

Items #3:

**Ordinance Approving Amendments To Existing SUP & PUD
Approval For Buffalo Creek Brewing, 360 Historical Lane**

VILLAGE OF LONG GROVE

ORDINANCE NO. 2016-O-__

AN ORDINANCE APPROVING AN AMENDMENT TO THE SPECIAL USE PERMIT FOR RED OAKS PLANNED DEVELOPMENT RELATING TO A TAPROOM AND BREWERY USE ON LOT 5 AND REPEALING ORDINANCE NO. 95-O-10

WHEREAS, pursuant to Ordinance No. 86-O-61 ("**Original PUD Ordinance**") the Village of Long Grove granted a special use permit for a planned development and granted final planned unit development plat approval for the Red Oaks Planned Unit Development ("**Planned Unit Development**"); and

WHEREAS, the Original PUD Ordinance granted approval for a mixed-use development on certain real property generally located on the west side of Old McHenry Road south of Robert Parker Coffin Road in the Village of Long Grove and zoned within the B1 Historic Business District; and

WHEREAS, the Original PUD Ordinance restricted the use of Lot 5 in the Red Oaks Planned Unit Development, which lot is legally described in Exhibit A to this Ordinance ("**Property**"), to office uses only; and

WHEREAS, pursuant to Ordinance No. 90-O-5, the Village amended the Original PUD Ordinance to permit the Property to be used in part for an art studio, art supply store, and art gallery, and restricted the building size to a maximum of 4,800 square feet ("**1990 Amendment**"); and

WHEREAS, pursuant to Ordinance No. 95-O-10, the Village further amended the Original PUD Ordinance to permit the construction and operation of a tea room and restaurant facility on the Property ("**1995 Amendment**"); and

WHEREAS, pursuant to Ordinance No. 2005-O-33, the Village further amended the Original PUD Ordinance to permit additional uses and facilities on the property, including a banquet facility, wine cellar, tasting bar, outdoor dining, and outdoor terrace and patio facilities

("2005 Amendment") (the Original PUD Ordinance together with the 1990, 1995, and 2005 Amendments shall be collectively referred to as the "**Red Oaks PUD**"); and

WHEREAS, the 1995 Amendment also established a number of conditions on the use of the Property, including a maximum restaurant seating capacity of 100 persons, a requirement that the parking lot be paved, and restrictions on the hours of operation for the tearoom and restaurant facility; and

WHEREAS, Buffalo Creek Brewing LLC ("**Applicant**") is the contract purchaser, and 360 Historical Lane LLC ("**Owner**") is the record owner, of the Property; and

WHEREAS, Applicant, with the support of Owner, is requesting approval of an amendment to the Red Oaks PUD to: (i) permit operation of a taproom combined with a brewery, (including production, wholesale distribution, and retail sale of beer and ale for both on-premises and off-premises consumption), a banquet facility, outdoor dining, and an outdoor beer garden (the "**Proposed Use**") on the Property, and (ii) repeal the conditions set forth in the 1995 Amendment relating to operation of a tearoom and restaurant facility on the Property (collectively, the "**Proposed Amendment**"); and

WHEREAS, Subsection 5-4-5(A)(5) of the Long Grove Zoning Code allows the Proposed Use to be established on the Property, subject to issuance of a special use permit; and

WHEREAS, pursuant to notice duly published in the *Daily Herald*, the Long Grove Plan Commission and Zoning Board of Appeals ("**PCZBA**") conducted a public hearing on September 6, 2016 for the purposes of hearing and considering testimony on the Proposed Amendment; and

WHEREAS, during the public hearings, representatives of the Owner presented oral and written testimony, including without limitation: (i) a site plan prepared by Barker/ Nestor Architecture & Design and consisting of one sheet dated July 22, 2016, (ii) a Zoning Code analysis prepared by Barker/ Nestor Architecture & Design and consisting of one sheet dated

August 30, 2016; and (iii) floor plans prepared by Cold Brewing Holdings LLC and consisting of four sheets; undated (collectively, the “**Plans**”), copies of which are attached hereto as Exhibit B; 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:

1. The Property is located in the B1 Historic Business District and is subject to the Red Oaks PUD.
2. According to the testimony submitted by the Applicant, the Applicant intends to operate the Proposed Use within the existing building on the Property as depicted on the Plans.
3. The Applicant testified that Applicant does not intend to make exterior modifications to the Property or existing building thereon, except for minor modifications to the loading area and parking lot to accommodate truck loading and deliveries, which modifications would be constructed in accordance with the Plans.
4. Applicant testified that the maximum seating capacity (indoors and outdoors) for the Proposed Use would be as follows:
 - a. Basement: 0 persons
 - b. Beer Garden: 52 persons
 - c. First Floor: 117 persons
 - d. Second Floor: 180 persons
5. Applicant’s request for repeal of the 1995 Amendment is appropriate because the 1995 Amendment authorized the use of the Property as a tearoom and restaurant facility (which use was never established) and imposed conditions on such use that are not applicable to or appropriate for the Proposed Use. Therefore, it would be appropriate for the 1995 Amendment to be repealed and superseded by the approvals granted in this Ordinance, subject to the conditions hereinafter set forth.
6. The evidence presented demonstrates that, subject to the conditions hereinafter set forth, the Proposed Amendment to permit the Proposed Use on the Property:
 - a. is consistent with the stated purposes of, and meets the requirements and standards of, the planned unit development regulations set forth in the Zoning Code;
 - b. does not materially affect the physical design of the Planned Development and makes adequate provision for public services, traffic, open space, and other amenities;

- c. is compatible with the adjacent properties and neighborhood;
- d. is desirable to promote the redevelopment and use of the Property, including for the economic benefit of the downtown business district and the Village as a whole; and
- e. is consistent with the Village's Comprehensive Plan.

WHEREAS, based on these findings, the PCZBA recommended that the Proposed Amendment to the Red Oaks PUD be approved; and

WHEREAS, the President and Board of Trustees, having considered the recommendations 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 approve the Proposed Amendments to the Red Oaks PUD as set forth in this Ordinance, subject to the terms and conditions provided herein;

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.

SECTION TWO: Amendment to the Red Oaks PUD. Pursuant to Section 5-11-18(J) of the Long Grove Zoning Code, and subject to the limitations therein and the conditions set forth in Section Five of this Ordinance, the Red Oaks PUD shall be, and is hereby, amended as follows:

(a) **Special Use Permit.** Pursuant to Subsection 5-4-5(A)(5) and Section 5-11-7 of the Zoning Code, a special use permit is hereby granted, subject to the conditions set forth in Section 3 of this Ordinance, to permit the establishment and operation of the Proposed Use on the Property, which Proposed Use shall consist of the operation of a taproom combined with a brewery, including production, wholesale distribution, and retail sale of beer and ale for both on-premises and off-premises consumption, provided, however, that production and wholesale

distribution activities may only be operated in conjunction with, and ancillary to, the retail sale of beer and/or ale on the Property. The following additional uses shall also be permitted as ancillary uses to the retail sale of beer and/or ale on the Property: a banquet facility, outdoor dining, and an outdoor beer garden. This authorization of the Proposed Use shall supersede all other special uses previously authorized to be established the Property pursuant to the Red Oaks PUD, which previous special use authorizations are hereby repealed insofar as they conflict herewith. To the extent that the Plans attached to this Ordinance conflict with any of the plans previously approved by the Red Oaks PUD for the Property ("**Original Plans**"), the Plans attached to this Ordinance shall control, but in all other respects the Original Plans shall continue in full force and effect to govern the development and use of the Property and the Planned Unit Development.

(b) Parking Relief. The Applicant is hereby granted relief from the off-street parking requirements of the Long Grove Zoning Code, subject to the conditions set forth in Section 3 of this Ordinance, to permit the operation of the Proposed Use on the Property as depicted on the Plans. Applicant shall not be required to install any new parking areas or pave and stripe any parking facilities on the Property.

(c) Repeal of 1995 Amendment. The 1995 Amendment (Ordinance Number 95-O-10) is hereby repealed.

SECTION THREE: Conditions on Approval. The amendments to the Planned Unit Development granted pursuant to Section Two shall be, and they are 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 approvals granted herein:

- a. Continued Effect of the Red Oaks PUD. Except as expressly modified by this Ordinance, the Red Oaks PUD shall remain in full force and effect, and the Owner shall comply with all requirements, conditions, and restrictions therein.
- b. Compliance with Plans. The development, maintenance, and use of the Property shall be in strict conformance with the Plans attached to this Ordinance as Exhibit B.
- c. Exterior Appearance. The exterior appearance of the Proposed Use shall be consistent with the exterior appearance of the existing building on the Property. Any changes to the exterior appearance may be made only after all necessary permits and approvals have been obtain as required under the Village Code and other applicable law. In addition, signage shall be authorized only to the extent permitted by the Zoning Code and approved by the Architectural Board.
- d. Loading and Deliveries. Truck deliveries and truck loading/ unloading activities associated with any production and wholesale distribution conducted on the Property shall be conducted in strict compliance with all applicable ordinances, laws, and regulations. In addition, the Village Manager is hereby authorized to establish schedules limiting the hours and frequency of such loading and delivery activities as the Manager shall deem necessary to minimize negative impacts on traffic, nearby residents, and other businesses within the downtown area.
- e. Outdoor Dining. The outdoor dining and beer garden uses shall be conducted in strict accordance with the following:
 - (1) The outdoor dining and beer garden uses shall be operated only as an integral part of the retail taproom use on the Property.
 - (2) The outdoor dining and beer garden areas may only be used during the hours that the taproom use on the Property is in operation.
 - (3) No music or amplified sounds of any kind shall be permitted at any time in the outdoor dining and beer garden areas.
 - (4) Beverages sold or delivered in the outdoor dining and beer garden areas must be consumed on-site.
- f. Compliance with Laws; No Authorization of Work. Except as otherwise provided in this ordinance, the Zoning Code, the Subdivision Code, the Building Code, and all other applicable ordinances and regulations of the Village shall continue to apply to the Property. In addition, the development and use of the Property shall be in compliance with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction. The approval of this Ordinance shall not itself authorize any demolition, construction, redevelopment, or other work on the Properties, which work may be commenced only after all necessary permits and approvals have been obtain as required under the Village Code and other applicable law.

- g. The Applicant shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Long Grove Village 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.
- h. Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant, the Owner, and upon any and all of the Applicant's and Owner's heirs, successors, and assigns, and upon any and all successor legal or beneficial owners 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 Applicant and Owner shall be released from their obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Applicant or Owner to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Applicant or Owner remaining fully liable for all of their obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Applicant or Owner.

In addition, any violation of this Ordinance shall be deemed a violation of the Long Grove Village Code and shall subject the Applicant and Owner to enforcement proceedings accordingly.

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 and Owner have (i) caused duly authorized persons to execute and (ii) thereafter file with the Village their 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 and Owner do not so file their unconditional agreement and consent within 30 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, repeal this Ordinance and thereby revoke the 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.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B

PLANS

DRAFT

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

Pursuant to Section Four of Long Grove Ordinance No. 2016-O-___, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigneds acknowledge for themselves and their successors and assigns in interest to the Property that they:

1. have read and understand all of the terms and provisions of said Ordinance No. 2016-O-___;
2. hereby unconditionally agree 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. acknowledge and agree 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 or approvals for use of the Property, and that the Village's issuance of any permit or approval 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. acknowledge 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;
5. agree to and do 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 and Owner pursuant to the Ordinance; and
6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on behalf of the Applicant and the Owner.

Applicant:
BUFFALO CREEK BREWING LLC

Owner:
360 HISTORICAL LANE LLC

By: _____

By: _____

Its: _____

Its: _____

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RED OAKS PLANNED DEVELOPMENT RELATING TO A TAPROOM AND
BREWERY USE ON LOT 5 AND REPEALING ORDINANCE NO. 95-O-10**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this 13th day of September, 2016

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this 13th day of September, 2016