

City of Davenport
Plan & Zoning Commission – Staff Report
July 19, 2022

Case REZ22-04: Request of SCI Iowa Funeral Services Inc. to rezone 1200 East 39th Street from S-OS Open Space District to C-1 Neighborhood Commercial District. [Ward 7]

Background:

The purpose of the rezoning request is to allow a change in building function from a funeral home to a reception facility. Cunnick-Collins Mortuary & Cremation Service currently operates a funeral home at 1200 East 39th Street. The owners intend to expand the business beyond funeral services by renting the gathering spaces for other reception activities.

Why is a Zoning Map Amendment Required?

A 'Reception Facility' is a prohibited use in the S-OS Open Space District. A rezoning to C-1 Neighborhood Commercial District is the least intensive non-residential zoning classification that allows a 'Reception Facility'. Should the rezoning request be approved by City Council, then a Special Use Permit must be granted by the Zoning Board of Adjustment to operate a 'Reception Facility' within the existing building.

Comprehensive Plan:

Within Existing Urban Service Area: Yes

Within Urban Service Area 2035: Yes

Future Land Use Designations:

The property is designated as Parks and Recreation in the Davenport +2035 Land Use Plan.

1. **Parks and Recreation (PR)** – Designates major developed parks, recreation areas, golf courses, cemeteries, etc. Park or recreation properties can be located in any zoning district. Smaller parks may not appear on the map because of the more general nature and scale of the map. But, it is implied in Residential General (RG) that small neighborhood parks are included.

Zoning:

The applicant is proposing a rezoning from S-OS Open Space District to C-1 Neighborhood Commercial District.

1. **S-OS Open Space District** - This district is intended to provide and protect larger open space and public recreational facilities, both outdoor and indoor, and cemeteries. Larger regional open spaces/parks may include both active and passive recreation areas and certain ancillary uses, such as cultural facilities, performance venues, and eating establishments. This district is also intended for governmental agency offices/facilities providing a governmental service to the public.
2. **C-1 Neighborhood Commercial District** - This district is intended to provide for commercial uses that predominantly serve the needs of nearby residential neighborhoods, and that are compatible in scale and character with the surrounding residential area. Low intensity mixed-use is encouraged.

Zoning Ordinance Use Definitions

1. **Funeral Home** - An establishment where the dead are prepared for burial display and for rituals before burial or cremation, including chapels for the display of the deceased and the conducting of rituals before burial or cremation, and crematoriums.
2. **Reception Facility** - A facility that provides hosting and rental services of a banquet hall or similar facilities for private events including, but not limited to, wedding receptions, holiday parties, and fundraisers, with food and beverages that are prepared and served on-site or by a caterer to invited guests during intermittent dates and hours of operation. Live entertainment may be provided as an ancillary use as part of an event. A reception facility is not operated as a restaurant with regular hours of operation.

Technical Review:

1. **Legal Department:** It is the Legal Department's opinion that this rezoning request does involve spot zoning. Spot zoning can be valid if there is a reasonable basis to treat the spot-zoned property differently from the surrounding properties. Spot zoning is not appropriate if it is for the financial benefit of the individual property, but detrimental to the surrounding properties. The primary question is whether the subject property has a peculiar adaptability to the new classification compared to the surrounding properties. In this instance, staff believe the answer is no. Finally, it appears this request may conflict with the comprehensive plan and, if so, absent compelling evidence of the benefits that treating this property differently offer, it would constitute unreasonable spot zoning.

Approval Standards for Map Amendments (Chapter 17.14.040):

The Plan and Zoning Commission recommendation and the City Council decision on any zoning text or map amendment is a matter of legislative discretion that is not controlled by any particular standard. However, in making their recommendation and decision, the Plan and Zoning Commission and the City Council must consider the following standards. The approval of amendments is based on a balancing of these standards.

a. The consistency of the proposed amendment with the Comprehensive Plan and any adopted land use policies.

Staff Response: The property is designated Parks and Recreation (PR) in the Davenport +2035 Land Use Plan. This land use category is intended to retain public open space, including cemeteries.

The Future Land Use Map identifies the area bounded by East 46th Street, the railroad right-of-way, East 39th Street, and Brady Street as Parks and Recreation. The approximately 218 acre area includes Mt. Calvary Cemetery, Davenport Memorial Park, Pine Hill Cemetery, Mt. Nebo Cemetery, and Cunnick-Collins Mortuary & Cremation Service. In addition, the natural topography includes Goose Creek.

Properties zoned C-1 Neighborhood Commercial District are generally designated as Residential General on the Davenport +2035 Land Use Plan. There currently is no Residential General land uses north of 39th Street and south of Goose Creek.

In considering spot-zoning, courts generally determine whether the zoning relates to the compatibility of the surrounding uses. One of the most important criteria is the extent to which the requested zoning is consistent with the comprehensive plan. Spot zoning is rebutted when the challenged zoning is found to be consistent with present surrounding uses or the comprehensive plan. Given the existing S-OS Open Space Districts in relation to the nearest C-1 zoning in the area, similar land use, and consistency with the comprehensive plan, it is staff's opinion this is spot zoning.

It is staff's opinion that the proposed rezoning to C-1 Neighborhood Commercial District is inconsistent with the Comprehensive Plan and adopted land use policies, which identifies the site as Parks and Recreation. Amending the property to a commercial zoning district is considered spot zoning.

b. The compatibility with the zoning of nearby property.

Staff Response: The surrounding zoning is S-OS Open Space District north of East 39th Street. The south side of 39th Street is predominantly R-MF Multi-Family Residential District. The neighborhood bounded by East Kimberly Road, Eastern Avenue, and East 39th Street contains a mix of C-2 Corridor Commercial, C-T Commercial Transitional, and I-1 Light Industrial District. However, commercial uses are focused along Kimberly Road as East 39th Street is more residential and open space in character.

The following zoning districts about the subject property:

- North: S-OS Open Space District
- South: R-MF Multi-Family Residential District
- East: S-OS Open Space District
- West: S-OS Open Space District

The following principal uses about the 1.93 acre property:

- North: Cemetery (Davenport Memorial Park)
- South: Dwelling-Multi-Family (Oak Valley Apartments)
- East: Cemetery (Pine Hill Cemetery)
- West: Cemetery (Davenport Memorial Park)

It is staff's opinion that the proposed amendment is not compatible with the zoning of nearby property.

c. The compatibility with established neighborhood character.

Staff Response: The existing S-OS Open Space zoning classification protects larger open space for public recreational activities as well as cemeteries. 'Cemetery' is an established principal use north of 39th Street. This has also included ancillary uses, such as funeral homes. In addition, the properties immediately south of 39th Street are zoned R-MF Multi-Family Residential District. This district also prohibits 'Reception Facilities'. Large events and live entertainment may create conflicts between the low intensity cemeteries to the north, east, and west, and the apartment complex to the south.

It is staff's opinion that the proposed amendment is not compatible with the established neighborhood character.

d. The extent to which the proposed amendment promotes the public health, safety, and welfare of the City.

Staff Response: While the applicant is proposing to develop the property as a 'Reception Facility', approval of the request should take into consideration all permitted and special uses within the C-1 Neighborhood Commercial District. Commercial districts allow for a variety of retail establishments, day care centers, dwellings, gas stations, offices, restaurants, and other higher intensity uses. Development of the property for a commercial use increases the likelihood for noise, traffic, light, or other nuisances that may negatively impact the surrounding residential neighborhood.

It is staff's opinion that the proposed zoning map amendment will not develop in a manner that promotes the public health, safety, and welfare of the City.

e. The suitability of the property for the purposes for which it is presently zoned, i.e. the feasibility of developing the property in question for one or more of the uses permitted under the existing zoning classification.

Staff Response: The property is presently zoned S-OS Open Space District. This district allows for a variety of principal uses, including campground, cemetery, community center, community garden, conservation area, country club, cultural facility, fairground, golf course/driving range, government office/facility, public park, public safety facility, RV park, and restaurant. These development opportunities ensure consistency with the surrounding neighborhood while mitigating incompatible development.

It is staff's opinion that the proposed zoning map amendment will enable the area to be developed in a manner inconsistent with the surrounding neighborhood.

f. The extent to which the proposed amendment creates nonconformities.

Staff Response: If rezoned to C-1 Neighborhood Commercial District, the 1.93 acre property will be conforming to the minimum lot area and width requirements. The existing structure conforms to the interior and rear yard setbacks.

It is important to note that the existing use of the building as a 'Funeral Home' is currently nonconforming as a standalone lot. However the funeral home and the cemetery are owned by the same entity. The funeral home functions as an ancillary use to the cemetery. A 'Funeral Home' and a 'Reception Facility' are both considered a special use in the C-1 Neighborhood Commercial District. The Zoning Board of Adjustment reviews and approves Special Use Permits.

It is staff's opinion that the proposed zoning map amendment will not create any nonconformities.

Public Input:

Letters were sent to property owners within 200 feet of the proposed request notifying them of the July 5, 2022 Plan and Zoning Commission Public Hearing.

To date, staff have not received any responses from adjacent property owners.

Staff will apprise the Commission of any correspondence at the July 19, 2022 Plan and Zoning Commission meeting.

Recommendation:

Staff recommend Case REZ22-04 be forwarded to the City Council with a recommendation for denial.

Findings:

1. The proposed rezoning to C-1 Neighborhood Commercial District is inconsistent with the Comprehensive Plan and adopted land use policies, which identifies the site as Parks and Recreation. Amending the property to a commercial zoning district is considered spot zoning.
2. The petition is not compatible with the zoning and land uses of nearby property.
3. The rezoning request is not compatible with the established neighborhood character, which includes cemeteries and multi-family residential dwellings.
4. The proposed amendment may be detrimental to the public health, safety, and welfare of the City.
5. Rezoning the property to C-1 Neighborhood Commercial District does not create any nonconformities.