

PINs: See EXHIBIT A

**ADDRESS:
504 COMMONS ROAD
NAPERVILLE, IL 60563**

**PREPARED BY:
CITY OF NAPERVILLE
LEGAL DEPARTMENT
630/420-4170**

**RETURN TO:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540**

PZC Case #16-1-136

ORDINANCE NO. 17 -

**AN ORDINANCE APPROVING THE PRELIMINARY PLAT OF SUBDIVISION
AND DEVIATIONS TO
MUNICIPAL CODE SECTION 7-3-5 FOR
AVENIDA**

WHEREAS, BCT, LLC (“Owner”) is the owner of the real property located at the southwest corner of Mill Street and Commons Road (504 Commons Road), legally described on **Exhibit “A”** and depicted on **Exhibit “B”** (“Subject Property”) and has filed a petition for annexation of the Subject Property into the City of Naperville (“City”); and

WHEREAS, Avenida Senior Living, LLC (“Petitioner”) is the contract purchaser of the Subject Property; and

WHEREAS, Petitioner has petitioned the City of Naperville (“City”) for approval of a Preliminary Plat of Subdivision for the Subject Property in order to consolidate thirty-eight vacant lots into one lot to allow for the development of an age restricted 146-unit multi-family residential building in the City of Naperville; and

WHEREAS, the Age Restriction Covenant (also referenced herein as “Covenant”) attached hereto as **Exhibit “C”** shall be recorded prior to recordation of any final plat of subdivision for the Subject Property. School District #203 has agreed to the terms of the Covenant as represented in their letter attached hereto and made part hereof as **EXHIBIT “E”**; and

WHEREAS, the Petitioner is also seeking a deviation from Section 7-3-5:5 to allow a waiver of any school donation fees and a reduction in the park donation fee based upon the age restriction set forth in the Age Restriction Covenant; and

WHEREAS, in addition to seeking approval of the preliminary plat of subdivision and deviations provided for herein, Petitioner has also requested City approval of ordinances approving annexation, an annexation agreement, rezoning, and a conditional use for multi-family residential units and variances to reduce the lot area and number of parking spaces on the Subject Property (all five ordinances hereinafter cumulatively referenced herein as the “Avenida Ordinances”); and

WHEREAS, Petitioner has requested that the City delay recordation of the Avenida Ordinances with the DuPage County Recorder for a period of time not to exceed three hundred and sixty-five (365) calendar days after their passage in order to allow the Petitioner to finalize the purchase and sale agreement for the Subject Property and to obtain ownership of the Subject Property; and

WHEREAS, subject to approval of the Avenida Ordinances, the City has agreed to the proposed timeframe for their recordation with the DuPage County Recorder as set forth herein. In the event that all of the Avenida Ordinances are not recorded within the timeframe described above, the City and Petitioner agree that the Avenida Ordinances, including but

not limited to this Ordinance, shall not become effective, shall not be recorded; and shall be deemed to be automatically null and void and of no force or effect with no further action being taken by the City or the Petitioner; and

WHEREAS, the City Council of the City of Naperville has determined that, subject to the terms and conditions set forth or referenced in the Avenida Ordinances, it is in the best interests of the City of Naperville to approve the Preliminary Plat of Subdivision attached hereto as **Exhibit “D”**.

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 powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: If recordation of the Avenida Ordinances does not occur within three hundred and sixty-five (365) calendar days after passage of the Avenida Ordinances as provided herein, then said Avenida Ordinances shall be deemed to be automatically void without any further action being required by the City or the Petitioner. Petitioner has agreed that in no event shall the City be liable or responsible in any manner or for any claim if the Avenida Ordinances are not recorded within the three hundred and sixty-five (365) calendar day timeframe described herein.

SECTION 3: Subject to approval, execution, and recordation of the Avenida Ordinances, the Preliminary Plat of Subdivision for Avenida, attached to this Ordinance as **Exhibit “D”**, is hereby approved.

SECTION 4: Subject to approval, execution, and recordation of the Avenida Ordinances, and subject to approval and recordation of an Age Restriction Covenant, the City Council hereby waives the requirements for the Petitioner to make a school land cash payment pursuant to Section 7-3-5 of the Naperville Municipal Code. If the age restriction is modified or released in the future to allow the Subject Property to be occupied by individuals other than as provided for in the Covenant, the waiver provided for herein shall be deemed to be automatically void without further action of the Parties hereto and the then Owner of the Subject Property shall be obligated to pay in full the land cash donation for the Subject Property based upon the provisions of the Naperville Municipal Code then in effect.

SECTION 5: Subject to approval, execution, and recordation of the Avenida Ordinances, and subject to approval and recordation of an age restriction covenant, the City Council approves a deviation to Section 7-3-5:4.2 of the Naperville Municipal Code to permit the Petitioner to pay a park donation based on the park donation worksheet attached hereto as **EXHIBIT “F”** attached hereto and made a part hereof, which donation worksheet specifically accounts for the Subject Property being developed as an age restricted community. The amount of such payment reflects a deviation from Section 7-3-5:4.2 of the Naperville Municipal Code which is agreed to by the Naperville Park District as evidenced by **EXHIBIT “G”**, attached hereto and made part hereof. Petitioner agrees that payment of said amount shall not be paid under protest, or otherwise objected to. If the age restriction is modified or released in the future to allow the Subject Property to be occupied by individuals other than as provided for in the Covenant, the waiver provided for herein shall be deemed to be automatically void without further action of the Parties

hereto and the then Owner of the Subject Property shall be obligated to pay in full the land cash donation for the Subject Property based upon the provisions of the Naperville Municipal Code then in effect.

SECTION 6: This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

SECTION 7: Upon confirmation from the City Attorney that the terms and conditions set forth or referenced herein have been fulfilled, the City Clerk is authorized and directed to record this Ordinance, together with the exhibits attached hereto, with the DuPage County Recorder.

SECTION 8: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

SECTION 9: This Ordinance shall be deemed passed upon approval of the City Council and shall be in full force and effect upon its recordation with the DuPage County Recorder.

PASSED this _____ day of _____, 2017.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2017.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph. D.
City Clerk