

**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 #98

ORDINANCE NO. 19 -

**AN ORDINANCE GRANTING A VARIANCE FROM
SECTION 5-10-3:12 (ROOFTOP STRUCTURES AND EQUIPMENT) OF TITLE 5
(BUILDING REGULATIONS) OF THE NAPERVILLE MUNICIPAL CODE
FOR MALL OF INDIA LOCATED AT 776 S. ROUTE 59**

WHEREAS, Project Naperville, LLC is the owner and petitioner ("Owner" and "Petitioner") of real property located at 776 S. Route 59, Naperville, Illinois, legally described on **Exhibit A** and depicted on **Exhibit B** ("Subject Property"); and

WHEREAS, the subject building located at 776 S. Route 59 was constructed in 1989 as part of the Fox River Commons Shopping Center, and was occupied by Walmart from the time of construction until it was vacated in 2014; and

WHEREAS, Mall of India is currently working to fill the space with multiple tenants including retail stores, services, and restaurants; and

WHEREAS, the Subject Property is currently zoned B2 (Community Shopping Center District) PUD and is improved with a commercial building and associated surface parking; and

WHEREAS, the subject building was constructed prior to the implementation of the City's current requirements for rooftop unit (RTU) screening, which was enacted by ordinance in 2004; and

WHEREAS, current requirements for RTU screening require that all roof structures and equipment be screened to their full height in the form of a parapet wall, unless otherwise approved by the Chief Building Official due to structural reasons; and

WHEREAS, Mall of India's significant scope of proposed work requires the building to be brought into compliance with current Municipal Code requirements, including requirements for rooftop screening as outlined in Section 5-10-3:12 of the Municipal Code; and

WHEREAS, the petitioner has requested a variance from Section 5-10-3:12 of the Municipal Code to allow modifications to required RTU screening; and

WHEREAS, the Building Review Board considered this matter at their meeting on February 20, 2019 and recommended denial of the Petitioner's requested variance (denied 5-1); and

WHEREAS, following the Building Review Board's recommendation of denial, the Petitioner proposed multiple changes to RTU screening for Mall of India tenants; and

WHEREAS, in consideration of the requested variance, the Petitioner proposes the following: screening RTUs to their full height along the west side of the building, fronting Route 59 as depicted on the building elevations attached to this ordinance as **Exhibit C**; restricting all RTUs to be set back a minimum of 37 feet and 8 inches from the east building line for consistency with the line of site analysis attached to this ordinance as **Exhibit D**; and, planting additional evergreen trees along the east property line to assist

with buffering the use from adjacent residential uses as depicted on the site plan attached to this ordinance as **Exhibit E**; and

WHEREAS, the City Council of the City of Naperville has determined that the Petitioner's request for a variance to Section 5-10-3:12 (Rooftop Structures and Equipment) 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 here in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: A variance from 5-10-3:12 (Rooftop Structures and Equipment) of the Naperville Municipal Code to allow modifications to required RTU screening, is hereby granted subject to compliance with the following: building elevations attached to this ordinance as **Exhibit C**; restricting all RTUs to be set back a minimum of 37 feet and 8 inches from the east building line for consistency with the line of site analysis attached to this ordinance as **Exhibit D**; and, planting additional evergreen trees along the east property line to assist with buffering the use from adjacent residential uses as depicted on the site plan attached to this ordinance as **Exhibit E**.

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

SECTION 6: 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