

**CITY OF WHEATON
RESOLUTION R-2021-09**

**A RESOLUTION IN OPPOSITION OF
A VARIANCE PETITION FOR THE PROPERTY LOCATED
AT 0N758 GARY AVENUE, WHEATON, ILLINOIS**

WHEREAS, Zoning Petition Z21-005 Rehberger Holdings, LLC ("**Zoning Petition**") , has been filed with the DuPage County Building and Zoning Department concerning the real property located at 0N758 Gary Avenue, Wheaton, Illinois ("**Petitioner's Property**") and requests five variations from the DuPage County Zoning Ordinance; and

WHEREAS, Petitioner's Property is under the jurisdiction of and subject to the requirements of the DuPage County Zoning Ordinance; and

WHEREAS, the boundary of the City of Wheaton is adjacent to the Petitioner's Property that is the subject of the variation requests; and

WHEREAS, the Petitioner's Property that is subject to the variation requests is within the City of Wheaton's planning jurisdiction; and

WHEREAS, the petitioner/owner Rehberger Holdings, LLC requests a variation from the required parking spaces and seeks to reduce the number of parking spaces from 38 spaces to 28 spaces ("**Parking Space Variation**"); and

WHEREAS, the petitioner's Site Plan depicts 28 parking spaces to serve both an existing tavern and the petitioner's proposed use of a currently vacant building as a restaurant with "incidental" video gaming and "grab and go" food service (Rehberger Holdings, LLC Application Narrative); and

WHEREAS, the City does not support the petitioner's requested Parking Space Variation as the request is detrimental to the public welfare, unduly increases traffic congestion in the

public streets and highways, is not compatible with the City of Wheaton's zoning ordinance, and violates the American with Disabilities Act ("**ADA**") and Illinois Environmental Barriers Act ("**EBA**"); and

WHEREAS, in furtherance of the City's interest in protecting the health, safety and welfare of the public, the City of Wheaton's Zoning Ordinance requires the provision of handicapped parking spaces "in accordance with the requirements of the Illinois Capital Development Board, effective July 1, 1988, as may be amended from time to time" (City of Wheaton Zoning Ordinance 22.4(2)); and

WHEREAS, the Site Plan attached and/or incorporated into the petitioner's Zoning Petition indicates that only one parking space will be dedicated for individuals with disabilities; and

WHEREAS, the petitioner's proposed use of the building located on Petitioner's Property will be open to the general public and the existing tavern is open to the general public; and

WHEREAS, Title III of the ADA prohibits discrimination on the basis of disabilities in places of public accommodation and commercial facilities; and

WHEREAS, public accommodations and commercial facilities are required to follow the 2010 ADA Standards for Accessible Design ("**ADA Design Standards**"); and

WHEREAS, the ADA Design Standards require that when the total number of parking spaces provided in a parking facility are between 26 and 50 spaces, the minimum number of required accessible parking spaces for individuals with disabilities is 2 spaces, with a minimum five foot access aisle, and one of those parking spaces must meet the parking space width

requirements for van accessibility (ADA Design Standards §208.2 and ADA Compliance Brief: Restriping Parking Spaces); and

WHEREAS, the petitioner's parking plan as depicted on the Site Plan does not comply with the required ADA Design Standards; and

WHEREAS, under the Illinois EBA (410 ILCS 25/1 *et seq.*) a "public facility" is defined as including "(2) any building, structure, or site improvement used or held out for use or intended for use by the public or by employees" (410 ILCS 25/3); and

WHEREAS, the Illinois Accessibility Code ("**IAC**") published by the Illinois Capital Development Board in compliance with the EBA (410 ILCS 25/4; 71 Ill. Adm. Code 400. Appx. A) applies to public facilities, including the existing tavern and the currently vacant building located on the Petitioner's Property; and

WHEREAS, the IAC requires that when the total number of off-street parking spaces provided are between 26 and 50 spaces, the minimum number of off-street parking spaces to be provided for individuals with disabilities is 2 spaces, along with an access aisle meeting the IAC's specifications (71 Ill. Adm. Code Appx. A §208); and

WHEREAS, the petitioner's parking plan as depicted on the Site Plan does not comply with the required IAC parking space requirements; and

WHEREAS, the lack of 2 parking spaces for individuals with disabilities for Petitioner's Property as proposed violates federal and state law, discriminates against individuals with disabilities, and does not meet the safety needs of disabled individuals; and

WHEREAS, the requested Parking Space Variation will not provide adequate on-site parking facilities for the general public; and

WHEREAS, the Site Plan depicts a building of at least 3,000 square feet housing both the existing tavern and the petitioner's proposed restaurant with video gaming, with 28 total parking spaces serving both businesses; and the City of Wheaton Zoning Ordinance requires a minimum of 45 parking spaces for a 3,000 square foot building; and

WHEREAS, for safety, the number of parking spaces provided on the Petitioner's Property needs to be more than adequate for maximum future potential patron and employee attendance and allow for one vehicle per patron and employee; and

WHEREAS, the renderings for the proposed use of the Petitioner's Property depict indoor seating for 16 people and 6 indoor gaming terminals; and the petitioner's narrative accompanying the Zoning Petition states that there will be 2 employees and that the on-site tavern is required to have 8 parking spaces; based upon the foregoing the full capacity of the tavern combined with the full capacity of petitioner's proposed restaurant, without "grab and go" patrons, is 32 people which exceeds the proposed 28 parking spaces and allows for 0 "grab and go" patrons when both the tavern and restaurant are at full capacity; and

WHEREAS, the petitioner's renderings depict possible space for future placement of seating areas inside the facility which would increase the number of patrons and demand for parking; and

WHEREAS, to comply with the ADA and IAC, petitioner would need to provide an additional parking space with adequate accessibility access in accordance with ADA requirements which would likely result in the loss of one of the 28 parking spaces on the Site Plan; and

WHEREAS, the City of Wheaton is concerned that the 28 (or 27 spaces if reduced to meet ADA requirements) is not sufficient to meet the maximum future potential patron and employee attendance, and is further concerned for the safety and convenience of patrons who may need to seek additional parking from nearby parking areas along the busy Gary Avenue roadway and who may attempt to cross the roadway outside of designated pedestrian walkways or who may seek to park along the adjacent alleyways, which would also impede the flow of alley traffic and traffic sightlines; and

WHEREAS, the City of Wheaton is further concerned that should parking demand exceed parking availability, traffic congestion will increase on Gary Avenue as patron vehicles stop and wait to turn into the parking lot; and that there may be increased traffic accidents if patrons entering from the north stop on Gary Avenue to wait to enter the parking lot as the southbound lanes of Gary Avenue merge from two lanes to one lane in the immediate vicinity of the driveway access into the Petitioner's Property's parking lot; and

WHEREAS, traffic congestion in the area is complicated by traffic flowing in and out of nearby offices, commercial businesses and a private grammar school; and

WHEREAS, the petitioner/owner Rehberger Holdings, LLC requests a variation from the minimum front yard, side yard (southside), and rear setback requirements ("**Setback Variations**") under the DuPage County Zoning Ordinance; and

WHEREAS, the City does not support the petitioner's requested Setback Variations as the proposed variations are not consistent with the City's front yard, side yard, and rear setback requirements; and

WHEREAS, the Petitioner's Property's front yard abuts Gary Avenue, its southside yard abuts a public alley way, and its rear yard abuts a public alley way; and

WHEREAS, the property adjacent to Petitioner's Property on the north side is located within the boundaries of the City of Wheaton and is within the City's C5 zoning district which requires minimum yard requirements of 25 feet for front yards, 25 feet for side yards abutting a public right-of-way, and 15 feet for rear yards; and

WHEREAS, the petitioner's requested Setback Variations would reduce the front, rear, and southside yards to 0 feet which is inconsistent with the City of Wheaton's Zoning Ordinance and the City of Wheaton's Comprehensive Plan, which treats Gary Avenue as part of the City's "Suburban Community Corridor" which seeks "modest front yard setback[s] and parkway area[s]"; and

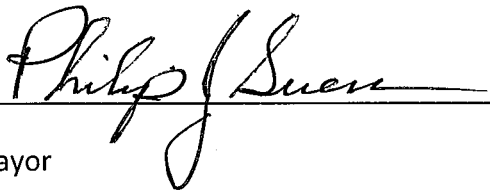
WHEREAS, the City does not support the petitioner's requested variation from the landscape requirements as it appears that petitioner offers no landscaping buffering for the Petitioner's Property, which is inconsistent with the City of Wheaton's Zoning Ordinance and Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Wheaton that:

1. The foregoing recitals are incorporated herein as if fully set forth as the factual basis of this objection; and
2. The City of Wheaton is opposed to the granting of the variations for Zoning Petition Z21-005 Rehberger Holdings, LLC for the foregoing reasons; and

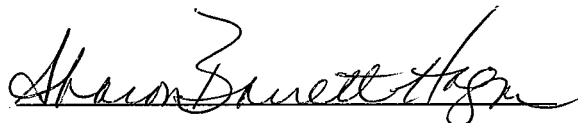
3. The City of Wheaton requests that the DuPage County Zoning Hearing Officer, the DuPage County Board of Zoning Appeals, and/or the DuPage County Board deny Zoning Petition Z21-005 Rehberger Holdings, LLC; and
4. That the City Clerk is hereby directed to immediately forward a certified copy of this resolution to Jessica Infelise at the DuPage County Building and Zoning Department.

ADOPTED this 1st day of March 2021.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Fitch
Mayor Suess
Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilwoman Bray-Parker

Nays: None

Absent: Councilman Barbier

Motion Carried Unanimously

