION TO THE EXACT AREA NEEDED FOR STORM WATER DETENTION WILL BE DETERMINED AT SUCH TIME THAT A SITE PLAN FOR ACTUAL CONSTRUCTION IS DEVELOPED AND SUBMITTED TO THE COUNTY FOR APPROVAL.
4. McKINNEY PLUMBING HAS VERIFIED THAT THERE IS NOT A SEPTIC SYSTEM LOCATED WITHIN THE CURRENT OPEN SPACE, AND THAT THE EXISTING BUILDING IS SERVED BY A SERVICE LINE THAT CONNECTS TO THE EXISTING SANITARY MAIN LOCATED ALONG THE WEST SIDE OF NE 14TH ST.

N

0 15 30

SCALE: 1" = 30'


Attachment 'C'
N
W
E
S
Subject Property
5095 NE 14th St.
NE 52nd Ave
NE 51st Ave
NE 50th Pl
NE 50th Ave
NE 13th St
NE 12th St
NE 14th St
NE 15th St
NE 16th St
Des Moines
I8035 WB
I8035 EB
0
750
1,500
Feet

DICKINSONLAW
Dickinson Mackaman Tyler & Hagen P.C.

Attachment 'D'

Theodore W. Craig
(515) 246-4539
tcraig@dickinsonlaw.com

May 15, 2020

Polk County Board of Adjustment
5885 NE 14th Street
Des Moines, IA

Re: McKee Auto Variance Request - Reply to Staff Report, Item 19/8673

Members of the Board:

McKee Auto provides this reply to the Staff Report issued by the Department of Public Works.

- The Staff Report identifies storm water management concerns. If the variance is granted, the final improvement plan would address all storm water issues.

- Exceptional or extraordinary circumstances or special conditions.

    - Property sits on the corner and is impacted on two sides by condemnation, creating a unique hardship.

    - The small size of the property creates a hardship and makes it difficult to put the property to a productive use as a used car lot without a green space variance, especially after impacts of the DOT condemnation.

- Preservation of adjacent property and public interest.

    - McKee's neighbor, whose property surrounds McKee Auto, supports the variance application.

    - If variance is granted, improvements (pavement, landscaping, potentially a new building) will be first-class and substantially improve the NE 14th Corridor.

- Special condition or circumstance not the result of the actions of McKee Auto.

    - This variance request is the result of the impact of the condemnation and taking from the DOT project.

    - McKee Auto appealed its condemnation award for the DOT project. This variance application is part of an attempt at a creative settlement of that active litigation, also involving McKee's two parcels to the north of the property at issue here. The active litigation, and this variance potentially serving as a total settlement of that litigation, makes this variance application a unique and rare circumstance, as no

other property is in the same situation. Granting this variance will not serve as precedent for other property owners, and is instead a way for McKee Auto, the DOT, and Polk County to work together and move forward.

Thank you for your time and consideration,

Theodore W. Craig

TWC/cz

Attachment 'E'

Memorandum

TO: Polk County Board of Adjustment

FROM: Jennifer Ellison, Planner

DATE: June 5, 2020

RE: **Docket 19/8673 Variance Appeal – McKee Auto Center (5095 NE 14th St.)**

During the May 18th Board of Adjustment meeting, the Variance Appeal for docket 19/8673 was tabled to the June 15, 2020 Board of Adjustment meeting. The Board members requested additional information that more specifically addressed the condemnation process. The Polk County Attorney's Office prepared the attached letter to provide additional information regarding the circumstances of the condemnation process. Planning staff does not have additional information to add or that would be different from the information that was included in the staff report from the May 18th meeting.

Polk County Attorney

JOHN P. SARCONE
County Attorney

Civil Division
111 Court Ave., Suite 340
Des Moines, IA 50309
(515) 286-3341

To: The Polk County Board of Adjustment

Date: June 4, 2020

Re: McKee Auto Center Variance Application

Members of the Board,

On May 18, 2020, the Polk County Board of Adjustment (Board of Adjustment) met to consider a variance request from McKee Auto, Center (McKee Auto) to reduce the minimum open space requirement from 35% to 10% on its property located at 5095 NE 14th Street, Des Moines, Iowa, Section 13 of Saylor Township (subject property).

At the hearing, McKee Auto presented argument and evidence in support of the variance. The Iowa DOT, through its legal counsel Matthew Rousseau, presented argument and evidence in support of the variance as well. Polk County Planning and Zoning presented argument and evidence at the hearing and recommended denial.

The Board of Adjustment determined it needed more information regarding the condemnation appeal which may have bearing on the variance request. The Board of Adjustment tabled the decision on this matter to the June 15, 2020 meeting.

McKee Auto owns the subject property as well as 5125 NE 14th Street, Des Moines, Iowa and 5145 NE 14th Street, Des Moines, Iowa. All three properties were impacted in 2019 by Iowa DOT Project No. NHSN-069-4(107)—2R-77. That project involved the widening of NE 14th Street. The Iowa DOT and Polk County condemned a total of approximately 6,887 square feet of land. The Polk County Compensation Commission awarded McKee Auto $31,000 for the taking.

On October 18, 2019, McKee Auto appealed the decision of the Polk County Compensation Commission to the Iowa District Court in case EQCE085149. The Iowa DOT and Polk County, Iowa are named as Defendants. The only issue for the jury to decide at trial is the amount to be awarded to McKee Auto for the taking by the Iowa DOT and Polk County. McKee Auto is asking for a damage award of approximately $90,000.00. Importantly, if the jury awards McKee

Auto more than $31,000 in damages, even $1 more, the Iowa DOT and Polk County must pay all costs of the appeal including reasonable attorney's fees for McKee Auto's counsel in addition to the damages amount.

To avoid this uncertainty and settle the lawsuit, McKee Auto and the Iowa DOT proposed a creative resolution to the litigation. The resolution would be for the Board of Adjustment to grant a minimum open space requirement variance of one square foot for every square foot of land condemned by the Iowa DOT and Polk County. In exchange, McKee Auto would dismiss the district court appeal. This would result in a reduction of the minimum open space requirement from 35% to 12.33%.

As stated at the May 18, 2020, Board of Adjustment meeting, the power to grant a variance lies solely in the hands of the Board of Adjustment. The Board of Adjustment must find that items 1-5 addressed by the Planning and Zoning staff in its report and McKee Auto in its reply to the staff report exist with respect to the property in order to grant the variance. The appeal and settlement of the appeal may be used in support any of those five items, but it is not required to be. The Board of Adjustment may deny the variance request, approve the variance request as written, or approve the variance request to a level of 12.33%. Should the Board of Adjustment approve the request, McKee Auto will dismiss the district court appeal against all defendants.

If there are any questions, I will be present via video at the June 15, 2020, Board of Adjustment meeting.

Thank You,

Dominic Anania