

ORDINANCE NO. 21 - 30

**AN ORDINANCE AMENDING ORDINANCE 18-24
FOR ADDITIONAL CONDITIONS TO THE SPECIAL USE PERMIT
FOR A LIMOUSINE RENTAL AND LEASING ESTABLISHMENT
(18 N. Western Avenue)**

WHEREAS, Norman and Noreen John (collectively, the "**Owner**") are the record title owners of that certain property located in the C-2 General Commercial Zoning District ("**C-2 District**"), consisting of approximately 20,832 square feet, commonly known as 18 N. Western Avenue 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 1,258-square-foot former residential building; and

WHEREAS, the Owner filed an application in 2018 for a special use permit in order to allow the use of the Property for a Proposed Limo Business ("**Requested Special Use Permit**"); and

WHEREAS, Section 16.16.020.C.7 of the "Carpentersville Municipal Code," as amended ("Village Code"), prohibits the use of property in the C-2 District for automobile rental and leasing establishments, except upon issuance by the Board of Trustees of a special use permit therefor; and

WHEREAS, the Village granted a Special Use Permit to the Owner in 2018, through and pursuant to Ordinance No. 18-24, to operate and maintain a limousine rental and leasing establishment on the Property (the "**Proposed Limo Business**"); and

WHEREAS, pursuant to Section 5 of Ordinance No. 18-24, the Village provided the Owner with written notice of multiple reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees; and

WHEREAS, on September 21, 2021, at a regular meeting of the Board of Trustees a public hearing was held to consider revocation of the Special Use Permit for a Limousine Rental and Leasing Establishment on the Property due to non-compliance with multiple Conditions of Operation as specified in Sections 3.B.5 (failure to resolve code violations), 3.B.7 (failure to obtain a certificate of occupancy), and 3.B.8 (failure to obtain a business license); and

WHEREAS, the Village of Carpentersville, by and through its President and Board of Trustees, pursuant to its statutory and home rule powers, have determined that the violations, as cited, were founded, and that it will serve and be in the best interests of the Village to impose additional conditions of operation upon the existing Special Use Permit to bring the Property into compliant and productive use within a reasonable timeframe or to otherwise revoke the Special Use Permit without further hearing;

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 Village President and Board of Trustees.

SECTION 2: APPROVAL OF ADDITIONAL CONDITIONS OF SPECIAL USE PERMIT.

The Special Use Permit granted to the Owner pursuant to Ordinance No. 18-24, for a Limousine Rental and Leasing Establishment on the Property, shall continue to be contingent upon the conditions, restrictions and provisions set forth in Section 3 of Ordinance No. 18-24, Section 2.52.040.E and the home rule powers of the Village, as well as the additional conditions, restrictions and provisions set forth in Section 3 of this Ordinance.

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 compliance with each and all of the following conditions:

- A. Additional Conditions of Operation. The use, operation, and maintenance of the Property and the Proposed Limo Business must comply with the following:
 1. No more than three (3) Property Owner-owned vehicles (2 trucks, 1 bus) shall be parked at the Property and must be parked behind the building from the perspective of Route 31, excepting only other vehicles that are there incidental to performing work to address code violations, such as Contractors' vehicles;
 2. No additional code violations shall occur relating to the Property;
 3. The only individuals that shall be permitted to have access to the interior of the building on the Property – which the Village posted as a Structure Unsafe for Human Occupancy or Use on February 12, 2021 – shall be the Owner and their Contractors for the express purpose of resolving the code violations;
 4. Occupancy of the building must be attained within six (6) months from the date of the regular meeting of the Board of Trustees that was held on September 21, 2021, at which point in time the Property Owner-owned vehicles identified in this Section 3.A.1 (2 trucks, 1 bus) shall no longer be permitted to be parked on the Property; and
 5. Failure to meet one or more of these additional conditions, including without limitation the condition that no further violations occur, shall result in the automatic revocation of the Special Use Permit granted by Ordinance 18-24 and amended by this Ordinance.

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 and each of the Owner's heirs, representatives, successors, and assigns.

SECTION 5: FAILURE TO COMPLY WITH ADDITIONAL CONDITIONS.

Upon the failure or refusal of the Owner to comply with any or all of the additional 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 result in the automatic revocation of the Special Use Permit. 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 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 with the Village Clerk of an Unconditional Agreement and Consent, in the form of **Exhibit B** 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 does not file a full executed copy 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.

[SIGNATURE PAGE FOLLOWS]

Motion made by Trustee Garcia, 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 5th day of October, 2021, pursuant to a roll call vote as follows:

AYES: 6 (Garcia, Malone, O'Sullivan, Frost, Vela, and Skillman)

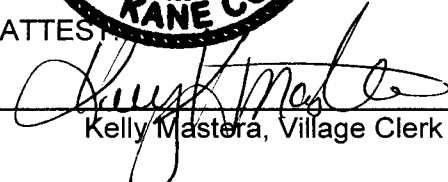
NAYS: 0

ABSENT: 1 (Sandoval)

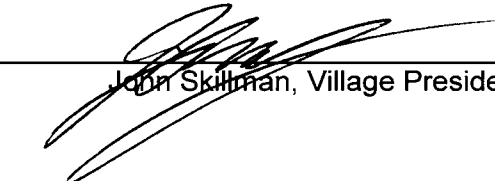
Adopted by me this 5th day of October, 2021.



ATTEST



Kelly Mastera, Village Clerk



John Skillman, Village President



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT 70 IN J.A. CARPENTERS PLAT OF WEST CARPENTERSVILLE (EXCEPT THAT PART LYING WITH THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 70, THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 70 AND LOT 69 OF SAID PLAT A DISTANCE OF 185 FEET TO THE NORTHWEST CORNER OF SAID LOT 69, THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOT 69, A DISTANCE OF 7.10 FEET TO A POINT, THENCE SOUTHEASTERLY, A DISTANCE OF 72.06 FEET TO A POINT WHICH IS 10.00 FEET NORTHEASTERLY OF AND PERPENDICULAR TO THE SOUTHWESTERLY LINE OF SAID LOT 69, THENCE SOUTHEASTERLY 113.03 FEET TO A POINT WHICH IS 7.15 FEET NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT 70; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT 70, A DISTANCE OF 7.15 FEET TO THE HEREIN ABOVE DESIGNATED POINT OF BEGINNING), IN THE VILLAGE OF CARPENTERSVILLE, KANE COUNTY, ILLINOIS.

Commonly known as 18 N. Western Avenue, Carpentersville, Illinois.

PIN: 03-22-102-036

EXHIBIT B

UNCONDITIONAL AGREEMENT AND CONSENT

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

WHEREAS, Norman and Noreen John (collectively, the "**Owner**") are the record title owners of that certain property commonly known as 18 N. Western Avenue, in the Village ("**Property**"); and

WHEREAS, Ordinance No. _____, adopted by the Village President and Board of Trustees on October 5, 2021 ("**Ordinance**"), imposes additional conditions upon the special use permit to the Owner for the use of the Property for a limousine rental and leasing 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 has filed, within 30 days following the passage of the Ordinance, the Owner's 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 does hereby agree and covenant as follows:

1. The Owner does 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 acknowledges that public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or a denial of any procedural right.

3. The Owner acknowledges and agrees 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 against damage or injury of any kind and at any time.

4. The Owner hereby agrees to defend, 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: _____, 2021

NORMAN JOHN

By: _____

NOREEN JOHN

By: _____