

ORDINANCE NO. 19 - 49

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT
FOR AN AUTOMOBILE SERVICE AND REPAIR ESTABLISHMENT
(6 Lake Marian Road)**

WHEREAS, Chicago Land Title Trust Company, as Successor Trustee to North Star Trust Company, the Successor Trustee to Park National Bank, the Successor Trustee to Cardinal Savings Bank, FSB, as Trustee under a Trust Agreement dated May 2, 2003 and known as Trust No. 98364 ("**Owner**") is the record title owner of that certain property located in the M-1 Light Industrial Zoning District ("**M-1 District**"), consisting of approximately 2,439 square feet, commonly known as 6 Lake Marian Road in the Village, and legally described in **Exhibit A** attached to and, by this reference, made a part of this Ordinance ("**Property**"); and

WHEREAS, the Property is currently improved with an approximately 2,439-square-foot industrial condominium unit ("**Existing Building**"); and

WHEREAS, TBT Transmission ("**Applicant**"), the lessee of the Property, desires to operate and maintain an automobile service and repair establishment (the "**Proposed Auto Repair Business**") in the Existing Building on the Property; and

WHEREAS, Section 16.17.010.C.3 of the "Carpentersville Municipal Code," as amended ("**Village Code**"), prohibits the use of property in the M-1 District for an automobile service and repair establishment except upon issuance by the Board of Trustees of a special use permit therefor; and

WHEREAS, the Applicant, with the consent of the Owner, has filed an application for a special use permit in order to allow the use of the Property for the Proposed Auto Repair Business ("**Requested Special Use Permit**"); and

WHEREAS, pursuant to Section 2.52.040.G of the Village Code, a public hearing of the Planning and Zoning Commission of the Village of Carpentersville ("**PZC**") to consider approval of the Requested Special Use Permit was duly advertised in the Daily Herald on November 6, 2019, and was held on November 21, 2019; and

WHEREAS, on November 21, 2019, the PZC voted (4 ayes, 0 nay, 3 absent) to approve findings of fact and a recommendation to the President and Board of Trustees in support of the Requested Special Use Permit, subject to specified conditions; and

WHEREAS, the President and Board of Trustees have considered the findings of fact and recommendation of the PZC, and have determined that the Requested Special Use Permit meets the standards for special use permits as set forth in Section 2.52.040.E of the Village Code; and

WHEREAS, the President and Board of Trustees have determined that it will serve and be in the best interests of the Village to grant the Requested Special Use Permit to the Applicant, subject to the conditions, restrictions, and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Carpentersville, Kane County, Illinois, as follows:

SECTION 1: RECITALS.

The foregoing recitals are incorporated into, and made a part of, this Ordinance as the findings of the President and Board of Trustees.

SECTION 2: APPROVAL OF SPECIAL USE PERMIT.

Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 3 of this Ordinance, a special use permit to allow the use of the Property for the Proposed Auto Repair Business is hereby granted to the Applicant pursuant to Section 2.52.040.E of the Village Code and the home rule powers of the Village.

SECTION 3: CONDITIONS.

Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Village Code, the special use permit granted pursuant to Section 2 of this Ordinance is hereby expressly subject to, and contingent upon, the development, use, and maintenance of the Property in compliance with each and all of the following conditions:

- A. Compliance with Regulations. Except to the extent specifically provided otherwise in this Ordinance, the development, use, operation, and maintenance of the Property and the Proposed Auto Repair Business must comply at all times with all applicable Village codes and ordinances, as the same have been or may be amended from time to time.

- B. Conditions of Operation. The use, operation, and maintenance of the Property and the Proposed Auto Repair Business must comply with the following:
 - 1. Not more than five vehicles may be parked at any time outside the Existing Building on the Property; and
 - 2. No vehicle may be parked outside the Existing Building on the Property except within one of the five parking spaces shown on the plan attached as **Exhibit B ("Plan")**.

- C. Reimbursement of Village Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable Village codes, ordinances, resolutions, rules, or regulations, the Applicant must pay to the Village, promptly upon presentation of a written demand or demands therefor, all legal fees, costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Ordinance. Payment of all such fees, costs, and expenses for which demand has been made must be made by a certified or cashier's check. Further, the Applicant is liable for, and must pay upon demand, all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

SECTION 4: RECORDATION; BINDING EFFECT.

A copy of this Ordinance will be recorded with the Kane County Recorder of Deeds. This Ordinance and the privileges, obligations, and provisions contained herein inures solely to

the benefit of, and is binding upon, the Owner, the Applicant, and each of their respective heirs, representatives, successors, and assigns.

SECTION 5: FAILURE TO COMPLY WITH CONDITIONS.

Upon the failure or refusal of the Owner or the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, in addition to all other remedies available to the Village, the approval granted in Section 2 of this Ordinance will, at the sole discretion of the President and Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the President and Board of Trustees may not so revoke the approval granted in Section 2 of this Ordinance unless it first provides the Owner and the Applicant 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. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the zoning district in which the Property is located at the time of revocation and the applicable provisions of the Village Code, as the same may, from time to time, be amended. Further, in the event of such revocation, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

SECTION 6: AMENDMENTS.

Any amendments to the approval granted in Section 2 of this Ordinance that may be requested by the Owner or the Applicant after the effective date of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Village Code.

SECTION 7: SEVERABILITY.

If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance are to remain in full force and effect, and are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 8: EFFECTIVE DATE.

- A. This Ordinance will be effective only upon the occurrence of all of the following events:
1. Passage by the President and Board of Trustees in the manner required by law;
 2. Publication in pamphlet form in the manner required by law; and
 3. The filing by the Owner and the Applicant with the Village Clerk of an Unconditional Agreement and Consent, in the form of **Exhibit C** attached to and, by this reference, made a part of this Ordinance, to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance and to indemnify the Village for any claims that may arise in connection with the approval of this Ordinance.

- B. In the event that the Owner or the Applicant do not file fully executed copies of the Unconditional Agreement and Consent, as required by Section 8.A.3 of this Ordinance, within 30 days after the date of final passage of this Ordinance, the President and Board of Trustees will have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

Motion made by Trustee O'Sullivan, seconded by Trustee Frost, that the Ordinance be passed.

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Carpentersville, Illinois at a regular meeting thereof held on the 3rd day of December, 2019, pursuant to a roll call vote as follows:

AYES: 7 (Garcia, Malone, O'Sullivan, Andresen, Frost, Vela, and Skillman)

NAYS: 0

ABSENT: 0

ABSTAIN: 0

APPROVED by me this 3rd day of December, 2019.

(SEAL)




John Skillman, Village President

ATTEST:


Kelly Mastera, Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

UNIT B, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN THE LAKE MARIAN INDUSTRIAL CONDOMINIUMS, ACCORDING TO THE PLAT OF PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PLAT ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED SEPTEMBER 1, 2005 AS DOCUMENT NUMBER 2005K103669, IN KANE COUNTY, ILLINOIS.

Commonly known as 6 Lake Marian Road, Carpentersville, Illinois.

PIN: 03-15-245-003

EXHIBIT B

PLAN

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

TO: The Village of Carpentersville, Illinois ("**Village**");

WHEREAS, Chicago Land Title Trust Company, as Successor Trustee to North Star Trust Company, the Successor Trustee to Park National Bank, the Successor Trustee to Cardinal Savings Bank, FSB, as Trustee under a Trust Agreement dated May 2, 2003 and known as Trust No. 98364 ("**Owner**") is the record title owner of that certain property commonly known as 6 Lake Marian Road, in the Village ("**Property**"); and

WHEREAS, Ordinance No. _____, adopted by the Village President and Board of Trustees on December 3, 2019 ("**Ordinance**"), grants a special use permit to TBT Transmission ("**Applicant**") for the use of the Property for an automobile service and repair establishment; and

WHEREAS, Section 8 of the Ordinance provides, among other things, that the Ordinance will be of no force or effect unless and until the Owner and the Applicant have filed, within 30 days following the passage of the Ordinance, their unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in the Ordinance;

NOW, THEREFORE, the Owner and the Applicant do hereby agree and covenant as follows:

1. The Owner and the Applicant do hereby unconditionally agree to accept, consent to, and abide by each and all of the terms, conditions, limitations, restrictions, and provisions of the Ordinance.
2. The Owner and the Applicant acknowledge that 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 such revocation on the grounds of any procedural infirmity or a denial of any procedural right.
3. The Owner and the Applicant acknowledge and agree that the Village is not and will not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's granting of special use permit approval for the Property or its adoption of the Ordinance, and that the Village's approvals do not, and will not, in any way, be deemed to insure the Owner or the Applicant against damage or injury of any kind and at any time.

4. The Owner and the Applicant do hereby agree to hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with the Village's adoption of the Ordinance granting the special use permit for the Property.

Dated: _____, 2019

ATTEST:

**CHICAGO LAND TITLE TRUST
COMPANY, AS SUCCESSOR TRUSTEE
UNDER TRUST AGREEMENT DATED
MAY 2, 2003 AND KNOWN AS TRUST
NO. 98364**

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

TBT TRANSMISSION

By: _____

By: _____

Its: _____

Its: _____

CERTIFICATION

I, Kelly Mastera, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Carpentersville, Kane County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Carpentersville.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Carpentersville, held on the _____ day of _____, 2019, the foregoing Ordinance entitled, ***AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR AN AUTOMOBILE SERVICE AND REPAIR ESTABLISHMENT***, was duly passed by the President and Board of Trustees of the Village of Carpentersville.

The pamphlet form of Ordinance No. 19-_____, including the Ordinance was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the _____ day of _____, 2019, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Carpentersville this ____ day of _____, 2019.

Kelly Mastera, Village Clerk
Village of Carpentersville,
Kane County, Illinois

(SEAL)