

SANGAMON COUNTY, ILLINOIS

ORDINANCE
NUMBER 21- 1

**AN ORDINANCE APPROVING A PERMISSIBLE ENCROACHMENT IN THE
VILLAGE RIGHT-OF-WAY**

DAVE KIMSEY, Village President
AMY DAHLKAMP, Village Clerk

KRISTEN CHIARO
ANDREW DETMERS
BRETT GERGER
RYAN MANN
MATT MAU
PAUL SCHERSCHEL
Village Trustees

Published in pamphlet form by authority of the President and Board of Trustees of the Village of Chatham
on January 12th, 2021

Sorling Northrup – 1 N. Old State Capitol Plaza, Suite 200, Springfield, IL 62705

ORDINANCE NO. 21 - 1

AN ORDINANCE APPROVING A PERMISSIBLE ENCROACHMENT IN THE VILLAGE RIGHT-OF-WAY

WHEREAS, the Village of Chatham (hereinafter “Village”) is an Illinois Municipal Corporation existing and operating under the Illinois Municipal Code and the laws of the State of Illinois; and

WHEREAS, Section 95.31 of the Village Code allows the Village to issue revocable permits for the temporary retention of permissible encroachments into the Village right-of-way; and,

WHEREAS, Dean and Rachalle Johnson are the owners of certain real property including improvements thereto commonly referred to as “The Apple Barn” located along Walnut Street (also known as Illinois County Highway 40) within the Village commonly known as 2290 E. Walnut St. Chatham, IL 62629 (hereinafter “Property”) and further described in the Plat of Survey attached as Exhibit A to the Encroachment Agreement attached hereto as **Exhibit 1**; and,

WHEREAS, the owners are seeking to subdivide the Property; however, said subdivision would result in an improvement on the Property extending approximately one foot (1’) into the required Village right-of-way (hereinafter “Encroachment”) as depicted on the Plat of Survey; and,

WHEREAS, the Corporate Authorities of the Village believe it is in the best interest of the Village to issue a revocable permit for the temporary retention of the Encroachment, approve an Encroachment Agreement outlining the rights and responsibilities of the Parties as it relates to the Encroachment, waive the permit fee, and amend its Code accordingly.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois, as follows:

Section 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section 2. Amendment to Village Code. Section 95.31 of the Village Code shall be amended as follows (added; ~~deleted~~):

95.31 ENCROACHMENTS ON RIGHT-OF-WAY

...

(C) Revocable permits have been issued by the Village for the temporary retention of the following Encroachments:

(1) 2290 E. Walnut St. Chatham, IL 62629 for improvement on the Property extending approximately one foot (1') into the required Village right-of-way

Section 3. Encroachment Agreement. The Encroachment Agreement attached hereto as **Exhibit 1** is hereby approved. The Village President and Clerk shall be, and are hereby, authorized and directed to execute the Encroachment Agreement.

Section 4. Permit Fee. The Permit Fee for the temporary retention of the Encroachment at the Property is hereby waived.

Section 5. Severability. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

Section 6. Repeal and Savings Clause. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, action, or causes of action which shall have accrued to the Village of Chatham prior to the effective date of this Ordinance.

Section 7. Effectiveness. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

SO ORDAINED this 12th day of January, 2021, at Chatham, Sangamon County, Illinois.

	AYE	NAY	ABSTAIN	ABSENT
KRISTEN CHIARO	×			
ANDREW DETMERS	×			
BRETT GERGER	×			
RYAN MANN				×
MATT MAU				×
PAUL SCHERSCHEL	×			
DAVE KIMSEY				
TOTAL	4			2

APPROVED by the President of the Village of Chatham, Illinois this 12th day of January, 2021.


 Dave Kimsey, Village President

Attest:

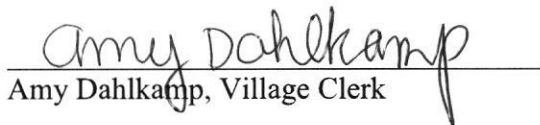

 Amy Dahlkamp, Village Clerk

Exhibit 1
Encroachment Agreement

Sangamon County, Illinois

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:**

**Gregory E. Moredock
Sorling Northrup
1 North Old State Capitol Plaza,
Suite 200
P.O. Box 5131
Springfield, IL 62705**

ENCROACHMENT AGREEMENT

This ENCROACHMENT AGREEMENT is entered into by and between the GRANTOR, THE VILLAGE OF CHATHAM, an Illinois Municipal Corporation, its successors, assigns and/or designees (hereinafter "Grantor" or "Village") and DEAN and RACHALLE JOHNSON (hereinafter ("Grantee" or "Johnson").

RECITALS

A. Grantor is the owner and maintainer of roadways in the Village including the roadway rights-of-way located immediately adjacent thereto.

B. Grantee is the owner of certain real property including improvements thereto located along Walnut Street (also known as Illinois County Highway 40) within the Village commonly known as 2290 E. Walnut St. Chatham, IL 62629 (hereinafter "Property") and further described in the Plat of Survey attached hereto as **Exhibit A**.

C. Grantee is seeking to subdivide the Property into multiple parcels.

D. There is currently an improvement on the Property that would extend approximately one foot (1') into the required Village right-of-way upon the subdivision (hereinafter "Encroachment") as depicted on the Plat of Survey.

E. The Parties desire to allow the encroachment to remain in the right-of-way so long as it remains in good repair, is not expanded further into the right-of-way, and the Village has no immediate need for use of the right-of-way.

F. The Village is willing to permit the encroachment under the terms provided for herein.

THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration as described herein, the receipt and adequacy of which are hereby acknowledged, the parties mutually agree as follows:

AGREEMENT

1. The Grantor hereby allows the Encroachment to remain, in its present form, in the Village right-of-way. The Village will grant to Grantee a revocable permit for a permissible encroachment pursuant to Section 95.31 of the Village Code for the Encroachment defined herein.

2. The Encroachment shall only be allowed in its current form and shall not be expanded or altered in any manner. Should the Encroachment fall into disrepair, Grantee shall remove the Encroachment and Grantee's sole expense.

3. No landscaping will be allowed in the right-of-way, including but not limited to trees and large shrubs without the Village's prior written consent.

4. Grantee shall indemnify, save, hold harmless, and at the Village's option, defend the Village, its officers, designees, successors and assigns, from any and all claims, demands, costs fines, for injury to persons or damage or loss to property, real or personal, environmental damages, in any way arising from or connected the existence, construction, operation, maintenance, relocations, or removal of the Encroachment.

5. In the event that the existence, construction, operation, maintenance, relocation, or removal of the Encroachment causes the Village to incur any cost that in any manner relates to the Encroachment or the right-of-way adjacent to the Property, Grantee agrees to reimbursement the Village for any and all such costs that would not have been incurred but for the existence of the Encroachment. Grantee hereby agrees that the Village will not be held liable for any damages to the Encroachment arising from the Village's actions pertaining to Walnut Street or the adjacent right-of-way.

6. The Parties agree that the existence of the Encroachment does not constitute a waiver of the Village's express rights as they pertain to rights-of-way as set forth in Illinois state statutes and the Village Code of Ordinances.

7. Except as herein provided, Grantee will not at any time erect, construct, or create any additional buildings, improvements, structures or obstructions of any kind, or expand or alter any current existing buildings, improvements, structures, or obstructions of any kind either on, above, or below the surface of the right-of-way without the prior written consent of the Village.

8. In the event that Grantee breaches any of the terms, covenants or provisions of this Agreement, and the Village commences litigation to enforce any provisions of this Agreement and

prevails, the cost of attorneys' fees and the attendant expenses will be payable by the Village by Grantee upon demand.

9. The Village and Grantee agree to cooperate and execute all future documents, including, but not limited to, any instrument if so requested by either party to confirm this Encroachment Agreement, re-grant this Encroachment Agreement, or as may be necessary or desired for recording purposes.

10. All rights, title and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties, their respective heirs, executors, administrators, successors, assigns, and legal representatives.

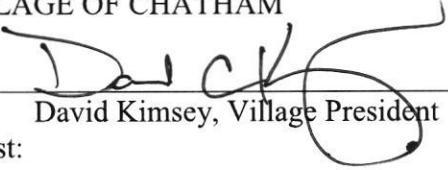
11. This Encroachment Agreement represents the entire agreement between the Village and the Grantee and supersedes prior agreements relating to the subject matter of this Encroachment Agreement. This Encroachment Agreement may be modified or amended only by a written instrument duly authorized and executed by the parties.

12. The Village shall have the right, in its sole discretion, to terminate this Encroachment Agreement with ninety (90) days written notice to Grantee. Should the Village choose to exercise its option to terminate this Agreement, Grantee expressly agrees to remove the Encroachment on or before the termination date. This paragraph 12 shall survive the termination of the Encroachment Agreement as provided for herein.

IN WITNESS WHEREOF, the parties have duly executed this instrument, or have caused this instrument to be executed by their duly authorized officers, as of the date written below.

DATED this 12TH day of January, 2021.


VILLAGE OF CHATHAM


By: 
David Kimsey, Village President

Attest:

By: 
Village Clerk

OWNER:

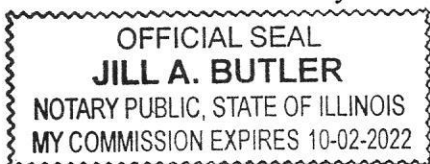

Dean Johnson


Rachalle Johnson

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Dean Johnson whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he delivered the foregoing instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of January, 2021.



Jill A. Butler
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Rachalle Johnson whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she delivered the foregoing instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of January, 2021.



Jill A. Butler
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS.

I, the undersigned, a Notary Public in and for the above County and State, HEREBY CERTIFY that Dean Johnson, as Rachelle Johnson of the VILLAGE OF CHATHAM, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed, sealed, and delivered said instrument, pursuant to authority, as the free and voluntary act of the Village of Chatham for the uses and purposes therein stated.

Given under my hand and seal, this 14th day of January, 2021.



Jill A. Butler
Notary Public

Exempt under provisions of Paragraph (e) of Section 31-45 of the Real Estate Transfer Tax Law, 35 ILCS 200/31-45.

Dated: _____

Buyer, Seller or Representative

**EXHIBIT A
PLAT OF SURVEY**

Exhibit A

