

**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.

Variance of: Section 5.5.3.C.3.a to vary the Campus Form District's 25 ft Dorsey Lane setback for the proposed pavement.

1. The variance will not adversely affect the public health, safety or welfare because the diminished setback is an aesthetic, not public health, safety or welfare, one, which can be mitigated with enhanced landscaping. Furthermore, Dorsey Lane has an enormous surplus of unused right-of-way given the fact that it is a dead-end street that, with this senior living facility, is now nearly fully built out; thus the unused right-of-way is highly unlikely to ever be encroached upon further than what it is today, which gives this project a significant setback from the actual travel lanes of Dorsey Lane.

2. The variance will not alter the essential character of the general vicinity because enhanced setbacks and landscaping off-set the diminished setback. Furthermore, Dorsey Lane has an enormous surplus of unused right-of-way given the fact that it is a dead-end street that, with this senior living facility, is now nearly fully built out; thus the unused right-of-way is highly unlikely to ever be encroached upon further than what it is today, which gives this project a significant setback from the actual travel lanes of Dorsey Lane.

3. The variance will not cause a hazard or a nuisance to the public because the diminished setback is an aesthetic, not a nuisance, issue. Moreover, the development's pavement slightly closer to Dorsey Lane than Code-allowed should not impact aesthetics, especially since Dorsey Lane has an enormous surplus of unused right-of-way given the fact that it is a dead-end street that, with this senior living facility, is now nearly fully built out; thus the unused right-of-way is highly unlikely to ever be encroached upon further than what it is today, which gives this project a significant setback from the actual travel lanes of Dorsey Lane.

4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the pavement being slightly closer to Dorsey Lane than Code-allowed should not impact parkway aesthetics, especially since the subject property includes a 15 ft LBA which

will include enhanced landscaping and also considering the other special circumstances of the significant unused Dorsey Lane right-of-way which gives the sense of much more significant setback than the Code would suggest.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity, but rather the diminished setback is an aesthetic issue in an area where this diminished setback pavement can be mitigated with enhanced landscape in areas where greater setback is provided. Furthermore, Dorsey Lane has an enormous surplus of unused right-of-way given the fact that it is a dead-end street that, with this senior living facility, is now nearly fully built out; thus the unused right-of-way is highly unlikely to ever be encroached upon further than what it is today, which gives this project a significant setback from the actual travel lanes of Dorsey Lane.
  
2. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create unnecessary hardship because the building and parking are unable to use the northeast corner of the proposed because of the requirement in this area to provide a connection to the adjoining property to the east. Also this building needs to be a certain size with certain amenities and a certain minimum amount of parking, and in this instance, the diminished setback is overcome by enhanced setback from Dorsey Lane travel lanes because of the extra-wide right-of-way and enhanced landscaping along Dorsey Lane.
  
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are a result of this building and parking being unable to use the northeast corner of the proposed because of the requirement in this area to provide a connection to the adjoining property to the east; and also this building needing to be a certain size with certain amenities and a certain minimum amount of parking. And in this instance, the diminished setback is overcome by enhanced setback from Dorsey Lane travel lanes because of the extra-wide right-of-way and enhanced landscaping along Dorsey Lane.

**Variance Justification:**

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Variance of: Section 5.5.3.C.3.a to vary the Campus Form District's 50 ft N. Hurstbourne Parkway setback for the proposed pavement.

1. The variance will not adversely affect the public health, safety or welfare because the diminished setback is an aesthetic, not public health, safety or welfare, one, which can be mitigated with enhanced landscaping.
2. The variance will not alter the essential character of the general vicinity because enhanced setbacks and landscaping off-set the diminished setback.
3. The variance will not cause a hazard or a nuisance to the public because the diminished setback is an aesthetic, not a nuisance, issue. Moreover, the development's pavement slightly closer to N. Hurstbourne Parkway in one small area than Code-allowed should not impact parkway aesthetics, especially since the subject property includes most of the required setback and will include enhanced landscaping.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the pavement being slightly closer to N. Hurstbourne Parkway than Code-allowed should not impact parkway aesthetics, especially since the subject property includes a 25 ft setback which will include enhanced landscaping.

**Additional consideration:**

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity, but rather the diminished setback is an aesthetic issue in an area where this diminished setback pavement can be mitigated with enhanced landscape in areas where greater parkway setback is provided.

2. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create unnecessary hardship because the building needs to be a certain size with certain amenities and a certain minimum amount of parking, and in this instance, the diminished parkway setbacks are overcome by greater setbacks and enhanced landscaping along other portions of the Hurstbourne Parkway frontage.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are a result of the an even greater Hurstbourne Parkway setback Waiver previously granted in context in the prior approved Detailed District Development Plan.