

VILLAGE OF GILBERTS

ORDINANCE NO. 16-2024

**AN ORDINANCE APPROVING AN AMENDMENT TO A SPECIAL USE PERMIT
AND VARIATIONS 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, on August 19, 2014, the Village Board passed Ordinance 16-2014, granting a special use permit to allow a permanent outdoor serving area for the Restaurant (the "**Existing SUP**"), and approving three variations from the Gilberts Unified Development Ordinance ("**UDO**") to reduce the minimum front yard setback for the property from 15 feet to 5 feet; reduce the reduce the minimum front yard setback to match the south wall of the principal structure on the Property; and to waive the parking space requirement applicable to the outdoor seating area; and

WHEREAS, on September 17, 2019, the Village Board passed Ordinance 13-2019, granting a special use permit to allow the construction and operation of an outdoor volleyball court accessory to the principal restaurant use on the Property; and

WHEREAS, on April 18, 2023, the Village Board passed Ordinance 07-2023, approving a variation from the UDO to reduce the number of off-street parking spaces for the Property from 38 spaces to 32 spaces; and

WHEREAS, the Applicant desires to expand the current permanent outdoor seating area, approved by the Existing SUP, to add approximately 958 square feet of additional outdoor seating area (the "**Outdoor Expansion**"); and

WHEREAS, Section 4-3(2)(e) of the UDO provides that permanent outdoor seating areas accessory to bars, restaurants, and taverns require a special use permit in the C1 Commercial Zoning District; and

WHEREAS, Section 4-6(A) of the UDO provides that the minimum interior side yard setback for buildings in the C1 Commercial District is 10 feet, and that the minimum front yard setback for buildings in the C1 Commercial District is 15 feet; and

WHEREAS, the proposed Outdoor Expansion will encroach into 7 feet into the 10-foot side-yard setback and 7 feet into the 15-foot front-yard setback; and

WHEREAS, Section 9-1(B)(3) of the UDO provides the required number of off-street parking spaces for specific uses; and

WHEREAS, the Outdoor Expansion and corresponding increase in net floor area for the Restaurant require an additional 17 off-street parking spaces on the Property; and

WHEREAS, the Applicant, with the permission of the Owner, has filed an application for an amendment to the Existing SUP to add the Outdoor Expansion to the Restaurant on the Property (the "*SUP Amendment*"); and

WHEREAS, the Applicant, with the permission of the Owner, has also filed an application for the following variations from the UDO: (1) a variation from Section 4-6(A) of the UDO to allow the Outdoor Expansion to encroach into the required side yard by 7 feet; (3) a variation from Section 4-6(A) of the UDO to allow the Outdoor Expansion to encroach into the required front yard setback by 7 feet; and (4) a variation from Section 9-1(B)(3) of the UDO to reduce the 17 additional off-street parking spaces required by the Outdoor Expansion to 0 spaces (collectively, the "*Variations*"); and

WHEREAS, pursuant to notice duly published, the Gilberts Plan Commission/Zoning Board of Appeals ("*PC/ZBA*") held a public hearing on August 14, 2024, for the purpose of hearing and considering testimony on the Applicant's requested SUP Amendment and Variations (collectively, the "*Zoning Relief*"); and

WHEREAS, at the conclusion of the public hearing, the PC/ZBA 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 requested SUP Amendment to add the Outdoor Expansion to the Restaurant on the Property:

- a. The proposed special use complies with all provisions of the applicable district regulations;
- b. 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 the public welfare at large.
- c. 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.

- d. Adequate utility, drainage, and other necessary facilities have been or will be provided.
- e. 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 or 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 Variations to allow the Outdoor Expansion to encroach into the required side yard setback by 7 feet, allow the Outdoor Expansion to encroach into the required front yard setback by 7 feet, and to reduce the required 17 additional off-street parking spaces for the Outdoor Expansion to 0 spaces:

- 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 Variations were not caused by the Applicant;
- c. The proposed Variations will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship;
- d. The denial of the proposed Variations will deprive the Applicant of the use permitted to be made by the owners of property in the immediate area;
- e. The proposed Variations 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. **Special Use Permit Amendment.** Subject to the conditions set forth in Section 4 of this Ordinance, the Village Board of Trustees hereby approves an amendment to the Existing SUP to add the Outdoor Expansion to the Restaurant on the Property, as more fully depicted on

the plans attached hereto as *Exhibit B*. In the event of any inconsistency between the Existing SUP and this Ordinance, this Ordinance shall control.

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

1. A variation from Section 4-6(A) of the UDO to allow the Outdoor Expansion to encroach into the required side yard setback of 10 feet by 7 feet (3-foot setback), as depicted in Exhibit B.
2. A variation from Section 4-6(A) of the UDO to allow the Outdoor Expansion to encroach into the required front yard setback of 15 feet by 7 feet (8-foot setback), as depicted in Exhibit B.
3. A variation from Section 9-1(B) of the UDO to reduce the required additional of off-street parking spaces for the Outdoor Expansion to the Restaurant on the Property from 17 spaces to 0 spaces.

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 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. Continued Effect of Existing Approvals. The Existing SUP that was granted by Ordinance 16-2014 and the SUP granted pursuant to Ordinance 13-2019 remain in full force and effect to govern the Property, except as expressly modified by this Ordinance.
- B. Landscaping Requirement. The Applicant must install landscaping along the south side of the Restaurant along Route 72. The required landscaping under this Section 4(C) will be subject to the review and approval of the Village Administrator.
- C. 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.
- D. Compliance with Laws. The UDO, the Building Code, the Village's Liquor Licensing Requirements, 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.

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

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 C-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 actions 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 Applicant and the Owner. Nothing in this Ordinance will be deemed to allow the Special Use Permit granted pursuant to this Ordinance, or pursuant to Ordinance 13-2019, to be transferred to any person or entity without a new application for approval for any person or entity other than the Owner or 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 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.

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 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 20th day of August 2024.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	<u>X</u>	_____	_____	_____
Trustee Robert Chapman	<u>X</u>	_____	_____	_____
Trustee Robert Vanni	<u>X</u>	_____	_____	_____
Trustee Brandon Coats	<u>X</u>	_____	_____	_____
Trustee Justin Redfield	<u>X</u>	_____	_____	_____
Trustee Frank Marino	<u>X</u>	_____	_____	_____
President Guy Zambetti	_____	_____	_____	_____

APPROVED this 20th day of August, 2024.



[Signature]

 Village President Guy Zambetti

ATTEST: *[Signature]*

 Village Clerk, Lynda Lange

Exhibit A

Description of the Property

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

PIN: 02-24-154-010

EXHIBIT B

Plans

EXHIBIT C

Unconditional Agreement and Consent

Pursuant to Section 9 of Ordinance No. 16-2024, 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. 16-2024;
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:  Tom TRICK

Its: PRESIDENT

Date: 9/4/24

Home State Bank of Crystal Lake, as Trustee under a Trust Agreement dated October 5, 1988, and known as Trust 3523

By: 

Its: owner (trust)

Date: 9/4/24