

ORDINANCE NO. 2195

(Change of Zone No. 1699)

AN ORDINANCE TO MODIFY CONDITION NO. 21 IMPOSED ON ORDINANCE NO. 1377 FOR CHANGE OF ZONE NO. 1400, THE APPLICATION OF OLDE TOWNE POINT, L.L.C. FOR "THE VILLAGE AT FIVE POINTS", A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY, SO THAT THE LIMITATION WITH REGARD TO COMMUNITY USE IS ONLY IMPOSED ON 2.52 ACRES, THEREBY ENABLING OLDE TOWNE POINT, L.L.C. TO USE THE REMAINING PORTION OF THE PROPERTY, 1.52 ACRES, FOR A PROPOSED PHARMACY OR RELATED USE

WHEREAS, on the 7th day of February 2000, a zoning application denominated Change of Zone No. 1400 was filed on behalf of Olde Towne Pointe, L.L.C.; and

WHEREAS, on the 6th day of April 2000, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1400 be approved; and

WHEREAS, on the 9th day of May 2000, a public hearing was held, after notice before the County Council of Sussex County and the County Council of Sussex County determined, based on the Findings of Facts, that said Change of Zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; and

WHEREAS, on the 6th day of June 2000, the County Council of Sussex County adopted Ordinance No. 1377, with conditions; and

WHEREAS, on the 26th day of October 2010, this application was filed to modify Condition No. 21 imposed on Ordinance No. 1377 so that the limitation with regard to community use is only imposed on 2.52 acres thereby enabling Olde Towne Pointe, L.L.C. to use the remaining portion of the property, 1.52 acres, for a proposed pharmacy or related use; and

WHEREAS, on the 27th day of January 2011, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day February 2011, said Planning and Zoning Commission recommended that Change of Zone No. 1699 be denied; and

WHEREAS, on the 15th day of February 2011, a public hearing was held, after notice, before the County Council of Sussex County and the County Council has determined, based on the findings of facts, that said Change of Zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morale, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Condition No. 21 be modified to read:

21. Applicant will limit through deed restrictions the type of future community use to be imposed on 2.52 acres thereby enabling Old Towne Pointe, L.L.C. to use the remaining portion of the property, 1.52 acres, for a proposed pharmacy or related use. The community service uses may include i.e. fire, police, EMS services, library, museum or similar use. The developer will maintain architectural and signage control of any facility.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2195 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 24TH DAY OF MAY 2011.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

1. This is an application for an Ordinance to modify Condition No. 21 imposed on Ordinance No. 1377 for Change of Zone No. 1400, the application of Olde Towne Pointe, L.L.C., for "The Villages of Five Points", a MR-RPC Medium Density Residential District – Residential Planned Community, so that the limitation with regard to community use is only on 2.52 acres, thereby enabling Olde Towne Pointe, LLC to use the remaining portion of the property, 1.52 acres, for a proposed pharmacy or related use.

2. The application of Olde Towne Pointe, LLC identified as Change of Zone No. 1699, seeks an Ordinance amendment to modify Condition No. 21 imposed on Ordinance No. 1377 for Change of Zone No. 1400, the application of Olde Towne Pointe, LLC for “The Villages of Five Points”, a MR-RPC Medium Density Residential District – Residential Planned Community, so that the limitation with regard to community use is only imposed on 2.52 acres, thereby enabling the Applicant to use the remaining portion of the property, 1.52 acres, for a proposed pharmacy or related use.
3. The property consists of approximately 4.04 acres. The Applicant has exercised reasonable efforts to satisfy Condition No. 21 of Ordinance No. 1377 and to generate interest from various organizations to utilize the property for community service use. Despite the Applicant’s efforts, there has been no economically viable interest by any community service organization to utilize the entirety of the property for such use.
4. The Applicant proposes to develop 1.52 acres for a pharmacy or related use and proposes to reserve 2.52 acres for a community service facility.
5. The Property is currently owned by the Applicant; however, 1.52 acres of the subject property is under contract to be purchased by JEM X, LLC for the purpose of constructing and maintaining a CVS pharmacy.
6. It is necessary to adopt an Ordinance to modify Condition No. 21 imposed on Ordinance No. 1377 for Change of Zone No. 1400, the application of Olde Towne Pointe, L.L.C. for “The Villages of Five Points”, a MR-RPC Medium Density Residential District – Residential Planned Community, so that the limitation with regard to community use is only imposed on 2.52 acres, thereby enabling the Applicant to use the remaining portion of the property, 1.52 acres, for a proposed pharmacy or related use.
7. The proposed modification of Condition No. 21 of Ordinance No. 1377 for Change of Zone No. 1400 will have no adverse or detrimental impact on neighboring areas or uses.

Further, based upon the record and the stated findings, the Sussex County Council found that approval of the modification of Condition No. 21 of Ordinance No. 1377 for Change of Zone No. 1400 is appropriate legislative action as it is for the purpose of promoting the health, safety, moral, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, including amongst other things, the lessening of congestion in the streets or roads, securing safety from fire, flood and other dangers, providing adequate light and air, preventing on the one hand, excessive concentration of population and on the other hand, excessive and wasteful scattering of population or settlement and promoting such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate and provide adequate provisions for public requirements.