



CITY OF KIRKLAND

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MEMORANDUM

To: David Ramsay, City Manager

From: Janice Soloff, AICP, Senior Planner 
Eric R. Shields, AICP, Planning Director 

Date: November 17, 2005

Subject: NE 85th STREET SUBAREA CODE AMENDMENTS- STUDY SESSION FOLLOWUP,
FILE IV-02-05

RECOMMENDATION

Consider the enclosed revised zoning text options staff has prepared related to issues raised at the study session on the NE 85th Street Subarea code amendments. Provide direction to staff to bring back an ordinance for final adoption at the December 13 Council meeting.

BACKGROUND DISCUSSION

On November 1, 2005, City Council held a study session to consider the Planning Commission's recommendation on proposed draft code amendments that will implement the goals and policies contained in the NE 85th Street Subarea Plan (refer to November 1 study session packet for background information). Such code amendments include reclassification of property to the new RH 1-8 land use districts, zoning regulations for each zone, and new design guidelines and design regulations for the Rose Hill Business District. At the study session, City Council raised several issues and directed staff to return with options for addressing those issues.

Below are the remaining issues for City Council consideration on November 28. Each issue includes a description of the existing zoning requirements, the proposed Planning Commission recommendation, and alternative options that staff has prepared for Council to consider.

ISSUES

1. Should automotive service centers be a permitted or prohibited use in the RH 5B and RH 8 zones?

Existing zoning: Currently, two automotive service center businesses are located on the north side of NE 85th Street in an area zoned BCX (see existing zoning map). The BCX zone currently allows automotive service center uses. The Zoning Code defines automotive service centers as "an establishment primarily engaged in automotive repair, including the sale and installation of lubricants, tires, batteries, mufflers, and similar accessories". This is different than a vehicle service station which is defined as "a commercial use supplying petroleum products that are for immediate use in a vehicle".

NE 85th Street Subarea Plan: The two properties will be rezoned to RH 5B and RH 8 (see proposed zoning map). In both RH 5B and RH 8 areas, the Subarea Plan policies establish that "permitted uses should be restricted to those that generate limited noise, light and glare, odor and traffic impacts. Appropriate uses include medical, dental offices, insurance offices, dry cleaners, and coffee shops. Not appropriate uses include gas stations, car washes, uses with drive through windows, and uses with extended hours of operation".

Originally, based on staff's interpretation of the Subarea Plan policies, staff recommended that automotive service center uses no longer be a permitted use in the RH 5B and RH 8 zones. Both uses tend to generate greater traffic, noise and odor impacts than neighborhood office and retail uses that are intended for the two zones. Auto oriented types of businesses do not fit the vision for both zones.

A property owner of an automotive service center use located in RH 8 opposes the new zoning because it would cause the existing use to be a legal non-conforming use. His concerns are that the existing structure was built for the specific business making it difficult to remodel, expand, or find another tenant to replace the existing tenant and that the 90 day limit is too short of a timeframe to replace the use with a similar non-conforming use (see letter from Ken Rasmussen).

Existing non-conforming use provisions: The City encourages the retention of businesses in Kirkland. That being said, pursuant to KZC Chapter 162.35.2, a legal non-conforming use may remain until one or more of the following situations occur. A non-conforming use must be brought into conformance under the following circumstances:

- a. the applicant is making a structural alteration or increasing the gross floor area of any structure that houses or supports the nonconforming use; or*
- b. the nonconforming use has ceased for 90 or more consecutive days; or*
- c. the nonconforming use is replaced by another use: the City may allow a change from one nonconforming use to another through a Process IIA permit.*

Based on Mr. Rasmussen's comments received at the public hearing, the Planning Commission wanted to accommodate the existing automotive service center use and therefore, directed staff to revise the zoning text to allow a longer period of time (12 months) for the property owner to find another tenant and allow a limited amount of expansion (25% expansion). See enclosures 1 and 2 which show the revised Special Regulations for an automotive service center use in the RH 8 zone and a retail use in the RH 5B zone recommended by the Planning Commission.

The City received public comments opposing the Planning Commission's recommendation from representatives from the North and South Rose Hill Neighborhoods and the NE 85th Street Action Team at the last City Council meeting. The opposing viewpoint believes that based on the Subarea Plan policy intent, automotive service centers should be a prohibited use in the RH 8 and RH 5B zones, and that the existing provisions of the non-conformance chapter are adequate vesting rights for the existing business to remain.

Question raised at the study session:

Is the language about nonconforming uses in the draft zoning text (special regulations) sufficiently clear to avoid questions about a property owner having the intent to abandon the nonconforming use?

According to the City Attorney, the language is as clear as we can make it. Factual questions about intent to abandon may still arise. The requirement that the City prove intent to abandon is court-made law. As the Washington Court of Appeals stated in University Place v. McGuire, 102 Wn. App. 658, 670 (2000):

Often, zoning ordinances are drafted in terms of 'discontinuance,' rather than 'abandonment,' to circumvent the requirement of proving intent to abandon a nonconforming use. [Citation omitted.] But many courts, including Washington's Supreme Court, 'have merged the terms 'discontinue' and 'abandon' and require proof of an intent to abandon even though the zoning code speaks in terms of a discontinued use or a use discontinued for a specified period of time. [Citations omitted.]

The case law provides that that cessation of a use for the time prescribed by the zoning code, on the face of it, is evidence of an intent to abandon the nonconforming use. Andrew v. King County, 21 Wn. App. 566, 672 (1978). The Court of Appeals has explained a city's burden of proof as follows:

[The owner] is correct that once he establishes the legal nonconforming use, the burden to prove abandonment would shift to the City. [Citation omitted.] But when an ordinance establishes a set time beyond which a nonconforming use cannot remain unused with being forfeited, the burden shifts back to the owner to prove lack of intent to abandon: 'If the ordinance references a time frame . . . a rebuttable presumption arises that the land occupier has intended to abandon the nonconforming use.' [Citations omitted.] (Emphasis supplied.) Miller v. City of Bainbridge Island, 111 Wn. App. 152, 164 (2002).

Consistent with the case law, if the City can prove that a use is discontinued for the time specified in the Zoning Code, the burden shifts to the owner to show that he or she did not intend to abandon the use.

Alternative options for City Council consideration:

- a) Council could interpret the intent of the Subarea Plan policies to prohibit automobile service center uses in both zones and remove the special regulations proposed by the Planning Commission. As a result, the existing provisions of the non-conforming use of KZC Section 162.35.2 would apply.
- b) Council could vary from the Planning Commission's recommendation and reduce the time limit for the cessation of a non-conforming use to something greater than the 90 days established in the nonconforming use regulations, and less than the 360 days proposed by the Planning Commission. The Council could also reduce the amount of expansion to something greater than 0

allowed by the nonconformance regulations, and 25 percent recommended by the Planning Commission.

2. Modifications to rear yard setbacks or landscape buffers adjacent to residential uses.

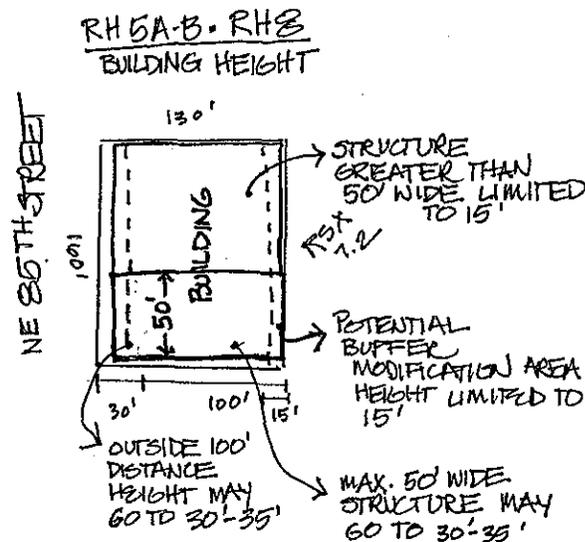
Subarea Plan policies (NE85-18.2) state that design standards should address building placement on the site and buffers between commercial development and adjacent residential homes. Policies also establish that incentives shall be developed to encourage redevelopment of the commercial district to improve its appearance and economic viability.

Under the proposed zoning, the Planning Commission recommendation is to require a more restrictive landscape category than currently required for commercial uses adjacent to residential uses as a transition along the district edges. A landscape category A will be required resulting in a 15' wide landscape buffer between all commercial and residential uses.

However, the Planning Commission concluded that sometimes a lower building wall may be a more effective buffer between uses than a landscape buffer because a landscape buffer behind a building can be neglected from a maintenance standpoint. In addition, new street improvements along NE 85th Street will require acquisition of a small amount of property thus reducing the already narrow depth of many of the commercial properties. A reduction in rear yard setback or landscape buffer allows for greater flexibility for the property owner.

Clarification of draft zoning text: For these reasons, the Planning Commission recommends that the rear yard landscape buffer be allowed to be modified. Both the residential and commercial property owners would need to agree to the modification. (Note: the Zoning Code currently permits this option) Under the proposed recommendation, to grant this buffer reduction, the height of the wall at the property line may be no higher than 15' in height.

In addition, the "Horizontal Façade" requirements apply: This code provision states that within 100' of a low density residential zone, a building could go to 25-30' in height (depending on if abutting an RS or RSX zone), if the length of the building parallel to property line adjacent to a low density zone is no more than 50' in width. If the width of a building was greater than 50' in width, a building would need to be a maximum of 15' in height. Beyond the 100', a building could rise to 30-35' in height. Most of the sites along the RH 8 zone are approximately 130' in depth (see illustration below).



Questions raised at the study session:

Under the draft regulations, if a buffer modification is approved, and the building is limited to 15' in height within the modified buffer area (15'), is there a point where the building could be permitted to be taller than 15'?

Yes, beyond 15' from the rear property line the structure may extend up to 25' or 30' in height (depending on abutting RS or RSX zone and if in RH 5A-B or RH 8) and beyond 100' from the rear property line the structure may extend up to 30' or 35' in height if building width is less than 50' in width (depending on abutting an RS or RSX zone). As a result a building could be modulated horizontally and vertically depending on distance from a low density zone.

3. Multi Family Design Standards

To clarify, in most cases, multi family dwelling units will be mixed with commercial development and therefore, through either administrative design review or review by the Design Review Board, the proposed design guidelines and design regulations will apply. New design treatments for open space in multi-family projects are included in the draft design guidelines. Lacking are design guidelines for the stand alone multi family development that we may see in the RM or PR zones bordering north and south of the business district. To fill the gap, use of the Comprehensive Plan Appendix C, residential design standards covering both detached and attached multi-family development will be used to evaluate multi family projects.

Alternative option:

Staff recommends that the Planning Commission and City Council discuss adding this as a future work plan item.

4. Building Materials

Under the proposed draft design regulations, in the Rose Hill Business District, the use of building materials such as metal siding, concrete block and trowled surfaces such as stucco are limited to 30% of a buildings primary entrance or façade visible from a street. To clarify, the intent is to limit the building materials to 30% for each material not 30% total of all three materials combined.

Alternative options:

- a.) Disagree with Planning Commission recommendation and have no limit to the use of building materials
- b.) Have a less restrictive limit range of 5-30%
- c.) Have a less restrictive limit to 30% total of all three materials.

5. Front yard setback width on side streets

The Planning Commission recommendation is a minimum front yard setback along NE 85th Street of 10' otherwise, a 20' for all other side streets. The reasoning for the 20' setback is to be consistent with the 20' front yard setback required in residential zones located on side streets approaching the commercial corridor. There may be certain zones where commercial development is desired to wrap around a corner at

the sidewalk and therefore, a front yard setback less than 20' on side streets is desired. The Design Review Board will have authority to reduce the front yard setback on side streets where appropriate.

Alternative options

- a. Keep the recommendation to require a 20' front yard setback along side streets.
- b. Allow a 10' front yard setback outright on every street.
- c. Add text to allow a 10' setback along front property lines across the street from a commercial zone.

Enclosures:

1. Draft RH 5B use zone chart for an automotive service center use
2. Draft RH 8 use zone chart for a retail use related to an automotive service center use

cc: File IV-02-05

RH 5A
RH 5B

USE ZONE CHART

Section 60.22	USE	REGULATIONS	Required Review Process	MINIMUMS REQUIRED YARDS (See Ch. 115)			Lot Coverage	MAXIMUMS	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Reg. Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
				Lot Size	Front	Side		Rear					Height of Structure
.010	Vehicle Service Station See Spec. Regs. 1 and 2	Design Review Chapter 142, KZC	22,500 sq. ft.	20' See spec. reg. 4	15' See spec. reg.4	15'	80%	If adjoining: An RS or RSX zone then 30' above average building elevation. Otherwise, 35' above average building elevation	A	E	See KZC 105.25.	<ol style="list-style-type: none"> This use is permitted only if the subject property abuts NE 85th Street. This use is not permitted in a RH 5B zone. May not be more than two vehicle service stations at any intersection. Gas pump islands must be setback a minimum of 20 feet from all property lines. Canopies or covers over gas pump islands may not be closer than 10 feet to any property line. Outdoor parking and service areas may not be closer than 10 feet to any property line. See KZC 115.105, Outdoor Use, Activity and Storage, for further regulations. 	
*.020	Automotive Service Center See Spec. Reg. 1.	Design Review Chapter 142, KZC	None	10' on NE 85 th Street, otherwise 20'	0'	15'					1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 3.	<ol style="list-style-type: none"> This use may only be permitted in RH 5B if the use existed on _____ date (adoption date of Ordinance # _____) and discontinued when: <ol style="list-style-type: none"> There is an increase in gross floor area of more than 25 percent to any structure on the subject property, or There is an alteration or change in a consecutive 12 month period to an improvement or structure on the subject property, and the cost of the alteration, change or other work exceeds 50 percent of the replacement cost of that improvement or structure, or The use has ceased for a consecutive 12 month period. This use specifically excludes a retail establishment involving the sale, lease, repair or service of automobiles, trucks, boats, motorcycles, recreation vehicles, heavy equipment, and similar vehicles. No openings (i.e., doors, windows which open, etc.) shall be permitted in any facade of a building adjoining any residential zone. Windows are permitted if they are triple-paned and unable to be opened. Ten percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor-home/travel trailer use. Parts and tires must be stored entirely within an enclosed structure. See KZC 115.105, Outdoor Use, Activity and Storage, for additional regulations. 	

FILE NO. _____
ENCLOSURE _____

RH 8

USE ZONE CHART

Section 60.22	USE	REGULATIONS	Required Review Process	MINIMUMS				MAXIMUMS	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Req'd Parking Spaces (See Ch. 106)	Special Regulations (See also General Regulations)
				REQUIRED YARDS (See Ch. 115)			Lot Coverage					
				Lot Size	Front	Side		Rear				
*.040	Any Retail Establishment other than those Specifically listed, limited, or prohibited in the zone, Selling Goods, or Providing Services including Banking or Related Financial Service	Design Review Chapter 142, KZC	None	10' on NE 85 th Street Otherwise 20'	0'	15'	70%	30' above average building elevation See General Regulations 1 and 2	A	D	1 per each 300 sq. ft. of gross floor area	<p>1. The following uses are not permitted in this zone:</p> <ul style="list-style-type: none"> a. vehicle service stations b. automotive service centers. <u>Exception for existing uses. This use may only be permitted if the use existed on _____ date (adoption date of Ordinance # _____) and must be discontinued when:</u> <ul style="list-style-type: none"> 1. there is an increase in gross floor area of more than 25 percent to any structure on the subject property, or 2. There is an alteration or change in a consecutive 12 month period to an improvement or structure on the subject property, and the cost of the alteration, change or other work exceeds 50 percent of the replacement cost of that improvement or structure, or 3. The use has ceased for a consecutive 12 month period. c. uses with drive in facilities or drive through facilities d. retail establishments providing storage services unless accessory to another permitted use. e. the sale of automobiles, trucks, boats, motorcycles, recreation vehicles, heavy equipment and similar vehicles. f. storage and operation of heavy equipment, except delivery vehicles associated with retail uses. g. storage of parts must be conducted entirely within an enclosed structure. <p>2. This use may not be located above the ground floor of a structure.</p> <p>3. Gross floor area for each individual use may not exceed 4,000 sq. ft.</p>

FILE NO. _____
ENCLOSURE _____
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