



Zoning Board of Adjustment Meeting Agenda

Wednesday, June 3, 2026 - 4:30 PM

Newton City Hall - Council Chambers
101 W 4th St S
Newton, IA 50208

View this Meeting: Mediacom Channel 12/85/121.12 or www.newtongov.org/cablecast

- I. Call to Order and Roll Call
- II. Review of Minutes of Previous Meeting
 1. Review minutes of April 1, 2026, meeting
- III. Public Hearing
 1. V26-5: Variance for a reduced side yard setback for a deck in R-2 zoning district at 414 W. 16th St. N. Damon Reynolds, applicant.
 2. V26-6: Variance for home occupation signage exceeding the permitted size in R-2 zoning district at 1109 W. 4th St. N, Barry DeVoll, applicant.
 3. V26-7: Variance for reduced separation between the principal and accessory structures in R-2 zoning district at 705 E. 21st St. Pl. S. Jody Gideon, applicant.
 4. Appeal to ZBA: 109 E. 3rd St. S. Miller Property Solutions LLC.
- IV. Other Business
- V. Adjourn

ADA Compliance: The City of Newton is pleased to provide reasonable accommodations, in compliance with the Americans with Disabilities Act, for those individuals or groups who require assistance in being able to participate in the meeting. Please contact the Community Development Department at least 24 hours in advance of the meeting by calling 641-792-6622 to arrange for accommodations to be provided.

Chair: Bev Rossow; **Vice Chair:** Noreen Otto; **Members:** Craig Trotter, Don Fitzgerald, John Billingsley

Minutes of Meeting
Zoning Board of Adjustment
Regular Meeting
April 1, 2026

ROLL CALL: Board members present: Trotter, Otto, Rossow, Billingsley

Board members absent: - Fitzgerald

STAFF PRESENT: Varsha Borde, Sr. City Planner
Nicholas Alexander, City Planner
Craig Armstrong, Economic Development Specialist

Applicants: Jose Delgado-Benitez, applicant.
Marti, 441 Hunter's Ave
Carol Clemmens, applicant.
Joe Hartgers, applicant's dad.

A quorum being present, Chair Rossow called the meeting to order at 4:31 PM

Minutes

The Board reviewed the minutes of the previous meeting from February 4, 2026. **Motion** by Otto, **seconded** by Billingsley to approve the minutes. **Voice vote:** Approved 4-0.

Action:

1. Public Hearing

V26-2: Variance for a height variance in R-2 zoning district at 215 W 13th St. S. Jose Delgado-Benitez, applicant.

Sr. City Planner Varsha Borde presented the staff report, detailing the analysis of the situation and the variance request to allow a 17.5 ft tall accessory structure in lieu of the permitted maximum height of 15 ft. Chair Rossow invited the applicant to explain the project.

Marti, who is a friend of the applicant then spoke about the shed. He mentioned that the shed is a DIY project and they were not aware of the easement. The shed is on skids and anchored to the ground. When they received the notice, they stopped the work and moved the shed out of the easement. ---- one of the property owners said neighbors were happy about the project and had emailed them so.

Motion by Otto, **Seconded** by Billingsley to close the Public Hearing. **Voice Vote:** (4-0)

Rossow invited the board to start the discussion. Billingsley asked if the issue was the height, which was answered as a yes. Otto thanked the applicant for being receptive and said the project was nice. Trotter asked if the shed matched the house and that it was not over-powering any property.

Motion by Otto to approve the variance. **Seconded** by Trotter. **Roll Call Vote:** Approved (4-0)

2. Public Hearing

V26-3: Variance for a 6ft privacy fence located in front yard in R-2 zoning district at 1108 S 13th Ave W. Carol Clemmens, applicant.

Sr. City Planner Varsha Borde presented the staff report, detailing the analysis of the situation and the variance request to allow a 6 ft. privacy fence in the required front yard.

Chair Rossow invited the applicant to explain the project.

Carol Clemmens, the applicant and property owner then spoke about the variance. She mentioned the noise and headlights issue from the traffic from W 12th St. S. No neighbors were present at the meeting.

Motion by Otto, **Seconded** by Billingsley to close the Public Hearing. **Voice Vote:** (4-0)

After the public hearing was closed, board members discussed the variance application. Billingsley inquired if the variance was required only for the height of the fence. Borde answered that the type of fence also required the variance approval. To Otto's question about the location of the fence, Clemmens answered that it would be parallel to the street.

Motion by Otto to approve to grant a variance to install a 6ft privacy fence within and along the west property line and no further south than the southern end of the west wall of the building. **Seconded** by Trotter. **Roll Call Vote:** Approved (4-0)

3. Public Hearing

V26-4: Variance for a reduced side yard setback for an accessory garage structure in an R-2 zoning district at 806 E 12th St N. Ashton Hartgers, applicant.

City Planner Nick Alexander presented the staff report, detailing the analysis of the situation on the variance request to allow an accessory structure in the required side yard setback. Nick noted that the adjoining property owner had called and was okay with it as long as it wasn't moving any closer to the property line than what it currently was.

Chair Rossow invited the applicant's representative to explain the project.

Joe Hartgers, the applicant's father explained the need for the variance and how the property is laid out. He mentioned that because of the width on that side of the house, they needed the garage to be placed over farther to allow entrance into the garage. No neighbors were present at the meeting.

Motion by Otto, **Seconded** by Billingsley to close the Public Hearing. **Voice Vote:** 4-0

After the public hearing was closed, the board discussed the variance application. The board had discussion to confirm that it is going to be the same distance as what is currently there.

Motion by Billingsley to approve to grant a variance to allow an accessory garage structure to be built within the required side yard setback. **Seconded** by Otto. **Roll Call Vote:** Approved 4-0.

Other Business- None

Motion by Trotter to adjourn the meeting, **seconded** by Otto. **Voice Vote:** Approved, 4-0. The meeting was adjourned at 5:12 PM.

Zoning Board of Adjustment - Staff Report: V26-5

Applicant: Damon Reynolds
Proposal: Side yard setback variance to allow a deck
Location: 414 W. 16th St. N. Newton, Iowa 50208
Current Use: Residential
Current Zoning: R-2: One- and Two-Family Residential

Proposal: The applicant has requested authorization of a zero (0) feet side yard setback along the south property line of 414 West 16th Street North. If granted, this will allow the homeowner to build a porch/deck in the area of an existing patio to go up to the property line. The applicant then plans to construct a new deck, larger than the existing patio to extend up to and along the south property line.

Analysis:

The subject property is located within the R-2: One- and Two-Family zoning district. The required minimum side yard setback for a deck in the R-2 zoning district is eight (8) feet. City code 158.119 also allows permitted obstructions into the side yard which allows a porch/deck to extend three feet or less into the required eight (8) feet side yard setback. This would allow a deck to be built up to five (5) feet away from the property line. The applicant is requesting authorization of a zero (0) feet side yard setback.

The home currently has approximately an eight (8) feet side yard setback. The home is located on a property that is 8,000 square feet. Additionally, the property can be described as relatively flat.

The Zoning Ordinance stipulates the following setback minimum requirements:

- Front yard: 25 feet
- Side yard: 8 feet
- Rear yard: 25 feet

If the variance is granted, a future deck at this property would encroach into the required side yard setback of eight feet, but doesn't encroach into the required front or rear yard setback areas. Due to the position of the existing structure, the entrance/exit for



the rear of the house, and the distance between the property line and home, the side yard setback variance is needed to allow the construction of a deck on the south side of the home. An approximate plot plan was provided by the applicant (attached) which includes a proposed view of the deck.

The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this side yard setback variance.



Variance Questions:

(Answers are attached on separate page)

The Zoning Ordinance includes specific criteria for granting variances. These are listed below, phrased as questions. For each question, the Board should try to determine what, if anything, distinguishes this case from other projects in the same zoning classification and if the applicant provided sufficient answers.

According to the ordinance and in order to grant the variance, the answer must be “yes” to the first three questions and “no” to the last three:

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?
2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?
3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?
4. Did the present owner create the alleged difficulty or hardship?

5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?
6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

Notice of Proposal: The notice of the meeting was published in the Newton Daily News on Tuesday May 26th, 2026. A notice of the proposal and meeting were sent to surrounding properties on Friday, May 22nd, 2026. No comments were received as of the date of this report.

Recommendation:

Staff recommends that the Zoning Board of Adjustment only grant the variance if the answers provided to the six legal test questions are to the Board's satisfaction. Staff finds that the requested variance is not detrimental to public welfare or the neighborhood considering the current circumstances. This recommendation applies with the understanding that neighborhood concerns and questions are addressed so as to avoid anything that is contrary to the public interest. The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this variance.

According to the ordinance, in order to grant the variance, the answer must be “yes” to the first three questions, and “no” to the last three:

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue? – **Yes, because of the addition that was added the property in the late 70s there is not enough room to add a viable deck or patio with only 14 total feet of room that must comply with the current setback requirements. The current setback requirements are 5ft from the property line, so a deck that would follow current setback requirements would only be 8ft wide. A deck is supposed to be a place that can be enjoyed by family and friends, and a 8ft deck simply isn't large enough to be enjoyed.**
2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification? – **Yes, no other properties in the neighborhood have had a substantial addition added to the structure that would apply to this specific variance**
3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance? – **Yes**
4. Did the present owner create the alleged difficulty or hardship? – **No, the addition to the property was added back in the 70s**
5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood? – **No**
6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood? – **No, this variance would not impair or pose any sort of safety risk to the property or surrounding neighbors**

Site Plans and Property
lines



AI image of Proposed Variance



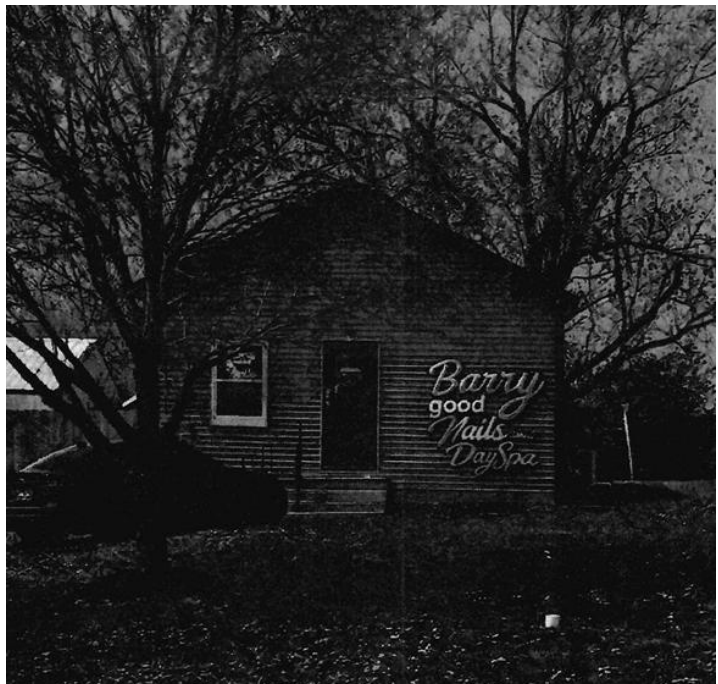
Zoning Board of Adjustment- Staff Report

Applicant: Barry DeVoll (Barry Good Nails)
Proposal: Variance for an oversized sign for a home occupation
Location: 1109 W 4th Street N
Current Zoning: R-2: One-and-Two-Family Residential

Background – Barry DeVoll, the owner of the home occupation at 1109 W 4th Street N reached out to staff regarding a proposed sign to install for a home occupation business called Barry Good Nails. Pictures of proposed sign are as shown below-

Applicable code -

Under the current ordinance, home occupations are exempt from sign permit requirements as long as the sign would be within the allowed dimensions under the § 158.157 Exempted Signs code. The proposed sign will not exceed 6 ft. by 6 ft exceeding the allowable signage area of 3 square foot for a wall sign.



§ 158.157 EXEMPTED SIGNS. Home occupation sign

Home occupations shall be allowed either 1 freestanding, swinging yard sign, sometimes called a colonial sign, maximum of 3 square feet sign area, maximum 6 feet in height, minimum of 10 feet setback from any property line, or one 3- square-foot wall sign attached or adjacent to a face of a building.

The applicant mentions that the intent of this request is to provide safe, visible, and appropriate identification for a legally operating home-based business while maintaining the character of the

surrounding neighborhood.

Notice. Notice of the application and meeting was sent to surrounding property owners via postcard mailing on May 21st. Notice was also published in the Newton Daily News on May 26th.

According to the ordinance, in order to grant the variance, the answer must be “yes” to the first three questions and “no” to the last three:

- 1.) Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, as distinguished from a mere inconvenience or loss of revenue?
 - Yes. The property's layout and residential placement create limited visibility from the roadway. Existing sign restrictions prevent adequate identification, creating a hardship related to safe wayfinding rather than simple revenue concerns.
- 2.) Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?
 - Yes. This property operates as a home-'based business within a residential zone. Unlike typical properties, it requires clear identification for' visiting clients, making the request unique to its use.
- 3.) Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?
 - Yes. The proposed 60-inch tall wall-mounted illuminated sign is modest, professionally designed, and will be affixed directly to the side of the home. It complements the residential character while providing necessary visibility, aligning with the ordinance's intent.
- 4.) Did the present owner create the alleged difficulty or hardship?
 - No. The limitation arises from existing zoning and sign regulations, not from any action taken by the owner.
- 5.) Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?
 - No. The sign will not harm the neighborhood. It will be securely mounted to the structure, well-maintained, and may improve safety by reducing confusion and unnecessary traffic movements.
- 6.) Will granting the variance impair an adequate supply of light and air to the adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?
 - No. The sign will not affect light, air, congestion, or safety. As a wall-mounted

sign, it introduces no ground obstruction and will not negatively impact surrounding properties.

Recommendation:

Staff recommends that the Zoning Board of Adjustment only grant the variance if the answers provided to the six legal test questions are to the Board's satisfaction.

At this time, staff is unable to recommend granting the variance, unless during the meeting discussion the applicant is able to demonstrate a unique circumstance or hardship to the Board's satisfaction.

The primary use for properties within residential districts must be housing, public parks/recreation, educational (school), or religious (church). Home occupations are allowed, but the zoning code provides the framework to maintain the minor commercial activity as secondary to the primary, residential, use. These requirements include minimal signage, limited hours of operation, limited customer visits, and minimal variation from normal residential character. Staff has concern that the large size proposed of the applicant is a step too far and does not maintain the "minimal variation from normal residential character" criteria.

The board should also address neighborhood concerns and questions are so as to avoid anything that is contrary to the public interest. The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this variance.

- If approved, applicable permits will have to be obtained.



Newton

City of Newton
Community Development
303 W 4th St N, Suite 501
Newton, Iowa 50208-1926

Varsha Borde
City Planner
(641) 792-6622 x 2302
VarshaB@newtongov.org

Variance Application

Fee: \$250

<u>Barry Good Nails</u> Name of Applicant	<u>1109 West 4th St. N</u> Mailing Address	<u>641-275-1104</u> Telephone
<u>Barry Devoll</u> Name of Owner	<u>1109 West 4th St. N</u> Mailing Address	<u>641-275-1104</u> Telephone
_____ Name of Agent	_____ Mailing Address	_____ Telephone

Location of Premises Affected by this Variance: 1109 West 4th St. N

Legal Description: to provide safe, visible, and appropriate identification for a legally operating name-based business while maintaining the character of the surrounding neighborhood.

The Board is requested to grant a variance from Sec. _____ of the Zoning Ordinance

for the following reasons: _____

The following items must be submitted with application unless specified by the Zoning Administrator:

- Site plan (if applicable)
- Building plans (if applicable)
- Petition signed by supporters of appeal (optional)
- Application fee

[Signature]
Signature of Applicant

Date

FOR OFFICE USE ONLY	
Date Submitted:	<u>4/20/2026</u>
Date Paid:	<u>4/20/2026</u>
Receipt #:	<u>053153</u>
File #: V	_____
Fee: \$250	<u>275</u>



Barry Good Nails and Day Spa
Newton, Iowa
Website: barrygoodnails.com

RE: Variance Application – Signage Request

Proposed: 60" Tall Wall-Mounted Illuminated Sign (Affixed to Side of House)

Dear Zoning Board of Adjustment,

Please find below my formal responses in support of a variance request for updated signage at Barry Good Nails and Day Spa. The intent of this request is to provide safe, visible, and appropriate identification for a legally operating home-based business while maintaining the character of the surrounding neighborhood.

1. Physical hardship exists?

Yes. The property's layout and residential placement create limited visibility from the roadway. Existing sign restrictions prevent adequate identification, creating a hardship related to safe wayfinding rather than simple revenue concerns.

2. Unique conditions?

Yes. This property operates as a home-based business within a residential zone. Unlike typical properties, it requires clear identification for visiting clients, making the request unique to its use.

3. Consistent with zoning intent?

Yes. The proposed 60-inch tall wall-mounted illuminated sign is modest, professionally designed, and will be affixed directly to the side of the home. It complements the residential character while providing necessary visibility, aligning with the ordinance's intent.

4. Hardship self-created?

No. The limitation arises from existing zoning and sign regulations, not from any action taken by the owner.

5. Detrimental to public welfare?

No. The sign will not harm the neighborhood. It will be securely mounted to the structure, well-maintained, and may improve safety by reducing confusion and unnecessary traffic movements.

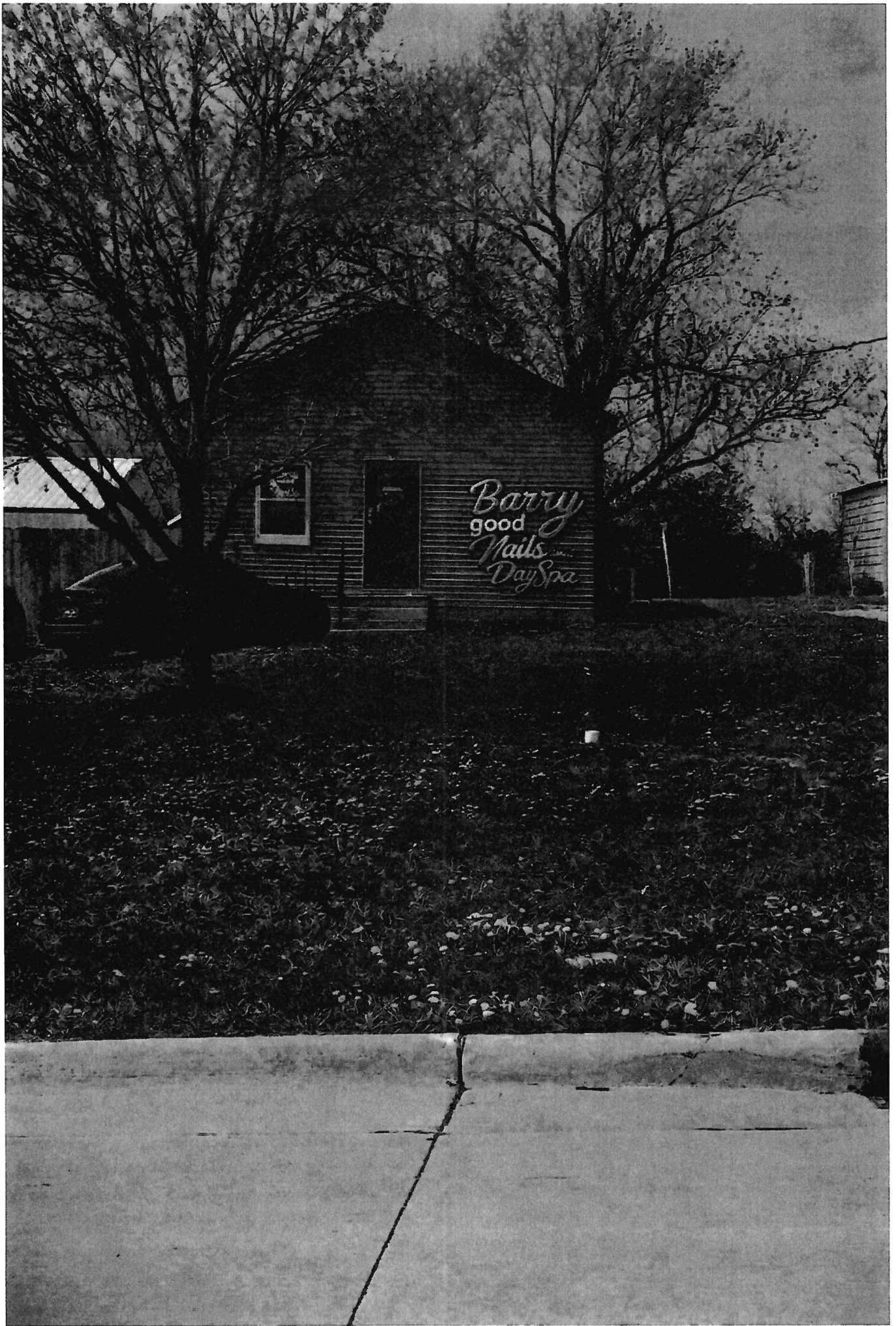
6. Impact on safety, congestion, property values?

No. The sign will not affect light, air, congestion, or safety. As a wall-mounted sign, it introduces no ground obstruction and will not negatively impact surrounding properties.

Thank you for your time and consideration of this request. I am committed to maintaining a professional, respectful, and community-oriented presence.

Sincerely,

Barry DeVoll
Owner, Barry Good Nails and Day Spa
"Stay Polished"



Zoning Board of Adjustment - Staff Report: V26-7

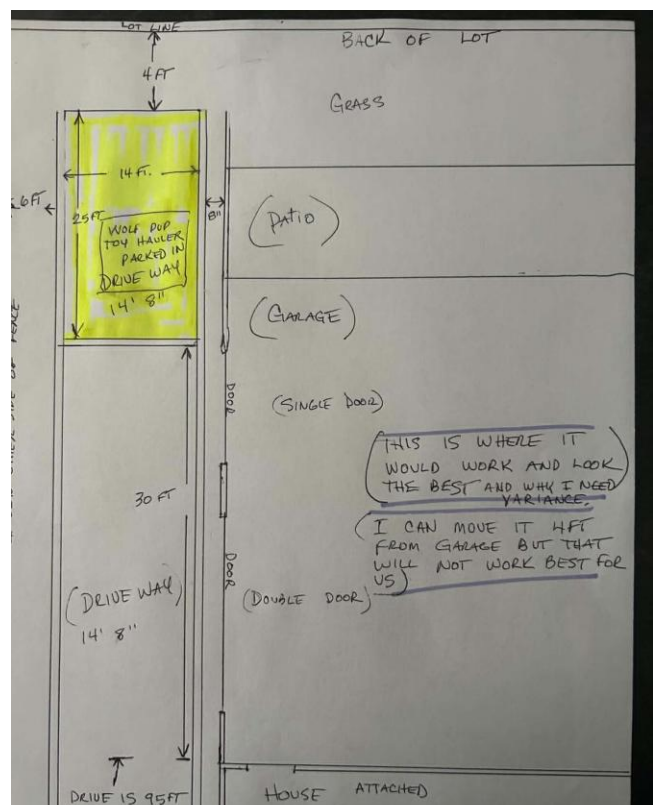
Applicant: Jody Gideon
 Proposal: Reduced separation between the principal and accessory buildings
 Location: 705 East 21st Street Place South Newton, Iowa 50208
 Current Use: Residential Home
 Current Zoning: R-2 One-and-Two-Family Residential

Proposal: The applicant has requested authorization of an 8 inch separation between the proposed carport and the existing house at 705 E 21st St Pl S. If granted, this will allow the applicant to build the car port as close as possible to the existing house.

Analysis: 705 E 21st St Pl S. is zoned R-2 (One-and-Two-Family Residential Zoning District), an aerial map and zoning map are included for reference. The existing structure has a 21-ft (approximate) side yard setback to the west side.



Aerial with existing side yard setback



Proposed carport

The Zoning Ordinance stipulates that accessory structures in any residential zoning district must be at least 4 ft. from any other structure on the parcel and at least 3 ft. from the rear and side property lines.

If the variance is granted, the accessory structure (carport) shall be 8 inches in lieu of the required 4ft. from the principal structure.

The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this structure setback variance.

If the variance is granted, the accessory structure (carport) shall be approximately 8 “ in lieu of the required 4ft building from the principal structure.

The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this structure setback variance.

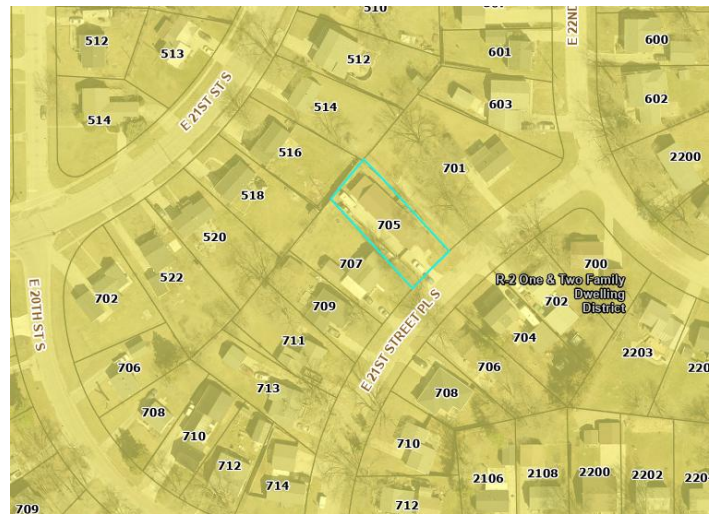


Aerial Vicinity Map around 705 E 21st St Pl S

Variance Questions:

The Zoning Ordinance includes specific criteria for granting variances. These are listed below, phrased as questions. For each question, the Board should try to determine what, if anything, distinguishes this case from other projects in the same zoning classification and if the applicant provided sufficient answers.

According to the ordinance and in order to grant the variance, the answer must be “yes” to the first three questions and “no” to the last three:



Aerial Zoning Vicinity Map

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?

2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?
3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?
4. Did the present owner create the alleged difficulty or hardship?
5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?
6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

See attached handwritten responses.

Notice of Proposal: The Notice of the meeting and proposal was published in the Newton Daily News once on May 26, 2026. A notice of the meeting was mailed on May 21, 2026 to surrounding properties within 200 ft. of the subject parcel for feedback.

Recommendation:

Staff recommends that the Zoning Board of Adjustment only grant the variance if the answers provided to the six legal test questions are to the Board's satisfaction. Staff finds that the requested variance is not detrimental to public welfare or the neighborhood considering the current circumstances. This recommendation applies with the understanding that neighborhood concerns and questions are addressed so as to avoid anything that is contrary to the public interest. The findings of the Zoning Board of Adjustment shall be a determination to either approve, conditionally approve, or deny this variance.



City of Newton
Community Development
303 W 4th St N, Suite 501
Newton, Iowa 50208-1926

Varsha Borde
City Planner
(641) 792-6622 x 2302
VarshaB@newtongov.org

Variance Application

Fee: \$275

<u>Jody Gideon</u> Name of Applicant	<u>705 E 21ST ST PLS</u> Mailing Address	<u>641-831-3144</u> Telephone
<u>Brandon Gideon</u> Name of Owner	<u>705 E 21ST ST PLS</u> Mailing Address	<u>641-831-3144</u> Telephone
_____ Name of Agent	_____ Mailing Address	_____ Telephone

Location of Premises Affected by this Variance: REAR DRIVEWAY OVER CONCRETE DRIVE

Legal Description: _____

The Board is requested to grant a variance from Sec. _____ of the Zoning Ordinance

for the following reasons: CARPORT ROOF NEEDED TO PROTECT TOY HAULER THAT IS USED FOR WIFE WHEELCHAIR- NEEDS SHELTER OVER DRIVE WAY HELPING HER WITH MULTIPLES SCELDRIS. STAYING OUT OF RAIN & HAIL.

The following items must be submitted with application unless specified by the Zoning Administrator:

- Site plan (if applicable)
- Building plans (if applicable)
- Petition signed by supporters of appeal (optional)
- Application fee

Jody Gideon
Signature of Applicant

May 19, 2026
Date

FOR OFFICE USE ONLY	
Date Submitted:	<u>5-19-26</u>
Date Paid:	<u>5-19-26</u>
Receipt #:	<u>053222</u>
File #: V	<u>26-7</u>
Fee:	\$275

According to the ordinance, in order to grant the variance, the answer must be "yes" to the first three questions, and "no" to the last three:

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?

YES

THERE SHOULD BE NO PROBLEM FOR ANYONE AROUND PROPERTY. I OWN NEXT DOOR AS WELL - IT WILL NOT BLOCK EMERGENCY ACCESS BE CAUSE IT IS BACK OF DRIVEWAY -

2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?

YES

THIS IS NOT A BUILDING. IT IS A ROOF OVER DRIVEWAY TO HOUSE TOY HAULER USED FOR STORAGE AGAINST RAIN AND HAIL ALLOWING MY WIFE WITH M.S. TO USE WHEELCHAIR

3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?

YES

IT WILL BE PLACED ACCORDING TO CODE AND BOLTED TO CONCRETE. THE ITEM IS MADE OF METEALAL TO CODE.

4. Did the present owner create the alleged difficulty or hardship?

NO

WE OWN THIS AND NO DIFFICULTY OR HARDSHIP CAN ACCURE.

5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?

NO

THIS WILL NOT HARM ANYONE OR CAUSE ANY PROBLEMS. IT CAN NOT HARM THE PUBLIC IN ANY WAY.

6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

NO

THIS WILL NOT OBSTRUCT ANYTHING. THIS IS OUT OF THE WAY ON BACK OF MY PROPERTY. IT WILL NOT CAUSE PROBLEM FOR FIRE, ANYTYPE OF SAFETY - IT IS NEW AND WILL NOT DIMINISH PROPERTY VALUE - IT WILL BE ABLE TO MOVE BY US WHEN NO LONGER NEEDED.



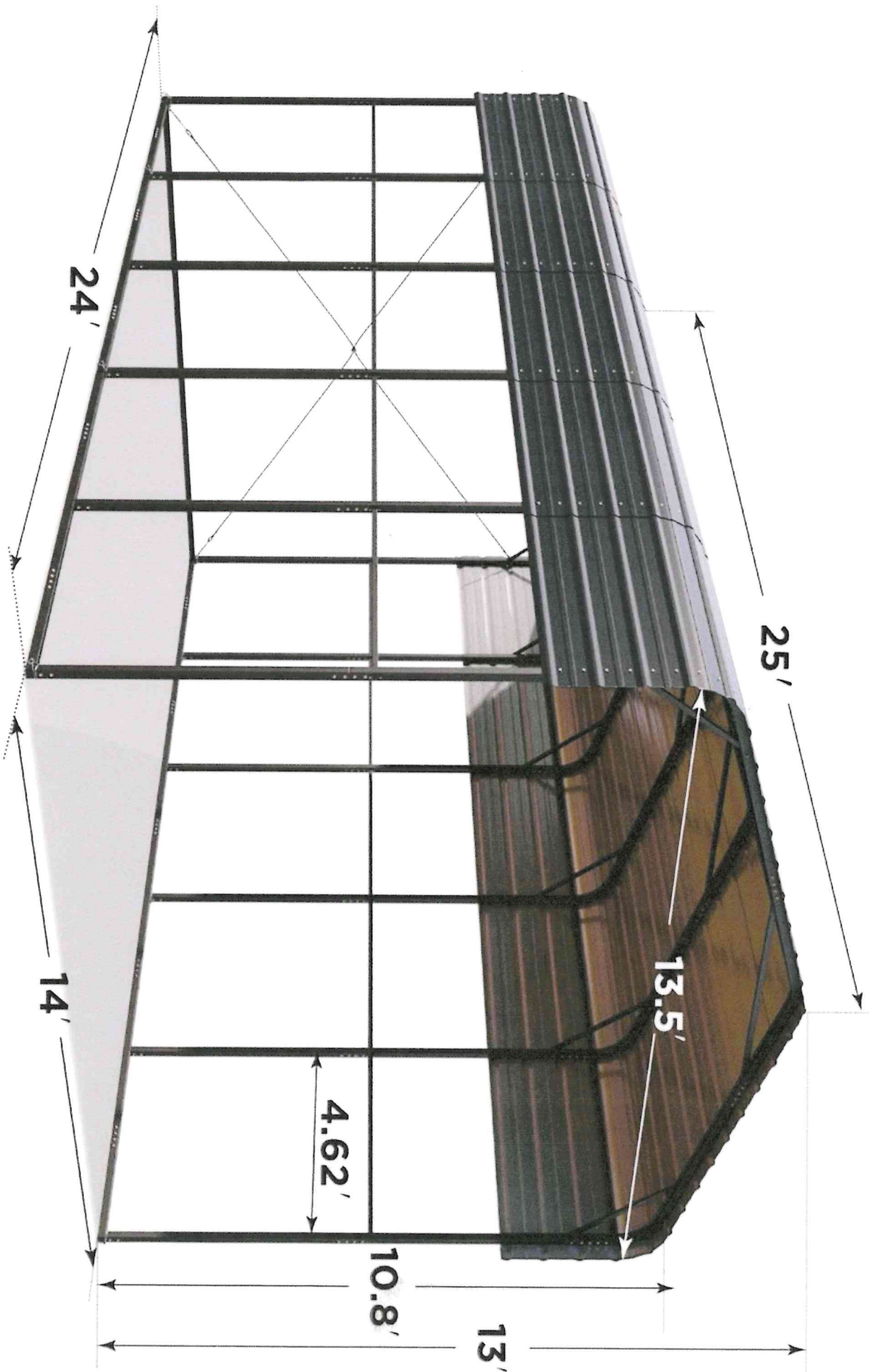
Jasper County, IA

WARD 3

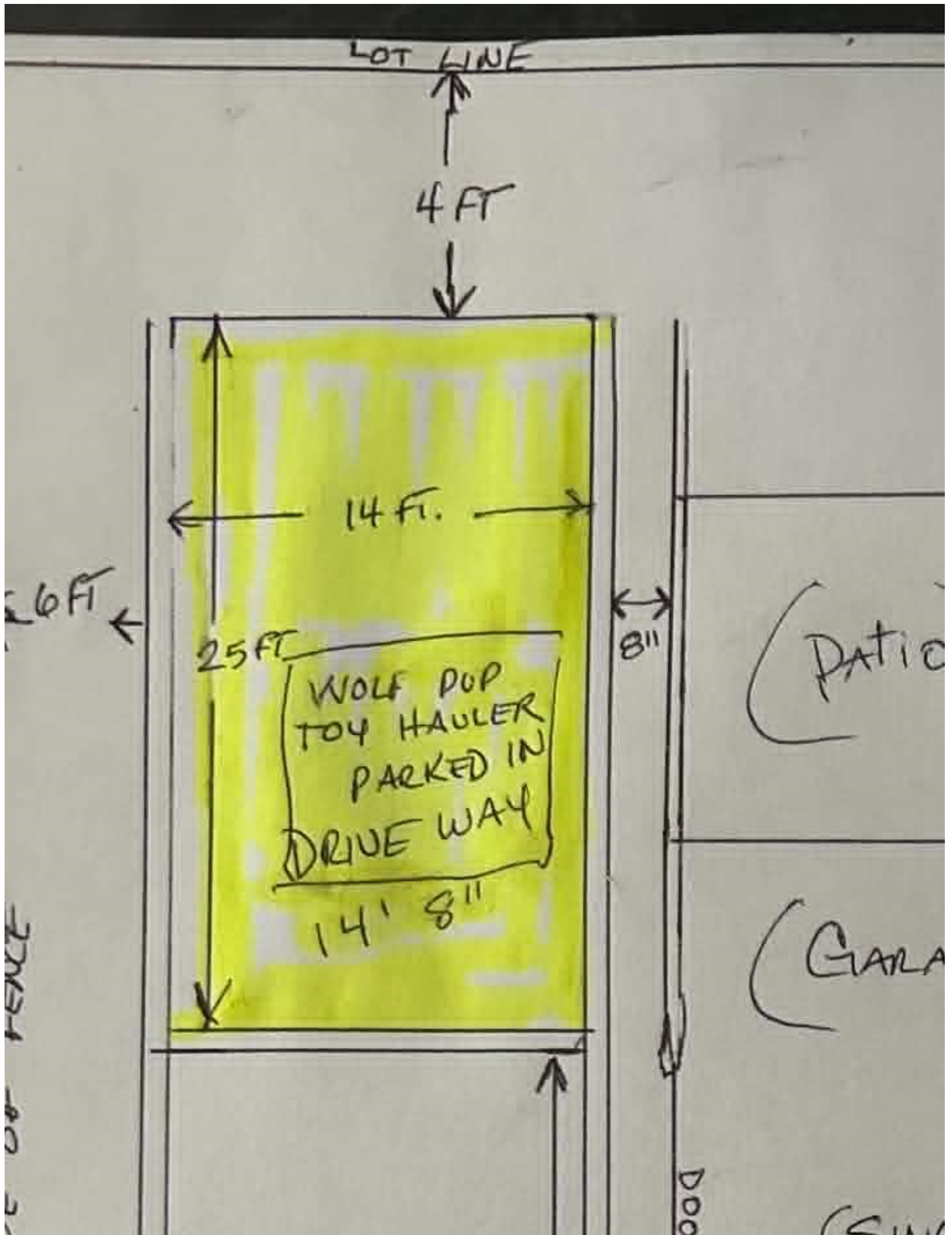
STACY SIMBRO

641-792-1239









Issue: The subject property was found to be out of compliance with the Vacant Building Ordinance due to the fact that it is either

- 1.) Unoccupied, or
- 2.) Occupied with a non-permitted use.

The building currently functions as a warehouse for Miller Property Solutions LLC.

Warehousing is only allowed in the C-CBD zone as a conditional use, and no conditional use permit exists for this property.

The appellant notes that the building has been used as a warehouse since 1979, first for Newton Furniture.

109 East 3rd Street South Appeal : Miller Property Solutions, LLC through the letter provided by the attorney Hilary Montalvo is appealing the determination that the building is vacant and has cited a number of points related to zoning, the pertinent points to this appeal are summarized as follows:

- The building is not vacant as it is used for storage in the same manner as the previous owner used the building. Property has consistently been in use as warehouse/storage area for 47 years.
- That the determination that the use is not permitted was not communicated in a manner that allows the property owner to appeal that determination to the Zoning Board of Adjustment.

Zoning Board of Adjustment Role: To act on the appeal on the Zoning Administrator's (Community Development Director) determination that the warehouse use is not allowed.

In order for the Zoning Board of Adjustment to grant the appeal, the following must be determined:

- 1.) The building has been historically used for warehousing.
- 2.) That the warehousing use was not discontinued for 6 months or more since the adoption of the current zoning ordinance in 2001.

If the Zoning Board of Adjustment finds that the use of warehousing at 109 East 3rd Street South is allowed as a pre-existing non-conforming use (grandfathered), then City staff will appropriately dismiss the vacant building action on the property as the sticking point was regarding allowable use.

Zoning Code: Applicable Zoning Codes are following. The subject properties are located in the C-CBD Zoning District.

§ 158.117 NON-CONFORMITIES.

(A) Any lawful use of land or structures existing at the time of passage of the zoning chapter or subsequent amendment, may be continued with the following limitations.

(1) No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of this chapter, except in compliance with the provisions of this chapter. Use or occupation of an area of land is intended to mean only that land which is actually utilized by the non-conforming use and shall not be interpreted to

include a larger area of land by virtue of ownership, intent to use or any other argument less than actual use and physical occupation by the non-conforming use.

(2) No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel which was not physically occupied by such use at the time of adoption of this chapter.

(3) Any non-conforming structure or structure containing a non-conforming use which has been damaged or destroyed by accident, fire, explosion, natural disaster or public enemy may be repaired or reconstructed on the existing footprint of the building, as long as the degree of non-conformity is not increased. The use is permitted to continue as it existed before the damage.

(4) No additional structure not conforming to the requirements of this chapter shall be erected in connection with such non-conforming use of land.

(5) No non-conforming use of greater intensity may be substituted for any other non-conforming use.

(6) Once a use has been converted to a conforming use, it shall not be converted back to a non-conforming use.

(7) No non-conforming use shall be established after having been discontinued for six months. Vacating of premises or building or non-operative status shall be evidence of discontinued use.

(8) Premises used for open storage, signs and billboards not expressly permitted in residential zoning districts in which they are located and where such uses existed prior to adoption of this chapter shall discontinue use upon adoption of this chapter and shall not be permitted to continue as non-conforming uses. Any such uses shall be in violation of this chapter.

(9) Structural alterations may be made to non-conforming buildings to meet the minimum requirements of other city codes and to maintain the building in a safe condition.

(10) Any use of land, use of structure or any structure in existence at the time of adoption of this chapter which was not an authorized non-conformity under previous zoning chapters, shall not be authorized to continue its non-conforming status pursuant to this chapter or amendments thereto.

158.022 C-CBD: CENTRAL BUSINESS DISTRICT COMMERCIAL.

(A) *Intent.* The C-CBD: Central Business District Commercial District is designed to provide space for a wide variety of retail stores, offices and related activities which serve the entire city or may even have regional impact. This district is characterized by high intensity and large bulk development. It is intended that this district not be mapped outside the downtown area.

(B) *Permitted uses.* The following uses are permitted in the C-CBD District:

- (1) Uses permitted in the **C-A District;**
- (2) One- through multiple-family dwellings;
- (3) Printing or publishing companies;
- (4) Accessory uses incidental to and on the same zoning lot as a permitted principal use;
- (5) Bed and breakfast inn, subject to site plan approved;
- (6) Educational and religious facilities; and
- (7) Tea room or tea house.

(C) *Conditional uses.* The following uses may be permitted in the C-CBD District on a conditional basis, following approval in the manner prescribed in this chapter: warehousing.

§ 158.023 C-A: ARTERIAL COMMERCIAL.

(C) *Permitted uses.* The following uses are allowed in the C-A: Arterial Commercial District:

- (1) Churches and educational facilities;
- (2) Personal service retail uses including the following: barbershops, beauty shops, laundry pick-up stations, optical stores, dance studios, hobby shops, florist shops, child care facilities, health studios or gyms, newsstands, photographic studios, post office substations, shoe repair shops, tailor and dressmaking shops, photo developing pick-up stations and other similar uses;
- (3) Professional offices and medical clinics;
- (4) Convenience stores including the sale of gasoline and fuels; provided, a traffic study prepared by a registered engineer is submitted and approved;
- (5) Automobile service stations, fuel sales stations, auto parts and accessory stores and washing facilities, all of which may or may not include the sales of gasoline; provided, however, if the sales of gasoline is included a traffic study prepared by a registered engineer is submitted and approved;
- (6) Automobile, trailer, motorcycle, boat, farm implement and construction equipment establishments for display, hire rental and sales;
- (7) Home service retail stores including the following: furniture stores, appliances stores, building materials stores, carpet and floor covering stores, cabinet stores, garden supply stores, hardware stores, lawn mower sales and service stores, paint and glass stores, plumbing and heating retail stores, television and electronics stores, rental stores, upholstering shops and other similar retail uses;
- (8) General retail stores, including the following: food stores, supermarkets, variety stores, discount stores, department stores, clothing stores, shoe stores, sporting goods stores, jewelry stores, art shops, book stores, camera stores, music stores, china and gift stores, drug stores, pet stores and other similar retail establishments;
- (9) Accessory outdoor displays and storage of the permitted sale of goods and services allowed or defined as permitted uses in this district and/or temporary seasonal displays such as lawn and garden or holidays, if identified on an approved site plan and if minimum parking requirements are met;
- (10) Travel related and hospitality related businesses, including the following: hotels, motels, tea room or tea houses or other similar businesses;
- (11) Restaurants and amusement establishments, including: bowling alleys, dance halls, pool halls, night clubs and lounges; provided, the use is located greater than 250 feet from a primary residential use;
- (12) Small animal veterinary clinics without boarding facilities;
- (13) Agriculture;
- (14) Multi-family dwellings up to 25 units per acre;
- (15) Fireworks sales with storage of fireworks in a space equal to or less than 20% of the sales floor area. The activity shall be located at least 150 feet from any residential dwelling, 150 feet from any fuel source, and 750 feet away from any other fireworks sales use; and
- (16) Municipally owned pound, provided the following conditions are met:

- (a) The facility and any associated fenced, run areas, shall be located no closer than 500 feet from any residential dwelling on a neighboring property.
- (b) The facility shall be connected to public utilities including electric, sewer, and water.
- (c) Animals shall not be exterior to the structure unless monitored by authorized personnel (staff and/or volunteer).
- (d) All State of Iowa Code requirements associated with this use shall be met.

Return To: Hilary J Montalvo, 112 N. 2nd Ave E., Newton, Iowa 50208
Taxpayer: Miller Property Solutions, LLC, 1550 Jade Street, Kellogg, IA 50135-8675
Preparer: Hilary J Montalvo, 112 N. 2nd Ave E., Newton, IA 50208, Tel: 641-792-2889

AFFIDAVIT

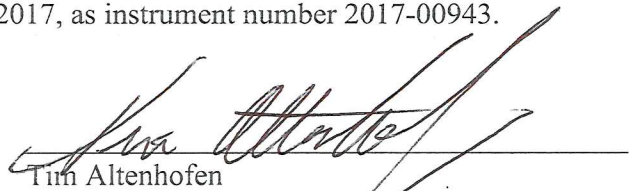
STATE OF WISCONSIN, COUNTY OF DANE, ss:

I, Tim Altenhofen, being first duly sworn on oath, depose and state as follows:

1. The following described real estate, locally known as 109 E. 3rd Street S., in Newton, Iowa, was owned by myself and my wife, from February 23, 2004 until February 10, 2017:

Lot Eight (8), Block Twenty-two (22), in the City of Newton, Jasper County, Iowa, EXCEPT Parcel A of said Lot Eight (8), as appears of record in Plat of Survey recorded in Book 1156, page 532 in the Office of the Recorder of said County.

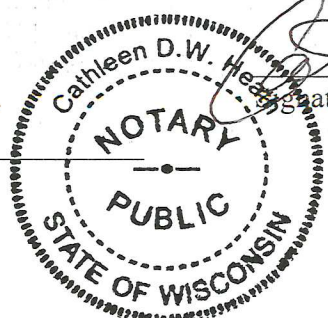
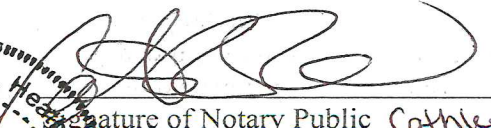
2. Title was conveyed to myself and my spouse by Warranty Deed recorded on March 29, 2004, as instrument number 2004-02822.
3. Prior to this transaction the property had been owned by my family for many years.
4. I have personal knowledge that the property was continually used as a warehouse since 1979, until my wife and I sold the property to Miller Property Solutions, LLC, via Warranty Deed signed on February 10, 2017, and recorded on February 13, 2017, as instrument number 2017-00943.



Tim Altenhofen

Signed and sworn to (or affirmed) before me on April 16, 2026, by Tim Altenhofen.

Commission Expires: never

Signature of Notary Public, Cathleen Heath

BRUCE NUZUM
bnuzum@newtoniawalaw.com
Of Counsel

HILARY J. MONTALVO
hmontalvo@newtoniawalaw.com

**NUZUM &
MONTALVO** PLLC
ATTORNEYS AT LAW

112 NORTH SECOND AVENUE EAST • NEWTON, IOWA 50208
TELEPHONE: 641-792-2889

TIM J. CAMPBELL, JR.
(1917 - 2004)

JAMES L. TYLER
(1927 - 2007)

A. FREDERIC MATTHIAS
(1915 - 2017)

February 13, 2026

Mr. Craig Armstrong
Development Specialist
City of Newton
303 W 4th St N
Newton, IA 50208

Re: "Final Notice" dated January 30, 2026 directed to Lee Miller, owner of
Miller Property Solutions, LLC regarding 109 E 3rd St S

Dear Mr. Armstrong:

I am formally responding to your letter which states that the City has determined that my client's warehouse property located at 109 E. 3rd Street S. in Newton is vacant. Your supposition is that the property is vacant because Miller Property Solutions LLC is not operating a lawful business at that address per zoning codes. Presumably you are using the definition found in Newton City Code §150.085: *A building or structure is vacant if no person or persons actively and currently conduct a lawful business, including applicable zoning requirements and uses, or lawfully reside or live in any part of the building in accordance with the city's zoning regulations.*

Initially your written statement was that the property was in the Commercial Arterial zone, and therefore my client's use, which is for private storage and the warehousing of the business' machinery, raw materials, and business records, was not permitted at all in that zone. Following our phone conversation on February 12, 2026, you corrected the written statement regarding the actual zone in which the property is located, which we agree is the Central Business District Commercial Zone, and that it has never been the other one described. This zone specifically allows warehouses as a conditional use. See Newton City Code §158.022 (C).

When this was pointed out to you, you indicated that you did not believe that the property had had such a conditional use granted to it, however, I noted that the property in question has been used by my client for warehousing and storage for his construction business since 2017, and prior to that date it was used as storage and warehousing for the local business, Newton Furniture, since 1979. I can provide you with a sworn statement from Timothy Altenhofen to that effect. It was also partially used for storage before 1979 for furniture or carpet for a prior business.

You provided my client with multiple documents which you stated must be returned to the City Community Development office to prevent a municipal infraction. These included: 1) a Vacant Building Program Registration form; 2) a Vacant Building Program Property Plan and 3) a City of Newton Vacant Building Program Appeal Form. Further your letter states, "You may appeal this decision to the Building & Trades Board." What "this decision" is, which needs to be appealed, is not specified.

Please consider this letter an appeal by Miller Property Solutions LLC of any determination of zoning, and/or determination of vacancy, and all related issues directed to any and all departments of the City of Newton, its elected officials, its appointees, and its agents, who have actual jurisdiction of any types of appeals under zoning or vacant buildings under the City Code.

We would like to point out the following:

- 1) Miller Property Solutions LLC has been a registered business in the state of Iowa since 2004 with registration #302588. It, not Lee Miller, has owned the warehouse located at 109 E 3rd St S since 2017.
- 2) Miller Property Solutions LLC is a construction, renovation, and home improvement service business which engages in the purchase of dilapidated properties and engages in their renovation and resale, including in Newton, Iowa, and the surrounding area. It stores construction equipment and materials for its business at this location, occasionally uses the location to prep portions of renovation projects at the location, and maintains business records there.
- 3) On June 3, 2025, Jacob Halferty issued a Newton Commercial Business Property Inspection Report stating that there were no violations of the city code found on inspection of the property and the report also stated that the property passed inspection. According to the Newtongov.org directory, Jacob Halferty is the Fire Marshal for the City of Newton. Copy Attached.
- 4) A determination of whether or not the use of a property in Newton is an allowable use pursuant to its zoning is restricted to the determination of the Zoning Administrator pursuant to Newton City Code §158.177. In our phone conversation, you agreed that Miller Property Solutions LLC is a business that uses this location in the manner that we have stated (storage/warehousing), but you claim that this is not an allowable use, rendering the property vacant since no "lawful" business operates there. However, the Community Development Department does not have the authority to determine whether or not a "lawful" business operates at that location. Only the Zoning Administrator does, by law, because that is an interpretation of the zoning code for that property.
- 5) The Newton City Code states: *It is the intent of this chapter (158, Zoning)* that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator. The Zoning Administrator shall make a determination as to*

*how all land uses and structures are classified. Unless a use is specifically listed as permitted, it is prohibited. Any questions of interpretation and enforcement shall be presented to the Zoning Board of Adjustment only on appeal from the decision of the Zoning Administrator. (Newton City Code §158.177(B)), *added for clarification.*

- 6) Warehousing is a permitted conditional use of the zone where the property is located, by law, as noted above. Since the sole basis to claim that this property is vacant is based on an interpretation of the zoning ordinances, you were required to obtain a determination from the Zoning Administrator that the property was in fact operating a business which was not permitted under the zoning uses, even under a conditional or grandfathered use.
- 7) There is no evidence that this has ever been done, and if it has, no copy of such a determination by the Zoning Administrator has ever been provided to us as required to be able to appeal such a determination to the Zoning Board.
- 8) This property is also conducting a business with a permitted use because, per Newton City Code §158.003, the definition of a permitted use includes "*A use that is allowed continue {sic} on a property as a pre-existing non-conforming use regulated under § 158.117 of this chapter.*" As stated, this property has consistently been in use as a warehouse/storage area for the last 47 years. It has in fact been grandfathered into the code, and complies with §158.117.
- 9) The zoning area that the property is located in (CBD) also includes all uses zoned Arterial Commercial District as well as the uses in its own zone. Each description of permitted uses in the code describes businesses which provide services to the public. Miller Property Solutions is engaged in the sale of renovated properties to the public, and it falls within the "and other similar uses" stated throughout the code describing service businesses in §158.023.
- 10) There is no City Code section stating that a business must bring its clients to its owned buildings in order to conduct a sales business with those clients, or that a business must be open to the public for entry, yet these ideas were used as a basis to conclude in our phone conversation that the property was "vacant," simply because when the City chose to send someone to knock at the door instead of contacting the owner first, no one answered.

In summary:

- a. We deny that this property is vacant and appeal any decision that it is for the reasons stated above;
- b. We deny that the Community Development Department has the authority under the City Code to determine whether or not a lawful business is operating at a

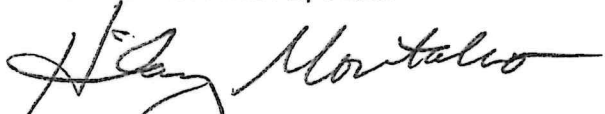
location, based solely on its own interpretation of the City Code regarding Zoning, where no other purported violations of City Code have been found at the property;

- c. We appeal any such determinations of vacancy and/or the authority of the Community Development Department in this particular situation; and
- d. Our position is that in order for the City to proceed any further, that the Zoning Administrator must provide a written determination that the actual use of this property shows that it is not: a lawful use under current zoning laws and why; not a previously approved conditional use; or that the property is not grandfathered in from the property's 47 year history of being used as a warehouse, so that we may seek the proper appeal of such a determination from the Zoning Board.
- e. We ask that the Community Development Department cease and desist from attempting to force Miller Property Solutions LLC to register its lawfully used property as a vacant unused property, or to pay any fees associated with supposed vacancy, and we ask for review by the correct department of the City as to the status of this property as vacant or not under the zoning laws.

If you have any questions or concerns, please feel free to contact me by email at hmONTALVO@newtoniowalaw.com. Should any hearing be scheduled, please provide such notice of a hearing to me, in writing, showing any date, time, and location of a hearing or review of these issues. Should you wish to receive an affidavit concerning the prior use of the property by the prior owner, please let me know and I will provide you with the same.

Very truly yours,

NUZUM & MONTALVO, PLLC

By: 
Hilary J. Montalvo

Enclosures