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**16Variance1093 for Bojangles' Restaurant 7304, 7318 & 7318 H Dixie Highway**

**Louisville Metro Land Development Code**

**Section 4.8.4.B. Variances-Additional Criteria**

1. *Buffer Area Requirements are dimensional requirements with respect to which variances may be requested as specified in KRS 100.243. In addition to the applicable criteria for variances provided by statute, the following factors may be considered in such a variance request.*

**a. The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.**

The subject site is zoned M-2 and is located in the Suburban Marketplace Corridor. Adjacent to the subject site MSD has re-relocated Big Run Creek into a concrete channel. Big Run Creek is not located on the subject site.

Because of the subject site's zoning and location near the intersection of a major arterial and a minor arterial the proposed development is an appropriate adaptive re-use of two developed sites and is a benefit to the community because it forestalls the development of undeveloped land.

The property was platted prior to the adoption of the current Land Development Code and its inclusion of the Streambank Buffer Area regulations. Therefore, the loss of developable land to provide the 100 ft Streambank Buffer Area was not taken into account when the tract was created. The subject site contains 1.2 acres. The 100 ft. Streambank Buffer Area encompasses approximately 7,520 s.f. or 15% of the site area. A 10 FT. Landscape Buffer Area is required within the Streambank Buffer Area and it will be provided as well as the required trees.

There is not sufficient land area to provide the 100 ft Streambank Buffer Area and the amount of parking spaces Bojangles' has determined is necessary based on their experience of operating Bojangles' restaurants. Bojangles' has created their own parking spaces required formula, independent of local development codes, to determine how many parking spaces are necessary for a functional business.

To encumber a small tract with the 100 ft. Streambank Buffer Area is an extreme hardship because it significantly reduces the amount of developable land and will significantly reduce the sites' re-development potential thus reducing its' economic reuse.

**b. The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.**

This factor is not applicable since the proposed development is not a single family residence.

**c. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.**

The proposed encroachment into the required Buffer Area is the minimum necessary to accommodate the proposed Bojangles' parking. Louisville-Jefferson County Government's Chapter 157: Floodplain Management Ordinance requires a 25 ft. Vegetative Buffer Area be provided on side of the creek. MSD enforces the provision and protection of the 25 ft. Vegetative Buffer and it will be provided free of any encroachments.

**d. The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post construction.**

A Building Permit is required prior to any land disturbance. MSD will review and approve the site civil construction plans prior to the issuance of a Building Permit by the Louisville Metro Building Department. MSD will review and approve an Erosion Prevention and Sediment Control Plan as a part of their review of the Site Civil Construction Plans. MSD's review and approval of the proposed development's storm water management system and erosion prevention and sediment control plan are the County's assurance there will be no adverse impacts of the proposed encroachment.

**e. Approval of the variance will not result in a reduction in water quality.**

The approval of the variance will not result in a reduction in water quality because the Applicant is proposing to install a Storm Water Quality Unit at the proposed development's point of discharge. A Storm Water Quality Unit will clean the storm water of trash, oils, sediment and hydrocarbons before the storm water enters Big Run Creek. The proposed parking lot will be curbed to insure the storm water will not exit the parking lot anywhere but into the Storm Water Quality Unit.

The existing development has been discharging it's storm water without cleaning it directly into Big Run Creek and the proposed development will clean up this existing polluting condition.

The proposed parking area is approximately 60 ft from Big Run Creek—30 ft on the subject site and 30 ft on the adjacent property. This area is grass on both the subject site and the adjacent property. The grass covered land will further mitigate any impact of an encroachment into the 100 ft Streambank Buffer Area. The MSD 25 ft. Vegetative Buffer Area will be provided and there is no encroachment into it.