

**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.**

This variance will allow the applicant to provide the required Parkway Buffer along Hurstbourne Parkway. It will, in no way, adversely affect the public health, safety or welfare.

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

This variance will allow the applicant to provide the required Parkway Buffer along Hurstbourne Parkway. This parkway buffer can be found all along the Hurstbourne Parkway corridor. Therefore, this 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.**

This variance will allow the applicant to provide the required Parkway Buffer along Hurstbourne Parkway. It will, in no way, cause a hazard or nuisance to the public.

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

This site has conflicting requirements. We either have to ask for a waiver of the landscape buffer or a variance to exceed the maximum setback. There is no way to meet both regulations. Therefore, this variance will not allow an unreasonable circumvention of the regulations.

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*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).**

This site is on a Parkway and within the Town Center Form District. The TCFD requires a 15' max. setback, while the Parkway requires a 30' buffer. These conflicting regulations are the special circumstances that require the applicant to request a variance.

**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 this regulation would require the applicant to ask for a waiver of the Parkway regulations and would require the removal of the exterior patio.

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

No. The circumstances are the result of conflicting regulations in the Land Development Code.

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## Waiver Justification Statement (REV)

### City Barbecue

February 23, 2015

The applicant is proposing three waivers for this project as follows:

**A. A Waiver from LDC 10.2.4.B to allow an existing easement to overlap the Parkway Buffer by more than 50%.**

There is an existing 20' x 50' drainage easement along the southern portion of the Hurstbourne Parkway frontage. This existing easement takes up more than 50% of the required 30' parkway buffer so the applicant is requesting a waiver from this regulation. All required Parkway Buffer plantings will still be planted as required.

**B. Waiver from 10.2.11.B to allow more than 120' between Interior Landscape Islands (ILAs).**

The proposed building and patio require 40 parking spaces. In order to provide these spaces, the applicant is proposing one area on the site that will not meet the 120' ILA spacing rule. The parking along the south boundary has 18 spaces in a row (162'). All other parking areas meet the requirement. The area of ILA required is still being met and all ILA trees will be provided as required.

**C. Waiver from LDC 5.5.1.A.1.a to allow the principal building entrance to be located on the side of the building.**

The regulations for this site do not allow parking and maneuvering in front of the building, so all parking is located at the side and rear of the building. Therefore, the applicant is requesting a waiver of this regulation to allow the main entrance to be located in close proximity to the parking areas. In addition, there is no vehicular access from Hurstbourne Parkway. As mitigation for this waiver, the applicant will provide the required parkway buffer along hurstbourne with an outdoor patio that faces the road in order to promote activity on along the street frontage.

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With regard to the justification statements for these waivers, please note the following:

**1. Will the waiver adversely affect adjacent property owners?**

- A. No. Many of the other properties in the area don't even provide a 30' Parkway Buffer. In addition the applicant will provide all required plantings.
- B. No. All surrounding properties are commercial in nature and all of the trees will be planted as required.
- C. No. Many of the other businesses in the area have primary entrances that do not face the street. Those that do have parking between the road and the street which is in conflict with other regulations.

**2. Will the waiver violate the Comprehensive Plan?**

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- A. No. The buffer area will still be provided, and the applicant will still be providing all required planting, thereby meeting the intent of the regulation.
  - B. No. The applicant will still be providing all of the required plantings to effectively reduce the heat island effect, thereby meeting the intent of the regulations.
  - C. No. This waiver will allow the applicant to provide convenient access from the parking area to the primary entrance which is in compliance with the Comprehensive Plan.
3. *Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?*
- A. Yes. The site is only 0.83 acres. The 30' Parkway Buffer further restrains the site. In order to fit the City Barbecue building and required parking on site, this is the minimum waiver necessary to afford relief to the applicant.
  - B. Yes. By eliminating one interior landscape island, the applicant is able to meet (not exceed) the minimum parking requirement.
  - C. Yes. This waiver will allow the applicant to locate the primary entrance on a facade that is closest to the parking spaces and most convenient to its patrons.
4. *Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant?*
- A. The strict application of the provisions of the regulation would require the applicant to increase the Parkway buffer by 5' which would negatively impact the developable area of the site, making it impossible to fit both the building and the necessary parking on site. This would create an unnecessary hardship on the applicant.
  - B. The strict application of the provisions of this regulation would require the applicant to ask for a waiver of the parkway buffer width or a parking waiver which are less justifiable than the requested ILA waiver, thereby causing an unnecessary hardship on the applicant.
  - C. The strict application of the regulation would require the applicant to locate the primary entrance along Hurstbourne Lane where there is no parking and no vehicular access. This would create an unnecessary hardship on patrons to the restaurant and therefore, create an unnecessary hardship on the applicant.

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