



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2012-0232**

**Final Action:**

**Sponsor(s):** Safety & Development Committee

**DEC 04 2012**

Resolution relative to determination of Special Use Permit for Oscar's Frozen Custard to establish a drive-thru addition to the existing restaurant located at 2362 S. 108 St.

WHEREAS, Jim and Suzy Taylor, d/b/a Elsie's Frozen Custard, Inc. filed with the City Administrative Officer-Clerk/Treasurer an application for a Special Use Permit, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code, to establish a drive-thru addition to the existing Oscar's restaurant located at 2362 S. 108 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on December 4, 2012, at 7:00 p.m., in the Common Council Chambers to consider the application; and,

WHEREAS, the Common Council, having carefully considered the evidence presented at the public hearing and the following pertinent facts noted:

1. The applicants, Jim and Suzy Taylor, d/b/a Elsie's Frozen Custard, Inc., reside at W279 N2865 Rocky Point Road, Pewaukee, WI 53072.
2. The applicants, Jim and Suzy Taylor, d/b/a Elsie's Frozen Custard, Inc. are proposing building additions and drive-thru on their existing Oscar's Custard Restaurant property. The building additions will consist of an addition on the south side of the building to add/update new men and women restrooms and enclose them within the new building footprint (patrons currently need to access restrooms from outside the building). On the north side of the building, an addition will be constructed for the purpose of providing additional seating (about 16 persons). The property is located at 2362 S. 108 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All the land of the owner being located in the Northwest  $\frac{1}{4}$  of Section 8, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin describes as follows:

Lots 18 thru 24 in Block 1 of the Marquette Gardens subdivision, adjacent vacated street and the adjacent vacated alley.

Tax Key No. 485-0016-004

Said land located at: 2362 S. 108 St.

3. In total, the applicant is proposing to establish an approximate 1,000 square foot addition to the existing 2,300 square foot building. Oscar's will establish a drive-thru and maintain the existing outdoor dining use on the site.
4. The aforesaid premises is zoned C-4 Regional Commercial District under the Zoning Ordinance of the City of West Allis, which permits a restaurant, drive-through and outdoor dining as a special use, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code.
5. The subject property is part of a block along the east side of S. 108 St. between W. Lincoln Ave. and W. Cleveland Ave., which is zoned for commercial uses. Properties to the north, south, and west are developed for commercial uses. Properties to the east are developed as commercial and multi-family residential.
6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property offers adequate off-street parking and is served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Jim and Suzy Taylor, d/b/a Elsie's Frozen Custard, Inc., for Oscar's Frozen Custard to establish a drive-through and building additions to the existing restaurant located at 2362 S. 108 St. be, and is hereby granted on the following grounds:

That the establishment, maintenance and operation of the proposed use, with the imposition of certain conditions hereinafter set forth, reasonably satisfies the standards set forth in Secs. 12.16 of the Revised Municipal Code, so as to permit the issuance of a special use permit as therein provided.

BE IT FURTHER RESOLVED that said special use permit is granted subject to the following conditions:

1. Site, Landscaping, Screening and Architectural Plans. The grant of this special use permit is subject to and conditioned upon the site, landscape, screening and architectural plans approved on November 26, 2012, by the City of West Allis Plan Commission as provided in Sec. 12.13 of the Revised Municipal Code of the City of West Allis. No alteration or modification of the approved plan shall be permitted without approval by the Plan Commission.
2. Building Plans and Fire Codes. The grant of this special use is subject to building plans being submitted to and approved by the Department of Building Inspections and Zoning and by the Fire Department.
3. Restaurant Operations. The restaurant will be permitted to be used for dine-in, carry-out, drive-through and outdoor dining as shown on the approved set of plans.
4. Restaurant Operations:
  - A. All exterior doors shall be kept closed to prevent sound/noise emissions into the adjacent neighborhood.

- B. Excessive odors from cooking on premises shall be controlled within limits of current technology.
  - C. Excessive noise and vibrations shall not emanate from the building or drive-through area. The drive-thru point of order area speaker volume to be adjustable to control noise within the area.
  - D. Employees shall inspect the site and immediate vicinity and pick up litter on a daily basis.
  - E. Exterior pest control shall be contracted on a monthly basis.
5. Hours of Operation. The hours of operation will be from 10:00 a.m. to 12:00 a.m. (midnight), seven days per week.
6. Off-Street Parking. A total of 22 spaces are required on site and 60 parking spaces are provided. Calculations have been calculated using a parking ratio of 1 parking stall required for every 150 gross sq. ft. in accordance with Sec. 12.19 of the Revised Municipal Code.
7. Litter. Employees shall inspect the area and immediate vicinity and pick up litter on a daily basis. Refuse, recyclables, grease and other waste materials will be fully enclosed within an approved 4-sided structure to match the building.
8. Marketing Displays. The use of pennants, special lighting, flags, streamers or other signage typically temporary in nature, hanging, floating or attached to a structure or vehicle shall not be permitted.
9. Deliveries and Refuse Collection. All refuse to be provided by a commercial hauler. All refuse, recyclables and other waste material shall be screened from view within an enclosure approved by the Department of Development. All tenants of the property will be required to abide by the City of West Allis health/public nuisance rules per Chapter 7 of the Revised Municipal Code. Because there are residents that live within the residential neighborhood adjacent to the site, delivery operations and refuse pick up shall only be permitted during daytime hours. These functions shall not be permitted between the hours of 9:00 p.m. and 7:00 a.m.
10. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
11. Sidewalk Repair. The grant of this special use is subject to compliance with Policy No. 2814 of the Revised Municipal Code relative to the City's sidewalk improvement policy as it relates to damaged, abutting sidewalk.
12. Outdoor Lighting. The grant of this special use is subject to all lighting fixtures being orientated and/or shielded in such a manner that no light splays from the property boundaries.
13. Noxious Odors, Etc. The use shall not emit foul, offensive, noisome, noxious or disagreeable odors, gases, or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.

14. Pollution. The use shall not cause any noxious or unwholesome liquid or substance or any dirt, mud, sand, gravel, or stone refuse or other materials to be deposited upon any public right of way or flow into any sanitary sewer, storm sewer, or water supply system, or onto adjacent properties.

15. Expiration of Special Use Permit. Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:

A. The applicant requesting the extension shall complete a planning application available from the Department of Development and shall submit a \$250.00 extension fee.

B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;

C. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit;

D. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.

16. Miscellaneous.

A. Applicants are advised that the foregoing conditions are reasonably necessary to protect the public interest and to secure compliance with the standards and requirements specified in Sec. 12.16 of the Revised Municipal Code; that the issuance of the special use is expressly subject to compliance with said conditions.

B. The use, as granted herein, is subject to applicants' compliance with all other state and local laws and regulations which may be applicable to the proposed use of the real estate in question.

C. The special use, as granted herein, shall run with the land and benefit and restrict all future owners and occupants of the property, unless the use shall lapse or be terminated and the use will not be altered or extended (including structural alterations and/or additions) without the approval of the Common Council, following public hearing, all as provided in Sec. 12.16 of the Revised Municipal Code.

17. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Special Use Permit. The failure of the applicant to meet the terms and conditions of the Special Use Permit shall subject the permit to being declared void by the Common Council after notice to the

applicant and a hearing before the Safety and Development Committee. Upon a finding and recommendation by the Committee to the Common Council on the matter, the applicant and/or any interested person may make comments regarding the matter to the Common Council prior to the Common Council's next regular meeting following the recommendation. Upon the Common Council's finding that the Special Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

18. Termination of Special Use. If the person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of West Allis, the State of Wisconsin or the United States on the premises covered by the special use, then the special use may be terminated.

19. Acknowledgement. That the applicants sign an acknowledgment that he has received these terms and conditions and will abide by them.

The undersigned applicant agrees to the terms and conditions and has agreed that the grant of the Special Use Permit is conditioned on meeting the terms and conditions of this resolution.

\_\_\_\_\_  
Jim and Suzy Taylor, property owners

Mailed to applicants on the

13 day of December, 2012

Monica Schultz  
Assistant City Clerk

cc: Dept. of Development  
Dept. of Building Inspections and Zoning  
Div. of Planning

ZON-R-898-12-4-12/bjb

ADOPTED DEC 04 2012

\_\_\_\_\_  
Paul M. Ziehler  
Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED 12/11/12

\_\_\_\_\_  
Dan Devine  
Dan Devine, Mayor

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West Allis, WI 53214

Chris DeRosier hereby states that he is authorized by Journal Communications Inc. to certify on behalf of Journal Community Publishing Group, publisher of Community Newspapers, public newspapers of general circulation, printed and published in city and county of Milwaukee; was published in the My Community Now- Midwest on 11/15/2012 and 11/22/2012; that said printed copy was taken from said printed newspaper(s).

  
Chris DeRosier

State of Wisconsin

County of Milwaukee

Subscribed and sworn before me this 27<sup>th</sup> day of November, 2012.

D-M Groholski

Notary Public State of Wisconsin

My Commission Expires 4/24/16



**CITY OF WEST ALLIS  
NOTICE OF HEARING  
Tuesday, December 4, 2012,  
7:00 P.M.**

NOTICE IS HEREBY GIVEN that the Common Council of the City of West Allis will conduct a public hearing on Tuesday, December 4, 2012, at 7:00 P.M., or as soon thereafter as the matter may be heard, in the Common Council Chambers of West Allis City Hall, 7525 W. Greenfield Avenue, West Allis, Wisconsin on the Special Use Permit for Oscar's Frozen Custard to establish a drive-thru addition to the existing restaurant located at 2362 S. 108 St.

You may express your opinions in writing to the City Clerk prior to the meeting or orally at such public hearing.

Dated at West Allis, Wisconsin, this 6th Day of November 2012.

12H50

/s/Paul M. Ziehler, City  
Administrative Officer,  
Clerk/Treasurer

PUBLISH: November 15, 2012  
and November 22, 2012

