

21012 HILLIARD BLVD.

ROCKY RIVER, OHIO 44116

(440) 331-0600

## NOTICE OF PUBLIC HEARING

BOARD OF ZONING AND BUILDING APPEALS  
ON  
MAY 18, 2023

TO WHOM IT MAY CONCERN:

THE BOARD OF ZONING AND BUILDING APPEALS WILL HOLD A PUBLIC HEARING ON THURSDAY, MAY 18, 2023 AT 7:00 PM FOR A VARIANCE TO CONSTRUCT A 6' PRIVACY FENCE IN THE SIDE AND REAR YARD VS. FENCES IN THE REAR YARD SHALL NOT EXCEED 6' IN HEIGHT. FENCES THAT ARE 25% TRANSPARENT REGARDLESS OF THE ANGLE AT WHICH THE TRANSPARENCY IS VIEWED ARE THE ONLY TYPES OF FENCES PERMITTED IN THE REAR YARD. HOWEVER, ANY PORTION OF THE FENCE OVER 5' IN HEIGHT SHALL BE CONSTRUCTED OF MATERIALS THAT ARE 50% TRANSPARENT WHEN VIEWED PERPENDICULAR TO THE FENCE (Section 1153.15(j)(3)); AND A VARIANCE TO CONSTRUCT A 6' PRIVACY FENCE IN THE SIDE YARD VS. FENCES IN THE SIDE YARD SHALL NOT EXCEED 5' IN HEIGHT AND MUST BE 25% TRANSPARENT WHEN VIEWED PERPENDICULAR TO THE FENCE (Section: 1153.15(j)(2)) FOR JEFF SMITH, 3289 FAIRILL DR.

BEFORE REACHING A DECISION, THE BOARD WILL GIVE THOSE IN ATTENDANCE AN OPPORTUNITY TO BE HEARD.

PLANS SHOWING THE PROPOSED LOCATION ARE ON FILE IN THE BUILDING DIVISION OFFICE AND ARE AVAILABLE FOR REVIEW VIA E-MAIL OR IN-PERSON AT ROCKY RIVER CITY HALL, 21012 HILLIARD BOULEVARD. PLEASE CONTACT KATE STRAUB, PLANNING & ZONING COORDINATOR AT [kstraub@rrcity.com](mailto:kstraub@rrcity.com) OR BY CALLING 440-331-0600 EXT. 2037.

Notices sent to:  
See attached list

VICKI BRACANOVIC 3270 FAIRHILL DR ROCKY RIVER, OH 44116	JERRY J SLABAUGH 3280 FAIRHILL DR ROCKY RIVER, OH 44116	BEIRNE, JAMES M. & NADA L. 3290 FAIRHILL DR ROCKY RIVER, OH 44116
SCULLIN, LEE K. & MARY CAY 3300 FAIRFILL DR ROCKY RIVER, OH 44116	REITZ, CHERYL L 3310 FAIRHILL DR ROCKY RIVER, OH 44116	ROCKS, THOMAS M. 3309 FAIRHILL DR ROCKY RIVER, OH 44116
ULINE, THOMAS J. & JUDITH A. 3299 FAIRHILL DR ROCKY RIVER, OH 44116	SMITH, JEFFREY D. & MURPHY, COURTNEY E. 3289 FAIRHILL DR ROCKY RIVER, OH 44116	MEREDITH, MARNI M 3279 FAIRHILL DR ROCKY RIVER, OH 44116
VICKERS, JAMES V. 3269 FAIRHILL DR ROCKY RIVER, OH 44116	DAVID & CAROL GOULD III 3545 ELDORADO DR ROCKY RIVER, OH 44116-4208	JAMES & L MAGISANO 3535 ELDORADO DR ROCKY RIVER, OH 44116-4208



- (4) A pool constructed of masonry type material shall be located and installed to conform to the natural grade as determined by the Building Division. No portion of the pool itself shall be higher than one (1) foot above such grade. All other pools, regardless of construction material, may not exceed five (5) feet above grade level.
- (5) Every pool shall have a drainage device so that it can and will be drained into the City storm sewer.
- (6) Whenever light is used to illuminate such pool, such lights shall be installed and shielded in such a manner as to direct light onto the pool only, and not to reflect light onto any abutting residential property. All wiring and electrical fixtures, accessories and appliances shall be installed under the National Electrical Code.
- (7) The swimming pool shall comply with the locational and coverage requirements set forth in this Chapter.

(i) Boat House. Boat houses are permitted accessory structures, in compliance with the following:

- (1) No part of the structure shall be higher than the average grade of the front yard or have a maximum height of fifteen (15) feet, whichever is lower;
- (2) Such boat house shall not exceed 250 square feet of gross floor/water area, and shall be located adjacent to Lake Erie or the Rocky River.

(j) Fences, Walls, and Planting Screens. Fences shall comply with Schedule 1153.15 and shall be constructed, located, and maintained in conformance with the standards set forth below:

- (1) Front Yard Fences. In the front yard of interior and corner lots, fences shall have a maximum height of thirty-six (36) inches. Only ornamental fences shall be permitted in the front yard, and the maximum length of any fence segment shall be thirty feet or the width of the front elevation of the house, whichever is less. Such fence segments shall be located no more than twelve (12) feet in front of the dwelling, and this distance shall be measured from the furthest projecting element on the front plane of the dwelling. A Zoning Certificate shall be required for a fence in the front yard, and such Certificate shall be approved by the Zoning Administrator. The Zoning Administrator may refer the application to the Architectural Review Board when, in his/her opinion, the appropriateness of the proposed fence should be judged by the Architectural Review Board.
- (2) Side Yard Fences. In the side yard, the maximum fence height shall be five (5) feet, except for chain link fences which shall not exceed four (4) feet in height. Ornamental, board on board, and picket fences are the only types of fences permitted in the side yard, except synthetic covered chain link fences are permitted to abut existing chain link fences, and except as provided for in sub-section 1153.15(j)(7) below.
- (3) Rear Yard Fences. Fences in the rear yard shall not exceed six (6) feet in height, except chain link fences which shall not exceed four (4) feet in height. Ornamental, board on board, picket fences, synthetic covered chain link fences, or similar fences that are twenty-five percent (25%) transparent regardless of the angle at which the transparency is viewed are the only types of fences permitted in the rear yard, except as provided for in sub-section 1153.15(j)(7) below. However, any portion of the fence over five (5) feet in height shall be constructed of materials that are fifty percent (50%) transparent when viewed perpendicular to the fence. The openings of the fence that provide the transparency shall be evenly spaced throughout the vertical surface.

## Kate Straub

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**From:** Jeff Smith <htimsdj@gmail.com>  
**Sent:** Tuesday, May 9, 2023 10:29 AM  
**To:** Kate Straub  
**Cc:** Courtney Murphy  
**Subject:** Re: variance information ...  
**Attachments:** Scan.pdf; Smith Variance App 5.9.23.doc

Caution! This message was sent from outside your organization.

[Allow sender](#) | [Block sender](#)

Hi Kate -

Attached are the drafts of the variance application and the site drawing. Please let me know if you have any comments or things that we should change.

We have not been able to take pictures yet because any time we are outside the neighbors go outside to stare at us or they look through their window.

Also, as noted in the application, we have videos of the last time when the neighbor was screaming at Courtney, which conveniently happened when I was out of town. Please let me know if you want those. Also, we have documentation from a court case the neighbors were involved in. In the court's decision, they were denied visitation with their grandchild based upon some really strange behavior. I don't want to pour gas on this fire, but if you feel the BZA members would want those, I can share both.

I've copied my wife, Courtney on this email. Her phone number is 440-226-0302, and mine is 440-292-7094.

thank you, Jeff

On Tue, May 2, 2023 at 1:42 PM Kate Straub <[kstraub@rrcity.com](mailto:kstraub@rrcity.com)> wrote:

Hi Jeff – My apologies for this late response to your quest for info on variances.

Attached is the variance application that should be filled out completely and submitted to me with the other things that are required. For a fence, I will need a site plan (see attached sample) with all existing fencing on your property labeled and where you would like the new fence to be located. I believe you said you want a privacy fence which means there is no space between the boards and you want it to be 6' tall. Please provide photos of the area you want to fence off – from the sidewalk view and from your back yard view - - also a view straight on of where the fence will be.

Get all that together and email it to me and I will review your application for completeness before you make your 10 stapled sets of the submission.

Thank you,

Kate Straub, Planning and Zoning Coordinator

City of Rocky River Building Department

440-331-0600 ext. 2037

[kstraub@rrcity.com](mailto:kstraub@rrcity.com)

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**From:** Jeff Smith <[htimsdj@gmail.com](mailto:htimsdj@gmail.com)>  
**Sent:** Wednesday, April 26, 2023 10:51 AM  
**To:** Kate Straub <[kstraub@rrcity.com](mailto:kstraub@rrcity.com)>  
**Subject:** variance information ...

Hi Kate -

Thanks for talking to me earlier. This is my personal email, so you can send the variance information here.

thanks, Jeff

**CITY OF ROCKY RIVER  
21012 HILLIARD BOULEVARD  
ROCKY RIVER, OH 44116  
PHONE: (440) 331-0600  
FAX: (440) 895-2628**

**Fence Permit Application**

Permit Fee: \$55.00

Date: May 11, 2023

**COMMERCIAL:** \_\_\_\_\_

**RESIDENTIAL:**  \_\_\_\_\_

**ADDRESS OF IMPROVEMENT:** 3289 Fairhill Dr. \_\_\_\_\_

**OWNERSHIP:** Jeff & Courtney Smith, 3289 Fairhill Dr., 440-292-7094

Name	Address	Phone
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**CONTRACTOR:** To Be Determined

Name	Address	Phone
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**CONTRACTOR EMAIL:** \_\_\_\_\_ **ESTIMATED COST** \_\_\_\_\_

**TYPE OF FENCE:** Ornamental  Split Rail  Board on Board  Picket  Privacy  \_\_\_\_\_

**HEIGHT & LOCATION OF FENCE:** Front \_\_\_\_\_ / Ht \_\_\_\_\_ Side 6 / Ht 0 Rear \_\_\_\_\_ / Ht \_\_\_\_\_

**CORNER LOT:** Yes \_\_\_\_\_ No  \_\_\_\_\_

**VARIANCE NEEDED:** Yes  No \_\_\_\_\_

**PROHIBITED FENCES**

Barbed Wire

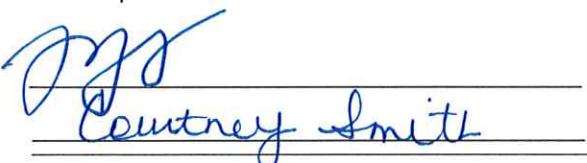
Electrified

BOARD OF APPEALS MEETING DATE: May 18, 2023

VARIANCES NEEDED: 6 foot privacy fence on side yard \_\_\_\_\_

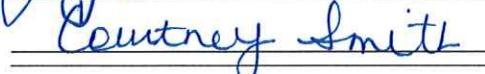
\*\* Caution should be used when replacing or installing a new fence on the property line and although a survey is not required, it is strongly recommended. Plan review and approvals by an HOA or any easement locations or deed restrictions are the responsibility of the applicant. Any dispute over the location of a proposed or installed fence will be settled by the applicant providing a current survey. By initialing this box I understand my responsibilities as the applicant. I will call the Building Department for a Final Inspection of the fence installation.

**SIGNATURE OF OWNER:**



\_\_\_\_\_

**SIGNATURE OF APPLICANT:**



\_\_\_\_\_

- Attach site drawing showing location of proposed fence and its proximity to the house, garage and/or other existing fences. Label length of proposed fence.
- Submit application and drawings to the Building Department. The applicant will be required to display an "Intent to Build" sign for 10 days. After 10 days a permit can be obtained.
- A final inspection verifying materials and design is required at conclusion of the project. **PLEASE CALL TO SCHEDULE FINAL INSPECTION**

For office use only:

NOTICES SENT TO ABUTTING NEIGHBORS

Date Sent: \_\_\_\_\_

Permanent Parcel # \_\_\_\_\_

10 Day Posting Card Issued \_\_\_\_\_

Permit #: \_\_\_\_\_

# **ROCKY RIVER BOARD OF ZONING & BUILDING APPEALS**

## **INSTRUCTIONS TO APPLICANTS**

**MEETINGS:** 2nd Thursday of each month at 7:00 P.M. in Council Chambers of Rocky River City Hall.

**DUE DATE FOR SUBMITTALS:** 2 weeks (14 days) prior to the scheduled BZA meeting. Late or incomplete submittals will not be forwarded to the Board for inclusion on the upcoming agenda.

**WHO MUST ATTEND:** A representative, including the property owner, must be present at the BZA meeting for all variance requests.

**APPLICATION FEE:** Residential Variance - \$100.00 first variance + \$35.00 each additional variance  
Commercial Variance - \$150.00 first variance + \$35.00 each additional variance request.

**SUBMISSION REQUIREMENTS:** Please provide **10 stapled sets** of the following along with app. fee:

- 1) **Appropriate Building Permit Application** for your project. (i.e., Building Permit Application, Fence Permit Application, Accessory Permit Application, etc.); **Check representing Application Fee.**
- 2) **Fully completed Variance Application.** Begin with a written narrative describing exactly what project you would like to do and why it is necessary to do so. Please refer to the Typical Variance Sheet for guidance on which standard (Practical Difficulty **OR** Unnecessary Hardship) applies to your request – only complete questions under the appropriate heading.
- 3) **Detailed site drawing** – see attached example, showing all existing structures on the subject property, as well as structures on properties directly adjacent to the location of the subject of your variance request (i.e., line of neighbor's house, driveway and garage closest to the addition you are proposing). Proposed structures must also be shown on the site drawing, with dimensions and distances from property lines clearly labeled. Site plan should show lot coverage by building calculation (existing and proposed).  
**PLEASE STAKE THE PROPERTY TO SHOW FOOTPRINT OF ADDITIONS, SHEDS OR LOCATIONS OF A/C CONDENSERS, etc.**
- 4) **Elevation drawings** (for pergola, garage, addition or any exterior alteration). Show what all sides of the finished project will look like. Submit a photo example of proposed fences and sheds. Show height of structure on the elevations. Additions will require existing and proposed interior floor plans for the floors that are affected.
- 5) **Photographs** of your property and adjacent properties. Label each photo for clarity.
- 6) **Support letters** from surrounding property owners, if available.
- 7) **Any other information as may be requested** by the Building Department or Board Members.

All documentation or other information shall be delivered to:

**Rocky River Board of Zoning & Building Appeals, City of Rocky River Building Department, 21012 Hilliard Blvd., Rocky River, Ohio 44116. Call 440-331-0600 ext. 2037 with questions.**

*(Applicants may not communicate with or present information relating to their variance request to any Board member directly. Communications must be submitted to the Building Department for delivery to the Board.)*

**I, (the owner/applicant) understand that upon the granting of my variance request from the BZA, a separate Permit Application fee will be due prior to the issuance of the Building Permit. I will not begin construction until the Building Permit has been issued.**

  
Property Owner

5/11/23  
Date

  
Courtney Smith  
Applicant/Representative

5/11/23  
Date

BZA Application Fee: \_\_\_\_\_

Date Paid: \_\_\_\_\_

**CITY OF ROCKY RIVER**  
**21012 Hilliard Blvd., Rocky River, Ohio 44116**  
**Telephone (440) 331-0600 — Fax (440) 895-2628**

**APPLICATION FOR BOARD OF ZONING & BUILDING APPEALS**  
(Please Print or Type)

Application Filing Date: May 11, 2023 Hearing Date: May 18, 2023  
Single Family  
Zoning of Property Residential Permanent Parcel No. 304-34-014

**NOTICE OF REQUEST OF A HEARING BEFORE THE  
BOARD OF ZONING & BUILDING APPEALS**

Address of property seeking variance: 3289 Fairhill Dr, Rocky River

Jeffrey & Courtney Smith  
Name of Property Owner  
3289 Fairhill Dr, Rocky River  
Address  
440-292-7094 440-226-0302  
(Jeff) (Courtney)  
Telephone No. Cell Phone No.

E-MAIL: jdsmit@fisherphillips.com

Description of what is intended to be done:

Side yard privacy fence with a height of 6 feet.

Sections of the Code from which variance is being requested:

Rocky River Codified Ordinance Section 1153.15(j)(2)

List variances requested:

Side yard privacy fence with height of 6 feet

  
Property Owner's Signature

  
Applicant/Representative's Signature

★ Please note that the Board members visit the subject property prior to each BZA meeting.  
Please indicate whether or not you have a dog(s) that may be outside at the time of their visits.

Yes  No

## TYPICAL VARIANCE SHEET

Please check appropriate box and answer questions as directed.

	Check as Applicable	VARIANCE STANDARD
<ul style="list-style-type: none"> <li>• Any functional, land or building USE not specifically permitted in either a particular zoning district, or otherwise not permitted by the Development Code</li> </ul>	<input type="checkbox"/>	(Use) Unnecessary Hardship
<b>ADDITIONS &amp; BUILDINGS:</b> <i>(Complete Building Permit Application)</i>		
<ul style="list-style-type: none"> <li>• Rear, side &amp; front setbacks</li> <li>• Coverage (&gt;28%)</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>DRIVEWAYS:</b> <i>(Complete Building Permit Application)</i>		
<ul style="list-style-type: none"> <li>• Width</li> <li>• Distance from property line</li> <li>• Circular if lot width is &lt;90'</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>SIGNS:</b> <i>(Complete Sign Permit Application)</i>		
<ul style="list-style-type: none"> <li>• Area allowed (maximum sq. ft.)</li> <li>• Height</li> <li>• Front setback</li> <li>• Lot width &lt;100'</li> <li>• Number of items of information</li> <li>• On side of building</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>FENCES:</b> <i>(Complete Fence Permit Application)</i>		
<ul style="list-style-type: none"> <li>• Height or Openness</li> <li>• Front Yard (in setback)</li> </ul>	<input checked="" type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>ACCESSORY BUILDINGS (Play Structures, Storage Sheds):</b> <i>(Complete Accessory Structure Permit Application); Detached Garages:</i> <i>(Complete Building Permit Application)</i>		
<p><b>Note:</b> Total square footage of all accessory buildings, including detached garages, is not to exceed 600 square feet.)</p>		
<ul style="list-style-type: none"> <li>• Height</li> <li>• Setback from property line</li> <li>• Square footage</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>Air Conditioners and Generators:</b> <i>(Complete HVAC Permit for A/C or Electrical Permit for Generators)</i>		
<ul style="list-style-type: none"> <li>• In side or rear yard &lt;10' from property line or in front yard</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties
<b>Parking:</b> <i>(Complete Building Permit Application)</i>		
<ul style="list-style-type: none"> <li>• &lt; the number of spaces required</li> <li>• Setback from property line</li> </ul>	<input type="checkbox"/>	(Area) Practical Difficulties
	<input type="checkbox"/>	(Area) Practical Difficulties

## **PRACTICAL DIFFICULTIES**

### **ALL QUESTIONS REQUIRE A COMPLETE RESPONSE**

**R.R.C.O. 1133.17(c)(1).** In order to grant an area variance, the following factors shall be considered and weighted by the Board of Appeals to determine practical difficulty:

A.) Describe what special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other land or structures in the same zoning district (i.e., exceptional irregularity, narrowness, shallowness or steepness of the lot; or proximity to non-conforming and inharmonious uses, structures or conditions).

**There are no peculiarities applicable to the land; rather, recent behavior by neighbors has prevented property owners from the full enjoyment of the property. Neighbors have verbally attacked Courtney and threatened owners with violence. Videos of altercation are available for review. This is not the first time this has happened.**

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B.) Explain whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance (discuss use limitations without the variance).

**The beneficial use of the property is diminished due to the actions of neighbors. Recent behavior by neighbors has prevented owners from full enjoyment of property because they are always standing at their window staring at us. When a contractor was over in the past two weeks, one neighbor stared through a bedroom window. The contractor noticed and said it was creepy.**

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C.) Explain whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures (demonstrate how much the variance request deviates from Code requirements, i.e., coverage is 1 or 2% above Code, or setback is 1 or 2 feet less than Code requirement).

**The variance request is minimum necessary. A fence of only 5 feet would not keep our yard out of their sightline.**

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D.) Explain whether the essential character of the neighborhood would be substantially altered and whether adjoining properties would suffer substantial detriment as a result of the variance (discuss the increase of value, use, and aesthetic appeal for both your property and adjoining properties, together with any negative impact to adjoining properties).

**Given that at least 2 existing properties on Fairhill Dr. have side yard privacy fences, there can be no argument made that the requested variance would alter the essential character of the neighborhood.**

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E.) Explain whether the variance would adversely affect the delivery of governmental services, such as water, sewer, or trash pickup.

**No delivery of services would be impacted.**

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F.) Explain whether the property owner purchased the property with knowledge of the zoning restrictions.

**It would have been impossible to know of the behavior of the neighbors.**

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G.) Explain whether special conditions or circumstances exist as a result of actions of the owner.

**None.**

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H.) Explain whether the property owner's predicament feasibly can be obviated through some method other than a variance (why other means and methods of property improvements or enhancements would not suffice).

**If the neighbors moved, no fence would be needed.**

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I.) Explain whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance (discuss the positive impact of your improvement on your property and on the surrounding neighborhood).

**Safety and reasonable privacy are desired and are necessary for minimum justice.**

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J.) Explain whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

**No special privilege would be conferred. No special privilege is requested.**

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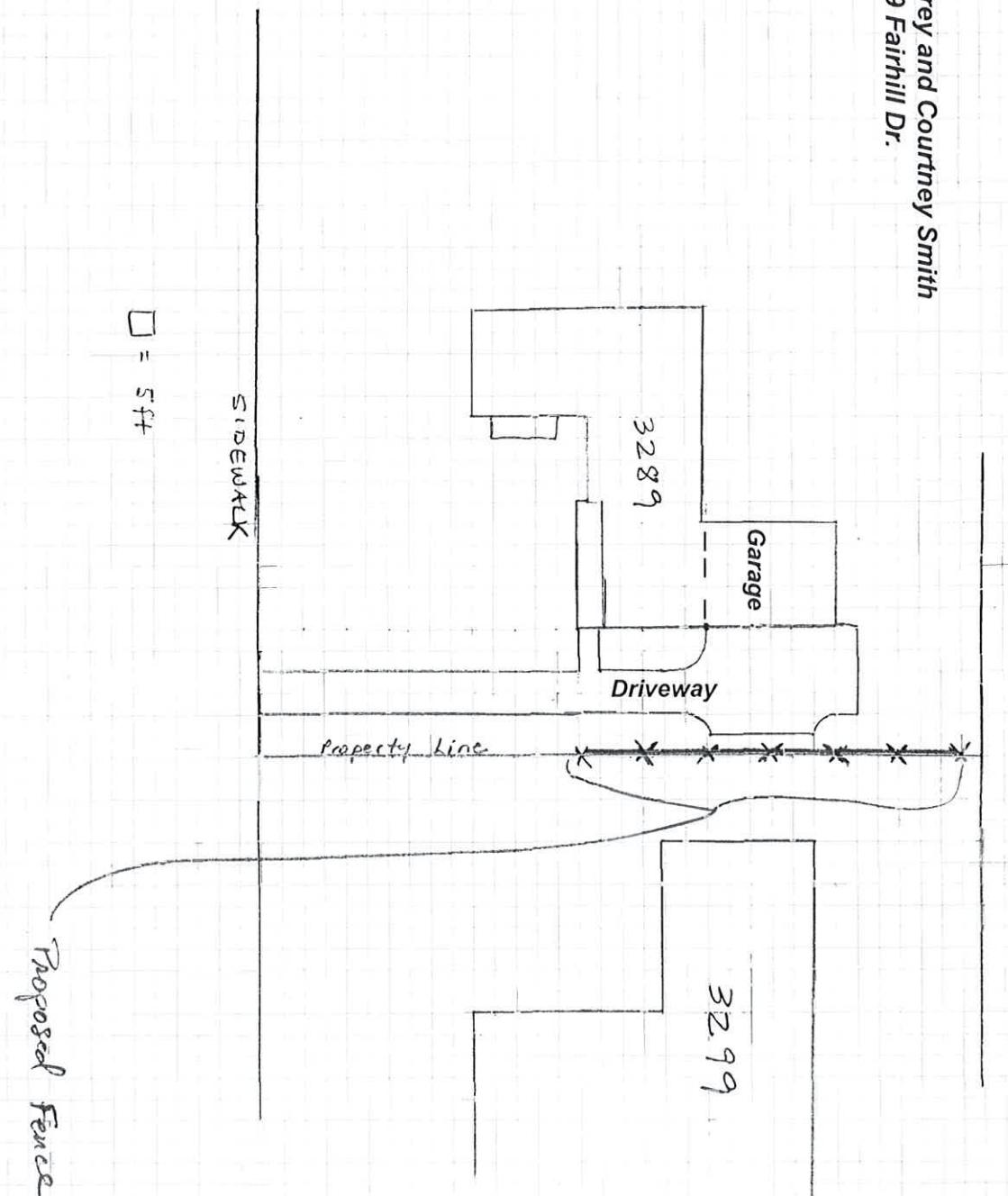
K.) Explain whether a literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

**Given that at least 2 properties on Fairhill Dr. have 6 foot privacy fences in the side yard, failure to grant the variance would deprive the applicant of the same rights enjoyed by others. Further, the requested privacy fence would start approximately 70 feet from the sidewalk, which is further back than existing fences on Fairhill.**

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**PLEASE NOTE: A separate Permit Application and fee will be due prior to issuance of the Building Permit. NO CONSTRUCTION IS TO BEGIN until the Building Permit has been issued.**

Jeffrey and Courtney Smith  
3289 Fairhill Dr.



Jeffrey & Courtney Smith  
3289 Fairhill Dr.



Jeffrey & Courtney Smith  
3289 Fairhill Dr.



Approaching 3289 Fairhill from North, shows how little of fence is visible

Jeffrey & Courtney Smith  
3289 Fairhill Dr.



Standing on sidewalk in front of 3299 Fairhill