

ORDINANCE NO. 2196

(Conditional Use No. 1868)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PHARMACY AND COMMUNITY SERVICE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.04 ACRES, MORE OR LESS

WHEREAS, on the 2nd day of June 2010, a conditional use application, denominated Conditional Use No. 1868 was filed on behalf of Olde Towne Pointe, LLC; 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 of February 2011, said Planning and Zoning Commission recommended that Conditional Use No. 1868 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 of Sussex County determined, based on the findings of facts, that said conditional use 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 that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1868 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying at the northwest corner of Savannah Road (Business Route 9) and North Village Main Boulevard, the entrance into the Village of Five Points and being more particularly described as:

BEGINNING at a point at the northwest corner of Savannah Road and North Village Main Boulevard; thence south 69° 37' 11" west 373.07 feet along the northerly right-of-way of Savannah Road to a point; thence north 40° 24' 02" west 341.66 feet along Common Area "D" of the Village of Five Points to a point; thence north 49° 35' 58" east 456.00 feet along the southerly right-of-way of West First Street to a point; thence southerly 495.86 feet along the westerly right-of-way of North Village Main Boulevard to the point and place of beginning and containing 4.04 acres, more or less.

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

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact and subject to the following conditions:

- 1. This is an application for Conditional Use of land in an AR-1 Agricultural Residential District for a pharmacy and community service facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 4.04 acres, more or less, lying at the northwest corner of Savannah Road (Business Route 9) and North Village Main Boulevard, the entrance into the Village of Five Points.**
- 2. The application of Olde Towne Pointe, LLC, identified as Conditional Use No. 1868, seeks a Conditional Use of land for a pharmacy and community service facility on 4.04 acres.**
- 3. 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.**
- 4. 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.**
- 5. The Applicant has offered to gift 2.52 acres of the property to the Lewes Public Library (the "Library") in the event that both Conditional Use No. 1868 and Change of Zone No. 1699 are approved by the County Council and settlement occurs with JEM X, LLC for the remaining 1.52 acres. As a condition of approval, the County Council requires that the Applicant complete its offer to deed the 2.52 acres restricted to community use granted to the Library as a gift. Recording such**

deed is conditioned upon no successful collateral attack on the granting of Conditional Use No. 1868 and Change of Zone No. 1699 overruling or setting aside such legislative action and the settlement of the sale of the 1.52 acres by the Applicant to JEM X, LLC or its assigns. The Applicant has submitted a Conditional Gift Agreement for the Library's consideration based upon its interest in the 2.52 acres and their publicly announced need to relocate. However, to date, the Library's internal review process has precluded it from entering into the Conditional Gift Agreement until it has considered other properties for the relocation site based upon its public interest protocols. Although the Library use is the preferred use as it is a natural fit to existing uses in the Villages of Five Points, in the event that the applications are approved and settlement occurs with JEM X, LLC for a pharmacy, and the Library elects not to accept the gift of property from the Applicant or fails to construct a library facility within ten (10) years from the date of recording of the Deed, for the 2.52 acres, then in that event, title to the 2.52 acres will automatically be transferred to The Villages of Five Points Property Owners Association, Inc. restricted to community use or as open space at the election of The Villages of Five Points Property Owners Association, Inc. The form of the deed shall be required to be approved by Counsel for the Applicant and the County Attorney before recording.

6. The Conditional Use is compatible and consistent with neighboring uses along Route 9, Savannah Road.
7. The Conditional Use will have no adverse or detrimental impact on neighboring areas or uses.
8. The Conditional Use will have no significant impact upon traffic in the area. DelDOT did not require a Traffic Impact Study.
9. The proposed project is in a Highway Commercial Area with the Environmentally Sensitive Developing Area overlay as established by the Comprehensive Plan Update of 2008. Thus, the project meets the purpose of the Plan Update.

10. Any building signage for the proposed pharmacy use shall face Savannah Road and/or North Villages Main Boulevard. Only minor directional signs shall be permitted in rear of the pharmacy. Signage configuration shall comply with the Sussex County Code.
11. Deflectors shall be utilized on the proposed pharmacy building lights to ensure that light from the pharmacy does not encroach on the adjacent residential properties.
12. The hours of operation of the pharmacy shall be normal operating hours. However, the pharmacy shall have the right to operate 24 hours per day if the pharmacy user determines that the needs of the community require it.
13. The pharmacy user shall be solely responsible for security on its site.
14. Any garbage dumpsters located at the pharmacy site shall be enclosed.
15. Sufficient landscape screening and buffering shall be placed to screen the pharmacy from the residential development at the Villages of Five Points until a community use is placed. A landscaping plan shall be submitted for review and approval by the Planning and Zoning Commission.
16. The user of the pharmacy portion of the property shall make feasible and commercially reasonable efforts to limit late night and early morning deliveries and to minimize idling delivery vehicles at the pharmacy site.
17. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Further, based upon the record and the stated findings, the Sussex County Council found that approval of the requested Conditional Use of land 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.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
COPY OF ORDINANCE NO. 2196 ADOPTED BY THE SUSSEX COUNTY COUNCIL
ON THE 24TH DAY OF MAY 2011.**



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL