



# City of West Allis

## Legislation Text

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**File #:** R-2009-0069, **Version:** 2

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Resolution relative to determination of Special Use Permit to establish The Orchard, an instructional training facility for dance, martial arts, aerobics, music and arts, business and trades within a portion of the existing mixed use building located at 1500 S. 73 St., 7223 W. Orchard St. and 15\*\* S. 73 St. (Tax Key Nos. 453-0212-000 and 453-0211-000)

WHEREAS, Kirsten Carter, d/b/a The Orchard, duly filed with the City Administrative Officer, Clerk/Treasurer an application for a Special Use Permit, pursuant to Sec. 12.16, Sec. 12.41(2), and Sec. 12.49 of the Revised Municipal Code, to establish The Orchard, an instructional training facility for dance, martial arts, aerobics, music and arts, business and trades within a portion of the existing mixed use building located at 1500 S. 73 St., 7223 W. Orchard St. and 15\*\* S. 73 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on March 3, 2009, 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, Kirsten Carter, d/b/a The Orchard, has offices and resides on site. The property is owned by Mr. Thad Phetteplace who has an office and resides on site.
2. The applicant, Kirsten Carter, has a valid offer to utilize the subject property at 1500 S. 73 St. West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

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

Lots 42, 43 and 44 in Block 9 of Central Improvement Co. Subdivision No.1.

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Said land being located at 1500 S. 73 St., 7223 W. Orchard St., and 15\*\* S. 73 St.

3. The applicant is proposing to utilize the first floor commercial space as a flexible commercial space for instructional training facility for dance, martial arts, aerobics, music and arts, business and trades within a portion of the first floor space. The remainder of the first floor space is currently utilized for an office. The second floor is utilized as a two-bedroom residence. The basement may be utilized for commercial purposes subject to applicable building and fire codes.
4. The aforesaid premises is zoned C-2 Neighborhood Commercial District under the zoning ordinance of the City of West Allis, which permits mixed residential and commercial uses and instructional training facilities for dance, martial arts, aerobics, music, business and trades as a special use. The property was previously

approved for a mixed use and currently operates as a mixed use under Resolution No. 27037 adopted March 8, 2002.

5. The property is serviced by all necessary public utilities.

6. The subject property is part of an area on the southeast corner of W. Orchard St. and S. 73 St., which is zoned C-2 Neighborhood Commercial District and RB-2 Residence District. The C-2 Commercial District permits mixed uses and the aforesaid special use pursuant to Sec. 12.41(2) and 12.49 of the Revised Municipal Code. The property upon which the former funeral home is located is zoned C-2 and the abutting parking lot is zoned RB-2 Residence District (all under same ownership). Properties to the south, north and east are developed as residential and properties to the west as commercial.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that Kirsten Carter, d/b/a The Orchard, be, and is hereby granted a special use:

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, Section 12.41(2) and 12.49 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 and floor plans approved by the City of West Allis Plan Commission on February 25, 2009, 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. Hours of Operation. The commercial facility may be utilized daily from 6:00 a.m. to 10:00 p.m.
3. Licenses and Permits. Subject to applicant obtaining all required State of Wisconsin licenses and permits.
4. 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.
5. Parking. Twelve (12) parking spaces to be provided on site, including one (1) ADA space. The Zoning Code requires 12 spaces.
6. 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.
7. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site.
8. 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.

9. Refuse Collection. Refuse collection to be provided by commercial hauler and stored within a four-sided enclosure large enough to accommodate all outdoor storage of refuse and recyclable containers.
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, abutting sidewalk.
11. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays from the property boundaries.
12. 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.
13. 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.
14. 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.

15. Acknowledgement. That the applicant 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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(Applicants Name)

Mailed to applicant on the  
\_\_\_\_ day of \_\_\_\_\_, 2009

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Assistant City Clerk

cc: Department of Development  
Department of Building Inspections and Neighborhood Services  
Division of Planning and Zoning

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