

CITY OF KIRKWOOD
PLANNING AND ZONING COMMISSION
STAFF REPORT
June 18, 2014

PETITION NUMBER: PZ-21-14

ACTION REQUESTED: AMENDMENTS TO CITY OF KIRKWOOD CODE OF ORDINANCES
APPENDIX A: THE CITY OF KIRKWOOD ZONING CODE,
SPECIFICALLY THE ADDITION OF NEW ZONING DISTRICT:
B-6 PLANNED COMMERCIAL.

DESCRIPTION OF AMENDMENT:

The redevelopment of the Manchester Rd. and Kirkwood Rd. intersection initiated a conversation about the best way to address new commercial development, in particular development along Manchester Rd. Staff proposed a new zoning district, B-6 Planned Development District, that would have open and flexible standards in order to promote tailored, innovative site planning that allows for the development of a piece of property while at the same time respecting the surrounding neighborhood. Please see Exhibit B for a copy of the draft ordinance, this proposal would be a natural evolution to the previously adopted planned development districts which includes the B-4 (1968) and the B-5 (1992).

The B-6 District would be available to all property zoned commercial and industrial, but it would be mandatory for new development in the B-3 Highway Business District. A unique ordinance and site plan, approved by City Council, would be tied to the property and would dictate specific zoning standards and permitted uses. Please see Exhibit C for a more detailed discussion of the B-6 Planned Development District.

COMPREHENSIVE PLAN:

A stated goal/objective/action step of the adopted Vision 2015 Comprehensive Plan supports the enhancement of planned development procedures.

Commercial, Retail and Industrial Development:

Goal 11. Support a balance of mixed-use residential in existing commercial areas.

Objective B. Support mixed-use developments through a planned development approach.

Action Step 1. Enhance existing planned development procedures to appropriately integrate mixed-uses into the community's fabric.

DISCUSSION:

The Planning and Zoning Commission received a presentation regarding the proposal on April 16, 2014. Discussion was held at that meeting and the following meetings on May 7, 2014 and May 21, 2014 respectively.

The Planning and Zoning Commission had two respective points of view. The view in favor of the proposed B-6 district noted that it could put the City more in a position to perform planning and help Kirkwood grow. It could allow for the proper infill development of challenged properties by promoting flexible standards and a team-oriented approach, city and developer. The view in opposition of the proposed B-6 district noted that the current zoning code provides certainty to prospective developers, whereas the open-ended approach of a B-6 could promote uncertainty. The B-6 district could also place too much responsibility on the Planning and Zoning Commission.

RECOMMENDATION:

The Planning and Zoning Commission, at their May 21st meeting, by a show of hands a majority choose not to pursue this zoning code amendment.

SUBMITTED BY:

Ryan Spencer, AICP, City Planner
Wednesday, June 18, 2014, Planning & Zoning Commission Meeting



PUBLIC SERVICES

Building, Engineering, Planning & Zoning, Streets, Sanitation and Water

TO: Chairman Kleinknecht and Commissioners
FROM: Ryan Spencer, Zoning Administrator
DATE: April 9, 2014
SUBJECT: Proposed B-6 Planned Development District

The City of Kirkwood is a mature, built-out community that is approximately eighty-five percent single-family residential. New commercial development must therefore be as sensitive and unobtrusive to surrounding residential properties as possible. Unfortunately, base zoning district standards are not flexible and therefore a context-sensitive solution cannot be reached without a Board of Adjustment decision or inferior site plan redesign. There are numerous non-residentially zoned properties in town that abut residential and because of size limitations are often forced to trade-off smart site planning in order to meet required setbacks, parking and landscaping regulations. The Zoning Code does have two zoning districts that embrace some flexibility, the B-4 and B-5 zoning districts, but these districts have a number of "strings attached" that limit their ability to be truly effective.

The solution that Staff is proposing is to create a new zoning district, the B-6 Planned Development District. This new district would be required of all new development in the existing B-3 zoning district and also be permitted for new development in the other commercial and industrial zoning districts. This new district would allow for negotiated zoning whereby the applicant and the City will reach an agreement on the conditions and regulations that will apply to the property in question. Regulations for parking, landscaping, setbacks, density, etc... would be recommended by the Planning and Zoning Commission and approved in the form of a resolution by the City Council. The uncertainty of a Board of Adjustment decision is eliminated and a development plan can be agreed to that is neighborhood-sensitive and property-specific.

DRAFT**Section A-550: B-6 Planned Development District**

550.1: *Purpose.* The purpose of the B-6 Planned Development District is to provide a means of achieving greater flexibility in development of land for intensive single and mixed uses; to encourage a more imaginative and innovative design of projects; to promote a more desirable community environment; and to retain maximum control over both the structure and future operation of the development.

It should be noted that these regulations are not intended to allow excessive densities, or the development of incompatible land uses, either within the development, or as the development relates to the general neighborhood. This district is also not intended to be solely or merely a method of avoiding area restrictions in other conventional zoning districts. Adequate services must support such intensive development or will be provided prior to occupancy. A B-6 development will be approved only if the project is of an enhanced design quality, if desirable amenities are an integral part of the development, if the project can provide for adequate transition to adjacent neighborhood areas; and if the project is in accordance with the adopted comprehensive plan.

550.2: *Development plans – when required.* A B-6 development plan shall be required for all new developments within the B-3 Highway Business District. The City may also, upon proper application, approve a B-6 Development in the B-1, B-2, B-4, B-5 and I-1, zoning districts for a site at least 10,000 square feet to facilitate the use of flexible techniques of land development and site design, by providing relief from zone requirements designed for conventional developments.

550.3: *Permitted Uses.* The types of permitted uses to be included in the B-6 defined area shall be established in the approved development plan.

550.4: *Height Regulations.* The maximum height requirement for uses in this district shall be established on the approved development plan with due regard to site and general area characteristics including land use, zoning, topography and setbacks, etc.

550.5: *Density, Area and Coverage Regulations.* The density of development, the minimum dimensions of lots, yards and maximum lot coverage shall be established on the approved development plan with due regard to site and general area characteristics including land use, zoning, topography, thoroughfares and open space opportunity.

550.6: *Minimum Site Area.* 10,000 square feet. This minimum site area may be waived by the City Council upon recommendation by the Planning and Zoning Commission if the parcel in question has certain unique physical characteristics; or if it is determined that the use proposed is desirable or necessary in relationship to the surrounding neighborhood; or if the Commission should determine that such waiver to be in general public interest.

- 550.7: ***Parking and Loading Zone Regulations.*** Off-street parking facilities and loading zones shall be provided at locations designated on the approved development plan. Minimum off-street parking and loading zone requirements shall be established in the approved development plan. Any deviation less than the minimum requirements specified in Section A-1000 Parking Regulations and Section 1010 Loading Zone Regulations shall require specific approval from the Planning and Zoning Commission.
- 550.8: ***Landscaping & Buffering.*** Landscaping shall be provided between the project site and any adjoining use. Landscaping shall be reviewed by the Planning and Zoning Commission and approved by the City Council as part of a specific B-6 development plan. Formal street tree planting shall be provided. All other open space areas within a site shall be provided with ornamental or flowering trees and low shrubs, suitable ground cover, such as grass, ivy, etc. and an appropriate mulch or appropriate paved surface for pedestrian circulation. Landscaping shall comply with the provisions of a redevelopment agreement, if applicable.
- 550.9: ***Architectural and Sign Review.*** The project shall be submitted to and reviewed by the Architectural Review Board in accordance with the rules and procedures of that board prior to consideration of the final plan. Signage shall comply with the provisions of a redevelopment agreement, if applicable.
- 550.10: ***Traffic Impact.*** The City shall determine if an analysis of the proposed development's impact on current and future traffic flows may be required. This analysis shall be prepared by a qualified traffic engineer and submitted with the Preliminary Plan to the Planning and Zoning Commission.
- 550.11: ***Underground Wiring.*** All electrical, cable television, and telephone distribution lines primarily intended for the use of buildings and structures located in the B-6 development shall be installed underground for new construction and major rehabilitation. Cable switching enclosures, pad mounted transformers and service pedestals may be installed above ground where recommended by the Planning and Zoning Commission and approved by the City Council.
- 550.12: ***Development Plan Approval Required.*** No development or redevelopment of the property encompassed by the B-6 Planned Development designation shall take place until the development plan has been reviewed by the Planning and Zoning Commission and approved by the City Council.
- 550.13: ***Development Plans.***
- (1) **When Required.** A development plan shall be submitted as part of the application for a B-6 Planned Development .

- (2) **Required Plan Drawings.** The following plan drawings shall be submitted with the development plan application. Each plan drawing shall contain all required information.

One or more plan drawings of the proposed development that includes the following:

- (1) Location of all proposed structures
 - (2) Any land areas within the 100-year floodplain
 - (3) Parking spaces, traffic lanes and sidewalks
 - (4) Loading and delivery zones
 - (5) Screening and buffering areas, open space and other amenities
 - (6) The existing and proposed contour intervals
 - (7) Public streets, identifying arterials, collectors and local streets, service and loading areas, points of access to public rights-of-way
 - (8) All easements and dedications
 - (9) Existing and proposed water, sewer, and storm utility systems
 - (10) Sufficient dimensions and grades to indicate relationship between buildings, property lines, parking areas and other elements of the plan
 - (11) A landscape plan with the specific location of all plant materials specifying size, species and location
 - (12) Plan for the provision of water, sanitary sewage and storm drainage facilities
 - (13) Existing streams and other bodies of water, including drainage patterns
 - (14) Focal points and site amenities, if any
 - (15) Internal and external pedestrian and vehicular access points
 - (16) Physical barriers (such as interstate highways)
 - (17) Proposed noise generation sources
 - (18) All other information which the City Council may designate as a condition of the development plan approval
- (3) **Exterior building sketches.** The application shall include preliminary sketches depicting the general style, size and exterior construction materials of the buildings proposed. Where several building types are proposed on the plan, such as apartments and commercial buildings, a separate sketch shall be prepared for each type. Such sketches shall include elevation drawings, but detailed drawings and perspectives are not required.
- (4) **Schedules.** A schedule shall be included indicating total floor area, dwelling units, land area, open space, parking spaces, land use intensity, hours of operation of the business, and other quantities specified in the appropriate zoning district regulations.

- (5) **Phases of development.** Phases of development, if applicable, must be shown on the preliminary development plan. If the development will occur in phases the applicant shall submit a development plan that also displays the entire development at the completion of all phases. The phased development shall have the phases clearly outlined with expected dates for beginning of construction and date of completion of construction. No building permit shall be issued for any phase of development until a firm development plan for that phase is approved in accordance with the provisions of this Section.
- (6) **Statement of need for modification from district regulations.** A narrative statement that explains the need for modification of the applicable zoning district regulations, if requested, shall be submitted in support of the application for the preliminary development plan approval.

550.14: *Development Plan Procedures.*

- (1) The owner or owners of any tract of land shall file application with the City for a rezoning/development plan.
- (2) A filing fee shall be paid in accordance with the Municipal Code of Ordinances Chapter 5, Article VI, "Fee Schedule" accompany the application.

The Planning and Zoning Commission shall review the application at an open meeting, and within 120 days after open meeting the Planning and Zoning Commission shall report to the City Council with its recommendations as to the application and the development plan. If the Planning and Zoning Commission fails to send a recommendation to the City Council within 120 days after the open meeting, the application shall be considered as having received an affirmative recommendation.

The City Council shall conduct a public hearing concerning the application after having given notice of the time, place and purpose of such public hearing by at least one notice in a newspaper of general circulation within the City of Kirkwood at least 15 days prior to the date of the public hearing, and by sending a copy of said notice by first class mail to all property owners shown by the City tax records within 300 feet of the boundaries of the area. The City Council may then either approve, disapprove, or modify and then approve the rezoning application and the development plan by ordinance, or it may return the same to the Planning and Zoning Commission for further study and report.

- (3) Within twelve (12) months of the date of approval of the rezoning/development plan by the City Council, construction shall commence, or the development approval shall be void.

(4) Any applicant desiring to extend the period in which construction shall commence under a final site plan shall, no later than thirty (30) days prior to the date such final site plan approval shall terminate, submit a written request to the City Council setting forth the reasons such development should be extended and a filing fee in accordance with the Municipal Code of Ordinances Chapter 5, Article VI, "Fee Schedule" of the Kirkwood Municipal Code. The City Council may extend such application for an additional one year(s) from the anticipated date of expiration at the sole discretion of the City Council. No Planned Development shall be deemed to terminate pending consideration by the City Council of a timely filed application.

550.15: *Financial Guarantees.* In reviewing the final site plan, the City Council shall require a cash deposit, letter of credit, or other financial guarantee acceptable to the city, to be furnished by the developer to insure compliance with such requirements as completion timelines, drives, walks, utilities, sewers, parking, landscaping and the like. The financial guarantee shall be deposited with the City within six (6) months of Final Approval by the City Council and prior to the issuance of any permits along with an administrative fee in accordance with the Municipal Code of Ordinances Chapter 5, Article VI, "Fee Schedule". As work progresses, the City Engineer may authorize a proportional release of the financial guarantee upon completion of significant phases or improvements.

550.16: *Amendments to Approved Development Plans.* The owner or owners of any tract of land with an approved development plan (or existing use and development) shall file an application for amendment to said plan and a fee shall be paid in accordance with the Municipal Code of Ordinances Chapter 5, Article VI, "Fee Schedule."

(1) **Minor changes.** An approved development plan that contains minor changes may be approved by the City Engineer. A determination by the City Engineer on such minor changes shall be made pursuant to this paragraph, provided that said person may, at his discretion, submit the changes to the Planning Commission for review. Any determination made by the City Engineer under this subsection may be appealed to the Planning and Zoning Commission by the applicant within seven (7) days after the date of the determination. In all such appeals, the Planning and Zoning Commission shall act in accordance with paragraph (2) of this Section.

(2) **Definition of minor changes.** For purposes of this Section, "minor changes" to the approved development plan shall mean all changes that are not "substantial" (as further defined herein) including but not limited to any of the following:

- A. Increases in the density or intensity of residential uses between 0% and 5%
- B. Increases in the total floor area of all nonresidential buildings covered by the plan between 0% and 10%
- C. Increases of lot coverage between 0% and 5%
- D. Increases in the height of any building between 0% and 10%
- E. Decreases of any side yard setback between 0% and 5%

- F. Decreases of areas devoted to open space between 0% and 5%
- G. Reconfiguration of building locations that do not involve substantial changes, as defined in this Section

(3) **Substantial changes.** An approved development plan that contains substantial changes shall be reviewed in accordance with Section 550.14(2)

(4) **Definition of substantial changes.** For purposes of this Section, "substantial changes" to the approved development plan shall mean any of the following:

- A. A change in the number or sequence of phases, if any
- B. Increases in the density or intensity of residential uses equal to or more than 5%
- C. Increases in the total floor area of all nonresidential buildings covered by the plan equal to or more than 10%
- D. Increases of lot coverage more than 5%
- E. Increases in the height of any building equal to or more than 10%
- F. Decreases of any setback equal to or more than 5%
- G. Decreases of areas devoted to open space equal to or more than 5%
- H. Changes of traffic or circulation patterns that will affect traffic outside of the project boundaries
- I. Modification or removal of conditions to the approved ordinance
- J. Modification or removal of conditions to the development plan approval

Section A-560 to A-599: Reserved
(Ord. No. 8861, §1, 10-7-99)

LIST OF QUESTIONS (May 21 P&Z Meeting)
B-6 Planned Commercial District?

1. Under a B-6 petition and site plan received, describe the duties of the following in processing and/or approving the request?
 - Zoning staff/Building Commissioner
 - Planning and Zoning Commission
 - City Council

Answer: The duties would be similar to the process currently in place for a special use permit or rezoning. Staff would meet with the applicant and discuss the process and requirements. Staff would also talk about any issues that may be inherent with the site and the best way to approach these issues from a site planning perspective. Staff would also enforce any conditions of an approved B-6 ordinance just as we now do with Special Use Permit conditions. The Planning & Zoning Commission and City Council, just as the currently do now with special use permits and rezoning cases, would review the proposal and ascertain if the requested site plan layout and conditions make sense based on the proposed location.

2. Who decides if the petition will go forward as a B-3, B-4, B-5 or B-6? (Zoning staff, Petitioner/Developer, or P&Z Commission)?

Answer: The B-6 District would be mandatory for any new development on land currently zoned B-3 Highway Business. A rezoning to B-6 would be optional for any new development on property currently zoned B-1, B-2, B-4, B-5 and I-1. Staff will make recommendations to prospective applicants about the best course of action, but it will ultimately be the decision of each applicant which direction they go.

3. Would the B-6 zoning category be restricted to certain defined areas or parcels of property? Or, could B-6 be used in any commercial district?

Answer: The B-6 District would be mandatory for any new development on land currently zoned B-3 Highway Business. A rezoning to B-6 would be optional for any new development on property currently zoned B-1, B-2, B-4, B-5 and I-1.

4. Will B-6 be limited to new comprehensive developments (new building, parking, etc.)? Or could B-6 be used where there the current site is being modified/expanded to fit a new or existing business?

Answer: The current draft ordinance limits B-6 use for new developments. It will be up to the Planning & Zoning Commission and City Council to make a determination if a certain percentage of an addition (for example greater than 50%) would trigger a B-6 rezoning.

5. Why will B-6 be required for all existing B-3 zoning districts?

Answer: Properties zoned B-3 Highway Commercial are for the most part located along Manchester Road, Kirkwood Road and Big Bend Boulevard. These properties are the most in need of a flexible zoning district due to the nature of residential adjacency, traffic circulation and property size. By compelling a more detailed review these properties will benefit from the more tailored site planning a flexible B-6 district would permit.

6. Could the advantages of B-6 be accomplished by amending the current B-3, B-4 and B-5 zoning districts?

Answer: No. It is important to keep in mind that the zoning code is a static set of regulations that are for all intents and purposes "one size fits all". To achieve site planning flexibility under the current ordinance there are two basic approaches; seek a variance from the Board of Adjustment (BOA) or amend the Zoning Code. The first approach is often problematic because the BOA is not a site planning board they are a quasi-judicial body that have a specific set of guidelines that require any applicant meet a high burden of proof to justify their variance request. The other approach to amend the code is unrealistic and not recommended in most instances, because to change the code for one unique property will affect all other properties whether the change makes sense for those properties or not. The B-6 district will be the flexible tool that will put the Planning & Zoning Commission and City Council in the driver's seat to make specific site planning/use decisions. It offers a clean path forward for a tailored site plan/use that is enforced through a set of approved plans and conditions.

7. Summarize 3-4 recent examples where the current zoning code has restricted or hindered good commercial/business development? Include some specific items in the Code that are causing problems?

Answer: The area of Manchester Rd/Kirkwood Rd., while not a recent project area, is a good example of where the zoning code and its one size fits all approach could possibly hinder good, infill development. The parcels in this area are often oddly-shaped or undersized, yet are commercially-oriented and will continue to be so into the future. Setback, parking and landscaping regulations, as mandated by the Zoning Code, in these situations are hard to implement without BOA variance approvals. As was discussed in the previous question BOA has a different mandate than the Planning & Zoning Commission and City Council making the re-development of these parcels challenged. Many recent commercial projects needed BOA variance approvals as part of their process including 915 N. Kirkwood, Andy's Frozen Custard, McDonalds and currently Fresh Thyme Market. The B-6 would allow a tailored approach that creates site-specific conditions for a unique property by putting the Planning & Zoning Commission and City Council in the driver's seat.

8. Would the 915 N. Kirkwood site plan be an example? If Yes, are areas or issues?

Answer: Possibly. The 915 N. Kirkwood Rd. case is very similar to what a B-6 process would entail. The subcommittee met multiple times with the applicant and outlined conditions that needed to be satisfied for approval. The main difference in a B-6 process is that the Planning & Zoning Commission and City Council would have even more discretion than in a straight site plan review process. In the end the City still has ultimate authority over what it determines is the best development layout for the property. It is true that development of the 915 N. Kirkwood Rd site was challenged and needed a number of variances. It is hard to say in hindsight, but a B-6 process could have allowed for more creative thought with respect to the design of the site. Instead of dwelling on issues related to fulfilling specific, quantitative regulations; issues such as how the use functions on the site and how the proposed use fit within the fabric of the neighborhood could have been front and center.

9. Pursuing a B-6 (vs. B-3, 4, or 5), how will the petitioner or developer avoid inconsistency or uncertainty. Some would say that the current zoning code provides consistency and clear guidelines

to follow. B-6 suggest that the technical requirements would be dependent on the project under consideration

Answer: This is really a question of how do we insure that the Planning & Zoning Commission and City Council are consistent? No two properties are alike in the City of Kirkwood and just like in rezoning cases and special use permit cases the Planning & Zoning Commission and City Council will have to exercise discretion. Consistency is provided by reviewing each case in accordance with the same checklist of important factors such as traffic circulation, landscape buffering hours of operation etc. Further, just as in special use permit cases; conditions of approval for one case are utilized again for a similar case. This is where staff must play its role in terms of maintaining institutional memory of the history of decisions made by City Council. Staff should make the current Planning & Zoning Commission and City Council aware of this history as well applicants so that expectations can be set and a framework established for consistent review.

10. Describe in more clarity. What is a "context-sensitive solution?" "negotiated zoning?"

Answer: A "context-sensitive solution" in this case refers to a the development of a particular site that takes into account all of the factors of the site that make it unique in order to help insure that the site is compatible with surrounding area. "Negotiated zoning" is a planning term often used to describe planned development zoning. The City Attorney was correct in his statement that in effect the process is not truly a negotiation as the City has ultimate decision-making authority and leverage. It is also important to note that the development of a B-6 planned development is not something that is developed behind the scenes by staff and the applicant and the Planning & Zoning Commission and City Council are mere rubber stamps. Staff works diligently with the applicant to bring the best product forward for review and in the end the Planning & Zoning Commission and City Council have to ask the tough questions and make the hard decisions with respect to the approval of the B-6 planned development ordinance.

11. Will the City provide the members of the P&Z Commission the training necessary to undertake this new B-6 district and decide technical issues previously under the jurisdiction of BOA?

Answer: Staff has in the past provided specific training and stands ready to provide whatever training and resources are necessary for Planning & Zoning Commissioners to be as effective at their assigned duties as possible.