



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2013-0126

Final Action:

Sponsor(s): Safety & Development Committee

JUN 04 2013

Resolution relative to determination of Special Use Permit for a proposed addition to Oscar's Frozen Custard, an 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, for a building 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 June 4, 2013, 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. had previously been approved for a drive-through and building additions under R-2012-0232. The property owners have since decided not to go forward with previously planned drive through use, and instead have revised their proposal. This resolution serves as an amendment to the previous special use approval.

The current/amended proposal includes 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). No drive-through is proposed. 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. The applicant is proposing to establish a building addition up to 1,000 square feet to the existing square foot building. Oscar's will 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 restaurants 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 amend a previous use approval to construct a building addition to the existing restaurant without a drive through 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 May 22, 2013 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, delivery and outdoor dining per the approved 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.

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 19 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 Taylor, property owner

Mailed to applicants on the

12th day of June, 2013

Maria Schulte
Assistant City Clerk

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

ZON-R-917-6-4-13-bjb

ADOPTED **JUN 04 2013**

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

APPROVED 6/10/13

Dan Devine
Dan Devine, Mayor