City Council Communication

Department: Community Development CASE # ZC-20-011 Applicant/Property Owner: Caren C. Taylo 1401 Avenue 'E' Council Bluffs, IA 51501	Ordinance No. _____	City Council 1st Consideration: 10/26/2020 2nd Consideration: 11/09/2020 3rd Consideration: 11/23/2020 Planning Commission: 10/13/2020

Subject/Title

Request: Public hearing on the request of Caren C. Taylo to rezone property legally described as Lots 47 through 50, Belmont Addition, along with the South ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa from C-2/Commercial District to R-2/Two-Family Residential District. The Community Development Department has expanded the request to include the neighboring property to the north, addressed at 1501 Avenue 'P' and legally described as Lots 44 through 46, Belmont Addition, along with the North ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, for zoning consistency purposes.

Location: 1500 and 1506 Avenue 'O' and 1501 Avenue 'P'

Background

The Community Development Department has received an application from Caren C. Taylo to rezone property legally described as Lots 47 through 50, Belmont Addition, along with the South ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa from C-2/Commercial District to R-2/Two-Family Residential District. The Community Development Department has expanded the request to include the neighboring property to the north, addressed at 1501 Avenue 'P' and legally described as Lots 44 through 46, Belmont Addition, along with the North ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, for zoning consistency purposes.

All three subject properties are each developed with a detached single-family dwelling. Since a 'single family dwelling, detached' is not a permitted use in the C-2/Commercial District, it is deemed a legal nonconforming use. The purpose of this request is to bring said residential uses into conformance with the Zoning Ordinance and facilitate the sale of these properties.

Land Use and Zoning

The following zoning and land uses surround the subject properties:

- North: Undeveloped land and a Chicago Central and Pacific Railroad rail line, which are zoned C-2/Commercial District.
- South: Undeveloped land that is zoned C-2/Commercial District and a homeless shelter that is zoned I-2/General Industrial District
- East: A Chicago Central and Pacific Railroad railyard, which is zoned I-2/General Industrial District.
- West: An adult entertainment establishment that is zoned C-2/Commercial District.

The future land use plan of the Bluffs Tomorrow 2030 (Comprehensive Plan) designates the subject properties as Local Commercial.

Public notices were mailed to all property owners within 200 feet of the request. The Community Development Department has not received any comments as of the date of this report.
All City Departments and local utilities were notified of the proposed rezoning. The following comments were received:

- The Permits and Inspections Division stated they have no comments on the request.
- The Public Works Department stated they have no comments on the request.
- The Fire Department stated they have no comments on the request.
- Mid-American Energy Company stated they have no conflicts with the request.
- Cox Communications stated they have existing network on the Mid-American poles located between the subject properties.

The following attachments are included with the case staff report:

- Attachment A: Location/Zoning Map

Discussion

1. All three parcels of land proposed to be rezoned exceed the minimum lot size requirements of the C-2/Commercial District and the R-2/Two-Family Residential District.
2. If the subject properties are rezoned to the R-2 District, the current residential uses would be brought into conformance with the Zoning Ordinance.
3. A 'single-family dwelling, detached' is not permitted use in the C-2 District. As per Section 15.01.050 of the Council Bluffs Municipal Code (Zoning Ordinance), "if property is used in a manner that was a lawful use on or before the effective date of this ordinance, and this ordinance no longer classifies that use as either a permitted or conditional use in the zoning district in which it is located, that use shall be deemed a legal nonconforming use." As such, the single-family dwellings located on the subject properties are deemed legal nonconforming uses and are subject to the provisions established in Chapter 15.26, Nonconformities, of the Council Bluffs Municipal Code (Zoning Ordinance).
4. As per Section 15.26.050 of the Council Bluffs Municipal Code (Zoning Ordinance), "any legal nonconforming residential use of a structure may be enlarged to the extent that an otherwise conforming residential use of a structure could be enlarged under the zoning regulations of the most restricted residential district in which such residential use of a structure would be permitted as a principal use." Therefore, the residential structures located on the properties proposed to be rezoned are currently subject to the site development regulations of the R-1/Single-Family Residential District.
5. Since the site development regulations in the R-1 and R-2 Districts are virtually identical, proposed rezoning will not resolve any nonconformities relative to the existing residential structures (i.e., lot coverage, setbacks and height).
6. As per Section 15.26.030(E) of the Council Bluffs Municipal Code (Zoning Ordinance), "when a structure containing a nonconforming use is damaged to an extent of fifty (50) percent or less of the replacement cost, the structure shall be allowed to continue if actual construction to repair it is commenced within six months of the date the damage was incurred, and the work is carried on diligently to completion within one year of this commencement." On the other hand, if the damage constitutes more than 50% of the replacement cost of said structure, then only uses classified as permitted or conditional in the underlying zoning district shall be allowed to occur at the site where said structure was located. Therefore, if the existing single-family structures on each of the subject properties were to be destroyed by more than 50% of the replacement cost, another single-family structure could not be rebuilt in its place. The proposed rezoning to the R-2 District would allow the current residential uses to continue to exist even if the damage to the structures constitutes more than 50% of the replacement cost.

7. The Bluffs Tomorrow 2030 (Comprehensive Plan) designates the subject properties as Local Commercial, which is intended for uses oriented primarily towards good and services that meet the demand of Council Bluffs residents, such as grocery stores, pharmacies, banks, auto services and small offices, and may be oriented as individual development on smaller lots. The C-2 District is generally consistent with the Local Commercial classification. Conversely, the R-2 District and the current residential uses are not compatible with the intention of the Local Commercial classification.
8. Surrounding land uses include a railroad yard to the north and to the east and an adult entertainment establishment to the west. The Community Development Department determines that the proposed rezoning is incompatible with the land uses and development patterns in the vicinity.
9. There has been no proposals or interest for residential development in this area of Council Bluffs that would indicate a rezoning to a residential district is needed.
10. 'Adult entertainment' is classified as a conditional use in the C-2 District. However, adult entertainment activities were permitted by right in the C-2 District prior to 1999. As per Section 15.01.050(B) of the Council Bluffs Municipal Code (Zoning Ordinance), "if property is used in a manner that was classified as a permitted use prior to the effective date of this ordinance, and that use is classified as a conditional use by this ordinance, that use shall be deemed a lawful conditional use." Thus, the adult entertainment establishment abutting the subject properties, Lipstix Adult Entertainment Club, is considered a legal conditional use. If proposed rezoning to the R-2 District is approved, said adult entertainment establishment would become a legal nonconforming use as adult entertainment activities are not permitted within 300 feet of any residential district, as per Section 15.15.060(A) of the Council Bluffs Municipal Code (Zoning Ordinance).
11. Due to the proximity restrictions established for adult entertainment activities in Section 15.15.060(A) of the Council Bluffs Municipal Code (Zoning Ordinance), there is a limited number of locations where adult entertainment establishments can operate in Council Bluffs. If proposed rezoning is approved, this limited number of locations would be further reduced.
12. Adequate utilities (e.g., water, sanitary sewer, electric, etc.) are available to accommodate the uses permitted in the R-2 District.

Recommendation

The Community Development Department recommends denial of the request of Caren C. Taylo to rezone property legally described as Lots 47 through 50, Belmont Addition, along with the South ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, and to rezone property legally described as Lots 44 through 46, Belmont Addition, along with the North ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, from C-2/Commercial District to R-2/Two-Family Residential District, based on the reasons stated above.

Public Hearing

Staff speakers for the request:

1. Moises Monrroy, 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. Parker Smith, 1600 5th Avenue, Council Bluffs, IA 51501
2. Wayne Konfrst, 1501 Avenue P, Council Bluffs, IA 51501

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommended denial of the request of Caren C. Taylo to rezone property legally described as Lots 47 through 50, Belmont Addition, along with the South ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, and to rezone property legally described as Lots 44 through 46, Belmont Addition, along with the North ½ of the vacated east/west alley adjoining, City of Council Bluffs, Pottawattamie County, Iowa, from C-2/Commercial District to R-2/Two-Family Residential District, based on the reasons stated above.

VOTE: AYE 10 NAY 0 ABSTAIN 0 ABSENT 1 VACANT 0 Motion: Carried

Attachments

Attachment A: Location/Zoning Map

Prepared by: Moises Monrroy, Planner, Community Development Department