

NOV 21 2011


City Clerk

ORDINANCE NO. 2915

AN ORDINANCE TO GRANT A ZONING CODE VARIANCE TO BUDDY G. AND ERIC GILLAN FOR THE PROPOSED ACTOR'S ATTIC THEATER TO BE LOCATED ON PART OF TAX LOT 65 OUTLOTS OF THE CITY OF COLUMBIA, ILLINOIS HAVING THE ASSIGNED ADDRESS OF 318 NORTH MAIN STREET IN THE CITY OF COLUMBIA, ILLINOIS TO ALLOW A REDUCTION IN THE REAR YARD SETBACK FROM THE REQUIRED TWENTY (20) FEET TO FIFTEEN (15) FEET.

WHEREAS, Buddy G. and Eric Gillan ("Gillan"), are the owners of property having the assigned address of 318 North Main Street in the City of Columbia, Illinois (the "City") and on which lot is to be located the Actor's Attic Theater;

WHEREAS, Subsection 17.28.040(C) of the City's Zoning Code provides a rear yard of not less than twenty (20) feet shall be provided;

WHEREAS, Gillan has applied for a variance from the strict compliance of the City's Zoning Code of a twenty (20) feet rear yard setback to allow a rear yard setback of fifteen (15) feet;

WHEREAS, Section 17.08.040 of the City's Zoning Code provides and requires that all applications for variances from strict compliance with the City's Zoning Code shall be filed with the City Clerk and forwarded by the City Clerk to the City's Zoning Board of Appeals for public hearing, following publication of the required notice of hearing in a newspaper published in the City;

WHEREAS, a public hearing with regard to the Gillan zoning variance application was held before the Columbia, Illinois Zoning Board of Appeals on November 2, 2011, following the publication of the required notice of hearing in compliance with the City's Zoning Code requirement and the City's Zoning Board of Appeals has recommended that the rear yard variance be granted to Gillan;

WHEREAS, Subsection 17.08.050(A) of the City's Zoning Code provides and requires that when by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, which condition is not generally prevalent in the area, the strict application of the area regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of such property, the City Council shall be empowered to authorize on application in regard to such property, a variance from such zoning district regulation so as to relieve such difficulty or hardship;

WHEREAS, Subsection 17.08.050(C) of the City's Zoning Code provides and requires that in the City Council's consideration of all applications for Zoning Code variances, the City Council shall, before making any finding in a specific case, first

determine that the proposed change will not constitute a change, including a variation in use, in the district map and will not impair an adequate supply of light and air to adjacent property, or increase congestion in public streets or increase the danger of fire, or materially diminish, or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of the City;

WHEREAS, Subsection 17.08.050(C) of the City's Zoning Code further provides and requires that every variance granted shall be granted by ordinance and that the ordinance granting the variance shall include a written finding of fact based upon testimony and evidence, specifying the reason for granting or denying the variance and the decision of the City Council shall be made a part of any building permit for which a variance is allowed;

WHEREAS, Subsection 17.08.050(D) of the City's Zoning Code provides and requires that the concurring vote of a majority of the Mayor and the City Aldermen holding office shall be required for the granting of a variance from strict application with the City's Zoning Code where the Zoning Board has recommended approval of the granting of the variance; and,

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is necessary and appropriate that the rear yard variance requested by Gillan be granted by this Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City's City Council has found and determined and does hereby declare that the proposed variance will not constitute a change, including a variation in use, in the City's district map and will not impair an adequate supply of light and air to adjacent property, or increase congestion in public streets or increase the danger of fire, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of the City. Further, the City Council of the City has found and determined that, based upon testimony and evidence presented at the public hearing before the City's Zoning Board of Appeals, the requested Zoning Code variance should be granted based upon the following facts:

(A) The proposed reduction in the rear yard will not diminish the appearance of the property and will not adversely affect any adjoining or proximately located property or property owner.

(B) The proposed theater constitutes an exceptional topographical condition or extraordinary or exceptional situation or condition on the subject property which

condition is generally not prevalent in the neighborhood in that it is an existing building being renovated into a theater.

(C) The property owners who own property adjoining or located proximate to the subject property in the neighborhood have not formally objected to the requested variance.

(D) Requiring strict application of the requiring rear yard of twenty (20) feet in this C-2 (General Business) Zoned District in the City for the applicants would result in a peculiar and exceptional practical difficulty for them and would create exceptional and undue hardship for them and the community; whereas the proposed fifteen (15) feet rear yard for an addition to an existing building to match the rear wall of the existing structure will allow a continuous wall without any offsets, and that hardship should be avoided by the granting of the requested variance.

Section 3. The rear yard setback variance herein requested (providing a fifteen (15) feet in lieu of twenty (20) feet) is hereby granted.

Section 4. The City's Building Inspector is directed to attach a copy of this Ordinance to the building permit to be issued to Gillan, or their successors or assigns, in connection with the authorization to establish a theater on Part of Tax Lot 65 Outlots of the City of Columbia, Illinois having the assigned address of 318 North Main Street, in the City of Columbia, Illinois in accordance with the requirements of Subsection 17.08.050(C) of the City's Zoning Code.

Section 5. This Ordinance shall be in full force and effect from and after its passage.

Alderman Mathews moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Piazza, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Roessler, Huch, Mathews, Piazza, Reis
and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 21st day of November, 2011.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)