

ORDINANCE NO. O2022-23

**AN ORDINANCE APPROVING A VARIATION
FROM TABLE 5E OF THE CITY OF WARRENVILLE ZONING ORDINANCE TO
REDUCE THE REQUIRED OFF-STREET PARKING
(3S230 WARREN AVENUE)**

WHEREAS, Edmund G. Lowrie ("**Owner**") is the owner of that certain real property commonly known as 3S230 Warren Avenue, Warrenville, Illinois, and legally described on **Exhibit A** ("**Property**"); and

WHEREAS, the Property is located in the B-4 Motorist Service District ("**B-4 District**") and is improved with a multi-tenant, multi-use building ("**Building**") with commercial tenant spaces on the first floor and apartments on the second floor; and

WHEREAS, the Property does not contain any off-street parking spaces; and

WHEREAS, the Property currently contains four one-bedroom apartments, 2,400 square feet used for retail uses, and 2,400 square feet used as a garage (collectively, the "**Existing Uses**"); and

WHEREAS, Rick Dandan ("**Applicant**") desires to operate a walk-up and takeout restaurant within a 492-square-foot tenant space located on the west end of the Property ("**Proposed Use**"); and

WHEREAS, according to Table 5E of the City of Warrenville Zoning Ordinance ("**Zoning Ordinance**"), the Existing Uses and Proposed Use at the Property require a total of 26 off-street parking spaces; and

WHEREAS, in order to operate the Proposed Use on the Property, and pursuant to the applicable provisions of the Zoning Ordinance, the Applicant filed, with the consent of the Owner, an application with the City for approval of a variation from Table 5E of the Zoning Ordinance to reduce the required off-street parking spaces from 26 to zero ("**Variation**"); and

WHEREAS, a public hearing by the Zoning Board of Appeals ("**ZBA**") to consider the Variation was duly published in the *Daily Herald* on July 6, 2022 and was convened on June 23, 2022 and continued to July 7, 2022, during which hearing evidence and testimony was received by the ZBA; and

WHEREAS, on July 7, 2022 the ZBA adopted Findings of Fact, Project Number VAR-2022-1010, recommending that the Mayor and the City Council approve the Variation, subject to certain conditions; and

WHEREAS, the Mayor and the City Council have determined that, subject to and contingent upon the conditions, restrictions, and provisions of this Ordinance, that the Variation complies with the criteria for variations set forth in Section 7.A and Table 7A of the Zoning Ordinance; and

WHEREAS, consistent with the ZBA recommendation, and pursuant to the City's powers under applicable law, including its home rule powers under the Illinois Constitution of 1970, the Mayor and the City Council have determined that it is in the best interest of the City and the public

to approve the Variation, and subject to and contingent upon, the conditions, restrictions, and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Ordinance as if fully set forth in this Ordinance.

SECTION 2: Approval of Variation. In accordance with Section 7.A and Table 7A of the Zoning Ordinance and subject to the conditions and restrictions set forth in Section 3 of this Ordinance, the Variation from Table 5E of the Zoning Ordinance is granted to allow the Proposed Use on the Property.

SECTION 3: Conditions. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Zoning Ordinance or any other rights the Owners may have, the approval granted in Section 2 of this Ordinance is hereby expressly subject to and contingent upon the conditions, concepts, restrictions, limitations, and provisions set forth in this Section (collectively, the "**Conditions**").

A. **Compliance with Regulations.** The development, use, operation, and maintenance of the Property shall comply with all applicable City codes and ordinances, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance.

B. **Compliance with Application Documents.** The Proposed Use must be constructed, used and maintained in substantial conformance with the Proposed Walk Up/Take Out Restaurant Plans, consisting of six sheets, prepared by MJC Architects Ltd., with a latest revision date of May 8, 2022, copies of which are attached to, and by this reference, made a part of, this Ordinance as **Exhibit B ("Plans")**.

C. **Other Conditions.**

1. The Applicant must apply for a building permit for the interior renovations to the Property, which renovations must comply with all relevant fire, building, and Illinois Accessibility Codes.

2. The Applicant must apply for and obtain all necessary City permits and approvals prior to making any exterior improvements to the Property in the future, including outdoor seating improvements.

3. The Applicant must install parking deterrents and customer trash receptacles in front of the building on the Property. The parking deterrent and trash receptacles improvements must be depicted on the plans submitted to the City for the building permit and City staff will have the administrative discretion to review and approve or deny the parking deterrent and trash receptacle improvements.

SECTION 4: Invalidation of Approval. 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 City, the approval granted in Section 2 of this Ordinance ("**Approval**") may, at the sole discretion of the City Council, by ordinance duly

adopted, be revoked and become null and void; provided, however, that the City Council may not so revoke the Approval 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 City Council. In the event of such revocation, the City Administrator and City Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

SECTION 5: Amendments. Any amendment to any provision of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Zoning Ordinance and the City Code, as applicable to the affected items of relief.

SECTION 6: Effective Date.

A. This Ordinance will be effective only upon the occurrence of all of the following events:

1. Passage by the City Council by a majority vote in the manner required by law;
2. Publication in pamphlet form in the manner required by law;
3. The filing by the Owner and the Applicant with the City Clerk of an Unconditional Agreement and Consent, in the form of **Exhibit D** 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 City for any claims that may arise in connection with the approval of this Ordinance; and
4. Recordation of this Ordinance, together with such exhibits as the City Clerk deems appropriate for recordation, with the office of the Recorder of DuPage County.

B. In the event that the Owners and the Applicant do not file with the City Clerk a fully executed copy of the unconditional agreement and consent referenced in Paragraph 6.A.3 of this Ordinance within 90 days after the passage of this Ordinance by the Mayor and City Council, the corporate authorities shall have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

[Voting Record and Signature Page Follows]

PASSED THIS ____ day of _____, 2022.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ____ day of _____, 2022.

MAYOR

ATTEST:

CITY CLERK

#65844077_v3

EXHIBITS

Exhibit A - Legal Description of Property

Exhibit B – Plans

Exhibit C – Unconditional Agreement and Consent.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT 1 IN BLOCK 2 OF RAY'S SUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 8, IN MANNING'S WARRENVILLE SUBDIVISION, A SUBDIVISION OF PART OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN REFERENCE BEING HAD TO A PLAT OF SAID RAY'S SUBDIVISION RECORDED DECEMBER 30, 1926 IN BOOK 15 OF PLATS, PAGE 59 IN DUPAGE COUNTY, ILLINOIS.

PIN: 04-35-111-001

EXHIBIT B

PLANS

