



# City of West Allis

## Legislation Text

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**File #:** R-2008-0207, **Version:** 2

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Resolution relative to determination of Special Use Permit for Topper's Pizza, a proposed delivery/carry-out pizza restaurant to be located at 1676 S. 108 St. (Tax Key No. 449-9981-011).

WHEREAS, John Kubisiak, d/b/a Topper's Pizza, duly filed with the City Administrative Officer-Clerk/Treasurer an application for a special use permit, pursuant to Sec. 12.42(2), 12.45(2) and Sec. 12.16 of the Revised Municipal Code, to establish a Topper's restaurant; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on October 7, 2008, at 7:00 p.m., and 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, John Kubisiak, d/b/a Topper's Pizza, resides at 21461 E. Moreland Blvd., Waukesha, WI 53186.
2. The applicant has a valid offer to lease a portion of the subject property and proposed to occupy 2,000 sq. ft. tenant space for Topper's Pizza within the existing Culver's Building at Crestwood Commons located at 1676 S. 108 St., West Allis, Milwaukee County, Wisconsin, more particularly described as follows:

A tract of land being in the Northwest  $\frac{1}{4}$  of Section 5, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, described as follows:

Commencing at the Northwest corner of said Section 5; thence Southerly, 1598.24 feet, along west line of said Section 8; thence Easterly, 60.00 feet to the Point of Beginning; thence, continue, Easterly, 572.34 feet, along South right-of-way line of West Mitchell Street; thence Southeasterly, 39.76 feet, along the arc of the curve with a radius of 65.00 feet; thence Southerly, 312.75 feet, along West right-of-way line of South 106<sup>th</sup> Street; thence Southwesterly, 9.86 feet; thence Westerly, 19.00 feet; thence Southerly, 90.00 feet; thence Westerly, 558.60 feet, to the East right-of-way line of South 108<sup>th</sup> Street; thence Northwesterly, 6.57 feet along said East line; thence Northwesterly, 72.20 feet along said East line; thence Northerly, 32.02 feet along said East line to the Point of Beginning.

The subject property contains 5.45 acres more or less; PDD land contains 6.961 acres (City R.O.W.) more or less.

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Said land is located at 1672-1712 S. 108 St.

3. Topper's Pizza proposes to lease an approximately 2,000 square foot space and utilize their lease space for carry-out and delivery service. Minimal seating will exist within the Topper's space - 1 table up to 4 patrons.

4. The underlying zoning of the existing Crestwood Commons property is currently zoned Manufacturing, with a Planned Development District overlay. A rezoning of the underlying zoning from M-1 to C-3 Community Commercial District is proposed (Common Council hearing October 21, 2008) as the nature of the property is no longer utilized for manufacturing purposes. Both the current and proposed zoning permits restaurants as a special use, pursuant to Sec. 12.42(2), 12.45(2) and Sec. 12.16 of the Revised Municipal Code.

5. The subject property is part of a block along the east side of S. 108 St., between the Union Pacific R.R. and W. Lapham St., which is zoned for commercial purposes. Properties to the north, south, east and west are developed for commercial and manufacturing uses.

6. A traffic impact analysis was conducted by Traffic Analysis and Design, Inc. All traffic leaving the development will be subject to a right-turn-only movement onto Hwy. 100 from W. Mitchell St.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the application of John Kubisiak, d/b/a Topper's Pizza, to establish a carry-out/delivery Pizza Restaurant at Crestwood Commons 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, landscape, screening and architectural plans approved on September 24, 2008, 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. Seating Capacity. The grant of this special use is subject to all applicable fire, life safety, and building codes. Occupant load calculations shall be submitted to the Building Inspections Department and to the West Allis Fire Department for review/approval.
3. Noxious Odors, Etc. The restaurant shall not emit foul, offensive, noisome, noxisome, oxious or disagreeable odors, gases or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
4. Parking. The property is required to provide a minimum of 214 spaces on site. A total of 240 are currently provided.
5. Hours of Operation. The hours of operation are as follows: Existing Culver's - 8:00 a.m. to midnight, seven days a week. Proposed Topper's - 10:00 a.m. to 1:00 a.m., seven days a week. From 1:00 a.m. to 3:00 a.m. only delivery is available.
6. Litter. Employees shall inspect the site and immediate vicinity and pick up litter on a daily basis.
7. Refuse Collection. Refuse collection to be by private hauler.
8. 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.
9. Monitoring. The area shall be adequately monitored by staff.
10. Window Signage. Any building window signage shall not exceed twenty (20) percent of each window's area
11. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays from the property boundaries.
12. 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.

13. 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.

14. 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.

E. The Common Council may declare the Special Use Permit to be void using the procedure set forth in Section 16.

15. 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.

16. 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.

17. 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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John Kubisiak, d/b/a Topper's Pizza (Tenant)

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Brian Shecterle, Shecterle Commercial Properties 2, LLC (Owner)

Mailed to applicant on the  
\_\_\_\_\_ day of \_\_\_\_\_ 2008

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Assistant City Clerk

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

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