



City of West Allis

Legislation Text

File #: R-2013-0102, **Version:** 1

Resolution relative to determination of Special Use Permit to amend the hours of operation for Pizza Pit, an existing restaurant within a portion of the existing fuel station, located at 6819-21 W. Lincoln Ave.

WHEREAS, James Lisowski, Sr., agent for Pizza Pit, duly 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 (no drive-thru) at 6821 W. Lincoln Ave.; and,

WHEREAS, Special Use Permit #R-2013-0055, granted March 5, 2013, is hereby amended with a new application to amend the hours of operation for an existing Pizza Pit restaurant at 6819-21 W. Lincoln Ave.; 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, James Lisowski, Sr., agent for Pizza Pit has offices at 5665 S. 108 St., Hales Corners, WI 53130. The owner, Muhammad Ayub, owner, has offices at 6819-21 W. Lincoln Ave., West Allis, WI 53219.
2. The applicant has a valid offer to lease the property at 6821 W. Lincoln Ave., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All that land of the owner being located in the Northwest $\frac{1}{4}$ of Section 10, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, described as:

Lot 1 in the Block 6 of the Assessors Plat No. 266.

Tax Key No. 489-0080-000

Said land is located at 6819-21 W. Lincoln Ave.

3. The owner of the property received a Special Use Permit (R-2006-0167) to open the restaurant on June 6, 2006 but did not receive an occupancy permit for it within one year of approval, and thus the special use permit expired. A subsequent special use was applied for by the owner and granted under Resolution R-2009-0193, on September 1, 2009 to establish a 1,100 square foot restaurant occupancy within the 3,200 sq. ft. gas station/convenience store building. A 6-month extension of time to fill the tenant space was granted under R-2010-0630 on October 19, 2010. A fast food Mexican Restaurant later filled the 6821 W. Lincoln Ave. tenant space. The hours of operation for the restaurant were from 10:00 a.m. to 10:00 p.m. The current applicant at 6821 W. Lincoln Ave., the Pizza Pit, is requesting extended hours of operation, for their delivery service, until 1:00 a.m. Pizza Pit was recently granted a Special Use Permit by the Common Council on March 5, 2013,

however, it was misunderstood at the time of application, the restaurant had also wanted to maintain Carry Out service through 1:00 a.m., and has asked for the City to consider revising the existing Resolution accordingly. Neighborhood context is taken into consideration, with respect to traffic, noise, proximity to residential development and "cruising." In this circumstance, allowing hours consistent with neighboring operations is acceptable.

4. The aforesaid premises is zoned C-2 Neighborhood Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants as a special use, pursuant to Sec. 12.41(2) and Sec. 12.16 of the Revised Municipal Code.

5. The subject property is located to the west of the intersection of W. Beloit Rd. and W. Lincoln Ave. All surrounding properties are zoned and used for commercial purposes.

6. The use, value and enjoyment of other property in the surrounding area will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of James Lisowski, Sr., agent for Pizza Pit, to extend the hours of operation for a new restaurant, the Pizza Pit, within a portion of the existing gas station/convenience store building, at 6821 W. Lincoln Ave. 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, Signage and Architectural Plans. The grant of this special use permit is subject to and conditioned upon the site, landscape, screening, signage and architectural plans approved on August 26, 2009, 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, Fire and Health Codes. The grant of this special use is subject to building plans being submitted to and approved by the Health Department, the Department of Building Inspections and Neighborhood Services and by the West Allis Fire Department.
3. Restaurant Operations. The restaurant will be utilized for dine-in between 10:00 a.m. and 10:00 p.m. daily. Both carry-out and delivery service will be offered 10:00 a.m. to 1:00 a.m. daily. The restaurant and existing gas station/convenience store will share the existing restroom facilities located within the building on site. Restrooms shall be available and provided during operating hours of all uses on site.
 - 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.

- 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.
4. Noxious Odors, Etc. The restaurant shall not emit foul, offensive, noisome or disagreeable odors, gases or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
5. Hours of Operation. The Pizza Pit restaurant will be utilized for dine-in, delivery and carry-out service with dine-in hours between 10:00 a.m. and 10:00 p.m. daily/seven days per week. Carry-out service and delivery service operations will exist from 10:00 a.m. to 1:00 a.m. daily, seven days per week with the dining room service being closed during this time. Restrooms shall be available and provided during operating hours of all uses on site as both restaurant and convenience store share common restroom facilities. Restaurant uses shall be permitted between the general operating hours of 6:00 a.m. to 10:00 p.m., with carry-out and delivery service until 1:00 a.m., seven days per week, under the terms of this special use and not require further approval from the Common Council for hours within this range.
6. Off-Street Parking. A total of 14 parking spaces are required on site (7 spaces for the restaurant and 7 for the gas/convenience use); a total of 11 parking spaces are provided. The Common Council has previously modified the parking requirement to accept the parking shortage
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 masonry structure to match the building.
8. Signage. Any building window signage shall not exceed twenty (20) percent of each window's area. Any existing non-conforming signage on site shall be removed.
9. 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.
10. Outdoor Lighting. All outdoor fixtures shall be shielded in such a manner that no light splays from the property boundaries.
11. 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.

12. 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.

13. 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.

14. 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.

15. Acknowledgement. That the applicant signs an acknowledgment that he has received these terms and conditions and will abide by them.

The undersigned applicant and property owner agree 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.

James Lisowski, Sr, applicant/agent for Pizza Pit

Muhammad Ayub, Owner

Mailed to applicant on the

_____ day of _____, 2013

Assistant City Clerk

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

ZON-R-916-5-7-13-bjb