


JAN 07 2008

**ORDINANCE NO. 2623**

  
City Clerk

**AN ORDINANCE TO GRANT A ZONING CODE REAR YARD SETBACK VARIANCE TO DOLORES J. BOVINETTE FOR HER HOMESTEAD REAL ESTATE HAVING THE ASSIGNED ADDRESS OF 226 WENKEL STREET, COLUMBIA, ILLINOIS AND WHICH PROPERTY IS LOCATED IN AN R-6 (ONE-FAMILY DWELLING ZONED DISTRICT) IN THE CITY**

WHEREAS, Dolores J. Bovinette ("Bovinette" or "Applicant") is the owner of property having the assigned address of 226 Wenkel Street in the City of Columbia, Illinois (the "City") and which property is located in an R-6 (One-Family Dwelling Zoned District) in the City;

WHEREAS, Subsection 17.22.050 of the City's Zoning Code provides and requires that each lot upon which a building or structure is constructed in an R-6 (One-Family Dwelling Zoned District) in the City, shall have a rear yard of not less than thirty (30) feet or twenty percent (20%) of the depth of the lot, whichever amount is larger, but the rear yard need not exceed forty-five (45) feet;

WHEREAS, the Applicant has applied for a variance from strict compliance with said rear yard setback requirement of the City's Zoning Code to allow for construction and installation of a room addition and deck for her residence and which home additions will encroach sixteen feet (16') into the rear yard of their homestead real estate lot at the address aforesaid;

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 company's zoning variance application was held before the Columbia, Illinois Zoning Board of Appeals on November 28, 2007, 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 requested rear yard setback variance be granted to Bovinette;

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 setback variance requested by Bovinette 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 construction will enhance the appearance of the property and will not adversely affect any adjoining or proximately located property or property

owner and the record of proceedings before the Columbia Zoning Board of Appeals indicates:

(i) The rear of the house on the subject real estate lot at 226 Wenkel Street in the City is located approximately 150 feet measured at right angles from the closest home located behind said house and approximately 133 feet measured at right angles from the rear lot line of the said lot located behind the subject lot; and,

(ii) There is a wooded ravine located behind the rear yard of the subject property that separates the houses aforesaid and obscures the view of said homes.

(B) The residence location 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 located adjacent to a wooded ravine and there is a significant lateral separation distance between the subject dwelling house as proposed to be improved and the closest exterior wall of the dwelling behind said residence which separation is occupied by an incline and the ravine aforesaid.

(C) Requiring strict application of the rear yard setback requirement in this R-6 (One-Family Dwelling Zoned District) in the City for the applicant who reasonably needs to make the residence improvements aforesaid on their lot to adapt the home to provide for invalid care and maintenance, would result in a peculiar and exceptional practical difficulty for her and would create exceptional and undue hardship for her and which hardship should be avoided by the granting of the requested variance.

**Section 3.** The rear yard setback variance herein (comprising approximately a sixteen foot [16'] rear yard setback encroachment) is hereby granted. The City's Building Inspector is directed to attach a copy of this Ordinance to the building permit to be issued to Bovinette in connection with the authorization to construct and install the room addition and deck for the Bovinette residence in the rear yard of the property located at 226 Wenkel Street, Columbia, Illinois in accordance with the requirements of Subsection 17.08.050(C) of the City's Zoning Code.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, as provided by law.

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

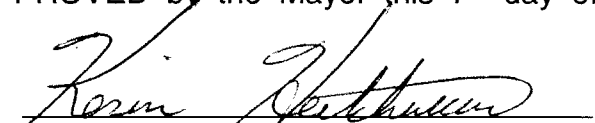
YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberkfell, Stumpf  
and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 7<sup>th</sup> day of January, 2008.

  
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KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
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WESLEY J. HOEFFKEN, City Clerk

(SEAL)