



**Building Inspection and
Neighborhood Services**
bldginspect@westalliswi.gov
414.302.8400

March 19, 2019

Anan Barbarawi
2311 S. 108th St.
West Allis, WI 53227

RE: Written Notice of Permit Refusal No. 2019-03
Address: 2311 S. 108th Street
Tax Key: 484-0002-001
Zoning: C-4 Regional Commercial District

Dear Applicant:

On August 30th, 2018, an application was made for a business occupancy permit for a new business at this location. The new business, "Smoke World Vape," was described on the application as a full service tobacco shop, selling premium cigars, cigarettes, and vape accessories. The use was best described in the Zoning Code as "Tobacco Retailer." A Tobacco Retailer is a permitted use in the C-4 Zoning District because all permitted uses of the C-3 Community Commercial Zoning District are accepted as permitted uses in the C-4 District; however there is a location requirement as follows:

12.42 C-3 Community Commercial District.

* * *

(1) Permitted Uses.

* * *

(ee) Tobacco Retailers.

1. No tobacco retailer shall be located within one thousand (1,000) feet of parcels occupied by the following uses:
 - a. A public or private kindergarten, elementary, junior high or high school;
 - b. Libraries;
 - c. Zoned Parkland; or
 - d. Another tobacco retailer or establishment licensed to sell any tobacco product or tobacco paraphernalia as defined within Section 12.06.

There is a gas station which is licensed to sell tobacco products currently occupying the property at 2203 S. 108th Street. This property is located approximately six hundred and fifteen (615) feet away from the property with the proposed new business.

The proposed business is three hundred and eighty-five (385) feet too close to an existing business licensed to sell tobacco products, and therefore does not meet the code. You may appeal this decision to the West Allis Board of Appeals. Information on filing an appeal can be obtained by contacting the Director of Building Inspection and Neighborhood Services at 414-302-8400.

Sincerely,

Ed Lisinski
Director
Building Inspection and Neighborhood Services | City of West Allis

cc: Property File/Owner



March 19, 2019

Board of Appeals Request Letter

This form must be returned to the Department of Building Inspection and Neighborhood Services by the submittal date listed below to be placed on the Agenda for the next available meeting date. Requests submitted after this date will be moved to the following month. The Board will hear appeals based only on the current proposed plan. Any additional proposed changes to this plan must be submitted with this application. The Board cannot hear or discuss any additional changes once this request has been submitted.

Address: 2311 S. 108th Street

Submittal Date: August 30, 2018

Tax Key: 484-0002-001

Meeting Date: April 9, 2019

Permit Refusal #: 2019-03

Meeting Time: 5:30 pm

Amount Paid: \$150.00

Room No: City Hall 222

Receipt: 65783

I hereby request a variance to reduce the distance allowed between a tobacco retailer and another establishment licensed to sell any tobacco products from one thousand (1,000) feet to five hundred (500) feet.

Thank you for your consideration.

Signature: Khaled S. AloulPrint Name: Khaled S. AloulTelephone No. (651)343-4995Email: khalaloul@gmail.com

March 21, 2019

VIA E-MAIL & HAND DELIVERY

elisinski@westalliswi.gov

Mr. Ed Lisinski

Director | Building Inspection and Neighborhood Services

City of West Allis

7525 W. Greenfield Ave.

West Allis, WI 53214

***Re: Blue Water Investment Properties LLC/City of West Allis, WI – Board of Appeals
Request for Variance to Operate as a Tobacco Retailer at the Premises Located at 2311
South 108th Street***

Dear Ed:

As you know, we represent Khaled Aloul, Ayman Shankin and Anan Barbarani and their Blue Water Investment Properties LLC in connection with the above-referenced matter. Attached and delivered with this correspondence please find the following:

1. The City's denial letter dated March 19, 2019;
2. Board of Appeals Request Letter signed by Mr. Aloul;
3. Narrative in Support of Variance Request with exhibits;
4. This firm's check in the amount of \$150.00 representing the filing fee for the same.

We respectfully request these items to be considered at the Board's April 9, 2019 meeting.

Mr. Ed Lisinski
March 21, 2019
Page 2

Please do not hesitate to contact me should you have any questions or wish to discuss the enclosed or require additional information.

Very truly yours,

Davis & Kuelthau, s.c.



Brian C. Randall

BCR:las
Attachments/Enclosures

cc: Mr. Khaled Aloul (w/attachs.) – Via E-Mail

NARRATIVE IN SUPPORT OF VARIANCE REQUEST

Before the Board of Appeals, City of West Allis

In connection with the request to operate a Tobacco Retailer at 2311 South 108th Street

TO: THE HONORABLE, THE BOARD OF APPEALS
7525 West Greenfield Avenue
West Allis, WI 53214

PLEASE TAKE NOTICE that Khaled Aloul, Ayman Shankin and Anan Barbarani, through their business entity Blue Water Investment Properties LLC (collectively, the “Applicant”), by their attorneys Davis & Kuelthau, s.c., submit this Narrative in Support of Variance Request and exhibits in the above-referenced matter in support of the Applicant’s request pursuant to § 12.15(2)(b), Revised Municipal Code of the City of West Allis, for an area variance from the minimum distance requirement between a tobacco retailer and another establishment licensed to sell any tobacco products.

INTRODUCTION

A. Zoning Code Minimum Distance Requirements.

The City adopted an ordinance requiring a minimum distance of 1,000 feet between one tobacco retailer and another, a tobacco retailer and another establishment licensed to sell any tobacco products, or one establishment licensed to sell any tobacco products from another. *See* § 12.42(1)(ee), Code (no tobacco retailer shall be located within 1,000 feet of a public or private

kindergartens, elementary schools, junior high or high schools; libraries; land zoned parkland; or **another tobacco retailer or establishment licensed to sell any tobacco product or tobacco paraphernalia**) (emphasis added). The Applicant understands that the minimum distance requirement was intended to, in part, prevent an overconcentration or proliferation of businesses that may seek to sell tobacco; it may also seek to not overexpose children to tobacco products.

However, the 1,000 foot minimum distance is the *longest* such requirement found in the Code. For example, under § 9.28(13)(a), Code, no adult-oriented establishment shall be located within 500 feet of an existing adult-oriented establishment, residential area, any school, church or day care center, or any establishment licensed to sell alcohol where such establishment also possesses an entertainment license.

Similarly, under § 9.033(2), Code, no establishment shall be granted an entertainment license if it is located within 500 feet of a residential area, an adult-oriented establishment, another establishment that possesses an entertainment license, or any school, church or day care center.

The Applicant hereby requests a variance, under the unique circumstances that are present in this case, to reduce the distance allowed between a tobacco retailer and another establishment licensed to sell any tobacco products from 1,000 feet to 500 feet.

B. The Measurement Between Businesses.

Located to the north and past the signalized intersection of West Lincoln Avenue (a grass median divided 4-lane roadway with parking and turn lanes) and South 108th Street (State Highway 100, a 6-lane grass median divided highway with turn lanes) is the Quick Pick Food Mart convenience store and gas station located at 2203 S. 108th Street. Quick Pick possesses a Tobacco Products Retail License for over-the-counter sales of tobacco products. *See Exhibit 1.*

As documented by the City in its March 19, 2019 letter providing written notice of permit refusal – and as seen on **Exhibit 2** attached hereto – Quick Pick is a distance of 615 feet away from the Applicant’s property (*see Exhibit 3*, p. 1 the former Paralyzed Veterans of America building at 2311 S. 108th Street). In other words, the Applicant’s property is 385 feet too close to the Quick Pick, a convenience store and gas station that possesses a Tobacco Products Retail License.

C. The Applicant’s Due Diligence and Meeting with City Staff.

Prior to purchasing the property and beginning renovations for a total investment to date of more than \$500,000, members of the Applicant ownership group and their locally licensed commercial real estate broker met with one or more City staff members at City Hall where the Applicant expressed the intent to open a tobacco retailer and discussed such a use with specific reference to 2311 S. 108th Street. The Applicant explained that its business only allows customers to enter who are 18 years of age and older (the legal age to purchase tobacco products in Wisconsin) and that it does not sell food, candy or other items that might be attractive to children.

In sum, the Applicant expressly discussed the intent to operate a full tobacco shop selling premium cigars, tobacco, cigarettes, and accessories at 2311 S. 108th Street.

City staff assured the Applicant that the proposed business and operating plans were in compliance with the applicable zoning requirements. **At no time did City staff indicate that using the building at 2311 S. 108th Street for a tobacco retailer business would not comply with the 1,000 foot minimum distance requirement as measured to the property line for 2203 S. 108th Street where the Quick Pick, a convenience store and gas station that possesses a Tobacco Products Retail License, is located hundreds of feet to the north past Lincoln Avenue.** The Applicant relied on that positive meeting with, and favorable indications

for its new business by, City staff and placed an offer to purchase the property, closed on the transaction, and began investing in the renovations for a total investment to date of more than \$500,000.

In the midst of the renovations and completing the required occupancy permit paperwork at City Hall in August, 2018, the Applicant was advised for the first time that an occupancy permit could not be granted because the new tobacco retailer site did not meet the minimum 1,000 foot distance requirement from Quick Pick. The Applicant immediately ceased construction activities at the site, began working directly with City staff, and retained local legal counsel to file for the subject variance.

VARIANCE STANDARDS PER THE CITY CODE

Under the Code, the Board of Appeals may authorize a variance from the terms of the Code – here the 1,000 foot minimum distance requirement – if it finds that the variance:

- (1) Will not be contrary to the public interest;
- (2) Where, owing to special circumstances, a literal enforcement of the provisions of the Code will result in practical difficulty or unnecessary hardship; and
- (3) That the variance will ensure that the spirit of the Code is observed, the public safety and welfare secured and substantial justice be done.

See § 12.15(2)(b), Code.

As established below, all of the above standards are satisfied, thereby justifying the grant of the requested variance.

A. The Variance Will Not be Contrary to the Public Interest.

Importantly, the Applicant's business will contain a number of safeguards to protect the public interest which, in this instance, the City appears to be protecting through the 1,000 foot

minimum distance requirement intended to, in part, prevent an overconcentration or proliferation of tobacco businesses and not overexpose children to tobacco products. The Applicant is not a convenience store or typical tobacco retailer. Rather, the Applicant will operate a premier cigar, tobacco, cigarette, and accessories shop. See **Exhibit 3**, p. 2 (top picture). A walk-in, cedar paneled humidor will be installed for the store's featured products and to deliver a quality customer experience. See **Exhibit 3**, p. 2 (bottom picture).

The Applicant's business strictly complies with Wisconsin law for tobacco sales by only allowing customers who are 18 years of age and older to enter to ensure that all purchases of tobacco comply Wis. Stat. § 254.92. Beyond that operational safeguard, the Applicant also does not sell products that might be attractive to children or otherwise draw them as customers for purchases of non-tobacco items but still be exposed to the tobacco products.

By contrast, convenience stores and gas stations are drastically different by often attracting persons under the age of 18 with shelves of candy and rows of soda. Then, upon check out, each customer is staring at a backdrop of tobacco products. Again, this is not the case at the Applicant's business: no food, candy or other items that might be attractive to children will be sold and children are not allowed in the store.

By granting a variance to reduce the distance from 1,000 feet to 500 feet between a tobacco retailer at 2311 S. 108th Street and the Quick Pick convenience store and gas station at 2203 S. 108th Street that is licensed to sell tobacco products, the variance will not be contrary to the public interest because of the Applicant's operational plan.

B. Owing to Special Circumstances, a Literal Enforcement of the Provisions will Result in Practical Difficulty or Unnecessary Hardship.

The Applicant's property is located in the C-4 Regional Commercial District, "intended to accommodate those commercial land uses which are generally larger scale and rely on heavy

automobile traffic for support.” § 12.43, Code. Indeed, Highway 100 carries heavy automobile traffic from the region and the Applicant’s business, as a premier cigar, tobacco, cigarette, and accessories shop, will draw from that regional traffic and would be otherwise appropriately located in such a commercial corridor. Prohibiting the tobacco retailer use just because it is 385 feet too close to a convenience store and gas station that sells some tobacco products – when the Applicant’s business is otherwise a **permitted** use – constitutes special circumstances but also rises to a practical difficulty and unnecessary hardship.¹

Further, while the Applicant’s building is not 1,000 feet away from Quick Pick, the uses are separated by the wide West Lincoln Avenue and a multi-tenant commercial center which constitute physical and practical distance separations, even if a measurement from property line to property line totals 615 feet. *See Exhibit 2.*

The most important special circumstance, which is highly unlikely to recur to somehow give rise to another applicant someday seeking a similar variance, is the fact that the Applicant not only sought review and approval by the City staff *before* buying the property and beginning the remodeling for a total investment to date of more than \$500,000, but the City staff did not indicate that there was any issue using the building at 2311 S. 108th Street for a tobacco retailer, much less disclose that the City had a 1,000 foot minimum distance requirement.

The Applicant relied on the response by City staff and bought the building, giving rise to truly exceptional circumstances in light of the measurement calculation that was subsequently performed that prevents the otherwise **permitted** use of the building. The literal enforcement of the distance requirement – where the Applicant’s property is 385 feet too close – serves as a

¹ This is exacerbated by the fact that 1,000 feet is the longest distance separation imposed by the City: not even adult-oriented establishments or alcohol licensed establishments with entertainment licenses have to satisfy a 1,000 foot standard. Those uses must only comply with a 500 foot separation distance. *See* § 9.08(13)(a) *and* § 9.033(2), Code.

practical difficulty and unnecessary hardship that the Board can use as a basis to grant the variance.

C. The Variance will Ensure that the Spirit of the Code is Observed, the Public Safety and Welfare Secured and Substantial Justice be Done.

A brief summary of the earlier analysis is necessary to also address the elements of the final variance approval standard.

First, the spirit of the Code is observed because the practical equivalent of the 1,000 foot distance separation is present given that the uses are separated by the wide West Lincoln Avenue and a multi-tenant commercial center. Those elements are physical and practical distance separations forming an equivalent result as a simple distance measurement, especially where it is only 385 feet too close or the Applicant's use would be permitted under the Code.

Second, the public safety and welfare are secured because of the safeguards within the Applicant's operational plan that protect the public (the Applicant only allows customers who are 18 years of age and older to enter and it does not sell food, candy or other items that might be attractive to children). These operational details, when compared to a typical convenience store and gas station with the mix of other goods and the highly-visible tobacco products, will protect the public more effectively than simply complying with a distance measurement of 1,000 feet.

Finally, substantial justice can only be done at this point through granting the variance. Here, the Applicant did the right thing by meeting with City staff before buying the building, explaining the proposed use and operational details, and not being advised that there would be any issue whatsoever with a 1,000 foot minimum distance requirement. Only after the Applicant relied on that positive meeting with City staff, bought the building, and began investing in the renovations for a total investment to date of more than \$500,000, did this issue arise in what are truly special, if not extraordinary, circumstances. Substantial justice is therefore served through

the granting of the variance to reduce from 1,000 feet to 500 feet the distance allowed between a tobacco retailer and another establishment licensed to sell any tobacco products.

CONCLUSION

The Applicant respectfully requests that a variance be granted under the special circumstances that are present in this case so that substantial justice is done by reducing the distance requirement from 1,000 feet to 500 feet where the Applicant's building is only 385 feet too close but is separated by Lincoln Avenue and another large commercial property.

Respectfully submitted this 21st day of March, 2019.

DAVIS & KUELTHAU, S.C.
Brian C. Randall
Blake A. Nold

By: Brian C. Randall

Brian C. Randall
BRandall@DKattorneys.com

Attorneys-in-Fact for Applicant: Khaled Aloul,
Ayman Shankin and Anan Barbarani; Blue Water
Investment Properties LLC

P.O. ADDRESS:

111 East Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
(414) 276-0200

Application for Cigarette and Tobacco Products Retail License

Submit to municipal clerk

Applicant's Wisconsin 15-digit Sales Tax Account Number 456-0000072373-04	Legal Name of the licensee below → This must be issued in the same
Period Covered 6-30-18 to 7-1-19	Date of Issuance 6-1-18
License Number 18-944	

Legal Name (corporation, limited liability company, partnership or sole proprietorship) NORTH LLC	Trade or Business Name (if different than Legal Name) Quick Pick Food Mart
Business Address (License Location) 2203 S. 108th St	City West Allis
State WI	ZIP Code 53227
City West Allis	or
Business located in <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Town	County Milwaukee
Business Telephone (414) 546-0101	State WI
Telephone Number (414) 331-6468	ZIP Code

Organization (check one)

- ☒ Wisconsin Corporation - Enter date incorporated: 12-10-1994
- ☐ Partnership
- ☐ Sole Proprietor
- ☐ Other (describe):

1. Does the applicant understand that they must purchase cigarettes only from distributors or jobbers who hold a permit with the Wisconsin Department of Revenue?

☒ YES ☐ NO

2. Does the applicant understand that they must obtain a Tobacco Products Distributor permit if purchasing untaxed tobacco products from an out-of-state company? (Tobacco Products Distributor permit is available from the Wisconsin Department of Revenue at 608-261-6435. See application form CTP-129, revenue.wi.gov/forms/excise/ctp-129.pdf)

☒ YES ☐ NO

3. Does the applicant understand that they cannot purchase/exchange cigarettes or tobacco products from another retailer, including transferring existing stock to a new owner?

☒ YES ☐ NO

4. Does the applicant understand that they must provide employees with tobacco sales training approved by the Wisconsin Department of Health Services? (<https://wisconsin.dhs.gov/tobaccocheck.org>)

☒ YES ☐ NO

5. Does the applicant understand that they may not sell, give or otherwise provide cigarettes/tobacco products and nicotine products to minors (including electronic cigarettes containing nicotine)?

☒ YES ☐ NO

6. Does the applicant understand that they may not sell single cigarettes?

☒ YES ☐ NO

7. Does the applicant understand that cigarette and tobacco products invoices must be kept on the licensed premises for two years from the date of the invoice and be available for inspection by the Wisconsin Department of Revenue/Law Enforcement and that failure to comply can result in criminal penalties, including loss of cigarettes/tobacco products?

☒ YES ☐ NO

8. Does the applicant understand that only cigarettes and roll-your-own (RYO) tobacco products listed on the Wisconsin Department of Justice's website labeled "Directory of Certified Tobacco Manufacturers and Brands" at www.doj.state.wi.us/dls/tobacco-directory may be sold in Wisconsin?

☒ YES ☐ NO

Cigarettes / Tobacco will be sold

- ☒ over counter ☐ through vending machine ☐ both

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the applicant. Applicant agrees to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, cannot be assigned to another.

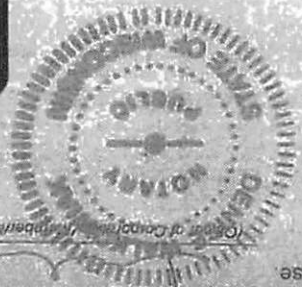
Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this day of June 2018

(Clerk / Notary Public)

My commission expires 3-6-2021



EXHIBIT

APR 25 2018

(Signature of Applicant/Manager of Limited Liability Company/Partner/Individual)

MUNICIPAL USE ONLY

66787

41201-3 COPY



X Renewal _____ New _____
BC/Appl. No. _____
License No. _____
From Police _____ APR 19 2010
Granted _____
Denied _____
Placed on File _____
Issued _____

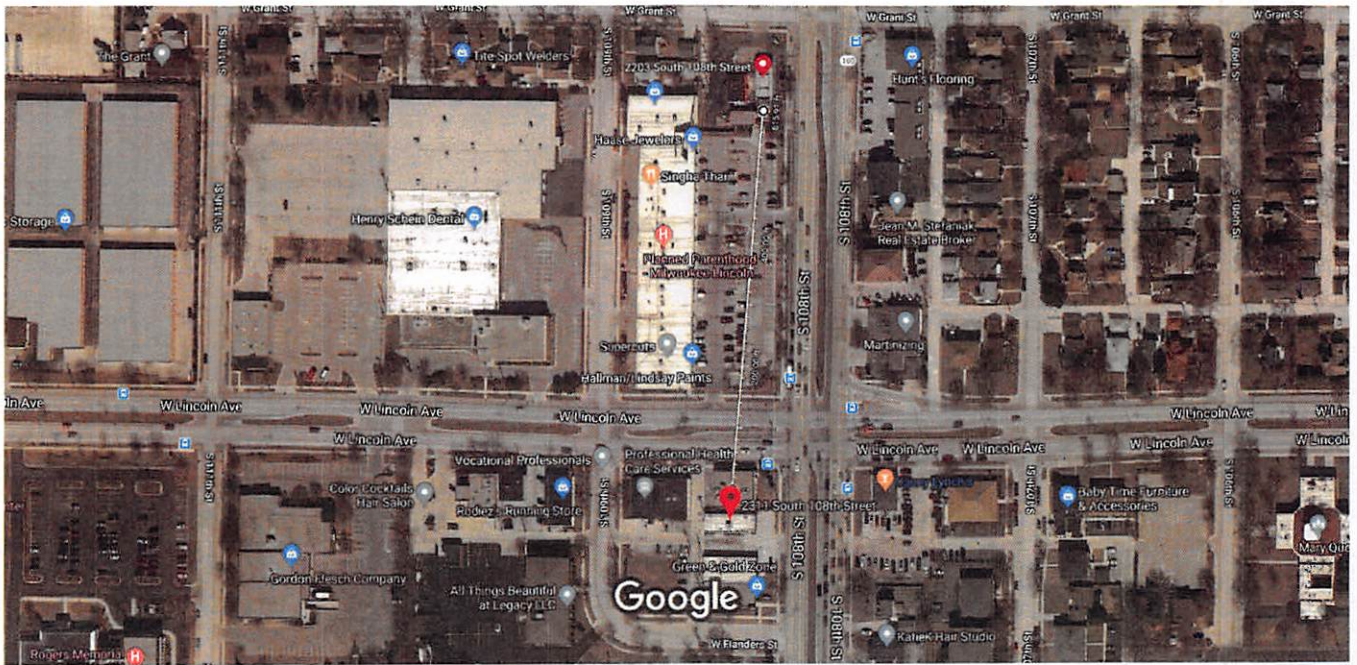
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(COMPLETE OTHER SIDE)
2 of 2

the change all 4/19/11



2311 S 108th St
to 2203 S 108th St



Imagery ©2019 DigitalGlobe, U.S. Geological Survey, Map data ©2019 Google 100 ft

Measure distance

Total distance: 615.91 ft (187.73 m)



**Variance Request
for
Blue Water Investment Properties LLC
at
2311 S. 108th Street, West Allis, WI 53227**

Front (Facing East)



EXHIBIT

3

**Variance Request
for
Blue Water Investment Properties LLC
at
2311 S. 108th Street, West Allis, WI 53227**

Representative Interior (Brookfield Store)



Representative Humidor (Brookfield Store)

