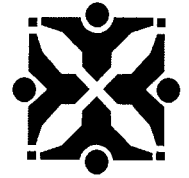


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: R 25-15

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: 2/2/2015

Re: Accepting a Declaration of an Equitable Servitude from Jennifer Building, LLC regarding Property Located at 217 N. Ninth Street

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Approves acceptance of a Declaration of an Equitable Servitude to ensure that appropriate fire-rating protection is provided between private property at 217 N. Ninth Street and City-owned property at 805 E. Ash Street.

Discussion

The owner of 217 N. Ninth Street wishes to remodel the existing building on that property, including adding windows to the south side of the building. That property sits on a zero-lot line with City-owned property at 805 E. Ash Street, which is currently being used as a surface parking lot. Because of the zero lot line, the Building Code does not allow window openings on the south side of the building to maintain fire rating. However, the adjacent parking lot necessitates no fire rating protection at this time.

This Declaration of an Equitable Servitude will allow the owner to install windows on the south side of the building as desired, but ensure that in the event the City desires at some time in the future to build a structure on 805 E. Ash Street, the owner of 217 N. Ninth Street will be required to remove or remodel the south side of the building to provide the appropriate fire-rating protection as required in the Building Code. The equitable servitude requires the City to provide a one-year notice to the owner of 217 N. Ninth Street that the City intends to construct a structure at 805 E. Ash Street, which would require alteration of the windows. If the owner of 217 N. Ninth Street fails to fire-proof the windows within such period, the authority is granted to the City to enter onto the private property and construct the fireproofing at the expense of the property owner. This form is used to provide for appropriate recording of the commitment in the land records of the Boone County Recorder to ensure that the servitude is binding on not only the current property owner, but all future property owners of 217 N. Ninth Street.

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Fiscal Impact

Short-Term Impact: None.

Long-Term Impact: In the event the City desires to construct a structure at 805 E. Ash Street, this servitude should save the City an unknown amount of money by ensuring a binding means to provide appropriate fire-rated protection between any City structure and the building at 217 N. Ninth Street.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Community Facilities and Services, Downtown

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Adoption of the resolution approving acceptance of servitude.

Legislative History

Not applicable.


Department Approved


City Manager Approved

Introduced by _____ Council Bill No. R 25-15

A RESOLUTION

authorizing a Declaration of an Equitable Servitude with Jennifer Building, LLC to guarantee that appropriate fire-rating protection is provided between private property located at 217 N. Ninth Street and City-owned property located at 805 E. Ash Street.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a Declaration of an Equitable Servitude with Jennifer Building, LLC to guarantee that appropriate fire-rating protection is provided between private property located at 217 N. Ninth Street and City-owned property located at 805 E. Ash Street. The form and content of the declaration shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof.

ADOPTED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

DECLARATION OF AN EQUITABLE SERVITUDE

This Declaration, made on the ____ day of _____, 2015, by Jennifer Building, LLC (**"Grantor"**) conveys an equitable servitude to the City of Columbia, Missouri, (**"Grantee"**). Grantor's mailing address is 217 North Ninth Street, Columbia, Missouri 65201. Grantee's mailing address is 701 E Broadway, Columbia, Missouri 65201.

Witnesseth:

WHEREAS, Grantor has purchased real property located at 217-219 North Ninth Street, Columbia Missouri, more precisely described as;

The south forty-seven and one-half (47 1/2) feet of Lot Number Three hundred fifty-eight (358) and the south forty-seven and one-half (47 1/2) feet of the east twelve and one-half (12 1/2) feet of Lot Number Three hundred fifty-nine (359) in the Original Town, now City of Columbia, Missouri; and

WHEREAS, Grantor wishes to beautify and remodel both the interior and exterior of the two-story brick building located at 217-219 N. Ninth Street. The south wall is currently an unbroken brick wall without any architectural features which may be appreciated in the photo inset in *Figure 1*; and



Figure 1 - Looking north toward the existing south-facing wall of the building at 217-219 N 9th Street, Columbia Missouri

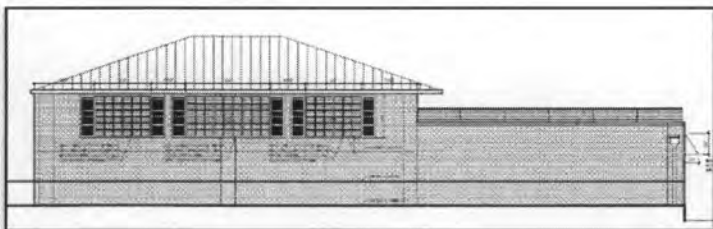


Figure 2 - Showing planned improvements including windows and shutters which Grantor seeks to install in the south-facing wall of 217-219 N. 9th Street

WHEREAS, Grantor's remodeling plan includes installing windows on the south facing outside wall of the building which may be appreciated in the drawing insert in *Figure 2*; and

WHEREAS, the property directly to the south of Grantor's property is owned by Grantee, which, for the benefit of the public, operates a surface parking lot ("Surface Lot") there to which it sells parking spaces to the public. Grantee's property more precisely described as;

All of Lot Number Three hundred forty-five (345), Lot Number Three hundred forty-four (344), and the east forty (40) feet of Lot Number Three hundred forty-three (343), together with the vacated fifteen (15) foot alley abutting the above described lots and running from Eighth Street to Ninth Street, all situate in the Original Town, now City, of Columbia, Boone County, Missouri;

WHEREAS, this Surface Lot is presently an "unoccupied space" under International Building Code 705.8.1(1.2) (2012); and

WHEREAS, Grantor's property and the Surface Lot are currently zoned C-2 and have a zero lot line setback for purposes of construction of improvement; and

WHEREAS, Grantee may someday construct a structure on the Surface Lot up to the South property line of Grantor's property; and

WHEREAS, the south wall of Grantor's building is located on or within three (3) feet of the north property line which adjoins the Surface Lot; and

WHEREAS, due to the location of Grantor's building and the zero lot line setback on the Surface Lot owned by Grantee, Grantor is prohibited from installing windows or other improvements which do not meet a fire-rating protection level for a zero lot line setback; and

WHEREAS, in the event that Grantee constructs a structure on the Surface Lot property up to the property line, the lot would no longer be an "unoccupied space" under International Building Code 705.8.1(1.2)(2012); and

WHEREAS, the City of Columbia, recognizing that in the eventuality that a structure is built on the Surface Lot using the zero lot line setback, then any openings on the south wall of Grantor's property that are within three (3) feet of the structure erected on Grantee's property must be modified to adequately protect the property and inhabitants of Grantor's and Grantee's property as required by City code; and

WHEREAS, City has no immediate plan to construct a structure on the Surface Lot and is willing to consent to architectural improvements by Grantor to the south wall of the building on Grantor's property under the express condition Grantor will remove and replace the same upon notice from Grantee so provided herein.

NOW, THEREFORE in consideration of permission granted by the City of Columbia allowing Grantor the right to install on the south side of the building located on Grantor's property the same classification of window City Code allows to be installed on the Ninth Street face of Grantor's building, Grantor, with all good faith and fair dealing agrees upon notification by Grantee as provided herein to upgrade, replace, augment or otherwise ensure the window openings on the

south side of the building are modified to meet the fire-rating protection level called for by the applicable City Code in effect at the time of notification.

Touches and Concerns the Land: Grantor, for itself, and for its successors and assigns, and for its future grantees, declares that Grantor is hereby restricted in the manner herein set forth and that this equitable servitudes touches and concerns the land.

Written Notice: Grantor agrees to bring the windows on the south side of the building into compliance within 365 days of Grantor's receipt of written notice from Grantee that it, or its agents, desire to construct a structure of the type and proximity necessitating action on the part of the Grantor to upgrade, replace, augment or otherwise modify the windows installed on the south side of Grantor's building. Written notice shall be deemed received upon personal service on Grantor or three (3) days after such notice is placed in the mail addressed to the address of the building at 217 N. Ninth Street, Columbia, MO 65201.

Method of Compliance: Grantor agrees to come into compliance by selecting any reasonable manner allowed by law under the applicable building codes in effect at the time of construction, provided any method of compliance which is not expressly allowed by applicable City Code shall only be utilized after approval of alternative equivalent construction by the applicable board, commission, or other authorized body of the City, or by other equivalent lawful process.

Non-Compliance: In the event Grantor fails to bring its building into compliance as provided herein after notice from the Grantee, Grantee shall have the right to enter the premises described herein to perform or have performed such work to bring the building into compliance, but not before Grantee provides an additional sixty (60) days' notice of entry to Grantor, during which Grantor shall have the opportunity to cure such non-compliance. In the event Grantee performs work to bring the building into compliance, Grantor shall allow Grantee to place a special tax bill upon the property, or any other lawful lien or encumbrance, to recover all costs expended by Grantee to bring the building into compliance. Nothing herein shall limit Grantee's ability to pursue and be granted any other remedy available in law or equity. In the event Grantee is required to seek legal recourse to enforce the terms and conditions of this servitude, Grantor shall reimburse Grantee for its costs and attorney fees.

Taking Effect: This equitable servitude becomes binding upon both parties once filed with the Recorder of Deeds of Boone County, Missouri.

Termination of the Servitude: Grantor grants the City of Columbia a protectable property interest, by this equitable servitude, which cannot be terminated unless the City of Columbia voluntarily consents in writing by duly authorized action of the City Council to the termination.

Severability: Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Jennifer Building LLC has caused this Declaration to be duly executed the day and year first written above.

JENNIFER BUILDING, LLC

By: _____ Date: _____
Jennifer Bukowsky, Manager

STATE OF MISSOURI)
)
COUNTY OF BOONE)

Subscribed and sworn before me on this _____ day of _____, 2015 by Jennifer Bukowsky, known to me to be the Manager of Jennifer Building, LLC, whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ACCEPTED BY:

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheila Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor