

PIN: 08-17-303-022

ADDRESS:  
See Exhibit A

PREPARED BY:  
CITY OF NAPERVILLE  
LEGAL DEPARTMENT  
630/420-4170  
400 SOUTH EAGLE STREET  
NAPERVILLE, IL 60540

RETURN TO:  
CITY OF NAPERVILLE  
CITY CLERK/COMMUNITY SERVICES DEPT.  
400 SOUTH EAGLE STREET  
NAPERVILLE, IL 60540

PZC Case #23-1-111

ORDINANCE NO. 24 - \_\_\_\_

AN ORDINANCE GRANTING A CONDITIONAL USE FOR GENERAL RETAIL FOR A  
HEINEN'S GROCERY STORE FOR  
REAL PROPERTY LOCATED AT 1244 E CHICAGO AVENUE

RECITALS

1. **WHEREAS**, Heinen's, Inc., 4540 Richmond Road, Warrensville Heights, Ohio, 44128 ("**Owner**" or "**Petitioner**"), is the owner of real property legally described on **Exhibit A** and depicted on **Exhibit B** having current common street addresses of 1256, 1260, 1262, 1266, 1268, 1270, 1272, 1274, 1276, 1280, 1284, and 1290 E. Chicago Avenue, Naperville, IL 60540, with a proposed new common street address of 1244 E. Chicago Avenue, Naperville, IL 60540 ("**Subject Property**").
2. **WHEREAS**, Petitioner has petitioned the City of Naperville for approval of a conditional use for general retail to allow for the development of a grocery store at the Subject Property.

3. **WHEREAS**, the Subject Property is currently zoned B1 (Neighborhood Convenience Shopping Center District).
4. **WHEREAS**, the Petitioner is also requesting a map amendment to rezone the Subject Property to the OCI (Office Commercial and Institutional District) concurrent with the request for conditional use approval.
5. **WHEREAS**, the requested conditional use meets the standards for conditional uses as provided in **Exhibit C**.
6. **WHEREAS**, on June 5, 2024, the Planning and Zoning Commission conducted a public hearing to consider the requested rezoning and conditional use for the Subject Property and recommended approval of the Petitioner's requests subject to the requirements set forth herein.
7. **WHEREAS**, the City Council of the City of Naperville has determined that the Petitioner's request for a conditional use for general retail for the Subject Property should be granted as provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:**

**SECTION 1:** The foregoing Recitals are incorporated as though fully set forth in this Section. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

**SECTION 2:** A conditional use to allow for general retail at the Subject Property pursuant to Section 6-7F-3 (OCI District: Conditional Uses) of the Naperville Municipal Code is hereby granted subject to the following conditions:

1. A minimum of 0.7 acres of the Subject Property along Pembroke Road shall be maintained as permanent open space generally located in the area depicted on **Exhibit D** (Landscape Plan) and hereinafter referred to as “**Permanent Open Space**”. Said Permanent Open Space shall include the existing berm which shall be maintained in its current location as specified on **Exhibit D** (Landscape Plan) and to the existing height depicted on **Exhibit E** (Final Engineering Plans). In addition, the Petitioner shall install an additional 20 landscape items (5 white fir trees and a variety of shrubs and ornamental grasses) at the south end of the existing berm, as depicted on **Exhibit D**, prior to issuance of a Final Occupancy Permit for the Subject Property.
2. A 6’ tall solid stockade (board-on-board) fence shall be installed and maintained along the south property line of the Subject Property as it abuts the northern and eastern property lines of the Naperville Park District property, in the location depicted on **Exhibit B** (Site Plan). Said fence shall be installed prior to issuance of a Final Occupancy Permit for the Subject Property.
3. Access to and/or from the Subject Property shall be prohibited from Pembroke Road.
4. A sound barrier varying in height between 8’ and 12’ shall be installed and maintained in the vicinity of the south property line of the Subject Property as depicted on **Exhibit B** (Site Plan) and as recommended in the Petitioner’s Sound Study attached hereto as **Exhibit F**, in order to comply with Section 6-14-1 (Standards: Noise) of the existing Naperville Municipal Code for noise as measured at the property line. Sound absorbing panels shall also be installed on the south wall of the building near the loading dock as depicted on **Exhibit B** (Site Plan). Said sound wall and acoustic panels shall be installed prior to issuance of a final occupancy permit for the Subject Property. If, following installation of the sound wall and/or sound absorbing panels, the Subject Property results in the generation of any continuous and sustained noise at the property lines of the Subject Property in excess of the limits established in Section 6-14-1, the Owner shall be required to take further steps to mitigate said noise to bring it into compliance with Code allowances.
5. All deliveries and garbage pick-up on the Subject Property must occur between the hours of 7:00 a.m. and 7:00 p.m.
6. Any change proposed to the conditions provided herein shall be processed as a Major Change to the Conditional Use hereby granted to the Subject Property pursuant to the provisions of Section 6-3-8:5 (Changes to Approved Conditional Uses) of the Naperville Municipal Code, as amended from time to time.
7. An Easement, Operation and Maintenance Agreement (“**Easement Agreement**”) recorded with the DuPage County Recorder as Document No. R2024-004382 contains provisions applicable to the Subject Property and to the adjacent McAlister’s Deli property located at 1296 E. Chicago, including but not limited to cross-access provisions and utility provisions. Said Easement Agreement has been impacted by requirements pertaining to the development of the Subject Property and shall be amended by Petitioner and the

owner of the McAlister’s Deli Property to address those impacts (hereinafter the “**Amended Easement Agreement**”). The provisions currently set forth in Section 2 of the Easement Agreement which is titled “Storm Sewer Easement; New Sanitary Sewer Easement; Electric Easement”, (hereinafter the “**Section 2 Provisions**”), shall be included in the Amended Easement Agreement as modified by virtue of the amendment and shall be subject to approval by the City Attorney except as to provisions relating to the Capital Improvements Contribution and the Storm Maintenance Contribution. The Amended Easement Agreement shall provide that it shall not be amended, modified, or revised as to the substance of said Section 2 Provisions (other than the Capital Improvements Contribution or the Storm Maintenance Contribution) without the prior written approval of the City Engineer. The Amended Easement Agreement shall be fully executed and recorded with DuPage County prior to the City’s issuance of a full site permit for the Subject Property.

**SECTION 3:** This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

**SECTION 4:** The City Clerk is authorized and directed to record this Ordinance with the DuPage County Recorder.

**SECTION 5:** If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code. Technical and minor substantive revisions as deemed acceptable to the City Attorney may be made to this Ordinance and to the exhibits hereto prior to recordation with the office of the Recorder in which the Subject Property is located within.

**SECTION 6:** This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

AYES:

NAYS:

ABSENT:

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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Scott A. Wehrli  
Mayor

ATTEST:

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Dawn C. Portner  
City Clerk