

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)
)
CITY OF NAPERVILLE)

**PETITION TO THE NAPERVILLE CITY COUNCIL AND PLAN COMMISSION TO
GRANT A MAP AMENDMENT (REZONING), A HEIGHT VARIANCE, AND
PRELIMINARY/FINAL PLAT OF SUBDIVISION FOR THE PROPERTY
AT 831 S. JULIAN STREET**

THE UNDERSIGNED Petitioner, Mathieson House, LLC, an Illinois limited liability company (hereinafter “the Petitioner”) respectfully petitions the City of Naperville (the “City”) to, upon annexation of the property legally described on Exhibit A (the “Property”) pursuant to a separate petition submitted by the Owners of Record of the Property: (i) zone the Property in the City’s R1A Low Density Single-Family Residence District; (ii) approve a preliminary and final plat of subdivision; (iii) grant a variance from Section 6-2-26:4 of the Naperville Municipal Code (the “Code”) so as to permit the residence on one lot to exceed the Height Limitation/Bulk Regulations; and (iv) such other relief from the Code as may be deemed necessary and appropriate to develop the Property.

In support of this Petition, the Petitioner represents to the City as follows:

1. The Owners of the Property are Kyle Javes and Joni Javes (“Owner”).
2. Owner filed a separate petition with the City of Naperville to annex the Property to the City of Naperville (“Annexation Petition”).
3. The Petitioner, Mathieson House, LLC, is the contract purchaser of the Property.
4. The Subject Property is zoned R-4 in unincorporated DuPage County and consists of one (1) lot totaling approximately 1.90 acres.
5. The existing land uses surrounding the Property are as follows:
 - a. North: R1A single family residential and unincorporated DuPage County
 - b. East: Unincorporated DuPage County

- c. South: Unincorporated DuPage County & R1, Low Density Single-Family Residential
- d. West: R1A single family residential

APPROVAL OF REZONING TO R1A

6. Upon annexation of the Property to the City of Naperville, Petitioner respectfully requests that the Property be zoned R1A, low density single-family residence district.

7. The rezoning request is appropriate based on the following factors:

- a. *The amendment promotes the public health, safety, comfort, convenience and general welfare and complies with the policies and official land use plan and other official plans of the City; and*

Pursuant to section 6-5-3 in the Code, the Petitioner shall request a zoning classification for the Property upon annexation to the City of Naperville and said zoning is consistent with both the proposed use of the Property and the existing use of the properties in the immediate vicinity. Adjacent incorporated properties to the north and west are zoned R1A, the adjacent property to the south is zoned R1 (low density single-family residential), and the adjacent properties not yet incorporated to the City of Naperville are zoned for residential use in DuPage County. In addition, Naperville's comprehensive plan addressing the East Sector designates the future land use for the Property for residential land use.

- b. *The trend of development in the area of the subject property is consistent with the requested amendment; and*

The trend of development in the area of the Property has been and continues to be single-family residential. Upon annexation to the City, the requested zoning is consistent with the nearby adjacent properties, all of which are zoned R1A and R1 in the City of Naperville. Further, the requested zoning will permit the development of a two-lot residential subdivision in keeping with the trend of development in the neighborhood.

- c. *The requested zoning classification permits uses which are more suitable than the uses permitted under the existing zoning classification; and*

The existing zoning classification of the Property is R-4 in unincorporated DuPage County. The Owner submitted a separate petition for Annexation to the City of Naperville and upon annexation, Petitioner requests the Property be zoned R1A, which is consistent with the existing zoning designations for nearby and adjacent properties that have been incorporated to the City of Naperville.

- d. *The subject property has not been utilized under the existing zoning classification for a substantial period of time; and*

The Property has never been utilized under a City of Naperville zoning designation as the Property is zoned R-4 in unincorporated DuPage County and upon annexation to the City, the Code requires Petitioner to request a zoning designation for the Property.

- e. *The amendment, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

As mentioned above, zoning the Property R1A is consistent with the single-family residential character of the neighborhood. The surrounding properties that remain unincorporated are zoned for residential use in DuPage County. All surrounding properties are intended for single-family residential homes, which is the very use for which Petitioner plans to utilize the Property.

APPROVAL OF A PRELIMINARY AND FINAL PLAT OF SUBDIVISION

8. Petitioner seeks approval of a Preliminary and Final Plat of Subdivision, a copy of which has been submitted herewith, to establish easements and create two legal lots of record. The proposed subdivision meets the standards for a subdivision consistent with the standards set forth in the Code.

APPROVAL OF A HEIGHT VARIANCE

9. The Petitioner requests a variance from Section 6-2-26:4 of the Code, which restricts the height of structures to two and one-half stories not to exceed thirty-five feet (35') with a maximum roof peak of forty feet (40').

10. There is approximately ten feet (10') of fall across the frontage of the Property due to the natural grade of the Property, which results in the datum point being located underground.

11. Under the Code, the datum point is used to measure the height of the structure and since the datum point is located underground, the proposed home will be considered a 3-story home exceeding 40' in height.

12. The requested variances are necessary due to the grading of the property and are appropriate due to the relative size of the Subject Property with respect to other properties in the immediate vicinity.

13. The requested variance is appropriate and meet the requirement for a variance pursuant to Section 6-3-6, based on the following factors:

- a. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The Height Limitations/Bulk Regulations were modified in 2005 in response to teardowns occurring throughout the City of Naperville. As the teardowns grew in height, concerns were raised about the manner in which the new structures imposed on adjacent properties. This was of particular concern due to the fact that many of the teardowns were occurring on small downtown lots consisting of six to eight thousand square feet. To address this concern, the Teardown/Infill Regulations were imposed and regulated both the height of structures and the bulk of structures. The Code was further modified to redefine the manner in which the height of a structure is measured. The modified height measurement was intended to prevent artificial filling of the

property so as to raise the ground level and increase the height of the home. According to Section 6-1-6 of the Code (Definition of “Height, Building or Structure”) the height of a building is measured as follows:

Height of a building or structure is the vertical distance measured from a datum point established by the average of the two (2) grades along each side lot line where the front yard line meets the side lot lines to the highest point of the roof surface or parapet, in case of a flat roof; to the deck roofline of a mansard roof; and to the mean level of the underside of the rafter between the eaves and the ridge of a gable, hip or gambrel roof. When determining front yard line, variances shall not be considered.

Here, the concerns over which the subject regulations were imposed are not applicable. The Subject Property consists of approximately two acres with each of the resulting lots of the proposed subdivision consisting of approximately one acre. Due to the size of the proposed lots there is no concern over encroaching on adjacent homes nor are there immediately adjacent residences which will be dwarfed. Further, Petitioner is not artificially filling the site to increase the height of the home. The natural grade of the property has a significant differential between the north and south property lines.

b. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

The Subject Property is unique for a Teardown/Infill site due to its size and topographic conditions. The prototypical teardown site is a level downtown lot consisting of six to eight thousand square feet. The Subject Property consists of approximately two acres. It is heavily wooded and a small creek runs from the southeast to the northwest corner of the property. Petitioner seeks to maintain the general grade of the Subject Property and to preserve trees where possible, as these natural conditions create a unique setting proximate to downtown Naperville. However, with the natural grade of the Subject Property, there is approximately ten feet (10') of

fall across the frontage of the Subject Property. Due to this natural elevation change, the datum point used to measure the height of the structure is actually located underground. As a result, the proposed home is considered a 3-story structure and measures 40'-4.5" to the roof peak, thereby exceeding the maximum height due to where the datum point is located underground. Further, in utilizing the datum points along the property lines, the structure will not be able to accommodate the walk-out type basement for which the Subject Property is perfectly suited. Due to the manner in which height is measured under the Code, this unique condition will create practical difficulties in the design of the homes and exceptional hardships by deflating the value of the property.

In addition to complications associated with the natural grade of the Subject Property, the City is rebuilding Julian Street and plans to flatten the grade of the road across the frontage of the Subject Property. This project will result in the elevation of the road being lifted proximate to the driveway of the southern home. The top-of-foundation for the home was set to minimize the slope of the driveway and prevent any ADA issues or practical difficulties with respect to operations.

- c. The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

The proposed variance will not alter the character of the neighborhood. The neighborhood surrounding the Subject Property is in transition. Many of the older homes have been replaced with large teardowns. While some of the older homes remain, the general character of the area has certainly shifted toward much larger teardowns. It would appear that the percentage of teardowns in this neighborhood is greater than that in many other neighborhoods in the general vicinity of downtown.

Julian Street, between Woodlawn and Gartner, is unique in that there is a platted 40' setback and there are only 6 homes that front Julian Street. The homes are all on larger lots and

have significant separation between them. This is not a typical city block lined with residential structures where a new home may dwarf existing structures. Here, the proposed south home will be set back approximately forty-five feet (45') from the Julian Street right-of-way. The north structure will be set back more than one hundred feet (100') from the Julian Street right-of-way. All of these conditions combined minimize the impact of a three-story, 40'-4.5" home.

The proposed height variance will not be perceivable to the naked eye. The manner in which the height of a structure is measured is an artificial construct. Here, it is this artificial means of measuring the structure by using datum points along the two property lines that necessitates the variance. From the front of the home, the proposed variance will not be recognizable. Further, the area in which the height will be greatest is along the central property line created by the developer. As such, there is no impact on an innocent adjacent property owner and the character of the surrounding neighborhood will not be altered.

WHEREFORE, by reason of the foregoing, the undersigned Petitioner respectfully requests the City Council and Plan Commission take the necessary steps to, upon annexation of the Property: (i) zone the Property in the City's R1A Low Density Single-Family Residence District; (ii) approve a preliminary and final plat of subdivision; (iii) grant a variance from Section 6-2-26:4 of the Code so as to permit the residence to exceed the Height Limitation/Bulk Regulations and (iv) such other relief from the Naperville Municipal Code as may be deemed necessary and appropriate to develop the Property.

RESPECTFULLY SUBMITTED this 12th day of May, 2020.

PETITIONER:

Mathieson House, LLC, an Illinois limited
liability company

By: 

ROSANOVA & WHITAKER, LTD.
ATTORNEY FOR PETITIONER

EXHIBIT A
LEGAL DESCRIPTION

LOT 6 IN BLOCK 10 IN ARTHUR T. MC INTOSH AND CO'S NAPERVILLE ESTATES,
BEING A SUBDIVISION OF PART OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 10,
EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
RECORDED MAY 20, 1927 AS DOCUMENT 236013, IN DUPAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 831 S. Julian St., Naperville, IL 60540

PIN: 08-19-400-010