

SPECIAL USE EXCEPTION REVIEW REPORT

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| Petition Number: | SUE09 -1 |
| Petitioner: | Mr. Ralph Pfremmer Lone Wolf Coffee Company, LLC 15480 Clayton Rd. Ballwin, MO 63011 636-496-2317 |
| Agent: | None |
| Project Name: | Lone Wolf Coffee Company |
| Filing Date: | 2/27/09 |
| Review Report Date: | 3/9/09 |
| Submission Compliance Certification Date: | 3/9/09 |
| Requested Action: | Special Use Exception |
| Purpose: | Alcoholic beverages sales and indoor entertainment facilities |
| Code Section | Article XIV Sec. 1 (21 and 30) |
| Location: | 15480 Clayton Rd. |
| Existing Land Use/Zoning: | Vacant / MXD |
| Surrounding Land Use/Zoning: | North – Commercial/ C -1 South – Single Family/ MXD West - Single Family/ R-2 East - Commercial/ C-1 |
| Plan Designation: | Office / Retail Commercial |
| Project Description: | |

Mr. Pfremmer opened the Lone Wolf Coffee Company for business in January of 2009 at 15480 Clayton Rd. The restaurant/catering business occupies approximately 5100 square feet of space formerly occupied by Zhivago's Restaurant. It shares kitchen

facilities between the restaurant and the catering business. There is seating for approximately 60 patrons. As originally envisioned, the business did not intend to sell alcoholic beverages or have entertainment, but the owner has determined that both uses would enhance his business opportunities.

The parcel of land on which this building is located, along with the adjoining properties that are now the Clayton Ridge Subdivision and the Kehrs Mill Professional Park, has been zoned MXD since the 1980's. These parcels were then part of the Barn at Lucerne Site Development Plan. The MXD zoning was created to allow a mixed use approach to the development of such sites. That plan for this area called for the land under this building and the Kehrs Mill Professional Park to be developed with interconnected commercial and office uses. The land presently occupied by the Clayton Ridge Subdivision was to be developed in a multiple family residential use. The multiple family development failed when the lender, Community Federal Savings & Loan, went bankrupt. The parcels were subsequently separated from the barn site and developed independently. New individual site development plans under the MXD zoning were ultimately approved for each parcel and the Barn at Lucerne was rezoned back to C-1 Commercial zoning. The Board of Aldermen subsequently did away with the MXD zoning district and it does not appear in the zoning ordinance today, however, several parcels retain that classification and the associated regulations.

Since there is no change to the zoning district or any amendment to the approved MXD sited development plan for this site, and the proposed use is allowed by SUE in the district, there is no discussion in this report of the MXD regulations.

Zoning Ordinance Requirements/SUE Regulations:

Article XIV Section 1:

This petition is submitted pursuant to Article XIV, Section 1, subsections 21 and 30, which allow the sale of alcoholic beverages by the drink for consumption on the premises and indoor entertainment facilities by special use exception. Certain additional regulations exist relative to the entertainment use.

Article XIV Section 2:

1. Section 2 (1 – 12) General SUE regulations: This petition involves adding two additional special uses (entertainment and alcohol sales) within an existing building in conjunction with a previously approved restaurant special use authorized via ordinance 08-32 in 2008. No changes to the site development plan are proposed in conjunction with these proposed additional uses. Furthermore, this site continues to operate in accordance with an approved site development plan associated with a special use

exception for front yard parking granted in 1997. The site appears to be in compliance with subsections 1 - 12 of Section 2 of Article XIV, the special use exception regulations of the Zoning Ordinance. The issue of parking provision was discussed in detail as a part of the original Lone Wolf Coffee Company SUE petition in 2008 and it was determined that parking was adequate for the site. This analysis has been supported by operational experience since the business opened last January. A copy of the parking discussion from that petition is attached to this report.

2. Section 2 (13) Entertainment: Some may recall the difficulties that the residents of the adjoining residential neighborhoods encountered when the proprietor of the former Zhivago's Restaurant at this location changed the banquet room to a nightclub called the Enigma Lounge and offered entertainment. This was not consistent with the scope of the business described when the original Zhivago's special use exception was granted, and Ballwin subsequently denied the operator's request for an SUE to allow live entertainment. A subsequent legal challenge to Ballwin's denial of the entertainment SUE on the basis of the disruption and negative impact on the adjoining residential neighborhood was upheld by the courts which determined that regardless of the land use implications of the requested use, the ordinance language was unconstitutional. The Enigma Lounge continued to operate, but as is the case with most entertainment oriented businesses, it closed fairly soon thereafter and the problems in the neighborhood left with it. Ballwin subsequently changed the ordinance language that the court found objectionable. Subsection 13 of Article XIV was adopted in its place to provide guidance for the review of special use exception petitions for indoor entertainment facilities. This discussion follows:

At the time of Mr. Pfremer's original petition, he did not intend to sell alcoholic beverages or have entertainment in this business. He has since determined that these activities would enhance the success of this enterprise. Since these uses were specifically excluded in the language of the ordinance that authorized the restaurant special use exception, it is necessary that Mr. Pfremer submit new petitions for these specific uses. An ordinance awarding these special use exceptions will have to remove the prohibition of these uses in ordinance 08-32.

3. Section 2(13)(a), **Entertainment Parking:** This section requires that a facility having indoor entertainment must provide parking at a rate of 2 times the minimum parking required for the restaurant use. The parking code presently demands 25 spaces for the restaurant and a total of 113 spaces for the entire site (This is described in detail in the write up for SUE petition 08-4 that was prepared for the original Lone Wolf restaurant petition and is attached).

The entertainment SUE requires an additional 25 spaces (50 total) for the restaurant if it also has entertainment. Article XV, Section 3 (1) (a) of the Parking Regulations allows up to 50% of the parking requirement for a restaurant to be taken from the surplus parking that is already on the site because the balance of

the building is occupied by office uses. A written authorization from the owner of the property is required to allow this application.

4. Section 2(13)(b), **Sound Emanation:** This section requires an **entertainment use located within 100 feet of a residence located within a residential zoning district to provide engineering evidence that the sound generated from the entertainment use cannot be heard beyond the property line. Acoustical insulation may have to be added to the building to meet this standard. Since the house to the west of this site appears to be within the described 100' radius, it will be necessary for the petitioner to provide this information.** Historically, Ballwin did not receive complaints about entertainment noise from the former Enigma Lounge when it was at this location. The noise complaints were related to the unruly behavior from the patrons as they left the establishment. It may therefore be a fairly simple matter to provide this certification and additional sound insulation may not be necessary.

5. Section 2(13)(c), **Package Sales:** This section prohibits the package sale of intoxicating liquor regardless of what may otherwise be permitted by a liquor license. The package sale of malt liquor is permitted if such sale is otherwise allowed by the provisions of the liquor license. The liquor license requested as of this writing is for the sale of malt liquor and light wine by the drink for consumption on the premises including Sunday sales. **These licenses do not include package sales so the provisions of this section are moot as they relate to this petition.**

6. Section 2(13)(d), **Security Personnel:** This section establishes that the petitioner may be required to provide security personnel during entertainment to deal with issues such as parking, noise, littering and disorderly conduct. The nature of this petition is such that it is unlikely that security personnel will be needed, but it is recommended that the approving ordinance include language granting the City Administrator and/or Chief of Police the authority to require the petitioner to provide security personnel, if, in their judgment, it becomes necessary due to the occurrence of incidents of disorderly conduct, littering, traffic congestion or other infractions associated with this business.

Article XIV Section 4: Review procedure

1. Sec 4 (7) (1) ***Increase traffic hazards and congestion:*** Every use generates traffic. These will be no exception. The critical issue here is the nature and size of the restaurants to which the new uses are being added. This is a coffee house/café with a relatively low traffic volume. The sale of beer and wine will be accessory to the sale of food. Even the addition of entertainment should not significantly increase traffic. The 60 seat capacity of the facility will severely limit the overall traffic generation of the use. The increase in traffic that can be directly attributed to these uses is therefore going to be

nominal in comparison to the theoretical potential overall traffic generation that the site was designed to accommodate when it was originally approved. **In my view there is little basis to support an argument that the parking lot, curb cuts and adjoining roadways have insufficient capacity to accommodate the nominal increase in traffic associated with the proposed additional uses.**

2. Sec. 4 (6) (2) *Adversely affect the character of the neighborhood:* There will be no changes to the building or site improvements. The restaurant is small and will still have the nature of a neighborhood service business. The sale of alcoholic beverages and the lure of entertainment has been an issue at this location in the past, but that was in a much larger space with a full bar license. The ordinance allows the city to require security if the patrons become unruly and to rescind both the special use exception and the liquor license if the business becomes an issue in the community. **Given the safety valves incorporated into the regulations and the city's authority to withdraw permits and licenses, there is little to support an argument that the uses will adversely impact the character of the surrounding neighborhoods in any kind of permanent and irreparable manner such that the special use exceptions should not be approved.**

3. Sec. 4 (6) (3) *Community general welfare impact:* The issues that impact #2 are generally applicable to this question as well. From the perspective of welfare meaning the overall good of the community, I do not believe this use will negatively impact the general welfare of the City of Ballwin. Mr. Pfremer proposes to operate a restaurant, sell beer and wine as an accessory use and occasionally have indoor entertainment. **There is nothing unique or special about the combination of uses at this location that would differentiate it from other similarly situated restaurant businesses in and around Ballwin to make it problematic from a general welfare perspective.**

4. Sec. 4 (6) (4) *Overtax public utilities:* I see no unique or disproportionate impact on the overall public utility (good) associated with this proposal nor any relationship to traditional utilities.

5. Sec. 4 (6) (5) *Adverse impact on public health and safety:* I see no basis to argue that the impacts on public health or safety coming from this proposal will be any different from those that might exist as a result of any other similarly situated and permitted restaurant in Ballwin.

6. Sec. 4 (6) (6) *Consistent with good planning practice:* This term can mean different things in different contexts. It can be an evaluation from an overarching and general perspective such as being consistent with the precepts of the city's comprehensive plan or even the principles of land planning in general, or it can be specific to a site and a situation. Although one might make a negative theoretical argument due to the proximity of alcohol sales and entertainment activities and

residential uses in this situation, it has not been uncommon for Ballwin to allow the placement of commercial uses such as restaurants with alcohol sales at locations in relative close proximity to residential neighborhoods. **This has been viewed as an appropriate land use and within the realm of good planning practice.**

7. Sec. 4 (6) (7) *operated in a manner that is compatible with permitted uses in the district:* Any issues that apply here have already been discussed above. Similarly situated uses all over Ballwin are operated in manners that are compatible with the permitted uses in their various zoning districts.

8. Sec. 4(6) (8) *Operated in a manner that is visually compatible with the permitted uses in the surrounding area.* No change in the visual nature of the site or the building is proposed.

Future Land use Categories:

1. The future land use map of the 2007 Comprehensive Community Plan recommends that this land be utilized as neighborhood commercial. This recommendation has been met.

2. The Neighborhood Commercial section of the plan (page 8:25) recommends that uses in neighborhood commercial areas should include areas to live, eat, shop and get personal services. Low impact “boutique style” developments are recommended. Although this building and its uses may not meet all of these requirements, the proposed restaurant with alcohol sales and indoor entertainment is not inconsistent with these guidelines.

Commercial Design Guidelines (page 8:21):

No change to the architecture or visual character of this site will be made as a result of this proposal so none of the architectural character and site planning guidelines of the 2007 comprehensive community plan appear to be applicable to this petition.

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

Excerpt from the 9/9/08 Petition Review report for petition 08-4 for the special use exception for the restaurant dba Lone Wolf Coffee Company approved vial Ordinance 08-32

Parking: a special use exception was obtained for front yard parking for this building when it was built. At the same time a special use exception was also issued for the operation of a restaurant that became Zhivago's. The site had exactly the minimum number of parking spaces for the building and the restaurant when it was built based upon the minimum parking requirements of the code at the time (1997). The parking requirements have, however, changed since the building was built as has the relative distribution of floor area occupied by office and restaurant uses. The 27,000 square foot building was originally occupied by 9,000 square feet of restaurant and 18,000 square feet of office space. The 90 parking spaces on the site were distributed based upon 45 spaces allocated for the restaurant use (1 space / 200 square feet of gross floor area) and 45 spaces allocated to the office uses (3 spaces for the first 1000 square feet of gross floor area and 1 space / 400 square feet of floor area above that).

The 27,000 square foot building will now be occupied by a 5,097 square foot restaurant and 21,903 square feet of office space. The parking requirement still requires 1 space / 200 square feet of floor area for the restaurant, so the parking requirement for the 5,097 square floor restaurant is 25.45 spaces (the parking formula based upon seating does not apply to this computation because the seating will be approximately 60 so the parking demand per the associated formula would only be 15 spaces and the formula resulting in the larger parking demand applies). The parking code now requires office parking to be one space per 250 square feet of gross floor area. That standard requires 87.6 parking spaces for the office use. A total of 113.05 parking spaces are required for the site. This is 23.05 more spaces than are on the site today. If today's parking standard had been in effect in 1997, the site would have had to provide 132.6 parking spaces.

Since the parking standard for office space was changed after this site was developed, it is legally non-conforming relative to the parking requirements and does not have to provide additional parking as long as the original uses allowed in the building remain. The reduction in floor area dedicated to restaurant uses has reduced the non-conformancy of the site. The nonconforming parking issue should not be a basis to reject an occupancy or a use unless it can somehow be demonstrated that the nonconformancy constitutes a danger to the community or the users of the business. The reduction in square footage for the proposed coffee shop from the square footage of the former Zhivago's restaurant is primarily due to the coffee shop not occupying the banquet room of the original restaurant.