



# City of West Allis

## Legislation Text

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**File #:** R-2013-0024, **Version:** 3

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Resolution relative to determination of Special Use Permit to establish a Marco's Pizza restaurant within a portion of the multi-tenant commercial building located at 1715-1723 S. 76 St. submitted by Melissa Klockzien of Family Video.

WHEREAS, Melissa Klockzien 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 located at 1723 S. 76 St. within a portion of the overall multi-tenant commercial property; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on February 5, 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, Melissa Klockzien, agent for the subject tenant, Marco's and Family Video, has offices at 540 ShreveLn, Neenah, WI 54956. The property is owned by Mr. Keith Hoogland, KAH II, LLC., 2500 Lehigh Ave. Glenview, IL 60026.

2. The applicant, Marco's Pizza will operate primarily as a carry-out and delivery establishment, but dine in is an option under this special use, from within the 1723 S. 76 St., address, an approximate 2,200-square foot tenant space on the south side of the building. Other tenants sharing the property are Subway and Family Video. Marcos Pizza will offer a delivery and carryout business, a few seats will be offered in the restaurant lobby as an accommodation for customers who choose to wait for their pizza in the store. While not restricted as part of the special use Marco's is not a dine in facility, nor will any drive-up or drive-thru be included as part of this occupancy located at 1723 S. 76 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

All the land of the owner in the Southwest  $\frac{1}{4}$  of Section 3, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, more particularly described as follows:

Lots 1 thru 8, Lot 29 and North 10 feet of Lots 9 and 28 including vacated alley adjacent to said lots, all being in Block 3 of the Linwood subdivision.

Tax Key No. 453-0433-001 (building and property) and 453-450-000 (parking lot property south of alley)

Said land located at 1723 S. 76 St. and 1700 Block of S. 76 St.

3. In total, the applicant is proposing to establish a restaurant within approximately a 2,200-square foot area on site.

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

5. The subject property is part of a block along the east side of S. 76 St. and north of W. National Ave., which is zoned for commercial uses. Properties to the north and east are developed for commercial uses and residential uses. Properties to the south are developed as residential. Properties to the west are developed as residential 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 Melissa Klockzien, agent for Marco's Pizza and Family Video, to establish a restaurant located within a portion of the multi-tenant commercial property at 1723 S. 76 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, signage and architectural plans approved on January 23, 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. Restaurant Operations. The restaurant will be permitted to be used for dine-in, carry-out, and delivery. While not proposed, outdoor dining is also permitted with the grant of this special use, but will require the submission of a revised site, landscaping and screening plan for Plan Commission approval if desired.
4. Restaurant Operations. The grant of this special use is conditioned upon the following:
  - 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 area.
  - 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 and/or in accordance with the City of West Allis Health Department.
5. Hours of Operation. The restaurant hours of operation will be from 10:00 a.m. to 1:00 a.m., seven days per week.
6. Off-Street Parking. The property is required to provide a minimum of 54 off-street parking spaces based on current tenant/uses including (Family Video 30 parking spaces, Subway 11 parking spaces, and Marco's Pizza 13 parking spaces). A total of 60 off-street parking spaces are provided.

The property is also served by public transportation.
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 structure. The existing refuse enclosure on site shall be large enough to accommodate/screen all refuse, recyclable, grease and other waste materials.
8. Window Signage. Any building window signage shall not exceed twenty (20) percent of each window's area.

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. Signage. Signage for the overall property shall be in accordance with the City of West Allis Signage Ordinance 13.21.
11. 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.
12. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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.

20. 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.

21. 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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Melissa Klockzien  
Regional Director/ Family Video & Marcos Pizza

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Keith Hoogland  
Family Video/ KAH II, LLC

\_\_\_\_\_ 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-905-2-5-13-ver3