

ORDINANCE NO. 21 - \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 3 (ADMINISTRATION AND ENFORCEMENT) AND CHAPTER 4 (PLANNED UNIT DEVELOPMENTS) OF TITLE 6 (ZONING REGULATIONS) OF THE NAPERVILLE MUNICIPAL CODE REGARDING USE DEVIATIONS, ZONING DECISIONS BY THE CITY COUNCIL, AND PUD REVOCATIONS**

**RECITALS**

- A. WHEREAS**, the Naperville Municipal Code currently prohibits variances which seek to allow for a use which is neither a permitted nor a conditional use in a property's underlying zoning district; and
- B. WHEREAS**, in limited and unique circumstances, it may be appropriate to permit use deviations to be sought; and
- C. WHEREAS**, the proposed amendment to the City's zoning regulations would permit a petitioner to request a use deviation in a PUD if petitioner can demonstrate that specific criteria have been met, including, but not limited to the presence of unique and unusual circumstances in the PUD; that the proposed use will not have an adverse impact on other users in the PUD; and that the proposed use will be incidental to the principal use of the PUD, and
- D. WHEREAS**, the proposed amendment would provide the City Council with flexibility to approve/deny a use deviation request in limited circumstances without permanently changing the characteristics of the underlying zoning district; and
- E. WHEREAS**, the proposed amendment also seeks to amend the PUD revocation process and to delete a conflicting code section pertaining to City Council final approval; and
- F. WHEREAS**, at their January 6, 2021 meeting, the Planning and Zoning Commission conducted a public hearing and recommended approval (vote 6-0) of the proposed amendments to Chapter 3 (Administration and Enforcement) and Chapter 4 (Planned Unit Developments) of Title 6 (Zoning Ordinance) of the Naperville Municipal Code; and
- G. WHEREAS**, the Naperville City Council has determined that it is appropriate to adopt the amendments to Chapter 3 (Administration and Enforcement) and Chapter 4 (Planned Unit Developments) of Title 6 (Zoning Ordinance) of the Naperville Municipal Code.

**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 authority, as follows:**

**SECTION 1:** The Recitals set forth above are incorporated herein and made part hereof as though fully set forth in this Section 1.

**SECTION 2:** Chapter 3 (Administration and Enforcement) of Title 6 (Zoning Regulations) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the ~~stricken~~ language, as follows:

CHAPTER - ADMINISTRATION AND ENFORCEMENT

SECTION:

6-3-3: - CITY COUNCIL:

1. Jurisdiction: \* \* \*
2. ~~Final Action~~ Zoning Decisions By City Council:
  - 2.1. - 2.3. \* \* \*
  - 2.4. All decisions ~~and findings~~ of the City Council related to the Zoning Title (Title 6 – Zoning Regulations), including but not limited to any petition or application for a conditional use, planned unit development, variance, rezoning, or other amendment to a zoning ordinance or to the Zoning Title, shall, in all instances, be the final legislative decisions and shall be subject to judicial review as set forth in 65 ILCS 5/11-13-25(a). ~~may be provided by law. In the case of zoning amendments, variances, conditional uses, planned unit developments and other actions which require that approval or granting thereof be by ordinance, the enactment of the approving or granting ordinance shall be the final administrative decision and shall be subject to judicial review as may be provided by law.~~

6-3-6: - VARIANCES:

1. Authority: The City Council, after receiving a report from the Planning and Zoning Commission containing its findings and recommendations, may vary the regulations of this Title if it finds that the variance requested is in harmony with their general purpose and intent and complies with all of the standards for variances established herein. The City Council shall not vary the provisions of this Title concerning permitted uses, conditional uses or the regulation of nonconforming uses, except as specifically provided in Chapter 4 (Planned Unit Developments) of this Title.
2. Standards For Variances: - 4. Effective Period Of Variance: \* \* \*

**SECTION 3:** Chapter 4 (Planned Unit Developments) of Title 6 (Zoning Regulations) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the ~~stricken~~ language, as follows:

CHAPTER 4 - PLANNED UNIT DEVELOPMENTS

SECTION:

6-4-1: - STANDARDS AND REGULATIONS: - 6-4-2: - PURPOSE AND INTENT:

\* \* \*

6-4-3: - DESIGN STANDARDS AND CRITERIA:

The planned unit development shall be designed to comply with the following standards and criteria:

1. Ownership And Control: - Design : \* \* \*
12. Deviations From Requirements Of This Code: Deviations shall be considered by the Planning and Zoning Commission and are subject to final approval by the City Council.
  - 12.1. Zoning, Landscaping And Subdivision Deviations: In accordance with the intent and purpose of this Chapter, consideration may be offered for deviations from the zoning (~~other than use~~), landscaping or subdivision requirements of this Code. Except for exceptional instances when use deviations may be permitted in accord with Section 12.2 below, t~~h~~e determination of whether a planned unit development deviation will be approved for a planned unit development shall be made using the following standards as guidelines:
    - 12.1.1. Whether the requested deviation would undermine the intent and purpose of the underlying zoning district; and
    - 12.1.2. Whether the requested deviation would be a detriment to the provision of municipal services and infrastructure; and
    - 12.1.3. Whether the requested deviation would contribute a planned unit development which offers a superior level of design, amenity enhancement, or environmental benefit; or would enhance community vitality through the inclusion of attainable or barrier free housing.
  - 12.2. Use Deviations: In accordance with the intent and purpose of this Chapter, consideration may be given in certain instances for deviations that would permit a use which is not a permitted or conditional in the zoning district in which the PUD is located as set forth herein. The City Council shall have the discretion to determine whether the petitioner has satisfactorily demonstrated that the criteria

set forth below has been met so as to merit granting the unusual relief of a use deviation in a planned unit development.

12.2.1. Unique and unusual circumstances are present; and

12.2.2. The requested use deviation will not have an adverse impact on current uses in the PUD; and

12.2.3. The requested use deviation will be incidental to the principal use of the PUD as principal use is defined in Section 6-1-6 of this Title; and

12.2.4. One or more of the following criteria are present:

12.2.4.1. The requested use deviation would achieve a land use goal identified adopted pursuant to Title 1 (Administrative), Chapter 2 (Comprehensive Plan) of this Code.

12.2.4.2. The requested use deviation would satisfy an unmet market need as evidenced by a market study or other similar report.

12.2.4.3. The requested use deviation is likely to benefit existing uses in which the PUD is located.

12.2.4.4. The requested use deviation is appropriate due to other circumstances or conditions specific to the PUD, including but not limited to, extended and/or high rate of vacancies or changing market conditions.

12.32. Outdoor Common Area And Site Amenity Deviations: Consideration for a deviation to reduce the minimum required percentage of outdoor common area for a planned unit development may be offered, subject to the following standards:

12.32.1. The requested deviation is in harmony with the intent and purpose of this Chapter.

12.32.2. Outdoor common area or site amenities provided in the planned unit development fulfill the objectives of the outdoor common area or site amenity standard to achieve the provision of passive or active recreation, site amenity, environmental protection or beautification.

12.32.3. Alternate site or building improvements are provided which sufficiently enhance purposes related to passive or active recreation, site amenity, environmental protection or beautification.

12.32.4. The planned unit development achieves a level of environmental design or pedestrian amenity above and beyond what is required under otherwise applicable zoning requirements.

12.43. Signage Deviations: Requests for deviations to the sign regulations contained in Title 5, Chapter 4 of this Code may be considered in conjunction with a request for a planned unit development or a change to a planned unit development in accordance with the standards described in Section 6-4-6 of this Chapter.

6-4-8: - EFFECTIVE PERIOD OF PLANNED UNIT DEVELOPMENT:

1. The planned unit development shall be constructed in a timely manner. The planned unit development shall be subject to revocation under the following conditions:
  - 1.1. Final platting does not occur within two (2) years from the date of approval of the preliminary plat of a planned unit development.
  - 1.2. Construction does not commence and proceed within two (2) years from the date of approval of the final plat of a planned unit development.
  - 1.3. The City Council may extend the time limits in up to one year increments.
2. The City Council may initiate, or the owner (or authorized owner's representative) of the parcel of land on which the planned unit development is to be constructed, may apply for the revocation of the planned unit development. The owner shall be notified, in writing, at least thirty (30) days prior to the City Council's consideration of the revocation if initiated by the City Council.
3. In conjunction with a request to revoke an existing planned unit development, the owner of the parcel of land, or an owner's authorized representative, may concurrently seek the establishment of a new planned unit development or seek rezoning of the parcel of land to an appropriate zoning designation.

In the absence of the owner of the parcel of land seeking to establish a new conditional use for a planned unit development or rezoning of the parcel to an appropriate zoning designation, the City Council may, at its option, direct the Planning and Zoning Commission to conduct a public hearing to determine if the underlying zoning district in which the parcel of land is located remains appropriate for said parcel following the requested revocation of the existing planned unit development. The recommendation of the Planning and Zoning Commission shall be submitted to the City Council for consideration in conjunction with the request to revoke the approved planned unit development. If the City Council determines that the underlying zoning is no longer appropriate for the parcel of land, the City Council may deny the request for revocation of the planned unit development. Alternatively, if the City Council determines that the underlying zoning is appropriate for the parcel of land, the City Council may approve the request for revocation of the planned unit development at which time the parcel of land shall conform to the permitted uses and other regulations of the underlying zoning district in which it is located.

~~Upon revocation of a planned unit development, the parcel of land shall conform to the permitted uses and other regulations of the underlying zoning district of which it is a conditional use unless an amendment or other conditional use is initiated by the City Council or is applied for by the owner of the parcel of land on which the planned unit development was to be constructed and granted by the City Council.~~

**SECTION 4:** This Ordinance shall be in full force and effect upon its passage and approval as required by law.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2021.

AYES:

NAYS:

ABSENT:

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2021.

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Steve Chirico  
Mayor

ATTEST:

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Pam Gallahue, Ph.D.  
City Clerk