

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 10.2.10 to waive the VUA/LBA for the property line adjacent to the existing alley

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Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because most of the properties with parking by the ally in the Germantown/Schnitzelburg neighborhood have for decades lacked any type of buffer between the lots and street for parking. It is evident that the waiver will not adversely affect either lot adjacent to it, nor any other neighbor's lot. Waiving the 5 foot VUA LBA for the rear parking will not adversely affect the adjacent property owners. In the Germantown/Schnitzelburg, Traditional Form Neighborhood, it is common, accepted, and practical for the parking spaces immediately adjacent to an alley to not have any buffer.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application. Guideline 3, Compatibility, and its applicable Policies sets forth the intent of allowing a mixture of land uses and densities near each other as long as they are designed and compatible with one another, which it is considering the commercial C-1 zoning predominant in this area. Considering the multitude of restaurants and bars in the area, there is no doubt that it is compatible with the adjacent owners and the overall area in general. The intent of Guideline 3 and its Policies is also to preserve the character of the neighborhood, which will be accomplished by allowing the architecture to be compatible with the area and the parking behind the building, toward the alley, with access to the alley, as is normal in this neighborhood. Finally, Guideline 6, Policy 3, encourages investment and redevelopment in older neighborhoods, which this waiver will continue to make possible by allowing the CUP request, adding more needed parking, and thus providing for the economic viability of the property and their uses into the future.

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3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because any effort to comply with the LBA standards in LDC Section 10.2.10 would necessarily require substantial loss of much needed parking, it would limit access and traffic flow through the alley, and would limit police patrols through the alley which many residents have indicated is important.

4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would unnecessarily limit parking, impede traffic flow, and limit police access to the alley.

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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 5.1.12.A.2.a to allow the proposed building and outdoor dining patio to extend to the front property line, adjacent to Goss Ave, beyond the two nearest lots' principal structures

1. The variance will not adversely affect the public health, safety or welfare because this variance is merely aesthetic and does not affect any public health or safety issues.
2. The variance will not alter the essential character of the general vicinity because this area is in a traditional neighborhood where there is no general consistency to the building set backs throughout the neighborhood. In fact, several buildings in the same block and two directly across the street, at 1006 and 1000 Goss Ave., homes abut the sidewalk. Commercial properties immediately to the east also contain buildings which come all the way to the street, so this variance will be consistent with the essential character of the general vicinity.
3. The variance will not cause a hazard or a nuisance to the public because this variance is merely aesthetic and does not affect any hazards or nuisance issues. In fact, the variance, will serve to provide a buffer by moving the commercial activity away from the front of the residences immediately to the west, the first two of which are zoned C-1, along with all of the properties across Goss Ave.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the variance is justified since it is consistent with the character of the traditional neighborhood, it does not affect safety for health matters, but is merely one of aesthetics allowing the property to be compatible with the rest of the 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 this is an adaptive reuse of a partially developed lot in a traditional neighborhood with pre-existing, as built conditions.

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 it would not allow the outdoor dining area which is important with the restaurants in this vibrant activity center.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because this is an adaptive reuse of a partially developed lot in a traditional neighborhood with pre-existing, as built conditions.

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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 Table 5.2.2 to allow the existing asphalt and proposed parking to encroach into the rear setback

1. The variance will not adversely affect the public health, safety or welfare, but will rather provide much needed offstreet parking for this traditional neighborhood form district.
2. The variance will not alter the essential character of the general vicinity because it allows the buildings to approach the street as is most common with both residences and businesses throughout the traditional neighborhood, where parking in front of a building is rare.
3. The variance will not cause a hazard or a nuisance to the public, but rather solves nuisances because it allows the building to come close to the street, with parking in the rear, and providing additional parking in an area where it is needed.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because it allows the development to retain the essential character of the traditional Germantown/Schnitzelburg neighborhoods, while at the same time provided much needed additional parking. Additionally, it provides easy and necessary access to the alley behind the property, allowing improved traffic flow and giving law enforcement access to the alley which is a need expressed by the nearby residents.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an adaptive reuse of a partially developed lot in a traditional neighborhood with pre-existing, as built conditions which already exists presently.

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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 it would deprive it of much needed parking or require the improvements to not match the character of the traditional neighborhoods by pushing parking to the front of the site.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because this is an adaptive reuse of a partially developed lot in a traditional neighborhood with pre-existing, as built conditions which already exists presently.

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