

ZONING ORDINANCE CHANGE PETITION REVIEW REPORT

Petition Number: Z09-3

Petitioner: Mr. Dan Thies for
Clayton Henry LLC / WB Properties
16650 Chesterfield Gove Rd., Suite 100
Chesterfield, MO 63005
636-537-9700

Agent: None

Project Name: Clayton Henry Commercial Development

Location: 14448 - 14464 Clayton Rd.,
775, 781, 785 & 793 Henry Ave.

Petition Date: 3/20/09

Review Date: 4/9/09, 4/21/09

Requested Action: Neighborhood Commercial Overlay
District Approval

Code Section: Zoning Ordinance
Articles IX and XXIII

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

Surrounding Land Use/Zoning: West - Single Family / R-2 (County)
South - Vacant / R-2 (County)
East - Single Family / PSD
North – Single Family / Chesterfield

Plan Designation: Neighborhood Commercial &
Neighborhood Residential

Proposal Description:

Clayton Henry LL / WB Properties LLC are proposing to rezone the entire 11.64 acre site at the southwest corner of the intersection of Clayton Rd. and Henry Ave. from R-2 (county) Single Family to C-1 Commercial (petition Z09-3) and obtain Neighborhood Commercial Overlay District zoning (petition Z09-4) to allow the construction of approximately 40,000 square feet of retail and office space with accompanying surface parking and with site access from Clayton Rd. and Henry Ave. The site is composed of six parcels of land of which two are presently occupied with single family residences. Much of the site is grown up in grasses, scrub and other woody growth (particularly around the perimeter and internal property lines), but there is a scattering of mature trees. The site is bounded by the Oak Tree Farm Subdivision to the east, a vacant parcel to the south, an underdeveloped parcel with a single residence across Clayton Rd. to the north and the

Clayton Corners Subdivision across Henry Ave. to the east. The Amberleigh Villas residential development is diagonally across the Clarkson/Henry intersection to the northeast of the site. The south right-of-way line of Clarkson Rd. is the corporate boundary line between the cities of Ballwin and Chesterfield.

The site sits at the southwest quadrant of the intersection of Clayton Rd. and Henry Ave and has an irregular shape. It fronts along the south right-of-way line of Clayton Rd. for a distance of approximately 665 feet. The western side of the property runs along the eastern edge of Plat 1 of the Oak Tree Farm Subdivision for a distance of about 809 feet. The eastern/southeastern property line follows for a distance of about 1040 feet along the western/northwestern right-of-way line of Henry Ave. The south side of the site runs approximately 404 feet in an east/west orientation along the shared property line of the parcel commonly known as 755 Henry Ave.

The highest point of the site is along the Clayton Rd. right-of-way at about the center point of the site's frontage at an elevation of about 691 feet. A gentle ridgeline that runs almost due south from this point separates the site into two drainage areas. The western portion of the site (approximately 25% of its area) sheet flows into the Oak Tree Farm Subdivision. The eastern portion of the site (approximately 75% of its area) drains toward Henry Ave. The lowest point on the site is at the throat of the area inlet near Henry Ave. just north of the proposed curb cut with an elevation of about 659 feet.

Runoff from the eastern portions of this site flows into the Oak Tree Farm subdivision storm water system where it ultimately enters a tributary of Grand Glaize Creek. The runoff from the eastern part of the site flows eastwardly under Henry Ave and through the Clayton Corners, Woodsmill and Woodsmill Village subdivisions and enters another tributary of Grand Glaize Creek. The Grand Glaize Creek ultimately flows into the Meramec River near Valley Park.

PLANNING AND PLAN REVIEW CONSIDERATIONS

This review report addresses the issues and justifications for rezoning in general and the specific issues of the C-1 Commercial District regulations. This petition has been submitted in conjunction with an accompanying rezoning (Z09-4) asking for the establishment of a Neighborhood Commercial District Overlay District (NCD) that will regulate the site development plan and the allowed land uses. Please reference the associated petition review report for a fuller understanding of the issues of the 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. **It would appear that for two of the following criteria, there are arguments that the petition could be viewed as spot zoning:**

(A.) The granting of a zoning classification which allows development that is inconsistent with surrounding development patterns or the recommendations of the Community Plan. This site is identified for neighborhood commercial zoning (NCD) on the approximately 4 acre parcel adjacent to the intersection and for neighborhood residential zoning on the balance of the site in the 2007 Comprehensive Community Plan. An underlying zoning of C-1 would be appropriate for NCD overlay zoning. **The distribution of land uses proposed by the petitioner, however, does not agree with the recommendations of the Future Land Use and Transportation Map of the comprehensive plan. This is addressed in more detail in #3 below.**

(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. **Although granting this proposal may convey an economic advantage, the land use recommendations of the comprehensive plan supersede a spot zoning argument as it relates to the property recommended for NCD development.**

Granting C-1 zoning with an NCD zoning overlay for approximately 4 acres of the site that is not recommended for neighborhood commercial district zoning in the plan raises the argument that it is spot zoning pursuant to this measure. Other than the obvious economic advantage of the rezoning, the petitioner has not advanced a planning based justification for expanding the commercial development beyond the area recommended by the comprehensive plan.

(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 being put forward supporting the rezoning under this measure.**

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 argument has been presented to support the position that there was an error in the establishment of the original zoning pattern in this neighborhood.**

(2.) **There has been no substantive change in the uses or planned uses of the adjoining properties surrounding this site since the establishment of the present zoning pattern. The land uses on these properties are consistent with their present zoning.**

(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.) **As mentioned earlier in this report, Ballwin's comprehensive community plan has recommended Neighborhood Commercial and Neighborhood Residential zoning for these properties. This is discussed more fully in #3 below.**

3. IS THE CHANGE CONSISTENT WITH BALLWIN'S COMPREHENSIVE PLAN? As described above, the Comprehensive Community Plan adopted on July 2, 2007, recommends that the approximately 4 acre parcel at the intersection (785 Henry Ave.) be zoned and developed in the Neighborhood Commercial Overlay (NCD) district and the balance of this site, as well as the adjoining vacant parcel to the south, be zoned and developed in the Neighborhood Residential Overlay (NRD) district.

The intent of the plan is that a neighborhood oriented commercial development should be created on the corner and buffered to the surrounding established single family residential neighborhoods with higher density residential development. The submitted proposal complies with this plan in some regards, but departs from it in others. The proposal includes commercial development and high density residential development, but it does not do so in the same land use pattern as recommended in the plan. The petition proposes to expand the commercial component of the development by extending it onto approximately 4 acres of land to the west along the south side of Clayton Rd. that is recommended for residential development in the comprehensive plan. This commercial development is proposed to extend all of the way to the Oak Tree Farm Subdivision without benefit of a higher density residential buffer. The southern portion of the site (approximately 4 acres) is planned to be developed with an independent care multiple family residential structure that will separate the adjoining single family residential developments in that area from the commercial development as the community comprehensive plan envisioned.

Neither this petition nor Petition Z09-4 includes the establishment of a Neighborhood Residential Overlay District in the multiple family portion of the site as recommended by the plan. The independent care multiple family improvement is proposed within the NCD, but this is consistent with the uses allowed in the NCD.

Given the deviations from the recommendations, the proposed development must be described as not being fully consistent with the 2007 Comprehensive Community Plan. In order for Ballwin to deviate from the land use recommendations of its plan, the petitioner needs to explain why the plan's recommendations are somehow in error or, for some other reason, should not be followed. At the very least the petitioner should be demonstrating that this development will have no greater impact on the community or the adjoining properties than would the land uses recommended by the plan for this property.

4. IS THE NEW ZONING IN KEEPING WITH THE CONTEXT OF THE NEIGHBORHOOD? As stated above, the basic nature of the adjoining properties is fundamentally unchanged since the present zoning was established. The 2007 comprehensive plan recommends a fairly traditional land use on this property transitioning

from a medium intensity commercial use on the corner to a higher density residential use that subsequently transitions to the existing low density single family residential uses adjoining the site. All uses were to be designed as mingling into a cohesive walkable community. It was determined in the comprehensive plan that this combination of zoning and land uses was in keeping with the character of the neighborhood.

As discussed above, the proposed development departs from the zoning and land use pattern recommended by the comprehensive plan. It utilizes only one of the recommended zoning districts, and all of the recommended land uses, but it does so in different relative quantities and in a different arrangement on the site. **One could clearly argue that the proposal, therefore, does not comply with the comprehensive plan. One could also, however, argue that the petition's departures from the plan's recommendations are not consequential in relationship to the overall intent of the land use plan for this area, and that a significant effort has been put forth in the site planning to mitigate the issues that arise from the minor departures such that the petition is substantially consistent with the overall intent of the community comprehensive plan and the general welfare of the city. The petitioner has not described how its plan can be viewed in this way.**

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 perspective, 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 and higher density residential 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 residence that is adjacent to a commercial development. It is difficult to gauge the impact of the recent economic climate on this issue.

6. ARE THERE ADEQUATE SITES, ELSEWHERE IN THE CITY, FOR THE PROPOSED USE IN DISTRICTS WHERE THE USE IS ALREADY ALLOWED? There are few vacant or underutilized 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 proposal entails the rezoning and development of a large single family residentially zoned site to a commercial zoning with commercial and high density residential land uses. The proposal asks for the C-1 district as the underlying zoning to accompany a NCD (Neighborhood Commercial District) overlay which will more stringently regulate site development and uses. The accompanying petition Z09-4 will address the NCD regulations

which may supersede the requirements of the C-1 district. Any regulation not superseded will still apply. The C-1 district issues with the site are as follows:

1. Section 2 establishes a list of uses that are allowed by right in the C-1 district. Article XIV of the zoning ordinance establishes additional uses that are allowed by special use exception in the C-1 district. All of the uses proposed are either allowed by right in the C-1 district or by special use exception (SUE).

The NCD Governing Ordinance will include a listing of the uses allowed in the development. These may only be drawn from the uses allowed in the C-1 district or in the special use regulations. Multiple family uses are not allowed in the C-1 district but may be allowed by the NCD. This will also be addressed in the governing ordinance. The issue of allowed uses is discussed more thoroughly in petition report Z09-4

2. Section 3 limits the height of structures to a maximum of 45 feet. No commercial building in the proposal exceeds this requirement. **The independent living building is proposed to be 65' in height. This exceeds the maximum height allowed in the C-1 district. The NCD may waive or amend this limitation.**
3. Section 4. (1) (i) (ii) (iii) all addresses properties fronting Manchester Rd. and West 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). Please see the discussion in that section below.
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 and the spacing of those plantings will have to be amended to meet this standard. The size of the stipulated plantings will not provide the 100% screening at the height of 6'. It will be years before the plantings will grow sufficiently as the proposed spacings to provide the required screening. The proposed fence cannot be considered a screening device per this code section. Its use does not allow any reduction in the screening provided by the landscape materials. The dimensional requirement appears to have been addressed. The issue of screening is more fully addressed in the NCD plan review.**
7. Sections 4. (3) (ii, iii and iv) and (4) 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 provided appears to meet the requirements of the C-1 district.

9. Section 5. (2) allows a parking reduction in exchange for more landscaping. The petitioner has not expressed its intent to utilize this section.
10. Section 6. requires the submission of the site development plan to MoDOT for its review. It is understood that this has been done. **As of this writing a traffic study has not been submitted for review. A scoping meeting with representatives from MoDOT, St. Louis County Dept. of Highways and Transportation, the petitioner, the Traffic Engineer and Ballwin was held on 4/20/09 to discuss traffic issues and what needs to be measured.**
11. Section 7. (1) requires that the minimum spacing of curb cuts be 500' between centerlines. **This plan is not in accordance with this requirement. The petitioner has expressed its intent to request that this requirement be waived in the NCD governing ordinance. I recommend that a waiver only be considered in accordance with MoDOT's acceptance of a curb cut plan pursuant to a traffic study.**
12. Section 7. (2) requires the construction of a 5' wide sidewalks along Clarkson Rd. and Henry Ave. Sidewalks have been proposed in accordance with this requirement. **It will be necessary to amend the sidewalk layout slightly at the intersection with regard to the Clayton Rd. and Henry Ave. crosswalks to meet MoDOT requirements.**
13. Section 7. (3) requires that a cross access, driveway/parking lot vehicular interconnection easement be established for the benefit of the adjoining properties. The ordinance allows this requirement to be waived for topographic or site design reasons. **There does not appear to be any reason for such an easement along the west side of this development because of the nature of the adjoining land uses, but there is a likelihood of future residential development on the Munzlinger property to the south. It is therefore recommended that a "cross access, driveway/parking lot vehicular interconnection easement" be dedicated to Ballwin in accordance with this code section between the southern curb cut on Henry Ave. and the south property line of the petitioned site to a depth sufficient (recommend 200 feet) from the Henry Ave right-of-way line to assure the ability of a future interconnection with development on the aforesaid Munzlinger property to the south.**

COMPREHENSIVE PLAN ISSUES:

The issues of the 2007 Comprehensive Community Plan that apply to this recommended development of this site are discussed in the petition review report Z09-4 and are not repeated here.

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