

ORDINANCE NO. 08-2023

**AN ORDINANCE APPROVING
A SPECIAL USE PERMIT AND VARIANCES**

(Crusin' Gilberts – 11 Galligan Road)

WHEREAS, D.R.D. Bar & Eatery, Inc. ("**Applicant**") is a tenant in the existing building located on the property at 11 Galligan Road, Gilberts, Illinois, which property is more specifically described in *Exhibit A* (the "**Property**"); and

WHEREAS, the current owner of the Property is Joseph Lazar ("**Owner**"); and

WHEREAS, the Applicant currently operates a restaurant on the Property called "Crusin' Great Food and Spirits" (the "**Restaurant**"); and

WHEREAS, the Property is currently zoned in the C-1 Commercial District; and

WHEREAS, under Section 4-3-2(e) of the Gilberts Unified Development Ordinance ("**UDO**"), permanent outdoor seating areas accessory to bars, restaurants, and taverns are allowed in the C-1 Commercial District subject to the issuance of a special use permit; and

WHEREAS, the Applicant, with the permission of the Owner, has applied for a special use permit to construct and operate a permanent outdoor seating area accessory to the Restaurant on the Property; and

WHEREAS, the Applicant has also applied for variance from Section 9-2(L)(1)(a) of the UDO to allow for a wall sign that is (1) 180 square feet instead of the maximum 80 square feet; (2) has lettering with a decorative background; and (3) projects higher than the parapet line of the wall to which it will be affixed; and

WHEREAS, pursuant to notice duly published, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Applicant's request for a special use permit and variances (collectively, the "**Zoning Relief**") on April 12, 2023; and

WHEREAS, at the conclusion of the public hearing on April 12, 2023, the Gilberts Plan Commission/Zoning Board of Appeals voted to recommend approval of the Applicant's requested Zoning Relief, subject to certain conditions; and

WHEREAS, the Village Board makes the following findings of fact in reference to the Applicant's request for approval of a special use permit to allow for the construction and operation of a permanent outdoor seating area accessory to the Restaurant on the Property:

1. The proposed special use complies with all provisions of the C-1 Commercial District.

2. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or to the public welfare at large.
3. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.
4. Adequate utility, drainage, and other necessary facilities have been or will be provided for the Property.
5. The proposed special use, where such developments and uses are deemed consistent with good planning practice, can be operated in a manner that is not detrimental to the permitted developments and uses in the district, can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall conform to the applicable regulations of the district; and is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of the Village.

WHEREAS, the Village Board makes the following findings of fact in reference to the Applicant's request for approval of the variances from Section 9-2(L)(1)(a) for the installation of the wall sign on the Property:

1. 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;~~
2. The extraordinary or exceptional conditions of the Property requiring the request for the variances were not caused by the Applicant;
3. The proposed variances will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship;
4. The denial of the proposed variances will deprive the Applicant of the use permitted to be made by the owners of property in the immediate area;
5. The proposed variances will result in structures that are appropriate to and compatible with the character and scale of structures in the area in which the variances are being requested, and
6. There is no other means other than the requested variances by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Property.

WHEREAS, based on the findings of fact detailed above, the Village Board has determined that the Applicant's request meets the standards of both state statute and the UDO for approval of the Zoning Relief, subject to the conditions set forth in this Ordinance.

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. Special Use Permit. Subject to the conditions set forth in Section 4 of this Ordinance, the Village Board of Trustees hereby approves a special use permit for the Applicant to construct and operate a permanent outdoor seating area accessory to the Restaurant on the Property.

Section 3. Variances. Subject to the conditions set forth in Section 4 of this Ordinance, the Village Board of Trustees hereby approves the following variances for the Property:

- (1) A variance from Section 9-2(L)(1)(a) to allow for a 180 square foot wall sign on the Property instead of the maximum 80 square feet for wall signs.
- (2) A variance from Section 9-2(L)(1)(a) to allow for the wall sign on the Property to have lettering with a decorative background.
- (3) A variance from Section 9-2(L)(1)(a) to allow for the wall sign on the Property to project higher than the parapet line of the wall to which it will be affixed.

Section 4. Conditions. The approvals granted pursuant to Section 2 and Section 3 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 Section 2 and Section 3 of 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 Owners 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, including, without limitation, final engineering approval.

- 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.
- C. Compliance with Plans. The development, maintenance, and use of the Property will be in substantial conformance with the plans attached hereto as *Exhibit B*.

Section 5. Failure to Comply. Upon failure or refusal of the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, the approvals in Section 2 and Section 3 this Ordinance ("*Conditioned Approval*"), will, at the sole discretion of the Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Board of Trustees will not revoke the Conditioned Approval unless it first provides the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees regarding the revocation. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the C-1 Commercial District, as the same may, from time to time, be amended. Further, in the event of revocation, the Village Administrator and Village Attorney are authorized and directed to bring all zoning enforcement action as may be appropriate under the circumstances. The Applicant acknowledges that public notices and hearings have been held with respect to the adoption of this Ordinance, have considered the possibility of the revocation provided for in this Section 5, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to the Owner required by this Section 5 is given.

Section 6. Binding Effect; Non-Transferability. The privileges, obligations, and provisions of each and every section of this Ordinance are for the sole benefit of, and shall be binding on, the Applicant. Nothing in this Ordinance will be deemed to allow the Special Use Permit granted pursuant to this Ordinance to be transferred to any person or entity without a new application for approval for any person or entity other than the Applicant.

Section 7. 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.

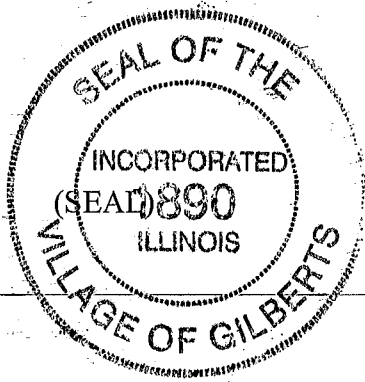
Section 8. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

Section 9. 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 Applicant has executed and filed with the Village its unconditional agreement and consent, in the form attached to this Ordinance as *Exhibit C*, within 30 days following the passage of this Ordinance.

PASSED BY VOTE OF THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 18th day of April, 2023.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	✓	_____	_____	_____
Trustee Dan Corbett	✓	_____	_____	_____
Trustee Lou Hacker	✓	_____	_____	_____
Trustee Brandon Coats	✓	_____	_____	_____
Trustee Justin Redfield	✓	_____	_____	_____
Trustee David LeClercq Sr.	_____	_____	✓	_____
President Guy Zambetti	_____	_____	_____	_____

APPROVED this 18th day of April, 2023.



Guy Zambetti

 Guy Zambetti, Village President

ATTEST: *Kelly Mastera*

 Kelly Mastera, Village Clerk

Exhibit A

Description of the Property

LOTS 1 AND 2 IN BLOCK 11 OF RUTLANDVILLE, IN THE VILLAGE OF GILBERTS,
KANE COUNTY, ILLINOIS

Common Address: *11 Galligan Road, Gilberts, IL*

PINs: *02-24-155-002*

Exhibit B

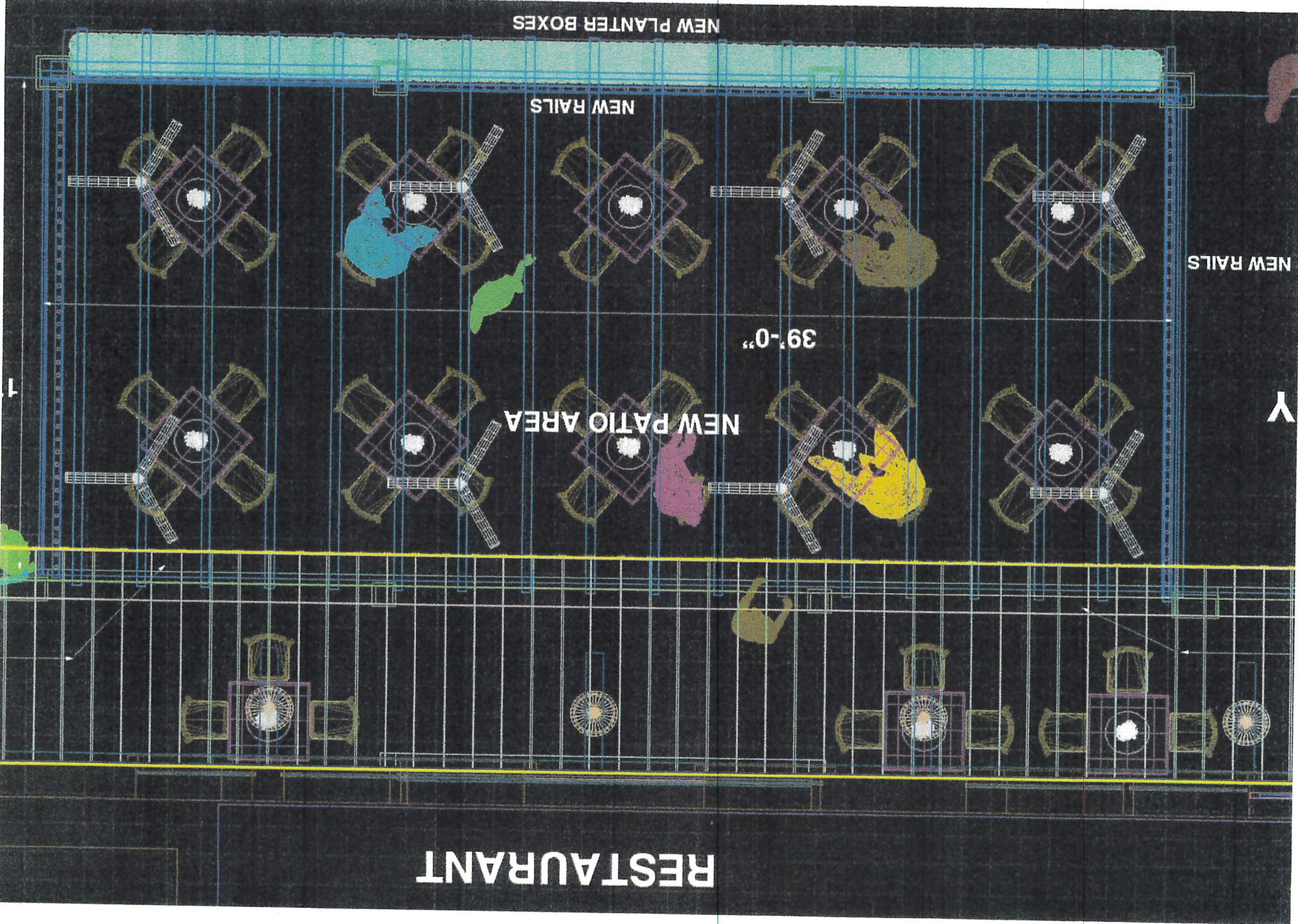
Plans







DR PLAN: NEW PATIO ADDITION



RESTAURANT

NEW PATIO AREA

39'-0"

NEW RAILS

NEW PLANTER BOXES

NEW RAILS

RESTAURANT

SECONDARY
ENTRY

EXISTING DOOR

MAIN
ENTRY

NEW PATIO AREA

17'-0"

NEW CONCRETE
FLOOR TO MATCH
EXISTING CONCRETE
WALKWAY

39'-0"

NEW RAILS

NEW RAILS

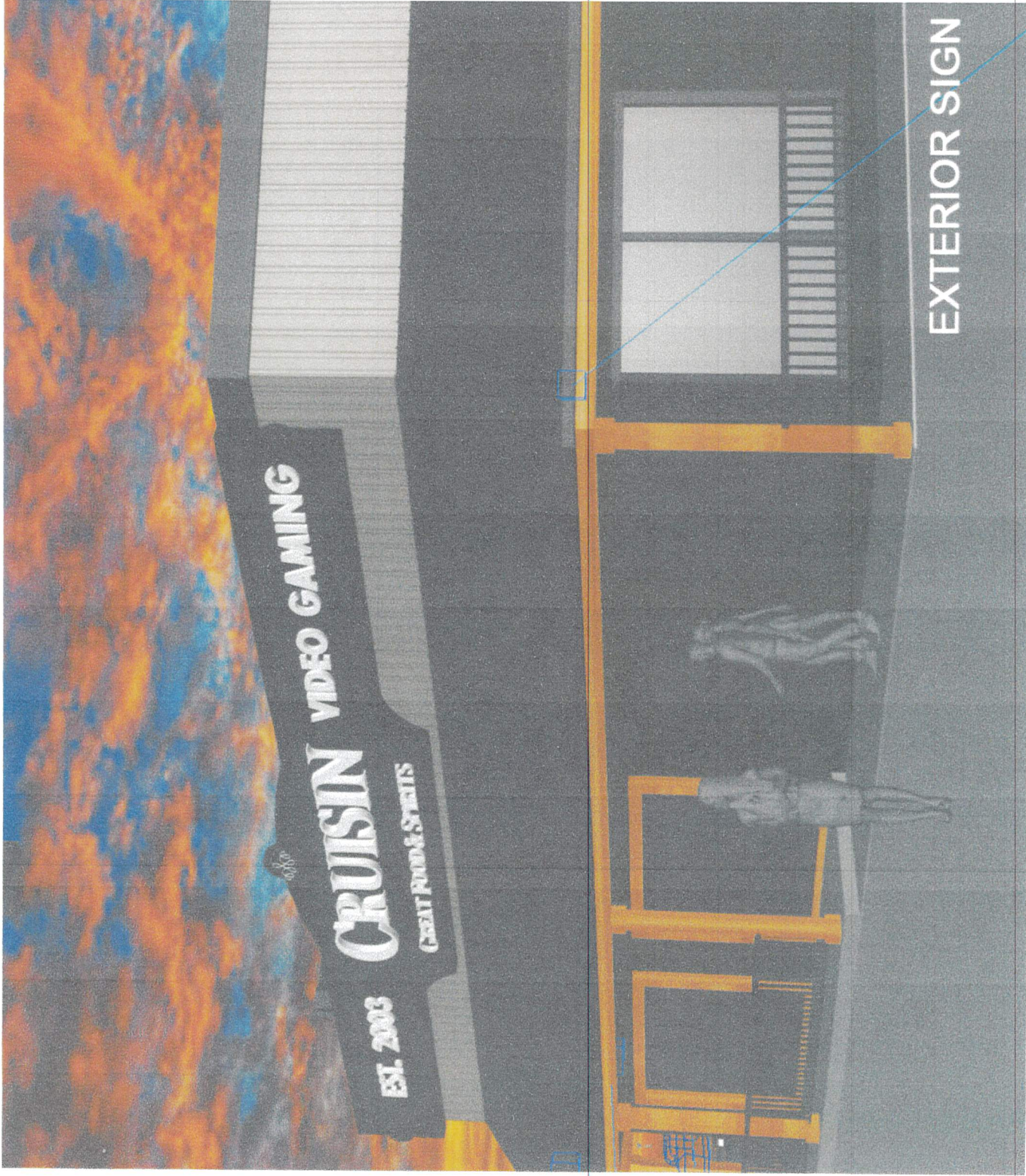
NEW RAILS

NEW 12X12
WOOD POST SUPPORT

NEW PLANTER BOXES

WOOD BEAMS
FOR PERGOLA

FLOOR PLAN: NEW PATIO ADDITION



EXTERIOR SIGN

EST. 2003

CRUISIN
GREAT FOOD & SPIRITS

GAME ROOM

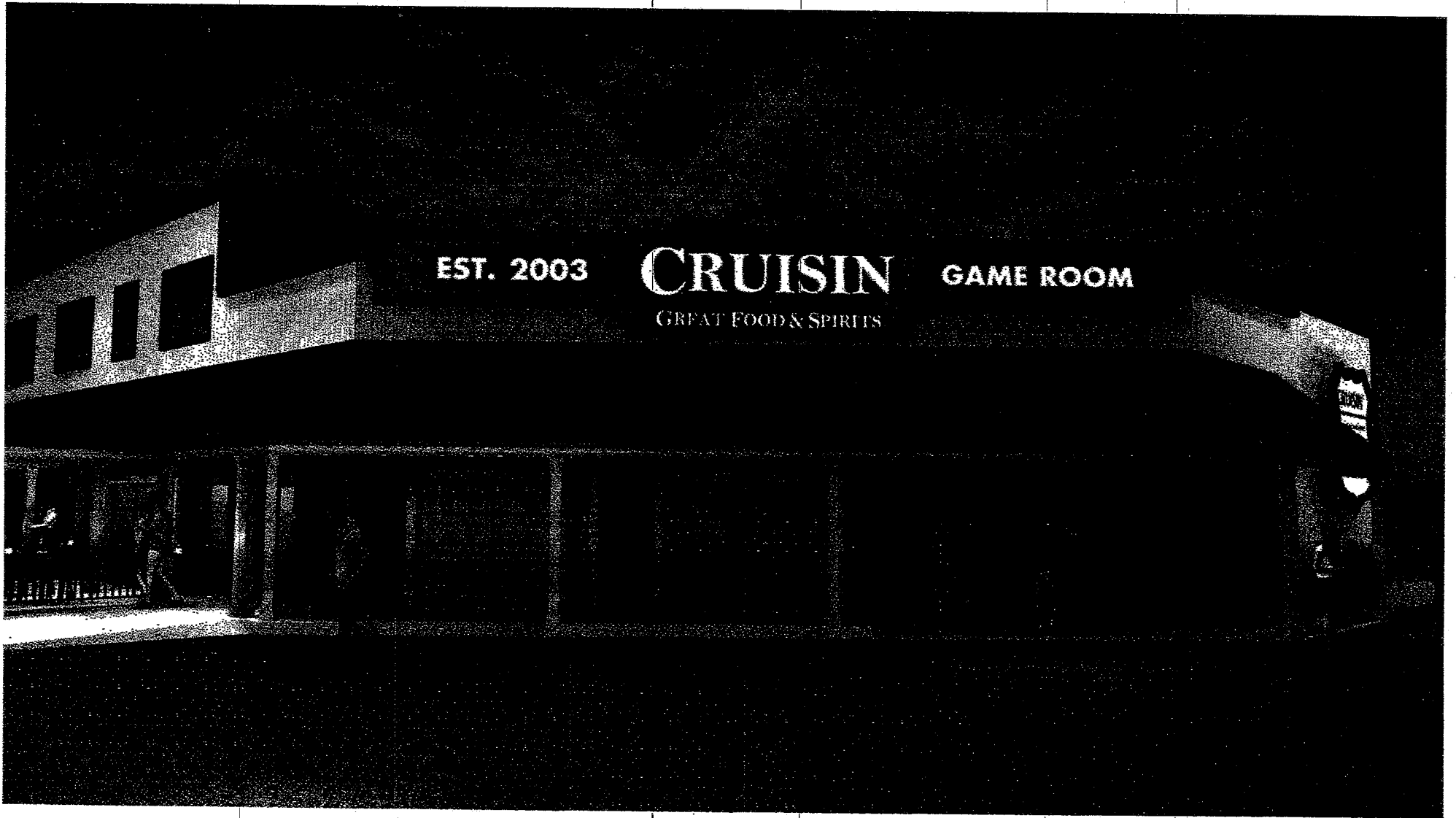



EXHIBIT C

Unconditional Agreement and Consent

Pursuant to Section 9 of Ordinance No. 08-2023, 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. 08-2023;
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 Applicant or Owner 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 Applicant and Owner.

D.R.D. Bar & Eatery, Inc.

By:  _____

Its: Owner _____

Date: 4-21-23 _____