



# City of West Allis

## Legislation Details (With Text)

**File #:** R-2020-0628 **Version:** 1

**Type:** Resolution **Status:** Adopted

**File created:** 10/20/2020 **In control:** Safety and Development Committee (INACTIVE)

**On agenda:** 10/20/2020 **Final action:** 10/20/2020

**Title:** Resolution relative to determination of an Application for a Special Use Permit for Qdoba to install a proposed drive-thru at their existing restaurant, located at 2831 S. 108 St.

**Sponsors:** Safety and Development Committee (INACTIVE)

**Indexes:**

**Code sections:**

**Attachments:** 1. R-2020-0628, 2. Planning Application - Qdoba, 3. AFFIDAVIT OF PUBLICATION - R-2020-0627 & R-2020-0628 11921233, 4. Res\_R-2020-0628 partially signed

Date	Ver.	Action By	Action	Result
10/20/2020	1	Safety and Development Committee (INACTIVE)		
10/20/2020	1	Safety and Development Committee (INACTIVE)		Pass
10/20/2020	1	Common Council	Adopted	Pass
10/20/2020	1	Common Council		
10/20/2020	1	Common Council		

Resolution relative to determination of an Application for a Special Use Permit for Qdoba to install a proposed drive-thru at their existing restaurant, located at 2831 S. 108 St.

WHEREAS, Kyle Bennehoff, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 12.16 and Sec. 12.43(2) of the Revised Municipal Code of the City of West Allis, to install a proposed drive-thru at an existing restaurant located at 2831 S. 108 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on October 20, 2020 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, Kyle Bennehoff represents the owner of the property located at 2831 S. 108 St. The proposed use includes a drive-thru at an existing restaurant at 2831 S. 108 St. (an existing commercial use building). The business owner is proposing to redesign the parking lot layout to accommodate a drive-thru lane and pick-up window.
2. The proposed drive-thru is located behind the existing building located at 2831 S. 108 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows, to-wit:

All the land of the owner being located in the Northeast ¼ of Section 7, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, describes as follows:

Commencing at the Northeast corner of said Northeast ¼ of Section 7; thence Southerly, 1088.71 feet, along the East section line of said Section 7; thence Southwesterly, 75.85 feet to the West right-of-way line of South 108th Street and Point of Beginning; thence continue Southwesterly, 214.93 feet; thence Southerly, 45.47 feet; thence Easterly, 170.00 feet, to the West right-of-way line of South 108th Street; thence Northerly, 176.97 feet, along said West right-of-way line

to the Point of Beginning.

Tax Key No. 520-9960-000

Said land being located at 2831 S. 108 St.

3. The applicant proposes to establish a drive-thru lane and pick-up window at the existing Qdoba restaurant.
4. The aforesaid premise is zoned C-4 Regional Commercial District under the Zoning Ordinance of the City of West Allis, which permits drive-thru facilities as a Special Use pursuant to Sec. 12.16 and Sec. 12.43(2) of the Revised Municipal Code.
5. The subject property is located on the west side of S. 108 St., between W. National Ave. and W. Dakota St., and is zoned for commercial purposes. Properties to the north, east, south, and west are zoned commercial and developed for commercial purposes.
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. Prior uses of the property included Z Teca, another Mexican style restaurant.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application submitted by Kyle Bennehoff, to install a proposed drive-thru at their existing restaurant, located at 2831 S. 108 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 Sec. 12.16 of the Revised Municipal Code, so as to permit the issuance of a Special Use Permit, as therein provided.

NOW, THEREFORE, 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, Landscaping, Screening and Architectural Plans approved by the West Allis Plan Commission on September 23, 2020. No alterations or modification to the approved architectural 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. Any applicable licenses shall be applied for and approved. Seating capacity shall be in accordance with limits of occupancy load calculations as approved by Building Inspection and Fire Departments.
3. Off-Street Parking. In accordance with Sec. 12.19 of the Revised Municipal Code, a total of 14 parking spaces are required for the proposed use (based on  $2,115\text{-sf}/150=14$ ). The site redesign includes 18 off-street parking spaces provided on site in accordance with the site plan.  
  
The Common Council has the authority to accept the revised parking provisions, as a condition of the Special Use. With the approval and signed execution of this resolution, the Common Council agrees to allow revised minimum parking requirements, in accordance with section 12.16(9)(a) of the Revised Municipal Code.
4. Hours of Operation. The grant of this Special Use Permit will allow the general hours of operation for the restaurant to be open from 10:00am - 10:00pm, Monday through Sunday.
5. Operations. The existing restaurant offers outdoor dining within the same operating hours as the dine-in portion of the business. The restaurant also offers carry-out/on site pick-up in accordance with the approved site and landscaping plan.
6. Window Signage. Window signage shall not exceed twenty (20) percent of the glazed portion of each window frame and be attached to the interior of the window area. No flashing window signage.

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. 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. Pest Control. Exterior pest control shall be contracted on a monthly basis.
10. 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.
11. 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.
12. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner to minimize light splay from the property boundaries.
13. Noxious Odors, Etc. The restaurant shall not emit foul, offensive, noxious or disagreeable odors, gases or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
14. 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.
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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Agent/Qdoba (tenant)

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Property owner

Mailed to applicant on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2020

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City Clerk

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

ZON-R-1234-10-20-20

Plan Commission recommends approval.