

Item #2:

Ord. Granting SUP For Permanent Outdoor Dining, 215 RPC

VILLAGE OF LONG GROVE

ORDINANCE NO. 2015-O- __

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR PERMANENT OUTDOOR
DINING AT THE BROKEN EARTH WINERY
(215 Robert Parker Coffin Road)**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this 23rd day of June, 2015

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this 24th day of June, 2015

VILLAGE OF LONG GROVE

ORDINANCE NO. 2015-O- __

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR PERMANENT OUTDOOR DINING AT THE BROKEN EARTH WINERY
(215 Robert Parker Coffin Road)

WHEREAS, Gerald and Marsha Lynn Forsythe ("**Owner**") are the record owners of the property located at 215 Robert Parker Coffin Road ("**Property**") within the Mill Pond Development, which Property is legally described in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the Property is located in the B-1 Historic Business District under the Long Grove Zoning Code ("**Zoning Code**") and is currently improved with two buildings; and

WHEREAS, Broken Earth Winery, LLC ("**Applicant**") occupies and operates a restaurant in the southern building on the Property ("**Premises**"); and

WHEREAS, Applicant proposes to establish permanent outdoor dining on the existing wooden deck on the front of the Premises, facing Robert Parker Coffin Road, as an ancillary use to Applicant's primary restaurant use ("**Proposed Use**"); and

WHEREAS, Section 5-4-5(A)(3) of the Zoning Code authorizes permanent outdoor dining that is ancillary to a primary restaurant use in the B-1 District only pursuant to a special use permit and subject to certain standards; and

WHEREAS, the Applicant has applied to the Village for a special use permit for permanent outdoor dining pursuant to Section 5-4-5(A)(3) of the Zoning Code ("**Requested SUP**"); and

WHEREAS, pursuant to notice duly published in the *Daily Herald*, the Long Grove Plan Commission & Zoning Board of Appeals ("**PCZBA**") conducted a public hearing on June 2, 2015 regarding the Requested SUP; and

WHEREAS, the PCZBA having fully heard and considered the testimony by all those attending the public hearing who wished to testify, made the following findings:

- A. The Property is located in the B-1 Historic Business District.
- B. The Applicant operates a restaurant on the Premises, known as the Broken Earth Winery.
- C. The Applicant proposes to establish the Proposed Use in the location depicted on the site plan attached hereto as Exhibit B ("**Site Plan**"), and the Applicant and Owner have submitted an application to the Village for the Requested SUP to authorize the Proposed Use.
- D. The evidence demonstrates that, subject to the conditions set forth in this Ordinance, the Proposed Use will be an integral part of the Applicant's principal restaurant use on the Premises and meets all other standards set forth in Section 5-4-5(A)(3) of the Zoning Code.
- E. The evidence demonstrates that, subject to the terms and conditions set forth in this Ordinance, the Proposed Use:
 - i. Is necessary for the public convenience;
 - ii. Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected;
 - iii. Will not cause substantial injury to the value of other lots in the neighborhood;
 - iv. Conforms to the applicable regulations of the B-1 Historic District except as otherwise provided in this Ordinance; and
 - v. Meets all standards for the issuance of a special use permit pursuant to Section 5-11-17(E) of the Zoning Code.

WHEREAS, at the conclusion of the public hearing, the PCZBA recommended that the Requested SUP be granted, subject to the conditions set forth in this Ordinance; and

WHEREAS, the President and Board of Trustees have considered the materials submitted by the Applicant, the evidence presented at the public hearing, and the recommendation of the PCZBA and, being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to grant the Applicant the Requested SUP, subject to the terms and conditions of this Ordinance as hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE. **Recitals.** The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth herein.

SECTION TWO. **Grant of Special Use Permit for Permanent Outdoor Dining.**
Pursuant to Sections 5-4-5(A)(3) and 5-11-7 of the Zoning Code, and subject to the limitations therein and the conditions set forth in this Ordinance, the Village hereby grants a special use permit to the Applicant to permit the Applicant to establish and maintain the Proposed Use on the Property, subject to the conditions set forth in Section Three of this Ordinance.

SECTION THREE. **Conditions on Approval.** The special use permit granted pursuant to Section Two of this Ordinance shall be, and is hereby, conditioned upon and limited by the following conditions, the violation of any of which shall, in the reasonable discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the special use permit without further notice or hearing:

- 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 shall be commenced on the Property pursuant to the approvals granted in this Ordinance except only after all permits, approvals, and other authorizations for such work have been properly applied for, paid for, and granted in accordance with applicable law.
- B. **Compliance with Plans.** The Applicant shall establish and maintain the Proposed Use in the location depicted on the Site Plan attached to this Ordinance as Exhibit B and will operate the Proposed Use in strict conformity therewith. Applicant shall be limited to a maximum of six outdoor tables providing seating for no more than sixteen patrons, placed on the existing wooden deck on the front side of the Premises, as depicted on the Site Plan, unless the Proposed Use is expanded pursuant to Section 3.C of this Ordinance.

- C. Expansion of Use. The Applicant may expand the Proposed Use to provide outdoor seating for up to a total of twenty-four patrons on the front (south-facing) side of the Premises ("**Expanded Use**"), subject to the prior written approval of the Village Manager and subject to the following conditions:
- i. Applicant shall submit a revised Site Plan depicting the proposed location and configuration of the Expanded Use, which Site Plan shall be subject to approval by the Village Manager;
 - ii. The Expanded Use shall be conducted within or on a permanent structure that is located higher than grade level and shall conform in all respects with Section 5-4-5(A)(3) of the Zoning Code; and
 - iii. The Expanded Use shall be subject to all terms and conditions of this Ordinance in the same manner as the Proposed Use.
- D. Compliance with Laws. The Proposed Use shall be performed in accordance with all applicable laws, codes, ordinances, and regulations, including the terms and provisions of this Ordinance.
- E. Termination. If the Applicant terminates, abandons, or discontinues for more than six consecutive months irrespective of intent (unless otherwise authorized by resolution of the Village Board) the primary restaurant use on the Premises, then the special use permit approved by this Ordinance shall immediately terminate.
- F. Fees and Costs. The Applicant shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Zoning Code. In addition, the Applicant shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or enforcement of this Ordinance. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.
- G. Binding Effect; Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant and Owner, any and all of the Owner's heirs, successors, and assigns of all or any portion of the Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, the Owner shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Owner to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Owner remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Owner.

SECTION FOUR: **Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law; provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant has caused a duly authorized person to execute and thereafter file with the Village the unconditional agreement and consent in the form attached hereto as Exhibit C and by this reference incorporated herein and made a part hereof; provided further that, if the Applicant does not so file its unconditional agreement and consent within 60 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, deem such failure as a withdrawal of the application, and repeal this Ordinance and thereby revoke the special use permit and other approvals granted in this Ordinance. Upon this Ordinance having full force and effect, the Village Clerk shall cause it to be recorded in the Office of the Lake County, Illinois Recorder of Deeds.

PASSED this 23rd day of June, 2015.

AYES: ()

NAYS: ()

ABSENT: ()

APPROVED this 23rd day of June, 2015.

Angela Underwood, Village President

ATTEST:

Heidi Locker-Scheer, Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

VILLAGE OF LONG GROVE, ILLINOIS
 NOTICE OF A PUBLIC HEARING FOR
 CONSIDERATION OF A REQUEST FOR A SPECIAL
 USE PERMIT FOR PROPERTY WITHIN THE B-1
 HISTORIC BUSINESS DISTRICT CLASSIFICATION
 AND/OR ADDITIONAL RELIEF NECESSARY AND/OR
 APPROPRIATE UNDER THE ZONING TO ALLOW
 PERMANENT OUTDOOR DINING AT
 215 ROBERT PARKER COFFIN ROAD.

PUBLIC NOTICE IS HEREBY GIVEN that on Tuesday, May 12, 2015 at 7:00 p.m., a public hearing will be held at the regular meeting of the Plan Commission & Zoning Board of the Village of Long Grove, Lake County, Illinois, at the Long Grove Village Hall, 2110 RFD, Long Grove, Illinois 60047 (unless otherwise posted) in connection with a petition for a Special Use Permit within the B-1 Historic Business District submitted by Mr. Gerald Forsythe to obtain a permanent outdoor dining and/or additional relief necessary and/or appropriate under the zoning code for property known as 215 Robert Parker Coffin Road and zoned under the B-1 Historic Business District classification within the Village of Long Grove, Illinois.

The reclassification of the subject property is requested. The subject property is legally described as follows:

LEGAL DESCRIPTION

That part of the east 1/2 of the Northwest 1/4 of Section 30, Township 43 North, Range 11 East of the Third Principal Meridian, as shown by a line as follows: Beginning of a point on the centerline of Dundee-Ho Day Road of the Southeast corner of the William Umbdenstock Subdivision, the plot of which was recorded as Document 991876; thence North-easterly along the centerline of said road 50.75 feet, more or less, to the northeasterly corner of Lot 2 of Fannings Subdivision the plot of which was recorded as Document 115751; thence south along the east line of Lot 2, 10.20 feet, more or less, to the northwesterly corner of that part described by that deed recorded May 4, 1876 as in book 56 of deeds page 249; thence northeasterly along the Northern line of said property, 136.67 feet to the northeasterly corner thereof; thence northwesterly at right angles to said last described line, 392.29 feet; thence northwesterly at right angles to the last described line, 310.34 feet to the easterly line of William Umbdenstock Subdivision First Addition, the plot of which was recorded as document 1257868; thence southwesterly along the northeasterly line of said subdivision and the northwesterly line of William Umbdenstock Subdivision aforesaid, to the place of beginning in Lake County, Illinois.

Commonly known as: The Broken Earth Winery;
 215 Robert Parker Coffin Road
 P.O. #: 15-96-203-019

Persons attending the hearing shall have the opportunity to provide written and oral comments and questions concerning the proposal. The above information, together with the zoning application, will be available for inspection at the Long Grove Village Hall, 2110 RFD, Long Grove, Illinois during regular business hours.

The Plan Commission & Zoning Board of Appeals reserves the right to continue the hearing to a later date, time and place should that become necessary.
 James M. Hague, Village Planner, Village of Long Grove
 Published in Daily Herald May 14, 2015 (4407581)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the DAILY HERALD. That said DAILY HERALD is a secular newspaper and has been circulated daily in the Village(s) of Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Lake Barrington, North Barrington, South Barrington, Bartlett, Batavia, Buffalo Grove, Burlington, Campton Hills, Carpentersville, Cary, Deer Park, Des Plaines, South Elgin, East Dundee, Elburn, Elgin, Elk Grove Village, Fox Lake, Fox River Grove, Geneva, Gilberts, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Kildeer, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Long Grove, Mt. Prospect, Mundelein, Palatine, Prospect Heights, Rolling Meadows, Round Lake, Round Lake Beach, Round Lake Heights, Round Lake park, Schaumburg, Sleepy Hollow, St. Charles, Streamwood, Tower Lakes, Vernon Hills, Volo, Wauconda, Wheeling, West Dundee, Wildwood, Sugar Grove, North Aurora

County(ies) of Cook, Kane, Lake, McHenry and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published May 14, 2015 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
 DAILY HERALD NEWSPAPERS

BY Laula Baltz
 Authorized Agent

RECEIVED
 MAY 18 2015
 VILLAGE OF LONG GROVE

Control # 4407581

EXHIBIT B

SITE PLAN



RECEIVED

APR 27 2015

VILLAGE OF LONG GROVE

APPLICATION FOR OUTDOOR DINING PERMIT
IN THE B-1 HISTORIC BUSINESS DISTRICT

Business Name and Address: Broken Earth Winery
215 Robert Parker Coffey Rd
Business Owner's Name: Gerald Foraythe
Business Owner's Phone: Day: 847-541-8300 Evening: Fax: 847-215-8485
Property Owner's Name and Address: New Midwest Capital LLC
1111 Willis Ave, Wheeling IL 60091

Time restaurant is currently opened for dining activities:
TU-TH 11:00 AM - 9:30 P.M., Fri + Sat + Sun 11:00 AM - 10:30 P.M.

Dates and Times for Proposed Outdoor Dining Activities:
Date: (month/date to month/date): 5/2015 to 11/2015 -> Spring thru fall months
Hours: Weekday (M-F) to Saturday and Sunday: to

Describe the setup for outdoor dining, including colors and materials of chairs, tables, umbrellas, tablecloths, etc. (Photo's are acceptable)

Number of Tables 6 Maximum Number of Patrons 16
2-2 Person tables + 1-4 Person table in front 219
2-2 Person tables + 1-4 Person table in front of 215/223 (same as above).

Attach a site plan of proposed outdoor dining facilities with setup indicated.
Provide photograph of the location on the property where outdoor dining activities will take place.

My signature indicates compliance with the restrictions and limitations of the Village Code 5-9-3 (3) regarding Outdoor Dining as a Temporary Use and License Requirements of Section 3-7-1 of this code.

Property Owner Signature: [Signature] Date: 4-14-2015
Business Owner Signature: Same ↑ Date: —



EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

Pursuant to Section Four of Long Grove Ordinance No. 2015-O-___, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigned acknowledges for itself and its successors and assigns in interest to the Property that the undersigned:

1. has read and understands all of the terms and provisions of said Ordinance No. 2015-O-___;
2. hereby unconditionally agrees to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Zoning Code, 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 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 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, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right;
5. agrees to and does hereby 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 these parties in connection with the Village's adoption of the Ordinance granting the approvals to the Applicant pursuant to the Ordinance; and
6. represents and acknowledges that the person signing this Unconditional Agreement and Consent is duly authorized to do so on behalf of the Applicant.

BROKEN EARTH WINERY, LLC

By: _____

Its: _____

GERALD FORSYTHE

MARSHA LYNN FORSYTH
