



SEILLER WATERMAN LLC

March 6, 2015

VIA EMAIL: Julia.Williams@louisvilleky.gov

Ms. Julia Williams

Re: *Willow Grande, LLC request for variances and waivers*

Dear Julia:

The parties were ordered to submit supplemental justification statements regarding Willow Grande's requests for waivers and variances.

Since our client, Cherokee Triangle Association, favors denial of the requests, we adopt, and rely upon, the Staff Report justifications for denial, except for the height request. On that request, we are herewith filing a supplemental justification.

We apologize for the one day delay in this filing. Our offices were closed yesterday due to the weather, and I did not have access to a means for the filing.

Yours truly,

Bill V. Seiller
Attorney for Cherokee Triangle Association

BVS:jep
G:\doc\BVS\Cherokee Triangle-Variances Waivers\Williams, Julia ltr 030615.wpd

Attachment

cc: Timothy W. Martin
Jon Baker
John Carroll (all via email)

ATTORNEYS

Meidinger Tower, 22nd Floor
462 South Fourth Street
Louisville, Kentucky 40202
502.584.7400
502.583.2100 Fax

Joseph H. Cohen
Alan N. Linker
Pamela M. Greenwell
David M. Cantor*
Kyle Anne Citrynell
Robert V. Waterman
Neil C. Bordy
Glenn A. Cohen
Anuj G. Rastogi
Sharon R. Handy
R. Kenneth Kinderman
Lester I. Adams, Jr.
Paul Hershberg
Lynn M. Watson
Christopher A. Bates
Sean E. Mumaw^
Gordon C. Rose
C. Shawn Fox
Charity B. Neukomm ‡
Auric D. Steele **†
James E. McGhee III
Su H. Kang †

EMERITUS COUNSEL
Robert S. Frey+
Irwin G. Waterman

OF COUNSEL
John J. Bleidt
J. Allan Cobb
Paul J. Krazeise, Jr.
D. Kevin Ryan
Bill V. Seiller

* Also admitted in Indiana & Colorado
^ Also admitted in Indiana
‡ Also admitted in Georgia
** Also admitted in Georgia & California
† Also admitted in New York
+ Also admitted in Ohio & Illinois

derbycitylaw.com
Office GPS Coordinates:
38.251962 -85.757494

Member:
Legal Netlink Alliance
An International Alliance
of Independent Law Firms

Louisville Metro Planning Commission
Case No. 17822
Project Name: Willow Grande

SUPPLEMENTAL JUSTIFICATION FOR DENIAL
OF REQUEST FOR HEIGHT VARIANCE

The applicant is requesting a variance from the requirement of the Land Development Code that the building on this lot be no more than 37'.

The request seeks a variance to allow a building height of 201.67'.

KRS 100.243 sets out factors to consider as to when a variance may properly be made.

The first statutory factors to consider are the three items which must be taken into account before making a finding of fact. They are whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

COMMENT: There are no special circumstances involving this land, except that the applicant wants to construct a building that is too tall for the lot and zoning. There would be no purpose in having height restrictions, if they could be disregarded merely because a land owner wanted to build in violation of the restrictions.

- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship of the applicant; and

COMMENT: The property is zoned R8A. This applicant has the same ability to use the property for permitted uses within that zoning class as any other property owner. There is no way the rules of the Land Development Code create a hardship or a denial of reasonable use since those rules apply to all properties within that zoning class. If there is a hardship, it is created by the applicant's request for an unreasonable use of the property.

- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought..

COMMENT: Applicant's request is the direct result of seeking to construct a building in violation of the pre-existing height restrictions.

After taking these factors into consideration, the Commission needs to make findings of fact on the points set out in KRS 100.243.

The clearest point, and about which there really should be no real argument, is whether the request will alter the essential character of the general vicinity.

There is absolutely no dispute that the essential character of the neighborhood is one of residential two and three story buildings. The existence of the three high rise buildings does not change the essential character of the neighborhood. It is important to note that the statutory language is "essential character." Then it is important to note that the closest of the three high rises is 70' shorter than the proposed building, the next building is even shorter. It is necessary to go two blocks to reach a building of comparable height, and that building is down hill so that it appears shorter than the proposed high rise.

Without any question, approval of this variance will alter the essential character of the neighborhood. Once it is built, the door would be open to similar high rise requests. If this is allowed, how could another high rise next door, or across the street be denied? The essential character would have been changed.

In addition to this point, the request will cause a nuisance to the public, particularly to the neighboring properties, by blocking existing views.