



Legislation Details (With Text)

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On agenda: 6/6/2023 **Final action:** 6/6/2023
Title: Pass the ordinance releasing declarations of restrictions pertaining to property located at 10 Martin Avenue

Sponsors:

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Attachments: 1. Ordinance, 2. Exhibit A - Legal, 3. Exhibit B - Subject Property, 4. Exhibit C - Declaration, 5. Petitioner Letter, 6. Declaration of Restrictions (1961)

Date	Ver.	Action By	Action	Result
6/6/2023	1	City Council	passed	Pass

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Pass the ordinance releasing declarations of restrictions pertaining to property located at 10 Martin Avenue

DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Sara Kopinski, AICP

BACKGROUND:

On April 18, 2023, the City Council approved ordinance 23-056 rezoning the property located at 10 Martin Avenue from OCI (Office, Commercial and Institutional District) to HS (Health Services District) and ordinance 23-057 granting multiple signage and setback variances to allow the petitioner to demolish an existing office building and construct a new cardiovascular center (also known as the Naperville Medical Office Building (MOB)).

After obtaining these entitlements from the City, Ryan Companies brought to the City's attention that there are restrictions recorded against the property that Ryan Companies requests the City release. Ryan Companies' request is outlined in the Petitioner Letter included in the attachments.

DISCUSSION:

Declarations of Restrictions

On January 10, 1961, a Declaration of Restrictions (Declaration) was recorded against the Subject Property with the DuPage County Recorder as Document No. R62-930. This Declaration imposed the following restrictions upon the Subject Property:

- i. Prohibit the owner of Lots 1 and 2 from "placing a building on said property which covers more than 20% of the total area contained in said Lots 1 and 2"; and,

- ii. Restrict the use of Lots 1 and 2 to “business and professional offices.”

The Declaration represents a restriction that is a covenant running with the land binding upon the owner’s heirs, successors and assigns, however, Section 3 of the Declaration specifies that: “this restriction, or any part thereof, can be released by a valid resolution of the City Council of the City of Naperville.”

Following zoning entitlements, on May 10, 2023, the Petitioner submitted a letter to City staff (available in the attachments), requesting the City release the restrictions imposed on the Subject Property by the Declaration, as they present problems for the planned Naperville Medical Office Building (MOB) project approved by Ordinances 23-056 and 23-057, including:

- The Naperville MOB features a building with a lot coverage ratio of approximately 31.2%, which exceeds the 20% maximum.
- The ambiguity regarding the phrase “business and professional offices” (as distinguished from medical offices) could complicate the financing process for the Naperville MOB project.

The Petitioner requests the City release the restrictions as contemplated in Section 3 of the Declaration.

Ordinance Releasing Declaration of Restrictions

Since 1961, when the Declaration was recorded, the zoning of the Subject Property has changed twice; first to OCI (Office/Commercial/Institutional District) and then, on April 18, 2023, it was rezoned from OCI to HS (Health Services District). Rezoning the Subject Property to HS was supported the petitioner’s proposed medical facility and cardiovascular center, which aligns with the purpose and framework of the HS zoning district. Staff finds that the restrictions set forth in the Declaration are no longer necessary or appropriate to be imposed upon the Subject Property and should be released. Staff recommends City Council approve the Petitioner’s request.

Follow-up Staff Action

To help ensure that restrictions recorded against a property are observed during project entitlement phases in the future, staff intends to update the City’s Petition for Development Approval to require the Petitioner provide staff all covenants/restrictions recorded against a property at the time a Petition for Development Approval is submitted.

FISCAL IMPACT:

N/A