

**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 A CONDITIONAL USE IN THE OCI (OFFICE, COMMERCIAL AND INSTITUTIONAL) ZONING DISTRICT FOR MULTI-FAMILY DWELLING UNITS AND VARIANCES TO 6-7F-5 (OCI: AREA REQUIREMENTS) AND 6-9-3:1 (OFF-STREET PARKING FACILITIES: RESIDENTIAL USES) OF THE NAPERVILLE MUNICIPAL CODE FOR THE PROPERTY AT 504 COMMONS ROAD (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**, Avenida Senior Living, LLC (“Petitioner”) is proposing the development of an age-restricted 146-unit multi-family residential building on property located at the southwest corner of Mill Street and Commons Road, Naperville (“Subject Property” or “Avenida”), which is legally described in **Exhibit “A”**, and depicted on **Exhibit “B”**; and

**WHEREAS**, the Subject Property is presently zoned R-3 (Single-Family Residence District) in unincorporated DuPage County and is currently unimproved; and

**WHEREAS**, Avenida Senior Living, LLC, (“Petitioner”) has petitioned the City of Naperville (“City”) for rezoning of the Subject Property to OCI (Office, Commercial and Institutional District) upon annexation; and

**WHEREAS**, the Petitioner is requesting approval of a Conditional Use for age-restricted multi-family dwelling units on the Subject Property in accordance with Section 6-7F-3 (OCI: Conditional Uses) of the Naperville Municipal Code; and

**WHEREAS**, the Petitioner is requesting approval of a variance to 6-7F-5 (OCI District: Area Requirement) to reduce the required lot area for multi-family dwelling units from 2,600 square feet per dwelling unit to 1,966.9 square feet per dwelling unit at the Subject Property to permit the construction of up to 146 age restricted dwelling units; and

**WHEREAS**, the Petitioner is also requesting approval of a variance to Section 6-9-3:1 (Off-Street Parking Facilities: Residential Uses) to reduce the required number of off-street parking spaces from 329 to 224 spaces at the Subject Property; and

**WHEREAS**, subject to the terms and conditions set forth herein, including but not limited to the provisions set forth in Sections 1 through 12 of this Ordinance, the requested conditional use and requested variances meet the Standards for Granting a Conditional Use and the Standards for Granting a Variance as prepared by the Petitioner and provided in **Exhibit “C”** attached hereto; and

**WHEREAS**, on January 18, 2017 and July 19, 2017, the Planning and Zoning Commission conducted a public hearing concerning Petitioner’s conditional use and variance requests (PZC 16-1-136), and recommended approval thereof; and

**WHEREAS**, the City Council of the City of Naperville has determined that the Petitioner's requests should be subject to the terms and conditions set forth and referenced herein; and

**WHEREAS**, in addition to the conditional use and variances herein, Petitioner has also requested City approval of ordinances approving an annexation agreement, annexation, rezoning, and a preliminary subdivision plat and deviations for the Subject Property (all five ordinances 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. If all of the Avenida Ordinances are not recorded within the timeframe described above, the City and Petitioner agree that the Avenida Ordinances shall not be recorded and shall be deemed to be automatically void with no further action being taken by the City or Petitioner, and that in no event shall the City be liable or responsible in any manner therefor; and

**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: Recitals Incorporated.** The foregoing recitals are incorporated herein 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: Recordation.** If recordation of all of the Avenida Ordinances does not occur within three hundred and sixty-five (365) calendar days after passage of the Avenida Ordinances, then said Ordinances shall be deemed to be automatically null and void and of no force and effect 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: Conditional Use.** Subject to the terms and conditions set forth and referenced herein, and effective upon recordation of this Ordinance, a Conditional Use for Multi-family dwelling units in accordance with Section 6-7F-3 of the Naperville Municipal Code to allow for the construction of an age-restricted 146-unit multi-family residential building on the Subject Property is hereby approved.

**SECTION 4: Age Restriction Covenant.** Development of the Subject Property is approved on the express condition that it is at all times owned and operated as an age-restricted community in compliance with the terms and conditions of the age restriction covenant (“Age Restriction Covenant” or “Covenant”) attached hereto and made part hereof as **Exhibit “D”**. The Covenant shall run with the land in perpetuity and shall bind the Petitioner and Petitioner’s successors, transferees, and assigns (for the purposes of this Ordinance the Petitioner and Petitioner’s successors, transferees and assigns are

cumulatively referenced as “Petitioner”). The Covenant shall run to the benefit of, and according to its terms, may be enforced by the City of Naperville, and/or Community Unit School District #203. The Covenant may only be released or modified on written agreement of the Petitioner, the City and School District #203, which agreement must be approved by not less than a supermajority of the corporate authorities of the City and School District #203 then in office.

A letter confirming School District #203’s approval of the Covenant is attached hereto and made part hereof as **Exhibit “E”**.

**SECTION 5: Release or Modification of the Age Restriction Covenant.** If Petitioner at any time seeks to modify or release the Covenant, Petitioner shall submit an application for same to the City’s Zoning Administrator concurrently with a petition for revised development approvals to modify the conditional use and variances granted herein (hereinafter “Zoning Controls”). The application shall include a detailed narrative setting forth the basis for the proposed modification or release of the Covenant and describing any modifications to the Zoning Controls proposed for the Subject Property in its stead. Petitioner shall concurrently file the application with the School District #203, and School District #203 shall process the application concurrent with the City’s review. The Covenant may only be released on written agreement of the owner of the Subject Property, the City and the School District, which agreement shall be approved by not less than a supermajority (2/3rds) of the corporate authorities of the City and School District #203 then in office.

The Zoning Controls are essential elements of the zoning established for the Subject Property and can only be modified as provided by the City Code then in effect.

In the event that Petitioner seeks to modify any or all of the Zoning Controls, Petitioner shall submit to the Zoning Administrator an application for: i) a major change to the conditional use; and/or ii) new zoning variances, as the Zoning Administrator may determine are appropriate.

In the event Petitioner proposes to modify or release the age-restricted nature of the development on the Subject Property, the petition for revised Zoning Controls shall include a new traffic study that takes into account the development conditions on and surrounding the Subject Property (e.g. total number and type of dwelling units proposed or existing and other data that the City determines necessary). Petitioner shall also provide other studies or information as required by the Zoning Administrator in order for the City to accurately evaluate the anticipated traffic impact on the Subject Property and the surrounding area if the Subject Property is permitted to modify the age-restriction. If the City determines that the net increase in traffic, school student generation, park usage, or other impact resulting from a non-age restricted development on the Subject Property will likely not be supported by then existing infrastructure (including but not limited to utilities and/or roadways), or services (including but not limited to school and/or park district capacity), then the City may: (i) deny the proposed major change to the conditional use and refuse to modify or release the Covenant; or (ii) approve a major change to the conditional use modifying or releasing the Covenant subject to requirements determined by the City at that time which may include a requirement that the Petitioner reduce the total number of bedrooms and/or total dwelling unit count on the Subject Property in order to correspondingly reduce the impact of the proposed non-age restricted development to a level that the City determines will be supported by said infrastructure and/or services.

In the event Petitioner proposes to modify or release the age-restricted nature of the development, the petition for revised Zoning Controls shall include an updated parking study that takes into account the development conditions then in effect on and surrounding the Subject Property (e.g. total number and type of dwelling units proposed or existing and other data that the City determines is necessary). In addition, the Petitioner shall also provide other studies, data, and/or information as required by the Zoning Administrator in order for the City to evaluate the anticipated impact the release of the Covenant would have on parking at the Subject Property and on surrounding properties. The City may require the Petitioner to undertake one or more remedies (“Remedies”) to be included in any amended parking variance approved by the City. Such Remedies may include, but shall not be limited to, one or more of the following:

- i. Petitioner shall establish a shared parking agreement with an adjacent property, subject to City review;
- ii. Petitioner shall reduce the number of bedrooms per dwelling unit;
- iii. Petitioner shall reduce the total number of dwelling units;
- iv. Petitioner shall assign parking spaces per dwelling unit through lease or sale agreements; and/or
- v. Other solutions as may be reviewed and approved by the City Council.

If an amended variance is not granted by the City, or is not granted in its entirety, and the Covenant is modified or released, the Petitioner shall be required to cease use of a portion of the Subject Property sufficient to reduce the parking demand

on the Subject Property to meet the requirements of the Naperville Municipal Code then in effect as applicable to the Subject Property.

**SECTION 6: Area Requirement Variance.** Subject to the terms and conditions set forth and referenced herein, and effective upon recordation of this Ordinance, a variance to 6-7F-5 (OCI District: Area Requirement) to reduce the required lot area for multi-family dwelling units from 2,600 square feet per dwelling unit to 1,966.9 square feet per dwelling unit at the Subject Property to permit the construction of up to 146 age restricted dwelling units is hereby approved.

**SECTION 7: Parking Variance.** Effective upon recordation of this Ordinance, a variance to Section 6-9-3:1 (Off-Street Parking Facilities: Residential Uses) to reduce the required number of off-street parking spaces from 329 to 224 spaces at the Subject Property is hereby approved subject to the terms and conditions otherwise set forth and referenced herein, and subject also to the following conditions:

1. The Subject Property shall be developed and at all times operated as an age-restricted community in accordance with the terms and conditions of an Age Restriction Covenant (“Covenant”) attached hereto as **Exhibit “D”**.
2. Petitioner shall reserve sufficient space to land bank 26 parking spaces on the Subject Property as depicted on the Preliminary Layout plan attached hereto as **Exhibit “B”**. In the event that the City Engineer, at his or her sole discretion, determines that the construction of the land banked parking spaces on the Subject Property is necessary, Petitioner agrees to obtain all necessary approvals and permits and to commence construction of said land banked parking improvements within 180 days of written notice by the City that such construction is required. The

land banked parking shall be constructed in compliance with the Naperville Municipal Code then in effect, including but not limited to all zoning, engineering, and building requirements and regulations then in effect.

3. Petitioner shall, in any lease or rental agreement for any dwelling unit within the Subject Property, require all Residents of the Subject Property to provide information with respect to vehicle ownership, and to update such information annually thereafter, including such information as make, model and license plate number of any vehicles owned by the Resident. This information shall be emailed to the City's Zoning Administrator within five calendar days upon her request therefor.
4. Petitioner shall actively manage the parking supply on the Subject Property such that there are not more than 156 Resident owned vehicles. In the event that there are more than 156 Resident owned vehicles, Petitioner shall be required to construct land banked parking described above which will then permit a maximum of 182 Resident owned vehicles to park on the Subject Property. In addition, Owner and Developer shall maintain 5 parking spaces for employees working at the Subject Property and 37 spaces for visitors to the Subject Property (0.25 spaces/unit).
5. Petitioner shall create a parking decal or other hang-tag as a mechanism to monitor and track all Resident registered vehicles. Petitioner shall include in each Resident's lease or rental agreement provisions that provide that: (a) No overnight parking shall be permitted except for registered Resident vehicles or guest vehicles that have been registered with the property manager; and (b) Petitioner may tow any vehicles parked in violation of the restrictions established for the development.

6. Petitioner shall also include in the lease, sublease, or rental agreements with all Residents that no Resident vehicles or guest vehicles, shall be permitted to park on public streets adjacent to the Subject Property, including but not limited to Commons Road, West Street, Mohler Court, or Hammer Creek Court. Petitioner shall make the same requirement applicable to all agents and employees who perform any work on or at the Subject Property.
7. Petitioner shall operate, or cause to be operated, a shuttle service for Residents of the development, which shuttle service is intended to provide transportation for group outings or other scheduled errands in an effort to reduce Resident reliance or need for independent vehicle ownership.
8. Petitioner shall include in their lease agreement with each resident who has a right to utilize space in a parking garage structure, whether it be an attached or detached garage structure, that the garage space shall be used for the primary purposes of parking a registered resident vehicle.
9. If at any point, parking demand on the Subject Property exceeds parking supply on the Subject Property, the Petitioner shall be obligated to correct the parking deficiency by using the Remedies described in Section 5 above (and as are also set forth in Subsection 10.4 of the Avenida Annexation Agreement) within a timeframe agreed upon by the Zoning Administrator.

**SECTION 8: Preliminary Layout Plan.** Subject to the terms and conditions set forth and referenced herein, and effective upon recordation of this Ordinance, the preliminary layout plan for Avenida attached to this Ordinance as **Exhibit “B”** is hereby approved.

**SECTION 9: Preliminary Landscape Plan.** Subject to the terms and conditions set forth and referenced herein, and effective upon recordation of this Ordinance, the Preliminary Landscape Plan for Avenida attached to this Ordinance as **Exhibit “F”** is hereby approved.

**SECTION 10: Building Elevations.** Subject to the terms and conditions set forth and referenced herein, and effective upon recordation of this Ordinance, the Building Elevations for Avenida attached to this Ordinance as **Exhibit “G”** are hereby approved.

**SECTION 11: Variance Expiration.** The variances approved by this Ordinance shall expire within two (2) years from the effective date of this Ordinance if a building permit has not been obtained and the construction or alteration of the structure as specified in this Ordinance has not been started within that two (2) year period.

**SECTION 12: Variance Revocation.** The variances approved by this Ordinance shall be subject to revocation by the City for failure to comply with all applicable provisions set forth in the Naperville Municipal Code, as amended from time to time, and all other applicable laws.

**SECTION 13: Recordation.** 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 14: Severability.** 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 15: Effective upon Recordation.** This Ordinance shall be deemed passed upon approval of the City Council of the City of Naperville 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.

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Steve Chirico  
Mayor

ATTEST:

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Pam Gallahue, Ph. D.  
City Clerk