

**VILLAGE OF GILBERTS**

**ORDINANCE 15-2021**

**AN ORDINANCE APPROVING  
A VARIANCE FROM THE GILBERTS UNIFIED DEVELOPMENT ORDINANCE**

*(172 Tyler Creek)*

**WHEREAS**, Adam and Christina Kasprowicz (collectively, “**Owner**”), the owners of the property located 172 Tyler Creek, Gilberts, Illinois, 60136, which property is more specifically described on **Exhibit A** (“**Property**”), desire to construct an attached wooden deck in the rear yard of the Property; and

**WHEREAS**, the Property is currently zoned in the R-3 Residential Zoning District; and

**WHEREAS**, Section 3-6(A) of the Gilberts Unified Development Ordinance (“**UDO**”) requires a 40-foot rear yard setback for residences served by a septic system in the R-3 Residential Zoning District; and

**WHEREAS**, the Owner filed an application for a variance from Section 3-6(A) to allow for the attached wooden deck to protrude 25 feet into the required 40-foot rear yard setback (“**Variance**”); and

**WHEREAS**, the Property is currently legally nonconforming, as the residence on the Property already encroaches into the required rear yard; and

**WHEREAS**, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Owner’s request for the Variance on July 14, 2021, and at the conclusion of the public hearing voted to recommend approval of the Variance; and

**WHEREAS**, the Village Board makes the following findings of fact in reference to the Owner’s application for approval of the Variance for the Property:

- a. The Property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that district;
- b. The extraordinary or exceptional conditions of the Property requiring the request for the Variance was not caused by the Owner, as the variance is necessary due to the current location of the residence on the Property;
- c. The proposed Variance will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship, as it is not feasible for the Owner to install any accessory structure within the rear yard of the Property without encroaching into the setback due to the location of the residence on the Property;
- d. The denial of the proposed Variance will deprive the Owner of the use permitted to be made by the owners of property in the immediate area, as other owners of property in the area are able to install decks in the rear yard without encroaching into the setback;

- e. The proposed Variance will result in structures that are appropriate to and compatible with the character and scale of structures in the area in which the Variance is being requested;
- f. There is no other means other than the requested Variance by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Property.

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois as follows:

**Section 1. Recitals.** The recitals are incorporated into this Section 1 as if fully set forth.

**Section 2. Variance.** Subject to the conditions set forth in Section 3 of this Ordinance, the Village Board of Trustees hereby approves the following variance for the Property:

A variance from Section 3-6(A) of the UDO to allow for the construction of an attached wooden deck on the Property located 15 feet from the rear yard lot line instead of the required 40 feet.

**Section 3. Conditions.** The approvals granted pursuant to Section 2 of this Ordinance are conditioned upon and limited by the following conditions, the violation of any of which shall, in the discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the approvals granted by this Ordinance in accordance with applicable law. In addition, any violation of this Ordinance will be deemed a violation of the UDO and subject the Owner to enforcement proceedings accordingly.

- A. **No Authorization of Work.** This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind may be commenced on the Property pursuant to the approvals granted in this Ordinance unless and until all conditions of this Ordinance precedent to that work have been fulfilled and after all permits, approvals, and other authorizations for the work have been properly applied for, paid for, and granted in accordance with applicable law.
- B. **Compliance with Laws.** The UDO, the Building Code, and all other applicable Village ordinances and regulations shall continue to apply to the Property, and the development and use of the Property must comply with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

**Section 4. Severability.** In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 5. Repeal and Saving Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any

rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

**Section 6. Effective Date.** Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form; provided, however, that this Ordinance shall be of no force or effect unless and until the Owner has executed and filed with the Village its unconditional agreement and consent, in the form attached to this Ordinance as **Exhibit B**, within 30 days following the passage of this Ordinance.

ADOPTED THIS 20 DAY OF July, 2021, pursuant to roll call vote as follows:

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Dan Corbett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Brandon Coats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Lou Hacker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Justin Redfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee David LeClerc	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Guy Zambetti	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



APPROVED THIS 20 DAY OF July, 2021

[Signature]  
Village President, Guy Zambetti

[Signature]  
Village Clerk, Courtney Baker

Published: \_\_\_\_\_

**Exhibit A**

*Description of the Property*

*Common Address:* 172 Tyler Creek, Gilberts, IL

*PINs:* 02-23-251-101

**Exhibit B**

**Unconditional Agreement and Consent**

Pursuant to Section 6 of Ordinance No. 15-2021, and to induce the Village to grant the approvals provided for in that Ordinance, the undersigned acknowledges for itself and its successors and assigns in title to the Property that it:

1. has read and understand all of the terms and provisions of Ordinance No. 15-2021,
2. hereby unconditionally agrees to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the UDO, and all other applicable codes, ordinances, rules, and regulations;
3. acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the owner or lessee against damage or injury of any kind and at any time;
4. acknowledges that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right; and
5. represents and acknowledges that the person signing this Unconditional Agreement and Consent is duly authorized to do so on behalf of the Owner.

**Adam Kasprowicz**

  
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Date: 7/22/2021

**Christina Kasprowicz**

  
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Date: 7/22/2021