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**Modified 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.

MOFIFICATION Variance of: Section 5.5.1.A.2 to allow the proposed building to not be located at the Bardstown Road and Seatonville Road ROW line, as approved under docket no. 15VARIANCE1013 on June 1, 2015, to modify the dimensions previously granted for the previously approved CVS, from 81 ft to 114 ft from Seatonville Road and 265 ft from Bardstown Road to 280 ft. (the distances were inadvertently reversed in the prior Variance approval)

1. The variance will not adversely affect the public health, safety or welfare because the location preserves the existing location of Cedar Creek and additional protections included in the Development Plan and Binding Elements.
2. The variance will not alter the essential character of the general vicinity because preserving the creek along the frontage of the lot is characteristic of both the residential lot to the south and the church lot across Seatonville Road to the north, which are also setback from Bardstown Road. Placement of the building at the corner of Seatonville Road and Bardstown Road, if permitted by the LDC Streambank setback requirements, which it is not, would alter the character of the area by drastically changing the existing area.
3. The variance will not cause a hazard or a nuisance to the public because buffers between the residential zones to the east and south will be provided and a buffer between the parking lot and Seatonville Road will be provided. The existing proposed building is located in approximately the same location as the previously approved CVS, just with a smaller building and less parking.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because Cedar Creek is an existing blue line stream being preserved on the site.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because Cedar Creek runs along the property frontage where the Town Center

form indicates the building location. Other properties do not have a blue line stream prohibiting same.

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 applicant would have to move Cedar Creek in order to get the building at the corner as required. The strict application of the setback would render the site unbuildable.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because Cedar Creek has always been located on the existing portion of the site.

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**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 5.5.1.A.1.a to allow the building primary entrance to face Seatonville Road.

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Explanation of Waiver:

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1. The waiver will not adversely affect adjacent property owners because the size and constraints existing on this site necessitate this layout. Further the waiver will not adversely affect adjacent property owners because facing the building to Bardstown Road, with the increased setback necessitated by the preservation of Cedar Creek, would not accomplish the goal of having the requirement of the primary entrance facing the main street (Bardstown Road) as opposed to the secondary road (Seatonville Road).
2. The waiver will not violate the Comprehensive Plan because there would be no adverse impacts of the entrance not facing Bardstown Road to be mitigated.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the size, configuration and constraints of this site necessitate this layout, including the location of the entrance.
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 the applicant would otherwise be unable to fit its new building on this site in the only arrangement that practically works for it. Facing the building to Bardstown Road, with the parking on this side of the building would cause further encroachments into the streambank setbacks.

**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 5.5.1.A.3.a to allow circulation and parking to be located in front of the building.

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Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because safe pedestrian access is provided from the public rights-of-way to the building entrance along Seatonville Road.

2. The waiver will not violate the Comprehensive Plan because Guideline 2, Policy 15 encourages the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 ensures compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the Form District. Guideline 3, Policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet Form District Guidelines. Guideline 7, Policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use. This encourages higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, Policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. Cedar Creek on the site constrains the building location, making an orientation toward Seatonville Road with parking in front the only feasible alternative.

3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because Cedar Creek and the existing sewers are the physical restraints preventing compliance with the regulations to be waived.

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 the existing sewers would have to be relocated to accommodate the structure. Additional mitigation could occur with the compliance of the VUA LBA along Seatonville to make the site more in compliance with other areas of the LDC.

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**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 5.9.2.A.1.B.i to not provide a pedestrian connection from the proposed building to Bardstown Road, which was previously granted under Docket No. 13DEVPLAN1003 on May 21, 2015.

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Explanation of Waiver:

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1. The waiver will not adversely affect adjacent property owners because pedestrian connections have been provided to Seatonville Road in a safe and reasonable distance of the transit stop.
2. The waiver will not violate the Comprehensive Plan because Guideline 9, Policy 1 states that new development provides, where appropriate, for the movement of pedestrians, bicyclists and transit users with walkways for access to public transportation stops. The waiver is compatible with the pattern of development within the form district because of the stream crossing that would have to occur which prevents compliance with the regulation.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the physical constraint of crossing Cedar Creek is preventing the pedestrian connection.
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 the applicant would have to construct a bridge across the stream for a pedestrian connection. To have the stream crossing, MSD would have to grant a variance. MSD has denied variances in the past for stream crossings on this site.