

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 5.3.2.C.2.b to allow the proposed pavement to encroach into the required side and rear building setback.

1. The variance will not adversely affect the public health, safety or welfare because only a portion of the pavement encroaches into the setback area and the neighboring property is an existing Target retail center developed by the applicant. The setback area is located between two C2 zoned properties where the two parking lots meet. The setback variance won't affect the adjacent property because the LBA requirement is only arguably triggered by the fact the current proposed development is a less intense residential use in a C-2 zoning district and the LBA is designed to apply to the more intense retail C-2 use. If this were proposed as a retail C-2 use, no setback would be applicable. In this case the retail use as a Target center is already existing, so this proposed less intensive use of the property will not adversely affect the Target center.
2. The variance will not alter the essential character of the general vicinity because the pavement is located along the rear portion of the property, away from Ruckriegel Parkway and Taylorsville Road and will not cause a negative impact with the neighbor to the North. Screening and buffering will be provided through plantings or a fence.
3. The variance will not cause a hazard or a nuisance to the public because it will not cause any because the applicant is not proposing to eliminate the setback entirely but simply is proposing a reduction in the area, while still providing adequate perimeter landscaping and buffering thus mitigating the request.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is the minimal amount required for the proposed upscale apartment community on the site with only encroachment of pavement into the setback area.

Additional consideration:

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1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because of this proposed infill residential use on a C-2 zoned property.

2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the site could not be used for an upscale apartment community without providing parking along the perimeter.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because the applicant has owned this property for a long time and this is the only use that is a potential at this time.

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