

**ITEM NO. 2 IG TO RS5; .5 ACRE; 830 E 13<sup>TH</sup> ST (JSC)**

**Z-13-00513:** Consider a request to rezone approximately .5 acre from IG (General Industrial) District to RS5 (Single-Dwelling Residential) District, located at 830 E 13<sup>th</sup> St. Submitted by William Price, property owner of record.

**STAFF PRESENTATION**

Mr. Jeff Crick presented the item.

**APPLICANT PRESENTATION**

Mr. William Price said he purchased the property to fix up the house and sell this Spring. He wanted to rezone for ease of the new owners.

**PUBLIC HEARING**

Mr. Chris Burger, 850 E 13<sup>th</sup> St, said Mr. Price was under the belief that a purchaser would not be able to acquire financing to buy a residence in IG zoning. He said by rezoning the property would turn his property into non-conforming. He requested that Mr. Price be allowed to reconstruct a residence in the event of a catastrophic loss on his property.

Commissioner Josserand asked Mr. Burger to explain how the proposed rezoning would make his property non-conforming.

Mr. Burger showed a survey with 15'. He said he would not be able to rebuild at the same location and would have to go back 5-15'.

Mr. McCullough said the difference was between zoning districts and the setback line. He said the current setback was 15' and would move to 20' with rezoning it from IG to RS. He said it would be made non-conforming through the process and it was the future that was of concern, such as a fire. He identified variances as an option to mitigate. He said since the recession the banking standards have changed.

Mr. Burger said the irony was that the property was zoned IG with a residence which was non-conforming. He said to correct the non-conformance it made the adjoining property non-conforming. He said then he would have to request a variance which may or may not be provided. He said the rezoning did not solve any problems, just created longer term issues.

**APPLICANT CLOSING COMMENTS**

Mr. Price inquired about mixed-use rezoning.

Mr. McCullough said mixed-use rezoning would not apply in this particular situation.

**COMMISSION DISCUSSION**

Commissioner Josserand asked Commissioner Culver about his observations on bank financing.

Commissioner Culver said there could be arguments made by both parties when it came to financing.

Commissioner Josserand wondered if the zoning boundaries had to agree with the definition of lots.

Mr. McCullough said it was problematic when it was not for financial reasons.

Commissioner Denney asked if under the current zoning the house was destroyed by catastrophic loss would they have any flexibility or restricted to footprint of building.

Mr. McCullough said they would be entitled to at least the footprint if not more as setbacks were looked at. He said it was in Chapter 15, Non-Conforming Uses.

Commissioner Denney expressed concern about trading one person's problem for another.

Commissioner Kelly asked if the lot could be replatted.

Mr. McCullough said it was not really a platting issue, as much as it was a zoning issue. He said it could help for the applicant to provide a letter from staff to the bank explaining the rights the property owner has to a detached dwelling structure in a non-conforming zoning district.

Commissioner Rasmussen asked what the future would hold for this neighborhood. He wondered if it would be IG long term or if it would go the way of becoming something else in the future.

Mr. McCullough said he did not have an answer because he did not know the desires of all the property owners. He said he had not heard IG was going away. He said it was similar to North Lawrence where there were pockets of IG next to residential.

Commissioner Britton asked if both problems would be solved if the rezoning was approved and the adjoining commercial property owner got a variance.

Mr. McCullough said yes. He said if the rezoning was approved it would transfer the issue to the adjacent property and they would then be seeking relief through a variance. He said it could potentially be an issue with financing or insurance but that variances typically work.

Commissioner Britton asked if one option would be to defer and direct staff to work with the adjoining property owner to get a variance request to the Board of Zoning Appeals.

Mr. McCullough said a pending recommendation of rezoning to RS could be taken to the Board of Zoning Appeals for the adjacent owner to seek a variance, assuming approval of the rezoning.

Commissioner Denney asked if there would be a cost to the adjacent property owner.

Mr. McCullough said there would be a fee but that staff would consider waiving it.

Mr. Price said he was fine with that plan.

Mr. Burger said he was not really thrilled with that because it sounded like more hoops to jump through, time and expense for something that was not necessary.

Mr. Price said there was a garage structure on the property. He said if he wanted to rebuild the garage he would have to follow commercial setbacks so it would have to be moved to the center of the yard to get 15' on both sides. He said for future use of the property it would work better if it was zoned residential.

Commissioner von Achen asked if the variance would apply to a future building if industrial property was destroyed.

Mr. McCullough said typically yes, if it was the same building.

Commissioner Struckhoff said the variance would enable to the applicant to rebuild as is, while still providing the change in zoning he needs. He said the perpetuity of the variance was important.

Commissioner Liese asked how much work it would require to obtain a variance.

Mr. McCullough said it would require time to talk to staff and submit an application. He said staff could waive the application fee.

Commissioner Liese disclosed that Mr. Price had been a customer at his store in the past but that he did not know him personally.

Commissioner Culver said he had some hesitation with passing an issue to another person.

### **ACTION TAKEN**

Motioned by Commissioner Kelly, seconded by Commissioner Josserand, to approve the rezoning (Z-13-00513) of .5 acre from IG (General Industrial) District to RS5 (Single-Dwelling Residential) District, located at 830 E 13<sup>th</sup> St, contingent upon approval from the Board of Zoning Appeals for a variance at 850 E 13<sup>th</sup> Street, and recommend staff do everything they can to reduce the burden on the neighboring party at 850 E 13<sup>th</sup> Street. If the variance is not approved then the rezoning would come back to Planning Commission for consideration.

Commissioner Britton felt it was a good motion and the least bad outcome.

Commissioner Denney expressed concern about passing one person's issue on to another.

Commissioner Rasmussen said he had heartburn with passing on an issue to a different property owner that was not the applicant. He said Planning Commission often has to look into the future and rezoning the property from IG to RS made sense.

Commissioner Josserand agreed with Commissioner Rasmussen and said without the variance he would vote for the rezoning.

Unanimously approved 10-0.