



# City of West Allis

## Legislation Text

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**File #:** R-2010-0253, **Version:** 1

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Resolution relative to determination of Special Use Permit for the proposed relocation of the Cousins Subs restaurant within the Oakridge Shopping Center, an existing multi-tenant commercial strip mall located at 10700 W. Oklahoma Ave.

WHEREAS, Joseph Ferguson, on behalf of Cousin's Submarines, Inc., duly filed with the City Administrative Officer-Clerk/Treasurer an application for a special use permit, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code, to establish a restaurant within the Oakridge Shopping Center, an existing multi-tenant commercial retail facility located at 10700-28 W. Oklahoma Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on November 16, 2010, at 7:00 p.m., in the Common Council Chamber 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, Joseph Ferguson, Director of Real Estate on behalf of Cousin's Submarines, Inc., has an office at N83 W. 13400 Leon Rd, Menomonee Falls, WI 53051.
2. The applicant currently leases restaurant space within the Oakridge Shopping Center at 10716 W. Oklahoma Ave., and is proposing to relocate to a new lease space within the center located at 10700-10728 W. Oklahoma Ave.

All the land of the owner being located in the Southwest  $\frac{1}{4}$  of Section 8, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, described as follows:

Beginning at the southwest corner of Lot 2 of the Certified Survey Map No. 944; thence Easterly, 396.53 feet; thence Southerly, 220.00 feet, to the North right-of-way line of West Oklahoma Avenue; thence Westerly, 394.36 feet, along said North line; thence Northwesterly, 7.07 feet, to the East right-of-way line of South 108<sup>th</sup> Street; thence Northerly, 215.00 feet, along said East line to the Point of Beginning.

Tax Key No. 519-9994-000

Said land being located at 10700-10728 W. Oklahoma Ave.

3. The applicant is proposing to relocate from the existing 10716 W. Oklahoma Ave. tenant lease space to a new lease space within the center. The new location is comparable in size at approximately 2,000 sq. ft. but located on the east end cap of the shopping center. The move to a new lease space within the center is part of a plan by the property owner to establish/accommodate a new retail business on the west end cap of the shopping center building and relocate Cousins.
4. The aforesaid premise is zoned C-4 Regional Commercial District under the Zoning Ordinance of the City of West Allis, which permits restaurants as a special use, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code.
5. The subject property is located on the northeast corner of W. Oklahoma Ave. and S. 108 St. Properties to the north, west and south are zoned and developed as commercial uses. Properties to the east are zoned as commercial and developed as multi-family residential.

6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property offers off-street parking and is served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Cousin's Submarines, Inc. to relocate and establish a new restaurant within the Oakridge Shopping Center 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 and Architectural Plans. The grant of this special use permit is subject to and conditioned upon the Site, Landscaping and Architectural Plans approved on October 27, 2010 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. Hours of Operation. The hours of operation for the restaurant will be from 10:00 a.m. - 10:00 p.m. daily.
4. Operations:
  - A. Full-service restaurant food establishment.
  - B. All exterior doors shall be kept closed to prevent sound/noise emissions into the adjacent neighborhood.
  - C. Excessive odors from cooking on premises shall be controlled within limits of current technology.
  - D. Excessive noise and vibrations shall not emanate from the building.
  - 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 Common Council.
5. Off-Street Parking. The property/development requires a total of 100 parking spaces (of which Cousins is required to provide 12 spaces). One hundred parking stalls will be provided on site.
6. Litter and Monitoring. 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 four-sided structure. The restaurant and property area shall be adequately monitored by staff.
7. 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 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 building and 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.
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. Noxious Odors, Etc. The use shall not emit foul, offensive, noisome, noxious, odorous or disagreeable odors, gases or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
11. 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.
12. Noise. All exterior doors and windows of the use will be closed to prevent excess noise from penetrating the adjacent neighborhood.
13. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light spills from the property boundaries.
14. 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.
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.

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Joe Ferguson or authorized agent Cousin's Submarines, Inc.

Mailed to applicant on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2010

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Assistant City Clerk

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

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