

**VILLAGE OF GILBERTS**

**ORDINANCE NO. 08-2021**

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

***(251 Valencia Parkway)***

**WHEREAS**, Paul Middleton ("**Owner**"), the owner of the property located at 251 Valencia Parkway, Gilberts, Illinois 60136, which property is more specifically described on **Exhibit A** ("**Property**"), desires to construct an in-ground pool in the rear yard of the Property; and

**WHEREAS**, the Property is currently zoned in the R-3 Residential Zoning District, and is served with a sewer instead of a septic field; and

**WHEREAS**, Section 3-6(A) of the Gilberts Unified Development Ordinance ("**UDO**") requires a 30-foot rear yard setback for residences served by a sewer in the R-3 Residential Zoning District; and

**WHEREAS**, Section 10-8-1(E) of the UDO provides that no private swimming pool or any accessory apron, walk or equipment room may protrude into any required rear yard; and

**WHEREAS**, the Owner filed an application for a variance from Section 3-6(A) to allow for the in-ground pool to be located 10 feet from the rear yard lot line instead of the required 30 feet ("**Variance**"); and

**WHEREAS**, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Owner's request for the Variance on May 12, 2021, and at the conclusion of the public hearing voted to recommend approval of the Variance to allow for the Owner to construct the in-ground pool within the required rear yard setback; 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;
- 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 Owner 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 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 the in-ground pool on the Property to be located 10 feet from the rear yard lot line instead of the required 30 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.

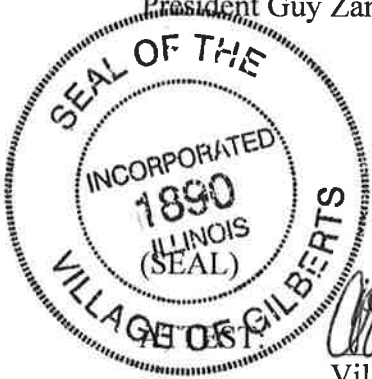
**Section 6. Effective Date.** Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form; provided, however, that this Ordinance shall be of no force or effect unless and until the Owner has executed and filed with the Village 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 16 DAY OF May, 2021, pursuant to roll call vote as follows:

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

APPROVED THIS 16 DAY OF May, 2021

Guy Zambetti  
 Village President, Guy Zambetti



Courtney Baker  
 Village Clerk, Courtney Baker

Published: 5-19-21

**Exhibit A**

*Description of the Property*

*Common Address:* 251 Valencia, Gilberts, Il 60136

*PINs:* 02-25-227-001

**Exhibit B**

**Unconditional Agreement and Consent**

Pursuant to Section 6 of Ordinance No. 08-2021, 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. 08-2021;
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.

**Paul Middleton**

  
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Date: 5-19-2021

