

# SPECIAL USE EXCEPTION REVIEW REPORT

**Petition Number:** SUE14-01

**Petitioner:** Mr. Nawshad Kabir of  
The Star Group, LLC  
405 Elm Crossing Court  
Ballwin, MO 63021  
314-332-0468

**Agent:** None

**Project Name:** St. Louis Taco & Pita Grill

**Filing Date:** 2/10/14

**Review Report Date:** 3/17/14

**Submission Compliance Certification Date:** 3/17/14

**Requested Action:** Special Use Exception

**Purpose:** Restaurant with carryout, liquor by the drink and a drive through window

**Code Section** Article XIV Sec. 1 (20, 21 and 26)

**Location:** 15493 Manchester Rd.  
(NE corner of Manchester and Hillsdale)

**Existing Land Use/Zoning:** Retail (vacant unit) / C -1

**Surrounding Land Use/Zoning:** North – Office-Retail / C -1  
South - Retail / Ellisville Commercial  
West - Retail / C-1  
East – Retail / C -1

**Plan Designation:** Office / Retail Commercial

**Project Description:**

Mr. Kabir is proposing to open a Mexican and Greek fusion restaurant with alcoholic beverage sales and a drive through window in the former Kentucky Fried Chicken restaurant at 15493 Manchester Rd. Mr. Kabir plans to occupy the existing building and site with no substantive changes to either. The restaurant proposes to be open 7 days per week for lunch and dinner> it will be open until 10 P.M. on weekdays and 11P.M. on weekends. The restaurant will seat approximately 35 patrons. A beer and wine license is requested. The necessary SUE is being requested as a part of this petition. No live entertainment is proposed at this time and no special use exception for live entertainment is being

requested.

Mr. Kabir has not provided a current site development plan. He has, however, provided air photographs of the site showing the building and the site improvements. He indicated that he has no plans to alter the site. I was able to find the original KFC site plan in Ballwin's records. This is attached to the report. The site does not appear to have been substantively changed since it was built in 1983.

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#### **Zoning Ordinance Requirements/C-1 District - Article IX:**

1. Restaurants, the sale of alcoholic beverages by the drink and drive through windows are uses that are only allowed in the C-1 District by special use exception.
2. The building proposed for occupancy appears to be in compliance with the minimum height and setback regulations of the C-1 Zoning District per section 3.
3. This site appears to be in compliance with all minimum setback and yard requirements of the C-1 District per Section 4.
4. Section 4. (1) (iv) requires that a 10' deep landscaping area be provided along the roadway frontages of the site. The landscaped area along Manchester Rd. appears to meet this dimensional requirement. **The landscaped area along Hillsdale Dr. does not appear to be more than about 5' wide. This site development plan was approved by ordinance 1545 in 1981. The 10' setback requirement was not an ordinance requirement until 2008. This makes this site legally nonconforming relative to this ordinance requirement as long as the site development plan is not changed. The petitioner states that he has no intention of changing the site plan for his restaurant.**

**The original approved plan shows extensive landscaping in the required front yards. Some of this landscaping, especially on the Manchester Rd. frontage is still in place, but some is missing. Of particular note in this regard is the Hillsdale frontage. None of the landscaping proposed in the original plan along this frontage is in place today. I recommend that the petitioner plant new landscaping that matches the general intensity of the landscaping improvements shown on the original approved KFC site development plan thereby bringing the site into compliance with that plan.**

5. Section 4. (3) requires a 25' deep fully landscaped rear yard. This depth requirement does not appear to be in compliance with the current plan. **As was the case for the front yard setback discussed in #4 above, as long as this site development plan is not amended, it is legally nonconforming for this requirement and can be utilized in its present form. Most of the original vegetation planted in this area, however, does not appear to be there today. The rear yard is overgrown with brush and weeds. Some of the original evergreen trees are still there, but they do not appear to be in very good condition. None of the shrubs or deciduous trees appear to remain. I recommend that the petitioner clean this area up, retain what can be kept and plant new landscaping materials in a plan that approximates the intensity of the original planting plan thereby bringing it back into compliance with the original approved site development plan.**
6. Section 5. (1) requires parking in compliance with the minimum requirements of Article XV. The existing parking appears to be compliant with this regulation. This

matter is discussed more fully in the SUE section of this report.

7. Section 7. (1) requires that the minimum spacing of curb cuts be 500' between centerlines for sites with "new development, redevelopment, building expansion or site improvements". This site has only one curb cut and that configuration will not change as a part of this petition.
8. Section 7. (2) requires that construction of 5' wide sidewalks along Hillsdale Dr. Manchester Road. **As was the situation in section 4 above, this ordinance requirement postdates the approval of this site development plan and it is therefore legally nonconforming relative to this requirement.**
9. Section 7. (3) requires the dedication of a cross access easement where a parking lot interconnection is necessary to minimize traffic congestion and vehicular conflict points. The topography of this site relative to Hillsdale Dr. makes an interconnection between the parking lot and Hillsdale Dr. very difficult. It would have to be done within the southernmost 50' or so of the Hillsdale Dr. frontage north of the Manchester Rd. intersection. This is too close for a safe curb cut onto a roadway as busy as this one. **There is, however, the possibility of a parking lot interconnection to the east and the possibility of a shared single curb cut with the business to the east at some point in the future. For this reason I believe an interconnection between the two parking lots should be pursued, or, at the very least, a cross access and parking lot interconnection easement running 50' deep from the Manchester Rd right-of-way line and from the center of the curb cut to the east property line should be granted to Ballwin to allow a future parking lot interconnection and perhaps the shared curb cut at such time as the adjoining property is redeveloped. Because no changes to this site development plan are proposed, there is a question as to whether the dedication of this easement is an ordinance requirement. The easement is only required if there is "...new development, redevelopment, building expansion or site improvements..." Clearly there is no site improvement or building expansion with this petition. The question comes down to whether or not a new business remodeling and opening in an existing building is development or redevelopment. Although frequently used in the Zoning Ordinance, neither term is defined in Ballwin's Code of Ordinances, but the common dictionary definitions of develop all revolve around growing and becoming more apparent or fully existing. I believe that this petition meets that definition and therefore believe that the easement is necessary to approval unless waived by the Board of Aldermen.**

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## Zoning Ordinance Requirements/SUE Regulations:

### ***Article XVI Section 2:***

This petition involves the occupancy of an approximately 2000 square foot building on an existing developed site. A site development plan that is still manifest in the present site

arrangement was approved as a part of a special use exception approved in 1981 for Kentucky Fried Chicken by ordinance 1545. The special use exception ceased to exist 90 days following the failure of KFC to renew its business license in 2013. As long as the site is not modified or changed, a new allowed use can occupy the existing building without having to amend the site plan which is legally nonconforming and can continue to exist and be used even though it does not meet the current requirements of the SUE or C-1 district regulations. Even with the antiquity of the site improvements, the existing site development plan appears to be in compliance with subsections 1, 2, 4, 6, 7, 8, 9, 10, 11, 12 and 13 of Section 2 of Article XVI of the Zoning Ordinance. There are no obvious issues with yard requirements, illumination, fencing, pavement, sanitary sewers, storm water runoff, ingress, egress, loading or trash disposal. Having said this, I have discussed in more detail the subsection topics of parking and landscaping as the two areas that I thought could be challenged or questioned at the hearing.

Section 2 (5), Parking: The site presently has 17 marked parking spaces including one accessible space. The 2000 square foot building is required to have 10 spaces (including 1 accessible) on the basis of its floor area. It, therefore, easily meets the parking requirement on the basis of floor area. **For restaurants, parking is to be provided on the basis of floor area as discussed above or on the basis of seating at the ratio of one space per 4 seats. The larger of the two requirements must be met. According to the petitioner, the restaurant will have seating for 38. On the basis of one space per four seats, this restaurant will have to have 10 parking spaces, so the site is compliant for both measures of parking for restaurants.**

Section 2 (3), landscaping: **As discussed in earlier in this report in the section on the C-1 district regulations, this site is legally nonconforming for many of the site development requirements of the current SUE and C-1 district ordinance regulations. This is because the site is still substantially compliant with the site development plans approved in 1981 pursuant to the site development regulations that were in force at that time. A new legal use can occupy the building, and, as long as no changes to the site plan are made pursuant to the new use, the site remains legally nonconforming. The new use, however, is required to live up to the provisions of the original approved site development plan. Landscaping is an area where the site does not appear to be compliant with the original plan. The order of magnitude of the plantings in the two front yards and the rear yard appears to be quite different from what was originally required. As discussed earlier in this report, the plantings along Hillsdale Dr. are completely gone, the plantings along Manchester Rd. seem sparse and the planting in the rear yard are gone, deteriorated or severely overgrown. I recommend that the site landscaping be cleaned up, rejuvenated and expanded to the point of comparable intensity and nature to the original plantings plan.**

#### **Article XVI Section 4 (6):**

1. Sec 4 (6) (1) *Increase traffic hazards and congestion:* Every development generates traffic. The St. Louis Taco and Pita Grill will be no exception. This site was occupied by a Kentucky Fried Chicken fast food restaurant for over 30 years. Although not McDonalds, KFC was a relatively high volume restaurant. I have no traffic congestion study for the area, but my personal anecdotal observations from frequently turning at the Manchester/Hillsdale intersection

is that traffic exiting KFC sometimes interfered or conflicted with traffic entering and exiting Hillsdale Dr. The problem seemed to be worse in the evening peak drive time because of the conjunction of peak hour roadway traffic and restaurant traffic. It was more a matter of drivers having to pay attention rather than there being a serious hazard. Given the nature of this proposal I have not required the submission of a traffic impact study. My rationale is that this restaurant is not likely to generate any more traffic than had been generated by KFC, and it will probably be less. KFC's traffic was not insignificant, but it was not so heavy as to be a serious problem. By extension, this restaurant was not likely to generate a serious traffic problem.

2. Sec. 4 (6)(2) *Adversely affect the character of the neighborhood*: The character of the commercial and adjoining residential neighborhoods should not be significantly changed or impacted as a result of this development. **The proposed use is substantially the same as the previous occupant's use. I am unaware of any negative impacts on the character of the surrounding residential and commercial neighborhoods that were the result of KFC on this site for more than 30 years. There will be no changes to the proximity of the building and other site improvements to the nearby uses. I do not, therefore, see that there will be an adverse impact on the character of the neighborhood.**

3. Sec. 4 (6) (3) *Community general welfare impact*: The issues that impact #2 above would have some applicability to this question as well. From the perspective of welfare meaning the overall good of the community, I do not believe this facility negatively impacts the City of Ballwin. Clearly traffic, noise, alcohol consumption and other issues associated with the operation of a restaurant might be considered in this category, but there are many businesses already existing in Ballwin that allow these activities without negatively impacting the general welfare of the community.

4. Sec. 4 (6) (4) *Overtax public utilities*: I see no impact on any utilities.

5. Sec. 4 (6)(5) *Adverse impact on public health and safety*: I foresee no impacts on public health or safety coming from this proposal that would be any different from those that might exist as a result of any other restaurant in Ballwin.

6. Sec. 4 (6)(6) *Consistent with good planning practice*: This term can mean different things in different situations, but putting a restaurant at this location was determined to be good planning in 1981 when Kentucky Fried Chicken built on this site. The sale of alcoholic beverages changes this a little, but both uses are allowed in the zoning district by SUE, so there is recognition that such a use can be appropriate under certain circumstances. Parking adequacy was a potential issue and has been previously discussed. Associated with restaurants and the sale of alcohol are issues of traffic congestion, noise, trash, and improper behavior from customers as they come and go from their cars. These problems are mitigated when parking is not near residential areas, the owner keeps the trash cleaned up on and around its site and the time of the commercial trash pick up is limited. None of these has historically been an issue on this site and each of these can be addressed through other enforcement mechanisms if they become problems. The issue of appropriateness, given the proximity to residential properties, is a subjective issue that is not easily resolved, but this site's lack of a direct connection between the proposed use and the adjoining residential areas mitigates the problem. There are, or have been, several examples of similar proximity between restaurant operations and single family

uses in Ballwin over the years. I believe, therefore, that this proximity has in the past been judged to be good planning practice as the term is administered in Ballwin.

7. Sec. 4 (6) (7) *operated in a manner that is compatible with permitted uses in the district:* I believe the issues that apply here have already been discussed above. A restaurant can be operated in a manner that is compatible with the permitted uses in the C-1 Commercial District.

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. I therefore see no substantive visual impact that this use will have on the surrounding area.

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