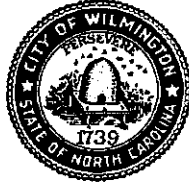


Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 10/18/2011

Ordinance Rezoning properties consisting of 1.83 acres located at 1950 Amphitheatre Drive from R-5, Residential District to O&I-1 (CD), Office and Institutional District-1 (Conditional District) for an adult day care facility with overnight respite services (assisted living) as an accessory use

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, NCGS Section 160A-385 authorizes local governments to change or modify zone boundaries within their jurisdiction; and

WHEREAS, the amendment set out below is made in accordance with NCGS Section 160A-364 and Article 3, Section 18-117 of the Land Development Code.

THEREFORE, BE IT ORDAINED:

SECTION 1: The Official Zoning Maps of the City of Wilmington are hereby amended by removing the hereinafter described tracts of land and rights-of way from the present R-5, Residential District and putting it in the O&I-1(CD), Office and Institutional District-1 (Conditional District) classification, said tracts being more particularly described as follows:

Legal Description for
Conditional district rezoning of 1950 Amphitheatre Drive

Being a tract of land situated in Wilmington Township, City of Wilmington, New Hanover County, North Carolina and lying West of and adjacent to the right of way line intersection of Honeysuckle Street and Amphitheatre Drive and more particularly described as follows:

Beginning at a scribed "x" marking the Northeast corner of Lot 6, as shown on a plat entitled "Survey & Redivision. Block 12 & Part of Block 13. Hanby Property - Summer Hill Tract" for A. R. Threath by M. F. Underwood Registered Land Surveyor, dated December 5, 1973 as recorded in Map Book 15 Page 47 of the New Hanover County Registry. Said scribed "x" also marking the point of intersection of the Southern right of way line of Amphitheatre Drive (60 foot public right of way) (formerly West Lake Shore Drive) with the Western right of way line of Honeysuckle Street (60 foot public right of way), running thence from said *Point of Beginning* along the Western line of Honeysuckle Street South 22 degrees 30 minutes 50 seconds East 156.16 feet to an iron pipe marking the Northeastern corner of Lot 5 of said plat,

CERTIFIED TO BE A TRUE COPY.
Melissa Spivey Sidbury
CITY CLERK

thence leaving said right of way along the Northern line of lots 5,4,3,2, & 1 South 67 degrees 30 minutes 00 seconds West 325.45 feet to a set iron pipe in the New Eastern right of way line of West Lake Shore Drive (60 foot public right of way) (formerly Poplar Street), thence along said right of way line of West Lake Shore Drive with a curve to the Northeast having a radius of 224.70 feet and a chord bearing and distance of North 28 degrees 14 minutes 13 seconds West 44.92 feet to a set iron pipe marking the Point of Tangency, thence continuing along said right of way line North 22 degrees 30 minute 00 seconds West 234.84 feet to a point in the edge of a catch basin, said point marking the Northwest corner of Lot 10 and the point of intersection of the Eastern right of way line of said West Lake Shore Drive with the Southern right of way line of Amphitheatre Drive, thence continuing along the Eastern right of way line of West Lake Shore Drive North 22 degrees 30 minutes 00 seconds West 32.34 feet to a set iron pipe marking the point of intersection of the centerline of Amphitheatre Drive and the Eastern right of way line of West Lake Shore Drive, running thence along the centerline of Amphitheatre Drive North 89 degrees 25 minutes 00 seconds East 87.20 feet to a set mag nail, thence North 88 degrees 10 minutes 00 seconds East 11.46 feet to a set mag nail, thence North 87 degrees 35 minutes 44 seconds East 179.30 feet to a set mag nail, thence leaving said centerline South 22 degrees 30 minutes 00 seconds East 31.94 feet to a scribed "x" mark in the Southern right of way line of Amphitheatre Drive, thence along said right of way line North 87 degrees 35 minutes 44 seconds East 74.43 feet to the *Point of Beginning*. Containing 1.83 acres more or less and being all of Lots 6, 7, 8,9,10 & Part of Lot 11 of the aforementioned "Survey & Redivision Map of the Hanby Property - Summer Hill Tract" and as shown on a plat entitled "Map of Recombination For Elderhaus, Inc." prepared by Mark A. Stocks, PLS, PC, dated April 29, 2009 as recorded in Map Book 54 Page 69 of the New Hanover County Registry. The above description includes a portion of Amphitheatre Drive together with and subject to however a 60 foot access and utility easement being more particularly described as follows:

Beginning as a scribed "x" mark in the Southern right of way line of Amphitheatre Drive (60 foot public right of way) said point being located South 87 degrees 35 minutes 44 seconds West 74.43 feet from the point of intersection of the Western right of way line of Honeysuckle Street (60 foot public right of way) and the Southern right of way line of Amphitheatre Drive, running thence from said *Point of Beginning* along said right of way line, South 87 degrees 35 minutes 44 seconds West 190.42 feet to a point, thence continuing with said right of way line South 88 degrees 10 minutes 00 seconds West 11.94 feet to a point and South 89 degrees 25 minutes 00 seconds West 75.45 feet to a point in the edge of a catch basin, marking the point of intersection of the Southern right of way line of Amphitheatre Drive with the Eastern right of way line of West Lake Shore Drive (60 foot public right of way), thence along said right of way line North 22 degrees 30 minutes 00 seconds West 64.68 feet to a set iron rod at its point of intersection with the Northern line of Amphitheatre Drive, thence along the Northern right of way line of Amphitheatre Drive, North 89 degrees 25 minute 00 seconds East 98.94 feet to a set iron rod, thence continuing with said right of way line North 88 degrees 10 minutes 00 seconds East 10.98 feet to a set iron rod, thence North 87 degrees 35 minutes 44 seconds East 168.17 feet to a set iron rod, thence leaving said right of way line South 22 degrees 30 minutes 00 seconds East 63.89 feet to the *Point of Beginning*. Containing 0.38 acres more or less.

SECTION 2: The following rules, regulations and conditions shall apply to the property described in this ordinance:

1. The use and development of the subject property shall comply with all applicable regulations and requirements imposed by the Land Development Code or any other applicable federal, state or local law, ordinance or regulation, as well as any condition stated below. In the event of a conflict, the more stringent requirement or higher standard shall apply.
2. If, for any reason, any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.
3. The use of the site shall be for adult daycare and as an accessory use, overnight respite services (assisted living), not to exceed a total of 6 beds.
4. The development of the subject property shall be in accordance with the plan dated September 12, 2011 as submitted and approved.
5. The existing off-premises freestanding sign for Elderhaus shall be relocated to the subject site and must comply with all provisions of the Land Development Code for signs located in an O&I-1 zoning district. Pole signs shall be prohibited on the property.
6. All requirements of the Technical Review Committee shall be met.
7. All city, state, and federal regulations shall be followed.

SECTION 3: The City Clerk and the Planning Manager are hereby authorized and directed under the supervision of the City Manager to change the Zoning Maps on file in the office of the City Clerk and the Planning Division, to conform with this ordinance.

SECTION 4: That any person violating the provisions of this ordinance, including the approved site plan, shall be subject to the penalties set forth in Section 18-52 of the Land Development Code.

SECTION 5: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6: If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 7: This ordinance shall be effective immediately upon its adoption.

Adopted at a regular meeting
on October 18, 2011.

ATTEST:

Penelope Spicer-Sidbury
Penelope Spicer-Sidbury, City Clerk



Bill Saffo
Bill Saffo, Mayor

APPROVED AS TO FORM:

Carolyn D. Johnson
City Attorney

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