



City of West Allis

Legislation Text

File #: R-2018-0108, **Version:** 1

Resolution relative to determination of Special Use Permit for Pho Saigon, a proposed restaurant, to be located at 10534 W. Greenfield Ave.

WHEREAS, Tu Tan Nguyen, d/b/a Pho Saigon, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 12.16 and Sec. 12.42(2) of the Revised Municipal Code of the City of West Allis, for a restaurant proposed to be located at 10534 W. Greenfield Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on April 4, 2018 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, Tu Tan Nguyen, owns the property and has offices at 2255 S. 105 St, West Allis, WI 53214 to-wit:

All the land of the owner being located in the Southwest $\frac{1}{4}$ of Section 32, Township 7 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

Lots 7 and 8 in Greenfield Park Subdivision No. 1, Block 7.

Tax Key No. 444-0511-001 and 444-0513-000

Said land being located at 10534 W. Greenfield Ave.

2. The aforesaid premise is zoned C-3 Community Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants, drive-thru facilities and outdoor seating/dining (extension of premise) as a Special Use, pursuant to Sec. 12.16 and Sec. 12.42(2) of the Revised Municipal Code.

3. The applicant currently owns the existing 2,340 sq. ft. commercial building.

4. The proposed new restaurant, Pho Saigon which specializes in authentic Vietnamese and Chinese food. The business will be offering dine-in and carryout, and will employ three full-time and two part-time employees.

5. The subject property is located along a commercial corridor on the north side of W. Greenfield Ave. between S. 106 St. and the Union Pacific Railroad. Properties to the north are zoned and developed as residential uses. Properties to the west and south are zoned and developed as commercial uses. Properties to the east are zoned commercial but developed as residential.

6. The use, value and enjoyment of other property in the surrounding area for permitted uses will not be

substantially impaired or diminished by the establishment, maintenance or operation of the special use. While the property has been vacant for several years, it was formerly used as a restaurant.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application submitted by Tu Tan Nguyen, d/b/a Pho Saigon, 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, Screening and Architectural Plans. The grant of this Special Use Permit is subject to and conditioned upon the site, screening and architectural plans approved by the West Allis Plan Commission on March 28, 2018. No alterations or modifications to the approved plan shall be permitted without approval by the West Allis Plan Commission.
2. Building Plans, Fire Codes and Licenses. The grant of this special use is subject to building plans being submitted to and approved by the Department of Building Inspections and Neighborhood Services and by the Fire Department. All applicable State and local licenses being applied for and approved. Seating capacity shall be in accordance with limits of occupancy load calculations as approved by Building Inspection and Fire Department.
3. Off-Street Parking. In accordance with Sec. 12.19 of the Revised Municipal Code, a total of 16 parking spaces are required for the property. Additional parking totaling 22 stalls, with two ADA stalls, is proposed by the property owner as approved on the site plan by Plan Commission.
4. Hours of Operation. The applicant volunteers that the restaurant will be open 7 days per week from 9:00 am to 9:00 pm.

With the approval of this special use, Common Council grants the following hours of operation for the use: 9:00 am to 9:00 pm and 7 days per week.

5. Restaurant Operations:
 - A. Refuse pick up shall be under contract with a commercial hauler service. Any outdoor waste, recycle, grease and similar containers must be screened from view within an approved enclosure as approved by the Plan Commission.
 - B. Excessive odors from cooking on premises shall not emanate from the building.
 - C. Noise and vibrations shall not emanate from the building. All exterior doors and windows of the establishment will be closed to prevent nuisance noise from entering the surrounding neighborhood.
 - D. The proposed use and outdoor extension of premise will be closed in accordance with the hours of operation approved by the Common Council.
 - 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. Special events to be authorized by the Common Council.
- H. Pho Saigon is a food establishment under RMC Section 7.04.
- I. Outdoor dining extension of premise is granted with this special use, but subject to site review before the West Allis Plan Commission and necessary licenses and permits.
- 6. Signage. Compliance with the West Allis Signage Ordinance. Any window signage shall not exceed 20% of the window area and be located internally.
- 7. 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.
- 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 a four-sided enclosure or as approved by the Department of Development to match the building. 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. 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. Litter. Employees shall inspect the site 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 structure.
- 10. 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, (if any) abutting sidewalk.
- 11. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays beyond the property boundaries.
- 12. Noxious Odors, Etc. The restaurant 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.
- 13. 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.
- 14. Noise. All exterior doors and windows of the establishment will be closed to prevent nuisance noise from entering the surrounding neighborhood. The outdoor dining area will be closed in accordance with the hours of operation approved by the Common Council.
- 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 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.

Tu Tan Nguyen, d/b/a Pho Saigon, property owner

Mailed to applicant on the
_____ day of _____, 2018

City Clerk

cc:Dept. of Development
 Dept. of Building Inspections and Neighborhood Services
 Div. of Planning

ZON-R-1135-4-4-18