

Introduced by: Mr. Sheldon
Date of introduction: February 23, 2016

RESOLUTION NO. 16 -034

TO AMEND A DECLARATION OF RESTRICTIONS FOR TAX PARCEL NO. 08-044.10-388, LOCATED ALONG THE NORTH SIDE OF STATE ROUTE 7 (LIMESTONE ROAD), MILL CREEK HUNDRED, TO REDUCE THE EXISTING THIRTY (30) FOOT REQUIRED LANDSCAPE BUFFER ALONG THE REAR PROPERTY LINE BETWEEN THE AUTOMOTIVE SERVICE BUILDING AND RESIDENTIAL PROPERTIES IN THE COMMUNITY OF SHERIDAN SQUARE TO A MINIMUM OF SEVEN AND ONE-HALF (7.5) FEET TO ACCOMMODATE NINETEEN (19) NEW PARKING SPACES

WHEREAS, Anthony J. Rocco and Barbara Rocco (collectively, “Rocco”) caused to be made that certain that certain Declaration of Restrictions dated November 6, 1992, and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware (the “Recorder’s Office”), in Deed Book 1440, Page 215, as amended by that certain Amendment to Declaration, dated on or about June 9, 2000 and of record in the Recorder’s Office at Deed Book 2861, Page 14 (collectively, the “Declaration”), in conjunction with an application to rezone and develop a certain parcel of land situate in Mill Creek Hundred, New Castle County, State of Delaware, containing approximately 1.0 acres, more or less (the “Property”), for purposes of, among other things, establishing a thirty foot (30’) wide landscape buffer along the northeasterly and northwesterly boundaries of the Property; and

WHEREAS, Campanella Group, LLC (“Campanella”), successor-in-interest to Rocco, proposes through that certain Resubdivision Plan for Pike Creek Automotive, New Castle County Department of Land Use Application No. 2015-0381-S, prepared by Karins and Associates and dated May 20, 2015 (the “Plan”), said Plan to be recorded in the Recorder’s Office, to, among other things, revise the existing buffer (the “Buffer”) to provide for the creation of nineteen (19) additional parking spaces on the Property (the “Parking Spaces”); and

WHEREAS, Campanella desires to amend the Declaration for the sole purpose of reducing the width of an approximately two hundred foot (200’) long portion of the Buffer to a width of not less than seven and one-half feet (7½’) to accommodate the inclusion of the Parking Spaces; and

WHEREAS, Campanella, as the owner of the Property, is authorized and permitted to amend the Declaration, subject to the consent and approval of New Castle County Council; and

WHEREAS, the recommendation from the Department of Land Use is to accommodate 14 (fourteen) new parking spaces, however, the property owner proposes to increase the number of spaces by 5 (five), totaling 19 (nineteen) new parking spaces; and

WHEREAS, the Department of Land Use recommends in favor of amending the Declaration currently encumbering the Property, consistent with the purposes stated herein; and

WHEREAS, *New Castle County Code* Section 40.31.130 provides that upon receipt of a recommendation report from the Department of Land Use and the Planning Board, County Council shall schedule a hearing and render a decision by resolution. A supermajority vote is required if voting contrary to a Department of Land Use recommendation.

NOW, THEREFORE, BE IT RESOLVED by and for the County Council of New Castle County that County Council hereby approves the Second Amendment to Declaration of Restrictions, attached hereto as Exhibit "A" (9 out of 13 votes is required).

Adopted by County Council of
New Castle County on:

President of County Council
New Castle County

SYNOPSIS: Same as title

FISCAL NOTE: There will be no discernable fiscal impact upon the approval of this resolution.

EXHIBIT A

Tax Parcel No.: 08-044.10-388

Prepared By and Return To:
John E. Tracey, Esquire
Young Conaway Stargatt & Taylor, LLP
1000 N. King Street
Wilmington, DE 19801

SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS

(this "Amendment") is hereby made this _____ day of _____, 201_, by **CAMPANELLA GROUP, LLC**, a Delaware limited liability company (referred to herein as "Declarant"), which states as follows:

WHEREAS, Declarant is seized in fee simple of a certain tract or parcel of land situate in Mill Creek Hundred, New Castle County, State of Delaware, being located along the northern side of Limestone Road, consisting of approximately 1.0 acres of land, more or less (hereinafter referred to as "the Premises" or "the Property"); and

WHEREAS, the Premises is bound by that certain Declaration of Restrictions dated November 6, 1992, and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware (the "Recorder's Office"), in Deed Book 1440, Page 215, as amended by that certain Amendment to Declaration, dated on or about June 9, 2000 and of record in the Recorder's Office at Deed Book 2861, Page 14 (collectively, the "Declaration"), recorded by Declarant's predecessor-in-interest, Anthony J. and Barbara Rocco (hereinafter collectively referred to as "Rocco"); and

WHEREAS, Rocco had, since the approval and recordation of the Record Plan of Rocco Automotive, of record in the Recorder's Office at Instrument No. 12064, operated an automotive repair shop on the Premises; and

WHEREAS, Declarant purchased the Premises from Rocco by that certain Deed dated October 15, 2012 and of record in the Recorder's Office at Instrument No. 20121019-0060948, and has continued to operate an automotive repair shop on the Premises; and

WHEREAS, the Declaration, as presently recorded, requires the maintenance of a thirty foot (30') wide landscaped buffer along the northeasterly and northwesterly boundaries of the Premises; and

WHEREAS, Declarant desires to amend the Declaration to permit a reduction of that buffer along an approximately 200 foot (200') long portion of the aforementioned boundary to accommodate the addition of nineteen (19) parking spaces designed to alleviate existing parking needs on the Premises; and

WHEREAS, New Castle County Council, pursuant to Resolution 15-____ (attached as Exhibit A hereto), has consented to the amendment of the Declaration as required by Paragraph 4 thereof.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declaration, with the approval of New Castle County Council, is hereby amended and modified in accordance with the provisions contained hereinafter.

1. Paragraph 1 of the Declaration is hereby amended by deleting the phrase “thirty (30) feet wide” and replacing it with the phrase “seven and one-half (7½) feet wide as shown on Exhibit B attached hereto and made a part hereof”.

2. The real covenants contained in the Declaration, as amended hereby, are hereby imposed for the benefit of New Castle County, a political subdivision of the State of Delaware, its successors and assigns, and may not be altered, amended or modified, in all or in part, without the prior approval of the County Council of New Castle County, its successors and assigns.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed the day and year first above written.

WITNESS:

DECLARANT:

CAMPANELLA GROUP, LLC, a Delaware limited liability company

By: _____ (SEAL)
Paul Campanella, Managing Member

