



BOARD OF ZONING APPEALS

OFFICIAL Minutes

JANUARY 16, 2025

ALPHARETTA CITY HALL
COUNCIL CHAMBERS
2 PARK PLAZA
5:30 PM

1. CALL TO ORDER

Elle Taylor, Planning & Zoning Coordinator, called the meeting to order at 5:32 p.m.

A. Election of Chair and Vice Chair for 2025

- ❖ Board Member Gelber nominated Michael Gordy as Chair.
 - Board Member Shaw-Murphy seconded the nomination.
 - Board Member Gordy accepted the nomination.
 - Motion carried (6-0-1)(Gordy)
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- ❖ Board Member Gelber nominated Kirk Driskell as Vice-Chair.
 - Chair Gordy seconded the motion.
 - Board Member Driskell accepted the motion.
 - Motion carried (6-0-1)

2. ROLL CALL

A. Board Members Present

- Marc Gelber (Chair)
- Michael Gordy (Vice -Chair)
- Kirk Driskell
- Donna Shaw Murphy
- Lisa Shippel
- Dereje Teshale
- Scott Wharton

B. Staff Present:

- Michael Woodman, Planning & Development Services Manager
- Elle Taylor, Planning & Zoning Coordinator
- Joel Carnow, GIS Specialist/Special Projects Manager

3. APPROVAL OF MEETING MINUTES

A. Approval of Meeting Minutes of 7-18-24

❖ Board Member Shaw-Murphy offered a motion to approve.

- Board Member Gelber seconded the motion.
- Motion carried (7-0)

4. ITEMS FROM BOARD MEMBERS

5. ITEMS FROM STAFF

6. PUBLIC HEARING

A. V-25-01 12539 Darvish Lane Setback Variance

Micheal Woodman, Planning & Development Manager, presented consideration of a variance from Unified Development Code (UDC) Subsection 2.3.3 (B) and UDC Subsection 2.3.3 (C) to reduce a swimming pool setback from 20' to 10'. The property is located at 12539 Darvish Lane and is legally described as being located in Land Lots 1165 & 1166, 2nd District, 1st Section, Fulton County, Georgia.

The applicant proposes to reduce the rear setback by 50% to ten feet (10') to accommodate a 511 square foot swimming pool with spa at the rear of the existing home. There are two (2) properties in The Pearl subdivision with existing swimming pools, including at 5260 Nasser Avenue which has a 480 SF pool and at 12535 Darvish Lane which has a 396 square foot pool. The applicant does not propose any tree removal with the construction of the swimming pool.

- Location Map.
- Survey.
- Site Plan.
- Variance Requirements:

The property has an unusual shape given its location on a cul-de-sac. The location on the cul-de-sac required that the home be set at an angle to the rear property boundary. Furthermore, the applicant provided letters of no objection from all adjacent properties and the Pearl HOA. In addition, there are examples of similar variance requests being approved to reduce setbacks for a swimming pool on lots with an unusual shape and located on a cul-de-sac. Most recently, the Board of Zoning Appeals approved rear setback reductions for swimming pools at 1060 Gramercy Lane on November 16, 2023, and at 550 Ebley Place on October 19, 2023.

Citizenship Participation Plan.

Staff has reviewed the applicant's proposal against the review criteria for a variance. The property has an unusual shape given its location on a cul-de-sac. The location on the cul-de-sac required that the home be set at an angle to the rear property boundary. Furthermore, the applicant provided letters of no objection from all adjacent properties and the Pearl HOA. In addition, there are examples of similar variance requests being approved to reduce setbacks for a swimming pool on lots with an unusual shape and located on a cul-de-sac. Most recently, the Board of Zoning Appeals approved rear setback reductions for swimming pools at 1060 Gramercy Lane on November 16, 2023, and at 550 Ebley Place on October 19, 2023.

Staff's recommendation:

Approve V-25-01 12539 Darvish Lane, subject to the following conditions:

1. Swimming pool shall be permitted as depicted on the submitted site plan with a 10' rear setback.

There was discussion from the Board:

- Adjacent property.
- 10' setback applies to pool, SPA , to edge of property.

Applicant gave a brief presentation and agreed to Staff's recommendation.

There was no public comment.

❖ **Board Member Shippel offered a motion to approve based on Staff's conditions.**

- **Board Member Teshale seconded the motion.**
- **Motion carried (7-0)**

B. PH-24-21 4098 Big Creek Overlook Appeal to Administrative Decision

The Appellant was not present at the meeting. There was discussion by the Board and City Attorney that the case could move forward at this meeting.

Brian Borden, Development & Planning Manager, presented consideration of an appeal to an administrative decision related to a fine issued for violations of Unified Development Code (UDC) Subsection 3.1.1(D)(2) working without the required land disturbance permit, UDC Subsection 3.1.1(D)(3) failure to provide minimum erosion and sedimentation control measures, UDC Subsection 3.1.1(C)(3) and UDC Subsection 3.3.2 disturbance of stream buffers along state waters, and UDC Subsection 3.4.4(C) development within regulatory areas of special flood hazard. The property is located at 4098 Big Creek Overlook and is legally described as being located in Land Lots 47 & 86, 1st District, 1st Section, Fulton County, Georgia.

The appellant, Moshe Bachar, is requesting consideration of an appeal to an administrative determination related to a fine associated with a Violation Notice, dated July 25, 2024. The administrative decision resulted in a fine of \$2,500 being issued with additional requirements to bring the property back into compliance with land development and floodplain management regulations. The notice and fine cites a violation of the outlined Unified Development Code (UDC) sections:

- Article III, Section 3.1.1D2 Working without the required City of Alpharetta Land Disturbance Permit.

- Article III, Section 3.1.1D3 Failure to provide minimum erosion and sedimentation control measures.
- Article III, Section 3.1.1C3 and Section 3.3.2 Disturbance of stream buffers along state waters.
- Article III, Section 3.4.4C Development within regulatory areas of special flood hazard.

The appellant requests the \$2,500 fine to be waived. He argues the work was completed without his prior knowledge. Further, he states, "the financial implications of the required corrective measures are significant," and he is working with limited resources.

The City had the option of issuing a fine to the appellant of up to \$10,000 based on the 5 code sections that were violated. Without seeking to issue a fine in this amount, staff reduced the fine to \$2,500 in order to encourage compliance and allow the appellant to utilize those funds to correct the code violations rather than collect them. However, staff does believe a fine is warranted as a deterrent to repeated future offenses.

The appeal to administrative determination is related to a Violation Notice, dated July 25, 2024. The notice cites violations of multiple sections of the Unified Development Code (UDC) within Article III. The city received a complaint by a resident who noticed numerous truckloads of dirt being brought to the subject property located at 4098 Big Creek Overlook. The dirt was then emptied from the trucks and spread with construction machinery, as seen in pictures taken by city staff. This location in floodplain and stream buffers, as well as the scope of development activity, would have triggered a Land Disturbance Permit.

Appellant received notice of a violations of UDC Article III.

Items 1 and 2 were complied with quickly. The appellant has stated to staff that he has had difficulty stabilizing the site, as he has tried mulch which later gets washed away by the water in the area. A site inspection in August revealed that grass had begun to take hold, but a follow up inspection in mid-September revealed signs of the grass growing were gone and the site was found to be covered in bare dirt again. If followed, Item 5 would have required a meeting with an engineer before the end of August. Staff agreed with the appellant that having an engineer on board and prepared to discuss the site may take longer than 30 days. However, a meeting was not scheduled with city staff until a second letter was sent to the appellant on October 10th. Following the subsequent letter, a November 6th meeting was scheduled with his engineer. We are now at Item 6 in the above list while waiting to learn the results of the appellant's engineer's efforts. While waiting on a report from his engineer, the appellant has informed staff that 67 truckloads of dirt and 10 truckloads of additional fill have been removed, and he believes all excess soil has been removed. However, due to the sensitive nature of floodplain management, we must first see a report from his engineer addressing the matter.

Prior to the issuance of the violation, city staff was aware of the appellant and his desire to bring additional soil into the floodplain of Big Creek. Staff has email exchanges with the appellant dating back to February 2022 where the appellant described his desire to fill the area in to make the "area manageable and usable for agricultural purposes." In response, the appellant was informed that he could not bring fill material or soils to the area which was largely floodplain, and he was referred to the City's Stormwater Engineer who further instructed the process by which the appellant could seek to modify the mapped floodplain with the Federal Emergency

Management Agency (FEMA). The last communication found related to infilling the floodplain was in August 2022. As a result, staff believed the appellant had decided to stop pursuing the idea.

The appellant has stated in his request to appeal the \$2,500 fine that he was unaware the soil was being placed on his property and did not provide consent for anyone to place the soil on his property. Further, he states that the corrective measures outlined by city staff will have significant financial implications, and he is operating under limited resources to complete those measures. Based on this, he requests the fine be waived in its entirety.

- Timeline of Events.
- Streetview Photo of entrances and driveways.
- Map of Property in the culle de sac and rest of property showing flood plain area, estimate of area of work that was done.
- Site plan with the restored area from Appellant's Engineer .
- Map from 2022 showing where Appellant had requested to replace dirt.
- Work that was done was precisely what had been denied in 2022.
- Photos from July 25, 2024 showing 3 large trucks entering and exiting the site.
- Photo of Floodplain area that was filled showing heavy equipment used to flatten the area.
- Photo with individual potentially facilitating how dirt was to be dropped off.
- Photo of trucking dumping dirt on the area.
- Photo of gate.
- Paved driveway covered in dirt.
- Photo of mud outside on neighborhood street.
- After notification the Appellant made some effort to address issues.
- Photo from August 2, 2025 still showing piles of dirt. – showing that area was heavily grassed previously.
- Photo from August 15, 2025 showing where Appellant had attempted to stabilize the area.

There was discussion from the Board:

- Stop Work Order was issued, and cards were left at the family's door. Some work still continued.
- Notified Appellant Process of steps Appellant needed to take to correct.
- Staff needs to make sure that the grades remain the same as before and that the area becomes stabilized with some type of vegetation to hold soil in the future.
- The area does flood.
- Process and difficulty of contact with Trucking Companies.
- Calculation of dirt brought in. (67 truckloads)

- Questions on police report filed by Appellant.
- Appellant stated he was out of town, but someone was in the home as shown in photos; dogs were released on Code Enforcement Officers on one day.
- No other prior instances of this magnitude in the City for the past 9 years.
- Case was deferred previously by the Applicant.
- Staff gave Appellant the process to follow in 2022 and he did not follow it.
- Possible false police report and/or Insurance claim.
- The Appellant was not present.
- There was no public comment.

There was more discussion from the Board.

- City Attorney clarified that the process had been followed by the City for the notice for the hearing date.
- City Attorney clarified that the decision being made today is the waiver of the fine not a determination of any other issue.
- Appellant was told of the process in 2022 and went forward not following the process.
- ❖ **Board Member Gelber offered a motion to deny the Applicant's request and to leave the fine in place.**
 - **Board Member Wharton seconded the motion.**
 - **Motion carried (7-0)**

7. ADJOURNMENT

Chair Gordy adjourned the meeting at 6:14 p.m.