

VILLAGE OF ARLINGTON HEIGHTS

ORDINANCE NO. 2023-_____

AN ORDINANCE GRANTING AN AMENDMENT
TO A VARIATION FOR PARKING
(129-151 W. Rand Rd.)

ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF ARLINGTON HEIGHTS
THIS ____ DAY OF _____, 2023.

Published in pamphlet form
by the authority of the
President and Board of Trustees
of the Village of Arlington Heights,
Cook County, Illinois this
_____ day of _____, 2023

Village Clerk

AN ORDINANCE GRANTING AN AMENDMENT
TO A VARIATION FOR PARKING
(129-151 W. Rand Rd.)

WHEREAS, Midwest Healthcare Properties, LLC (“**Owner**”) is the record title owner of that certain property located in the B-2 General Business District (“**B-2 District**”) commonly known as 129-151 W. Rand Road, Arlington Heights, Illinois, and legally described in Exhibit A attached to and, by this reference, made a part of this Ordinance (“**Property**”); and

WHEREAS, the Property is improved with a multi-tenant commercial office building; and

WHEREAS, on February 4, 2013, the President and Board of Trustees adopted Ordinance No. 13-005, granting, among other things, a variation from the “2002 Comprehensive Amendment of the Zoning Ordinance of the Village of Arlington Heights,” as amended (“**Zoning Code**”), to reduce the minimum number of off-street parking spaces required on the Property, from 132 spaces to 88 spaces, and conditioned upon the use by the tenants of the Property of 19 parking spaces on the adjacent property located at 155 W. Rand Road in the Village (“**Prior Variation Ordinance**”); and

WHEREAS, Cyril Dental Care, P.C., doing business as Impressive Smiles (“**Applicant**”), is a tenant of the Property and operates a dental office within a portion of the Property; and

WHEREAS, the Applicant desires to expand the dental office use into an approximately 2,097-square-foot portion of the building on the Property adjacent to its current operations (“**Proposed Expansion**”); and

WHEREAS, pursuant to Section 10.4 of the Zoning Code, upon implementation of the Proposed Expansion, an additional seven parking spaces will be required on the Property; and

WHEREAS, pursuant to Section 12 of the Zoning Code, the Applicant, with the consent of the Owner, has filed an application for approval of an amendment to the Prior Variation Ordinance for a further variation from the minimum parking spaces requirement in Section 10.4 of the Zoning Code to allow the Proposed Expansion with 88 spaces on the Property and 19 on the adjacent property located at 155 W. Rand Road in the Village (“**Requested Relief**”); and

WHEREAS, a public hearing of the Plan Commission of the Village to consider approval of the Requested Relief was duly advertised in the *Daily Herald* newspaper on December 27, 2022, and held on January 11, 2023; and

WHEREAS, on January 11, 2023, the Plan Commission made findings and recommendations in support of the Requested Relief, with conditions; and

WHEREAS, the President and Board of Trustees have determined that the Requested Relief meets the required standards for variations as set forth in Section 12.2 of the Zoning Code; and

WHEREAS, the President and Board of Trustees have determined that it will serve and be in the best interest of the Village to grant the Requested Relief, 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 ARLINGTON HEIGHTS:

SECTION 1. RECITALS. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. GRANT OF AMENDMENT OF VARIATION. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 3 of this Ordinance, and in accordance with, and pursuant to, Section 12 of the Zoning Code and the home rule powers of the Village, the Village hereby amends the off-street parking variation granted pursuant to the Prior Variation Ordinance and hereby grants a variation from Section 10.4 of the Zoning Code to reduce the minimum number of off-street parking spaces on the Property, from 139 spaces to 88 spaces.

SECTION 3. CONDITIONS. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Zoning Code, the approvals granted pursuant to Section 2 of this Ordinance are 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 Proposed Expansion and the Property must comply at all times with all applicable Federal, State, and Village statutes, codes, ordinances, and regulations, as the same have been or may be amended from time to time.
- B. Compliance with Plans. Except for minor changes and site work approved by the Village Director of Building & Life Safety (for matters within their permitting authority) in accordance with all applicable Village standards, the development, use, operation, and maintenance of the Proposed Expansion and of the Property must comply with those certain floor plans prepared by Eki Architects, Ltd., with a latest revision date of June 20, 2022 and consisting of one sheet, a copy of which is attached to and, by this reference, made a part of this Ordinance as Exhibit B ("**Plans**").
- C. Off-Site Parking Agreement. The Owner must maintain its existing lease agreement with the owner of the property located at 155 West Rand Road in the Village ("**Adjacent Property**") for use by employees and guests of the Property of 33 off-street parking spaces on the Adjacent Property, dated November 15, 2022 ("**Parking Agreement**"); or (2) establish substantially similar. In the event that the Parking Agreement is terminated or otherwise no longer in effect:
 - 1. The Owner or the Applicant must provide written notice to the Village of the termination or expiration of the Parking Agreement within three business days; and
 - 2. The Owner must demonstrate, within 120 days after the date of termination or expiration of the Parking Agreement, to the satisfaction of the Village Manager in their sole discretion, that it has secured substantially similar rights as are provided in the Parking Agreement for use of not less than 33 off-street parking spaces on another parcel of real property located in the vicinity of the Property. In the event that the Owner fails to comply with this Section 3.C.2, the Property may not be used for any medical office uses, and the Village Board of Trustees may terminate the approvals granted in Section 2 of this Ordinance in the manner set forth in Section 5 of this Ordinance.

- D. Bicycle Parking Spaces. The Owner and the Applicant must install at least two bicycle parking spaces on the Property no later than May 30, 2023. The Owner must work with the Property's Condominium Association to cause the installation of five additional bicycle parking spaces on the Property pursuant to a schedule acceptable to the Village.
- E. Trees. The Owner must install three four-inch caliper shade trees missing from islands within the parking lot on the Property no later than June 30, 2023.

SECTION 4. RECORDATION; BINDING EFFECT. A copy of this Ordinance will be recorded on title to the Property with the Cook County Clerk's Recording Division. This Ordinance and the privileges, obligations, and provisions contained herein inure solely to the benefit of, and are binding upon the Applicant and each of its 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, as applicable, the approvals granted in Section 2 of this Ordinance may, at the sole discretion of the Village President and Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village President and Board of Trustees may not so revoke the approvals granted in Section 2 of this Ordinance unless they first provide 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 Village President and Board of Trustees. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the B-2 District 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 enforcement action as may be appropriate under the circumstances.

SECTION 6. AMENDMENTS. Any amendments to the approvals 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 Zoning 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 will 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 Village President and Board of Trustees in the manner required by law; and
 - 2. 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 the Owner or the Applicant does not file fully executed copies of the Unconditional Agreement and Consent, as required by Section 8.A.2 of this Ordinance, within 30 days after the date of final passage of this Ordinance, the Village 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.

AYES:

NAYS:

PASSED AND APPROVED THIS ____ day of _____, 2023

Village President

ATTEST:

Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT 2 AND THE SOUTHEASTERLY 36 FEET OF LOT 1 IN STANLEY W. MINSKY'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

KNOWN AS: 129-151 W. RAND ROAD, ARLINGTON HEIGHTS, ILLINOIS 60004

PIN: 03-18-401-167-0000

Commonly known as: 129-151 W. Rand Road, Arlington Heights, Illinois.

PIN: 03-18-401-167-0000

EXHIBIT B

PLANS

(attached)

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

TO: The Village of Arlington Heights, Illinois (“**Village**”):

WHEREAS, Midwest Healthcare Properties, LLC (“**Owner**”) is the record title owner of that certain property located in the B-2 General Business District, commonly known as 129-151 West Rand Road, Arlington Heights, Illinois (“**Property**”); and

WHEREAS, Cyril Dental Care, P.C., doing business as Impressive Smiles (“**Applicant**”), is a tenant of a portion of the Property; and

WHEREAS, Ordinance No. 2023-_____, adopted by the Village President and Board of Trustees on _____, 2023 (“**Ordinance**”), grants an amendment to a variation for parking on the Property; 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 file, 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 hereby unconditionally agree to, accept, consent to, and will 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 the variation 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 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 variation for the Property.

[SIGNATURES ON FOLLOWING PAGE]

Dated: _____, 2023

ATTEST: MIDWEST HEALTHCARE PROPERTIES, LLC

By: _____ By: _____

Its: _____ Its: _____

ATTEST: CYRIL DENTAL CARE, P.C., d/b/a IMPRESSIVE SMILES

By: _____ By: _____

Its: _____ Its: _____