

ENROLLED ORDINANCE 173-074

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA ZONING CODE BY REVISING A CONDITION OF A PREVIOUS CONDITIONAL REZONING ENROLLED ORDINANCE NO. 153-129, PARAGRAPH (g), EXHIBIT "A-3") TO ALLOW DRIVE THROUGH USES IN THE B-3 GENERAL BUSINESS DISTRICT (RZ17)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Waukesha Town Board on November 8, 2018; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the District Zoning Map for the Town of Waukesha Zoning Code, adopted by the Town of Waukesha on October 30, 2017, is hereby amended to revise the conditional rezoning allowed by Enrolled Ordinance No. 153-129, Paragraph (g), Exhibit "A-3" to allow drive through uses in the B-3 General Business District, and more specifically described in the "Staff Report and Recommendation" and map on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference RZ17, is hereby approved, subject to the following conditions:

1. County Enrolled Ordinance 153-129 Exhibit "A-3"; paragraph (g) shall be amended as follows:

Uses on the site shall be allowed, as set forth in the B-3, General Business District, except the following uses shall expressly be prohibited: vehicle sales, new or used; storage yards and garages for equipment, supplies, or vehicles; storage of junk automobiles or parts; dry cleaning, dyeing, and laundry establishments, except that drop off and pick up stations for laundry/dry cleaning establishments may be allowed; lockers or cold storage plants; gasoline stations; vehicle repair; dance halls and amusement places; wholesalers and distributors; mini warehouses; and theaters.

2. Effective. The amendment to the B-3 District conditions shall not be in full force and effect until approved by the Waukesha County Board of Supervisors.
3. Payment of Charges. The Petitioner and/or Property Owner shall, on demand, reimburse the Town of Waukesha for all costs and expenses of any type incurred by the Town in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions. Additionally, any unpaid bills owed to the Town of Waukesha by the Subject Property Owner and/or Agent, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees or forfeitures owed to the Town of Waukesha must be paid on demand and prior to issuance of any permits. Such unpaid bills also constitute a breach of the requirements of

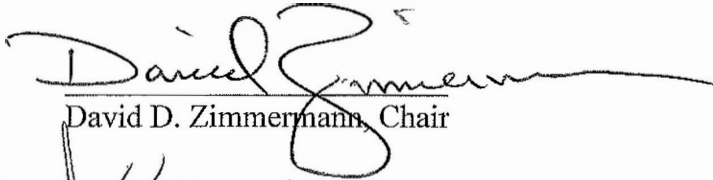
this conditional approval that is subject to all remedies available to the Town of Waukesha, including possible cause for termination of the conditional approval.

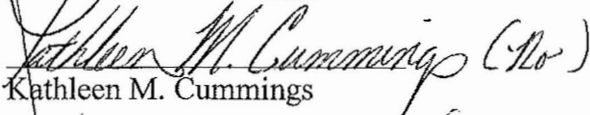
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Waukesha.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA ZONING CODE
BY REVISING A CONDITION OF A PREVIOUS CONDITIONAL REZONING ENROLLED
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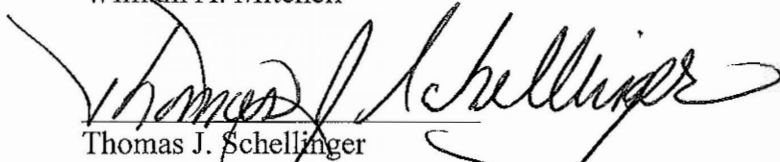
Presented by:
Land Use, Parks, and Environment Committee

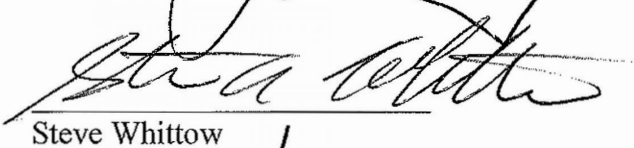

David D. Zimmermann, Chair

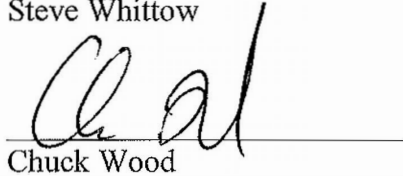

Kathleen M. Cummings


Keith Hammitt

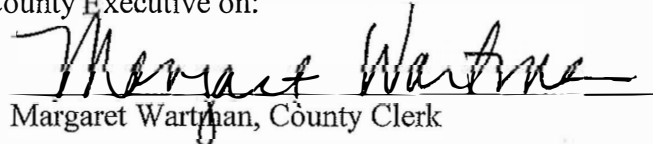

William A. Mitchell


Thomas J. Schellinger


Steve Whittow


Chuck Wood

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: January 22 2019, 
Margaret Wartyman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed:

Date: 1/29/19, 
Paul Farrow, County Executive

COMMISSION ACTION


The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends **approval** of **(RZ17 Larson-Shops at Sunset LLC/78 Waukesha LLC)** in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION


December 6, 2018

Absent

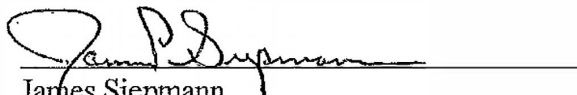
Robert Peregrine, Chairman




William Mitchell, Vice Chairman




Richard Morris



James Siepmann



William Maslowski



Thomas Michalski

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
ZONING MAP AMENDMENT

DATE: December 6, 2018

FILE NO.: RZ17

TAX KEY NO's.: WAKT 1335.942.002 and WAKT 1335.942.003

OWNERS: Tim Larsen
d/b/a Shops at Sunset LLC
2777 N. Stemmons Fwy Ste 1400
Dallas, TX 75207-2277

78 Waukesha LLC
6938 N. Santa Monica Boulevard
Fox Point, WI 53217

LOCATION:

Parcel 2 and 3 of Certified Survey Map No. 9666, part of the SW ¼ of Section 10, T6N, R19E, Town of Waukesha. More specifically, the properties are located at S30 W24890 and S30 W24896 Sunset Drive, containing a total of approximately 4.9 acres.

PRESENT ZONING CLASSIFICATION:

B-3 (Conditional).

PRESENT LAND USE:

Commercial (south), senior housing (north).

PROPOSED ZONING:

B-3 (Amend conditions imposed by previous rezoning).

PROPOSED LAND USE:

Mixed Use (modification to use terms for drive-thrus proposed).

PUBLIC HEARING DATE:

September 13, 2018.

PUBLIC REACTION:

An owner of a business located in the strip mall on the property affected by the proposed text amendment expressed concerns regarding traffic and safety issues around the building. She indicated that their employees enter and exit from the back of the building and make trips to the dumpster in the far back of the building. If there would be additional drive through traffic, they suggested the addition of speed bumps in the back and front of the building to slow down vehicles. Another suggestion was to make the parking in the back of the building employee parking only. She also had questions regarding the fire lanes and noted that it is difficult to make a left turn onto Sunset Drive. The fire chief indicated that all standard codes for fire lanes would need to be met.

TOWN PLAN COMMISSION:

On September 13, 2018, the Town Plan Commission, by a vote of 4 to 1, recommended approval of the rezoning request as conditioned. Subsequently, on November 8, 2018, the Town Plan Commission unanimously recommended approval of the subject rezone ordinance in its final form.

TOWN BOARD ACTION

On September 13, 2018, the Town Board, by a vote of 4 to 1, approved the rezoning request as conditioned. Subsequently, on November 8, 2018, the Town Board, by a vote of 4 to 1 approved the subject rezone ordinance in its final form.

COMPLIANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN AND THE TOWN OF WAUKESHA LAND USE PLAN:

The properties are designated in the Mixed Use category on both plans. The proposal to amend the rezoning terms is compatible with plan recommendations in that mixed uses would continue to be accommodated.

OTHER CONSIDERATIONS:

The subject properties are part of a conditional rezoning series of files that was first established in 1999. The conditions that govern the subject properties are extremely detailed and are similar to those that are typical of a planned unit development (PUD) document. The properties subject to the various rezone files within the series are located at the northwest, northeast and southeast quadrants of the intersection of Sunset Drive and Prairie Avenue. The rezone terms have been amended several times since 1999. This part of the Town is highly urbanized and these particular properties are bordered by the City of Waukesha on all sides.

The current proposal would amend the use terms as they relate to two properties in the northwest quadrant of the intersection (see attached map). The amendment would slightly modify the list of prohibited uses, which would make restaurants with drive through lanes an available Conditional Use, whereas the use is currently prohibited. A Jimmy John's sandwich shop is proposed for the west end of the strip commercial building located on the subject parcel that abuts Sunset Drive. The sandwich shop would like to have a drive-thru window. Drive-thrus within the Town's B-3 District require a Conditional Use Permit. The proposed sandwich shop has advanced through the Town's Conditional Use process but approval of the drive thru use has been made contingent upon this rezoning being approved. There are numerous fast food restaurants with drive thrus on Sunset Dr., with the closest being Culver's located immediately to the west.

A speaker at the public hearing asked a number of questions about the functionality of a specific drive-thru layout that would only be able to move forward if this text amendment were first proposed. The Town has conducted a Conditional Use hearing regarding that related proposal. The Town asked the petitioner to respond with detailed information regarding anticipated traffic, drive lane specifications, etc. and the petitioner has provided very detailed information, as requested. The Town has since conditionally approved a Conditional Use, subject to numerous conditions including that the subject rezone must first be approved and that the County Planning and Zoning Division must review and approve the Site Plan, pursuant to the terms of the 1999 rezoning. The Town's Conditional Use conditions stipulate compliance with a detailed plan set that includes provisions to ensure traffic safety, landscape buffering and signage considerations.

STAFF RECOMMENDATION

It is the opinion of the Planning and Zoning Division Staff that the request be **approved** subject to the following conditions imposed by the Town:

- 1. County Enrolled Ordinance 153-129 Exhibit "A-3": paragraph (g) shall be amended as follows:

Uses on the site shall be allowed, as set forth in the B-3, General Business District, except the following uses shall expressly be prohibited: vehicle sales, new or used; storage yards and garages for equipment, supplies, or vehicles; storage of junk automobiles or parts; dry cleaning, dyeing, and laundry establishments, except that drop off and pick up stations for laundry/dry cleaning establishments may be allowed; lockers or cold storage plants; gasoline stations; vehicle repair; dance halls and amusement places; wholesalers and distributors; mini warehouses; and theaters.

- 2. Effective. The amendment to the B-3 District conditions shall not be in full force and effect until approved by the Waukesha County Board of Supervisors.

- 3. Payment of Charges. The Petitioner and/or Property Owner shall, on demand, reimburse the Town of Waukesha for all costs and expenses of any type incurred by the Town in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions. Additionally, any unpaid bills owed to the Town of Waukesha by the Subject Property Owner and/or Agent, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees or forfeitures owed to the Town of Waukesha must be paid on demand and prior to issuance of any permits. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town of Waukesha, including possible cause for termination of the conditional approval.

The approval of the request allows for the subject property owners to seek Conditional Use approvals to operate drive thru restaurants in an area that has many such uses. The Conditional Use and Site Plan review process would ensure that such uses are compatible with the neighborhood.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Division Manager

Attachments: Town Ordinance No. 2018-07
Map

ORDINANCE NO. 2018-07
TOWN OF WAUKESHA

AN ORDINANCE TO CONDITIONALLY REZONE THE B-3 CONDITIONS
TO CERTAIN LANDS IN THE TOWN OF WAUKESHA



WHEREAS, a petition has been filed by Tim Larson; DBA Shops at Sunset, petitioning pursuant to Section 13-2- 22(b) for rezoning property depicted in attached Exhibits A, attached hereto and incorporated herein by reference (the "Subject Property"); and

WHEREAS, upon receipt of the petition the Town Clerk scheduled a public hearing to be held jointly by the Town Plan Commission and the Town Board September 13, pursuant to Section 13-2- 22(d); and

WHEREAS, the Town Clerk for the Town of Waukesha has properly transmitted notice to the Town Plan Commission, Town Board, and to the Waukesha County Park and Planning Commission, pursuant to Section 13-2-22(d)(2) of the Town of Waukesha Zoning Code; and

WHEREAS, the Plan Commission considered the testimony taken at the public hearing, along with other pertinent technical information and made a recommendation to the town pursuant to Section 13-2- 22(d)(3) of the Town of Waukesha Zoning Code; and

WHEREAS, the Town Board for the Town of Waukesha at the September 13, 2018 meeting after carefully reviewing the recommendation of the Plan Commission for the Town of Waukesha and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety, morals, comfort, prosperity and general welfare of the Town of Waukesha of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the rezoning will serve the public health, safety morals, comfort, prosperity and general welfare of the Town of Waukesha, and that such amendments are intended to provide for adequate light, air, convenience of access, and safety from fire and other dangers; to promote the safety and efficiency of the public streets and highways; to aid in conserving and stabilizing the economic values of the community; to promote the orderly development of land; to preserve and promote the general attractiveness and character of the community environment; to guide the proper distribution and location of population and of the various land uses; and otherwise provide for the healthy and prosperous growth of the community, and that such rezoning will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW THEREFORE, the Town Board for the Town of Waukesha, Waukesha County does hereby ordain as follows:

SECTION 1: The Subject Properties identified as Tax Keys WAKT1335942002 and WAKT1335942003, are hereby conditionally rezoned to amend the B-3 District conditions established in Enrolled Ordinance no. 153-129, Ordinance No 3, Exhibits A-3 for the properties located at S30W24896 Sunset Dr (WAKT 1335942002) and S30W24890 Sunset Dr (WAKT1335942003), by conditions stated in Section 2 of this ordinance are met.

SECTION 2: The above rezoning is conditioned upon the following conditions, which must be complied with or this ordinance is null and void:

1. County Enrolled Ordinance 153-129 Exhibit "A-3"; paragraph (g) shall be amended as follows:
Uses on the site shall be allowed, as set forth in the B-3, General Business District, except the following uses shall expressly be prohibited: vehicle sales, new or used; storage yards and garages for equipment, supplies, or vehicles; storage of junk automobiles or parts; dry cleaning, dyeing, and laundry establishments, except that drop off and pick up stations for laundry/dry cleaning establishments may be allowed; lockers or cold storage plants; gasoline stations; vehicle repair; dance halls and amusement places; wholesalers and distributors; mini warehouses; and theaters.
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SECTION 4. SEVERABILITY.

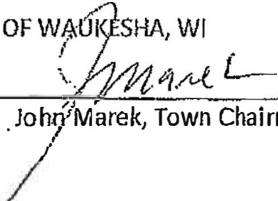
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 7. EFFECTIVE DATE.

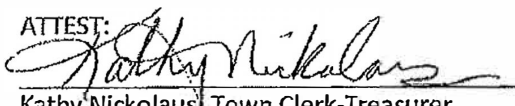
This ordinance shall be in full force and effect from and after its passage and publication and subject to the conditions stated in Section 2, and this ordinance is null and void and original district zoning shall be in effect with no further notice if said conditions are not complied with on the terms and conditions stated herein.

Passed and approved this 8th day of November, 2018.

TOWN OF WAUKESHA, WI

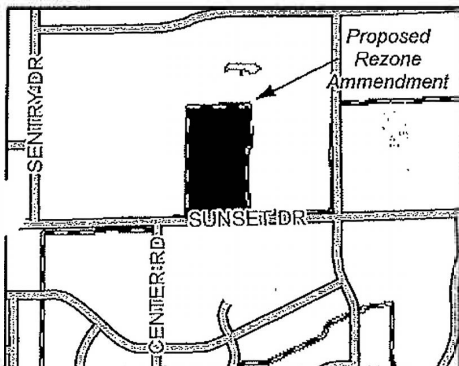
By:  John Marek, Town Chairman

ATTEST:


Kathy Nickolaus, Town Clerk-Treasurer

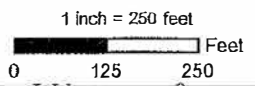
ZONING AMENDMENT

PART OF THE SW 1/4 OF SECTION 10,
TOWN OF WAUKESHA



 AMENDMENT OF CONDITIONS FROM PREVIOUS REZONE (ZT-1237A)

FILE.....RZ17
 DATE OF PLAN COMMISSION.....12/6/2018
 AREA OF CHANGE.....4.8 ACRES
 TAX KEY NUMBER.....WAKT 1335.942.002 AND WAKT 1335.942.003



Prepared by the Waukesha County Department of Parks and Land Use
 File Number: 173-O-074



Voting Results for 173-O-074

Amend The District Zoning Map Of The Town Of Waukesha Zoning Code By Revising A Condition Of A Previous Conditional Zoning Ordinance No. 151.123, Paragraph (g), Subpart "A," To Allow Over Through Uses In The B-3 General Business District (BZ7)

Passed By Majority Vote

AYE: 22
NAY: 1
ABSTAIN: 0
ABSENT: 2

D1 - Foti		AYE			AYE
D2 - Zimmermann	Motion	AYE		Second	AYE
D3 - Morris		ABSENT			AYE
D4 - Batzko		AYE			AYE
D5 - Dondlinger		AYE			AYE
D6 - Walz		AYE			AYE
D7 - Grant		AYE			AYE
D8 - Michalski		AYE			AYE
D9 - Heinrich		AYE			AYE
D10 - Swan		AYE			AYE
D11 - Howard		AYE			AYE
D12 - Wolff		AYE			AYE
D13 - Decker		AYE			AYE
			D14 - Wood		AYE
			D15 - Mitchell		AYE
			D16 - Crowley		AYE
			D17 - Paulson		AYE
			D18 - Nelson		AYE
			D19 - Cummings		NAY
			D20 - Schellinger		AYE
			D21 - Gaughan		AYE
			D22 - Wysocki		AYE
			D23 - Hammitt		AYE
			D24 - Whittow		ABSENT
			D25 - Johnson		AYE