



Date June 24, 2013

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 6, 2013, its members voted 11-1 in support of a motion to recommend DENIAL of a request from Kelli Wulfekuhle (owner) to rezone property in the vicinity of 1617 Oakland Avenue from R1-60 One-Family Low-Density Residential to R-3 Multiple Residential District, to allow the future consideration of a Conditional Use Permit for the premises for a correctional placement residence use subject to Section 134-552(9) of the Zoning Ordinance.

The subject property is more specifically described as follows:

(Except the East 150 feet) the North 110 feet of the South 225 feet, Lot 47, Oakland, an Official Plat, and the West 20 feet of the East 105 feet of the South 115 feet, Lot 47, Oakland, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on July 15, 2013, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

FORM APPROVED: MOVED by _____ to adopt.

Michael F. Kelley
Assistant City Attorney

(ZON2013-00065)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

June 12, 2013

Date _____
 Agenda Item 20
 Roll Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held June 6, 2013, the following action was taken regarding a request from Kelli Wulfekuhle (owner) to rezone property in the vicinity of 1617 Oakland Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|--------------------|-----|------|------|--------|
| Dory Briles | X | | | |
| JoAnne Corigliano | X | | | |
| Shirley Daniels | X | | | |
| Jacqueline Easley | X | | | |
| Tim Fitzgerald | | | | X |
| Dann Flaherty | X | | | |
| John "Jack" Hilmes | X | | | |
| Ted Irvine | X | | | |
| Greg Jones | X | | | |
| William Page | X | | | |
| Christine Pardee | X | | | |
| Mike Simonson | | | | X |
| CJ Stephens | | | | X |
| Vicki Stogdill | X | | | |
| Greg Wattier | X | | | |

APPROVAL of Part A) to find the proposed rezoning is **not** in conformance with the existing Des Moines' 2020 Community Character Plan;

By separate motion Commissioners recommend 11-1 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|--------------------|-----|------|------|--------|
| Dory Briles | X | | | |
| JoAnne Corigliano | X | | | |
| Shirley Daniels | X | | | |
| Jacqueline Easley | X | | | |
| Tim Fitzgerald | | | | X |
| Dann Flaherty | X | | | |
| John "Jack" Hilmes | X | | | |
| Ted Irvine | X | | | |
| Greg Jones | | X | | |
| William Page | X | | | |
| Christine Pardee | X | | | |



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 602 ROBERT D. RAY DRIVE
 DES MOINES, IOWA 50309-1881
 (515) 283-4182

ALL-AMERICA CITY
 1949, 1976, 1981
 2003

| Commission Action: | Yes | Nays | Pass | Absent |
|--------------------|-----|------|------|--------|
| Mike Simonson | | | | X |
| CJ Stephens | | | | X |
| Vicki Stogdill | X | | | |
| Greg Wattier | X | | | |

DENIAL of Part B) to approve the amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low Density Residential to Medium Density Residential; and

Part C) **DENIAL** of the requested rezoning to "R-3" Multiple Family Residential District.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the Des Moines' 2020 Community Character Plan.

Part B) Staff recommends denial of an amendment to the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low Density Residential to Medium Density Residential.

Part C) Staff recommends denial of the requested rezoning to "R-3" Multiple Family Residential District.

Written Responses

- 0 In Favor
- 9 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to legally occupy the dwelling on the premises for a correctional placement residence that would house up to 25 beds.
2. **Size of Site:** 18,140 square feet.
3. **Existing Zoning (site):** "R1-60" One-Family Low Density Residential District.
4. **Existing Land Use (site):** The property has been determined to be out of use and was determined vacant in August of 2012. It was previously authorized as a supervised group residence for Harbor of Hope Mission with a Variance for separation from other supervised group residences granted in November of 1986. After the supervised group residence vacated the property in August 2012, it has since been re-occupied with an illegal use for a correctional placement residence. Under the current zoning the property would only be permitted to be reoccupied as a single-family dwelling. It would need separation relief from the Board of Adjustment to reoccupy as a supervised group residence.
5. **Adjacent Land Use and Zoning:**

North – "R-3", Use is a five-unit multiple-family dwelling conversion.

South – “R1-60”, Uses are a two-family dwelling and a church.

East – “R-3”, Use is a four-unit multiple-family dwelling conversion.

West – “R-3”, Use is an 18-unit multiple-family dwelling.

6. **General Neighborhood/Area Land Uses:** The subject property is located a block east of the 6th Avenue mixed-use corridor. It is also within the River Bend Local Historic District. The area is characterized by large multi-story single-family dwellings and multiple-family conversions.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the River Bend Association Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on May 17, 2013. Additionally, separate notifications of the hearing for this item were mailed to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the rezoning on May 17, 2013 (20-days prior) and May 24, 2013 (10-days prior). A Final Agenda was mailed to the neighborhood association on May 31, 2013. All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The River Bend Association Neighborhood Association notices were mailed to Mike Hildebrand, 410 Franklin Avenue, Des Moines, IA 50314.
8. **Relevant Zoning History:** On November 19, 1986, the Board of Adjustment granted a Variance to the one-quarter mile separation provision for supervised group residences to allow occupancy as a new supervised group residence within proximity to an existing supervised group residence. At this time the property was zoned “R-3”. However, there is not a record of a request for a Conditional Use Permit in “R-3” to allow a correctional placement residence and a variance of the same separation provision.

On October 27, 2008 the City Council rezoned the property from “R-3” to “R1-60” as implementation of the River Bend Neighborhood action plan. The rezoning was in response to an effort by the neighborhood to reduce density and encourage density reduction within dwellings that had been converted from single-family to multiple-family. Properties that were built as multiple-family dwellings or which conformed to lot area per unit standards were not rezoned.

9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

Should the property be rezoned to “R-3” as requested, the applicant has indicated intent to also request a Conditional Use permit for a correctional placement residence under the following standards in the Zoning Ordinance:

Correctional placement residence means a residential facility occupied by three or more persons who have been convicted of public offenses and who have been released to such facility during any period of:

- (1) Probation;
- (2) Work release while serving a sentence in a correctional institution; or
- (3) Assignment to the judicial district department of correctional services after receiving a deferred sentence.

Supervised group residence means a residential facility, occupied by three or more persons under the supervision of one or more persons who are unrelated to the persons being supervised by blood, marriage or adoption, wherein the individuals supervised have mental, social or substance-abuse problems which hinder their functioning in society and require the protection and supervision of a group environment to facilitate their becoming functional members of society; provided that family homes, hospitals, **correctional placement residences**, and nursing, convalescent and retirement homes are not included within this definition.

Sec. 134-552. Principal permitted uses.

Only the following uses of structures or land listed shall be permitted in the R-3 multiple-family residential district:

- (9) Conditional use for correctional placement residences, subject to the following:
 - a. No such use shall be commenced or expanded without the approval of the board of adjustment as a conditional use after public hearing. In its determination, the board of adjustment shall consider all the following:
 - 1. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property;
 - 2. Such use shall not impair an adequate supply of light and air to surrounding property;
 - 3. Such use shall not unduly increase congestion in the streets, or public danger of fire and safety;
 - 4. Such use shall not diminish or impair established property values in adjoining or surrounding property;
 - 5. Such use shall be in accord with the intent, purpose and spirit of this chapter and the comprehensive plan; and
 - 6. The proposed location provides the residents with adequate access to public transportation. Any permit for such use shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the operation of the facility has become detrimental to the neighborhood.
 - b. Each bedroom shall contain (i) beds for no more than four residents, (ii) a minimum of 80 square feet of usable floor space per bed, except a minimum of 60 square feet of usable floor space per bed shall be

permitted for those correctional placement residences that are constructed after July 1, 1991 and are owned or leased and administered by the fifth judicial district department of correctional services as part of a community-based correctional program under I.C. ch. 905, and (iii) usable floor space of no less than eight feet in any major dimension. For purposes of computation of usable floor space, that part of the room having no less than seven feet of ceiling height shall be used. Rooms in which beds are located shall not be used for purposes other than bedrooms.

- c. Each such facility shall contain at least one lavatory and one toilet per ten residents or fraction thereof and one tub or shower per 15 residents or fraction thereof. There shall be a minimum of one bathroom with tub or shower, toilet and lavatory on each floor which has resident bedrooms.
- d. Each such facility shall contain areas for dining and recreational purposes. When space is provided for multipurpose dining and recreational purposes, the area shall total at least 30 square feet per resident bed. When space is provided to be used only for dining, the area shall total at least 15 square feet per resident bed. When space is provided to be used only for recreational purposes, the area shall total at least 15 square feet per resident bed, and at least 50 percent of the required area must be in one room.
- e. Each such facility shall provide supervision 24 hours a day by persons responsible for the care of the residents.
- f. No new such facility shall be located within one-fourth mile of any existing supervised group residence, family home, correctional placement residence, or shelter for the homeless, except where such facilities are separated from each other by a freeway or river.
- g. The requirements of subsections (9)b, (9)c and (9)d of this section shall not apply with respect to those facilities licensed and regulated as health care facilities by the state department of public health.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. **Traffic/Street System:** Access to the site would be provided via an access drive connection from College Avenue. The applicant is seeking to rezone a detached parcel that includes an unimproved access drive. This access passes through the adjoining multiple-family site to the east. This drive also provides access to a church site to the southeast of the subject dwelling.
- 2. **Parking:** The indicated proposed use of a correctional placement residence would require one parking space per eight beds, plus one space per two non-resident employees, plus one per resident employee. In this case the applicant has indicated intent for 25 beds and one resident employee, which would require five off-street parking spaces. By contrast, if the property would be rezoned to "R-3", the property contains enough land area to allow for up to six multiple-family units which would require a minimum of nine off-street parking spaces.

- 3. **2020 Community Character Plan:** The Des Moines' 2020 Community Character Plan identifies the area requested for rezoning within the Low Density Residential designation. Amending the Plan to include the subject property within a Medium Density Residential designation would be contrary to the intent of the River Bend plan. This would be necessary in order to add new "R-3" zoned property. A supervised group residence once legally occupied the property.
- 4. **Staff Analysis:** The current property is being occupied illegally for a correctional placement use. The applicant indicates that the previous owner had conducted a similar correctional placement residence on the premises. There is no evidence that this was ever conducted legally under the provisions of the Zoning Ordinance.

In looking at the structure, there are challenges to converting the home strictly for single-family use and be able to market it as such. The dwelling has nearly 6,000 square feet of living area. The applicant would have the option of seeking the Variance of separation again to allow it to be re-occupied as a supervised group residence. This would not allow residents placed by the judicial system.

In looking at the possibility of the reuse of the property for a multiple family dwelling, staff believes that the amount of area available for off street parking that would meet minimum standards would only warrant a maximum of four units, unless the site were redeveloped to remove an existing garage and several mature trees. The applicant has not provided any evidence of the intent or ability to make such a redevelopment.

The River Bend neighborhood plan and the City Council's action to down zone the property are indicators of the intent to reduce density, not increase density, within the neighborhood. Moving to a multiple-family zoning and dwelling use would be contrary to that intent. Re-occupancy as a supervised group residence or correctional placement residence also violates the intent of the Zoning Ordinance as there are two existing Polk County Health Services group homes at 1730 Arlington Avenue and 1812 Oakland Avenue within one-quarter mile of the subject property. Based on these factors Staff cannot support a rezoning of the property as requested.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

Mike Ludwig confirmed that the rezoning from "R-3" to "R1-60" that was done in the neighborhood was of non-conforming structures. If structures were built as multi-family structures or conforming conversions in the neighborhood those remained zoned "R-3". Therefore, the goal was to reduce the density of non-conforming conversions that had occurred over time as they were deemed to be detrimental to the neighborhood.

Erik Lundy stated that as long as this property remained as a supervised group residence it was a legal non-conforming use under the current zoning.

Greg Wattier asked if staff knows if this proposal is a conforming or non-conforming use.

Erik Lundy stated a correctional placement residence is not allowed in the "R1-60" district. The previous supervised group residence received a variance of the ¼ mile separation requirement as long as it was in continuous use by the grantee which was Harbor of Hope

Mission. Because Harbor of Hope Mission sold the property, the relief to the separation requirement lapsed.

Mike Ludwig stated if the zoning was denied and it remained zoned "R1-60" the applicant could still go to the Board of Adjustment and seek a variance of separation for a supervised group residence. The correctional placement would not be permitted under "R1-60" zoning.

Erik Lundy stated if the zoning were denied the applicant could also seek a use variance from the Board of Adjustment for a correctional placement residence.

Greg Wattier asked if there was a list of complaints from zoning enforcement in regards to this property.

Erik Lundy stated that zoning enforcement has gotten complaints. Currently, staff do not have the details of the complaints. However, the complaints are what initiated this rezoning application. As soon as the violation notice was issued the applicant came in for a pre-application meeting.

JoAnne Corigliano asked how many group homes are in the vicinity.

Erik Lundy stated the two that would be in question with regards to the separation distance are actually north of this property. Both of them are operated by Polk County. One is on this same street and one on Arlington.

JoAnne Corigliano asked currently what is in the building of this property.

Erik Lundy stated he understands that there is still some residence occurring. While the rezoning application is pending the enforcement is stayed, unless there is life safety consideration.

Greg Wattier asked about the condition of the facility.

Erik Lundy stated there were some concerns in regards to the condition. Some of the systems had failed with the property i.e. sewer.

Kelli Wuelfekuhle 1306 SE Trileine Dr., Ankeny stated she would like staff to receive and file a petition in favor of the applicant being in the neighborhood. She gave a brief history of the building. She did note that the house sat vacant from July 2012 to November 2012. The applicant became involved because she was a volunteer at the Harbor of Hope Mission. When the Harbor of Hope Mission moved she continued to volunteer for a short time before deciding to open her own facility. She purchased the property and has remodeled the entire inside. She believes that this would be a safe, structured environment after release from prison, jail or some type finding of treatment program. Classes, education, computers, help with resumes, and help find jobs are just a few things that would be offered.

January 2013 to April 2013 there were residents in the building. In April 2013 the sewer had to be repaired which cost about \$20,000. The house was condemned because there was no running water and the sewer had gone out so the residents could not stay there. The applicant notes that she put all of the residents up in hotel rooms because they had no place to go. Once the building was no longer condemned the residents moved back in the

