



# City of West Allis

Resolution: R-2019-0172

**File Number: R-2019-0172**

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

**Final Action:**

**MAR 05 2019**

Resolution relative to determination of Special Use Permit to establish a restaurant with drive-thru within the existing multi-tenant commercial building located at 1606 S. 84 St., submitted by Pete Agnos d/b/a Agnos Enterprises on behalf of J & L Enterprises of WI.

WHEREAS, Al Jacobson, of J & L Enterprises of WI, filed with the City Administrative Officer-Clerk/Treasurer an application for a Special Use Permit, pursuant to Sec., 12.41(2) and Sec. 12.16 of the Revised Municipal Code, to establish a restaurant with drive-thru, located at 1606 S. 84th St., and,

WHEREAS, after due notice, a public hearing was held by the Common Council on March 5, 2019, 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 applicant, Al Jacobson, of J & L Enterprises of WI, will operate the proposed restaurant use within an approximate 3,100-sf portion of the existing 13,000-sf multi-tenant commercial building at 1606 S. 84 St. The owner of the property is Peter Agnos (Agnos Enterprises) for the subject property located at 1606-1650 S. 84th St. and 83\*\* W. Lapham St.

**Tax Key No. 452-0431-001:**

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

Lots 1, 2, 3 and 4 in Block 1, being part of the Assessors Plat No. 256, except West 26.50 feet of said Lots 1, 2, 3 and 4.

**Tax Key No. 452-9999-010:**

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

Beginning at the Northwest corner of Lot 1 in Block 1 of the Continuation of Henderson Park subdivision; thence Southerly, 330.00 feet to the Southwest corner of the Lot 11; thence Southeasterly, 270.57 feet to the Southwest corner of Lot 20; thence Southwesterly, 70.92 feet to the Southeast corner of Lot 6 in Block 1 of the Assessors Plat No. 256; thence Northerly, 593.95 feet to the Northeast corner of Lot 1 of the said Assessors Plat No. 256; thence Easterly, 50.00 feet to the Point of Beginning.

Said land located at 1606 S. 84th St.

2. The proposed restaurant space with seating for 80 persons and will also utilize an existing drive-thru window (formerly used for the previous credit union use) for carry out/pick up orders.
3. The aforesaid premises is zoned C-2 Neighborhood Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants and outdoor dining as a special use, pursuant to Sec. 12.41(2) and Sec. 12.16 of the Revised Municipal Code.
4. The subject property is part of a block along the east side of 84th St. between W. Lapham St. and W. National Ave., which is zoned for commercial uses. Properties to the north and west are developed for commercial and some residential uses. Properties to the east are zoned for manufacturing uses. Properties to the south are developed for commercial and park uses.
5. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property has historically been utilized as a multi-tenant commercial use. Sufficient off-street parking will be provided and the area is also served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Al Jacobson, of J & L Enterprises of WI, to establish a restaurant with drive-thru located at 1606 S 84th 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 Section 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 February 27, 2019, 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. Submittal of Certified Survey Map. The grant of this special use permit is subject to the submittal of a CSM combining the parcels associated with tax keys 452-0431-001 and 452-9999-010 into one parcel. The CSM shall be submitted within one year of Common Council adoption of the special use permit.
3. 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 Neighborhood Services and by the Fire Department.
4. Business Operations. The grant of this special use is conditioned upon the following:
  - A. Excessive odors from cooking on premises shall be controlled within limits of current technology.

- B. Excessive noise and vibrations shall not emanate from the building.
  - C. All exterior doors and windows being kept closed after daytime hours to prevent excess noise from entering the adjacent neighborhood.
  - D. Exterior pest control shall be contracted on a monthly basis and/or in accordance with the City of West Allis Health department.
  - E. Licensed operation. Necessary State and Local licenses being obtained in conjunction with the proposed business operations.
5. Hours of Operation. The proposed restaurant has indicated hours of operation to be from 10am to 11pm seven (7) days per week.
6. Off-Street Parking. Twenty one (21) parking spaces are required for the proposed restaurant use. Total for all tenants at the shopping center is 76 parking spaces. A total of 118 stalls are provided on site.
7. Litter. Employees shall inspect the area and immediate vicinity and pick up litter on a daily basis. Refuse, recyclables, and other waste materials will be enclosed in accordance with the approved site plan.
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. Signage. Signage for the overall property shall be in accordance with the City of West Allis Signage Ordinance Section 13.21 of the Revised Municipal Code; window signage shall not exceed twenty (20) percent of each window's area and be installed on the inside of the glass.
10. 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.
11. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
12. Outdoor Lighting. The grant of this special use is subject to all lighting fixtures being orientated downward 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.

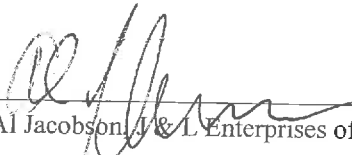
17. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the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

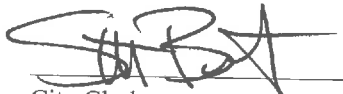
19. Acknowledgement. That the applicants sign an acknowledgment that he has received these terms and conditions and will abide by them.

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.

  
Al Jacobson, J&L Enterprises of WI, tenant

  
Peter Agnos, property owner

12 day of March, 2019

  
City Clerk

cc: Dept. of Development  
Dept. of Building Inspections and Neighborhood Services  
Div. of Planning

ZON-R-1169-3-5-19

ADOPTED MAR 05 2019

APPROVED 3/7/19

  
Steven A. Braatz, Jr., City Clerk

  
Dan Devine, Mayor