

PIN: 08-17-303-025

ADDRESS:
1296 E. CHICAGO AVE.
NAPERVILLE, IL 60540

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

RETURN TO:
CITY OF NAPERVILLE
COMMUNITY SERVICES OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

PZC Case #22-1-095

ORDINANCE NO. 23 -

AN ORDINANCE APPROVING A CONDITIONAL USE FOR AN EATING ESTABLISHMENT IN THE OCI ZONING DISTRICT AND GRANTING SETBACK AND DRIVE-THROUGH STACKING VARIANCES FOR THE PROPERTY LOCATED AT 1296 E. CHICAGO AVENUE (MCALISTER'S DELI)

RECITALS

1. **WHEREAS**, Old Second National Bank, 333 W. Wacker Drive, Suite 1010, Chicago, IL 60606, is the owner ("**Owner**") of real property located at 1296 E. Chicago Avenue, Naperville, IL 60540, legally described on Exhibit A and depicted on Exhibit B ("**Subject Property**"); and
2. **WHEREAS**, the Subject Property is located in the City's B1 Zoning District (Neighborhood Convenience Shopping District); and
3. **WHEREAS**, the Subject Property is currently improved with a single-story bank building with a drive-through and a surface parking lot; and
4. **WHEREAS**, with the authorization of the Owner, the Hari Group, Inc., 1208 Samuel Court, Naperville, IL 60540 ("**Petitioner**"), has petitioned the City of Naperville to

approve this ordinance (“**Ordinance**”), along with an ordinance revoking Ordinance 76-137 which imposed certain use limitations, and an ordinance rezoning Subject Property from B1 (Neighborhood Convenience Shopping District) to OCI (Office, Commercial and Institutional District); and

5. **WHEREAS**, subject to approval of its rezoning request and its request for revocation of Ordinance 76-137 (together referenced herein as the “**Related Development Ordinances**”), Petitioner also seeks approval of a conditional use for an eating establishment to be known as McAlister’s Deli; and
6. **WHEREAS**, pursuant to Section 6-7f-3 (OCI Zoning District: Conditional Uses) of the Naperville Municipal Code, an eating establishment requires a conditional use in the OCI Zoning District; and
7. **WHEREAS**, subject to City Council approval of the Related Development Ordinances and subject to compliance with the terms and conditions set forth and referenced herein, the requested conditional use meets the Standards for Conditional Uses as provided in **Exhibit C** attached hereto; and
8. **WHEREAS**, Petitioner is also requesting a variance to Section 6-9-2:4.3.1 (Off-Street Parking Facilities: Yard Requirements) of the Naperville Municipal Code to permit the existing driveways that are parallel to Olesen Drive and E. Chicago Avenue to remain in place within required setbacks, and a variance to Section 6-9-3:5 (Schedule of Off-Street Parking Requirements: Stacking Requirements For Use With Drive-Through Facilities) to permit a drive-through facility with stacking for three (3) cars; and
9. **WHEREAS**, subject to City Council approval of the Related Development Ordinances and subject to compliance with the terms and conditions set forth and referenced herein,

the requested variances meet the Standards for Variances as provided in **Exhibit C** attached hereto; and

10. **WHEREAS**, on May 17, 2023, the City’s Planning and Zoning Commission conducted a public hearing regarding Petitioner’s requests and recommended that they be approved; and

11. **WHEREAS**, the City Council of the City of Naperville has determined that Petitioner’s requests should be granted subject to approval of rezoning of the Subject Property to the OCI Zoning District, and subject to compliance with the terms and conditions set forth and referenced 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 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Subject to City Council approval of the Related Development Ordinances for the Subject Property, a conditional use for an eating establishment in the OCI District pursuant to Section 6-7F-3 (OCI District: Conditional Uses) of the Naperville Municipal Code is hereby approved for McAlister’s Deli subject to the following conditions:

1. Final engineering plans must be submitted, reviewed and approved by City staff prior to the issuance of any site or building permits for the Subject Property. All staff comments, including but not limited to Department of Public Utility-Electric, Department of Public Utility-Water/Wastewater, Fire Department, Engineering and Planning Department, must be addressed and resolved to the City’s satisfaction upon submittal of final engineering plans. All plans must be code compliant (except for approved variances).
2. A preliminary/final plat of subdivision shall be submitted with the final engineering plans to create a legal lot of record and to establish any easements and provisions required by the City.

3. Four-sided building elevations must be submitted concurrently with the final engineering plans. Any new exterior building materials must comply with the Citywide Design Guidelines. All RTUs must comply with Section 5-10-3:12 (Landscaping and Screening: Rooftop Equipment).
4. Bicycle parking must be installed on the Subject Property prior to issuance of an occupancy permit in compliance with Section 6-9-7 as amended from time to time (Off Street Parking: Supplemental Standards for Bicycle Parking) and said bicycle parking shall be consistently maintained.
5. The monument sign advertising McAlister's Deli must comply with applicable provisions of the Naperville Municipal Code, including but not limited to Section 6-16-5 as amended from time to time (Signs on Commercial and Institutional Property).
6. Details of the proposed dumpster enclosure on the Subject Property shall be provided by Petitioner for approval by City staff (material, style and design) upon submittal of final engineering plans, and the proposed enclosure must comply with Section 5-10-3:7 (Landscaping and Screening: Screening of Refuse Disposal Areas) and Section 6-2-10 (Accessory building, structures and uses of land) as amended from time to time.
7. If vehicles stacking in the pick-up lane block access to any parking spaces, staff will require that those parking spaces be designated as employee only parking. Petitioner shall promptly comply with City staff requirements.
8. Only vehicles shall be allowed to use the pick-up window and vehicles are prohibited from parking and waiting for food pickup north of the pick-up window (where the drive-through ends). Petitioner shall enforce compliance with this requirement at all times.

SECTION 3: Subject to City Council approval of the Related Development Ordinances for the Subject Property and the conditional use described above, a variance to Section 6-9-2:4.3.1 (Off-Street Parking Facilities: Yard Requirements) to permit existing driveways that are parallel to Olesen Drive and E. Chicago Avenue within the setback areas as depicted on the Site Plan attached as **Exhibit D**, is hereby approved.

SECTION 4: Subject to City Council approval of the Related Development Ordinances for the Subject Property and the conditional use described above, a variance to Section 6-9-3:5 (Schedule of Off-Street Parking Requirements: Stacking Requirements For Use With Drive-Through Facilities) to permit a drive-through facility on the Subject

Property with stacking for three (3) cars as depicted on the Site Plan attached as **Exhibit D**, is hereby approved, subject to the following condition:

1. The drive-through facility shall be utilized exclusively for pick-up orders made in advance; orders may not be given at the pick-up window.

SECTION 5: The variances approved by this Ordinance shall expire unless within two (2) years from passage of this Ordinance: (1) a building permit has been obtained and the construction or alteration of the structure as specified in this Ordinance has been started, or (2) the use specified in this Ordinance has commenced.

SECTION 6: The variances approved by this Ordinance shall be subject to revocation for failure to comply with all other applicable provisions set forth herein and in the Naperville Municipal Code, as amended from time to time, to the terms and conditions set forth in the Related Development Ordinances, and to all other applicable ordinances and laws, as amended from time to time.

SECTION 7: 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 DuPage County Recorder.

SECTION 8: The City Clerk is authorized and directed to record this Ordinance with the DuPage County Recorder.

SECTION 9: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2023.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2023.

Scott A. Wehrli
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk