



# Variance Application

Louisville Metro Planning & Design Services

Case No.: 21-VARIANCE-0142 Intake Staff: M  
Date: 9-20-21 Fee: \$ 760

Applications are due on Mondays at 2:00 p.m. in order to be processed that week. Once complete, please bring the application and supporting documentation to: Planning and Design Services, located at 444 South 5<sup>th</sup> Street, Suite 300. For more information, call (502) 574-6230 or visit <http://www.louisvilleky.gov/PlanningDesign>.

### Project Information:

This is a variance from Section Table 5.3.1 of the Land Development Code, to allow the shared access road to encroach into the required yard setback.

Primary Project Address: 3323 Freys Hill Rd.

Additional Address(es): 3325 Freys Hill Rd

Primary Parcel ID: 001301560000

Additional Parcel ID(s): 001300260000

Proposed Use: Multi-Family Residential Existing Use: Vacant/Utility Facility

Existing Zoning District: R-4 Existing Form District: N

Deed Book(s) / Page Numbers<sup>2</sup>: 4579/520 4492/309

The subject property contains 15.22 acres. Number of Adjoining Property Owners: \_\_\_\_\_

Has the property been the subject of a previous development proposal (e.g., rezoning, variance, appeal, conditional use permit, minor plat, etc.)? *This information can be found in the Land Development Report (Related Cases)*<sup>1</sup>  Yes  No

If yes, please list the docket/case numbers:

Docket/Case #: 21-ZONEPA-0062 Docket/Case #: \_\_\_\_\_

Docket/Case #: \_\_\_\_\_ Docket/Case #: \_\_\_\_\_

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**Contact Information:**

**Owner:**  Check if primary contact

**Applicant:**  Check if primary contact

Name: Robert W. Marshall, Jr.

Name: Michael Gross

Company: The Deerfield Company, Inc.

Company: LDG Multifamily, LLC

Address: PO Box 7086

Address: 1469 S. 4th Street

City: Louisville State: KY Zip: 40257

City: Louisville State: KY Zip: 40208

Primary Phone: 502-897-5214

Primary Phone: 502-638-0534

Alternate Phone: 502-468-7591

Alternate Phone: \_\_\_\_\_

Email: abxmrc@bellsouth.net

Email: mgross@ldgdevelopment.com

**Owner Signature (required):** \_\_\_\_\_

DocuSigned by:  
Robert Marshall, Jr  
37AF025C05C5405...

**Attorney:**  Check if primary contact

**Plan prepared by:**  Check if primary contact

Name: Clifford H. Ashburner

Name: Kelli Jones

Company: Dinsmore & Shohl LLP

Company: Saback Wilson & Lingo Inc.

Address: 101 S. Fifth St. Ste. 2500

Address: 608 S. 3rd. Street

City: Louisville State: KY Zip: 40202

City: Louisville State: KY Zip: 40202

Primary Phone: 502-540-2300

Primary Phone: 502-584-6271

Alternate Phone: \_\_\_\_\_

Alternate Phone: \_\_\_\_\_

Email: Clifford.ashburner@dinsmore.com

Email: Kelli.jones@swllnc.com

**Certification Statement:** A certification statement **must be submitted** with any application in which the owner(s) of the subject property is (are) a limited liability company, corporation, partnership, association, trustee, etc., or if someone other than the owner(s) of record sign(s) the application.

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_, hereby  
*representative/authorized agent/other*

certify that \_\_\_\_\_ is (are) the owner(s) of the property which  
*name of LLC / corporation / partnership / association / etc.*

is the subject of this application and that I am authorized to sign this application on behalf of the owner(s).

Signature: Robert Marshall, Jr Date: \_\_\_\_\_

I understand that knowingly providing false information on this application may result in any action taken hereon being declared null and void. I further understand that pursuant to KRS 523.010, et seq. knowingly making a material false statement, or otherwise providing false information with the intent to mislead a public servant in the performance of his/her duty is punishable as a Class B misdemeanor.

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**Variance Justification:**

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Explain how the variance will not adversely affect the public health, safety or welfare.

2. Explain how the variance will not alter the essential character of the general vicinity.

3. Explain how the variance will not cause a hazard or a nuisance to the public.

4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

*Additional consideration:*

1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).

2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

3. Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?

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**Please submit the completed application along with the following items:**

**Project application and description**

- Land Development Report<sup>1</sup>
- A copy of the current recorded deed<sup>2</sup> (*must show "End of Document" stamp on last page*)
- Legal description on a separate 8.5 x 11" sheet of paper

**Site plan, drawings, and photographs**

- One elevation drawing for new construction (including home additions, garage additions, and fences)
- Six copies of the site plan or building rendering (whichever is applicable), including the following elements. LOJIC maps are not acceptable. *See site plan example on the last page.*
  - Plan drawn to a reasonable scale [engineer's scale (1" = 20') or architect's scale (1/8" = 1')]
  - Vicinity map that shows the distance from the property to the nearest intersecting street
  - North arrow
  - Street name(s) abutting the site
  - Property address, parcel ID, and dimensions
  - Building limit lines
  - Electric, telephone, drainage easements with dimensions
  - Existing and proposed structures with dimensions and distance from property lines
  - Highlight (in yellow) the location of the variances

**Supplemental documentation**

- A copy of Refusal Letter from citing official, if applicable (**required** if a STOP WORK ORDER or CITATION has been received)
- If the proposed structure encroaches into an easement (MSD, LG&E, or Bell South), then the applicant must submit written documentation from the utility company indicating approval for the encroachment

**Mailing labels to notify Adjoining Property Owners (APOs)<sup>3</sup>**

- One set of legible mailing label sheets for: 1<sup>st</sup> tier APOs and those listed on the application
- One copy of the APO mailing label sheets

**Requirements for Non-Public Hearing Applications Only**

*Eligible cases are heard in the Business Session of Board of Zoning Adjustments (BOZA) meetings. All APOs must sign the attached Non-hearing affidavit indicating consent for the variance, as comments from the general public are not taken during this process.*

- Non-Hearing Affidavit form (see pages 5-6)
- Photographs of the subject area from all angles

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**Fee (cash, charge or check made payable to Planning & Design Services)**

- Application Fee: **\$100** for Single-Family Uses  
**\$300** for churches, parish halls, temples, schools and institutions of learning (except colleges, universities, trade, business or industrial schools), not-for-profit uses, and clubs, private non-profit  
**\$700** for All Other Uses
- Clerk's Fee: **\$60**  
*(If two or more applications are submitted simultaneously for the same site, only one clerk's fee is required)*

**NON-PUBLIC HEARING VARIANCE AFFIDAVIT FOR THE SUBJECT PROPERTY OWNER(S): Part 1**

Qualifications for a Non-Public Hearing include:

1. The Board of Zoning Adjustment may approve the following variances without a public hearing:
  - a. Side yard and rear yard variances to permit a detached garage which is accessory to a single-family residential use or any addition to a principal single-family structure;
  - b. Variances to permit a garage or building addition to cover more than 30% of the rear yard on property used for detached single-family residential use; (note, this provision applies to principle structures in the Neighborhood Form District (NFD) only. Accessory structures in the NFD can encroach up to 50% and cumulative encroachment of accessory and principal structures shall not exceed 50%. TNFD does not permit any encroachment into a rear yard.)
  - c. Variances to permit any building to be closer than the required minimum distance to another building on the same lot;
  - d. Variances to allow a reduction in the private yard area in the Traditional Neighborhood Form District;
  - e. Variances to allow the accessory structure/use area to exceed the maximum depth in the Traditional Neighborhood Form District.
  - f. A departure from a dimensional requirement of the Land Development Code of 10% or less.
2. All adjoining property owners must sign this affidavit. This includes all owners listed on the deed.
3. For each adjoining property that is held by a company, corporation, trust, etc. there must be a Certification Statement included with the affidavit.
4. All supporting documentation listed in the checklist must be included with the application.

Date: \_\_\_\_\_

I (We), \_\_\_\_\_, owner(s) of the subject property under Case # \_\_\_\_\_

states as follows: It is hereby requested that the application for variance under Case # \_\_\_\_\_ be considered by the Board in open executive session without holding a public hearing on the proposal.

The signatures of all adjoining property owners required by the Board of Zoning Adjustment's bylaws have been submitted to the Board so that the variance may be acted upon without a public hearing.

Print Name: \_\_\_\_\_ Signature of Owner: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature of Owner: \_\_\_\_\_

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**NON-PUBLIC HEARING VARIANCE AFFIDAVIT FOR THE SUBJECT PROPERTY OWNER(S): Part 2**

Date: \_\_\_\_\_

We have seen a drawing of the proposed (e.g. garage, addition) \_\_\_\_\_  
to be constructed at (address) \_\_\_\_\_.

As owners of the property adjacent to the above address, we give our consent and do not object to the planned construction or to the variance that will be required.

**Please note:** *If the property is in joint ownership, all owners must sign or an authorized person must sign (authorized persons must also complete the certification statement). If there is a POA, the property owner is deceased or there are extenuating circumstances, please indicate on the signature line. For additional signatures, use additional copies of the affidavit form.*

1. Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

2. Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

3. Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

4. Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Signature: \_\_\_\_\_

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**Certification Statement:** A certification statement **must be submitted** with any application in which the owner(s) of the subject property is (are) a limited liability company, corporation, partnership, association, trustee, etc., or if someone other than the owner(s) of record sign(s) the application.

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_, hereby  
*representative/authorized agent/other*

certify that \_\_\_\_\_ is (are) the owner(s) of the property which  
*name of LLC / corporation / partnership / association / etc.*

is the subject of this application and that I am authorized to sign this application on behalf of the owner(s).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I understand that knowingly providing false information on this application may result in any action taken hereon being declared null and void. I further understand that pursuant to KRS 523.010, et seq. knowingly making a material false statement, or otherwise providing false information with the intent to mislead a public servant in the performance of his/her duty is punishable as a Class B misdemeanor.

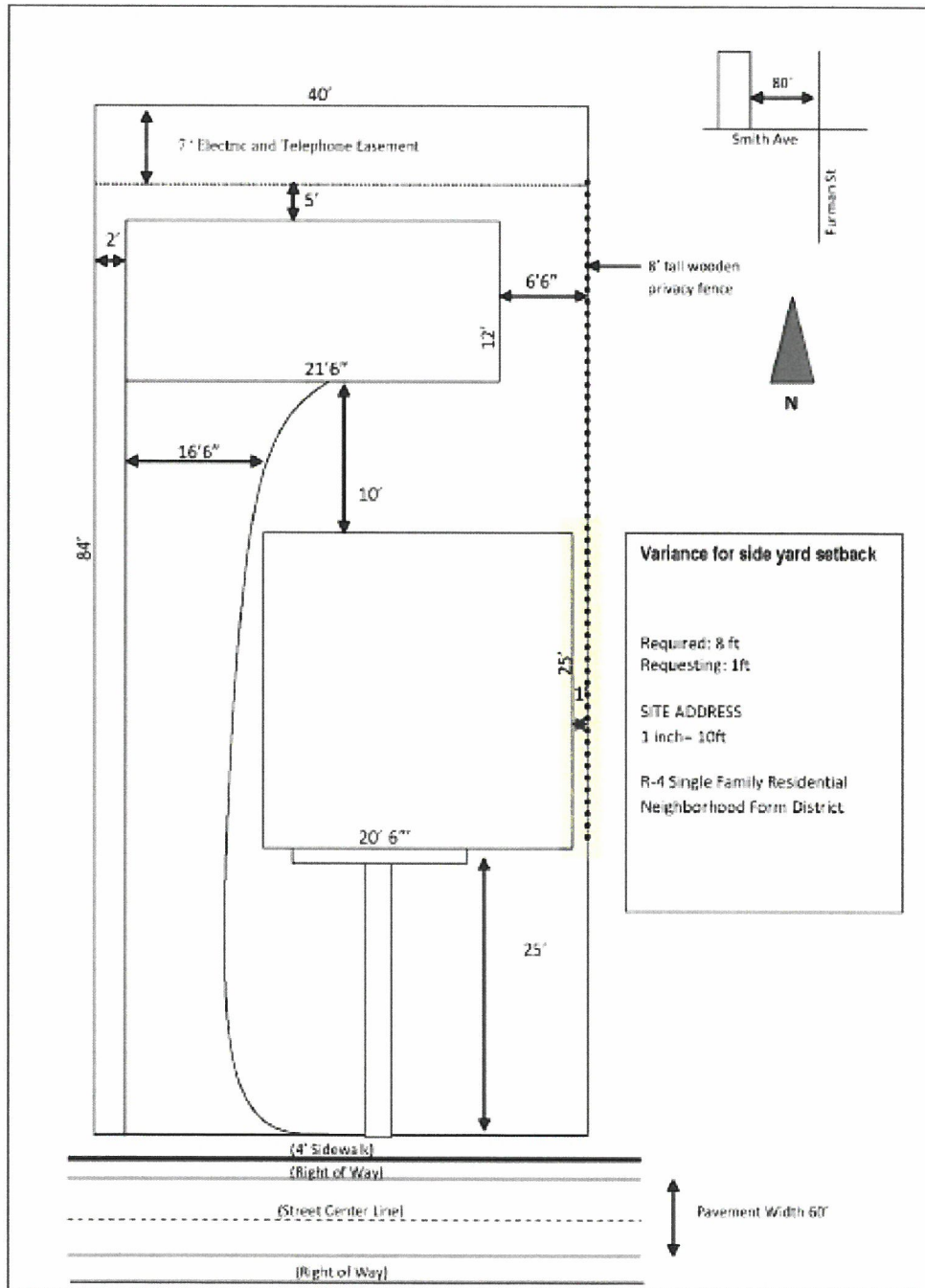
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**Resources:**

1. Land Development Reports can be obtained online by entering the site address at: <https://www.lojic.org/lojic-online>
2. Deeds and plats can be found at the Jefferson County Clerk's Office, located at the 2<sup>nd</sup> floor of Metro Hall (527 West Jefferson Street, telephone: 502-574-6220). Many deeds, plats and other records are available online at: <https://search.jeffersondeeds.com>
3. Adjoining property ownership information can be found at the Property Valuation Administrator (PVA) office at 531 Court Place, Suite 504 or via their website: <https://jeffersonpva.ky.gov/property-search>

Sample site plan is for example purposes only and not drawn to scale



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## VARIANCE JUSTIFICATION STATEMENT

**LDG Multifamily, LLC**

**3323 and 3325 Frey's Hill Road**

The proposed variance, which will permit the applicant to encroach into the 15 feet street side yard setback with a shared access road, will not adversely affect the public health, safety or welfare. The applicant proposes to develop this vacant property into apartments but the property is burdened/benefitted by an easement that also provides access to the adjacent commercial property. The encroachment will not result in any impact along Frey's Hill Rd. or to any adjacent structures.

The variance will not alter the essential character of the general vicinity. The shared access road already exists and will not be altered. The encroachment of the shared access road should have no impact on the character of the area.

The variance will not cause a hazard or nuisance to the public for the reasons stated above and because the encroachment is a shared access road. This road will be shared with the adjacent commercial properties following along the rear of each property which will not disturb the public right of way.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The zoning regulations concerning setbacks are meant to address the location of structures and parking adjacent to right of way to which the property has access or similarly situated lots and structures. Here, the side yard setback is being encroached into by a shared access road on property owned by the applicant, and for which the adjoining property owners have approved.

The variance arises from special circumstances that do not generally apply to land in the vicinity of the project. As stated above, the zoning regulations concerning setbacks are meant to address the location of structures and parking adjacent to right of way to which the property has access or similarly situated lots and structures. Here, the side yard setback is being encroached into by a shared access road in between the properties.

The strict application of the regulations would create an unnecessary hardship because the full 15' setback would require the applicant to limit the use of its property adjacent to the shared access.

The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the Land Development Code but are, instead, the result of the misapplication of the side yard setback requirements to a shared access road between the properties, for which the

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owners of the adjacent have approved. The variance will allow the applicant to improve access to the development for residents, visitors, employees, and the public.

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