



# City of West Allis

## Legislation Details (With Text)

**File #:** R-2013-0106 **Version:** 2

**Type:** Resolution **Status:** Adopted

**File created:** 5/7/2013 **In control:** Safety and Development Committee (INACTIVE)

**On agenda:** 5/7/2013 **Final action:** 5/7/2013

**Title:** Resolution relative to determination of Special Use Permit for Lupitas Mexican Kitchen, an expansion of an existing restaurant, located at 1126 S. 70 St.

**Sponsors:** Safety and Development Committee (INACTIVE)

**Indexes:**

**Code sections:**

**Attachments:** 1. Affidavit NPH

| Date     | Ver. | Action By                                   | Action             | Result |
|----------|------|---|--------------------|--------|
| 5/7/2013 | 1    | Common Council                              |                    |        |
| 5/7/2013 | 1    | Safety and Development Committee (INACTIVE) |                    |        |
| 5/7/2013 | 1    | Common Council                              |                    |        |
| 5/7/2013 | 2    | Safety and Development Committee (INACTIVE) |                    | Pass   |
| 5/7/2013 | 2    | Common Council                              | Adopted As Amended | Pass   |

Resolution relative to determination of Special Use Permit for Lupitas Mexican Kitchen, an expansion of an existing restaurant, located at 1126 S. 70 St.

WHEREAS, Mike Martello, d/b/a Lupitas Mexican Kitchen, filed with the City Administrative Officer-Clerk/Treasurer an application for a Special Use Permit, pursuant to Sec. 12.45(2) and Sec. 12.16 of the Revised Municipal Code, to expand an existing restaurant to include outdoor dining within a portion of the multi-tenant commercial property located at 1126 S. 70 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on May 7, 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 applicant, Mike Martello, d/b/a Lupitas Mexican Kitchen, currently operates the existing restaurant at 1126 S. 70 St., Suite S106C, West Allis, WI 53214. The property is owned by Prowess Commercial Real Estate, 1126 S. 70 St., Suite N105, West Allis, WI 53214.
2. The applicant, Mike Martello, d/b/a Lupitas Mexican Kitchen, will operate a restaurant primarily as a dine-in and carry-out establishment from within the multi-tenant commercial building located at 1126 S. 70 St., occupying approximately 1,500 square foot of tenant space near the lobby of the south side of the building. Seating is offered within the restaurant, and an outdoor patio has been proposed along S. 70 St. in front of the restaurant tenant space. The applicant has a valid lease at the current location

within the building located at 1126 S. 70 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All that land of the owner being located in the Southeast ¼ and Southwest ¼ of Section 34, Township 7 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin describes as follows:

Parcel 3 of the Certified Survey Map No. 6388.

Tax Key No. 439-0001-026

Said land located at 1126 S. 70 St.

3. In total, the applicant is proposing to expand the existing 1,500 sq. ft. restaurant with a proposed approximate 300 square foot outdoor dining area for a total occupancy of 1,800 sq. ft.
4. The aforesaid premises is zoned M-1 Manufacturing District under the Zoning Ordinance of the City of West Allis, which permits restaurants and outdoor dining as a Special Use, pursuant to Sec. 12.45(2) and Sec. 12.16 of the Revised Municipal Code.
5. The subject property is part of a large commercial office development along the east side of S. 70 St. and north of W. Washington St. that was formerly part of the Allis Chalmers facility, which is zoned for manufacturing uses and is primarily developed and occupied with commercial offices. Properties to the north and east are developed for commercial and manufacturing uses. Properties to the south and east are developed for commercial and retail uses, and properties to the west are developed as commercial and educational uses.
6. 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 commercial use with off-street parking and served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Mike Martello, d/b/a Lupitas Mexican Kitchen, to expand an existing restaurant to include outdoor dining within a portion of the multi-tenant commercial property located at 1126 S. 70 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 and Architectural Plans approved on March 27, 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. Licensing. Applicant obtaining all required local and State of Wisconsin licenses and permits.
4. Restaurant Operations. The restaurant will be permitted to be used for dine-in, carry-out and delivery. Outdoor dining shall also be permitted with the grant of this Special Use, subject to the submission of revised a Site, Landscaping and Screening Plan per the Plan Commission's approval.

The grant of this Special Use is conditioned upon the following:

- A. Full-service restaurant food establishment.
  - B. Applicant obtaining all required local and State of Wisconsin licenses and permits.
  - C. All exterior doors shall be kept closed to prevent sound/noise emissions into the adjacent neighborhood.
  - D. Excessive odors from cooking on premises shall be controlled within limits of current technology.
  - E. Excessive noise and vibrations shall not emanate from the building area.
  - F. Employees shall inspect the site and immediate vicinity and pick up litter on a daily basis.
  - G. Exterior pest control shall be contracted on a monthly basis and/or in accordance with the City of West Allis Health Department.
  - H. Special events to be authorized by Common Council.
5. Hours of Operation. The restaurant hours of operation will be from 6:45 a.m. till State of Wisconsin mandated closing time, and seven days per week. The outdoor dining/patio area will be closed between midnight and 10:00 a.m.
  - . Outdoor Dining Area. The outdoor dining area shall be operated in accordance with all applicable State and local regulations, including the regulation of alcohol sales and consumption. The outdoor dining area shall be in accordance with the approved site and landscaping plan approved by the Plan Commission on March 27, 2013. The outdoor dining area will be closed between midnight and 10:00 a.m.
  6. Off-Street Parking. The property is required to provide a minimum of 1,128 off-street parking spaces based on current tenant/uses including the proposed use. The proposed expansion is not expected to increase parking demand on site, as many customers come from the immediate building/area. A total of 738 off-street parking spaces are provided. The property is also served by public transportation.
  7. Grant of Privilege. The Special Use is conditioned upon a Grant of Privilege for any proposed use of public right-of-way being applied for and approved by the Board of Public Works for a Major Encroachment or the City Engineer for a Minor Encroachment. Any such area approved in the Grant of Privilege is subject to the terms and conditions set forth herein.

8. 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. The existing refuse enclosure on site shall be large enough to accommodate/screen all refuse, recyclable, grease and other waste materials.
9. Window Signage. Any building window signage shall not exceed twenty (20) percent of each window's area. Such signage shall be reviewed/approved by the Department of Development prior to installation and affixed to the interior of the window
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. Signage. Signage for the overall property shall be in accordance with the City of West Allis Signage Ordinance 13.21.
12. 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.
13. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
14. 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.
15. 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.
16. Outdoor Storage and Display. No outdoor storage, sales or display of merchandise shall be permitted onsite, unless identified on an approved Site Plan and enclosed by a four-sided enclosure.
17. 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.
18. 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.
19. 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 the date of 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.

20. 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.

21. 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.

22. 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.

23. 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.

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Mike Martello  
Lupitas Mexican Kitchen

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Jenn Hough  
Prowess Commercial Real Estate

\_\_\_\_\_ day of \_\_\_\_\_, 2013

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Assistant City Clerk

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

ZON-R-914-amended-5-7-13-bjb