

Letter of Intent and Written Analysis

City of Brookhaven

Variance Applications

Applicant: Blue Square Group, LLC

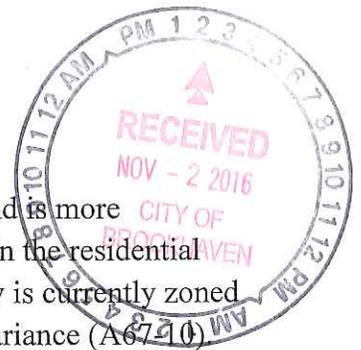
Property:

3262 Lynwood Drive
Brookhaven, Georgia 30319

Submitted for Applicant by:

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I. INTRODUCTION

The subject property is located at 3262 Lynwood Drive in Brookhaven and is more particularly identified in the enclosed legal description. The Property is located in the residential neighborhood of Lynwood Park and is currently undeveloped land. The Property is currently zoned R-75 (Single-Family Residential) and is subject to the Lynwood Park Blanket Variance (A67-10). The Property Owner and Applicant, Blue Square Group, LLC, seeks to improve the Property by building one single-family residence. In order to develop on the irregularly-shaped lot, the Applicant is requesting a zoning variance for a reduction in the front yard setback from 30 feet as required by the R-75 zoning district to eight (8) feet. The Applicant is also requesting a variance to increase the lot coverage from 35 percent to 38 percent.

The Property is an irregular corner lot that cannot be reasonably developed without the requested front yard setback variance and the requested lot coverage variance. Without the requested variances, the Property has no viable economic use and the Applicant/Owner's constitutionally-protected property rights will be taken. The proposed variance to the front yard setback will benefit adjacent neighbors along Osborne Road by allowing additional separation between the proposed single-family home and adjacent homes to the rear of the Property. The Applicant also plans to plant evergreen trees along the common boundary line between the Property and properties at 3267, 3265, and 3259 Osborne Road, and is amenable to adding this as a condition to the variance request.

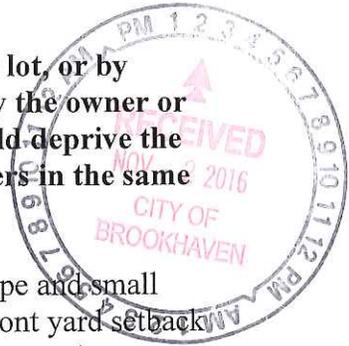
Further, the proposed variances are not contrary to the public interest as a literal enforcement of the Zoning Ordinance would result in unnecessary hardship. The proposed variances are in keeping with the spirit of the Zoning Ordinance, do not risk public safety or welfare, and accomplish substantial justice.

II. BASIS FOR VARIANCE REQUEST AND WRITTEN ANALYSIS

The Property currently exists as a small, irregularly shaped lot in an established residential community. The odd shape and small size of the lot places great hardship on the Applicant/Owner and prohibits reasonable development on the Property. The Applicant seeks approval of the requested variances to relieve these hardships and build a single-family home. Additionally, the Applicant anticipates exercising the preexisting Lynwood Park Blanket Variance (A67-10) for the side yard setbacks, each of which will be 5 feet. The proposed variance to the front yard setback will also benefit owners of adjacent homes by providing additional separation between homes.

The Applicant satisfies all of the criteria for variances as set forth in the City of Brookhaven Code of Ordinances Sec. 27-1665:

- 1) **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district:**



The Property currently exists as a small, irregularly shaped lot. The odd shape and small size of the lot prohibits reasonable development on the Property without a front yard setback variance and lot coverage variance. The Applicant seeks approval of the requested variances to relieve these hardships and build a single-family home that is in keeping with the character and context of surrounding properties. Strict application of the R-75 setback and lot coverage requirements will deprive the Property of significant value, and the Property will continue to exist as an empty, undeveloped lot.

- 2) **The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located:**

The proposed variances from the R-75 setback and lot coverage requirements are the minimum actions required to afford relief from the hardship caused by the small size and irregular shape of the Property. The Applicant is seeking relief that is no greater than necessary to relieve the undue hardship exerted upon the Property.

- 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:**

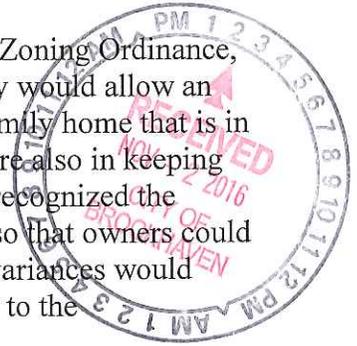
The proposed variances will benefit the Property by allowing a previously empty and unbuildable property to be developed. Also, the proposed front yard setback variance will benefit neighboring residences by creating additional separation along the rear property line between homes. Further, the proposed variances are not contrary to the public interest as a literal enforcement of the R-75 setback and lot coverage requirements will continue to result in unnecessary hardship to the property owner. The proposed variances are in keeping with the spirit of the Zoning Ordinance and do not risk public safety or welfare.

- 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 assigns:**

The literal interpretation and strict application of the R-75 setback and lot coverage requirements will cause undue and unnecessary hardship to the Property. Without the granting of the proposed variances, the Property will remain undeveloped and the Applicant/Owner will be deprived of constitutionally-protected property rights.

5) **The requested variance would be consistent with the spirit and purpose of this chapter and the city's comprehensive plan text:**

The proposed variances are consistent with the spirit and purpose of the Zoning Ordinance, the Comprehensive Plan, and the Lynwood Park blanket variance as they would allow an undevelopable and irregularly-shaped lot to be developed for a single-family home that is in keeping with the character of Lynwood Park. The requested variances are also in keeping with the spirit and intent of the Lynwood Park Blanket Variance which recognized the irregularity of the lots within the neighborhood and relaxed regulations so that owners could exercise their constitutionally-protected property rights. The proposed variances would allow the Applicant to construct a single-family residence that conforms to the neighborhood characteristics and aesthetics of Lynwood Park.



III. CONSTITUTIONAL NOTICE

Georgia law and the procedures of the City of Brookhaven require us to raise Federal and State constitutional objections during the variance application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the City of Brookhaven Zoning Code, facially and as applied to the Property, which restrict the Property to any zoning classification, conditions, uses, or to any development other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the City of Brookhaven Zoning Code, facially and as applied to the Property, which restricts the Property to any zoning classification, uses, conditions or to any development other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Variance Application would constitute an arbitrary and capricious act by the City of Brookhaven Zoning Board of Appeals without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the

Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the City of Brookhaven Zoning Board of Appeals to approve this Application for the Property in accordance with the criteria requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any zoning of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

This notice is being given to comply with the provisions of O.C.G.A. § 36-33-5 to afford the Zoning Board of Appeals an opportunity to grant the requested variance. If the Zoning Board of Appeals denies the requested variance, a claim will be filed in the Superior Court of DeKalb County demanding just and adequate compensation under Georgia law for the taking of property, diminution of value of adjacent and surrounding properties, attorney's fees and \$370,000 in other damages arising out of the unlawful deprivation of the Applicant/Owner's constitutionally-protected property rights.

For all the foregoing reasons, it is submitted on behalf of the Applicant that the variance applications meet the requirements of the City of Brookhaven Zoning Ordinance.

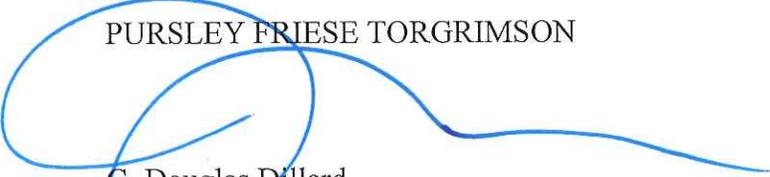
IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the City of Brookhaven Zoning Board of Appeals approve these Applications, granting relief from the R-75 front yard setback and lot coverage requirements.

If there are any questions about the variance requests, you may contact me at 404-665-1243 or at jarnold@pftlegal.com.

Sincerely,

PURSLEY FRIESE TORGRIMSON



G. Douglas Dillard
Jillian S. Arnold