



City of West Allis

Legislation Text

File #: R-2017-0186, **Version:** 1

Resolution relative to determination of Special Use Permit for Jane's Simply Delicious Popcorn, a proposed limited food production use, to be located within a portion of the Southtown Shopping Center located at 2942 S. 108 St.

WHEREAS, Bill Duchaine, d/b/a Jane's Simply Delicious Popcorn, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code, to establish Jane's Simply Delicious Popcorn within the Southtown Shopping Center at 2942 S. 108 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on July 11, 2017, 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, Bill Duchaine, d/b/a Jane's Simply Delicious Popcorn, has offices at 2433 E. Layton Ave., Cudahy, WI 53110.
2. The applicant is in the process of leasing tenant space within the Southtown Shopping Center at 2942 S. 108 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

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:

Lot 2 of the Certified Survey Map No. 7411.

Tax Key No. 519-0339-020

Said land located at: 2906-2990 S. 108 St.

3. The applicant is proposing to remodel and establish an approximate 3,360 sq. ft. retail and food production space within the overall 92,315 sq. ft. shopping center.
4. The aforesaid premises is zoned C-4 Regional Commercial District under the Zoning Ordinance of the City of West Allis, which permits food production, limited uses as a Special Use, pursuant to Sec. 12.43(2) and Sec. 12.16 of the Revised Municipal Code.
5. The subject property is part of a commercial corridor along S. 108 St. (State Highway 100), which is zoned C-4 Regional Commercial District. Properties to the north and west of the subject property are used for commercial. Properties to the north are also developed for high density residential use. Properties to the east of the subject property are used for low density residential use. Properties to the south are used for commercial and high density residential uses.

6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area as the property is part of a retail-commercial corridor and served by public transit.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of Bill Duchaine, d/b/a Jane's Simply Delicious Popcorn, to establish retail and food production space within the Southtown Shopping Center within leasable space located at 2942 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 Secs. 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, Landscaping, Screening and Architectural Plans approved on June 28, 2017 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, 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 Federal, 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. Hours of Operation. The applicant has indicated the following hours of operation: Monday through Friday business hours to be from 9:00 a.m. to 9:00 p.m., Saturday from 9:00 a.m. to 8:00 p.m., and Sunday from 10:00 a.m. to 5:00 p.m.

With the grant of this special use permit the Common Council accepts the following hours of operation for the subject limited food production use at 2942 S. 108 St.: 8:00 a.m. to 10:00 p.m., 7 days a week.

4. Operations:
 - 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.
 - 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.
 - F. Special events to be authorized by Common Council.
5. Off-Street Parking. The use requires a total of 11 parking spaces. The site offers off-street parking for 408 parking stalls.
6. Litter and Monitoring. Employees shall inspect the area and immediate vicinity and pick up litter on a

daily basis.

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 is a 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. Pagers, Intercoms. The use of outdoor pagers, intercoms, or loud speakers shall not be permitted on site. Person-to-person conversation, as typical within drive-thru operations via speakers and microphones, is permitted, subject to noise/volume controls, as necessary.

11. Sidewalk Repair. The grant of this Special Use Permit 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.

12. Outdoor Lighting. The grant of this Special Use Permit is subject to all lighting fixtures being orientated and/or shielded in such a manner that no light splays from the property boundaries.

13. 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.

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 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.

Bill Duchaine, d/b/a Jane's Simply Delicious Popcorn, tenant

Southtown Plaza LLC, property owner

Mailed to applicants on the

_____ day of _____, 2017

City Clerk

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

ZON-R-1106-7-11-17