

**CITY OF WEST ALLIS
RESOLUTION R-2022-0561**

**RESOLUTION RELATIVE TO THE DETERMINATION FOR CONDITIONAL USE
PERMIT FOR BIGGBY COFFEE, A PROPOSED RESTAURANT WITH DRIVE-
THROUGH SERVICE, TO BE LOCATED WITHIN A PORTION OF THE
PROPERTY AT 10230-10288 W. NATIONAL AVE.**

WHEREAS, Gary Tree of Advanced Building Corporation, filed with the City Clerk an application for a Conditional Use Permit, pursuant to Sec. 19.14 and 19.32 of the Revised Municipal Code, to establish a proposed restaurant with drive-through service, to be located within a portion of the property at 10230-10288 W. National Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on September 6, 2022, 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 during the public hearing and the following pertinent facts noted:

1. The applicant, Gary Tree of Advanced Building Corporation, has applied on behalf of Biggby Coffee and the property owner (Badger Century Management LLC). Biggby Coffee will operate the proposed use on a new lot to be created within a portion of the existing shopping centers parking lot at 10230-10288 W. National Ave. The subject property is described as follows:

All that land of the owner being located in the Northwest ¼ of Section 8, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin describes as follows:

Parcel 1 of the Certified Survey Map No. 2013.

TAX KEY NO: 485-9990-011

Said property being located at 10230-10288 W NATIONAL AVE.

2. The aforesaid premise is zoned C-4 Commercial under the Zoning Ordinance, which permits drive-through service as a Conditional Use, pursuant to Sec. 19.32 of the Revised Municipal Code.

3. The applicant is proposing to establish a drive-through service use within a small free-standing building within the existing parking lot. A new lot will be created for the new use via a Certified Survey Map. The lot will be 0.24-acres in area and will be created along the Southern edge of the property for the proposed Biggby Coffee. An access easement will be included to allow cross-access for each site.

4. The subject property is located near the intersection of W. National Ave. and W. Cleveland Ave. (on the north side of W National Ave.). Properties to the north, south, east, and west are zoned for and developed as commercial.

5. The use, value and enjoyment of other property in the surrounding area for permitted uses will not be substantially impaired or diminished by the establishment, maintenance or operation of the Conditional Use.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Gary Tree of Advanced Building Corporation, on behalf of Biggby Coffee to establish a proposed restaurant with drive-through service, to be located within a portion of the property at 10230-10288 W. National Ave.; 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 Sec. 19.14

of the Revised Municipal Code, so as to permit the issuance of a Conditional Use Permit as therein provided.

BE IT FURTHER RESOLVED that said Conditional Use Permit is granted, subject to the following conditions:

1. Certified Survey Map, Site, Landscaping and Architectural Plans. The grant of this Conditional Use Permit is subject to and conditioned upon a Certified Survey Map, Site, Landscaping, and Architectural Plan being approved by the West Allis Plan Commission and Common Council. No alteration or modification of the approved plan shall be permitted without approval by the West Allis Plan Commission.

2. Building Plans and Fire Codes. The grant of this Conditional Use is subject to building plans being submitted to and approved by the Department of Code Enforcement Department and by the Fire Department.

3. Parking. No parking will be provided on the subject property. An easement will be established to provide parking on the abutting shopping center parking property.

Off-street parking of vehicles and vehicle stacking for drive-through service shall be arranged in accordance with the approved site and landscaping plan (inclusive of access aisles being maintained). Changes subject to Plan Commission approval.

4. Business hours. Common Council grants the hours of operation seven (7) days a week 6:00am to 9:00pm.

5. Lighting. Exterior lighting on premise shall require prior approval of a lighting plan by the Planning and Zoning Office.

a) All outdoor lighting fixtures shall be directed downwards and shielded in such a manner that no light spays from the property boundaries.

b) Exterior lighting should be presented in a lighting plan which identifies all exterior lighting features, either mounted on the building or freestanding, along with dispersion pattern, intensity of light and cut-off shielding that reflects away from the street. Light distribution should not spill over onto adjacent properties.

a) "Rope" lighting or similar exposed outward facing LED lighting shall not be used in any manner that results in visible or exposed bulbs.

6. Noise. The use shall not make, produce, allow or cause to be produced any noise which exceeds the noise limitations, as set forth in Ch. 7.035 of the Revised Municipal Code. To prevent excess noise from penetrating into the adjacent neighborhood, the operator is expected to close exterior overhead doors or openings for services that may result in prolonged noise levels.

7. Deliveries and Refuse Pickup. Because there is a residential use adjacent to the site, delivery operations and refuse pickup shall not be permitted between 9:00 p.m. and 7:00 a.m. Refuse collection to be provided by commercial hauler and stored within a four-sided enclosure large enough for all outdoor storage of refuse and recyclable containers.

8. Noxious Odors, Etc. The business 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.

9. 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, unless permitted in accordance with the municipal code.

10. Signage. Signage shall be in accordance with the City signage ordinance. Any window signage shall not exceed 20% of the glazed portion of each window area. Windows signage shall be situated on the internal side of the window.

12. Expiration of Conditional Use Permit. Any Conditional Use approved by the Common Council shall lapse and become null and void 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 conditional 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 60 days of the expiration of the conditional use permit;

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

13. 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 conditional 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 conditional 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.

14. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a conditional use within one year of the granting thereof, then the Conditional Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Conditional Use Permit. The failure of the applicant to meet the terms and conditions of the Conditional 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 Conditional Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

15. Termination of Conditional Use. If the person or entity granted the Conditional 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 conditional use, then the Conditional Use may be terminated.

16. Acknowledgement. That the applicants sign and 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 Conditional Use Permit is conditioned on meeting the terms and conditions of this resolution.

Agent for Badger Century Management LLC

Agent for Biggby

Sent to applicant on the _____ day of _____, 2022.

SECTION 1: **ADOPTION** “R-2022-0561” of the City Of West Allis
Municipal Resolutions is hereby *added* as follows:

ADOPTION

R-2022-0561(*Added*)

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL

_____.

	AYE	NAY	ABSENT	ABSTAIN
Ald. Angelito Tenorio	_____	_____	_____	_____
Ald. Vince Vitale	_____	_____	_____	_____
Ald. Tracy Stefanski	_____	_____	_____	_____
Ald. Marty Weigel	_____	_____	_____	_____
Ald. Suzzette Grisham	_____	_____	_____	_____
Ald. Danna Kuehn	_____	_____	_____	_____
Ald. Thomas Lajsic	_____	_____	_____	_____
Ald. Dan Roadt	_____	_____	_____	_____
Ald. Rosalie Reinke	_____	_____	_____	_____
Ald. Kevin Haass	_____	_____	_____	_____

Attest

Presiding Officer

Rebecca Grill, City Clerk, City Of
West Allis

Dan Devine, Mayor, City Of West
Allis