

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

**PETITION TO THE NAPERVILLE CITY COUNCIL AND PLAN COMMISSION FOR
A ZONING AMENDMENT APPROVAL WITH CONDITIONAL USE ALONG WITH
DRIVEWAY AND STACKING LANE VARIANCES**

THE UNDERSIGNED Petitioner, The Hari Group, Inc., an Illinois corporation (hereinafter the “Petitioner”) respectfully petitions the City of Naperville (the “City”) to: (i) grant a map amendment (rezoning) pursuant to Section 6-3-7:1 of the City’s Municipal Code (the “Code”) to zone the Property (defined below) to OCI for the property located at 1296 E. Chicago Avenue, Naperville, Illinois, which is legally described on **Exhibit A** (the “Property”); (ii) grant a conditional use in the OCI zoning district for an eating establishment to operate on the Property pursuant to Section 6-7F-3 of the Code; (iii) grant a variance for existing driveways that are parallel to Olesen Drive and E. Chicago Avenue within the setback areas pursuant to Section 6-9-2:4.3.1 of the Code; (iv) grant a variance for the existing stacking lane design to accommodate a maximum of three (3) stacked cars pursuant to Section 6-9-3:5 of the Code; and (v) grant such other variances, departures or deviations as may be necessary to permit the redevelopment of the Property for a McAlister’s Deli restaurant as depicted on the dimensional site plan and preliminary landscape plan attached herewith as **Exhibit B**.

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

1. The Petitioner is The Hari Group, Inc., an Illinois corporation, which is the owner and operator of several restaurant franchises, including McAlister’s Deli and is the contract purchaser of the Property;
2. The Owner of the Property is Old Second National Bank, a national banking

association, successor by merger to West Suburban Bank;

3. The Property consists of approximately one and forty-one hundredths (1.41) acres located at 1296 E. Chicago Avenue, Naperville, Illinois;

4. The Property was originally improved in the early 1970 pursuant to Ordinance Number 72-52 recorded November 24, 1972 as Document Number R72-72321 and Ordinance Number 76-137 recorded March 11, 1977 as Document Number R77-16982 Amending Ordinance No. 72-52 (“Historic Ordinances”), which ordinances rezoned the property from R-3 to B-1 and imposed certain conditions on the use and development of the Property (the “Zoning Restrictions”);

5. The Property was subsequently developed consistent with the site plan attached as Exhibit B, consisting of a retail bank building.

6. Most recently, the bank building was owned/occupied by Owner, but is currently vacant;

7. The Property is zoned B1 within the City of Naperville’s Neighborhood Convenience Shopping Center district classification;

8. The surrounding uses are:

- a.* North: DuPage County – Zoning “R-4 Single Family” in unincorporated DuPage County: Naperville Country Club;
- b.* East: City of Naperville – Zoning “R1”: Grace Pointe Church;
- c.* South: City of Naperville – Zoning “B1”: Mixed use shopping center for commercial purposes anchored by Butera Fresh Market; and
- d.* West: City of Naperville – Zoning “B1”: Mixed use shopping center for commercial purposes anchored by Butera Fresh Market (vacant).

9. Code Section 6-3-7:1 regulates a map amendment (rezoning), and Petitioner seeks a rezoning of the Property to the OCI Office, Commercial and Institutional zoning designation and in association with the zoning amendment, termination of the Zoning Restrictions associated with the Historic Ordinances.

10. Code Section 6-7F-3 regulates conditional uses within the OCI zoning district and Petitioner seeks a conditional use within the OCI zoning district to permit the operation of an eating establishment (McAlister's Deli) on the Property.

11. Petitioner requests a variance from Code Section 6-9-2:4.3.1 for the existing driveways that are parallel to Olesen Drive and E. Chicago Avenue within the setback areas.

12. Petitioner also requests a variance for the existing stacking lane design to accommodate a maximum of three (3) stacked cars in one lane pursuant to Section 6-9-3:5 of the Code. Petitioner's requests meet the requirements for a zoning variance under the Naperville Municipal Code and is appropriate based on the following:

A MAP AMENDMENT (REZONING) PURSUANT TO CODE SECTION 6-3-7:1

- 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*

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. The Property is currently zoned B1, subject to the Zoning Restrictions. The B1 zoning and associated Zoning Restrictions place unusual constraints on the Property and are generally inconsistent with the City's current zoning ordinance and standards. The proposed rezoning to the OCI zoning designation with the condition use requested below will align the zoning of the Property with the City's current policy and zoning expectations. As such, the proposed zoning promotes the public health, safety, comfort, convenience and general welfare. The proposed zoning will facilitate significant reinvestment in the Property for the improvement or redevelopment thereof. Additionally, pursuant to the City's Land Use Master Plan dated March 1, 2022, the existing use of the Property is for commercial retail/service/entertainment. The future land use plan designates the Property as a neighborhood center which is consistent with the rezoning request for the proposed OCI zoning designation for the Property. It should also be noted that the character of this

area of the City is now substantially different from when the Property was rezoned to B1 and the Zoning Restrictions were imposed in the 1970's. Today, there is no fundamental purpose served by the extremely restrictive nature of the Zoning Restrictions.

- 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 subject property is consistent with the requested amendment. The historical trend of development in this area of the City has been neighborhood uses consistent with the OCI zoning designation. Neighborhood Centers consist of a variety of land uses that contribute to its role as a local focal point and hub of activity. Examples of primary uses within Neighborhood Centers are restaurants and cafés, coffee shops, small grocery stores, banks, convenience stores, dry cleaners, salons, or fitness centers. Supporting uses in Neighborhood Centers include institutional or office-based uses, such as schools, community facilities, small offices, or medical clinics. Residential uses in the form of mixed-use, multi-unit, or townhomes, can exist in these areas where housing will complement the primary function of the Neighborhood Center. The former use of the Property was as a bank and the proposed use is for a McAlister's Deli restaurant, which is consistent with the historical trend of development in the area.

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

The requested OCI zoning classification permits uses which are more suitable than the uses permitted under the existing zoning classification, which is further restricted by the Zoning Restrictions. The Zoning Restrictions improperly restrict uses which are permissible under the B1 and OCI zoning designation and in order to correct this issue, the City should grant the amended zoning classification to the OCI zoning designation. This situation is clearly unique and the Zoning Restrictions would not be imposed or enacted under the current zoning regulations and processes. As such, the requested zoning change to the OCI zoning designation for the Property permits uses which are more flexible and in line with modern Neighborhood Centers, including restaurant uses.

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

The subject Property has not been utilized under the existing B1 zoning classification for a substantial period of time. As stated previously, Petitioner is requesting the rezoning from B1 to the OCI designation. The Property was previously utilized as a bank with drive through service and has not been utilized as such for several months and foreseeably longer in the event that the zoning amendment is not granted. The proposed zoning will remove barriers to investment associated with the Historic Ordinances and help reinvigorate 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.*

The amendment, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property. To the contrary, the zoning

designation to OCI will allow for the redevelopment of the Property for the operation of a popular restaurant chain, McAlister's Deli. The redevelopment of the Property to a restaurant use will positively impact the character of the neighborhood by improving the corner of Chicago Avenue and Olesen Drive from a blighted, vacant bank building to a fresh restaurant use, attracting the attention of the neighbors and increasing the City's tax base by providing additional jobs, sales and real estate taxes. The redevelopment of the Property will not be detrimental to adjacent property because such redevelopment will improve the aesthetics of the neighborhood and increase adjacent property values due to the significant investment the Petitioner intends to make in the Property in connection with its redevelopment plans. Furthermore, a substantial increase in traffic to the Property is unlikely, as the proposed McAlister's Deli use is much like the existing Dairy Queen and Pepe's restaurants, which primarily serve residents in the local neighborhood.

GRANT A CONDITIONAL USE FOR AN EATING ESTABLISHMENT IN THE OCI ZONING DISTRICT PURSUANT TO SECTION 6-3-8 OF THE CODE

- a. *The establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the public health, safety and general welfare; and*

The establishment, maintenance or operation of the conditional restaurant use will not be detrimental to, or endanger the public health, safety and general welfare. Granting the conditional restaurant use for the Property will actually promote the public health, safety, and general welfare because the Property will be redeveloped and occupied by an operating business, which will not only create jobs but also increase the City's sales and real estate tax base. Furthermore, the Property will be occupied by an operating business in place of a vacant building with no business operating thereon for several months. Additionally, without the grant of the conditional use for an eating establishment, the B1 zoning designation conditioned by the Zoning Restrictions creates a foreseeable circumstance in which the Property remains vacant for a significant period of time. The bank users have changed several times over decades (with periods of prolonged vacancy) and the demand for office users in this market is weak, at best. Vacant properties generally provide less tax revenue to the City and invite crime, loitering, vandalism and illegal dumping, contrary to the health, safety and general welfare of the public. Granting the OCI zoning designation with the eating establishment conditional use will not be detrimental to, or endanger public health and safety, but will permit the development of an additional and unique restaurant offering in this neighborhood.

- b. *The conditional use will not be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood; and*

The conditional use will not be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The conditional eating establishment use will not be detrimental to adjacent property because such redevelopment will improve the aesthetics of the neighborhood and increase adjacent property values due to the significant investment the Petitioner intends to make in the Property. Furthermore, there

are eating establishments operating in the adjacent shopping center property currently. The Property was developed and historically operated under the City's B1 District which permits both restaurant and general retail uses. Accordingly, granting the conditional use will not change the character of uses that have historically operated alongside the adjacent residential neighborhoods. Moreover, the OCI District is specifically intended as a "transitional zone" between intensive business areas and residential neighborhoods, so the district standards specifically contemplate residential adjacency and accommodate for appropriate uses and bulk regulations.

- c. *The establishment of the conditional use will not impede the normal and orderly development and improvement of the adjacent property for uses permitted in the district; and*

The establishment of the conditional use will not impede the normal and orderly development and improvement of the adjacent properties. The Property was developed under the B-1 zoning for intensive commercial uses in the early to mid 1970's. At the same time the adjacent parcel anchored by the former Butera user was also developed. The general pattern of development in this area of the City requires significant commercial uses along the arterial corridors of Chicago Avenue and Olesen Drive. The Property, being located at the corner of this corridor, requires a transitional use that was once a retail banking center. The proposed McAlister's Deli restaurant is more intensive than traditional retail banking center due to the increased traffic, but is significantly less intensive in terms of overall activity (parking and traffic) than traditional commercial development with a B1 zoning district designation.

- d. *The establishment of the conditional use is not in conflict with the adopted comprehensive master plan.*

The establishment of the conditional use is not in conflict with the adopted comprehensive master plan. Petitioner is seeking to develop the Property for the use and operation of a McAlister's Deli restaurant, which is consistent with the City's Land Use Master Plan dated March 1, 2022, designating the existing use of the Property for commercial retail/service/entertainment. The future land use plan designates the Property as a neighborhood center, which is consistent with the requested OCI zoning designation of Property for a number of compatible uses, one of which is for restaurants.

A VARIANCE FOR EXISTING DRIVEWAYS THAT ARE PARALLEL TO OLESEN DRIVE AND E. CHICAGO AVENUE WITHIN THE SETBACK AREAS PURSUANT TO SECTION 6-9-2:4.3.1 OF THE CODE

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

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. In this case, there is an existing non-conforming use of the Property because the driveways were constructed in the mid 1970's parallel to Chicago Avenue and Olesen Drive within the current yard setbacks. Petitioner is seeking to utilize the same driveways for use in connection with the operation of a McAlister's Deli

restaurant, which is consistent with the City's Land Use Master Plan dated March 1, 2022, designating the existing use of the Property for commercial retail/service/entertainment.

- 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*

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. In the event that the requested variance isn't granted, the Property would likely need to be completely reconfigured to change the location of the access points, existing easements and driveway locations in order to be redeveloped by any potential user or buyer, requiring a complete demolition of most or all of the improvements located thereon, which isn't practical and imposes an exceptional financial hardship based upon the existing configuration of the driveways that have been in place for nearly a half century. Additionally, there no other full-service banks (with four (4) drive aisles) within miles of the Property. The configuration of the improvements located on this parcel are unusual because the driveways were constructed for the purposes of utilizing four (4) drive aisles for the drive-up banking ports servicing the banks. Additionally, there are no other properties on corner parcels such as this one with driveways parallel to the right-of-way within the yard setback requirements within this sector of the City. Accordingly, the Petitioner is attempting to utilize the existing design of driveways and improvements that have been located on the Property for decades.

- 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 variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property. To the contrary, the variance permitting the existing parallel driveways within the yard setbacks will allow for the redevelopment of the Property for the operation of a popular restaurant chain, McAlister's Deli. The redevelopment of the Property to a restaurant use will positively impact the character of the neighborhood by improving the corner of Chicago Avenue and Olesen Drive from a blighted, vacant bank building to a fresh restaurant use, attracting the attention of the neighbors, increasing the City's tax base and attract additional investment in the surrounding area. The redevelopment of the Property will not be detrimental to adjacent property because such redevelopment will improve the aesthetics of the neighborhood and increase adjacent property values due to the significant investment the Petitioner intends to make in the Property. There are no detrimental impacts to adjacent property by allowing existing parallel driveways within the yard setbacks.

**A VARIANCE FOR THE EXISTING STACKING LANE DESIGN TO
ACCOMMODATE A MAXIMUM OF THREE (3) STACKED CARS PURSUANT TO
SECTION 6-9-3:5 OF THE CODE**

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

comprehensive master plan; and

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. In this case, the property was developed as a bank branch with drive through service, accommodating the stacking of three (3) cars in accordance with the Code. Petitioner is seeking to utilize one (1) drive aisle (as opposed to four (4) aisles) for use in connection with the operation of a McAlister's Deli restaurant pick-up window. A pick-up window should not be confused with traditional fast food drive-throughs with menu boards and speaker boxes; there will simply be a touch screen to notify restaurant employees that a customer picking up an online or mobile order has arrived and the customer then proceeds to the pick-up window to retrieve their order. If granted, the variance is consistent with the City's Land Use Master Plan dated March 1, 2022, designating the existing use of the Property for commercial retail/service/entertainment. The future land use plan designates the property as a neighborhood center, which is consistent with the OCI rezoning request for the Property for a number of compatible uses, one being for restaurants.

- 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*

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. In the event that the requested variance isn't granted, the Property would likely need to be completely reconfigured to change the location of the access points, existing easements and driveway locations in order to be developed with a pick-up window or drive-through. As stated previously, Petitioner is seeking to utilize one (1) drive aisle (as opposed to four (4) aisles) for use in connection with the operation of a McAlister's Deli restaurant pick-up window. The configuration of the improvements located on this parcel is unusual because the driveways were constructed for the purposes of utilizing four (4) drive aisles for the drive-up banking ports servicing the banks. Accordingly, the Petitioner is attempting to utilize the existing design of driveways and improvements that have been located on the Property for decades. A low-volume pick-up window doesn't require a minimum of twelve (12) stacking spaces because the window is not being used the same as a traditional fast-food restaurant where nearly seventy percent (70%) of the business is generated through drive-through orders and pickup.

- 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 variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property. To the contrary, the variance permitting reduced stacking in the existing drive-through lane will allow for the redevelopment of the Property for the operation of a popular restaurant chain, McAlister's Deli. The redevelopment of the Property to a restaurant use will positively impact the character of the neighborhood by improving the corner of Chicago Avenue and Olesen Drive from a

blighted, vacant bank building to a fresh restaurant use, attracting the attention of the neighbors and increasing the City's tax base. The redevelopment of the Property will not be detrimental to adjacent property because such redevelopment will improve the aesthetics of the neighborhood and increase adjacent property values due to the significant investment the Petitioner intends to make in the Property, which may also attract additional investments in the surrounding neighborhood. There will also not be any detriment to adjacent properties by virtue of granting the variance, as the stacking of the vehicles will be confined to the Property and will not impact any public roads due to the design and configuration. Furthermore, there will only be 30-40 cars using the pickup window per day, which is less than a typical quick-service restaurant drive-through window. Also, the maximum number of cars waiting in the stacking lane during peak hours is three cars, but is typically 2 or less.

WHEREFORE, by reason of the foregoing, the undersigned Petitioner requests the City Council and Plan Commission take the necessary steps to: (i) grant a map amendment (rezoning) pursuant to Section 6-3-7:1 of the Code to zone the Property to OCI; (ii) grant a conditional use in the OCI zoning district for an eating establishment to operate McAlister's Deli on the Property pursuant to Section 6-7F-3 of the Code; (iii) grant a variance for existing driveways that are parallel to Olesen Drive and E. Chicago Avenue within the setback areas pursuant to Section 6-9-2:4.3.1 of the Code; (iv) grant a variance for the existing stacking lane design to accommodate a maximum of three (3) stacked cars pursuant to Section 6-9-3:5 of the Code; and (v) grant such other variances, departures or deviations as may be necessary to permit the redevelopment of the Property for a McAlister's Deli restaurant.

RESPECTFULLY SUBMITTED this 21st day of March, 2023.

PETITIONER:

The Hari Group, Inc., an Illinois corporation

By: *Zachary W. Blair*
Zachary W. Blair
Attorney for Petitioner

**EXHIBIT A
LEGAL DESCRIPTION**

THAT PART OF THE SOUTH 1/2 OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE CENTER LINE OF CHICAGO AVENUE FORMERLY (NAPERVILLE-CHICAGO ROAD) (MAPLE ROAD) AS NOW MONUMENTED AND OCCUPIED, SAID POINT BEING 640.345 FEET (AS MEASURED ALONG SAID CENTER LINE) NORTHEASTERLY OF THE MOST NORTHERLY CORNER OF PEMBROKE GREENS UNIT ONE, BEING A SUBDIVISION IN THE AFORESAID SOUTH 1/2 OF SECTION 17, SAID MOST NORTHERLY CORNER BEING AT THE POINT OF INTERSECTION OF THE CENTER LINE OF CHICAGO AVENUE FORMERLY (NAPERVILLE-CHICAGO ROAD) (MAPLE ROAD) AND THE EASTERLY LINE OF THE AFORESAID PEMBROKE GREENS UNIT ONE SUBDIVISION; THENCE NORTH 74 DEGREES, 29 MINUTES, 10 SECONDS EAST, ALONG SAID CENTER LINE OF CHICAGO AVENUE 253.535 FEET TO THE POINT OF INTERSECTION WITH THE CENTER LINE OF OLSEN'S LANE AS NOW PLATTED AND RECORDED; THENCE SOUTH 6 DEGREES, 18 MINUTES, 00 SECONDS WEST, ALONG SAID CENTER LINE OF OLSEN'S LANE, 338.87 FEET; THENCE NORTH 83 DEGREES, 42 MINUTES, 00 SECONDS WEST, ALONG A LINE DRAWN PERPENDICULARLY TO THE AFORESAID CENTER LINE OF OLSEN'S LANE, 159.36 FEET; THENCE NORTH 15 DEGREES, 30 MINUTES, 50 SECONDS WEST, ALONG A LINE DRAWN PERPENDICULARLY TO THE AFORESAID CENTER LINE OF CHICAGO AVENUE 205.39 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN SOUTH 6 DEGREES, 36 MINUTES, 53 SECONDS WEST THROUGH THE HEREIN ABOVE DESIGNATED POINT OF BEGINNING; THENCE NORTH 6 DEGREES, 36 MINUTES, 53 SECONDS EAST, ALONG THE LAST DESCRIBED LINE, 53.976 FEET TO SAID POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1296 E. Chicago Avenue, Naperville, IL 60540-5612

PERMANENT INDEX NUMBER: 08-17-303-025

EXHIBIT B
DIMENSIONAL SITE PLAN AND PRELIMINARY LANDSCAPE PLAN
(Attached)