

**PIN: [BLOCK 59 SHOPPING CENTER]
07-22-102-022**

**COMMON ADDRESS:
404 S. ROUTE 59
NAPERVILLE, IL 60540**

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

**RETURN TO:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540**

PZC Case #23-1-059

ORDINANCE NO. 23 - _____

**AN ORDINANCE APPROVING
A FINAL PLAT OF PLANNED UNIT DEVELOPMENT
FOR BLOCK 59**

RECITALS

1. **WHEREAS**, Brixmor Heritage Square LLC, 8700 West Bryn Mawr Avenue, Suite 1000-S, Chicago, IL 60631 (“**Petitioner**” and “**Owner**”) is, or will be, the owner of 16.75 acres of real property located at the northeast corner of IL Route 59 and Aurora Avenue, legally described on **Exhibit A** and depicted on **Exhibit B** (the “**Subject Property**” or “**Block 59 Shopping Center**”).
2. **WHEREAS**, the Petitioner has petitioned the City for approval of a Final Plat of Planned Unit Development for the Subject Property (the “**Final PUD Plat**”) as set

forth on **Exhibit B** to allow for a restaurant, entertainment, and experiential development to be constructed on the Subject Property.

3. **WHEREAS**, on March 22, 2023, the City Council of the City of Naperville approved the following ordinances: Ordinance 23-036, revoking Ordinance 91-205 which established the Heritage Square Planned Unit Development (PUD) for the Subject Property recorded as Doc. No R2023-021673 with the DuPage County Recorder; Ordinance 23-037, approving the Preliminary Plat of Subdivision for the Subject Property recorded as Doc. No R2023-021674 with the DuPage County Recorder; and Ordinance 23-038, approving a conditional use for the Block 59 PUD, a Preliminary PUD Plat and deviations to the following sections of the Naperville Municipal Code for the Subject Property recorded as Doc. No R2023-021675 with the DuPage County Recorder:

- (i) Section 6-9-3 (Schedule of Off-Street Parking Requirements) to reduce the required parking from 3,796 parking spaces to 3,358 parking spaces subject to conditions referenced in Ordinance 23-038 (hereinafter referenced as **“Parking Deviation”**);
- (ii) Section 6-14-4:3.2.5 (Performance Standards) to increase the height of light poles from 25 feet to 30 feet;
- (iii) Section 6-9-6:2.2 (Drive Through Stacking Lanes) to shorten the required drive-through bypass lane for building L;
- (iv) Section 6-16-5 (Signs on Commercial and Institutional Property) to allow for modifications to permissible sign height, area, setbacks, orientation, quantity, and changeable copy regulations; and,

(v) Section 1.3.2 of the Design Manual for Public Improvements to modify the required parking lot design.

4. **WHEREAS**, Ordinance 23-038 addresses parking requirements for Block 59 Shopping Center and the adjacent Westridge Court Shopping Center in the context of shared parking between the two shopping centers as set forth in a parking study performed by Petitioner's consultant and provided by Petitioner. Said parking study (attached as Exhibit E to Ordinance 23-038) evaluated parking requirements for shared parking between the Block 59 Shopping Center and the Westridge Court Shopping Center and was the basis for the Parking Deviation approved in Ordinance 23-038. In addition to the requirements set forth in Ordinance 23-038, implementation and enforcement pertaining to allocation of shared parking is provided for in the Owners' Acknowledgement and Acceptance Agreement for Block 59 Shopping Center and Westridge Shopping Center attached as Exhibit C to the Ordinance approving the Final Plat of Subdivision for Block 59.
5. **WHEREAS**, the March 9, 2023 Parking Study attached as Exhibit E to Ordinance 23-038 was updated by Petitioner's consultant on October 25, 2023 to further refine the parking allocations existing at the Westridge Shopping Center and for proposed Block 59 Shopping Center uses. Said updated Parking Study, attached hereto as **Exhibit C**, reflects changes in building square footages and uses but is consistent with and supports the Parking Deviation approved in Ordinance 23-038.
6. **WHEREAS**, the Petitioner has satisfied the following conditions of approval of the Parking Deviation as required by Ordinance 23-038:

1. Owner shall amend the Declaration of Easements dated July 16, 2020 and currently recorded as Document No. R2020-075500, to reflect the parking changes proposed for Westridge Court, as well as to expand the applicability of the agreement to Block 59. Said amendment shall be subject to review and approval by the City Attorney and shall be recorded concurrent with the first Final PUD Plat for Block 59.
 2. Owner shall submit an autoturn exhibit for the overflow and event parking areas, utilizing a 34.25 foot fire pumper truck, which exhibit shall be subject to review and approval by the City Engineer, prior to City Council consideration of the first final PUD plat for Block 59.
 3. Owner shall submit details pertaining to the utilization and functionality of the overflow and event parking area, including options such as wayfinding signage, lot striping, hours of operation, and usage of parking lot attendants, subject to review and approval by the City Zoning Administrator, prior to City Council consideration of the first final PUD plat for Block 59.
7. **WHEREAS**, Ordinance 23-038 further provides that the Parking Deviation granted therein is subject to ongoing compliance with the following:

If it is determined by the City Zoning Administrator that the parking demands of Block 59 and Westridge Court are not being accommodated within the available parking supply on the Subject Property, or if designated valet areas serving the Subject Property are consistently operating over capacity, the City Zoning Administrator shall notify the Owner and work with the Owner to identify the parameters of the parking shortage and determine how said parking shortage may be resolved. Options which may be required by the City Zoning Administrator to resolve a parking shortage may include some or all of the following:

- a. Utilization of alternative parking solutions by the Owner such as shared parking agreements with surrounding property owners or providing off-site parking locations.
- b. Prioritization of tenants with reduced parking requirements/demand over restaurant/entertainment tenants.
- c. Pre-approval by the City Zoning Administrator of temporary events planned to take place within Block 59 or Westridge Court parking areas.
- d. Modifications of designated valet parking areas and overflow event parking (either by elimination of and/or addition thereto) shall be made if said areas do not operate as anticipated.

- e. Any other options proposed by the Owner subject to review and approval by the City Zoning Administrator.

The Zoning Administrator, with input from the Owner, will determine which of the above option(s) will most efficiently address the parking shortage on the Subject Property. The Owner shall promptly comply therewith. If the Owner disagrees with the determination of the Zoning Administrator, the Owner may submit a request for review to the City Council which shall be transmitted through the Zoning Administrator. Further, if the City Zoning Administrator does not grant approval of a Special Event, the Owner may seek approval from the City Council of a Temporary Use subject to Section 6-2-11 of the Naperville Municipal Code as amended from time to time.

8. **WHEREAS**, the Final PUD Plat for the Block 59 Shopping Center is in substantial conformance with the Preliminary PUD Plat approved by Ordinance 23-038.
9. **WHEREAS**, Petitioner has requested that the City approve this ordinance ("**Ordinance**") and an ordinance approving the Final Plat of Subdivision for Block 59 Shopping Center and an Owners' Acknowledgement and Acceptance Agreement for Block 59 Shopping Center and the Westridge Court Shopping Center (hereinafter together referenced herein as the "**Block 59 Ordinances**").
10. **WHEREAS**, Petitioner has requested that the City delay recordation of the Block 59 Ordinances, including but not limited to the Owners' Acknowledgement and Acceptance Agreement, with the DuPage County Recorder for a period of up to (2) years from the date of approval of the Block 59 Ordinances (the "**Recording Timeframe**"). Delayed recordation will allow Petitioner time to obtain title to a portion of the real property which is the subject of this Ordinance and the ordinance approving the Final PUD Plat, and to obtain approval of the Final Plat of Subdivision from the Illinois Department of Transportation.
11. **WHEREAS**, subject to approval of this Ordinance and the ordinance approving the Final Plat of Subdivision for Block 59 which includes an Owners' Acknowledgement

and Acceptance Agreement, the City has agreed to the proposed Recording Timeframe for recordation of the Block 59 Ordinances. If the Block 59 Ordinances, including all exhibits thereto, and a fully executed Owners' Acknowledgement and Acceptance Agreement, Final Plat of PUD, and Final Plat of Subdivision, which are to be recorded separately, are not recorded with the DuPage County Recorder within the Recording Timeframe, then they shall not be recorded and shall be deemed to be automatically null and void and of no force or effect with no further action being taken by the City or the Petitioner. Petitioner has acknowledged that in no event shall the City be liable or responsible in any manner or for any claim or loss if the documents referenced above are not recorded within the Recording Timeframe.

12. **WHEREAS**, the City Council of the City of Naperville has determined that the Final PUD Plat for the Block 59 Shopping Center should be approved 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 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Subject to execution and recordation of the Block 59 Ordinances and their exhibits, and separate but concurrent recordation of the fully executed Owners' Acknowledgement and Acceptance Agreement, Final Plat of PUD, and Final Plat of Subdivision within the Recording Timeframe, the Final PUD Plat attached to this Ordinance as **Exhibit B**, is hereby approved. Modifications to the Final PUD Plat, including the addition

of uncovered patios which are not air-conditioned or heated, may be administratively approved so long as they do not:

- (i) alter the concept or intent of the approved Final PUD;
- (ii) impact any of the deviations approved by Ordinance 23-038; or
- (iii) increase the cumulative gross square footage beyond the maximum square footage specified on the Final Plat of Planned Unit Development for Block 59, as prepared by Gremley & Biedermann and dated July 29, 2022, of all: amusement establishments; fast food establishments; eating establishments; and drinking establishments, as those terms are defined in the Naperville Municipal Code as amended from time to time.

SECTION 3: Subject to approval, execution, and recordation of the Block 59 Ordinances and fully executed Final PUD Plat, Final Plat of Subdivision, and Owners' Acknowledgement and Acceptance Agreement within the Recording Timeframe, the Landscape Plan for Block 59, attached to this Ordinance as **Exhibit D**, is hereby approved.

SECTION 4: Subject to approval, execution, and recordation of the Block 59 Ordinances and fully executed Final PUD Plat, Final Plat of Subdivision, and Owners' Acknowledgement and Acceptance Agreement within the Recording Timeframe, the Building Elevations for Block 59, attached to this Ordinance as **Exhibit E**, are hereby approved; however, modifications to the Building Elevations may be administratively approved so long as they comply with the City's Building Design Guidelines and do not alter the concept or intent of the approved elevations or increase the cumulative gross square footage of all amusement establishments; fast food establishments; eating establishments; and drinking establishments located in the Block 59 Shopping Center specified on the Final Plat of Planned Unit Development for Block 59 (Final PUD Plat), attached to this Ordinance as **Exhibit B**.

SECTION 5: If recordation of the Block 59 Ordinances and the fully executed Final PUD Plat, Final Plat of Subdivision, and Owners' Acknowledgement and Acceptance Agreement does not occur within the Recording Timeframe, then they shall not be recorded and shall be deemed to be automatically null and void and of no force or effect with no further action being taken by the City and or the Petitioner. Petitioner has acknowledged that in no event shall the City be liable or responsible in any manner or for any claim or loss if the documents referenced above are not recorded within the Recording Timeframe .

SECTION 6: This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

SECTION 7: Subject to receipt of direction from the City Attorney to do so, and subject to such technical and minor substantive revisions as may be deemed acceptable to the City Attorney, the City Clerk is authorized and directed to record the Block 59 Ordinances, with all exhibits attached thereto, and the fully executed Final PUD Plat, Final Plat of Subdivision, and Owners' Acknowledgement and Acceptance Agreement with the DuPage County Recorder so long as such recordation occurs within the Recording Timeframe.

SECTION 8: 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.

SECTION 9: This Ordinance shall be in full force and effect upon its recordation with the DuPage County Recorder as provided herein.

PASSED this _____ day of _____, 2023.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2023.

Scott A. Wehrli
Mayor

ATTEST:

Dawn Portner
City Clerk

Exhibit A

Legal Description of Subject Property

Metes and Bounds Legal Description of the Subject Property Prior to Recordation of the Plat of Subdivision:

LOT 1 IN HERITAGE SQUARE, NAPERVILLE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 28, 1992 AS DOCUMENT R92-143318, IN DUPAGE COUNTY, ILLINOIS;

EXCEPT THAT PART TAKEN FOR ROADWAY PURPOSES IN CASE NUMBER 12ED22 AND AS RECORDED BY COURT ORDER VESTING TITLE AS DOCUMENT R2016-90221, DESCRIBED AS FOLLOWS:

PARCEL A: BEGINNING AT THE MOST WESTERLY SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 21 MINUTES 00 SECONDS EAST, BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, N.A.D. 83 (2007), ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 12.65 FEET; THENCE SOUTH 74 DEGREES 51 MINUTES 32 SECONDS EAST 122.80 FEET TO THE SOUTHERLY LINE OF SAID LOT 1; THENCE SOUTH 83 DEGREES 14 MINUTES 39 SECONDS WEST ALONG SAID SOUTHERLY LINE 4.86 FEET TO AN ANGLE POINT; THENCE NORTH 89 DEGREES 08 MINUTES 32 SECONDS WEST ALONG SAID SOUTHERLY LINE 76.04 FEET TO AN ANGLE POINT; THENCE NORTH 63 DEGREES 27 MINUTES 32 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1; A DISTANCE OF 42.21 FEET TO THE POINT OF BEGINNING;

AND

PARCEL B: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 12 MINUTES 24 SECONDS EAST, BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, N.A.D. 83 (2007), ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 18.00 FEET; THENCE SOUTH 00 DEGREES 21 MINUTES 00 SECONDS WEST 187.88 FEET; THENCE SOUTH 01 DEGREES 13 MINUTES 43 SECONDS WEST 326.05 FEET; THENCE SOUTH 89 DEGREES 12 MINUTES 38 SECONDS EAST 5.00 FEET; THENCE SOUTH 00 DEGREES 21 MINUTES 00 SECONDS WEST 188.54 FEET TO AN EAST-WEST LINE IN THE WEST LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID EAST-WEST LINE 18.00 FEET TO AN ANGLE POINT IN SAID WEST LINE; THENCE NORTH 00 DEGREES 21 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE 702.11 FEET TO THE POINT OF BEGINNING

TOGETHER WITH

THAT PART OF LOT 5 IN GLACIER PARK RESUBDIVISION NO. 10, BEING A SUBDIVISION IN SECTION 15 AND SECTION 22, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 2020 AS DOCUMENT R2020-075498 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 5 AFORESAID, BEING ALSO A POINT ON THE NORTHERLY LINE OF AURORA AVENUE; THENCE NORTH 00 DEGREES 23 MINUTES 04 SECONDS EAST ALONG THE WEST LINE OF LOT 5 AFORESAID 490.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 23 MINUTES 04 SECONDS EAST ALONG SAID WEST LINE 421.35 FEET; THENCE NORTH 45 DEGREES 05 MINUTES 59 SECONDS EAST 47.89 FEET; THENCE SOUTH 44 DEGREES 54 MINUTES 01 SECONDS EAST 171.37 FEET; THENCE SOUTH 45 DEGREES 05 MINUTES 59 SECONDS WEST 93.02 FEET; THENCE SOUTH 44 DEGREES 49 MINUTES 41 SECONDS EAST 67.60 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 59 SECONDS WEST 220.39 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 01 SECONDS WEST 139.10 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS

LESS AND EXCEPTING

THAT PART OF LOT 1 IN HERITAGE SQUARE, NAPERVILLE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 28, 1992 AS DOCUMENT R92-143318, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 11 MINUTES 58 SECONDS EAST ALONG THE NORTH LINE OF LOT 1 AFORESAID, 436.24 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 11 MINUTES 58 SECONDS EAST ALONG SAID NORTH LINE 288.83 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 23 MINUTES 04 SECONDS WEST ALONG THE EAST LINE OF LOT 1 AFORESAID 50.88 FEET; THENCE SOUTH 45 DEGREES 05 MINUTES 59 SECONDS WEST 74.03 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 01 SECONDS WEST 236.20 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 59 SECONDS EAST 98.68 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

Address: 352 to 476 S. Illinois Rte 59 and 2835 Aurora Ave, Naperville, IL 60540

Exhibit B

Depiction of Subject Property

Final Plat of Planned Unit Development (Final PUD Plat) for Block 59 Shopping Center

Exhibit C

Updated Parking Study

Exhibit D

Landscape Plan

Exhibit E

Building Elevations