

ORDINANCE CHANGE PETITION REVIEW REPORT

Petition Number: Z 13-11

Petitioner: William F. Kemp, Manager
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Project Name: Westglen Court Subdivision

Location: 855 Westglen Village Dr.

Review Date: 12/12/13, 1/30/14

Requested Action: Rezoning from R-3 to PSD including a preliminary site development plan approval

Code Section Zoning Ordinance
Article VII and XXIII

Existing Land Use/Zoning: Vacant / R-3

Surrounding Land Use/Zoning: West – Recreational / PA
South – Multiple Family / R-4
East – Multiple Family / R-4
North –Multiple Family R-4 &
Recreational /PA

Plan Designation: High Density Residential

Proposal Description:

Kemp Homes is requesting a change in the zoning district classification from R-3 Single Family to PSD Planned Single Family Dwelling District for the approximately 3 acre parcel of land at 855 Westglen Village Dr. This parcel is located between the Westglen Village Condominiums and the Westglen Village Apartments. The petitioner proposes to develop

the property with a single family development.

PSD Regulations

A PSD petition is a two step process. The first step involves the submittal of a preliminary development plan as a part of the zoning change petition. Upon approval by ordinance, the property is provisionally rezoned to PSD. The developer has 12 months to submit a final and fully engineered and approved development plan. If the final plan is approved, the project goes forward. If a final plan is not approved within the required time frame, the Board of Aldermen may hold a hearing to change the zoning back to the previous classification. In the case of a single family fee-simple ownership plan such as that proposed in this petition, a subdivision will also have to be approved. Subdivision petition SUB13-05 accompanies this rezoning petition.

Section 1. Purpose:

The purpose of the PSD is to permit greater flexibility in the development of residential areas. One common application of this concept is on properties that are constrained under the provisions of conventional zoning due to irregular shape, extreme topography, incompatible adjoining land uses, extreme development intensity differences on opposing sides, etc. is to permit smaller, narrower or irregular lots than would normally be permitted as long as the overall density is not substantially inconsistent with surrounding uses and/or the recommendations of the comprehensive plan.

This PSD petition is proposing lots that are smaller (5 of the 9), narrower (64' instead of 70') and have a smaller roadway setback (20' instead of 25') than is permitted in the current R-3 single family residential zoning. Lot sizes range from as small as 8,000 square feet (lot 3) to as large as 11,957 square feet (lot 5). Five of the 9 lots are smaller than the minimum size permitted in the existing zoning district and four are larger. The average size of the 9 lots is 9,648 square feet. That is approximately 4% smaller than the 10,000 square foot minimum lot size permitted in the current R-3 zoning. The smallest lot is 20% smaller than the minimum of the current zoning and the largest lot is 19% larger than the minimum permitted.

Given that all of the 9 proposed lots are narrower than is permitted in the R-3 district and that the average lot size is slightly smaller than is permitted in the present R-3 zoning, the new development can be characterized as being similar in general character but of a slightly higher density of development than would be permitted under the current zoning.

Section 3. Use regulations:

Single family detached dwellings are an allowed use in the PSD district.

Section 4. Height Regulations:

The maximum structure height allowed in a PSD development is 35 feet. The submitted architectural elevations indicate that the houses will be in compliance with this section. Bullet point 7 of the Compatibility Standards for Infill, Tear-down & Redevelopment sites on page 8:18 of the 2007 plan recommends that building heights transition to existing nearby buildings. Structure heights should not exceed those of adjoining structures by more than one story at the setback line and heights above that should setback at a rate of one foot vertically for one foot horizontally. The surrounding buildings are generally one and two story single family and multiple family residences. The submitted architectural information appears to show compliance with this provision of the comprehensive plan.

Section 5. Area Regulations: The front yard setback has been set at 20' the rear yard at 15' and the side yards at 8', and no building, accessory building or structure in excess of four feet in height, except fences and screens, may be constructed or erected except as provided in the following subsections.

(1). This subsection requires a 15' minimum internal front yard building setback. This petition proposes a 20' front yard setback, so it exceeds the minimum requirement of the PSD district.

(2). Per this subsection, no building can be built within 20' of an existing building on an adjacent lot or tract outside of the development. No structures on adjoining properties or proposed within the site are in close enough proximity to each other to be inconsistent with this ordinance provision.

(3). No building can be built within 10' of a rear or side lot line of an adjacent undeveloped tract. Undeveloped common ground tracts from the surrounding developments abut this site on all sides. All buildings appear to meet this setback requirement.

(4). This subsection requires a 20' minimum building setback to any single family district line. No single family zoning district abuts this property, so this regulation does not apply to this petition.

(5). This subsection prohibits the construction of any building that is not shown on a PSD plan approved by the Board of Aldermen. There does not appear to be any intent to build structures other than what are proposed on this submitted plan.

Section 6. Parcel Size:

The minimum parcel size that can be considered for PSD zoning is one (1) acre. This parcel exceeds this requirement.

Section 7. Parking:

(1) This subsection requires two off street parking spaces per dwelling unit. The submitted plans show at least 2 parking spaces in the driveway of each unit and at least a two-car garage for each unit, so more than adequate parking is proposed.

(2) - (4) These subsections deal with group parking facilities and do not appear to apply to this development proposal.

(5) This subsection requires the parking areas (driveways) and streets to be paved. The submitted plan shows that these areas will be paved. Compliance with Ballwin's minimum paving standards will be reviewed as a part of the subdivision improvement plans review and approval process.

(6) This subsection addresses parking space requirements. As discussed in subsection (1) above, the submitted plan appears to meet the minimum parking provision requirements of the PSD.

(7) This subsection addresses parking lots and does not apply to this petition.

(8) This section addresses the drainage of parking facilities and other impervious surfaces. **It appears that proper drainage has been addressed in the submitted documentation. It is my understanding that the detention/water quality plan has been submitted to MSD for its review and approval. Ballwin will not allow a subdivision development to be built until MSD has approved the drainage plan. If the final plan departs significantly from the plan presented here, the plan will have to be resubmitted to the Commission and Aldermen for review and approval.**

(9) The parking locational requirement of this section does not appear to apply to the development plan submitted with this petition.

Section 8. Streets and Traffic Circulation:

The proposed internal roadway will serve less than 100 dwelling units so it is required to be a 26' wide pavement section within a 50' wide right-of-way. The submitted plans appear to meet this requirement.

Section 9. Perimeters:

(1) Per this subsection's definition of a PSD perimeter, the entire perimeter of this 3 acre parcel is a perimeter.

(2) This subsection requires a 60' structure setback (buffer zone) from any structure intended for human occupancy within the PSD and any commercial or multiple-family use. **The term "use" as it is used in this section is not specifically defined in the code. The context of its use leaves little logically option but a reference to the actual use of land or a building. For example, a parcel of land with a single family use is a piece of ground occupied by a house with its customary accessory facilities such as driveways, sheds, lawns, gardens, fences, trees, etc. A retail use would be a building or property occupied by an entity that sells a product or provides a service. It would include the customary accessory features of parking lots, signage, fences, landscaped areas, etc. The broader term commercial would include retail and service uses, but would also include other commercial activities such as business and professional offices, small manufacturing and fabricating, warehousing, etc. depending upon the associated zoning regulations.**

By this definition of the term "use", a multiple family use would include not only multiple dwelling units or buildings on a single parcel of land but also customary associated elements such as parking lots, recreational facilities, sidewalks, vegetated open space areas, etc.

This site adjoins several different parcels with different uses. Westglen Village Plat 7 to the south includes the apartments and has a multiple family use. Westglen Village Plat 4 common ground area to the northwest is associated with a large single family development and can best be characterized as having a single family use. Westglen Village Plat 8 to the southwest is exclusively a common ground area and can best be characterized as having a recreational use. Westglen Village Plat 5 includes the townhouses to the east and the undeveloped common ground area to the west on a separate parcel of land. Clearly the townhouses to the east are a multiple family use, but the separate undeveloped common ground area to the west that is part of the same plat is more appropriately, in my mind, classified as having a recreational use. I believe, therefore, that lots 1-3 and 6-9 are subject to the 60' setback requirement. The proposed houses on lots 7 and 8 are placed such that they meet this requirement.

The houses proposed on lots 1,2,3,6 and 9, do not meet the 60' setback requirement. This makes this petition non-compliant with this provision of the PSD district. I do not believe it can be approved in its present form.

(3) This subsection addresses the 60' buffer for subsection 2 above. It requires that the required buffer zone be landscaped or contain preserved natural features that prevent the development from adversely impacting the surrounding area. **The grading plan marks the undisturbed areas with a grey line. Additionally, the identified existing large trees that are show in a heavy dark line will be saved.**

A substantial portion of the vegetation on the site will be lost. This includes

much of the mature vegetation within the 60' setback area in the rear portions of lots 3, 6, and 7. The landscaping plan does not replace any of this vegetation. The plantings are limited exclusively to one street tree per lot and one small planting area in front of each front door.

Section 10. Internal Buffers:

This section requires PSD building spacings to be the mean of such spacings allowed in the adjoining residential districts but no less than 12". The R-4 residential district that adjoins this site has no minimum building spacing requirement. The building spacing requirement in the R-3 district, which is geographically the closest district that has equivalent setback criteria, has an 8' side yard (16' building spacing). The proposed side yard is 8' so the submitted petition is consistent with the nearby R-3 zoning district. Ballwin has many neighborhoods that are built to the 8' side yard standard, so it is common, especially in the southern part of the city.

Section 11. Open Space:

Subsection 1 of this section defines the terms open space and usable open space for the purpose of the PSD. Both definitions apply to this petition.

Subsection 2 of this section requires that a minimum of 15% of the site must be dedicated to open space as defined in Subsection 1 of this section. According to a statement on the plan sheet 1 of this set, 62% of the site is open space.

Subsection 2 also requires that one area meeting the definition of useable open space must be provided. According to a statement on the plan sheet 1 of this set, two areas meeting the minimum area requirements for useable open space have been provided. Such areas are to have no slope in excess of 6%. The useable open space in the rear of lots 8 and 9 appears to meet this requirement.

Subsection 3 addresses the distribution of useable open space areas around a development. Since this small development only requires one such space, this section does not apply.

Subsection 4 of this section requires that at least 70% of the land dedicated for open space shall have a slope of no more than 8%. According to a statement on the plan sheet 1 of this set, the open space meets this requirement.

Subsection 5 does not apply to this development because no recreational structures are proposed.

Subsection 6 allows buffer zones to be counted toward the open space requirement. That does not appear to have been done in this case as the plan meets the open space requirements without having to include the internal buffer areas.

Section 12. Environmental Design:

Subsection 1 requires the submittal of a general landscaping plan. This information has been included in a general way on the first page of the plan set. **The species, size and planting directions will have to be provided as a part of the final PSD development plan approval, but the character and abundance of the plantings seems to be generally in accordance with what has commonly been done for similar subdivisions in the past.**

Subsection 2 addresses FEMA designated floodplains. This section does not appear to apply to this petition as it is nowhere near a designated flood zone.

Subsection 3 requires the submission of a grading plan that is supposed to maintain the site's native characteristics. **The submitted plans show that a significant portion of the site will be regraded to facilitate the proposed development. Mature trees are the only significant "native characteristic". There once was a farm pond near the center of the site under the cul-de-sac and lots 4 and 5, but it is no longer holding water. The petitioner has provided a survey of the existing significant trees on the site. The species and condition have not been provided but the trees that will be retained have been shown in bold print and the trees to be removed are shown in light print.**

Subsection 4 discusses the stabilization of hillsides and limits slopes to a maximum of 3:1. No substantial hillsides have been proposed except for those related to the detention basin or that already exist naturally on the site, but no slopes on the submitted plan appear to exceed the 3:1 maximum of this subsection. **There is no specific mention made of how site hillsides will be protected, but they will have to be treated in accordance with MSD's and Ballwin's standards for such improvements.**

Section 13. Site Plan Approval:

Subsection (2) B 1 of this section requires the submittal of an application form. This has been submitted.

Subsection (2) B 2 of this section requires the submittal of a statement of planning objectives to be achieved by PSD Zoning. **As of this writing, no such statement has been provided.**

Subsection (2) B 3 requires that the petitioner provide a quantitative data regarding density of development and the percentage of the site dedicated to uses such as dwellings, pavement, open space, etc. This data has been provided in the open space calculations table on page PSP1.

Subsection (2) C 1 of this section requires that the preliminary site development plan be submitted with 2' topographic contours and that it clearly show, among other

things, vegetation cover and trees in excess of an 8" caliper. This information has been provided.

Subsection (2) C 2 of this section requires that the overall preliminary site development plan be submitted. This requirement has been met.

Subsection (2) C 3 of this section requires that the floor area and height of each building is to be provided. The floor area information has been provided in the included documentation, but the height information is missing from the submittal. Since houses typical of the construction and development practices that are common throughout Ballwin are proposed, I see no serious problem with this omission. The structure heights are reviewed for code compliance as a part of building permit issuance.

Subsection (2) C 4 of this section requires the size of all proposed dwellings to be provided. As mentioned above, floor area information has been provided.

Subsection (2) C 5 of this section requires that all useable open space areas are to be shown on the plan. This information has been provided.

Subsection (2) C 6 of this section requires that a circulation system be provided. This requirement appears to have been met.

Subsection (2) C 7 of this section requires the plans to show the locations, volumes and capacities of all storm water control structures. This issue has been addressed in the accompanying SUB 13-05 petition report.

Subsection (2) C 9 of this section requires the plans to show a general landscape plan. A preliminary landscaping plan has been provided. A detailed plan will be required for the approval of the final PSD plan approval.

Subsection (2) C 10 of this section requires the submitted plan to show required perimeters and their treatment. This information has been provided.

Subsection (2) C 11 of this section requires that information regarding surrounding properties be provided. This information has been provided.

Subsection (2) D of this section states that the preliminary development plan is to provide sufficient information to "...understand the nature, scope and neighborhood impact of the proposal..." **I believe that that the information necessary to evaluate this proposed development has been provided.**

COMPREHENSIVE PLAN ISSUES

Section 2 (Residential Design) of the Future Residential Development Guidelines of the 2007 Comprehensive Community Plan is described on pages 8:16 and 8:17 of the

plan:

1. Bullet #1 states that residential buildings should contain street-facing architectural features of human scale to enhance curb appeal and reinforce local building traditions. The submitted building elevations appear to meet this requirement.
2. Bullets #2 – 5 all establish performance criteria for the orientation of dwelling units. The submitted building elevations appear to meet this requirement.
3. Bullet #3 recommends limiting garage frontages to no more than 50% of the dwelling's width. **The 3-car garage elevations do not appear to meet this guideline. The garage frontages appear to be wider than 50% of the overall width of the structure.**
4. The Future Land Use and Transportation map of the Comprehensive Community Plan 2007 recommends high density residential development for the petitioned property. High Density Residential development is recommended for a density of 8 –20 units per acre (page 8:6). The density of this proposed development is 3 units per acre, so it is substantially lower in density than is recommended. The density of the adjoining Westglen Village Condominiums is 8.55 units per acre. The density of the adjoining Westglen Village Apartments is 5.5 units per acre, but this is due primarily to the large parcel of land within this apartment complex that is undeveloped. This section of the plan goes on to say that such development should feature street trees, sidewalks and professional landscaping that includes buffering and screening to lower density residential development.

The R-4 and PIM districts are cited as suitable for development in this category. Neither is proposed as a part of this petition. This development proposal is not in any way a multiple family development; it is not even a particularly high density single family development. Noncompliance with relatively minor recommendations of the plan like garage frontage percentages, roadway facing entrances or gateway features are not, in my view, as significant as a complete departure from the underlying land use and density recommendations of the plan. Use and density are fundamental to a neighborhood's character. Furthermore, for a community like Ballwin that has very limited potential to grow, and with population being a revenue factor for the city, promoting higher densities where it is appropriate is an important guideline of the comprehensive plan. This is one of the few parcels of land in Ballwin today that is suitable for high density residential development.

On page 8:15 the plan goes onto say that the areas designated for high density residential development should be developed in a manner that is consistent with surrounding land uses with regard to general character, density, structure height and bulk, **Generally, the proposed development does not do well with regard to this plan recommendation either. The density is low, the use is single family**

not multiple family and the nature of the building is very different from the nature of the buildings in the adjoining townhouse and apartment developments.

Conclusion: I do not believe that one could draw the conclusion that this development proposal is consistent with the recommendations of the comprehensive plan.

Zoning Review

The main issue of any rezoning request is the question of the appropriateness of the new classification. Are the allowed uses in the new district acceptable within the area proposed for the change, and are they compatible with surrounding areas and Ballwin's long range plans for the area? There are several points that relate to this determination:

1. WILL THIS CHANGE CREATE AN ISOLATED DISTRICT UNRELATED TO THE ADJACENT DISTRICTS (SPOT ZONING)? "Spot zoning" is typically defined as any of the following:

(1.) The granting of a zoning classification which allows development that is not consistent with surrounding development patterns or is not consistent with the community plan could be elements of a spot zoning situation. All of the developments adjoining this site are multiple-family. This development proposal is for a single family subdivision. As mentioned previously in this report, the Westglen Village Condominium development has a density of 8.5 units per acre. The Westglen Village Apartments have a density of 5.12 units per acre even with a large undeveloped parcel as part of the development. This petition only anticipates a density of 3 units per acre.

The comprehensive plan recommends high density residential development which is defined as 8 to 20 units per acre for this site. **The petitioner has requested a rezoning to the PSD district, to permit single family development with single family densities. This development proposal is not in keeping with the recommendations of the comprehensive plan or the nature of the immediately adjoining developments. There is, however, substantial single family development of a similar character and density in the nearby neighborhoods.**

(2.) The granting of a zoning classification which gives an economic advantage to a property owner that is not enjoyed by the owners of similar surrounding properties. Since the development densities are significantly lower than those of the adjoining development, I do not see that this zoning would grant this kind of economic advantage.

(3.) The granting of a zoning classification for a property which is not uniquely applicable due to a special character or physical / environmental situation. No documentation or explanation has been provided suggesting that the requested zoning is necessary due to some unusual characteristic or circumstance of the site.

2. IS THERE A JUSTIFICATION FOR THE ZONING DISTRICT CHANGE? Normally, the only justifications for a change in zoning are (1) an error in the original zoning designation, (2) the occurrence of a change in the general land use pattern of a neighborhood since the zoning pattern was put in place, (3) the existence of a significant natural physical characteristic of a site that prohibits the uses allowed in the existing district or (4) the adoption of a comprehensive community plan that recommends a different land use such that a zoning district change is warranted.

(1.) No evidence has been presented to show that there was an error in the establishment of the original zoning pattern in this neighborhood. This site and the surrounding properties have been zoned in their present districts since the neighborhood was annexed into Ballwin in 1989. The county zoning prior to that annexation was very similar to Ballwin's present zoning. That classification dates to the original construction of the dwellings in this area in the 1970's. This neighborhood is successfully developed and fully utilized per the present zoning pattern. **One might reasonably conclude, therefore, that the current zoning of this parcel which permits the construction of a single family development between two multiple family developed properties would constitute an error in original zoning and support a proposal to rezone to a multiple family designation, but the zoning that is being requested in this petition does not do that. The proposed zoning only manipulates the present zoning for economic advantage.**

(2.) There has been no substantive change in the general land use patterns in this neighborhood since the existing zoning pattern was put in place.

(3.) As stated above in section 1 (3), the petitioner has presented no evidence supporting the position that there is a significant natural feature or other characteristic of this site that makes it undevelopable under the current zoning and justifies the zoning district change. **The multiple family developments flanking this site might support a petition to rezoning to multiple-family, but their presence does not seem to support a rezoning to a different single family district.**

(4.) Ballwin's current comprehensive plan was adopted in 2007. This plan considers this property to be desirable as a high density residential site and recommends a multiple family residential development. **The comprehensive plan does not recommend a single family detached development pattern.**

There is little evidence of an error in the original zoning district designation of the site, and there is no evidence of a change in the character of this neighborhood such that the current zoning of R-3 not reasonable. The proximity of multiple-family development might qualify as a characteristic that makes it undevelopable in accordance with the current zoning, but the plan does not support a zoning change based on a single family development proposal.

3. IS THE CHANGE CONSISTENT WITH BALLWIN'S COMPREHENSIVE PLAN? The comprehensive plan recommends a multiple family residential development with a density

of 8 to 20 units per acre. (Page 8:5) **The submitted plan is not consistent with that recommendation. The proposed lot density of approximately 3 units per acre is well below the 8 recommended by the plan.**

4. IS THE NEW ZONING IN KEEPING WITH THE CONTEXT OF THE NEIGHBORHOOD? As stated above, the basic nature of this neighborhood is unchanged since the present zoning was established. Multiple family developments adjoin the site. The dwelling units per acre densities of the adjoining developments are higher than that proposed for this development. Yes, there are other single family residential developments in this part of Ballwin that have densities that are similar to or lower than that proposed here, but this site is separated from these areas by multiple family developments and extensive common ground areas. There is a serious question whether this development proposal is in keeping with the context of the neighborhood. Clearly the comprehensive plan did not see this parcel in the context of a single family use. It recommended high density residential development. This is not what is being proposed by this petition.

5. WILL THE REZONING ADVERSELY AFFECT THE VALUE OF SURROUNDING PROPERTIES? This issue is typically central to many zoning change debates of this nature. Depending on one's perspective, convincing arguments can sometimes be made for both sides of the question.

From my perspective, the adjacency of multiple family developments at higher densities than that proposed in this development will cause this development to have very little impact on the value of surrounding properties.

6. ARE THERE ADEQUATE SITES, ELSEWHERE IN THE CITY, FOR THE PROPOSED USE IN DISTRICTS WHERE THE USE IS ALREADY ALLOWED? There are virtually no vacant sites for this kind of development anywhere in Ballwin.

Conclusion: It appears to me that there is a reasonable debate whether this zoning change proposal is justified. The comprehensive plan clearly sees this parcel as being most appropriately developed with a high density residential development. No evidence has been presented to justify the zoning change on the basis of inappropriate or erroneous original zoning, a change in the character of the neighborhood, a unique characteristic that precludes development under the present zoning or a change in a land use designation arising from a recommendation of the comprehensive plan. These are traditionally the reasons that a zoning district change is warranted. On the basis of these arguments the zoning district change and the development that goes along with it is not appropriate. Mitigating in favor of the zoning change, however, is that the proposed development is essentially the same in both character and density as would be allowed under the present R-3 zoning. If they did not need the design flexibility that the PSD district offered, a zoning change petition would not be necessary and the appropriateness of the development would be beyond the city's review authority.

Thomas H. Aiken, AICP
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