

ORDINANCE NO. 2796

JUL 19 2010

**AN ORDINANCE TO GRANT A ZONING CODE FRONT
YARD SETBACK VARIANCE TO CHRISTOPHER A.
KALBFLEISCH AND MELISSA B. KALBFLEISCH, FOR
THEIR COMMERCIAL ZONED REAL ESTATE, BEING
LOT NO. 2 OF THE QUALITY COLLISION BUSINESS
PARK SUBDIVISION IN THE CITY OF COLUMBIA,
ILLINOIS AND WHICH PROPERTY IS LOCATED IN A C-3
(HIGHWAY BUSINESS ZONED DISTRICT) IN SAID CITY**

J. Ronald Colyer
City Clerk

WHEREAS, Christopher A. Kalbfleisch and Melissa B. Kalbfleisch, his wife, (jointly hereinafter jointly referred to as "Kalbfleisch") are the owners of commercial zoned property, being Lot No. 2 of the Quality Collision Business Park Subdivision (the "Subdivision") in the City of Columbia, Illinois (the "City"); and which property is located in an C-3 (Highway Business Zoned District) in the City;

WHEREAS, Subsection 17.30.060 of the City's Zoning Code provides and requires that each lot upon which a building or structure is constructed in a C-3 (Highway Business Zoned District) in the City, shall have a front yard of not less than fifty (50) feet within which no building or structure shall be erected or enlarged;

WHEREAS, Kalbfleisch has applied for a variance from strict compliance with said front yard setback requirement of the City's Zoning Code for said lot No. 2 of the Subdivision to allow for the future construction and installation of a building on said lot which lot is platted as a building lot but which would not be a buildable lot in the subdivision due to flood plain restrictions and utility installations that serve the Southwoods Subdivision and the Quality Collision Business Park Subdivision unless the building would be allowed to be located within five (5) feet of the front lot line and to encroach forty five (45) feet into the fifty (50) foot zoning ordinance required front yard setback;

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 July 7, 2010, 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 front yard setback variance be granted to Kalbfleisch;

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 shall be required for the granting of a variance from strict application with the City's Zoning Code; and,

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is necessary and appropriate that the front yard setback variance requested by Kalbfleisch 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 City's sanitary sewer line as well as an AmerenIP (formally known as Illinois Power Company) electric transmission line and other utility installations that serve the Southwoods Subdivision as well as the Quality Collision Business Park Subdivision in the City are located and installed in a fifteen foot (15') wide easement which dissects the subject lot from the front lot line through the rear lot line rendering approximately the most northerly one third (1/3rd) of the Lot unusable for locating a building on the lot.
- (B) Approximately the most southerly one third of the lot is in the flood plain for Wilson Creek as that flood plain is defined by the currently effective flood insurance rate maps approved by the Federal Emergency Management Agency (FEMA) and therefore also is unusable for placement of a building on the lot at that location.
- (C) The lot which is platted as a building lot is of an unusual and unconventional shape, being generally in the shape of a triangle, which also renders it difficult to place a commercial building on for the commercial development of the lot in this C-3 (Highway Business Zoned District) in the City.
- (D) Realistically the only area available for the placement of a commercial building on the lot is the area located between the utility easement aforesaid and the flood plain aforesaid so that if the front yard set back line is not reduced from fifty feet (50') to five feet (5') as requested by Kalbfleisch the lot will not reasonably be usable as the building lot for which it was platted.
- (E) Requiring strict application of the fifty (50) foot front yard setback requirement in this C-3 (Highway Business Zoned District) in the City for Kalbfleisch who reasonably need to allow the lot to be developed as a commercial zoned building lot in the City, would result in a peculiar and exceptional practical difficulty for Kalbfleisch and would create exceptional and undue hardship for Kalbfleisch, which hardship should be avoided by the granting of the requested variance.

Section 3. The City's Building Inspector is directed to attach a copy of this Ordinance to the building permit to be issued to lot owner in connection with the authorization to construct and install a commercial building on the subject Lot No. 2 of the Quality Collision Business Park Subdivision in the City, 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 Ebersohl, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Row, Hejna, Oberfell, Stumpf,

Roessler and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

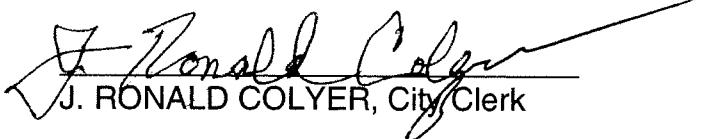
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 19th day of July, 2010.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)