



Board of Zoning Appeals Public Hearing
May 17, 2016 — 7:00 P.M

CASE NUMBER:	V-16-013
PROPERTY LOCATION:	625 Barston Lane Johns Creek, GA 30022 1st District, 2nd Section Land Lot 922
CURRENT ZONING:	CUP (Community Unit Plan) Conditional
PARCEL SIZE:	.138 Acres
PROPERTY OWNER(S):	Nofar Avigal and Eliad Shwartz
STAFF RECOMMENDATION:	DENIAL

REQUEST

The existing residence, located at 625 Barston Lane, was constructed in 1993 and is approximately 2,400 square feet. The applicant is requesting a variance to allow a hot tub and a hot tub deck to encroach 7'6" into the ten-foot setback required for pools, pool equipment, and decks by Section 19.3.12.B.1 of the City of Johns Creek Zoning Ordinance. Typically, accessory structures are required to comply with the primary building setbacks, however, Section 19.3.12.B.1 provides an exception for pools and their related equipment/structures. If approved, the hot tub at 625 Barston Lane would be setback 2'6" from the side property line while the hot tub deck would be setback 5'4" from the side property line. The hot tub is approximately eight-feet by eight-feet, measuring 64-square feet, and includes a cover.

When the case was originally submitted, a raised deck, which extended all the way to the side property line, was located around the perimeter of the hot tub. The conditions of zoning on the property set no side setback requirements, but require all buildings to be ten-feet apart. Since the raised deck did not comply with the conditions of zoning, the applicant removed the raised portion of the deck, but left a lower tier of the decking which is located at grade. The edge of the reduced deck is located 11'8" from the edge of the neighbor's house at 635 Barston Lane and therefore, now complies with the zoning conditions for the subdivision. However, the deck is only 5'4" from the side property line and must also be reviewed per the requested variance. The remaining deck is u-shaped, due to the portion that was removed. Additional portions of the deck could be removed, which would eliminate the need for the deck portion of the variance.

The hot tub is located ten-feet from the edge of the neighbor's house at 635 Barston Lane.

Swimming pools, private are defined as "a recreational facility designed and intended for water contact activities which serves single-family dwelling(s), duplex dwellings and/or multi-family dwellings, or combinations of dwelling types, including pools which are owned and/or controlled by a neighborhood club similar organization." While Section 19.3.12.B.1 does not specifically state regulations for hot tubs or spas, the definition of a private swimming pool intends for all recreational water facilities to be reviewed in the same

manner. This is also consistent with the International Residential Building Code which regulates pools, spas, and hot tubs using the same set of guidelines.

BACKGROUND

The subject property, 625 Barston Lane, is lot number 12 within Phase Three of the Enclave at Breckenridge subdivision.

Staff notes that this is an after-the-fact request, as the hot tub has already been installed. In this instance, the hot tub was installed on the property by a previous owner; however, a complaint was made after the new owners purchased the property. Based on historic aerial photography, the hot tub was installed between 2013 and 2014. The current property owners, Nofar Avigal and Eliad Shwartz, purchased the home in April of 2015.

ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, east, and west are zoned CUP Conditional and are in the Enclave at Breckenridge subdivision as well.

APPLICABLE CODE REQUIREMENTS

City of Johns Creek Zoning Ordinance; Article XIX: Administrative Permits and Use Permit; Section 19.3.12: Swimming Pool, Private; B: Standards; 1: Detached Dwellings;

Detached Dwellings. Swimming pools shall be allowed in side and rear yards of single-family dwellings in any district and may also be allowed at the back of the house on a double frontage single-family residential lot as approved by the Department. Pools, pool equipment, and their decks must be a minimum of 10 feet from all property lines, except that when perimeter setbacks are required, for example in NUP and TR zoned districts, pools, pool equipment, and decks cannot be located in perimeter setbacks.

VARIANCE CONSIDERATIONS

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or
- B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public.

STAFF RECOMMENDATION

V-16-013, if granted, would not be in harmony with the general purpose and intent of the Zoning Ordinance. Ten-foot setbacks for pools, pool equipment, and their decks are intended to provide adequate separation

between the accessory structure and the neighbors. In this case, allowing a hot tub and decking to be located 2'6" from the west property line would not meet this intent, as the adjacent residence would be located only 10-feet away.

Additionally, there are no extraordinary or exceptional conditions on the subject property due to its size, shape, or topography that would create an unnecessary hardship under the provisions of the Zoning Ordinance. The fact that a previous owner installed the hot tub and deck does not constitute a hardship, as outlined by the variance considerations in Section 22.3.1 of the City of Johns Creek Zoning Ordinance. Staff has reviewed the site and the rear yard is flat, with several alternative locations that the hot tub could be relocated to. If the hot tub is relocated, the deck could remain where it is as it would no longer be considered an accessory to the hot tub.

Therefore, the Community Development Department recommends **DENIAL** of V-16-013, as the proposed variance request is not in harmony with the general purpose and intent of the Zoning Ordinance, nor are there any extraordinary or exceptional conditions on the site which would create an unnecessary hardship.

RECOMMENDED CONDITIONS

Based upon the findings and conclusions herein, Staff recommends **DENIAL**. If the Board were to approve the variance request, Staff recommends that approval be subject to the following conditions of approval:

1. No decking shall be placed within ten-feet of the neighboring structure, to comply with conditions of zoning.
2. The hot tub must remain at grade and cannot be raised on a deck.
3. Obtain required swimming pool permits and fencing permits from the City of Johns Creek Community Development Department.



Community Development