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DENNIS KNOBLOCH  
MONROE COUNTY RECORDER  
WATERLOO, IL  
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**ORDINANCE NO. 3319**

**AN ORDINANCE TO GRANT ZONING CODE VARIANCES TO BART BERNEKING AND BRAD EATON FROM CHAPTER 17.44 OFF-STREET PARKING AND LOADING, SECTION 17.44.020(F)(7) "ADDITIONAL PARKING REGULATIONS" AND SECTION 17.44.050(B)(1) "DESIGN AND SCHEDULE OF OFF-STREET LOADING AND UNLOADING SPACE" FOR THE PROPERTY HAVING THE ASSIGNED TAX IDENTIFICATION NUMBER 04-17-481-026-000 IN THE CITY OF COLUMBIA, ILLINOIS TO CONSTRUCT A RESTAURANT, DRIVE-THRU TYPE**

WHEREAS, C & S Associates (the "owner") is the owner of the property having the assigned Tax Identification Number 04-17-481-026-000, and zoning classification C-2 General Business District, in the City of Columbia, Illinois (the "City"), ;

WHEREAS, Bart Berneking and Brad Eaton (the "applicants") have requested to construct a restaurant, drive-thru type, located on the owners property,

WHEREAS, Subsection 17.44.020(F)(7) "Additional regulations-Parking" of the City's Zoning Code provides and requires "C-2 District Only, Except in the C-2 general business district where parking spaces shall be set back three feet from any property line abutting a public right-of-way, and parking spaces when established on a zoning lot adjacent to a residential use shall be set back three feet from that established property line";

WHEREAS, Subsection 17.44.050(B)(1) "Design and schedule of off-street loading and unloading space" of the City's Zoning Code provides and requires "Retail businesses and service establishments shall provide: one off-street loading and unloading space at least twelve (12) feet by thirty-five (35) feet for every three thousand (3,000) square feet of total floor area";

WHEREAS, the applicants have applied for variances from strict compliance with said requirements of the City's Zoning Code to allow for the construction of a restaurant, drive-thru type consisting of a parking facility that encroaches into the required three (3) foot minimum setback from a public right-of-way and does not provide the required one (1) off-street loading and unloading space;

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 applicant's zoning variance applications was held before the Columbia, Illinois Zoning Board of Appeals on March 22, 2017, 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 variances be granted to the applicant;

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;

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is necessary and appropriate that the variances requested by the applicants 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 Council of the City of Columbia has found and determined and does hereby declare that the proposed variances 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 variances should be granted based upon the following facts:

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

(B) The property does constitute as an exceptional topographical condition or extraordinary or exceptional situation or condition on the subject property which condition is generally not prevalent in the neighborhood as the parcel is an irregular shaped lot and is significantly encumbered with an existing one hundred (100) foot utility easement, a situation that does not allow the construction to comply with the City's Zoning Code without the said variances.

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

(D) Requiring strict application from the required three (3) foot minimum setback from a public-right-way for a parking facility and the required one designated loading and unloading berth for a service establishment under 3,000 square feet in this C-2 (General Business) Zoned District in the City for the applicant 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 construction of the facilities on the subject property will allow the establishment to be located and sized to serve the needs of the owner and the community and; that hardship should be avoided by the granting of the requested variance.

**Section 3.** The variances from Subsection 17.44.020(F)(7) and 17.44.050(B)(1) of the City's Zoning Code to allow a parking facility be located within three (3) foot of the public right-of-way along the Northwest property line adjacent to Admiral Parkway (IL Route 3) and allow a service establishment of less than three thousand (3,000) square feet not provide a designated off-street loading and unloading berth is hereby granted.

**Section 4.** The Applicants must satisfy the requirements and obtain a special use certificate established in Ordinance 3318 Section 2 subparagraph (C) item (a).

**Section 5.** The City's Building Inspector is directed to attach a copy of this Ordinance to the building permit to be issued to the applicant in connection with the authorization to construct a restaurant drive-thru type for the property having the assigned Tax Identification Number 04-17-481-026-000, in the City of Columbia, Illinois in accordance with the requirements of Subsection 17.08.050(C) of the City's Zoning Code once Section 4 of this ordinance has been done, performed and satisfied by the applicants

**Section 6.** This Ordinance shall be in full force and effect from and after its passage.

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

YEAS: Aldermen Ebersohl, Agne, Niemietz, Roessler, Reis, Holtkamp and Martens.


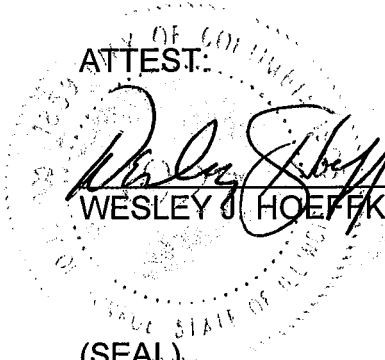
NAYS: None.

ABSENT: Alderman Huch.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 17<sup>th</sup>, day of April, 2017.

  
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KEVIN B. HUTCHINSON, Mayor

ATTEST:  
  
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WESLEY J. HOEFFKEN, City Clerk  
  
(SEAL)