



OFFICE OF PLANNING
55 Trinity Avenue S.W., Suite 3350
Atlanta, Georgia 30303
(404) 330-6145

APPLICATION #: **V-15-352**
DATE ACCEPTED: **10/21/2015**

NOTICE TO APPLICANT

Address of Property:
929 Cumberland RD NE

City Council District: **6** Neighborhood Planning Unit (NPU): **F**

Board of Zoning Adjustment (BZA) Hearing Date:

December 10, 2015 at 12:00 p.m.

Council Chambers, 2nd Floor, City Hall
55 Trinity Avenue, S.W.

The contact person for NPU F is:

Charles Nalbone
404-376-3230
Zoning@npufatlanta.org

Contact info for adjacent NPUs is provided below if necessary:

Additional Contacts:

Please contact the person(s) listed above within two days to find out which meetings you will be required to attend before the next NPU meeting. If you are unable to reach the contact person, please call the city's NPU Coordinator at 404-330-6145.

Signed,



TT, for Director, Bureau of Planning



Stephen Furr



CITY OF ATLANTA

Office of Buildings - Zoning Division
55 TRINITY AVENUE, SUITE 3900
Atlanta, Georgia 30303
404-330-6175

REFERRAL CERTIFICATE

COUNCIL DISTRICT 6 APPLICATION NUMBER V-15-352

NPU F DATE FILED 10-21-2015

1. KBD Development, LLC
Name of Applicant

BUILDING PERMIT AUTHORIZING

Construction of a Single-Family Dwelling.

at 929 Cumberland Road NE 17th / 2
Street Address Quadrant District & Land Lot

to be used for Residential purposes

The property is zoned R-4 District

2. The Building Permit Was Denied For The Following Reasons:

Applicant seeks a variance from the zoning regulations to reduce the 1/2 depth front yard setback from 17.5 feet to 7 feet in order to allow for the construction of a single family dwelling. Applicant seeks no other variances at this time.

1982 ZONING ORDINANCE, AS AMENDED

Chapter 6 Section 16-06.008 Paragraph (1)

Chapter 28 Section 16-28.007 Paragraph (5)(b)

Chapter _____ Section _____ Paragraph _____

Chapter _____ Section _____ Paragraph _____

[Signature]
Plan Reviewer 10-21-15
Date

[Signature]
Applicant 10/21/2015
Date



APPLICATION FOR VARIANCE
City of Atlanta

Date Filed 10/21/2015 Application Number V-15-352
Name of Applicant Stephen Furr Daytime Phone 404-561-1555
Company Name KBD Development LLC e-mail sfurr@kbddevelopment.com
Address 2472 Cove Circle Atlanta GA 30319
street city state zip code

Name of Property Owner Steve Kengisser Phone 770-845-4728
Address 1247 Riverside Rd. Roswell GA 30076
street city state zip code

Description of Property

Address of Property 929 Cumberland Rd. Atlanta, GA 30306 OR
the subject property fronts _____ feet on the _____ side of _____
, and begins _____ feet from the
corner of _____.

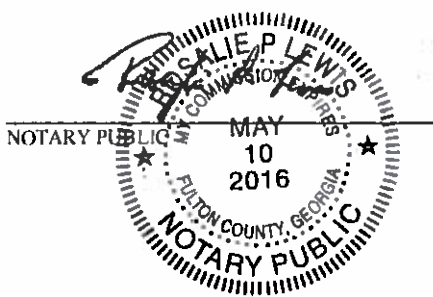
Depth: 184 Area: .226 ^{acres} Land Lot: 2 District: 17th, Fulton County, GA.
Property is zoned: R4, Council District: 6, Neighborhood Planning Unit: F

TO THE BOARD OF ZONING ADJUSTMENT: Applicant, having received an adverse order or requirement from the administrative officer in seeking a building permit or certificate of occupancy, hereby requests that the Board of Zoning Adjustment grant variance(s).

I hereby authorize the staff of the Office of Planning to inspect the premises of the above-described property. I understand that it is my responsibility to post a public notice sign on the property according to the instructions given to me by the Office of Planning upon filing this application. I swear that all statements herein and attached hereto are true and correct to the best of my knowledge and belief.

Sworn To And Subscribed Before Me This 21 Day Of Oct, 2015.

[Signature]
Owner or Agent for Owner (Applicant)
Stephen B. Furr
APPLICANT'S NAME IN PRINTED LETTERS





V-15-352

Summary of proposed changes to buildings or site (example: "Construct a 10-foot by 10-foot, one-story room addition on the first floor of the house.") Include square footages and stories: Requests a variance to reduce the secondary side yard (half depth front yard) setback from 17.5' feet to 7 feet for a new single family residence zoned R4.

Proposed Lot Coverage (After Construction): Calculate total square footage of all lot coverage on the entire property after construction would be finished, including existing and proposed buildings and other structures, sidewalks, driveways, parking pads, patios, gravel, etc; everything except natural planted or undisturbed areas.

3504 covered square feet / 9845 total lot square feet = 36 % proposed lot coverage
50 % maximum allowed lot coverage

Variance Procedures

Variance applications are heard and decided at a regularly-scheduled public hearing by the five-member City of Atlanta Board of Zoning Adjustment ("BZA"). The Office of Planning serves as staff to the BZA. Approximately one week after each closing date, a planner is assigned to review your application. All inquires regarding your application should be directed to this office at (404) 330-6145. The rules of the BZA prevent BZA members from discussing the merits of any case except during the public hearing for that case.

Schedule. There are two closing dates and two public hearings per month. The schedule allows time for neighborhood and NPU meetings to occur throughout the City prior to each public hearing. The schedule of closing and public hearing dates is attached (Page 9).

Neighborhood and NPU Recommendations. The City is divided into 24 Neighborhood Planning Units (NPU), each of which has a volunteer citizen advisory committee that makes a recommendation to the BZA on variances. When you file your application, you will be notified of the NPU contact person and that you must schedule a meeting with that NPU in order to explain what you wish to do. You may be requested to attend additional neighborhood meetings; inquire about the time and place of those meetings. The applicant is expected to contact the NPU as soon as possible after the application is filed. The Office of Planning will send a copy of your application to the appropriate NPU during the week after the closing date for your application.

Public Notice. When you file your application, it will be scheduled for a public hearing. The Office of Planning will initiate posting of public notice ("an advertisement", "a legal ad") for this public hearing so that the public is informed at least 15 days before the date of the public hearing:

- by sending written notice of your application to all property owners whose property is within 300 feet of the subject property, and
- by causing public notice to be placed in the newspaper.

You are responsible for obtaining a public notice sign when you file your application with the Office of Planning, and for posting it in a visible location on your property, at least 15 days prior to your public hearing. Failure to properly post the sign will make it necessary for the BZA to defer your case to another public hearing. The BZA may defer the case to a hearing that has been scheduled 30 or more days after the original hearing.

Refunds on Withdrawn Cases. Requests for withdrawal received 18 days prior to the public hearing will enable a refund of the application fee.

Staff Recommendation. Office of Planning staff reviews and makes written recommendations to the BZA on each variance application. You may contact your assigned planner at (404) 330-6145 on the day of the public hearing if you wish to know staff's recommendation.

Variance Letter of Appeal

Chris J. Davis
KBD Development LLC
2472 Cove Circle
Brookhaven, GA 30319

Office of Planning
City of Atlanta
55 Trinity Avenue
Suite 3350
Atlanta, GA 30303



To Whom It May Concern:

Request:

KBD Development, LLC ("KBD") hereby officially requests a variance to reduce the secondary side yard (half depth front yard) setback from 17.5 feet to 7 feet for a single family residence zoned R4. The Subject Property is located at 929 Cumberland Road NE Atlanta, GA 30306 NE ("Subject Property"), fronting 50 feet on the south side of Cumberland Road and beginning at the intersection of Cumberland Road and Wessyngton Road.

Background:

The Subject Property is currently located in the heart of the Morningside neighborhood and is developed with an old duplex building that is rented. The Subject Property is a corner lot that is legal non-conforming in width as it is only fifty feet wide instead of the required seventy feet. KBD plans to demolish the existing structure and build a new single family residence. A high number of rental properties exist in this neighborhood and the adjacent and nearby neighbors, who are owners, strongly support the development of new primary residences which helps reduce this imbalance.

Justification:

First, there are extraordinary and exceptional conditions pertaining to the Subject Property because of its size and shape. The Subject Property meets the minimum lot size of 9,000 square feet for the R-4 district, but does not meet the minimum width requirement of 70 feet. City of Atlanta Zoning Ordinance Section 16-06.007. The Subject Property is only 50 feet wide. Corner lots zoned to the R4 district are required to provide a half-depth front yard adjacent to streets other than in frontage. City of Atlanta Zoning Ordinance Section 16-28.007(5)(b). Because the lot is already legal non-conforming in width, meeting the additional frontage for corner lots is a hardship. Most internal lots in the Morningside neighborhood with similar widths (50 feet) are required to have two seven-foot side yards. As a result, these lots have a 36 foot wide building area. If Subject Property is required to provide the additional half depth front yard, the Subject Property will only have a 25.5 foot wide building area. This is an extremely narrow building area to fit a single family detached home while retaining the harmony and architectural characteristics of the Morningside neighborhood.

It is KBD's hope that with this variance, our Architect can blend the Architectural styles of the past (Tudors and Jacobean) into a new residence that has a more traditional and functional floorplan layout. Although a home could be constructed on the Subject Property that is limited to a width of 25 feet, the

home would be rectangular in shape and long and narrow, much like a typical townhome. Allowing the additional 10.5 feet will allow design flexibility to increase the interior and exterior architectural appeal and build a home that is in keeping with the other homes in the neighborhood. In addition, there is currently a duplex on the Subject Property that is a legal non-conforming structure. Allowing the variance will enable this non-conforming structure to be removed and replaced with an allowed use (a single family detached dwelling).

Second, the application of the Zoning Ordinance of the City of Atlanta to the Subject Property would create an unnecessary hardship. Denying the Applicant the ability to construct a single family detached home in keeping with the surrounding neighborhood would ultimately lead to the creation of an inferior house less desirable to potential buyers. Further, precedents have been set in the Morningside area to allow narrow corner lots a reduction in the secondary side yard (half depth front yard) setbacks to less than what KBD is requesting. As an example, 1384 Middlesex Avenue is a 60 foot wide corner lot in Morningside that was recently granted a secondary side yard setback reduction from 17.5 feet to 5.5 feet. Granting the requested variance would remove the unnecessary hardship.

Third, the conditions pertaining to the Property are peculiar to the Property. As described above, the shape of the Property is a unique, narrow shape that constrains the buildable area for a single family home.

Fourth, relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Zoning Ordinance of the City of Atlanta. The requested setback variance seeks to gain the minimum building width necessary of 36 feet to build a modest house that maintains current neighborhood aesthetics. Past variance cases show that the city has granted approval for similar situations in this neighborhood. Further, granting the requested variance would be consistent with the purposes of the Zoning Ordinance, such as providing for the protection of existing single-family communities and the development of new communities on lots of medium size at a density of not more than one dwelling unit per 9,000 square feet.

Accordingly, the Applicant respectfully requests that the Board of Zoning Adjustment of the City of Atlanta grant the variances as requested.

By: 
KBD Development LLC



V-15-352



Y-15-352

NOTARIZED AUTHORIZATION BY PROPERTY OWNER

(Required only if applicant is not the owner of the property subject to the application.)

TYPE OF APPLICATION Variance

I, Steven J. Kangisser (OWNER'S NAME)

SWEAR THAT I AM THE OWNER OF THE PROPERTY LOCATED AT 929 Cumberland Road Atlanta, GA 30306 (PROPERTY ADDRESS).

AS SHOWN IN THE RECORDS OF Fulton COUNTY, GEORGIA WHICH IS THE SUBJECT MATTER OF THE ATTACHED APPLICATION. I AUTHORIZE THE PERSON NAMED BELOW TO ACT AS THE APPLICANT IN THE PURSUIT OF THIS APPLICATION.

NAME OF APPLICANT KBD Development LLC

ADDRESS OF APPLICANT 2472 Cove Circle Atlanta, GA 30319

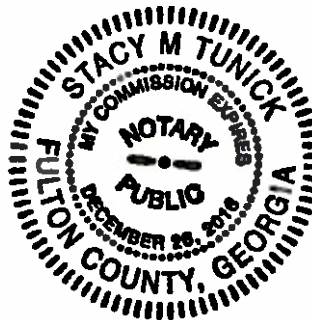
TELEPHONE NUMBER 404-561-1555

[Signature]
Signature of Owner

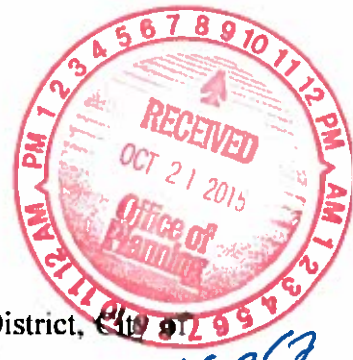
Personally Appeared Before Me Stacy M. Tunick

Who Swears That The Information Contained In This Authorization Is True and Correct To The Best of His or Her Knowledge and Belief. [Signature]

Notary Public [Signature]
Date 10/16/15



**LEGAL DESCRIPTION
929 Cumberland Road**

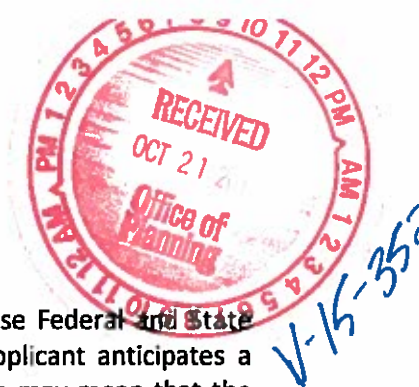


All that tract or parcel of land lying and being in Land Lot 2 of the 17th Land District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows;

Beginning at the intersection of the southerly right-of-way of Cumberland Road (50' R/W) and the easterly right-of-way of Wessyngton Road (50' R/W), said point being THE TRUE POINT OF BEGINNING; THENCE from said point as thus established, continuing on said southerly right-of-way of Cumberland Road North 89 Degrees 35 Minutes 31 Seconds East for a distance of 55.00 feet to a point, said point marked by a ½ inch rebar pin found; THENCE leaving said right-of-way and traveling South 22 Degrees 40 Minutes 43 Seconds East for a distance of 183.83 feet to a point, said point marked by a 1 inch crimp top pipe found; THENCE South 66 Degrees 50 Minutes 28 Seconds West for a distance of 50.37 feet to a point on the easterly right-of-way of Wessyngton Road, said point marked by a ½ inch rebar pin found; THENCE along said right-of-way North 22 Degrees 49 Minutes 40 Seconds West for a distance of 205.10 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.226 Acres

CONSTITUTIONAL OBJECTIONS
City of Atlanta, Georgia



Georgia Law and the procedures of the City of Atlanta 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 Zoning Ordinance of the City of Atlanta, Georgia, as applied to the Property, that would result in a denial of the variance as requested by the Applicant, are, or would be, 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 of the Constitution of the State of Georgia of 1983, Article I, 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.

Any application of the Code of the City of Atlanta or the City of Atlanta Zoning Ordinance to the Property which restricts its use to any use in a manner other than that requested by the Applicant is unconstitutional, illegal and null and void because such an application constitutes a taking of the 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 Article I, 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 because such an application denies the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application or approval subject to conditions which differ from those proposed by the Applicant, would also violate the Religious Land Use and Institutionalized Persons Act by imposing a substantial burden on the exercise of religion without a compelling government interest or without using the least restrictive means possible of furthering a compelling governmental interest.

A denial of this Application would also constitute an arbitrary and capricious act by Zoning Board of Appeals of the City of Atlanta without any rational basis therefore, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, 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 to grant the variance as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of 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 approval of the variance subject to conditions that are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting the Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

In addition, this constitutes formal written notice to the City of Atlanta, pursuant to O.C.G.A. § 36-33-5, that the Applicant plans to seek to recover all damages that it sustains or suffers as a result of the denial of this Application and/or the unconstitutional zoning of the Property by the City of Atlanta. Such damages may include, but are not necessarily limited to, damages related to the diminution in the value of the Property, attorneys' fees and expenses of litigation.

Accordingly, the Applicant respectfully requests that the Board of Zoning Appeals of the City of Atlanta grant the variance requested by the Applicant.

By: 
KBD Development LLC



V-15-352

RECEIPT

CITY OF ATLANTA
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
55 TRINITY AVE SW, ATLANTA GA 30303
404-330-6070

Application: V-15-352
Application Type: Planning/BZA/Variance/NA
Address: 929 CUMBERLAND RD NE, ATLANTA, GA 30306
Owner Name: KANGISSER STEVEN J
Owner Address:
Application Name:

PAID
CITY OF ATLANTA
OCT 21 2015
EX OFFICIO MUNICIPAL
REVENUE COLLECTOR

Receipt No.	Ref Number	Amount Paid	Payment Date	Cashier ID	Received	Comments
438950		\$100.00	10/21/2015	PLUKE		

Owner Info.: KANGISSER STEVEN J

Work Description: to reduce the 1/2 depth front yard setback from 17.5 feet to 7 feet to allow for the construction of a single family home