

VILLAGE OF GILBERTS

**AN ORDINANCE APPROVING VARIATIONS TO
THE GILBERTS UNIFIED DEVELOPMENT ORDINANCE
FOR THE DUPLEX LOTS IN GILBERTS TOWN CENTER**

WHEREAS, REO Funding Solutions IV, LLC (“*Owner*”), the owner of 20 duplex lots situated in Unit 2B of Gilberts Town Center, as more specifically described on **Exhibit A** (“*Property*”), desires to construct residential duplexes on the Property; and

WHEREAS, the Village and certain other parties entered into a certain Annexation Agreement and Development Agreement dated April 27, 2005, and recorded on June 13, 2005, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2005K066197 (“*Original Annexation Agreement*”), for various parcels of land as described in the Original Annexation Agreement as Gilberts Town Center; and

WHEREAS, the Original Annexation Agreement was later amended by the First Amendment, dated December 13, 2011, and recorded on January 10, 2012, in the office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2012K001801 (the “*First Amendment*”); and

WHEREAS, the Original Annexation Agreement and the First Amendment were later amended by the Second Amendment, dated December 20, 2016, and recorded on January 3, 2017, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2017K000143 (the “*Second Amendment*”), (the Original Annexation Agreement, the First Amendment, and the Second Amendment shall collectively be referred to as the “*Annexation Agreement*”); and

WHEREAS, the Owner has proposed certain modifications to the Annexation Agreement relating to the size and design requirements for duplex construction on the Property, and has applied for certain variances from the Gilberts Unified Development Ordinance (“UDO”) relating to duplex design and construction requirements for the Property; and

WHEREAS, the Property is currently zoned R-4 Multi-Family Residence District, and is subject to the special standards for attached single family dwelling units under Section 10-3-6(B)(8) of the UDO; and

WHEREAS, the Owner has submitted an application for the following variances from Section 10-3-6-(B)(8) relating to duplex design and construction on the Property: (1) a reduction in the minimum square footage for duplex units from the required 1,800 square feet to 1,445 square feet; (2) a reduction in the required masonry construction on the street façade from 50% to 30%; and (3) a reduction in the minimum number of required corners on a building from 8 to 5 (collectively, the “*Variances*”); and

WHEREAS, the Gilberts Plan Commission held a public hearing and reviewed the Owner’s requested Variances on June 12, 2019, and at the conclusion of the public hearing voted to recommend approval of the Variances to allow for the Owner’s proposed construction of the duplex units on the Property; and

WHEREAS, the Village Board makes the following findings of fact in reference to the application for approval of the Variances 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 Variances were not caused by the Owner;
- c. The proposed Variances will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship;
- d. The denial of the proposed Variances will deprive the Owner the use permitted to be made by the owners of property in the immediate area;
- e. 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
- f. There is no other means other than the requested Variations by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject 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. **Variations.** Subject to the conditions set forth in Section 3 of this Ordinance, the Village Board of Trustees hereby approves the following variances from Section 10-3-6-(B)(8) relating to duplex construction on the Property:

- (1) A reduction in the minimum square footage for duplex units from the required 1,800 square feet to 1,445 square feet;
- (2) A reduction in the required masonry construction on the street facade from 50% to 30%; and
- (3) A reduction in the minimum number of required corners on a building from 8 to 5.

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 approval 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, including, without limitation, approval of final engineering plans and issuance of required permits.
- 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. Continued Effect of the Annexation Agreement. The Annexation Agreement, as amended, shall remain in full force and effect, and the Owner shall comply with all requirements, conditions, and restrictions therein.
- D. Contingent Upon Approval of Third Amendment to the Annexation Agreement. The rights, privileges, and authority granted by this Ordinance are contingent upon, and shall not become effective, unless and until the Corporate Authorities of the Village approve the Third Amendment to the Annexation Agreement for Gilberts Town Center between the Village and the Owner.

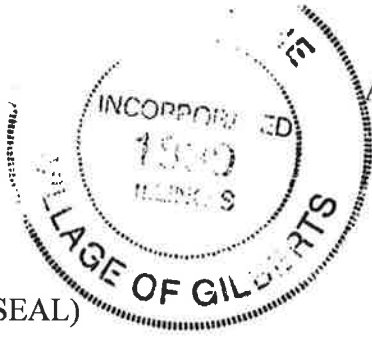
Section 4. Severability. In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted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

ADOPTED THIS 16 DAY OF July, 2019, pursuant to roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Dan Corbett	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Trustee Elissa Kojzarek	<u>_____</u>	<u>_____</u>	<u>✓</u>	<u>_____</u>
Trustee Nancy Farrell	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Trustee Jeanne Allen	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Trustee Lou Hacker	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Trustee Guy Zambetti	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
President Rick Zirk	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>



(SEAL)

APPROVED THIS 16 DAY OF July, 2019

Village President, Rick Zirk

ATTEST:

Village Clerk, Courtney Baker

Published:

July 17, 2019

Exhibit A

Legal Description of the Property

LOTS 12, 13, 15, 28, 32, 33, 35, 36, 37, 38, 39, 40, 52, 53, 56, 57, 63, 64, 66 AND 69 IN GILBERTS TOWN CENTER-UNIT 2B, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 7, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 28, 2006 AS DOCUMENT 2006K032929, IN KANE COUNTY, ILLINOIS