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## WAIVER JUSTIFICATION STATEMENT

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 two Waivers from LDC Chapter 10.2 as follows:

**A. A Waiver of LDC Chapter 10.2.10 to allow the raised seating area to encroach less than 1' into the required 5' VUA buffer between the proposed drive lane and the residential structure to the south east.**

The proposed structure will be built directly adjacent to the Wild & Woolly Video building. Per LDC 10.2.10, a 5' VUA LBA is required between the proposed drive aisle and the first floor residential use on the rear building to the southeast. Due to the narrow width of the property and the nature of development along the Bardstown Road corridor, the raised patio area will encroach less than 1' into this required VUA buffer. This raised patio is an important element to the design of the building. This will be the place to sit on nice days. It also helps to meet the requirements of the Bardstown Road Overlay District by continuing the perceived street wall and lessening the impact of the proposed curb cut to the character of the corridor. The entire buffer will be provided at street level along with the required screen. In addition, the adjacent buildings are set back 3.5' from the property line, giving a minimum separation of 8' between the raised patio and the adjacent structures, thereby meeting the intent of the regulation.

**B. A Waiver of LDC Chapter 10.2.11 to not provide the VUA buffer trees between the proposed building and the residential structure to the east. The required screen will still be provided.**

The VUA buffer mentioned above requires 1 type A tree per 50 linear feet and a 6' screen. Due to the narrow width of the property and the proximity of the adjacent structures to the property line, providing large trees in this VUA buffer is impossible. The required screen will still be provided, and the required VUA buffer trees along the alley are being provided. No ILA trees are required, but one is being provided. In addition, the applicant proposes two smaller trees for the Bardstown Road streetscape. According to the Tree Canopy standards in Chapter 10.1, the applicant is only required to provide the equivalent of 1.5 type A trees at 720 SF each. The applicant proposes 3 type A trees and 2 type C trees. This is over 200% more tree canopy than is required. It is also more tree canopy than exists on site today. There are two existing trees which are not in very good shape. They will be removed as a part of construction.

With regard to the General Waiver Justification, please note the following:

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

- A. No. There will still be a minimum of 8' between the patio and adjacent buildings. The minimum requirement is 6'. In addition, a screen will be provided at street level, and on the patio to provide privacy for those living in the all floors of the adjacent building as well as those dining on the patio.

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- B. No. Planting the trees in this location would adversely affect adjacent property owners. The adjacent buildings are only set 3.5' off of the property line. This is not enough space to accommodate the large trees that are required in this location and they would eventually have to be dramatically sheered to avoid damage to the adjacent buildings. This sheering would be detrimental to the health of the tree which could then pose a public safety issue.

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

- A. No. The buffer area and all screening materials will still be provided as required. In addition, a screen will be provided on the second story patio as well to provide privacy to adjacent residents and people dining on the patio. The intent of the regulations are still being met, so this waiver will not violate the Comprehensive Plan.
- B. No. The purpose of planting VUA trees is to lessen the impacts on incompatible developments as well as to screen the view of vehicle use areas and reduce the heat island effect. Part of what makes the Bardstown Road corridor great is the integration of residential and commercial development in a way that is done nowhere else in the City. The drive aisle will be shaded by the proposed patio and all screening will still be provided. Therefore, this waiver will not violate the Comprehensive Plan.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

- A. Yes. The original design required a much greater encroachment into the buffer area. 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 below 1'. Again, the adjacent buildings sit 3.5' from the property line, making the encroachment insignificant.
- B. Yes. In order to provide the raised patio to continue the street "wall" in accordance with the Bardstown Overlay standards, and in order to not provide a hardship on adjacent buildings, the trees in the VUA buffer between the drive aisle and the residential structure to the south east cannot be provided.

**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 waiver (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 would create an unnecessary hardship on the applicant?**

- A. The applicant is still providing the required buffer and screening as required. This minimal encroachment will be a raised patio that will not prohibit any screening. The patio and building have already been reduced in width. Any other reductions would begin affecting the functionality of the space, and would therefore create an unnecessary hardship on the applicant.
- B. The applicant is proposing over 200% more tree canopy than required by the Land Development Code by planting three more trees than are required by the regulations. In addition, all other required landscaping is being provided.

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