

VILLAGE OF GILBERTS

ORDINANCE NO. 01-2021

**AN ORDINANCE APPROVING
A SPECIAL USE PERMIT AND VARIANCE FOR THE KEEPING OF LIVESTOCK**

(15N288 Tyrrell Road)

WHEREAS, Jesus Alvarado ("**Owner**"), the owner of the approximately 5.45 acre property located at 15N288 Tyrrell Road, Gilberts, Illinois 60136, which property is more specifically described on **Exhibit A** ("**Property**"), desires to keep livestock, poultry, and other farm animals on the Property; and

WHEREAS, the Property is currently zoned in the A-1 Agriculture District, and

WHEREAS, Section 2-3(7) of the Gilberts Unified Development Ordinance ("**UDO**") allows for the breeding, keeping, and grazing of livestock, poultry, and other farm animals ("**livestock**") as a special use in the A-1 District, but only lots consisting of five more acres; and

WHEREAS, the Owner has filed an application for a special use permit to keep certain types of livestock on the Property ("**Special Use**"); and

WHEREAS, the Owner also requested a variance from Section 9-3 of the UDO to install a fence around a corral for the proposed livestock on the Property at a height of six feet ("**Variance**"); and

WHEREAS, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Owner's request for the Special Use and the Variance on November 12, 2020, and December 9, 2020, and at the conclusion of the public hearing voted to recommend denial of the Special Use and Variance; and

WHEREAS, the Village Board considered the recommendation of the Plan Commission/Zoning Board of Appeals on December 15, 2020, and January 5, 2021, and referred the matter back to the Plan Commission/Zoning Board of Appeals to determine if there was any acceptable limitation on the number or types of livestock that would meet the requirements of the Village's UDO; and

WHEREAS, the Gilberts Plan Commission/Zoning Board of Appeals held a public meeting to consider the referral from the Village Board on January 13, 2021, and at the conclusion of the public meeting voted to recommend approval of the Special Use and Variance, subject to several conditions; and

WHEREAS, the Village Board makes the following findings of fact in reference to the application for approval of the Special Use to keep livestock the Property:

1. The proposed Special Use complies with all provisions of the applicable district regulations.
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. The Owner will be required to keep the livestock within the barn and the corral on the Property, the livestock may not be penned or kept within 200 feet of an inhabited residence, and the Owner will only be able to keep a limited number of livestock on the Property.

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. The keeping of livestock on the Property will not prevent development use of neighboring properties, and the conditions limiting the number of livestock and requiring all livestock to be kept within the barn and corral will limit any impacts on the immediate neighborhood.
4. Adequate utility, drainage, and other necessary facilities have been or will be provided. The Owner will be required to build a corral to keep the livestock contained on 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, based on the findings of fact detailed above, the Village Board has determined that the Owner's request meets the standards of both state statute and the UDO for approval of the Special Use for the Property, subject to the conditions set forth in this Ordinance; 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 were not caused by the Owners, as the request for the increased fence height was made by the Plan Commission/Zoning Board of Appeals in order to ensure proper containment of the livestock on the Property;
- c. The proposed Variance will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship;
- d. The denial of the proposed Variance will deprive the Owners of the use permitted to be made by the owners of property in the immediate area;
- 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 Variances are being requested; and

- 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. 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 pursuant to Section 11-11 of the UDO to allow for the Owner to keep livestock on the Property.

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

A variance from Section 9-3(C) of the UDO to allow the corral fence to extend to a height of six (6) feet instead of the maximum five (5) feet.

Section 4. Conditions. The approvals granted pursuant to Section 2 and 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 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. **Permitted Types and Number of Livestock.** The maximum number of livestock permitted on the Property will be as follows:
- 15 chickens
 - 4 turkeys
 - 2 roosters
 - 3 Sheep
- B. **Prohibition on Additional Livestock.** No other types of livestock besides chickens, turkeys, roosters, and sheep may be kept on the Property. No more than the maximum number of livestock specified in Section 4(A) of this Ordinance may be permitted on the Property without an amendment to the Special Use Permit.
- C. **Corral Construction.** The owner must construct a 50x50 corral with 70x20 connection to the existing barn the Property. The corral and its connection to the barn must have a fence that is six (6) feet in height, and has chicken wire extending up to the full six (6) feet of fencing.
- D. **Restricted Hours.** The livestock on the Property are permitted to be outside of the coop and barn only between the hours of 8:00 a.m. and 8:00 p.m. The livestock must remain inside the barn and coop at all other hours of the day.

- E. Prohibition on Slaughtering. No slaughtering of livestock is permitted on the Property.
- F. Distance Limitation. No livestock may be kept, housed, maintained, or pastured on the Property within a distance of 200 feet of any occupied residence other than the Owner's residence.
- G. 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.
- H. 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, including any and all applicable laws regulating the keeping of livestock on the Property.

Section 5. Failure to Comply. Upon failure or refusal of the Owner 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 for the Property ("***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 Owner 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 A-1 Zoning 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 Owner 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 Owner. Nothing in this Ordinance will be deemed to allow this Ordinance to be transferred to any person or entity without a new application for approval for any person or entity other than the Owner.

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 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 5 DAY OF Jan., 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 Nancy Farrell	<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 Kurt Kojzarek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Guy Zambetti	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Rick Zirk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPROVED THIS 5 DAY OF Jan., 2021



 Village President, Rick Zirk

(SEAL)

ATTEST: 
 Village Clerk, Courtney Baker

Published: 1-20-21

Exhibit A

Description of the Property

Common Address: 15N288 Tyrrell Road, Gilberts, IL 60136

PINs: 02-25-400-016

Exhibit B

Unconditional Agreement and Consent

Pursuant to Section 9 of Ordinance No. 01-2021, 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. 01-2021;
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.

Jesus Alvarado



Date: 2 - 12 - 2021