

ZONING ORDINANCE CHANGE PETITION REVIEW REPORT

Petition Number: Z09-1

Petitioner: Mr. David G. Fontana for
Schnuck Markets, Inc.
11420 Lackland Rd.
St. Louis, MO 63146
314-994-4449
dfontana@schnucks.com

Agent: James E. Mello, Esq.
Armstrong Teasdale
One Metropolitan Square, Suite 2600
St. Louis, MO 63102

Project Name: Schnuck's Store

Location: 2511 Kehrs Mill Rd.

Petition Date: 3/20/09

Review Date: 3/23/09, 4/20/09

Requested Action: Zoning District Change from R-3 to C-1

Code Section: Zoning Ordinance
Articles IX and XXIII

Existing Land Use/Zoning: Single Family / R-3

Surrounding Land Use/Zoning: West –Commercial / C-3
South –Single Family / R-1 & R-2
East - Single Family / R-2
North – Multi Family / Chesterfield

Plan Designation: Medium Density Residential

Proposal Description:

Schnuck Markets Inc. is proposing to rezone the approximately 4.27 acre site at the southeast corner of Kehrs Mill Rd. and Clarkson Rd. commonly known as 2511 Kehrs Mill Rd. from R-3 single family to C-1 Commercial with an accompanying petition (Z09-2) for a Neighborhood Commercial Overlay District to allow the construction of an approximately 41,000 square foot grocery store with accompanying at grade parking and site access from Clarkson Rd. and Kehrs Mill Rd. The property is presently developed with one single family residence. Much of the site is grown up in scrub and other woody growth (particularly around the perimeter), but there is a scattering of mature trees throughout the site. The site is bounded by the Clarkson Crossing Subdivision to the east and south, the National City

Bank commercial site across Clarkson Rd. to the west and the Picardy Hills multiple family subdivision across Kehrs Mill Rd. to the north. Additionally, Marquette High School of the Rockwood School District is diagonally across the Clarkson/Kehrs Mill intersection to the northwest of the site.

Although the National City Bank site is in Ballwin, the adjoining single family developments to the west and south of it and the high school are all within the corporate limits of in the City of Clarkson Valley. The Picardy Hills Subdivision across Kehrs Mill Rd. to the north of the site is within the corporate limits of the City of Chesterfield.

The site is zoned R-3 single family and the petitioners are asking that the zoning classification of the entire site be changed to C-1 Commercial with a NCD Overlay governing site design and use.

The site is generally rectangular in shape with a total area of approximately 4.27 acres. It fronts along the southwest right-of-way line of Kehrs Mill Rd. for a distance of approximately 480 feet. The western side of the property runs along the southeastern right-of-way line of Clarkson Rd. for a distance of about 437 feet. The southwestern property line runs a distance of about 397 feet southeastwardly from Clarkson Rd. and the southeastern side of the site is approximately parallel to Clarkson Rd and runs approximately 385 feet southwestwardly from the Kehrs Mill right-of-way line.

The highest point of the site is at the easternmost corner near the proposed Kehrs Mill Rd. entrance at an elevation of 652 feet. The site generally drains to the south and west. A gentle ridge line separates the site causing approximately the southern third of the site to drain toward lot 97 of Clarkson Crossing subdivision. The balance of the site drains into an area inlet structure in the Clarkson Rd. right-of-way. The lowest point of the site is at the extreme westernmost corner with an elevation at this point of about 621 feet.

Runoff from the southern portions of this site flows through the Clarkson Crossing subdivision and enters that subdivision's storm sewer systems. This system and the Clarkson Rd. storm sewer system ultimately flow into a tributary of Caulk's Creek where it flows under Clarkson Rd. just south of Clarkson Crossing Subdivision. Caulk's Creek subsequently flows through the cities of Clarkson Valley and Chesterfield. Ultimately the runoff enters the Missouri River in Chesterfield.

Planning and Plan Review Considerations

This review report covers the issues of the C-1 Commercial District regulations. This petition had been submitted in conjunction with an accompanying rezoning (Z09 -2) asking for the establishment of a NCD Neighborhood Commercial District Overlay district for the site that will regulate the site development plan and allowed land uses. Please reference the associated review report for a fuller understanding of the issues of this development proposal.

ZONING CHANGE PETITION CONSIDERATIONS:

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 one or more of the following:

(A.) The granting of a zoning classification which allows development that is inconsistent with surrounding development patterns or is inconsistent with the Community Plan. **This site is primarily abutted and surrounded by single family and to a lesser degree multiple family residential uses. There is a financial institution on a commercial property across Clarkson Rd. and there is a major institutional use (Marquette High School) located diagonally across the Clarkson/Kehrs Mill intersection from the site. Additionally, the adjoining roadways are regional arterial ways with significant traffic volumes and congestion and the normally associated noise, glare, activity, etc. that come with such roadways. Although it would be difficult to develop this site commercially in a way that is completely compatible with the nearby residential uses, there are also issues with developing the site residentially with the surrounding commercial, institutional and arterial roadway uses.**

The submitted zoning change request and the associated development plan propose a retail commercial development. The layout has been altered from the traditional highway strip retail arrangement of uses to more closely comply with the recommendations of the NCD district. The central activity center of the use, the building, has been pulled away from the residential uses and pushed close to the intersection. The delivery areas are on the roadway side of the building and not adjacent to a residential use. A screening buffer utilizing landscaping, topography and fencing has been proposed to separate the parking lot and the loading dock from the adjoining residential properties. Given the mixture of surrounding uses and the efforts made to isolate the activity centers of the proposed use from the surrounding residential uses, I believe that successful arguments can be put forth on both sides of the question as to whether this proposal is spot zoning on the basis of this measurement. The issue of compatibility with the community comprehensive plan is discussed later in this document.

(B.) 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. **No information has been submitted supporting any argument that the present zoning is unworkable or uneconomical. One, therefore, can assume that the petition is based on economics. Certainly commercial development would be expected to bring a greater return than would residential development, but there may be mitigating arguments.**

Few of the adjoining or surrounding properties are zoned commercial and therefore do not have the potential for the economic return that comes with commercial

zoning. With the exception of the high school site, these properties are generally much smaller, and they are fully developed under their present zoning. Given the land use patterns in the area, small properties would not be expected to be successfully redeveloped in commercial uses. It seems to be the size of this site that makes commercial development possible.

(C.) The granting of a zoning classification for a property which is not uniquely applicable due to a special character or physical / environmental situation. **There does not appear to be an argument supporting the rezoning under this measure. No documentation or explanation has been provided supporting that there is a special character to this site that creates a developmentally or economically fatal limitation that would support a zoning district classification that permits a significantly different character of development than that allowed by the present zoning.**

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, (3) the existence of a significant natural physical characteristic of a site that prohibits the development allowed in the existing district or (4) the adoption of a 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. **The surrounding properties have been zoned in their present districts since the 1980's and have been successfully developed per this zoning pattern. This site was zoned R-3 in the early 1990's and has remained a large lot single family development at the choice of the owner since that time.**

(2.) There has been no substantive change in the uses of the adjoining single family residential properties to the east and south of the site or the C-3 Planned Limited Commercial Bank site to the west since the establishment of the present zoning on this property in 1991, and the land uses on these properties are consistent with their present zoning. The bank site was zoned C-3 Planned Limited Commercial as the result of a lawsuit that required the commercial zoning classification.

There has been a change in the character of the adjoining roadways, the property across the intersection to the northwest and the property across Kehrs Mill Rd. to the northeast since 1991. At the time of the rezoning, the high school site, which was, and is yet, within the municipal limits of the City of Clarkson Valley, was farm land. The land across Kehrs Mill Rd., where the Picardy and Stone Hill Subdivisions have been built, which is within the municipal limits of the City of Chesterfield, was undeveloped. Given the nature of the surrounding land use pattern at the time and Clarkson Valley's reluctance to allow virtually all commercial land uses, it was a very reasonable assumption that those sites would be developed in single family residential uses. The zoning that was adopted for the petitioned site was chosen to be compatible with that expected future.

Subsequently, the high school, which has a commercial character and traffic generation pattern, was built on the farmland at the northwest quadrant of the

intersection. The Stonebriar subdivision was built in accordance with the established land use pattern in the area. The Picardy Hills subdivision was built as a multiple family development with slightly higher density than the surrounding single family developments. The overall impact of these developments ended up being somewhat more intense with higher traffic volumes and higher densities than had probably been expected in 1991. Also important in this analysis is the character of Clarkson and Kehrs Mill roads. Both of these have experienced growth in traffic volumes since the early 1990's. Furthermore, the character of Clarkson Rd. was dramatically changed when it was rebuilt and widened to a five lane section. Taken together, these changes to the future land use pattern that was expected may not be viewed as substantial to some. I believe, however, that an argument can be made that the character of the surrounding neighborhood is somewhat different from what it was expected to be at the time that the current zoning pattern was established. The question is whether the change is of such a magnitude that it supports changing the zoning from single family residential to commercial on the site in question.

(3.) As stated above in section 1 (C), the petitioner has presented no evidence supporting an argument that there is a significant natural feature or characteristic of this site that makes it undevelopable under the current zoning.

(4.) Ballwin has adopted two comprehensive community plans since the zoning classification of this site was established in 1991. Neither of these plans has suggested that this site should be developed in any manner other than as residential. This is discussed in more detail in the following section.

3. IS THE CHANGE CONSISTENT WITH BALLWIN'S COMPREHENSIVE PLAN? In the Comprehensive Community Plan adopted on July 2, 2007, this site is recommended for medium density residential development. This permits density of between 3.5 and 8.75 units per acre and includes the R-3, R-4 and PSD districts. **The Medium Density Residential section of the Future Residential Land Use Recommendations of the plan on page 8:14 states**"These areas are to be exclusively for single-family detached residential development." **There is no provision for commercial uses. The proposed development does not comply in any way with the recommendations of the comprehensive community plan.**

4. IS THE NEW ZONING IN KEEPING WITH THE CONTEXT OF THE NEIGHBORHOOD? As stated above, the basic nature of the neighborhood is unchanged to the east and south since the present zoning was established, but the nature of development to the west and north has changed somewhat. The 2007 comprehensive plan recommends a single family development pattern similar to that of the adjoining subdivisions in Ballwin. **One could, however, put forth an argument that conventional zoning theory would not oppose commercial development on this corner because of the nature of the adjoining roadways and other land uses at the intersection if it was properly buffered to the surrounding single family residential developments.**

5. WILL THE REZONING ADVERSELY AFFECT THE VALUE OF SURROUNDING PROPERTIES? This issue is typically central to most zoning change debates. Depending on one's perspective, convincing arguments can sometimes be made for both sides of the question. **From my experience, this rezoning would probably have some negative**

impact on the value of the immediately adjoining properties. My observations of single family residences that adjoin commercial development in Ballwin is that they do not seem to have significantly lower values than do other residences in the same subdivisions. The time on market, however, seems to be longer for these units such that a quick sale may require a lower price. The buyer pool is evidently smaller for such houses. Some potential buyers will be unwilling to purchase a single family house that is adjacent to a commercial development.

6. ARE THERE ADEQUATE SITES, ELSEWHERE IN THE CITY, FOR THE PROPOSED USE IN DISTRICTS WHERE THE USE IS ALREADY ALLOWED? There are few developable sites for any kind of development remaining in Ballwin. Most new development is proposed for sites such as this one that are being redeveloped because they are underutilized for the potential of the market. **There is little opportunity remaining for any kind of new development in Ballwin without having to purchase and remove existing improvements.**

C-1 DISTRICT REGULATIONS:

This petition is the rezoning and development of a large lot single family residential site to a commercial zoning. The proposal is asking for C-1 zoning as the underlying zoning to accompany a NCD (Neighborhood Commercial District Overlay) which will more stringently regulate site development and uses. The accompanying petition Z09-2 addresses the NCD regulations which may supersede the requirements of the C-1 district. Any regulation not superseded will still apply. The issues with the site are as follows:

1. Section 2 (1) (23) allows stores for the indoor display and sale of new merchandise. The proposed grocery store is consistent with this allowed use.
2. Section 3 limits the height of structures to a maximum of 45 feet. The proposed building does not exceed this requirement.
3. Section 4. (1) (i) (ii) (iii) all addresses properties fronting Manchester Rd. and Orchard Ln. and do not apply to this petition.
4. Section 4. (1) (iv) requires the provision of a 10' deep landscaping area along all roadway frontages of the site. The submitted plan provides the required green space.
5. Section 4. (2) requires landscaped side yards of 25' where commercial sites abut residential uses. The landscaping must meet the requirements of Section 4 (3) (i) and it appears to do so.
6. Section 4. (3) (i) requires a 25' deep fully landscaped rear yard. With a site like this, it is difficult to determine between rear and side yards, but between this section and the previous section the entire line that this property shares with the adjoining residential properties is covered by the provision that a 25' wide landscaped buffer zone must be provided. The landscaped buffer must provide 100% visibility screening to a height of 6'. **The screening standard does not appear to have been met. The number of plantings and the spacing of those plantings will have to be amended to meet this**

standard. The proposed fence cannot be considered a screening device. Its use does not allow any reduction in the use of landscape materials as the screening device.

7. Sections 4. (3) (ii, iii and iv) do not apply to this petition.
8. Section 5. (1) requires the provision of parking in accordance with the provisions of Article XV. **The parking plan does not comply with the C-1 District parking regulations. A parking reduction is proposed per the provisions of the NCD. This is discussed more thoroughly in that petition review report.**
9. Section 5. (2) does not apply to this site.
10. Section 6. requires the submission of the site development plan to MoDOT for its review. This has been done and review is underway but the petitioner will have no choice but to comply with the requirements of MoDOT and the St. Louis County Department of Highways and Trans.
11. Section 7. (1) requires that the minimum spacing of curb cuts be 500' between centerlines. This plan is in accordance with this requirement.
12. Section 7. (2) requires the construction of a 5' wide sidewalk along Kehrs Mill and Clarkson Roads. There is an existing sidewalk along Kehrs Mill that will be retained, and a sidewalk is proposed along Clarkson Rd. to comply with the ordinance requirement.
13. Section 7. (3) requires that a cross access, driveway/parking lot vehicular interconnection easement be established for the benefit of the adjoining properties. In the case of this site, this would logically mean providing a roadway connection to the stub end of Cypress Trace Dr. to the south. A cross access easement to adjoining single family residential lots does not make any sense. Given the nature of the proposed development, the surrounding land use pattern and the potential for unacceptable traffic generation through the adjoining residential neighborhood, the petitioner will be asking that this requirement of the C-1 district be waived as a part of the NCD approval and that only a pedestrian connection be provided.

COMPREHENSIVE PLAN ISSUES:

There are no provisions of the 2007 Comprehensive Community Plan that apply to this proposal because commercial uses are not recommended at this location.

Thomas H. Aiken, AICP
City Planner/Assistant City Administrator