

PIN:
07-24-400-001

ADDRESS:
310 MARTIN AVENUE

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

BRB Case 96

ORDINANCE NO. 19 -

**AN ORDINANCE UPHOLDING THE BUILDING REVIEW BOARD'S
INTERPRETATION OF THE APPLICATION OF TITLE 5 (BUILDING REGULATIONS)
OF THE NAPERVILLE MUNICIPAL CODE FOR NAPERVILLE ELDERLY HOMES
LOCATED AT 310 MARTIN AVENUE, NAPERVILLE
AND DENYING VARIANCES TO TABLE 705.8 AND SECTION 706.1.1
OF THE 2018 INTERNATIONAL BUILDING CODE**

WHEREAS, for the past forty (40) years, Naperville Elderly Homes Inc. ("NEH" or "Petitioner"), a not-for-profit corporation formed in 1967, has owned and operated the Martin Avenue Apartments, a government-subsidized, nonprofit housing center that offers housing opportunities for seniors or persons with disabilities on a limited income, at the property located at 310 Martin Avenue, Naperville IL, which is legally described in **Exhibit A**, and depicted on **Exhibit B** ("**Subject Property**"); and

WHEREAS, the Subject Property is currently zoned OCI (Office Commercial and Institutional District) and is improved with 122 low-income senior apartments (hereinafter referred to as "**Original Building**"); and

WHEREAS, in 2017, the Petitioner submitted a petition to construct a new sixty-eight (68) unit senior apartment building, which building would be attached to the Original Building via a common corridor (hereinafter **“the Expansion”**); and

WHEREAS, in order to accommodate construction of the Expansion, on June 6, 2017 the Naperville City Council passed the following ordinances: Ordinance No. 17-075 (Approval of a Deviation and Preliminary Plat of Subdivision which created a separate lot for the Expansion), Ordinance No. 17-076 (Approval of a Conditional Use for Multi-Family Dwellings), Ordinance No. 17-077 (Approval of Certain Zoning Variances), and Ordinance No. 17-078 (Approval of a Variance Regarding Exterior Wall Construction). The foregoing ordinances are hereinafter referenced cumulatively herein as the **“Naperville Elderly Homes Ordinances”**; and

WHEREAS, following City Council approval of the Naperville Elderly Homes Ordinances, the scope of the project was modified to include both construction of the Expansion and renovation of the Original Building for the Use described herein (collectively, referenced herein as the **“Project”**); and

WHEREAS, to obtain funding from the Illinois Housing Development Authority for both the Original Building and the Expansion, Petitioner is seeking to amend Ordinance No. 17-075 to replace the preliminary plat of subdivision previously approved with the Preliminary/Final Plat of Subdivision of the Subject Property approved by separate ordinance and attached hereto as **Exhibit C**; said Preliminary/Final Plat of Subdivision will adjust the shared lot line between Lot 1 and Lot 2 of the Subject Property and result in a portion of the Original Building being located on Lot 1 and a portion of the Original Building and the Expansion (Original Building and Expansion are hereinafter referenced as **“Building”**) being located on Lot 2. A portion of the Building containing seventy-one

(71) apartments for the Use described herein shall be located on Lot 1. A portion of the Building containing one hundred and nineteen (119) apartments for the Use described herein shall be located on Lot 2; and

WHEREAS, based on the location of the property lines resulting from the subdivision of the Subject Property, the Petitioner requested Building Review Board (“BRB”) approval of a variance to Table 705.8 (Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection) and Section 706.1.1 (Party Walls) of the 2018 International Building Code, as adopted through Title 5 (Building Regulations) of the Naperville Municipal Code in order to waive certain requirements pertaining to the renovation of the Original Building and construction of the Expansion (hereinafter referred to as “**BRB Case #96**”); and

WHEREAS, Petitioner’s requests in BRB Case #96 were predicated on the basis that upon completion of the Project, the Original Building and the Expansion would function as a single building and would be operated as a single apartment community; and

WHEREAS, on December 19, 2018, the Building Review Board conducted a hearing on BRB Case #96 and did not recommend approval of the requested variances, finding that they were unnecessary given its interpretation that the Project should be viewed as a single structure located on the Subject Property under Title 5 of the Naperville Municipal Code (“Naperville Building Code”), regardless of the lot lines established by a plat of subdivision of the Subject Property (hereinafter “**BRB Interpretation**”); and

WHEREAS, for purposes of the City of Naperville Building Code and the Updated Naperville Elderly Ordinances, and subject to strict compliance with the conditions set forth and referenced herein, the City hereby adopts the BRB Interpretation and shall view the Original Building and the Expansion as a single structure (herein “Building”) constructed on

Lot 1 and Lot 2 of the Subject Property, and will not require variances from Title 5 of the Naperville Municipal Code (“Building Regulations”), including variances for: fire separation, fire wall, egress and other requirements; and

WHEREAS, the fundamental components of the Project, including total unit count, parking, building size, and setbacks, remain consistent with the approvals set forth in the Naperville Elderly Homes Ordinances; however, said Ordinances and exhibits are being updated to reflect the revised subdivision of the Subject Property (the “**Updated Naperville Elderly Homes Ordinances**”); and

WHEREAS, the Building shall be constructed and shall operate as a single structure to be used for residential apartments for individuals on a limited income who are seniors or persons with disabilities (herein referenced as “**Use**”). A portion of the Building containing seventy-one (71) apartments for said Use shall be located on Lot 1.

WHEREAS, the Building and the Total Property shall at all times function in an integrated manner for the Use described herein and in compliance with all applicable laws, as amended from time to time, including but not limited to the Naperville Municipal Code, and including but not limited to building code, fire protection, and life safety code provisions. Fire safety code provisions include, but are not limited to, provisions pertaining to means of egress, travel distance to exits, occupant load, and dead-end corridors.

WHEREAS, subject to continued compliance with the terms and conditions set forth herein and in the remaining Updated Naperville Elderly Ordinances, and to encourage and accommodate the Project described herein, the City hereby adopts the Building Code Interpretation discussed herein; and

WHEREAS, NEH will record a Declaration of Covenants, Conditions, Restrictions and Easements for Naperville Elderly Homes with the DuPage County Recorder

("Declaration") on the Subject Property subsequent to recordation of the Updated Naperville Elderly Ordinances and prior to issuance by the City of a building or site permit for the Subject Property, which Declaration will govern the operation of the Project; and

WHEREAS, capitalized terms used herein, unless otherwise defined herein, shall have the meaning set forth in said Declaration; and

WHEREAS, "Lot 1" and "Lot 2", as defined in the Declaration, shall comprise the property and improvements on each respective Lot, and "Total Property" shall be defined in the Declaration as Lot 1 and Lot 2 collectively; and

WHEREAS, the Declaration shall reference the Updated Naperville Elderly Ordinances and the requirement that the Total Property comply with said Ordinances and the Naperville Municipal Code and other applicable laws, as amended from time to time, including but not limited to fire code and life safety provisions and regulations; and

WHEREAS, the Declaration shall further provide that it shall not be terminated without the prior written consent of the City of Naperville, and that the prior written consent of the City of Naperville shall be required for any amendment or modification of the Declaration pertaining to the Use of the Building or the operation of the Building as a single structure, or pertaining to the Total Property, to the extent that such provisions: (a) affect easements granted in favor of Lot 1 and Lot 2 of the Total Property for parking, ingress and egress, and unrestricted access to Shared Areas by residents, occupants, tenants, and their invitees; (b) modify the Use of the Subject Property or provide for Use or operation of the Building or the Total Property in a manner contrary to the Updated Naperville Elderly Ordinances or the Naperville Municipal Code or other applicable laws then in effect; (c) affect the use and operation of the Building as a single structure; or (d)

modify the amendment or termination provisions of the Declaration, or the definitions of the Declaration which in any way pertain to the City's rights hereunder; and

WHEREAS, the Declaration shall also include provisions that: (i) if all or some part of the Total Property is determined by the City to be in violation of the Naperville Elderly Ordinances, or any part thereof, in violation of the Naperville Municipal Code or other laws then in effect, or in violation of the City Approved Declaration Provisions (hereinafter cumulatively referenced as "**Violation**"), the City may take all appropriate action, including but not limited to directing the owners of the Total Property to correct such Violation within a reasonable timeframe as determined by the City's Zoning Administrator; (ii) the owner or owners of the Total Property who caused the Violation shall reimburse the City for all reasonable attorneys' fees (whether in-house or outside counsel) within sixty (60) days of receipt of an invoice therefor; and (iii) the City shall be entitled to record a lien against that portion of the Total Property responsible for such Violation if payment of such invoice is not timely made; and

WHEREAS, the City Zoning Administrator and the City Attorney shall review and approve the provisions of the Declaration described in the four recitals above prior to recordation of the Declaration with the DuPage County Recorder (hereinafter "**City Approved Declaration Provisions**"); and

WHEREAS, subject to the terms and conditions set forth and referenced herein, the City Council of the City of Naperville has determined that it concurs with the BRB Interpretation for BRB Case #96.

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 here in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Variances to Table 705.8 (Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection) and Section 706.1.1 (Party Walls) of the 2018 International Building Code to waive said requirements (BRB Case #96) are hereby denied.

SECTION 3: The BRB Interpretation for BRB Case #96 issued on December 19, 2018 regarding the Project, wherein the BRB determined that notwithstanding the provisions of the Naperville Building Code, the Building should be viewed as a single structure located on the Subject Property regardless of the lot lines established by a final plat of subdivision for the Subject Property, is hereby upheld subject to the terms and conditions set forth herein unless the same are amended with the approval of the City Council.

SECTION 4: In the event that the Total Property, as defined in the Declaration, is operated in Violation of the provisions of this Ordinance, the remaining Updated Naperville Elderly Homes Ordinances, the City Approved Declaration Provisions, or the provisions of the Naperville Municipal Code, as amended from time to time, the City may: (a) exercise rights and remedies available to it at law or in equity; (b) enforce penalties or take other action as may be appropriate under the Naperville Municipal Code or other laws then in effect; and/or (c) revoke some or all of the entitlements granted under the Updated Naperville Elderly Ordinances. In the event of a revocation, the Total Property, including but not limited to the Building, shall immediately comply with the Naperville Municipal Code then in effect.

Prior to any action to revoke any or all of the Updated Naperville Elderly Ordinances as to any portion of the Total Property, the City shall provide written notice to each owner of the Subject Property, as such ownership is reflected on the last tax bill for the Subject Property, detailing the basis or bases for the Violation(s) and providing a reasonable time to cure the same. If the basis or bases of the Violation(s) apply to only one of the two Lots of the Subject Property, the City shall only revoke some or all of the Naperville Elderly Ordinances with respect to that Lot so long as the remaining Lot can be operated in compliance with the Updated Naperville Elderly Ordinances, the Naperville Municipal Code and other laws then in effect, and the City Approved Declaration Provisions.

SECTION 5: 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 6: The City Clerk is authorized and directed to record this Ordinance with the DuPage County Recorder.

SECTION 7: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2019.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2019.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk