

ONE MIDTOWN PLAZA, SUITE 1010  
1360 PEACHTREE STREET NE  
ATLANTA, GEORGIA 30309

Direct Dial 885-7576  
Fax 470-225-6646  
chad@hhpatlanta.com  
www.hhpatlanta.com

December 7, 2020

*VIA HAND DELIVERY*

City of Johns Creek  
Community Planning & Development  
Attn: Ruchi Agarwal, Planner III  
11360 Lakefield Drive  
Johns Creek, GA

**RE: Variance Application - 10645 Stonefield Way  
Letter of Appeal**

Dear Ms. Agarwal:

As you know, this firm has been retained to represent Mr. Ray Johnston in the Variance Application process regarding his property located at 10645 Stonefield Way, Johns Creek. Please accept this correspondence as the Letter of Appeal in support of the Variance Application made pursuant to the Johns Creek Zoning Ordinance, Article 22.2.2 and 22.2.3. Mr. Johnston seeks to construct a pavilion at the rear of his residential property within the 35-foot set back required by the City of Johns Creek. The pavilion would be considered an accessory structure pursuant to the Zoning Ordinance, Article III. Previously, Mr. Johnston completed construction of the pavilion; however, the contractor hired to perform the construction did not pull the proper permit for the project. In good faith, Mr. Johnston has deconstructed the pavilion and is pursuing this variance in order to reconstruct the structure with the proper permit. Mr. Johnston's overall property plan is to include a swimming pool located behind his home between the house and the pavilion. Mr. Johnston's proposed improvements to his private property are entirely consistent with the Johns Creek 2018 Comprehensive Plan and the Medlock Community Plan.

Mr. Johnston's home is located in the Stonehaven subdivision in Johns Creek. In addition to the City of Johns Creek's building and development guidelines and codes, the Stonehaven Homeowners' Association has strict building requirements for any additional structure homeowners wish to place on their property pursuant to the HOA Covenants. Mr. Johnston has submitted the site plan and architectural renderings of the pavilion and the proposed location to the HOA. Given the property lines and the neighboring homes, the Stonehaven HOA has approved the proposed pavilion only for the specific placement for which this variance is sought. A copy of

the email approval from the Homeowners' Association is attached hereto as Exhibit A. Specifically, section 16 of the HOA Covenants directs that any accessory structures must be placed behind the home and not visible from the road. HOA Covenant Section 16 attached as Exhibit B. Mr. Johnston has also consulted each neighbor immediately adjacent to his property and whose sightlines and other interests may be impacted by the proposed placement of the pavilion. Each property owner supports Mr. Johnston's proposed placement and construction of the pavilion. Four letters of support from the adjacent landowners will be provided via supplemental filing with the City.

Specifically, the Johns Creek Zoning Ordinance provided for variances from ordinance requirements as follows:

*22.3.1. Variance Considerations. Variances may be considered in all districts. Primary variances and concurrent variances shall only be granted upon showing that:*

*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.*

It is important to note, the Zoning Ordinance as to variances does not provide rigid criteria or set hardships which must be met by the applicant. Rather, the Zoning Code allows for broad consideration of the property owner's application and proposed use.

The United States Constitution, mirrored by the Georgia State Constitution, guarantees a property owner is entitled to the highest and best use of his or her property. While municipalities have the authority to regulate the use of private property – that authority is not absolute and must be narrowly tailored to accomplish an important public goal. In the State of Georgia, zoning ordinances are to be strictly construed in favor of the property owner and any vagaries or ambiguity in the language employed should be resolved in favor of the free use of the property. *See Stanfield v. Glynn County*, 280 Ga. 785, 787 (2006). The City of Johns Creek ordinance at issue here is the required 35-foot set back from the rear property line of residential property. In addition to the City, the Stonehaven HOA has concurrent and additional restrictions on property use within its boundaries. The HOA will not allow placement of the pavilion along the western boundary between Mr. Johnston's home and his neighbor. The HOA reasoning for this restriction applies throughout the Stonehaven development and is an aesthetic regulation. It is for these reasons that the only HOA approved location is the southwestern rear of the property where the pavilion is more hidden from both the street and the surrounding neighbors. Additionally, placement of the pavilion on the western side of the property would require the cutting of three trees along the property line and the significant disturbance of Mr. Johnston's neighbor's yard to clear the root systems of the trees taken down. Please see the site plan included with the variance application which includes the trees and the likely root system(s).

The City has suggested a second potential placement of the pavilion directly off of the rear of the Johnston home. This placement, while outside of the rear set back, is wrought with problems

and presents difficulties which would restrict Mr. Johnston's highest and best use of his property. First, as stated above, Mr. Johnston has a comprehensive plan which includes the installation of a swimming pool off the rear of the home. The property immediately off of the rear of the home is the most level for the installation of the pool and would not require the disturbance of the trees along the western property border. Second, as the topographical survey submitted with the variance application makes clear, there is an 8-foot slope/drop between the southern rear of the property and the rear of the home. This is very significant as it relates to the City's recommendation to place the pavilion at the rear of the home and the pool at the rear of the property. For instance, to place the pool along the southern rear of the property (the location this application seeks to place the pavilion) would require at least an 8-foot deep dig out of the sloping ground – which is much more expensive. Additionally, the southern property line is populated by a number of pine and hardwood trees which are not on Mr. Johnston's property. Rather, these trees are on neighboring property. The work to install the pool in the location suggested by the City would destroy the root systems of these trees on neighboring property causing a hazardous condition to Mr. Johnston and his neighbors. The critical root systems of the trees located on the western and southern borders of the property are included in the variance site plan submitted herewith. In contrast, the foundation of the footings and the proposed retaining wall would only dig 1-foot into this area and not disturb the neighboring property owners' trees.

The Variance Application does not offend any legitimate interest the City of Johns Creek has in regulating the use of private residential property. Further, there is no logical alternative to the proposed placement of the pavilion as detailed in the site plan submitted. Mr. Johnston respectfully requests his variance be granted and he be allowed to reconstruct the pavilion as detailed herein.

Sincerely,

*Charles Hoffecker*

Charles Hoffecker

CH/ser  
Enclosures

EXHIBIT A

On Thu, Oct 29, 2020 at 7:14 PM Stonehaven ACC <[stonehaven.acc@gmail.com](mailto:stonehaven.acc@gmail.com)> wrote:

RECEIVED  
V-21-001  
DEC 08 2020

Good evening Ray,

Thank you for the update and meeting. The ACC unanimously approves your proposal to move the structure to the back of the house-parallel with the back of the home. The request is that the start of the structure be as far to the left (towards the open property and current structure placement) as the land and regulations will allow. We feel this is best placement for privacy and to ensure the maximum amount of the structure is not visible from the street.

Please keep us updates as progress continues and let us know how we can help.

Thank you!

Stonehaven ACC

City of Johns Creek  
Community Development

EXHIBIT B

RECEIVED  
V-21-001  
DEC 08 2020

GEORGIA, Fulton County, Clerk's Office, Superior Court

Filed & Recorded,

Aug. 27 1986 8:50  
20th

*Robert J. Linn* CLERK

City of Johns Creek  
Community Development

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR STONEHAVEN

THIS DECLARATION, made this 19th day of August, 1986, by JOHNS CREEK ASSOCIATES, a Georgia General Partnership composed of Universal Investment and Manufacturing Company, a Georgia corporation, Dalton Farms, Inc., a Tennessee corporation, and M. L. Vitya Chakrabandhu (hereinafter referred to as "Developer").

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property known as Stonehaven Subdivision lying and being in Land Lots 280, 281, 305 and 306 of the 1st District, 1st Section of Fulton County, Georgia, which real property is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in Stonehaven and for the maintenance of the property and improvements thereon, and to this end to subject the real property described in Exhibit "A" to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Stonehaven, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common area and improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused to be incorporated, under the laws of the State of Georgia, Stonecreek Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions;

BK10280 case 352

Section 12. Antennae. No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 13. Clotheslines. No outside clothesline shall be placed on any Lot.

Section 14. Recreational Vehicles and Trailers. The Architectural Control Committee, in reviewing the plans and specifications for any proposed Structure, may require that special parking areas be made available for recreational vehicles. No trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot, except on such parking areas as specified by the Architectural Control Committee pursuant to this Section 14 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. While nothing contained herein shall prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual constructions, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Section 15. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot.

Section 16. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage; a garage may also be an attached accessory structure. Such accessory structures shall not exceed twenty (20) feet in height and shall conform in exterior design and quality to the dwelling on the same Lot. With the exception of a garage that is attached to a dwelling and the mailbox, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located within such side and rear setback lines as may be required hereby or by applicable zoning law. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory structure to be erected on any Lot, and construction of an accessory structure may not be commenced until complete final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants.



Any accessory structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the Lot on which such accessory structure is located.

Section 17. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Stonehaven shall be undertaken and completed in accordance with the following conditions:

- (a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities.
- (b) All single-family residences constructed on the Lots shall be European or American traditional in style. The determination of whether or not a residence is European or American traditional shall be decided by the Architectural Control Committee in its sole and uncontrolled discretion.
- (c) Concrete or concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot, and there shall be no chain-link fence or fences or walls of any other material which the Architectural Control Committee determines to be incompatible with dwellings or other structures in Stonehaven.
- (d) Only one mailbox shall be located on any Lot, which mailbox shall be of masonry construction only and consistent with the quality and design of surrounding dwellings and mailboxes. Said mailbox shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns.
- (e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.
- (f) No exposed, above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.