

February 27, 2013

To The City of Brookhaven Community Development Department, and
The Zoning Board of Appeals (ZBA)

Re: **Variations Requested for 2536 Caldwell Drive, NE, Atlanta, GA 30319**
ZBA 13-022

BROOKHAVEN-PEACHTREE COMMUNITY ALLIANCE’S (BPCA)
OPPOSITION TO THE GRANTING OF HEIGHT VARIANCE
REQUESTED FOR THE SUBJECT PROPERTY
& RELATED APPLICATION COMMENTS

BACKGROUND COMMON TO ALL OPPOSITION:

The property in at 2536 Caldwell Drive is a circa 1938 wood frame house on approximately a quarter acre site. The existing buildings are of little redeeming value and un-extraordinary; the assessed value of the structure(s) was \$24,400.00 in 2012. The property was purchased by the current owner & appellant in mid-2010.

The existing structure has been historically been used as a house, the underlying zoning is R75, and, a restaurant is not a permitted use under that zoning. The property is clearly in the Brookhaven-Peachtree Overlay (Overlay). The existing structures do not comply with the Overlay in numerous ways, as outlined further below.

In accordance with **Section 25-5**, “...existing buildings, structures & uses which do not comply with the regulations shall be authorized to continue...”. The building is a house, due to the underlying zoning it should be allowed to continue as a house. It will not exist as a house, or even substantially resemble a house if constructed as proposed.

The footprint of the building upon the site is proposed to almost double in size and a new accessory use building is shown to be added.

BPCA’S OPPOSITIONS:

GENERAL OPPOSITION:

BPCA states that the application does not meet the requirements necessary for filing of the application, or granting by the ZBA notably:

Sec. 27-916. - Criteria to be used by the board in deciding applications for variances and special exceptions.

No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without

substantial impairment of the intent and purpose of this chapter and the comprehensive plan text. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

(a) Variances from the provisions or requirements of this chapter shall be authorized only upon making all of the following findings:

(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;

(4) The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship, not merely impose a casual/discretionary inconvenience upon the applicant or his/her assigns; and

(5) The requested variance would be consistent with the spirit and purpose of this chapter and the city's Comprehensive Plan text.

BPCA is unaware of any part of the application that responds to ALL 6 points & meets the requirements of ALL 6 points as necessitated by the variance application, and, as required for consideration of the ZBA. BPCA states that the application does not meet all 6 requirements.

Regarding **(3) above**: BPCA states that the granting of this variance endangers public welfare in an area that is poorly prepared for on-street parking and pedestrian traffic (detail following).

Regarding **(4) above**: BPCA states that the regulations, and subject of the variance application, do not impose *unnecessary hardship* because: **a)** The owner of the property is allowed to continue in the same use as-is today, or, **b)** There is little reason to keep the existing house structure due to the extensive renovations proposed and thereby comply.

Regarding **(5) above**: BPCA states that the granting of this variance is absolutely not consistent with the spirit of the Comprehensive Plan text. **Sec. 27-728.15.1. - Scope of Provisions states "...** The LCI plan's purpose was to create a community vision and action plan for the development of a more dynamic mixed-use community with the character of a multistory, urban village..."

BPCA respectfully requests that the application be denied without hearing as not meeting required criteria.

SPECIFIC OPPOSITIONS:

1. The language of the Overlay is clear and absolute that "All buildings within the Peachtree-Brookhaven Overlay District shall be a minimum of two (2) stories tall and twenty-eight (28) feet in height".
2. Applicant states that they wish to re-use the existing structure; however the existing structure is a wood-frame house with an assessed value of approximately \$24,000.

The costs to convert to a restaurant as proposed will significantly exceed \$500,000 and involve demolition of all systems and finishes in the structure. Even that minimal budget figure is **20 times** the assessed value of the structures. There is little, if any, economic reasons to keep the current structures and thereby comply with all requirements of the overlay. Again, the structure is unremarkable.

Renovation to convert the existing building will necessitate demolishing most 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 kitchen & toilets, adding fire suppression & life-safety systems, all new interior finishes & millwork, renovating the exterior, adding a deck and sidewalk along with the FFE.

3. BPCA calls to the ZBA's attention the following:

Sec. 27-940. - Nonconforming characteristics of buildings and structures.

Any building or structure with nonconforming characteristics which is occupied by a conforming use shall not be enlarged, expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity.

BPCA states that conversion of the structure and expanding the footprint by almost 100% increases the degree of nonconformity and thereby should be denied.

PUBLIC SAFETY CONCERNS:

4. The site plan proposes only 10 parking spaces for a restaurant with a seating capacity greater than 100 seats. While this meets the strict requirement of the code, it is clear that a restaurant of that size would generate at least 50 cars when full, 80% of which will be forced into parking immediately across Caldwell Drive onto the single family residential streets (due to historic parking/driving congestion nearer to Dresden). After parking, customers will then be forced to walk to the restaurant along narrow residential streets with inadequate lighting and no sidewalks. Walking in those areas of Caldwell Drive is too dangerous without continuous sidewalks extending along Caldwell Drive and into the residential streets & street lighting.

Caldwell Drive is narrow, approximately 25' wide and has a right angle bend in it very close to the applicant's property. Caldwell Drive is without obvious outlets which would return unfamiliar drivers to Dresden Drive, thereby causing restaurant customers to execute dangerous U-Turns.

Unnecessarily assisting the applicant by granting the requested variance will either require the City of Brookhaven to immediately improve Caldwell Drive and the residential roads nearby, or, increase the City's legal liability for public safety. It would seem that tThe City must minimally patch/repair the road surface and install continuous

sidewalks on the opposite side of Caldwell Drive and into the residential streets. The city must also place “No Parking” signs along both sides of the entirety of Caldwell Drive and provide adequate street lighting.

No construction should be allowed to commence until all public safety issues have been studied & completed by the City of Brookhaven.

THE APPLICATION AND EXHIBITS DO NOT ADDRESS THE FOLLOWING ISSUES, OR, INCORRECTLY DEPICT CONDITIONS WHICH DO NOT MEET THE OVERLAY REQUIREMENTS, CLARIFICATIONS REQUESTED:

5. The submitted site plan does not comply with **Section 27-728.15.8 (c) (3)** requiring a 4’ landscape zone & 6’ sidewalk, and/or the depiction is not accurate. The first floor of the structure is approximately 4’ above the level of the curb. The pedestrian & landscape zone requirements zone extends from the back of the curb for 10’ into the property leaving approximately 15’ to install a high retaining wall & stairs to the entrance.
6. The submitted drawings depict the restaurant entrance to be located on the east side of the building, not the street side. This is not allowed under the zoning and requires another variance:
Sec. 27-728.15.12. - Development standards. (d) (8) The primary entrance to all buildings shall be clearly visible from the street, shall face the street,
7. The submitted site plan does not comply with **Section 27-728.15.8 (d) (1)**. Street trees are not shown.
8. The submitted site plan does not comply with **Section 27-728.15.12 (d) (16)**. All utilities are not underground. Electrical service to the site is overhead at the rear of the property.
9. The exterior finish of the existing structure is vinyl siding which is not permitted in the Overlay per **Sec. 27-728.15.7**. Exhibits are unclear as to proposed finish.
10. The new or moved storage shed is depicted against the rear and west side property lines this is not allowed per:
Sec. 27-731. - Accessory buildings, structures, and uses.(c) All accessory buildings or structures shall be located in the rear yard of the lot. No accessory building or structure shall be located closer than ten (10) feet to a side or rear lot line in any district.
11. The submitted elevations do not comport with the 35% rule of openings and glass
Sec. 27-728.15.7. - Architectural design requirements.(d) Building facades should promote architectural and visual interest. A minimum of thirty-five (35)

percent of any facade facing a public street shall consist of openings including windows and doorways.

12. A restaurant requires a dumpster, none is shown on the site plan & it must be screened per:

Sec. 27-728.15.7. - Architectural design requirements.

(e) Service areas, trash dumpsters, trash compactors and all other mechanical areas and equipment shall be screened from view from all streets and public rights of way. Screening shall be permitted to include landscaping or architectural treatment of color similar to the building, or both to screen the

For the above reasons BPCA respectfully requests the ZBA for the City of Brookhaven 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. We thank you for your thoughtful consideration.

Respectfully Submitted;

A handwritten signature in black ink, appearing to read 'T. Porter', written in a cursive style.

Thomas Porter, AIA, LEED AP
Member, BPCA