

## VARIANCE JUSTIFICATION

This site is in the Traditional Marketplace Corridor Form District, with a Form District Transition Zone for the Traditional Neighborhood Form District across the alley. It is also in the Bardstown Road Overlay District. Wild & Woolly Video is located north west of the site. KFC11 is located across Bardstown Road, south west of the site. There is a commercial building with residential above to the south east of the site with a residential structure to the rear, and there is residential to the north east of the site across the alley. All surrounding properties are zoned C-2 with the exception of the residential parcels across the alley which are zoned R-6 and R-5B.

This site was the former Miracle Dry Cleaners that has been demolished. Due to contamination from the former use, this site is considered a Brownfield. The applicant has an approved Property Management Plan in place through the Kentucky Department of Environmental Protection's Brownfield Redevelopment Program and has been cleared to redevelop this site.

The applicant proposes a 5,908 SF, two story restaurant for this site with an ingress-only curb cut along Bardstown Road which will lead to parking in the rear of the building. The parking will also have ingress and egress from the alley. This proposed curb cut will take the place of pull-in parking that previously lined the street front, making it safer for both vehicular and pedestrian traffic. The visual impact of this curb cut on Bardstown Road will be greatly diminished by a proposed 1,129 SF second story patio area that will provide outdoor seating for the restaurant. This patio will also help to continue the street "wall" that is so important to the character of the Bardstown Road corridor.

The applicant is requesting a Variance from LDC Chapter 5 as follows:

**A Variance of LDC Chapter 5.2.3.D.3.b to allow the raised seating area to encroach just over 1' into the required 6' side yard adjacent to the structures to the south east.**

Per LDC 5.2.3.D.3.b, a 6' side yard is required when adjacent buildings have windows facing the site. There are no windows or doors facing the site on the Wild & Woolly Video building, therefore the proposed structure will be built directly adjacent to this building. Both of the buildings to the southeast have doors and windows facing the site. They are set back at least 3.5' from the property line with a sidewalk that provides access to the doors. The raised patio area will encroach just over 1' into the required side yard, but a separation of at least 8' will be maintained between the existing buildings and the proposed patio, so this variance will have no effect on the ability of the adjacent properties to use their doors or windows, thereby meeting the intent of the regulation.

With regard to the Variance Justification, please note the following:

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

This variance is located along the side property line between two buildings. The adjacent buildings are set back 3.5 feet from the property line and a minimum separation of 8' will be maintained between structures. At no point does this variance affect the ability of the adjoining property owners to use their doors or windows. The required screening material will be provided in the required VUA buffer to create a separation between the existing sidewalk on the adjacent property and the proposed drive lane on the subject property. The drive lane is located entirely outside of the required setback. The encroachment is limited to the second story patio that overhangs the drive lane and the patio will only be accessible to restaurant patrons. A screen will also be provided on the second story patio to protect the privacy of the adjacent residents as well as those dining on the patio. Therefore, this variance will have no effect on public health, safety or welfare.

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

The character of the Bardstown Road Corridor consists of buildings connected or close together that set at or near the road right-of-way. This helps to create the urban, pedestrian friendly streetscape that this neighborhood is known for. The proposed second story patio will help to continue this streetscape pattern on a site that has become known as an eyesore on the corridor. Because the adjacent building has doors and windows facing the site, a gap will have to be provided, but by allowing the raised patio to encroach into this required setback, it will lessen the impact of this gap on the streetscape. Therefore, this variance is essential to maintaining the character of the corridor.

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

Again, this variance is located along the side property line between two buildings. The adjacent buildings are set back 3.5 feet from the property line and a minimum separation of 8' will be maintained between structures. At no point does the variance affect the ability of the adjoining property owners to use their doors or windows.

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

This regulation is intended to provide enough separation between adjacent buildings that windows can be used and the exterior of the buildings can be maintained. Because the adjacent buildings are set back at least 3.5' from the property line and a minimum separation of 8' is maintained, the intent of this regulation is being met. Therefore, this is not an unreasonable circumvention of the requirements of the regulation.

**Additional Considerations:**

**1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity.**

This variance is the result of the conditions of the adjacent building. No setback would be required if the adjacent building didn't have windows and doors facing the site. All along Bardstown Road you see buildings that directly abut the property line and often times these buildings share walls with the building on the adjacent lot. This is going to be the case on the northwest property line where the proposed building will have a common wall with Wild & Woolly Video. Therefore, this variance arises from special circumstances which do not generally apply to land in the general vicinity.

**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 an unnecessary hardship.**

The strict application of the regulations would require the applicant to reduce the width of the raised patio or the width of the proposed building which would affect the functionality of the space. The original design required a much greater encroachment into the setback. After determining the minimum width of the building and designing an efficient, yet functional drive aisle and pedestrian path along the side of the building, the encroachment was reduced to just over 1'. Again, the adjacent buildings sit 3.5' from the property line, making the encroachment insignificant.

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

The circumstances are the result of existing conditions on the site, coupled with the fact that this site is in the Bardstown Road Overlay District. In order to continue the appearance of a street wall, as required by the Overlay standards, the applicant wishes to push the patio area as close to the property line as possible. Again, if the adjacent property didn't have windows or doors, no setback would be required. Because the adjacent buildings are set back 3.5' from the property line, the proposed encroachment will have no effect on the ability of the adjacent property to use their doors or windows.

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