City Council Communication

Department: Community Development Department CASES #ZC-20-003 and #SAV-20-002 Applicant: Cherry Ridge Construction, Inc. Rep. Chris Rochleau 1425 9th Avenue Council Bluffs, IA 51501 Property Owner: 92 Investments, LLC 22735 James Drive Council Bluffs, IA 51501	Ordinance No. _____ Resolution No. _____	Planning Commission: 5/12/2020 CASE#ZC-20-003 1st Consideration: 2nd Consideration: 3rd Consideration CASE#SAV-20-002 Resolution of Intent: Resolution to Dispose:

Subject/Title

Request: Combined public hearing on the request of Cherry Ridge Construction, represented by Chris Rochleau, to rezone the properties legally described as Lots 16-30, Block 37, Brown's Subdivision and the east/west alleyway adjacent, City of Council Bluffs, Pottawattamie County, Iowa from P-C/Planned Commercial to C-2/Commercial District, and to vacate said east/west alleyway platted in Block 37, Brown's Subdivision.

Location: Northwest Corner of South 35th Street and 14th Avenue

Background/Discussion

These cases were first heard by the Planning Commission on April 14, 2020, at which time the Commission voted to postpone the request to allow the applicant additional time to submit an engineered site plan with storm sewer, stormwater detention, a utility plan, and a parking plan. The applicant has submitted the requested plans, and the document has been included as Attachment C.

The Community Development Department has received an application from Cherry Ridge Construction, represented by Chris Rochleau, to rezone the property described above, and to vacate the east/west alleyway platted in Block 37, Brown's Subdivision. The applicant is requesting the rezoning to build two contractor shops that will have 12 bays each in two phases. The rezoning has been requested because contractor shops are not a permitted use in the P-C/Planned Commercial District, in which the property is currently zoned, but is a permitted principal use in the C-2/Commercial District. The applicant has requested that the adjacent alleyway be vacated to allow additional space for setbacks, and to access the rear of the buildings that are to be constructed on the property.

The following attachments are included with this report for reference purposes:
Attachment A: Case Map
Attachment B: Letter of Intent
Attachment C: Site and Utility Plan
Attachment D: Building Renderings
Attachment E: Building 1 Interior Layout
Attachment F: Letter of Support from Frank Krejci
Attachment G: Letter of Support and Attachments from John Jerkovich
Attachment H: Letter in Opposition from Petersen Law on behalf of Property Investments Inc.

Attachment I: Letter in Opposition and Attachments from Mark McKeever
Attachment J: Letter of Support from Tyler Borman, DEB Partnership (Received after Planning Commission Meeting)

Comments

The following comments have been received from City Departments and utility providers on the proposals:

1. The Council Bluffs Fire Marshal stated they have no comments on the requests.
2. The Council Bluffs Public Works Department stated they have no comments on the requests.
3. The Iowa Department of Transportation stated the cases do not appear to create any conflicts with the Interstate 20 reconstruction project.
4. Black Hills Energy stated they have no concerns on the requests.
5. Council Bluffs Water Works stated they have no comments on the proposal.
6. MidAmerican Energy stated they have no concerns with the proposal, though the developer should contact MidAmerican Energy to identify costs and requirements for extending electric service.

Public notices were mailed to all property owners within 200 feet of the requests. Prior to the April 14, 2020 City Planning Commission Meeting, one letter of opposition was received and is included with this report as Attachment H. One letter of support was also received prior to the meeting and was read into the record but was not included in the staff report, that letter has been included with this report as Attachment F.

After the April 14, 2020 Planning Commission meeting, one letter of support and one letter of opposition were received, these letters are included as Attachment G and Attachment I.

After the May 12, 2020 Planning Commission meeting, one letter of support was received, and has been included as Attachment J.

CASE #ZC-20-003 Discussion:

Land Use and Zoning

The following zoning and land uses surround the subject properties:

- North: Land that is zoned P-C/Planned Commercial District and is occupied by Union Pacific Railroad tracks.
- South: 14th Avenue and land that is zoned P-C/Planned Commercial District and contains one parcel which houses a hotel, and two undeveloped parcels.
- East: South 35th Street and land that is zoned I-2/General Industrial District that is occupied by a truck/trailer repair facility and Union Pacific Railroad land.
- West: Land that is zoned P-C/Planned Commercial District that is currently undeveloped.

The future land use plan of the Bluffs Tomorrow 2030 (Comprehensive Plan) designates the subject property as "Public Park". This same future land use plan designation is applied to other properties in the City that are undeveloped and located immediately adjacent to an existing railroad corridor and generally serves as a buffer until a transitional use that is compatible with the railroad and adjacent neighborhoods/properties can be determined. In this particular case, the "Public Parks" designation serves as a buffer between the elevated Union Pacific railroad tracks and the commercial/industrial areas located immediately south and east of the subject property. The C-2 District will function as a transitional zoning district that will allow for a variety of land uses that are compatible with the surrounding area and will not be detrimental to the long term development of areas along South 35th Street.

1. If approved, the subject property will exceed the minimum lot area of 5,000 square feet and the minimum dimensions of 50 feet wide by 100 feet deep for property in the C-2 District, as the property is approximately 2.08 acres (90,604 square feet) and has the dimensions of 137 feet by 660 feet
2. As is proposed by the applicant the property would contain 2 buildings which would house approximately 12 bays of contractor shops each. In the C-2/Commercial District, contractor shops are considered a permitted principal use. Outside storage is not allowed under the "Contractor Shop" definition.
3. If approved, the contractor shop, or other uses that are allowed in the C-2/Commercial District would be in conformance with the general character of the area. In order to further conform with P-C/Planned Commercial District standards, as many of the surrounding properties are zoned, the applicant is proposing to add landscaping to the property and will construct the building with a stone accent along the front (South face) and side (East face) of the building (as is shown on Attachment D).
4. The subject property abuts Union Pacific Railroad tracks, which greatly limits the desirability to develop the property with uses allowed in the P-C/Planned Commercial District. The applicant is proposing two buildings which would provide storage and work space for businesses, and is anticipating employment numbers of 36 to 60 individuals per building.
5. Existing land uses along this segment of South 35th Street range from commercial hotels and restaurant to industrial truck maintenance facilities and various trade shops. While the subject property does not have any other C-2 properties directly adjacent, it would be a compatible and complimentary use to the neighboring P-C/Planned Commercial District, as well as the I-2/Industrial District property to the East, and would serve as a transition area between the two districts.
6. Objecting parties to the proposed rezoning considers the proposal to be a case of spot zoning, which is the creation of an island of property with restrictions on its use different that those imposed on surrounding property. In previous spot zoning cases in Iowa, the Iowa Supreme Court has considered three factors on determining the validity of a spot zoning case; (1) whether the new zoning is germane to an object within the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan. While the proposed rezoning is to a different zoning district than any of the surrounding properties, all of the abutting properties on the West side of South 35th street are, and would continue to be zoned commercially, in the C-2/Commercial District and the P-C/Planned Commercial District. Because the subject property abuts the elevated Union Pacific railroad tracks, there is a unique circumstance on the subject property that could make the subject property less desirable to certain uses that would otherwise be drawn to nearby properties, such as restaurants and hotels. The proposed building could also be considered a buffer from the railroad tracks to consumer based businesses, which would also consider the proposal to be in line with the Bluffs Tomorrow 2030 (Comprehensive Plan).

CASE #SAV-20-002 Discussion:

On August 25, 2003 the City Council amended the adopted *Policy and Procedures for Alley, Street and Right-of-way Vacations.* The objectives of the amended Policy are as follows:

1. *To provide due process and citizen participation in the application and review process for vacations*. There are two property owners which abut the subject alleyway. All abutting property owners were mailed petitions asking if they are in favor of/opposed to and/or willing to/not willing to acquire the

portion of the alley that abuts their property, if vacated. Responses to these petitions are summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access*.
   Access to the adjacent properties will not change as a result of this vacation, as the applicant's property maintains access to 14th Avenue and South 35th Street, and the abutting properties to the North are owned by the Union Pacific Railroad and maintain access to the railroad tracks and the platted 13th Avenue. The Union Pacific Railroad properties appear to be primarily used as an access road to the railroad tracks.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. The subject alleyway currently dead-ends approximately 660 feet from the West right-of-way line of South 35th Street, as the subdivision to the West of the subject alleyway does not contain a continuation of the alleyway. The proposal is to vacate the entirety of the alleyway, therefore eliminating a dead-end alley.

4. *To reduce or eliminate hazardous and dangerous traffic conditions*. The subject right-of-way is unimproved and is not used for vehicular and/or pedestrian traffic.

5. *To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.*
   All City Departments and utilities were notified of the request, none indicated any objections or requirement that any easements be maintained.

6. *To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.* There is no pedestrian or vehicular circulation through the subject alleyway.
7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.* This request is to vacate the entire east/west alleyway in Block 37, Brown's Subdivision.

8. *To assist in the implementation of the goals and objectives of the Comprehensive Plan.* The request has no impact local access and circulation, and is consistent with the objectives stated in Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).

9. *To reduce the City's maintenance liability on previously vacated right-of-way parcels from public improvement projects and various lots acquired through delinquent taxes or assessments.* Not applicable.

10. *To establish an equitable price for surplus public property.* All abutting property owners were notified about this vacation request. Each abutting property owner is eligible to receive their portion in consideration of the vacation application fee, which has already been paid. The following responses were received:
    - 92 Investments, LLC, owns the property legally described as Lots 16-30, Block 37, Brown's Subdivision, and as the applicant of the request is in favor of the vacation and willing to acquire the portion of alleyway abutting their property.
    - Union Pacific Railroad, owner of Lots 1-15, Block 37, Brown's Subdivision, indicated they received the petition to vacated the alleyway, but did not indicate whether they were in favor or opposed to the vacation, nor did they indicated if they were willing to acquire the portion of alleyway adjacent to their property.

Recommendation

The Community Development Department recommends the following:

- Case #ZC-20-003: Approval of the request to rezone the property legally described as Lots 16-30, Block 37, Brown's Subdivision and the alleyway adjacent from the P-C/Planned Commercial District to the C-2/Commercial District.
    1. The rezoning shall become effective once the applicant, Cherry Ridge Construction, takes ownership of the subject property.
- Case #SAV-20-002: Approval of the request to vacate the east/west alleyway in Block 37, Brown's Subdivision, with the entirety of the alleyway being combined with the property owned by 92 Investments, LLC (the applicant) that is legally described as Lots 16-30, Block 37, Brown's Subdivision.

Public Hearing

Staff speakers for the request:

1. Christopher Meeks, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503
2. Christopher Gibbons, Planning Manager, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor:

1. Chris Rochleau, 1425 9th Avenue, Council Bluffs, IA 51501
2. John Jerkovich, 535 West Broadway, Suite 100, Council Bluffs, IA 51503

Speakers against:

1. Deb Petersen, 215 South Main Street, Council Bluffs, IA 51503
2. Mark McKeever, 1032 Woodbury Avenue, Council Bluffs, IA 51503

Planning Commission Recommendation

The Planning Commission recommended:

1. Case #ZC-20-003: Approval to rezone the property legally described as Lots 16-30, Block 37, Brown's Subdivision and the alleyway adjacent from the P-C/Planned Commercial District to the C-2/Commercial District, subject to the following condition:
    - The rezoning shall become effective once the applicant, Cherry Ridge Construction, takes ownership of the subject property.

2. Case #SAV-20-002: Approval to vacate and dispose of the east/west alleyway in Block 37, Brown's Subdivision, with the entirety of the alleyway being combined with the property owned by 92 Investments, LLC (the applicant) that is legally described as Lots 16-30, Block 37, Brown's Subdivision.

VOTE: AYE 5 NAY 4 ABSTAIN 2 ABSENT 0 VACANT 0 Motion: Carried

Attachments

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Prepared by: Chris Meeks, Planner