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**SIDEWALK WAIVER JUSTIFICATION ADDENDUM**  
**1576 Cherokee Road**  
**W. Earl Reed, III, Applicant**

**1. How does the proposed waiver conform to the Comprehensive Plan and the intent of the Development Code?**

Conformance to the Comprehensive Plan. Although the Comprehensive Plan supports the construction of sidewalks in most cases, the recommendations of legislatively adopted studies, such as the Bonnycastle Neighborhood Plan, take precedence over the more general guidelines of the Comprehensive Plan. Comprehensive Plan, Community Form Guideline 1, A.2.e.

The Bonnycastle Neighborhood Plan recommends that the addition of a sidewalk along the “house” side of Cherokee Road “should be very carefully implemented.” This area of Cherokee Road is rolling, having a variety of lawns, landscaping and trees. The Bonnycastle Neighborhood Plan provides that “the topography and grades of the street and adjoining property present significant challenges to the designers [of a sidewalk] to prevent drainage problems.” Bonnycastle Neighborhood Plan, p. 17.

At 1576 Cherokee Road, there are three (3) substantial trees in the right-of-way which must be removed if a sidewalk were to be placed parallel within the right-of-way. Moreover, connections to adjacent properties are problematic. A connection to the existing sidewalk at 1578 Cherokee Road – which stops in the middle of the front yard of 1578 -- is difficult because that sidewalk is not located in the right-of-way. A sidewalk connection into 1572 Cherokee Road would be difficult because the sidewalk would go up a rise in the front yard of 1576 Cherokee Road, which is not desirable for pedestrians.

The Bonnycastle Neighborhood Plan recommends a neighborhood approach to a sidewalk on the south side of Cherokee Road:

“We recommend that when it becomes feasible to implement this recommendation that the Bonnycastle Association facilitate a meeting with all Cherokee Road property owners to ensure effective communication and participation during the design process.” Bonnycastle Neighborhood Plan, p. 17.

At this time, there is no sidewalk on the “house” (south) side of Cherokee Road, from Eastern Parkway to Spring Drive and beyond. Placement of a sidewalk at 1576 Cherokee Road would serve no useful purpose because there are no other sidewalks to connect with.

Conformance to the Intent of the Land Development Code. Land Development Code §6.1.1 provides that proper street design should balance the right of reasonable access to private property with the right of Louisville residents to safe and efficient travel on Louisville streets. The requested sidewalk waiver successfully balances that right by waiving the requirement to

construct a sidewalk along a street (Cherokee Road) where no sidewalks are planned and where the construction of a sidewalk would be challenging.

**2. Why is compliance with the regulations not appropriate, and will granting of the waiver result in a development more in keeping with the Comprehensive Plan and the overall intent of the Land Development Code?**

Land Development Code §5.8.1. requires that all developments shall provide sidewalks in the abutting right-of-way to serve the development site (same side of street). However, this provision of the Land Development Code is subject to a grant of a waiver when, as in this case, the waiver would be more in keeping with the Comprehensive Plan and the intent of the Land Development Code than would be compliance with the requirement. The governing principle of the Comprehensive Plan is found in the Bonnycastle Plan which strongly recommends neighborhood decision-making concerning placing a sidewalk along Cherokee Road.

**3. What impacts will the granting of the waiver have on adjacent property owners?**

The granting of the waiver would have no adverse impact on adjacent property owners because none of the adjacent neighbors on Cherokee Road have a sidewalk in the Cherokee Road right-of-way.

**4. Why would strict application of the provision of the regulations deprive the Applicant of reasonable use of the land or create an unnecessary hardship?**

The strict application of the regulation will deprive the Applicant a reasonable use of his land and would create an unnecessary hardship on him because (1) a sidewalk in the 1576 Cherokee Road right-of-way would cause the needless removal of three (3) street trees; (2) there are no existing sidewalks on either side of 1576 Cherokee Road to connect with; consequently, the sidewalk would serve no purpose benefitting pedestrians; and, (3) if sidewalk connections were made with abutting properties the connections would not be desirable due to the topography (1572 Cherokee Road) or the location of the existing partial sidewalk (1578 Cherokee Road).

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**VARIANCE JUSTIFICATION ADDENDUM  
AN APPLICATION FOR A HEIGHT VARIANCE  
1576 Cherokee Road  
W. Earl Reed, III, Applicant**

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

The proposed building height will allow for increased density for this existing multi-family site in the Traditional Neighborhood Form District, as advocated by the Comprehensive Plan. As indicated by the Shadow Study prepared by Joseph & Joseph, Architects, with the exception building shadow impact to 1572 Cherokee Road and 1568 Cherokee Road<sup>1</sup> the building will not block sunlight to any nearby properties. The building will not cause existing views of Cherokee Park as seen from nearby homes – including 2335 Bonnycastle Avenue -- to be compromised. See photographs, Demonstration of Appropriateness **Tab 2**. Moreover, the building will not compromise views of Cherokee Park from property situated at Consequently, the grant of the variance would not adversely affect the public health, safety or welfare.

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

Comprehensive Plan Traditional Neighborhood Policy 1.B.2. encourages higher density uses to be located “near parks” such as Cherokee Park, where the Proposal is located. Traditional Neighborhood Districts Objective C3.2.b provides, among other things, that [a]ppropriate locations for larger scale multi-family developments include land adjacent to parks....Comprehensive Plan, p. 19. Because of the height of the existing multi-family buildings shown above and the foregoing Comprehensive Plan protocols the height variance will not alter the essential character of the general vicinity.

The proposed height of Cherokee Springs is less than all other higher density multi-family buildings in the vicinity, whether in Bonnycastle or Cherokee Triangle. Adequate sunlight will remain for virtually all adjacent residential properties, as indicated by Shadow Study submitted by the Applicant. Views of Cherokee Park from adjacent residential properties will not be diminished as a result of the building’s proposed height because (1) no houses in Bonnycastle presently have a view of the park “over” the

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<sup>1</sup> The Shadow Study shows that in January at 10 AM, noon and 2 PM the Cherokee Springs building will block considerable sunlight to the lot at 1572 Cherokee Road; in June there is minimal sunlight blockage to the 1572 Cherokee Road lot, and during March and September considerable sunlight blockage only occurs at 10 AM and noon. The Shadow Study also shows that the Cherokee Springs building will cause considerable sunlight blockage to 1568 Cherokee Road (corner of Cherokee Road and Alta Avenue) only in January at 10 AM and noon; otherwise there is no impact to 1568 Cherokee Road. Cherokee Springs will cause no other sunlight impact to any other property.

existing 4-plex, and (2) the Cherokee Springs building will not be wider on its lot than is the existing 4-plex.

A comparison of the height of the higher density multi-family buildings in Bonnycastle and Cherokee Triangle shows the following:

	<u>Height</u>
Cherokee Springs (the Proposal) 1576 Cherokee Road	100 feet (proposed)
The Park Grande 1604 Cherokee Road	112 feet – 4 inches
The Commodore Condominiums 2140 Bonnycastle Avenue	124 feet
1400 Willow	214 feet – 10 inches
Willow Grande 1418 Willow Avenue	213 feet – 2 inches
The Dartmouth 1412 Willow Avenue	124 feet

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Because of its location adjacent to the park, and because the Comprehensive Plan recommends higher density – and therefore, a taller building – adjacent to the park, as is The Cherokee Grande at 1604 Cherokee Road, the variance will not alter the character of the general vicinity.

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

The height variance will not impact the viewshed to Cherokee Park from the vantage point of any adjacent residential uses, nor will it substantially impact sunlight to these adjacent residences. Vehicle trip generation rates from the proposed 14 units of Cherokee Springs will not substantially alter the existing rate of traffic flow on Cherokee Road. There will be no adverse impacts – whether a hazard or a nuisance -- to the public as a result of the variance.

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

The grant of the variance will allow a higher density multi-family building to be situated immediately across from Cherokee Park, at a location advocated by the Comprehensive Plan. The 100-foot building, if permitted, would be shorter than the Park Grande and The

Commodore – both in the Bonnycastle neighborhood, and 1400 Willow, the Willow Grande and The Dartmouth in Cherokee Triangle. All of these buildings have immediate proximity to Cherokee Park. Consequently, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

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**Additional Considerations**

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

The special circumstances justifying the height variance arise from the location of this property on Cherokee Road immediately opposite Cherokee Park, which is the location advocated by the Comprehensive Plan for higher density multi-family structures. The lot on which Cherokee Springs is proposed to be situated is wider than most other Bonnycastle lots fronting on Cherokee Road between Cherokee Road/Dingle Road and Cherokee Road/Barney Avenue [i.e., the section of Cherokee Road having both multi-family and single-family residences].

- 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.**

The strict application of the regulation would deprive the Applicant of the opportunity to utilize this property for a higher density use authorized by the Comprehensive Plan. Consequently, a rejection of the variance would deny the Applicant a reasonable use of the land and would create an 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?**

The circumstances justifying the variance are a result of the proximity of 1576 Cherokee Road to Cherokee Park, the lack of adverse impact to nearby homes in Bonnycastle, the existence of other higher density multi-family buildings in the Bonnycastle and Cherokee Triangle neighborhoods, and the size of the site allowing a building similar to Bonnycastle's typical 1:1 building height-to-width ratio. These circumstances are not a result of actions taken by the Applicant subsequent to the adoption of the regulation from which relief is sought.

**VARIANCE JUSTIFICATION ADDENDUM  
AN APPLICATION FOR A VARIANCE TO PERMIT THE PRIVATE YARD AREA TO  
BE LESS THAN 30% OF THE LOT [LAND DEVELOPMENT CODE §5.4.1.D.2]  
1576 Cherokee Road  
W. Earl Reed, Applicant**

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

The Private Yard Area is proposed to be 1,175 square feet, substantially below the minimum 30% of the lot, or 6,503 square feet. However, due to numerous private opportunities on the lot for rest and relaxation the variance request is justified. A 1,000 square foot Courtyard with a private seating area will be created in the front yard surrounded by substantial plantings. A 4,000 square foot Roof Garden with a private seating area will be created on the roof of the building. Units will all have private balconies, looking onto, or over, Cherokee Park. Moreover, the reduction in the size of the Private Yard Area will have no off-site impacts. Consequently, 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.**

The Private Yard Area, at 1,415 square feet, is the cohesive area on the north side of the drive lane going into the underground garage. This area is large enough for a private seating area for residents and guests, a dog walking area or a patio with a grill. None of these activities would alter the essential character of the general vicinity. For residents of Cherokee Springs, "private" seating areas will exist (1) in the Private Yard Area, (2) in the Courtyard area, (3) in the balconies in each unit, and (4) on the Roof Garden. Private Yard Areas of differing sizes are to be found throughout Bonnycastle and the Highlands. Consequently, 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.**

Even though the Private Yard Area will be diminished in size, private opportunities for resident relaxation on the site are substantial, as indicated above. The reduction in the size of the Private Yard Area will have no impact on off-site properties. Therefore, 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.**

The Roof Garden and the balconies within each unit provide relaxation space that is more private than the Private Yard Area. The private seating areas on the lot and within the

building will provide more private relaxation area than would a Private Yard Area alone. Therefore, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

**Additional considerations**

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

The special circumstances justifying the variance arise from the multiple on-site opportunities for resident relaxation: the 1,175 square foot Private Yard Area, the 1,000 square foot Courtyard, the 4,000 square foot Roof Garden, and the balconies in each unit which have views of Cherokee Park. The lot at 1576 Cherokee Road is larger than most lots on Cherokee Road between Cherokee Road/Dingle Road and Cherokee Road/Barney Avenue. These are special circumstances not typically applying 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 unnecessary hardship.**

The strict application of the provisions of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship because it would prohibit the Applicant from constructing the proposed 14-unit building with views of Cherokee Park.

**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 justifying the variance arise from the recommendation of the Comprehensive Plan to provide higher density multi-family buildings near parks, such as Cherokee Park. The circumstances also arise from the size of the lot which is wider than most lots in Bonnycastle and most lots on Cherokee Road in Bonnycastle. The circumstances are not the result of any actions taken by the Applicant.

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