

PIN: 07-22-300-036

ADDRESS:

**776 S. ROUTE 59
Naperville, IL 60540**

PREPARED BY:

**CITY OF NAPERVILLE
LEGAL DEPARTMENT
630/420-4170**

RETURN TO:

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

BRB Case #97

ORDINANCE NO. 19 -

**AN ORDINANCE GRANTING A VARIANCE FROM SECTION 402.1.1 (OPEN SPACE)
OF THE 2012 INTERNATIONAL BUILDING CODE
776 S. ROUTE 59**

WHEREAS, the former Wal-Mart building located at 776 S. Route 59, Naperville, IL, legally described on **Exhibit A** attached hereto and made part hereof ("Subject Property"), is being converted from a single building to a mall as "mall" is defined in Section 202 of the 2012 International Building Code; and

WHEREAS, pursuant to Section 402.1.1 of the 2012 International Building Code, a minimum of sixty feet (60') of open space surrounding the perimeter of a mall is required; and

WHEREAS, certain tenant space ("Tenant Space YY") located at the northwest perimeter of the former Wal-Mart building on the Subject Property extends into the required

sixty foot (60') open space of the newly created mall ("Mall") on the Subject Property as depicted on **Exhibit B** attached hereto and made part hereof; and

WHEREAS, approximately three feet (3') of the property to the northwest of the Subject Property, located at 760 S. Route 59, encroaches into the required sixty foot (60') open space required for the Mall on the Subject Property as depicted on **Exhibit B**; and

WHEREAS, the owner of the Subject Property, Project Naperville, LLC, has petitioned the City for a variance from Section 402.1.1 of the 2012 International Building Code to allow Tenant Space YY to extend into the required open space around the newly established Mall, and also to allow approximately three feet (3') of the adjacent existing building at 760 S. Route 59 to encroach into the required open space around the newly established Mall; and

WHEREAS, city staff recommends approval of the requested variance based on the following conditions which must occur prior to issuance of an occupancy permit by the City:

1) A fire barrier with a fire-resistance rating of three (3) hours be provided between Tenant Space YY and the Mall; 2) Fire protection (including but not limited to fire sprinklers and alarms) be provided for both Tenant Space YY and the Mall, which could be provided as a single system; 3) A minimum of sixty feet (60') of open space will be maintained around the exterior perimeter of Tenant Space YY; and 4) Material storage shall not be allowed in that portion of Tenant Space YY which is currently unconditioned (i.e. is open to the elements). If said unconditioned space is converted to interior conditioned space, it must conform to conditions 1 through 3 above; and

WHEREAS, on December 19, 2018, the City's Building Review Board (BRB) considered this matter and voted (5-0 with one abstention) to approve the requested variance subject to the conditions identified by city staff set forth above; and

WHEREAS, the City Council of the City of Naperville has determined that the variance to the Naperville Municipal Code should be granted to the extent and subject to the terms and conditions set forth in this Ordinance.

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 substantive and are incorporated in this Section 1 as though fully set forth in this Section 1.

SECTION 2: Subject to the terms and conditions set forth herein, a variance to Section 402.1.1 (open space) of the 2012 International Building Code is hereby granted to allow a portion of the existing building at 776 S. Route 59 and the adjacent existing building at 760 S. Route 59 to extend into the required open space around the perimeter of a mall building, as depicted on **Exhibit B**.

SECTION 3: 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 4: The City Clerk is directed to record this Ordinance and its exhibits with the DuPage County Recorder.

SECTION 5: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2019.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2019.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk

EXHIBIT A

PIN: 07-22-300-036

LOT 1 IN FOX RIVER COMMONS ASSMT PLAT 2 AT NAPERVILLE, UNIT – BEING A SUBDIVISION OF PART OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B

