

2. FINAL DEVELOPMENT PLAN APPROVAL – TALK OF THE TOWN PATIO –
11922 West 119th Street

GENERAL COMMENT: This application was discussed at the July 14, 2008 Planning Commission meeting. A motion was made for approval of the patio without outdoor speakers. This motion was withdrawn and the item was continued to determine if another restaurant in the same commercial center has outdoor speakers on its patio. The applicant was also asked to review the dimension of the sidewalk between a column and the patio railing.

Major Simon Happer of the Overland Park Police Department attended the Planning Commission meeting and responded to questions about calls for service to the Stoll Park commercial center and to the Talk of the Town restaurant. Major Happer has stated that he will attend the July 28, 2008 Planning Commission meeting as well.

The Planning Commission allowed for public comment at the July 14, 2008, meeting. There were no members of the audience that spoke at this meeting. The staff has been informed that there are members of the public that want to speak when this item is discussed at the July 28, 2008, meeting.

1. **APPLICANT:** Dulane Pankratz Architect is the applicant for this request.
2. **REQUESTED ACTION:** The applicant is requesting final development plan approval to allow an outdoor seating patio for a restaurant.
3. **LOCATION:** The subject property is located at 11922 West 119th Street.
4. **EXISTING ZONING:** This property is currently zoned CP-2, Planned General Business District (Rezoning No. 1984-78).
5. **ANALYSIS:** The applicant is requesting final development plan approval to allow a new outdoor seating patio for the Talk of the Town restaurant in the Stoll Park development. The development is at the northwest corner of 119th Street and Quivira Road. The Stoll Park commercial development began construction in the 1980's. The property had been zoned for a commercial center since the late 1970's. The commercial development and the adjacent residential development to the west and north, Kimberly Downs, were zoned and planned at the same time.

The Talk of the Town restaurant is the western most tenant space of the main building in the development. The patio is proposed on the west side

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of the building. Three parking stalls are to be removed to provide adequate room for the patio and at least five feet of sidewalk allowing pedestrians to move around the patio. The Americans with Disabilities Act (ADA) requires sufficient sidewalk width for wheelchairs and pedestrians to pass each other. The staff has enforced a minimum of five feet of sidewalk width and an additional two feet for vehicles to overhang the sidewalks when parked.

The patio is proposed to have six tables and 24 seats. A metal railing will be installed to limit access; customers must enter the patio by way of the interior restaurant space. An emergency exit gate will be installed per building code requirements. The applicant is proposing decorative metal posts be installed at regular intervals along the railing. The spacing of the posts and railing will be required to meet all building code requirements.

The Stoll Park commercial center has a total of 457 parking stalls based on a count done by the staff. The Talk of the Town restaurant had originally been approved to have 165 seats. The restaurant has removed seats from the inside of the restaurant. The total number of seats including the added 24 seats for the patio is 156. Based on the parking requirements for the other restaurants and the balance of retail square-footage of the center, 456 parking stalls are required. Staff is aware that patrons of the restaurants will tend to park as close as possible to the entrances and even parallel park in the drive aisles. Staff will discuss this issue with the restaurant management and encourage them to proactively have the customers use available parking stalls in the center which may be further away from the entrances.

The management of the Talk of the Town restaurant and staff has discussed the requirements of outdoor seating patios at length. The restaurant had a patio in the same general area as what is now proposed; but, did not obtain approval to do so. A metal railing was installed between columns, and tables were placed on the sidewalk between the columns and the wall of the building.

The Community Services Division was contacted and a site inspection was made. The management of the restaurant was informed that the railings, tables and chairs had to be removed and that a final development plan was required for a patio to be installed.

The initial reason that the Community Services Division was involved is because a complaint about noise from the patio was made. In addition to

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the complaint to the Community Services Division, complaints were made to the police department. The planning staff contacted the police department to get a summary of the calls for service to the Talk of the Town restaurant. That summary is included in the comments as a memorandum from the police department. It states that five calls for service were made from February 18, 2008, to June 28, 2008. The summary also states that each incident was handled by the officer at the scene. No citations or tickets were issued for these incidents.

The noise ordinance establishes a maximum volume level at the common property line with a neighboring property. In the case of residential property, the maximum volume level is 55 decibels between the hours of 10 p.m. to 7 a.m. and 60 decibels between the hours of 7 a.m. to 10 p.m. The only exception to these volume levels is for construction activity. There are also ordinances that address specific sources of sustained excessive noise like dog barking and lawn and gardening equipment. A copy of the noise ordinance is included with the staff comments.

Concerns about noise at this center were raised in the past for another restaurant that had live music played on several nights throughout the week. The owner of that restaurant, the neighbors, and the Planning Commission discussed these concerns and included stipulations that were intended to bring the establishment into compliance with the ordinances. The owner of the restaurant agreed to install sound dampening material, to stop the music at certain times and to require that the rear doors of the restaurant remain closed during the live music. The staff is not certain if live music is still being performed at this restaurant.

The staff has received letters from adjacent residents regarding the request for this patio. These letters are included with the staff comments. The letters include comments about the installation of a speaker system that would play music on the patio. The management of the restaurant has also provided a letter, included with the staff comments, indicating that speakers are a part of the request for the patio. The letter states that the speakers will be positioned so that they orient away from the parking lot and residences to the west. The staff does not object to an outdoor speaker system. Any music or noise from patrons of the restaurant must adhere to the maximum decibel level stated in the noise ordinance.

6. STAFF RECOMMENDATION: Staff recommends approval of Final Development Plan, Talk of the Town Patio, subject to the following stipulations:

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- a. The location and geometrics of all driveways and parking areas are subject to review and approval by the Planning and Development Services Department.
- b. A Building Permit shall be obtained prior to the installation of the patio.
- c. Any music system and noise generated by patrons of the restaurant shall comply with the city's noise ordinance.