



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

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**File Number: R-2012-0106**

**Final Action: 5/15/2012**

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

Resolution relative to determination of Special Use Permit for Orange Leaf Yogurt, a proposed restaurant with outdoor dining, to be located at 10922 W. National Avenue.

WHEREAS, John Marek, d/b/a Orange Leaf Yogurt restaurant, duly 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 proposed restaurant with outdoor dining, to be located at 10922 W. National Avenue.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on May 15, 2012 at 7:00 p.m., in the Common Council Chamber 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 property is owned by John Marek, P.O. Box 270463, Milwaukee, WI 53227.
2. The property at 10922 W. National Ave., West Allis, Wisconsin, more particularly described as follows:

All the land of the owner being located in the Southeast  $\frac{1}{4}$  of Section 7, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

Lots 19 thru 23, in Block 1, of the National Avenue Homesites Subdivision.

Tax Key No. 520-0014-001

Said land being located at 10922 W. National Ave.

3. The applicant is proposing to demolish the existing building and construct a new building to convert the former Taco Bell, and more-recently Enterprise car rental facility, at 10922 W. National Ave. into a frozen yogurt restaurant with outdoor dining. The site is zoned C-4 Regional Commercial District, which permits restaurants and outdoor dining as Special Uses. The restaurant would not have drive-thru facilities.

The proposed restaurant will serve a full menu of many different flavors of frozen yogurt desserts and soft drinks and will offer sit-down and outdoor dining. The grant of this special use is

conditioned upon the establishment being maintained as a full service restaurant food establishment per City of West Allis Health Department classification.

4. The aforesaid premise 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 located on the corner of W. National Ave. and S. 110 St. Properties to the east, west and south are zoned and developed for commercial use. Properties to the north are developed and zoned for residential use.

6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property is part of a retail-commercial corridor and served by public transit. Previous uses were commercial in nature as a former restaurant, car dealership and car rental agency.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Jon Marek, d/b/a Orange Leaf Frozen Yogurt restaurant to establish a restaurant and outdoor dining area on premise, 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 Sec. 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, Architectural and Signage Plans. The grant of this special use permit is subject to and conditioned upon the Site, Landscaping and Architectural Plans approved on April 25, 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. It is understood the roof pitch will be reduced from 23 feet to 13 feet. The existing monument sign will be moved to the middle of the lot frontage.

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. Hours of Operation. The Restaurant will be open 7 days a week. The hours of operation will be from 11 a.m. to 11p.m. daily.

Outdoor Area - The outdoor area will be open 7 days a week during business hours and closed between 10:30 p.m. and 11:00 a.m. After one year, the Safety & Development Committee may reconsider hours.

5. Operations:



- A. Full-service restaurant food establishment.
- B. All exterior doors shall be kept closed to prevent sound/noise emissions into the adjacent neighborhood.
- C. Excessive odors from cooking on premises shall be controlled within limits of current technology.
- D. Excessive noise and vibrations shall not emanate from the building.
- E. Employees shall inspect the site and immediate vicinity and pick up litter on a daily basis.
- F. Exterior pest control shall be contracted on a monthly basis.
- G. 4-sided exterior refuse area being installed with personnel door and access gate.
- H. Outdoor furniture being removed in the off-season months.
- I. Special events to be authorized by Common Council.
- J. Removal of WeEnergies flood lights from site and lowering of existing light poles on site and light fixtures being equipped with house-side shields.

6. Off-Street Parking. The 1,754 sq. ft. restaurant is required to have 12 parking spaces, including ADA compliant handicapped stall. A total of 32 stalls have been detailed on site.

7. Litter and Monitoring. 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 four-sided structure. The restaurant, and outdoor area shall be adequately monitored by staff.

8. Deliveries and Refuse Pickup. 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 is a 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.

9. Window Signage. Any building window signage shall not exceed twenty (20) percent of each window's area and not flash.

10. 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.

11. 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.

12. 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.

13. Noise. All exterior doors and windows of the use will be closed to prevent excess noise from penetrating the adjacent neighborhood.

14. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays from the property boundaries. Removal of WeEnergies flood lights from site and lowering of existing light poles on site and light fixtures being equipped with house-side shields.

15. Sidewalk Repair. The grant of this special use is subject to compliance with Policy No. 2806 of the Revised Municipal Code relative to the City's sidewalk improvement policy as it relates to damaged, abutting sidewalk.

16. 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.

17. 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.



18. 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.

19. 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.

20. Acknowledgement. That the applicant signs 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.

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Property owner, John Marek

Mailed to applicant on the  
21<sup>st</sup> day of May, 2012

Monica Schultz  
Assistant City Clerk

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

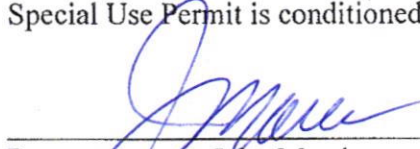
ZON-R-871-5-15-12-amended

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Property owner, John Marek

Mailed to applicant on the  
21<sup>st</sup> day of May, 2012

  
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Assistant City Clerk

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


ZON-R-871-5-15-12-amended

ADOPTED AS AMENDED 05/15/2012



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

APPROVED AS AMENDED 5/18/12



Dan Devine, Mayor





**CITY OF WEST ALLIS,  
NOTICE OF HEARING  
Tuesday, May 15, 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, May 15, 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 Orange Leaf Yogurt, a proposed restaurant with outdoor dining, to be located at 10922 W. National Ave.

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 18th Day of April 2012.

12H26

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

PUBLISH: April 26, 2012 and May 3, 2012