

ORDINANCE NO. 07-2023

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

(38 East Higgins Road- Pub 72)

WHEREAS, Pub 72, Inc. ("**Applicant**"), is the occupant of the property located 38 E. Higgins Road, Gilberts, Illinois, which property is more specifically described in **Exhibit A** ("**Property**"); and

WHEREAS, the current owner of the Property is the Home State Bank of Crystal Lake, as Trustee under a Trust Agreement dated October 5, 1988, and known as Trust 3523 ("**Owner**"); and

WHEREAS, the Property is zoned in the C-1 Commercial zoning district; and

WHEREAS, the Applicant currently operates a restaurant on the Property called "Pub 72 Bar & Grill" (the "**Restaurant**"); and

WHEREAS, the Applicant desires to expand the Restaurant on the Property to add an additional 1,000 square feet of net floor area; and

WHEREAS, Section 9-1(B) of the Gilberts Unified Development Ordinance ("**UDO**") provides the required number of off-street parking spaces for specific uses; and

WHEREAS, with the expansion of the Restaurant and the corresponding increase in net floor area, the Property requires 38 off-street parking spaces under the UDO; and

WHEREAS, the Applicant, with the permission of the Owner, has filed an application for a variance from Section 9-1(B) of the UDO to reduce the required off-street parking spaces for the Property from 38 spaces to 32 spaces ("**Parking Variance**"); and

WHEREAS, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Applicant's request for the Parking Variance on April 12, 2023, and at the conclusion of the public hearing voted to recommend approval of the Parking Variance; and

WHEREAS, the Village Board makes the following findings of fact in reference to the Applicant's request for approval of the Parking 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 variances were not caused by the Applicant;
- 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 Applicant of 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 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. A variance from Section 9-1(B) of the UDO to reduce the required number of off-street parking spaces for the Property from 38 spaces to 32 spaces.

Section 3. Conditions. The approval granted pursuant to Section 2 of this Ordinance is 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.
- 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 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.

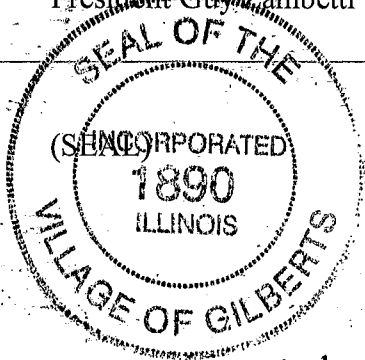
Section 5. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of 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 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

Common Address: 38 E. Higgins Road, Gilberts, Il 60136

PINs: 02-24-154-004
 02-24-154-012
 02-24-154-010

EXHIBIT B

Plans

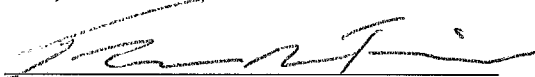
EXHIBIT C

Unconditional Agreement and Consent

Pursuant to Section 6 of Ordinance No. 07-2023, 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. 07-2023;
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.

PUB 72, INC.

By: 

Its: 

Date: 4 19 23