

STATE OF WISCONSIN

CITY OF ST. FRANCIS

MILWAUKEE COUNTY

ORDINANCE NO. 1512

AN ORDINANCE TO CONDITIONALLY REZONE CERTAIN LANDS
IN THE CITY OF ST. FRANCIS AS A
PLANNED UNIT DEVELOPMENT-MIXED USE UNDER ARTICLE IV, CHAPTER 455 OF
THE CITY OF ST. FRANCIS ZONING CODE
3195 SOUTH LAKE DRIVE
TAX KEY NUMBER(S) 541-9000-002

WHEREAS, an Application dated February 7, 2023 has been filed by John W. George, as Administrator for St. Francis Convent, Inc., a Wisconsin non-stock corporation (“Applicant”) to rezone certain lands in the City of St. Francis, Milwaukee County, Wisconsin, which are more particularly described in the attached Exhibit A (the “Subject Property”); and

WHEREAS, the Subject Property is currently zoned as a residential Planned Unit Development (“PUD”) pursuant to Chapter 455, Article IV of the City of St. Francis Code of Ordinances to permit redevelopment and use of the Subject Property as a convent for the Sisters of St. Francis of Assisi to replace the former St. Mary’s School and former Marian Center for Non-profits; and

WHEREAS, the existing PUD residential zoning permits use of the three (3) connected buildings for the Sisters to reside and have a place for worship and other rooms for activities, living, kitchen and maintenance, and related amenities as set forth in the initial PUD Project Plan attached hereto and incorporated by reference as Exhibit B; and

WHEREAS, the current Application seeks to have the Subject Property rezoned to a PUD-Mixed Use pursuant to Chapter 455, Article IV of the City of St. Francis Code of Ordinances to permit use of the south wing of the existing building (“Elizabeth Hall”) into a 48-unit Residential Care Apartment Complex (“RCAC”) serving up to 48 residents; use of the north wing of said existing building (“Clare Circle”) as a 32-unit memory care Community Based Residential Facility (“CBRF”) to be operated as “Franciscan Shore” to provide care to up to 32 patients/residents; and use of the center wing as a cafe, chapel, library, bookstore, heritage room and staff offices for use by the order and convent; and

WHEREAS, use of the property for a mixed-use Planned Unit Development is only permitted if a Planned Unit Development is approved by the Common Council under §§ 455-34 of the City of St. Francis Zoning Code following a public hearing and receipt of Planning Commission recommendations; and

WHEREAS, the Applicant has supplied all required data pursuant to Section 455-33(D) of the City of St. Francis Zoning Code for initial PUD Plan and rezoning for the entire tract; and

WHEREAS, the Application and related information provided by Applicant has been available for public inspection in the office of the City Clerk since on or about February 7, 2023; and

WHEREAS, as provided for in § 455-34(D)(1) of the City of St. Francis Code of Ordinances, the Application was considered by the City of St. Francis Planning Commission at a regular meeting held on February 23, 2023 upon due notice to the public; and

WHEREAS, the Common Council finds that the operation of RCAC and memory care facilities within the City without adequate equipment and a sufficient number of properly trained personnel pose a risk to the health, safety, and welfare of the unavailability of City of St. Francis Police and Fire personnel to provide emergency services as a result of being called upon to provide non-emergency patient/resident care that should be provided by the operator(s) of the subject facility; and

WHEREAS, the Applicant has represented to the City that the RCAC and CBRF will be operated with sufficient trained personnel to preclude calls upon City emergency services personnel to provide non-emergency care to patients and residents of the facilities to be operated on the Subject Property; and

WHEREAS, the Applicant has further represented to the City that it agrees to reimburse the City in the event that City personnel are called upon to provide patient/resident care or services on a non-emergent basis; and

WHEREAS, the Planning Commission has recommended to the Common Council for the City of St. Francis (“Common Council”) that the requested zoning be approved conditioned upon the Applicant’s entry into a development agreement as required by § 455-35(B)(4) and further conditioned upon Applicant’s agreement to reimburse the City for costs arising out of certain requests that City emergency services personnel services to residents or patients on the Subject Property; and

WHEREAS, as provided for in § 455-38 of the City of St. Francis Code of Ordinances, an application for reduction in off-street parking was considered by the City of St. Francis Planning Commission at a regular meeting held on March 22, 2023 upon due notice to the public; and

WHEREAS, the Planning Commission recommended that the Council approve the requested reduction of 18 off-street parking spaces conditioned upon the Applicant’s recording of a shared parking agreement with Applicant’s Canticle Court and Juniper Court (PIN: 541-1141-000 and 541-8001) properties that complies with § 435-38(6)(a)(1) of the City of St. Francis Code of Ordinances and further contingent upon said reduction in parking being effective only during the time that Applicant retains unity of ownership and management over the three parcels; and

WHEREAS, notice having been properly given, a public hearing was held before the Common Council on May 2, 2023 as required by said Section 455-34 of the City of St. Francis Code of Ordinances upon the recommendation of the Planning Commission; and

WHEREAS, pursuant to Section 455-34(D) the Council has duly considered all of the following before making a decision on the requested zoning:

1. Consistency with the Comprehensive Smart Growth Plan;
2. Consistency with the purposes of this chapter;
3. Consistency with the recommendations of the Planning Commission;
4. Conformance with the standards set forth in § 455-35;
5. Findings and recommendations of City staff; and
6. All verbal and written comments received at the public hearing.

WHEREAS, having determined that all procedural and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such rezoning on the health, safety, and welfare of the community and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the community as to noise, dust, smoke, odor, and others, hereby determines that the rezoning will not violate the spirit or intent of the Zoning Code for the City of St. Francis, will not be contrary to the public health, safety, or general welfare of the City of St. Francis, will not be hazardous, harmful, noxious, offensive, or a nuisance by reason of noise, dust, smoke, odor, or other similar factors and will not, for any other reason, cause a substantial adverse effect on the property values and general desirability of the neighborhood as long as the operation is conducted pursuant to the following conditions and in strict compliance with the same and is consistent with the recommendations found in the City of St. Francis comprehensive plan;

NOW, THEREFORE, the Common Council of the City of St. Francis, Milwaukee County Wisconsin, DO ORDAIN AS FOLLOWS:

SECTION 1: Commencing upon the date hereof, the Zoning Map of the City of St. Francis is hereby conditionally amended to rezone the Subject Property as Planned Unit Development – Mixed Use to permit use of the south wing (“Elizabeth Hall”) as a 48-unit Residential Care Apartment Complex (“RCAC”) serving up to 48 residents; use of the north wing (“Clare Circle”) as a 32-unit memory care Community Based Residential Facility (“CBRF”) to be operated as “Franciscan Shore” to provide care to up to 32 patients/residents; and use of the center wing as a cafe, chapel, library, bookstore, heritage room and staff offices for use by the order and convent; all as set forth in the initial PUD Project Plan attached hereto and incorporated by reference as Exhibit B, subject to initial and continued compliance with each of the conditions stated in Section 2 of this Ordinance being fully met.

SECTION 2: CONDITIONS IMPOSED.

The rezoning of the Subject Property to permit a Planned Unit Development as set forth in the Application dated February 7, 2023 and related plans and materials submitted by the Applicant and on file in the office of the Zoning Administrator hereby granted is subject to initial and continued compliance with all of the following conditions:

1. Maintenance of Adequate Personnel and Equipment.

- a. Applicant and its administrators, licensees, lessees, contractors and successors in interest and title shall, at all times, maintain sufficient trained staff and equipment onsite for the safe and orderly operation of the Subject Property as permitted hereunder.
- b. Personnel, equipment, and supply costs incurred by the City as a result of responding to any request(s) that City emergency services personnel (e.g., police, fire, EMS/Paramedic) provide patient and/or resident location (e.g., missing patient/resident location) or control (e.g., disorderly/uncontrollable patient/resident) services, or provide assistance or care services (including but not limited to lift assistance, mobility assistance, hygiene/toiletry assistance, and/or patient assessment with or without transport to a definitive care facility) to patients or residents of the Subject Property shall be invoiced to the owner(s) and or operator(s) of the Subject Property where the City Administrator reasonably determines that any such request(s) arose out of or are related to a failure by the Applicant, its administrator(s), contractor(s), agent(s), lessee(s), or successor(s) in interest to have, as of the time of such request(s), adequate staffing on site (whether with respect to quantity or training) or as a result of insufficient or inoperable equipment.
- c. Any invoice issued under the provisions of Section 2(b) of this Ordinance shall be due and payable thirty (30) days from the date of its issuance and, upon default in payment shall be assessed as a special charge for services pursuant to the provisions of Wis. Stat. § 66.0627 (including as amended and / or renumbered or from time to time) provided, however, that the determination by the City Administrator concerning assessing any cost(s) pursuant to Section 2(b) of this Ordinance shall be subject to review under Chapter 4, “Administrative Review”, of the City of St. Francis Code of Ordinances (including as amended and / or renumbered from time to time).
- d. Nothing in this Ordinance shall be construed as a limitation or waiver with respect to the City of St. Francis’ authority under any applicable statute, regulation, ordinance, or rule.

2. Licenses and Permits.

- a. No use of the Subject Property for which any State and/or Federal license(s) and/or permit(s) are required shall be commenced until such time as Applicant has secured all such necessary license(s) and/or permit(s) for such use(s).
- b. Applicant shall, upon receipt of any required State/Federal license/permit file a copy of said license/permit with the City’s Zoning Administrator as a condition of obtaining a certificate of occupancy.

3. Reduction in Parking. Applicant's request for a reduction in off-street parking is approved subject to the following conditions:
 - a. Applicant shall, within twenty (20) days of the date of this Ordinance, provide the City's Zoning Administrator with evidence that the Amended and Restated Access and Parking Easement Agreement attached to and incorporated by reference into this Ordinance as Exhibit C has been duly executed recorded with the Register of Deeds for Milwaukee County.
 - b. The reduction in parking granted hereunder is granted solely to the Applicant and upon the occurrence of one or more of the following events the reduction granted hereunder shall terminate and the off-street parking for the Subject Property shall thereafter be fully subject to all applicable provisions of Section 455-38 of the City of St. Francis Code of Ordinances, including as amended and renumbered from time to time:
 - i. The Subject Property is no longer occupied by any member of the Order of the Sisters of St. Francis of Assisi.
 - ii. The School Sisters of St. Francis Convent, Inc. divests any interest in the Subject Property.
 - iii. There is a transfer of any interest in the ownership of the parcels.
 - iv. Any land division or change of occupancy of any of the parcels identified as of the date of this Ordinance by Property Identification Numbers: 541-8000, 541-8001, and 541-9000-002.
4. Commencement of Use of the Property. Common Council, Aesthetic Control Board, Planning Commission and staff approvals are required to finalize the detailed PUD plans, after which construction of private and public facilities may commence in accordance with the following:
 - a. Approvals, fees and infrastructure required. Building plans must be submitted to the Common Council, Aesthetic Control Board, and Planning Commission for their review and approval prior to issuance of any building permits.
 - b. No building permit shall be issued until all applicable fees and assessments have been paid, a detailed PUD plan has been approved, and a developer's agreement has been approved. For staged development, such developer's agreements may provide for the construction of improvements and the use of common areas outside of the subject stage.
5. Expiration of approvals. If the Common Council and Planning Commission have not approved detailed PUD plans within one year of the date the Common Council approval of this Ordinance, the PUD Zoning granted hereunder shall lapse and zoning for the parcel

shall immediately revert back to its prior status, unless the time for approval of detailed PUD plan(s) is extended in writing by the Common Council prior to such expiration. Furthermore, after the Common Council and Planning Commission have approved the detailed PUD plans, use of the Subject Property in accordance with such detailed PUD plans shall be commenced within one year, unless the time is extended in writing by the Common Council. In the event that use has not commenced within one year and been actively pursued, and an extension of time has not been granted by the Common Council, the PUD zoning approval lapses and zoning for the parcel reverts to its prior status.

6. The Subject Property shall, except as otherwise expressly provided herein or in the detailed PUD Plans be used in compliance with all applicable provisions of the City Code including, but not limited to, fire safety, noise, parking, public health, sign regulations, and zoning regulations.
7. The Applicant shall obtain all required municipal, State, and Federal permits and licenses required for operation of the Subject Property prior to engaging in such permitted/licensed activity.
8. The Applicant is required and must have all plans current, approved by the Planning Commission for the City of St. Francis, and on file with the Planning Commission for the City of St. Francis. The Applicant shall be entitled to amend or change any plan contemplated herein subject to the aforementioned conditions and subject to the Planning Commission for the City of St. Francis approval and without a public hearing, if such amendments and/or change is not a substantial change from the original plan as approved and as allowed herein.
9. The Applicant shall comply with all Federal, State, County, and local rules, codes, ordinances, regulations, and initial and detailed PUD plans in the construction, operation, and maintenance of the Subject Property. In the event any applicable law(s), regulation(s), condition(s), restriction(s), and/or ordinance(s) conflict, the more restrictive shall control.
10. The Applicant is required to properly maintain the Subject Property at all times and in full compliance with the property maintenance ordinance provisions of the City of St. Francis, as amended from time-to-time, to the satisfaction of the Building Inspector.
11. The Applicant must pay all fees, costs, and assessments due and owing to the City of St. Francis and all costs and expenses incurred by the City of St. Francis, including legal and engineering fees and costs, arising out of or related to the Application, the review thereof, this Ordinance, and subsequent development of the Subject Property.
12. Any application for use of, or construction on, the lands described on Exhibit A, is an acknowledgement by Applicant that the Subject Property is subject to these conditions of approval. Applicant waives any claim(s) that it may have against the City of St. Francis, including, but not limited to, claims for damages, costs, and expenses, and claims of vested

rights to the proposed development of the Subject Property, in the event any owner(s) of the Subject Property do not agree to the required terms.

13. Applicant shall satisfy all comments and concerns of the Building Inspector, City Engineer, Fire Chief, Police Chief, and Health Department pertaining to the Application and subsequent development and operation on the Subject Property under this Ordinance.
14. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In the case of a question as to the classification of use, the question shall be submitted to the Planning Commission for determination.
15. No use is hereby authorized unless that use is conducted in a lawful, orderly, and peaceful manner. Nothing in this Ordinance shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order, or rule of either the City of St. Francis, the County of Milwaukee, the State of Wisconsin, the United States of America, or other duly constituted authority except only to the extent that it authorizes a nonconforming use of the Subject Property in specific respects expressly described herein. This Ordinance shall not be deemed to constitute a building permit, nor shall this Ordinance constitute any other license or permit required by City Ordinance or other law or regulation.
16. The Planned Unit Development granted under this Ordinance may be amended, varied, or altered only pursuant to the procedures and subject to the standards and limitations provided in Chapter 455 of the City of St. Francis Zoning Code for its original approval.
17. Any violation of this Ordinance shall constitute a violation of the Zoning Ordinance for the City of St. Francis and shall be subject to the enforcement procedures contained in the City of St. Francis Zoning Code, as amended from time-to-time, and such other remedies as may be available to the City of St. Francis under Wisconsin law.

SECTION 3: SEVERABILITY.

The several sections of this Ordinance are declared to be severable. If any section or provision thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such declaration shall apply only to the specific section(s) or portion(s) thereof directly specified in said declaration, and shall not affect the validity of any other provisions, sections, or portions of the Ordinance, which shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this Ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This Ordinance shall take effect upon its passage and posting/publication as provided by law.

Passed and adopted at a regular meeting of the Common Council of the City of St. Francis this 6th day of June 2023.

City of St. Francis

By: /s/Ken Tutaj
Ken Tutaj, Mayor

ATTEST: /s/Anne B. Uecker, MMC/WCPC
Anne B. Uecker, City Clerk/Treasurer

APPLICANT ACCEPTANCE

Applicant hereby accepts the terms of this Ordinance in its entirety.

Dated this _____ day of June 2023.

St. Francis Convent, Inc.

By: _____
Name: Sister Diana De Bruin
Its: Director of the Congregation

Exhibit A

Legal Description of Subject Property

That part of the Northwest 1/4 of Section 14 and the Northeast 1/4 of Section 15, Town 6 North, Range 22 East, in the City of Milwaukee and City of St. Francis, County of Milwaukee, State of Wisconsin, which is bounded and described as follows:

Commencing at a stone monument located on the most Easterly corner of Lot 3, in Block 1, in Zawodny's Subdivision, a recorded subdivision in said Northeast 1/4 of Section 15; thence South 56° 11' 00" East 118.31 feet along the Southwesterly line of South Lake Drive to the point of beginning of the lands to be described; thence continuing South 56° 11' 00" East 18.54 feet along said Southwesterly line; thence South 42° 24' 30" East 726.11 feet along said Southwesterly line; thence South 38° 12' 55" West 277.05 feet to a stone monument; thence North 43° 37' 55" West 259.99 feet; thence South 87° 35' 30" West 36.69 feet; thence North 39° 37' 46" West 419.82 feet; thence North 05° 22' 14" East 141.42 feet; thence North 50° 22' 14" East 177.72 feet to the point of beginning.

EXCEPT that part conveyed to the Sisters of St. Francis of Assisi by a Quit Claim Deed recorded in the Register of Deeds office for Milwaukee County on March 22, 1989, on Reel 2313, Image 99, as [Document No. 6261434](#).

Tax Key No: 541-9000-002
Address: 3195 S. Lake Drive

Exhibit B

Initial PUD Project Plan
[On File in the Office of the Zoning Administrator]

Exhibit C

Amended and Restated Access and Parking Easement Agreement