

**PZ 01-31-24**

**LETTER OF INTENT**

and

Other Material Required by  
The City of Brookhaven Zoning Ordinance  
for the  
Rezoning and  
Concurrent Variance  
Applications

of

**PIRKLE BUILT, LLC**

for

± 4.02 Acres of Land  
located in  
Land Lot 307 of the 18<sup>th</sup> District, DeKalb County  
Addresses: 1946 & 1960 Harts Mill Road

Submitted for Applicant by:

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## I. INTRODUCTION

This Application seeks to rezone a ± 4.02-acre tract of land from RS-100 (Single-Dwelling Detached (15,000 sq. ft.)) to RS-50 (Single-Dwelling Detached (6,000 sq. ft.)) with two concurrent variances to allow for the development of fourteen (14) single family detached homes. The Subject Property consists of two parcels located in Land Lot 307 of the 18<sup>th</sup> District of DeKalb County, Georgia at 1946 and 1960 Harts Mill Road (Parcel IDs 1830702003 and 1830702004). The Subject Property is currently developed with two single family homes originally built in 1966 and 1967.<sup>1</sup> Both have been vacant for some time and are in a current state of disrepair. The Applicant intends to fully remove the structures and redevelop the property with homes on lots ranging from ±8,800-square feet to ±10,803-square feet (“Proposed Development”). The Proposed Development will also include internal sidewalks and an amenity area for the residents. The Proposed Development is consistent with other recent developments in the surrounding community. It is important to note that the Applicant has received strong support from the community and is submitting approximately twenty-eight (28) letters of support from the neighbors along with its application.

The Subject Property is in an area of the city that has evolved over the last twenty years, moving away from the larger lot single family residences built over 50 years ago, to modern homes in developments with lots that are more moderately sized. The Applicant’s proposal for fourteen homes, at a density of ±3.48 units per acre and a minimum lot size of 8,800 square feet, is aligned with the surrounding development. For example, the Mendenhall subdivision, zoned RSA-5 (Single-Dwelling Attached (5 UPA)) and located directly east of the Subject Property, is developed with homes on lots starting at ±6,000 square feet; the Harts Mill neighborhood to the west is zoned

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<sup>1</sup> The age of the structures was obtained from the DeKalb County Tax Map information for

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RSA-5 and contains  $\pm 7,300$  square foot lots; the Sidestreet neighborhood is zoned RS-50 with  $\pm 5,950$  square foot lots; the Commons at Brookhaven to the north is zoned RSA-8 (Single-Dwelling Attached (8 UPA)) with  $\pm 3,690$  square foot lots; and also to the north is Chamdun Place which is zoned RS-50 with  $\pm 6,080$  square foot lots.<sup>2</sup> Additionally, several larger lots in the Wyndale subdivision, to the north of the Subject Property, were rezoned from RS-100 to RS-60 and RSA-5 and redeveloped for smaller lot homes. Hence, and as a result of the recent redevelopment, the Subject Property has become an island of RS-100 zoning in an area that otherwise zoned for denser residential development.

Similar development has occurred up and down Harts Mill Road. For example, The Estates at Harts Mill, located near the intersection of Harts Mill Road and Ashford Dunwoody Road, is currently under construction for twelve (12) homes and zoned RSA-5; the New Haven subdivision developed around 2002 and zoned RSA-5; and the Hartford Glen subdivision developed around 2000 and zoned RS-50. This is a trend that is occurring throughout Brookhaven but is acutely apparent in the vicinity of the Subject Property. The Applicants proposal will rezone the property to RS-50, which will allow its development commensurate with what is existing the surrounding community.

In addition, the Proposed Development is aligned with many of Brookhaven's long-term planning goals. The City of Brookhaven's 2034 Comprehensive Plan ("Comp Plan") identifies the property as being located within the Lakes District character area. The vision for this character area is "for the single-family neighborhoods to be maintained and preserved. Residential infill development should be permitted only if it maintains the single-family detached character of the surrounding neighborhood." *See City of Brookhaven's 2034 Comprehensive Plan, pg. 15.* The

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<sup>2</sup> Lot sizes were taken from the DeKalb County Tax Map information based on sample lots in each subdivision.

Comp Plan also notes that single-family residential is one of the appropriate land uses for the character area. *Id.* As noted above, the Proposed Development's RS-50 zoning and the proposed single family detached homes on moderate lots are both consistent with these policies and aligned with the surrounding developments than the two large-lot homes currently on the property.

The Applicant submits this document as a Letter of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and an analysis of the rezoning listed in the City of Brookhaven Zoning Ordinance § 27-1027(a) along with an analysis of the approval criteria for the concurrent variances as outlined in the City of Brookhaven Zoning Ordinance § 27-1098. A site plan and survey have been filed with the original Application, along with other required materials.

## II. ZONING HISTORY

To the Applicant's knowledge, no rezoning applications have been filed concerning the Subject Property. The applicant has heard anecdotally, however, that in the recent past a developer approached the neighborhood regarding an 80-unit townhome development on the Subject Property.

## III. ZONING IMPACT ANALYSIS

The following is an analysis of the factors to allow a rezoning as outlined in the City of Brookhaven Zoning Ordinance § 27-1027(a):

### A. THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN.

As noted in the paragraphs above, Brookhaven's Comp Plan lists the property as being within the Lakes District character area. The Lakes District seeks to protect the single-family character of existing neighborhoods by limiting new residential development to single family

detached homes that are compatible with the surrounding homes. The proposed single family detached homes on minimum  $\pm 8,800$  square foot lots meet this policy and are more compatible with the redevelopments adjacent to and in proximity than the existing homes on the larger lots. The proposed use, therefore, is suitable *vis-a-vis* the policies of the Comp Plan.

**B. THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTIES.**

Yes, as noted in the paragraphs above, the Applicant's proposal for moderately sized lots IS more harmonious than the current 1.5-to-2.5-acre parcels.<sup>3</sup> Consequently, a rezoning to RS-50 will allow a development that is more aligned and harmonious with the surrounding development.

**C. WHETHER THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED.**

The current RS-100 zoning limits development to single family residential on a minimum 15,000 square foot lot. As noted in the paragraphs above, the surrounding area has transitioned away from larger lot residential to more moderately sized lots. Not surprisingly, the homes are currently vacant and restricting development to the current RS-100 zoning requirements will limit the appeal of the property to prospective buyers. Absent the grant of a rezoning to a more favorable district, the homes are likely to remain vacant.

**D. THE ZONING PROPOSAL WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY.**

No. As noted above, the majority of the nearby properties contain a mix of higher-density residential zoning districts that are similar to what is being proposed. Accordingly, the Applicants proposal to rezone the property to RS-50 for the development of fourteen (14) single family detached residences is compatible with the adjacent and nearby development.

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<sup>3</sup> 1946 Harts Mill Road is  $\pm 1.555$  acres and 1960 Harts Mill Road is  $\pm 2.465$  acres.

**E. WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY THAT PROVIDE SUPPORTING GROUNDS FOR EITHER APPROVAL OR DISAPPROVAL OF THE ZONING PROPOSAL.**

The development trends in the area support approval of this Application. The Subject Property's existing homes were developed in the 1960's, at a time when single family residential development favored larger parcels. In the approximately 55 years since the homes' original development, the area has grown and many of the larger parcels have been rezoned and replaced with smaller lot development. As a result, the Subject Property exists today as an island of RS-100 zoning in an area that otherwise zoned for denser residential development. The Applicant's proposal to rezone to RS-50 will bring the property in to alignment with the surrounding area.

**F. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.**

No. The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Properties or located in the immediate vicinity that would suffer adverse impacts from this rezoning request.

**G. THE AESTHETIC AND ARCHITECTURAL DESIGN OF THE SITE IS COMPATIBLE WITH THE INTENT AND REQUIREMENTS OF THE COMPREHENSIVE PLAN, THE CHARACTER AREA STUDY, AND ALL APPLICABLE ZONING ORDINANCE REGULATIONS.**

The homes proposed architecture will be compatible with the existing, newer homes in the area. The Applicant has not yet completed the final architectural design, but the homes proposed will fully comply with the requirements of the Comprehensive Plan and Zoning Ordinance.

**H. THE ZONING PROPOSAL WILL RESULT IN A USE THAT WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS.**

The Applicant does not anticipate any significant impact to the vehicular traffic from the number of trips that the Proposed Development will generate. The Applicant used the Institute of Traffic Engineers (ITE) Trip Generation Manual (Ninth Edition) (ITE Category 210 Single Family Residential), to calculate vehicle trips for the Proposed Development. According to the ITE Trip Generation Manual, the fourteen (14) homes will generate  $\pm 12.07$  trips during the weekday A.M. peak hour,  $\pm 14.97$  trips during the weekday P.M. peak hour, and  $\pm 161.24$  total trips on a weekday. The Proposed Development's small number of vehicular trips are not anticipated to cause any significant detrimental impacts on the adjacent roadways, however. The Proposed Development will have direct access to Harts Mill Road, which is classified as a Collector roadway per the Roadway Functional Classification in Brookhaven Map. *See City of Brookhaven's 2034 Comprehensive Plan, pg. 22.* Additionally, the Subject Property is located a short distance from Chamblee-Dunwoody Road and Ashford Dunwoody Road, both of which are classified as Minor Arterials and intended for higher volumes of traffic. *Id.* For example, the Georgia Department of Transportation's data for Chamblee-Dunwoody Road notes an average daily trip count of  $\pm 12,200$  cars. When the current daily trips are compared to the trips that the Proposed Development is expected to generate, the proposed trips are inconsequential. Hence, the Proposed Development's impact on traffic is anticipated to be minimal.

Any school age children that might live in the development will attend Montgomery Elementary School, Chamblee Middle School, and Chamblee High School. Chamblee Middle School is currently listed as under capacity, but Montgomery Elementary School and Chamblee

High School are over capacity.<sup>4</sup> The small number of homes, however, will not produce a significant number of school-age children and are not anticipated to have a negative impact on local schools.

As for utilities, the Subject Properties have access to water and sewer. A sewer capacity letter has been submitted to DeKalb County concurrent with this application.

**IV. CONCURRENT VARIANCE ANALYSIS**

The Applicant is seeking one concurrent variance with its request to the following requirement of the Brookhaven Code of Ordinance:

**A. Brookhaven Code of Ordinances § 14-357 to waive the requirement for a street to terminate in a cul-de-sac.**

The Brookhaven Code of Ordinances § 14-437 requires dead end streets to terminate in a cul-de-sac. The Subject Property's narrow shape, however, prevents adding a cul-de-sac without impacting lots, the amenity area and the stormwater detention pond. The general intent of a cul-de-sac is to provide sufficient space for vehicles to turn around at the end of a dead-end street. The Applicant will provide a t-shaped turn around at the end of the street instead of a cul-de-sac. The turnaround will meet the International Fire Code requirements for such a turnaround, thus giving larger emergency vehicles sufficient room to maneuver and turn around at the end of the street. The t-shaped turnaround, however, requires much less room than a cul-de-sac allowing area to preserve greenspace, an amenity area, and buildable lots. As a result, there will be no harm from grant of the proposed variance. A strict enforcement of the requirements will result in the loss of at least two proposed homes, the amenity area, and greenspace, without any other benefit.

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<sup>4</sup> The data was obtained from the DeKalb County School District Planning website at <https://www.dekalbschoolsga.org/operations/planning/> (last accessed on January 28, 2024).



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### **B. Brookhaven Code of Ordinances § 27-954 to increase the maximum height of a masonry wall from 8-feet to 14-feet.**

The Brookhaven Code of Ordinances § 27-954 prohibits masonry walls from exceeding eight feet in height when located in any other (non-front) yard. The Proposed Development will include a concrete wall along two sides of the proposed detention pond. The stormwater detention pond will be located at the Subject Property's lowest point to allow it to sufficiently capture the proposed stormwater. As a consequence of being at the lowest point in the development, coupled with the significant elevation change along the length of the property, walls are necessary along two sides of the pond. The wall will 14-feet at its highest point to provide sufficient volume for the anticipated stormwater runoff.<sup>5</sup> It is important to note, however, that the walls will not be retaining any soil and will only be necessary when the pond fills during rain events. The pond's design is such that it will completely drain in the days following a rain event and the walls will not be retaining anything. A strict enforcement of the 8-foot wall height limit would require the pond to have a much larger footprint that would result in the loss of buildable lots and the amenity area. A grant of the variance would not result in any harm to the public or frustrate the intent of Brookhaven's code. One benefit of the wall height limit is to protect visual impacts on adjacent properties. The proposed wall, however, faces the rear of the adjacent property, which has a large amount of existing wooded vegetation that will visually buffer the wall. In addition, the Applicant will mitigate any impacts by planting additional screening materials along the face of the wall.

Pursuant to the City of Brookhaven Zoning Ordinance § 27-1098, the criteria for granting the variance are met. First, the grant of the variances will not be detrimental to the public health, safety or welfare or injurious to property or improvements. Second, the variance requests are

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<sup>5</sup> The walls are 14-feet on the pond side and 12-feet in height on the outside due to a difference in grades on each side of the wall.

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based on conditions that are unique to the subject property, not generally applicable to other properties in the same zoning district, and not the result of the subject property owner's or applicant's actions. Third, because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners. Fourth, 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 similarly situated properties. Fifth, the literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience. Finally, the requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.

### **V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The Applicant respectfully submits that the current zoning classification of the Subject Property and any proposed intervening district is unconstitutional and that rules relative to the Subject Property owner's right to use the Property established in the City of Brookhaven Zoning Code, to the extent they prohibit the Proposed Development, as well as constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to grant the requested Rezoning and

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Concurrent Variance applications would constitute a taking of private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The Applicant respectfully submits that the City of Brookhaven City Council's failure to approve the requested Rezoning and Concurrent Variance applications would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to allow the Rezoning and Concurrent Variance applications in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the Rezoning and Concurrent Variance applications in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

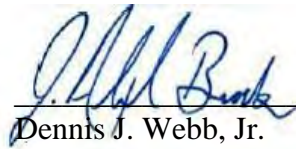
Opponents to this request, if any, lack standing; have failed to exhaust administrative remedies; and have waived their rights to appeal by failing to assert legal and constitutional objections.

**VI. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that this Rezoning and Concurrent Variance application be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City so that such recommendations or input may be incorporated as conditions of approval of this Application.

This 31<sup>st</sup> day of January, 2024.

Respectfully submitted,



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