

## SPECIAL USE EXCEPTION REVIEW REPORT

**Petition Number:** SUE 15 - 05

**Petitioner:** Bret and Megan Hilbert  
151 Ries Rd.  
Ballwin, MO 63021  
314-630-9384

**Agent:** None

**Project Name:** Hilbert Restaurant

**Location:** 151 Ries Rd.

**Filing Date:** 7/24/15

**Review Report Date:** 8/5/15

**Submission Compliance Certification Date:** 8/20/15

**Requested Action:** Special Use Exception

**Purpose:** Restaurant with alcohol sales by the drink, front yard parking, outdoor recreation and outdoor display of gardening supplies

**Code Section:** Zoning Ordinance, Article XIV, Sections 14, 17, 19, 20, and 21.

**Existing Land Use/Zoning:** Office / C-1 Commercial

**Surrounding Land Use/Zoning:** West – Commercial / C-1,  
South – Institutional / R-1  
East - Commercial / C-1  
North – Multiple Family / R-4

**Plan Designation:** Commercial,

**Proposal Description:**

The Hilberts are proposing to open a 620 square foot restaurant to be operated out of the rear portion of their building via a walk up window. The existing concrete patio in the rear of the building will be utilized for access to the walk-up window and a place to locate 4 picnic tables for customers. There will be no internal seating. In my discussions with the petitioner this

business has been characterized as a sno-cone stand type of business, but the petitioners propose to offer a much larger selection of food similar in character to what is offered at the snack bar at the Ballwin Athletic Association fields. Of particular note is the plan to obtain a liquor license to allow the sale of alcoholic beverages. In addition to the restaurant, the Hilberts propose to provide a sand volleyball court or other similar outdoor entertainment venue on the site and want to be able to sell pumpkins, Christmas trees or even farm grown vegetables in an outdoor farmer's market type of facility on the grounds of the site.

In general, the site is approximately .9 acres in size and sits on the east side of Ries Rd. approximately 100' north of the intersection with Jefferson Ave. This is approximately one quarter mile south of Manchester Rd. intersection. The site is composed of two parcels and is irregular in shape. It fronts along Ries Rd. for a distance of approximately 220'. The site abuts the Ballwin Manor Apartments to the north, Bee's Beauty Salon to the east and the Masonic Temple to the south. The Olde Towne Plaza lies across Ries Rd. to the west.

The site slopes generally to the southeast and drains onto the adjoining properties. No topographic information has been provided, but the highest point appears to be at the northwest corner of the lot and the lowest point of the site appears to be at the southeast corner. There is no stormwater control system in place on the site, but runoff sheet flows to the southeast where it eventually flows into a yard inlet in the back yard of the Masonic Temple. That pipe system flows southwardly to a point of discharge into Fishpot Creek in Ballwin Meadows Subdivision approximately 750' east of the Ries Rd. bridge of the creek. After flowing in a southeasterly direction through Ballwin, Manchester and portions of unincorporated St Louis County, Fishpot Creek ultimately flows into the Meramec River in Valley Park.

The existing building on the site has a footprint of approximately 750 square feet. The new use will occupy 620 square feet of this building.

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## **PLANNING AND PLAN REVIEW CONSIDERATIONS:**

This review report covers the issues associated with the C-1 Commercial district in which this parcel is locate and the Special Use Exception regulations which apply because of the uses that are proposed for the site.

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## **C-1 DISTRICT REGULATIONS:**

1. Article IX, Section 2 identifies 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. The office use which presently occupies the building and site is compliant with use regulations of the C-1 district, several of the proposed new uses are not permitted by right in the C-1 district and are only allowed by special use exception. This is the reason for this petition.
2. Article IX, Section 3 limits the maximum height of structures to 45 feet. The maximum height

of the existing building, which will not be externally modified, is in compliance with this regulation.

3. Article IX, Section 4. (1) (i and iii) only apply to properties fronting on Manchester Rd. This site does not abut Manchester Rd.
4. Article IX, Section 4. (1) (ii) only applies to properties fronting on the south side of Orchard Lane and does not apply to this petition.
5. Article IX, Section 4. (1) (iv) requires the provision of a 10' deep landscaped area along all roadway frontages of the site. The submitted site plan meets this requirement along the Ries Rd. frontage of the site, but, due to the irregularity of the right-of-way along the front of the existing building, it is legally nonconforming on the south side of the site where the parking is located. This is due to the 2002 realignment of Ries Rd. north of Jefferson Ave. to intersect with Seven Trails Dr. at Manchester Rd. This realignment eliminated the right angle curve in front of 151 Ries Rd. and took the road west of the structure. Ballwin did not vacate the unused right-of-way, so the parking lot is actually built within the old right-of-way; the site is legally nonconforming relative this landscape requirement and house is legally nonconforming in its setback from the right-of-way line.
6. Article IX, Section 4. (2) requires landscaped side yards of 25' depth where commercial sites abut residential uses or residential or recreational zoning classifications in a side yard configuration. This provision of the ordinance applies along the east side of the petitioned site. **The submitted site plan shows no site improvements within this area, and no information is provided regarding the nature of any landscaping that is proposed for this area. The notation that an 8' tall fence and landscape screen will be provided along the property line is insufficiently detailed to fully understand the nature of this proposed feature. I recommend that no affirmative action be taken on this petition until this screen is detailed and dimensioned on the site.**
7. Article IX, Section 4. (3) (i) requires a 25' deep landscaped rear yard area where the site abuts non-commercial uses. **The issue along this property line is similar to that described for the side line in section 6 above. There is some existing landscaping in this area, but its extent is not described on the site plan and no information regarding new landscaping is provided. I recommend that no affirmative action be taken on this petition until the 25' deep landscaped rear yard setback is detailed.**
8. Article IX, Section 4. (3) (ii, iii and iv) and (4) do not apply to this petition.
9. Article IX, Section 5. (1) requires the provision of parking in accordance with the provisions of Article XV. This code section requires a minimum of 1 space per 200 square feet of gross retail floor area. The parking provided in the submitted site plan meets this requirement. The building has 715 square feet of floor area. This corresponds to 4 parking spaces and there are 5 spaces on the site presently. This petition proposes to use 600 of the 715 square feet for the restaurant kitchen and storage (no internal seating). This does not change the 4 space requirement overall requirement, but it assigns a minimum of 3 of the 5 spaces to the proposed restaurant.

This petition also proposes to place 4 picnic tables on the outside patio area. With six (6) seats per table, the total seating will be 24. The second restaurant parking standard is based upon seating. One (1) space is required for each four seats. Twenty four (24) spaces require 6 spaces. The petition proposes to add two new parking spaces, so the total parking, based upon the minimum standards of the zoning regulations will be met.

**Parking, and traffic generation in general, are issues that concern me with this proposal. The zoning regulations establish parking based upon traditional restaurants with seats and indoor seating. This restaurant is quite different from this scenario. It will primarily be a sno-conde business with some other restaurant fare mixed in. If approved as petitioned it will also sell alcoholic beverages and offer entertainment that may tend to keep people around longer than a conventional restaurant might. I am concerned that its nature will generate a parking demand in excess of 6 spaces, and there is no nearby alternative for overflow parking. The adjoining streets do not allow on-street parking and the nearest parking lots are a considerable walk away. A parking demand in excess of the 7 spaces proposed could end up parked illegally on adjoining driveways and yards, in the adjoining multiple family parking lot, in the church lot approximately 300 feet to the south or in the Olde Towne Plaza lot approximately 500 north. This combination of overflow parking locations is unacceptable from the neighbor's perspective and exceedingly far away for the customers.**

**No traffic study has been provided and it might be a good idea to require such a study given the possible scenario outlined above. The most closely applicable operation that I can draw from was the Andy's Frozen Custard petition that was approved for Gordon Plaza in 2015. The traffic study for that use, which was a frozen custard restaurant with only walkup windows, projected a traffic flow of 130 trips in the evening peak hour. I understand that Andy's is a different business that also has a drive through window, but Mr. Hilbert's business has a very different product mix. If the trip generation of this business is even 20% of Andy's, there is a tremendous potential for inadequate parking. When the possibility of longer term visits associated with the alcohol sales and entertainment feature gets factored in, the potential for a parking or traffic congestion problem gets even worse. The petitioner has shown a future parking area. His proposal is to test the market with 7 spaces. If additional parking is required, he will expand the parking lot. There is room for about 10 additional parking spaces in the expansion area. No explanation is suggested as to the events or circumstances necessary to trigger the construction of the additional parking spaces.**

10. Article IX, Section 5. (2) allows a parking reduction in exchange for more landscaping. The petitioners have not indicated any intent to utilize this option and frankly the parking concerns do not justify their doing so.
11. Article IX, Section 6. requires the submission of the site development plan to MoDOT for its review. This site does not adjoin a MoDOT controlled roadway, so there is no logic in submitting the petition for MoDOT's review.

12. Article IX, Section 7. (1) requires that the minimum spacing of curb cuts be 500' between centerlines. There is only one curb cut so this provision of the ordinance does not apply.
13. Article IX, Section 7. (2) requires the construction of a 6' wide sidewalk along Manchester Rd. This site does not adjoin Manchester Rd., so this provision of the ordinance does not apply.
16. Article IX, Section 7. (3) requires that a cross access, driveway/parking lot vehicular interconnection easement be established to allow a future parking lot interconnection with adjoining properties. The ordinance allows this requirement to be waived for topographic or site design reasons. Given the shared access of this site with the three adjoining properties, there is no reason to require an additional interconnection easement.
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### **SUE Regulations (Article XIV):**

1. Sec.1 (1) (17, 19, 20, 21 and 26) restaurants, alcohol sales, outdoor display and sale of gardening supplies and front yard parking are allowed by special use exception (SUE) in the C-1 zoning district.

2. Sec. 2 (1) *Minimum Yard Requirements*: The minimum yard requirements of the C-1 District do not appear to have been met. As described previously in this report this building does not comply with the minimum setback requirements of the C-1 district. It was built before Ballwin was incorporated as a city in 1950, predates the C-1 district and is legally nonconforming relative to the minimum setback from the right-of-way line in the C-1 district.

3. Sec. 2 (2) *Site Illumination*: **No site illumination has been shown on the submitted drawings. The petitioner sees this as being a relatively low activity business, but this subsection requires that "appropriate site illumination" be provided and that it cannot disturb adjacent property or rights-of-way. The term appropriate is not defined, and in some cases no illumination may be appropriate, but given the nature of the proposed uses on the site that could extend into the evening hours, some exterior illumination is going to be installed. Given the close proximity of the adjacent residential uses, I believe that a site illumination plan is in order, and it needs to address the minimum standards for such illumination outline in this subsection. I recommend that the Commission not take any affirmative action this petition until the issue of site illumination is more fully addressed.**

4. Sec. 2 (3) *Greenery and Planting*: There is minimal landscaping on this site today. What's there is predominately a grown up fence row along the north property line. **The petitioner proposes to create an 8' tall fence and landscape screen along the east property line abutting the adjoining residential use. No detail is provided as to what fence structure and plantings will be incorporated into this screen. The C-1 district regulations require 10' deep landscape areas along the roadway frontages and 25' deep landscape areas along the abutting residential uses to the north and east. No such landscaping is shown. This is also discussed in Sections 6 and 7 in the C-1 district regulations section**

of this report. I recommend that no affirmative action be taken on this petition by the commission until a more extensive and descriptive landscaping plan is provided.

5. *Sec. 2 (4) Fencing:* The submitted plan shows an 8' tall fence/landscaped area along the property line. Detail as to the nature of the fence is needed. This is also part of the landscaping plan discussed earlier in this report.

6. *Sec 2 (5) Parking:* This issue is discussed in section 9 of the C-1 section of the report. As I explained there, I am concerned about traffic and parking for this proposed business. It is different from the restaurant proposals Ballwin has dealt with in the past. I think a traffic study may be in order to get a better feeling for the traffic and parking demand that this business will produce. If the low-key utilization of the petitioner pans out, these will probably not be issues. If the business proves to be popular, there is no room on this or surrounding sites for parking overflow or traffic congestion. The option of expanding the parking lot by 10 spaces may not be adequate, and there is the issue of what scenario or criteria have to be met to trigger the expansion. Ballwin's recent experience at Ballwin Grove Plaza with restaurant parking is evidence that assuming all will work out because it usually does is not a universally valid assumption. A traffic study, although expensive and not offering a guarantee of accuracy, would give some additional documentation as to the expected extent of any such problems.

7. *Sec. 2 (6) Pavement:* No detail on the construction of the pavement has been provided. **Pavement sections and lot design are stipulated by Ballwin code, but more detail on the layout of the parking lot expansion and the proposed future expansion should be provided.**

8. *Sec 2 (7) Storm water runoff control:* **There are no existing storm water facilities on this site. The two proposed additional parking spaces will not generate sufficient additional runoff to necessitate MSD review. This is equally true of the future parking addition if it becomes necessary. In fact, this site is so small that if it were 100% paved it would not create enough additional runoff to exceed MSD's 2 cfs increase threshold. If the parking expansion becomes necessary the site plan will have to be reviewed by MSD for water quality. Although its regulations stipulate that water quality improvements are only required for disturbed sites in excess of one acre, MSD routinely requires water quality improvements on smaller sites. This review should be conducted as a condition of petition approval and no building permit or business license should be issued until this review is finalized.**

9. *Sec. 2 (8) Loading docks and facilities:* No such facilities are required or necessary for this kind of development.

10. *Sec. 2 (9) Ingress and Egress:* **This is also an element of a traffic and parking demand analysis. The proposed access to this site is shared with three other properties. The recommended traffic and parking study should also look at this this issue. A lot of volume or excessive parking demand might argue for a different access to this site, a**

different location for the parking lot or a change in the configuration of the present shared access.

11. *Sec. 2 (10) Adequate area for the use:* I believe that it is reasonable to conclude that there is adequate area for the proposed use, but this is qualified by the results of the traffic and parking study. There has to be sufficient parking and vehicle maneuvering room for this observation to remain affirmative.

12. *Sec. 2 (11) Dead storage, dismantling and repair of automobiles:* This is not expected to be an issue with this use and there are other regulations that would allow enforcement of these kinds of issues on this site.

13. *Sec. 2 (12) Rubbish and trash disposal and screening:* No provision has been made for the placement of a dumpster or any screening of such a facility. It is not likely that an interior trash receptacle could be large enough for a restaurant operation, so an exterior dumpster is almost a certainty. I recommend that the Commission make no affirmative recommendation on this petition until this issue is properly addressed.

14. *Sec 4 (6) (1) Increase traffic hazards:* This is an issue that should be addressed in the traffic and parking study. The study should look at the current and projected post-development traffic volumes at the Ries Rd. curb cut. The business will certainly increase traffic, but will it be enough to create additional traffic congestion on Ries Rd. I am concerned that this might be an issue given the close proximity of the business curb cut to the Jefferson Ave. intersection with Ries Rd. This is a fundamental issue with this development, and I recommend that the Commission satisfy itself that the new business will not generate additional traffic to the point that congestion will be outside of acceptable tolerances for the continued function of this roadway at its present level of service.

15. *Sec 4 (6) (2) Neighborhood character impact:* The adjoining residential properties to the north, east and southwest of this site may potentially be impacted in a negative way by these proposed uses. This property is zoned for commercial development and there is commercial zoning across the street to the west and adjacent to the east. Additionally there are institutional uses to the south (Masonic Temple and the First Missionary Baptist Church). Even with this surrounding mix of nonresidential uses, this neighborhood has a distinct single family residential character. This is primarily the result of the nature of the buildings in the area and the size of the various lots. The commercially zoned properties to the east are residential structures that have historically been occupied by single family residential uses in conjunction with small scale commercial uses. There are single family uses to the east of these properties and south of the church along both sides of Ries Rd. There is a multiple family use immediately adjacent to the north of the site. These long standing residential uses and structures impart a distinctly single family residential character to this neighborhood. Any commercial use needs to be sensitive to this character to avoid negative impacts. I am not sure that everyone would agree that an outdoor eating establishment with alcoholic

**beverage sales and outdoor entertainment is sensitive to a residential character. The intensity of the activity on the site as measured in the traffic study could play a major role in this analysis.**

16. Sec. 4 (6) (3) *Community general welfare impact*: **The issues discussed as a part of the neighborhood character impact (section 4 (6) (3) above) also fall into the category of the general welfare of the community. I believe that these same issues, if not properly understood and addressed in the site development plan and the operating plans for the business, can potentially have a negative impact on the general welfare of the entire community as well as the neighborhood.**

17. Sec. 4 (6) (4) *Overtax public utilities*: I do not see that the proposed uses will have any significant impact on public utilities.

18. Sec. 4 (6) (5) *Adverse impacts on public health and safety*: **A significant increase in traffic volumes on Ries Rd. and in the proximity of the Ries/Jefferson intersection without proper roadway design considerations could be viewed as having an adverse impact on public safety. Again, a traffic and parking study would shed some light on this issue.**

19. Sec. 4 (6) (6) *Consistent with good planning practice*: to my knowledge Ballwin has not previously allowed the establishment of this kind of a commercial development on a property with a similar proximity to residential and commercial developments. **Lacking an understanding of the traffic issues associated with the proposed use and a poorly detailed landscaping and screening plan, it is difficult to make a case for good planning practice.**

20. Sec. 4 (6) (7) *Operated in a manner that is compatible with permitted uses in the district*: The same issues that have applied to several of these analytical sections apply here too. A restaurant can frequently be operated in a manner that is compatible with the uses permitted in the C-1 commercial district. **Operational compatibility with the uses permitted in the nearby residential zoning districts (and use areas) is not as clear. Is an outdoor eating and drinking establishment with a sports entertainment facility compatible with a single family dwelling that is 50' away or from an apartment that is 150' away? Does the absence of any definitive screening for these abutting uses come into play in this analysis? I suspect that it does. I do not believe that there is sufficient information to make an affirmative determination to the question put forth in this section.**

21. Sec. 4(6) (8) *Operated in a manner that is visually compatible with the permitted uses in the surrounding area*. The lack of detailed information about site illumination, landscaping, screening and parking leave many unanswered questions about visual compatibility. There is legitimate concern that there is little basis to support the position that this use, as proposed, would be visually compatible with permitted uses in the surrounding residential areas. The same can be said about the impact on the nearby institutional uses. Religious structures such as churches are traditionally located in residential areas and share the culture and character of such neighborhoods. The proposed commercial use may not be compatible from the visual perspectives of signage, illumination levels and parking, not to mention general site activity and

noise issues. These are less of a concern as they relate to the surrounding commercial uses. **No useful information has been provided about many of the proposed use's operational and site characteristics. I recommend that the Commission not make a recommendation on this petition until these site issues have been more thoroughly understood and addressed.**

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#### **LIQUOR LICENSE ISSUE:**

The alcoholic beverage code states that "no license shall be granted for the sale of intoxicating liquor within 300 feet of any school, church or other building regularly used as a place of religious worship." The First Missionary Baptist Church at 206 Ries Rd. is the closest such facility. The church building is approximately 390 feet from the building in which the sale of alcoholic beverages is proposed pursuant to this petition.

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