

PIN:
07-03-402-027

ADDRESS:
1420 WEST DIEHL 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 #18-1-019

ORDINANCE NO. 18 -

**AN ORDINANCE APPROVING A
CONDITIONAL USE IN THE OCI (OFFICE, COMMERCIAL AND INSTITUTIONAL)
ZONING DISTRICT TO ALLOW AN AGE-RESTRICTED, MULTI-FAMILY BUILDING,
A CONDITIONAL USE FOR
A PLANNED UNIT DEVELOPMENT, AND A PRELIMINARY PLANNED UNIT
DEVELOPMENT PLAT, WITH DEVIATIONS TO SECTION 6-9-3, SECTION 6-7F-5,
AND SECTION 6-7F-8 OF THE NAPERVILLE MUNICIPAL CODE
FOR MCDOWELL POINT**

WHEREAS, AG Investors III, L.L.C. (hereinafter referenced as "Owner" or "Petitioner") is the owner of real property located at 1420 E. Diehl Road, Naperville Illinois, legally described on **Exhibit A** and depicted on **Exhibit B** ("Subject Property"); and

WHEREAS, Petitioner is proposing the development of an age-restricted 174-unit multi-family residential building on the Subject Property anticipated to be known as McDowell Point; and

WHEREAS, the Subject Property is currently zoned ORI (Office, Research, and Light Industry); and

WHEREAS, the Petitioner has petitioned the City of Naperville for rezoning of the Subject Property to OCI (Office, Commercial and Institutional); and

WHEREAS, subject to approval of said rezoning by separate ordinance (“Rezoning Ordinance”), Petitioner seeks approval of a conditional use in the OCI zoning district to allow for an age-restricted, multi-family building in accordance with Section 6-7F-3 of the Naperville Municipal Code and for approval of a conditional use to establish a planned unit development and a preliminary PUD plat for McDowell Point, including deviations to the following sections of the Naperville Municipal Code: (i) Section 6-9-3 (Schedule of Off Street Parking Requirements) to allow for a decrease in the number of required off-street parking spaces from 392 spaces to 304 spaces; (ii) Section 6-7F-5 (OCI, Area Requirements) to allow for a decrease in the required minimum lot area from 2,600 square feet per dwelling unit to 2,068 square feet per dwelling unit; and (iii) Section 6-7F-8 (OCI, Height Limitations/Bulk Regulations) to increase the permitted maximum height of the proposed building to be constructed on the Subject Property from 43 feet to 54 feet, 8 inches; and

WHEREAS, on May 16, 2018, the Planning and Zoning Commission conducted a public hearing concerning PZC 18-1-019 to consider the Petitioner’s requests for the Subject Property, and recommended approval of Petitioner’s requests; and

WHEREAS, the City Council finds that subject to the terms and conditions set forth and referenced herein, the requested conditional use to allow for a multi-family building in accordance with Section 6-7f-3 of the Naperville Municipal Code meets the Standards for Conditional Uses as provided in **Exhibit C** attached hereto; and

WHEREAS, the City Council finds that subject to the terms and conditions set forth and referenced herein, the requested conditional use to establish a planned unit development and a preliminary planned unit development (PUD) plat for the Subject

Property meets the Standards for Granting a PUD as provided in **Exhibit D** attached hereto; and

WHEREAS, the City Council finds that subject to the terms and conditions set forth and referenced herein, the requested deviations to Sections 6-9-3, 6-7F-5, and 6-7F-8 of the Naperville Municipal Code meet the Standards for Approving a PUD Deviation as provided in **Exhibit E** attached hereto; and

WHEREAS, the conditional uses and deviations described herein are approved subject to the following conditions and covenants: (1) the terms and conditions set forth and referenced herein; (2) the provision of sidewalks on the Subject Property as described in Section 8 herein; (3) grants of easements to the City on the Subject Property as described in Section 9 herein; (4) approval of an Age Restriction Covenant as referenced in Section 10 herein at the time as the ordinance approving the Final Planned Unit Development Plat for the Subject Property is considered, and recordation of said Covenant with the DuPage County Recorder prior to recordation of the Final Planned Unit Development Plat for the Subject Property; (5) provision of parking and lease requirements as set forth in Section 4 herein; and (6) ownership of the Subject Property at all times by a single person or entity; and

WHEREAS, the provisions of this Ordinance shall be binding upon the Owner and its successors, assigns, and transferees; and

WHEREAS, subject to the terms and conditions set forth and referenced herein, and subject to approval of rezoning of the Subject Property from ORI to OCI, the City Council of the City of Naperville has determined that a conditional use in the OCI (Office, Commercial and Institutional) zoning district, and a conditional use to establish a planned unit

development and a preliminary PUD plat for the Subject Property with the deviations specified above should be approved.

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 herein as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated herein and made part hereof.

SECTION 2: Each of the approvals contained in this Ordinance is subject to and conditioned upon approval of a final planned unit development plat for the Subject Property and strict compliance with the terms and conditions set forth and referenced herein. All terms and conditions set forth and referenced herein shall be binding upon the Owner and Owner's successors, transferees, and assigns.

SECTION 3: A conditional use to establish the McDowell Point Planned Unit Development and the Preliminary Planned Unit Development Plat for McDowell Point, attached to this Ordinance as **Exhibit F**, is hereby approved for the Subject Property, subject to compliance with the following plans:

- Building Elevations for McDowell Point, as **Exhibit G**,
- Preliminary Landscape Plan for McDowell Point, as **Exhibit H**,
- Open Space Exhibit for McDowell Point, as **Exhibit I**,
- Overall Site Plan for McDowell Point, as **Exhibit J**.

SECTION 4: Deviations to the Preliminary Planned Unit Development for McDowell Point as follows are hereby approved:

- i. Section 6-9-3 (Schedule of Off Street Parking Requirements) of the Naperville Municipal Code to allow for a decrease in the number of required off-street parking spaces from 392 spaces to 304 spaces, subject to the parking conditions set forth on **Exhibit K**;
- ii. Section 6-7F-5 (OCI, Area Requirements) of the Naperville Municipal Code to allow for a decrease in the required minimum lot area from 2,600 square feet per dwelling unit to 2,068 square feet per dwelling unit; and
- iii. Section 6-7F-8 (OCI, Height Limitations/Bulk Regulations) of the Naperville Municipal Code to increase the maximum building height from 43 feet to 54 feet, 8 inches.

SECTION 5: School and Park Contributions.

5.1 School Donation. No school contribution shall be required as long as the Subject Property remains an age restricted community in compliance with the age restriction covenant to be approved by the City Council and recorded prior to recordation of a Final Planned Unit Development Plat for McDowell Point.

5.2 Park Donation. As long as the Subject Property remains an age restricted community in compliance with the age restriction covenant to be approved by the City Council upon consideration of the Final Planned Unit Development Plat for McDowell Point, the Owner shall pay to the Naperville Park District \$871,616.60. The City acknowledges that prior to approval of the Final Planned Unit Development Plat for the Subject Property the Owner may provide the City with documentation from the Naperville Park District evidencing an agreement between the Owner and Naperville Park District for payment of an alternate amount which shall be in lieu of the \$871,616.60 referenced above. If an alternate amount is agreed upon, said documentation shall be attached as

an exhibit to the ordinance approving the Final Planned Unit Development Plat for the Subject Property. Payment shall be due prior to recording of the Final Planned Unit Development Plat for the Subject Property. The Owner further acknowledges that the park donation established herein will be verified at the time of the building permit issuance, and if the number of dwelling units in the building exceeds 174 total dwelling units, then the permit applicant shall be charged for additional dwelling units, in accordance with the park donation table in effect at the time the building permit is issued.

SECTION 6: West Diehl Road Traffic Signal Contribution. The Owner of the Subject Property shall reimburse the City for fifty percent (50%) of the annual cost of the maintenance and electrical energy charges for the operation of the traffic signal located at the intersection of the West Diehl Road entrance to the Subject Property. Payment shall be made within thirty (30) days of receipt by the Owner of an invoice therefor. If any traffic signal contributions as provided herein are not timely paid, the City shall have the right to lien the Subject Property described in **Exhibit A** which lien may include reasonable attorney's fees (including in-house counsel) and costs of collection, including litigation costs. The responsibility for the Owner to make the payment described in this Section 7 shall remain in effect as long as the traffic signal remains in place, either in its current, or in a modified, configuration.

SECTION 7: Sidewalks. The Owner shall install public sidewalks, at the Owner's sole cost, as follows:

7.1 Along the West Diehl Road frontage of the Subject Property from a point beginning from Raymond Drive and extending west along West Diehl Road to terminate immediately east of the main entrance to the Subject Property along West Diehl Road.

7.2. Along the West Diehl Road frontage of the Subject Property, from a point beginning immediately west of the main entrance to the Subject Property to extend to the west property line of the Subject Property, unless an alternative approach for sidewalk installation is agreed upon in writing by the Owner and City Engineer at his reasonable discretion.

7.3 Along the Raymond Drive frontage of the Subject Property. Additionally, the Owner shall install a section of sidewalk on the north side of West Diehl Road connecting the existing sidewalk to the back of curb at the northwest corner of West Diehl Road and Raymond Drive. Said sidewalk connection shall also include pedestrian receiving areas and pedestrian road crossing pavement markings pursuant to Naperville Municipal Code.

7.4 Installation of the sidewalks identified in 7.1 through 7.3 herein shall be completed by the Owner and approved by the City prior to the issuance of any final occupancy permit for the Subject Property.

SECTION 8: Easement Grants. By separate instrument to be approved with the final planned unit development plat for the Subject Property, the Owner shall grant to the City those public utility and drainage easements as set forth in the final engineering plans to be approved by the City Engineer for the Subject Property. Said instrument shall be recorded with the DuPage County Recorder prior to the recordation of the final planned unit development plat and shall be referenced by recordation number on the final planned unit development plat at the time of its recording.

SECTION 9: Age Restriction. Use of the Subject Property is approved on the express condition that it shall, at all times, be owned and operated as an age-restricted community as referenced herein and as set forth in the Fair Housing Amendments Act of

1988 as amended from time to time including but not limited to the provisions of the “Housing for Older Persons Act of 1995” (“HOPA”). An age restriction covenant ensuring the integrity and enforceability of age restrictions for the McDowell Point development shall be submitted for consideration by the City Council concurrently with the submission of a Final Planned Unit Development Plat for the Subject Property. Said covenant shall be recorded prior to recordation of a Final Planned Unit Development Plat for the Subject Property and shall run with the land in perpetuity and bind the Owner and Owner’s successors, transferees, and assigns. The Covenant shall be implemented and enforced by the Owner. The Covenant shall run to the benefit of, and according to its terms, and may also be enforced by the City of Naperville, and/or Community Unit School District #204. The Covenant may only be released or modified on written agreement of the Owner, the City and School District #204, which agreement must be approved by not less than a supermajority of the corporate authorities of the City and School District #204 then in office as set forth in **Exhibit L**.

SECTION 10: This Ordinance is subject to all conditions and requirements set forth in Title 6 (Zoning) of the Naperville Municipal Code, as amended, and to all supporting documents and exhibits contained as a part of the record of the public hearing before the Planning and Zoning Commission.

SECTION 11: This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

SECTION 12: The approvals contained herein are contingent upon: (i) approval of the Rezoning Ordinance; (ii) approval by the City Council of a final planned unit development plat for the Subject Property (“Final Plat”); and (iii) approval by the City Council of an age restriction covenant for the Subject Property which shall be recorded

prior to the Final Planned Unit Development Plat and which shall be referenced on the Final Planned Unit Development Plat. The approvals contained herein may be revoked in accordance with the revocation provisions set forth in the Rezoning Ordinance.

SECTION 13: The City Clerk is authorized and directed to record this Ordinance and its Exhibits with the DuPage County Recorder subject to the condition set forth in Section 14 below.

SECTION 14: This Ordinance shall not be recorded, nor shall the entitlements provided for herein take effect, unless the Rezoning Ordinance for the Subject Property referenced herein has also been approved.

SECTION 15: This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED this _____ day of _____, 2018.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2018.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph. D.
City Clerk