

December 3, 2012

To The DeKalb County Department of Planning and Sustainability, and  
The Zoning Board of Appeals

**Re: Variances Requested for 1411 Dresden Drive, NE, Atlanta, GA 30319  
N17. A-12-18321**

**BROOKHAVEN-PEACHTREE COMMUNITY ALLIANCE'S (BPCA) OPPOSITION TO THE GRANTING OF ALL  
VARIANCES REQUESTED FOR THE SUBJECT PROPERTY.**

**BACKGROUND COMMON TO ALL OPPOSITION:**

Michel Arnette has submitted application and site plan requesting several variances on November 9, 2012 to open a "restaurant" in an existing office use building on Dresden Drive. The property is owned by Dresden Properties, LLC, not the applicant. Variances are sought from the requirements of the Brookhaven Overlay District (hereinafter the Overlay). In several conversations Mr. Arnette has informed BPCA members that he wants to open a facility that consists of an approximately 100 seat "tavern" and an approximately 100 seat "live music venue" which would share a common kitchen.

**BPCA's OPPOSITION:**

**GENERAL OPPOSITION:**

1. Application states that this is an existing structure erected before adoption of the Overlay, however the property was purchased by the current owner in August 2008 well after the adoption of the Overlay. While restaurants are allowed in the Overlay; restaurants, nightclubs & late-night establishments are not an allowed use in the underlying zoning of O-I. Applicant seems to want to pick and choose which zoning codes to follow.
2. BPCA does not believe the existing Overlay requirements create an "exceptional and undue hardship upon the owner of such property". Owner purchased a lot with an office building after adoption of the Overlay and may continue to operate that property as an office building.
3. Applicant states that he wishes to re-use the existing structure; however the existing structure is a prefabricated steel building with some façade treatments and with an assessed value of approximately \$70,000. The costs to convert such a structure to a restaurant use will significantly exceed \$1,000,000 and involve demolition of all systems and finishes in the structure. There is little, if any, economic reasons to keep the current structure, or, minimally to not relocate the structure to be in accordance with the Overlay.

Renovation to convert this building of dubious merit will necessitate demolishing all interior finishes, then up-fitting that space with completely new plumbing, mechanical & electrical systems along with new utilities that will have to be brought into the building (including water, sewer, electrical & gas), trenching the majority of the existing slab floor for your kitchen & toilets, adding fire suppression & life-safety systems, all new

interior finishes & millwork, renovating the exterior, adding a patio and sidewalk along with the FFE.

4. The application states that the variances are requested for a restaurant use, which is permitted in the Overlay, however, what the applicant wants to create is actually a “Nightclub” under the definitions in section 2.03 of DeKalb County Zoning due to the live-music . Nightclubs are not a permitted use in the Overlay District.
5. There are many changes to the existing site plan thereby negating any “grandfathering” of the zoning compliance. Applicant proposes removing a great deal of the existing parking to construct a “patio”, shows a proposed narrow sidewalk from Dresden Drive. The site plan DOES NOT INDICATE other changes which will be necessary to the proposed use such as dumpster enclosure, mechanical systems (structure cannot support the weight of new HVAC systems). Site plan does not address buffering sound from the three residential lots that share a rear property line.

#### **SPECIFIC OPPOSITION TO VARIANCES REQUESTED:**

6. Section 27-728.15.12 (f)(3) variance request: Applicant already has the right to operate the existing building and property as it was originally constructed as an office building or any other allowable use without changes to the site plan. Variance request is not fully defined and the requested changes to the site plan are both not detailed and incomplete (see point 5 above). If the Applicant is requesting changes to the site plan then all requirements of the Overlay must be adhered to.
7. Section 27-728.15.12 (f)(3) and 27-715.5 (a) & (b) variance request: Applicant already has the right to leave the existing building with its existing setbacks without changes to the site plan. Variance request is not fully defined and the requested changes to the site plan are both not detailed and incomplete (see point 5 above). If the Applicant is requesting changes to the site plan then all requirements of the Overlay must be adhered to.
8. Section 27-728.15 (e) & (f): Applicant is requesting to be able to convert parking in front of building into a patio and thereby making significant changes to the site plan. The Overlay allows parking to the side of structures with appropriate screening which the Applicant does not address in the site plan. The applicant seeks to remove the parking from the front of the building. T Variance request is not fully defined and the requested changes to the site plan are both not detailed and incomplete (see point 5 above). If the Applicant is requesting changes to the site plan then all requirements of the Overlay must be adhered to.
9. Section 27-728.15 (a)(2)and/or (3): Applicant unreasonably requests: (1<sup>st</sup>) to convert much of the existing parking into a patio and (2<sup>nd</sup>) to then reduce the already insufficient parking required to “up to” 20 valet only parking spaces. The Overlay does not prescribe parking for restaurant use therefore it reverts to the underlying O-I zoning requirements which is 1 space per each 75 sf, or, parking for 90 cars. The proposed site plan doesn’t even approximate adequate parking, further; the proposed site plan doesn’t even have provision for cars to drop-off then turn around within the property. A reduction in the parking requirements would cause cars to stack up on Dresden Drive in both directions,

blocking traffic, and blocking the narrow existing sidewalk. BPCA believes that the request is extremely unreasonable, poorly conceived and a real danger to the public. Any approval will be contrary to Section 27-916 (a)(3) "The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located;". Forcing pedestrians to walk in the street to avoid blocked sidewalks is certainly a significant public safety issue.

The property abuts and close to residential properties, the overflow parking would be forced onto the narrow residential streets which places an unfair burden upon the residents and counterproductive to the intent of the Overlay to provide protection of established, stable single-family neighborhoods.

10. Section 27-15.8 (c) (2): Delete requirement of 15' sidewalk and allow existing sidewalk to suffice – The requirement for wider sidewalks has been consistently applied to all newer developments on Dresden Drive and will create a hole in the streetscape which is inconsistent with neighboring development. Granting of the variance would be contrary to Section 27-916 (a)(2) which states that the BZA will not grant a variance which "constitutes a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located". The existing sidewalk is very narrow and abuts the street. Applicant desires to create a new use with a much denser occupancy than the existing use which will create driveway and sidewalk congestion (per point 9 above) forcing pedestrians to move from the sidewalk into busy Dresden Drive to bypass blockage. BPCA asserts that this is contrary to Section 27-916 (a)(3) which states that the BZA will not allow "The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located".
11. Section 27-15.8 (c) (2): Delete requirement of pedestrian zone and landscape strip: BPCA responds similarly to item #10 above, property will be converted to a use with larger group of occupants than the prior use and the pedestrian zone is necessary for the consistency of the streetscape as well as safety concerns. Again, granting this variance would create special privilege inconsistent with the limitations upon other properties.

For the above reasons BPCA respectfully requests the DeKalb County Department of Planning and Sustainability, and the Zoning Board of Appeals to deny all requested variances for the subject property.

If there are any questions or comments I can be reached at 404-844-7959, or by email to [thomasporter@earthlink.net](mailto:thomasporter@earthlink.net). We thank you for your thoughtful consideration.

Respectfully Submitted;

Thomas Porter, AIA, LEED AP  
Member, BPCA