



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 LOCATE A 6' TALL ORNAMENTAL FENCE WITH 2' OF ADDITIONAL HEIGHT USING POLY "DEER FENCING" MATERIAL IN THE REAR YARD VS. FENCES IN THE REAR YARD SHALL NOT EXCEED 6' IN HEIGHT (Section 1153.15(j)(3)) FOR RUTH AND THOMAS STAFFORD, 20860 AVALON 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 OR BY CALLING 440-331-0600 EXT. 2037.

Notices sent to:
See attached list

CONWAY, JEANNE M
20762 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

TIMOTHY & GRETCHEN BURT
20821 AVALON DR
ROCKY RIVER, OH 44116-1301

RIVEIRO, CARLOS EDUARDO
AND RIVEIRO, DORCAS O.
20780 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

VAUGHAN, GARETH D. &
CARRIE K.
20791 AVALON DR
ROCKY RIVER, OH 44116

GORDON, LOUISE JULIANA
20910 AVALON DR
ROCKY RIVER, OH 44116

LOWRY, JOSEPH M.
20841 AVALON DR
ROCKY RIVER, OH 44116

KEMPTON, DAVID D. &
MEREDITH F.
20891 AVALON DR
ROCKY RIVER, OH 44116

BRANDT, DONALD MCGREGOR
JR. TRUSTEE
20880 AVALON DR
ROCKY RIVER, OH 44116

JOSEPH & C CAROZZONI
20797 BEACH CLIFF BL
ROCKY RIVER, OH 44116-1322

JOANNE H MORSCHER
TRUSTEE
20771 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

O'TOOLE, TIMOTHY J. &
THERESE A.
20772 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

WALKER, ROBERT M. &
KIMBERLY A. CARPENTER
20873 AVALON DR
ROCKY RIVER, OH 44116

DAUGSTRUP, BARBARA L.
(TRUSTEE)
20756 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

MICHAEL & K JOYCE
20874 AVALON DR
ROCKY RIVER, OH 44116-1302

DEBORAH J ANDREWS
20911 AVALON DR
ROCKYRIVER OH, 44116

SUMMERS, WILLIAMS B. JR.,
20749 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

DARR, KHALID B. TRS
20900 AVALON DR
ROCKY RIVER, OH 44116

DAUGSTRUP, BARBARA L.
(TRUSTEE)
20756 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

NAEEM, TARIQ
4910 TIEDEMAN RD
BROOKLYN, OH 44144

DAUGSTRUP, BARBARA L.
(TRUSTEE)
20756 BEACH CLIFF BLVD
ROCKY RIVER, OH 44116

WARD, GREGORY W & MOLLY D
20783 AVALON DR
ROCKY RIVER, OH 44116

SANDERS, BRENT L. &
ELIZABETH KRUEGER
20781 BEACHCLIFF BLVD
ROCKY RIVER, OH 44116

RUTH STAFFORD TRUSTEE
20860 AVALON DR
ROCKY RIVER, OH 44116

SCALABRINO JR., DANIELM. AND
SCALABRINO, ANNE M.
20863 AVALON DR
ROCKY RIVER, OH 44116

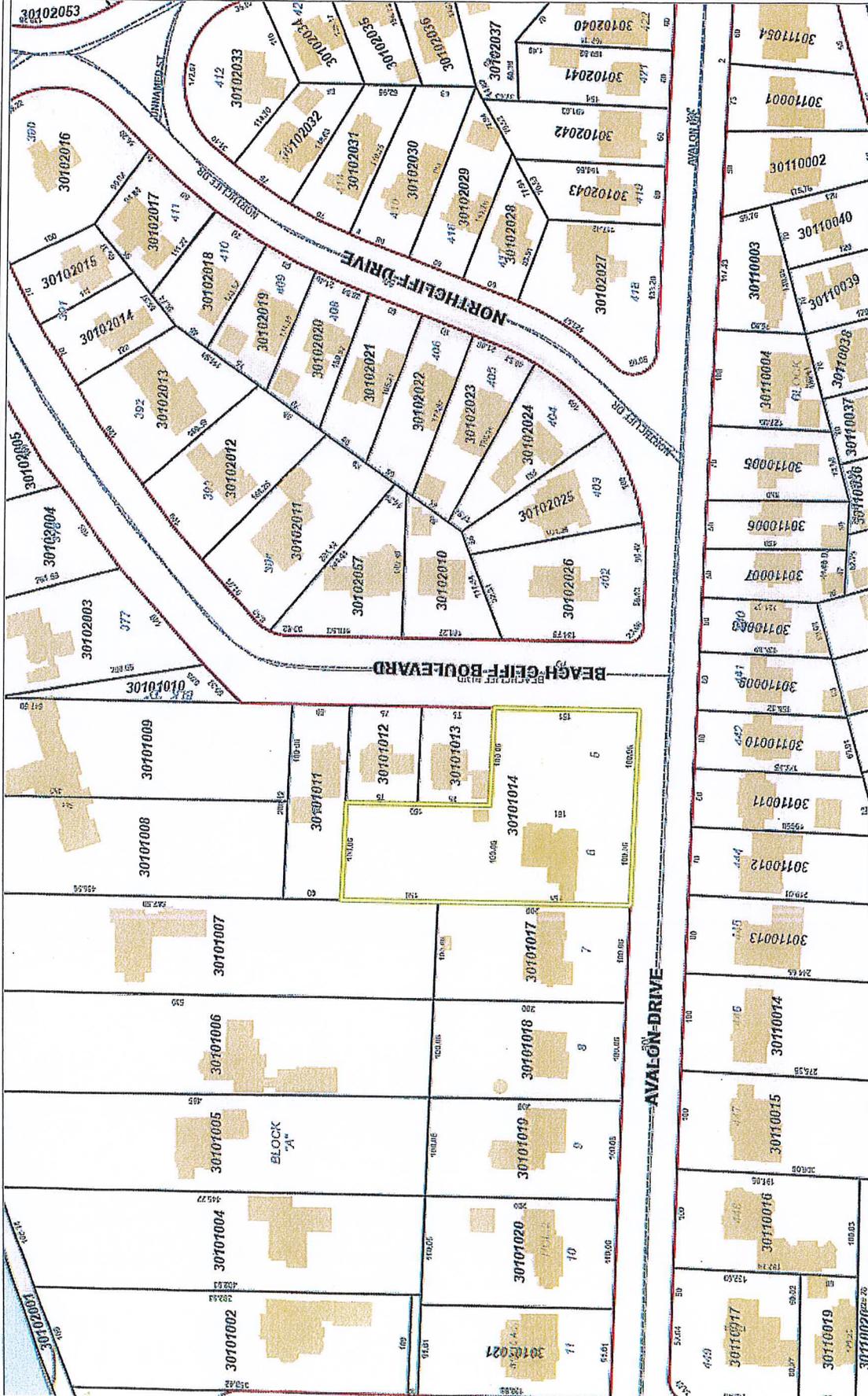


Date Created: 3/2/2023

Legend

- Municipalities
- Right Of Way
- Platted Centerline
- Parcel
- Buildings - 2017

1:1,200



This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
 THIS MAP IS NOT TO BE USED FOR NAVIGATION



Projection:
 WGS_1984_Web_Mercator_Auxiliary_Sphere

- (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.

Ruth and Thomas Stafford Variance Application Modification

Description of what is intended to be done:

This section is modified in its entirety to read: Install a 2-foot-high black polypropylene mesh fence addition using black powder-coated fence posts on the property lines on the west, north and east side of the rear yard. The extension will be attached to the fence posts of a conforming 6-foot-high black powder-coated aluminum ornamental fence providing an overall height of 8 feet.

Fence and Extender Pictures

The ornamental fence will look as follows except there will be two rails at the bottom to match the two rails at the top:



The only picture I could find was an extender attached to a wooden fence or a chain-link fence. The manufacturer's description reads: "This kit can be used to add up to 3' of height to wooden three board fence, split rail fence, **aluminum fence**, chain-link fence or privacy fence." The posts are 1-3/8" and black powder coated.



**BOARD OF ZONING AND BUILDING APPEALS
ROCKY RIVER, OHIO**

IN RE: THOMAS AND RUTH) **BZA NO.:** _____
STAFFORD)
)
Petitions/Applicants,)
)
)
)

BRIEF

I. INTRODUCTION

The Petitioners/Applicants, Thomas and Ruth Stafford, (“Staffords”) of 20860 Avalon Drive, Rocky River, Ohio, first submitted an Application to the Board of Zoning and Building Appeals (“BZA”) for a fence variance in February 2023. Four of the members, including one alternate, as they can recall, attended the March 2023 BZA meeting. The matter was heard and tabled. The matter was again heard in April 2023 by four members of the BZA. Again, it was tabled.

Subsequently, the Staffords decided to install a 6 ft. black powder-coated aluminum ornamental fence. This is Code-permitted without need of a variance. They would like to have installed a 2 ft. extension to better keep deer out. The extension is the same material sought in the 8 ft. deer fence, just much shorter. Since the overall height would then still be higher than 6 ft., a variance is needed for the extension.

The Staffords are now on the installation list for Elyria Fence to install the 6 ft. aluminum fence. The projected date (10 to 12 weeks out) jeopardizes the plant material that was ordered, so the Staffords could not wait any longer. Only recently, did the Staffords become aware of this extension option. Although more expensive overall, they wished to move forward while still proceeding with the variance application since the extension can be added later relatively easily.

The Staffords have applied for a fence permit for the 6 ft. fence. The current variance request is modified to reflect the changes in the fence approach.

II. STATEMENT OF FACTS

As the BZA heard in both March and April, that Thomas Stafford and his wife, Ruth, have lived in Rocky River for many decades. They own the property on the corner of Beachcliff and Avalon on the northwest side. They have done a terrific job of maintaining this property for many decades.

Over the decades, the Staffords, like many of in the Beachcliff/Rocky River area, have been plagued by herds of roaming deer that can decimate plantings in a single night, despite every effort to dissuade them from doing so.

Thomas and Ruth tried every method to dissuade the deer from eating their plantings. They hired a company that came out with all different types of deer repellants, such as motion sensors, trip alarms, alarms that only deer can hear and so forth. The deer simply ignored it or became accustomed to it and continued eating what they wanted.

Thomas and his wife want to invest approximately \$150,000.00 in their property, a significant portion of which is for the rear yard. But, before they do that, they wanted to try keep the deer from decimating their new plantings.

They came across a gentleman who owns a company in Cleveland who has done this type of fencing in other places successfully. This was provided in February, March, and May to the BZA.

The Staffords like this style of fence and recognized it to be something that is beneficial to them and the neighbors. They also got more information from the fence installer about 2

installations in Pepper Pike and what type of roadblocks there have been. It turns out that once the BZA and Planning Commissions understand what is involved, it is generally approved.

The next step was talking to the neighbors about it, which they did. The Staffords are proposing this for their backyard, not their front. So, the only people who would see it are five neighbors. All but one have agreed to it. The configuration behind the Staffords is five houses that go all the way back to the Conways' house just north of Avalon. The Staffords are hoping, at this May 18, 2023 Hearing, to have neighbors present and to answer any questions concerning the height or type of fencing, so that any concerns the BZA may have will be alleviated.

In March and April a couple of the questions concerned whether this would truly prohibit deer from coming into the yard. The answer is no. We have all seen the heights to which deer can jump, if they are truly motivated. But, it would be a huge deterrent to the deer coming in and ruining the anticipated plantings.

III. LEGAL DISCUSSION

The rear fence extension that the Staffords would like to have installed for them requires an area variance because they are seeking a fence with an overall height that is 2 ft. higher than what is typically permitted.

The standard for granting an area variance requires the applicant to demonstrate “practical difficulties.” In other words, the property owner is required to show that the application of an area zoning requirement to his property is inequitable. See *Duncan v. Middlefield* (1986), 23 Ohio St. 3d 83, 86 cited within *Phillip v. Westlake Zoning Board of Appeals* (8th Dist. 2009), 2009 WL 1505617.

The Eighth District Court of Appeals noted that the standard for granting an area variance should be lesser than that applied to use variances. “The application for an area variance does not establish unnecessary hardship; it is sufficient that the application show practical difficulties.”

The Ohio Supreme Court has explained practical difficulties in *Duncan* as follows:

When existing definitions of ‘practical difficulties’ are often nebulous, it can safely be said that a property owner encounters ‘practical difficulties’ whenever an area of zoning requirement (e.g., frontage, set back, height) unreasonably deprives him of a permitted use of his property. The key to this standard is whether the area of zoning requirement, as applied to the property owner in question, is reasonable. The practical difficulties standard differs from the unnecessary hardship standard normally applied to use variance cases, because no single factor controls in a determination of practical difficulties. A property owner is not denied the opportunity to establish practical difficulties, for example, simply because he purchased the property with knowledge of the zoning restrictions.

Phillips, Id. citing Consolidated Management, Inc. v. Cleveland (1983), 6 Ohio St.3d 238.

The *Duncan* Court went on to explain that the factors to be considered and weighed in determining whether a property owner seeks an area variance has encountered practical difficulties in the use of this property include, but are not limited to,

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. **The Staffords want to upgrade the total property’s landscape by approximately \$150,000.00. The Staffords have demonstrated that they have been successful in adding to the beauty of the neighborhood by the way they turned a lot into a beautiful sanctuary at the corner of Beachcliff and Avalon. So, the Staffords believe that the property in question will yield a reasonable return with the variance requested granted, and while the property can be used without the variance as it has been for many years, it will be used without the intended budgetary plantings which could benefit not only the Staffords and the subsequent owners, but also the neighbors as well. They all will not get this benefit because there is no sense in putting money into plantings that will be ripped up and eaten by roaming bands of deer.**
2. Whether the variance is substantial. **“Substantial” is a term of art, but the Staffords do not believe it is substantial because not only can you not see this fence from the**

street, it is also not that much higher than would be permitted anyway at 6 ft. The material is see through so it has much less blocking of the views and uses. The neighbors have all seen this and no one is disputing this. It is very much like the netting at Progressive Field, but sturdier.

3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. **The essential character of the neighborhood would not change at all. In fact, no one in the neighborhood other than the neighbors in the back would even know about this. The people with adjoining properties have already said that they agree to this as stated in their letters to the BZA included with the variance application. So, they obviously do not think there is any detriment, substantial or otherwise, as to this increase and the type and height of the fence.**
4. Whether the variance would adversely affect the delivery of government services. **It would have no bearing whatsoever on the delivery of government services. It is all private land behind the Staffords and the other homeowners. The water, sewer, and garbage would not be affected by the height or nature of the fence.**
5. Whether the property owner purchased the property with knowledge of the zoning restrictions. **Thomas Stafford graduated from Rocky River High School in 1962. He is well aware of the Charter and all of the codified Ordinances of Rocky River and that is why he is going through this process. When the property was purchased in 1988 there were no deer so no thought of a fence was ever contemplated.**
6. Whether the property owner predicament feasibly can be obviated through some other method other than a variance. **It cannot be because it is important to follow the law in Thomas and Ruth's view. The fence needs to be a little higher to dissuade deer from jumping over it easily. They also like a different kind of fence that is not board on board so that the views are not restricted by anyone.**
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. **The Staffords believe the spirit and intent behind the zoning requirement would be observed by this variance request being granted and substantial justice would be done in granting the variance.**

Phillips, Id. citing Duncan, Id. at 86.

Section Two of the Rocky River Codified Ordinances pertaining to the BZA is that the Board may grant variances subject to procedures established by City Council including, but not limited to, the assessment of practical difficulties or unnecessary hardship in the strict

interpretation of the aforesaid Ordinances, Resolutions, Regulations, measures or Order, “provided that the granting of such exception or variance will be in harmony with the general purpose and intent thereof.”

The Staffords maintain to this Board that this type of height with no one seeing it, but the neighbors (all but one of whom has agreed as preferable), and will **not** impact the City of Rocky River’s harmony at all. It is consistent with the purpose and intent of seeking a variance for the circumstances described.

The discussion of variance in City Ordinance § 1133.17 tracks the factors set forth in the Ohio Supreme Court decisions.

But there are a few other conditions in § 1133.17(C)(1), such as (G) which states, “Whether special conditions or circumstances exist as a result of the actions of the owner.” The special conditions and circumstances do not exist because of any actions by the Staffords. They exist because deer have been roaming around the city, including Beachcliff area, in packs eating whatever they care to eat. It has been frustrating to property owners to plant very expensive plantings only to see them basically destroyed down to the nub by the deer.

Another factor is (J), “Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation toward the land, structures or buildings in the same district.” Again, the Staffords have asked whether there have been any denied fence applications in the area of this type, nature, and circumstances. No one knew of any. This is completely hidden from the street; most neighbors have agreed to it; and it is only 2 ft. and a see-through material.

Also § 113317(c)(1)(K) which is, “Whether literal interpretation of the provision of this code would deprive the applicant of rights commonly enjoyed by the other properties in the same

district under the terms of this code.” The Staffords and the undersigned counsel do not know of any other approved fences along the lines of this material and height but would, again, note that this is not seen from the street, the neighbors have seen it, and it will not impact anyone other than the neighbors behind the Staffords and the Staffords themselves.

Additionally, pursuant to Rocky River Code § 1185.15, the Staffords ask for the variance from 6 ft., but will note to the BZA that there will be plenty of plantings in and around the fence along with buffers to anyone seeing the fence from the outside from the streets or driving by, except for the homeowners and the adjacent properties. The Staffords have professional landscapers and professionals who will be installing this, if approved, for the benefit of not only the Staffords, but everyone in the area that they live in.

As noted by the Ohio Supreme Court in *Duncan*, all factors that the Court identified in that case do not have to be found in every situation in which a variance is requested. Additionally, *Duncan* noted that no single factor controls a determination of practical difficulties and that all factors should be considered and weighed by the BZA. *Duncan*, *Id.* at 86. This is underscored by the Eleventh District Court of Appeals in *Winfield v. Painesville* (11th Dist. 2005), 2005-Ohio-3778 in which the Court stated that the list of seven factors were not exclusive. The key the Court believed was whether the area in use zoning was reasonable whether the variance request was reasonable.

The Eighth District Court of Appeals in *Phillips* was discussed in *1415 Kenilworth, LLC v. Cleveland*. In *1415 Kenilworth, LLC v. Cleveland* (8th Dist. 2003), 2003 WL 1458881, the Court noted that no single *Duncan* factor controls in a determination of practical difficulties, “[T]he inquiry should be focused on the spirit rather than the letter of the zoning ordinance so that

substantial justice is done.” *1415 Kenilworth, LLC*, Id. citing *Dyke v. Shaker Hts.* (8th Dist. 2004), 2004-Ohio-514 at ¶30.

IV. CONCLUSION

Pursuant to Revised Code § 1133.17(f)(1)(A), Thomas and Ruth Stafford ask the Board of Zoning and Building Appeals to approve their Application for a fence variance from 6 to 8 ft. If the BZA refuses to approve this request, the Staffords request that the BZA make specific findings of fact directly on the particular evidence submitted for all the reasons set forth in the Applications in March, and in May, as presented by the Applicants and counsel, during public Hearings, that the BZA does not believe justify the granting of the variance as requested.

As the Applicants presented in February, March, and now May, all of the *Duncan* elements have been satisfied; all of the elements of the Rocky River Ordinances and Charter have been satisfied; there is no downside to the request. There is no reason to think it is precedential at any level because the circumstance here is that it is in the backyard with these neighbors is a “one off;” it is not visible from the street; it is beneficial to all the neighbors and stops the deer from destroying the overall planting project that is going to cost approximately \$150,000.00. All of this is beneficial to Rocky River and the area in which this variance would sit. So, it would not be applicable to any other situation that would come before the BZA at any other time with these materials and this height at issue.

Respectfully submitted,

MICHAEL P. HARVEY CO., L.P.A.

/s/Michael P. Harvey

Michael P. Harvey, Esq. (0039369)

311 Northcliff Drive

Rocky River, Ohio 44116

Office: (440) 356-9108

Cell: (440) 570-2812

Email: MPHarveyCo@aol.com

Attorney for Petitioners/Applicants

Thomas and Ruth Stafford

MPH/map/rrg

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

PACKET FOR
~~4-18-23~~
5-18-23

Fence Permit Application

Permit Fee: \$55.00

Date: February 22, 2023

COMMERCIAL: _____ RESIDENTIAL: R-1 _____

ADDRESS OF IMPROVEMENT: 20860 Avalon Drive

OWNERSHIP: Ruth M. Stafford Trust 20860 Avalon Dr., Rocky River 440-333-0942
Name Address Phone

CONTRACTOR: Thomas G. Stafford 20860 Avalon Dr., Rocky River 440-333-0942
Name Address Phone

CONTRACTOR EMAIL: tomgstafford@yahoo.com ESTIMATED COST \$12,600

TYPE OF FENCE: Ornamental Split Rail Board on Board Picket Privacy DEER FENCE

HEIGHT & LOCATION OF FENCE: Front ___ / Ht ___ Side ___ / Ht ___ Rear X / Ht 8'

CORNER LOT: Yes ___ No X

VARIANCE NEEDED: Yes X No ___

BOARD OF APPEALS MEETING DATE: _____

VARIANCES NEEDED: _____

PROHIBITED FENCES

- Barbed Wire
- Electrified

** 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: Ruth M. Stafford

SIGNATURE OF APPLICANT: Thomas G. Stafford

TGS

- 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

TGS

For office use only:

NOTICES SENT TO ABUTTING NEIGHBORS

Date Sent: _____

Permanent Parcel # _____

10 Day Posting Card Issued _____

Permit #: _____

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: 2/23/2023 Hearing Date: 3/9/2023
Zoning of Property R-1 Permanent Parcel No. 301-01-014

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

Address of property seeking variance: 20860 Avalon Drive
Ruth M. Stafford Trust, Ruth Stafford,
Trustee
Name of Property Owner Thomas G. Stafford
Name of Applicant / Representative

20860 Avalon Drive 20860 Avalon Drive
Address Address

440-333-0942 440-567-6076 440-333-0942 None
Telephone No. Cell Phone No. Telephone No. Cell Phone No.

E-MAIL: rmstafford@gmail.com **E-MAIL:** tomgstafford@yahoo.com

Description of what is intended to be done:
Install an 8-foot-high black polypropylene mesh fence using black powder-coated fence posts on the property lines on the west, north and east side of the rear yard. Two 5-foot-wide gates are included. No top or bottom rails would be used except on each gate (also black powder-coated).

Sections of the Code from which variance is being requested:
1153.15(j)(3) Rear Yard Fences.

List variances requested:
1-Installation of an 8-foot fence in the rear yard 2 feet higher than the 6-foot fence per the Code.

Ruth M. Stafford
Property Owner's Signature

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

This property has two lots to the west, one lot to the north and two lots to the east. The total lot size of the property is just over 1 acre. The configuration of this lot together with adjacent lots on the north and west creates an oversized area across the northern section of this lot which creates an environment exceptionally attractive to the deer population. As a result, multiple deer migration tracks cross this property and it is used as a foraging ground. In the City, few lots have this large of a rear yard and five adjoining properties creating such a large, open area.

- 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 property could be used without the variance; however, to control the browsing deer population effectively a fence with at least an 8-foot height is recommended. A 6-foot fence if installed according to the Code, thus not requiring a variance, would need to have near zero visibility to reduce the chance of a deer jumping over it. (Deer will not jump if they cannot see where they will land.) Such a solid wood fence would be unsightly compared to the proposed 8-foot black polypropylene mesh which would be nearly invisible.

- 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).

This fence height variance is 2 feet in excess of the 6 feet proscribed by the Code. As described above, all fence installers and horticulturalists, among others have told us that 8 feet is the minimum height required and there is a significantly less chance of deer breaching the fence than than if it were shorter. Since the mesh is nearly invisible, the extra 2 feet are not substantial.

- 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).

The essential character of the neighborhood would not be substantially altered by a fence of this type being installed. It is in the rear yard, virtually invisible when viewed from the adjoining neighbors' property and from any surrounding streets. By eliminating or at least substantially reducing the deer crossing through this property it will likely reduce foraging in this property and adjoining properties which will significantly reduce the lost value of each homeowner's landscape. The aesthetic appeal for both this property and adjoining properties may be slightly lessened by this fence as it might for any fence; however, the fact that it is nearly invisible compared to the conforming solid-wood 6-foot fence that could be installed instead makes it more appealing.

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

The variance would have no effect on the delivery of governmental services.

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

We purchased the property in 1988. We cannot recall if we had knowledge of the restrictions 35 years ago. It is possible; but it is only recently that we needed to be aware of them.

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

We are not aware of any special conditions or circumstances that exist as a result of our actions.

- 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).

We have spent thousands of dollars trying professional spraying (This company told us that they did not want to continue as it was wasting our money.), personal spraying, stun sticks and a partial electric fence. The only other means of improvement would be a solid fence that would likely be less effective and still result in significant economic damage. We have discussed options with these professionals and horticultural experts and know no other solution.

- 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).

We do not know for sure what the spirit and intent behind the zoning requirement was when enacted but we assume it was to allow a reasonable amount of privacy to adjoining property owners and minimize the potential loss of aesthetic value a higher fence might cause them while preserving at least some privacy for the property owner wanting the fence. This zoning provision was enacted, I believe, before there was any issue with the deer population. This improvement will allow us to replace very expensive landscaping with less fear of it being quickly destroyed. By removing the deer, it would restore the privacy we once had that is now reduced by the deer crossing through and browsing. It could result in less browsing nearby but the biggest impact on the surrounding neighborhood is that an aesthetically superior fence is being used compared with installing a conforming, highly visible wooden fence.

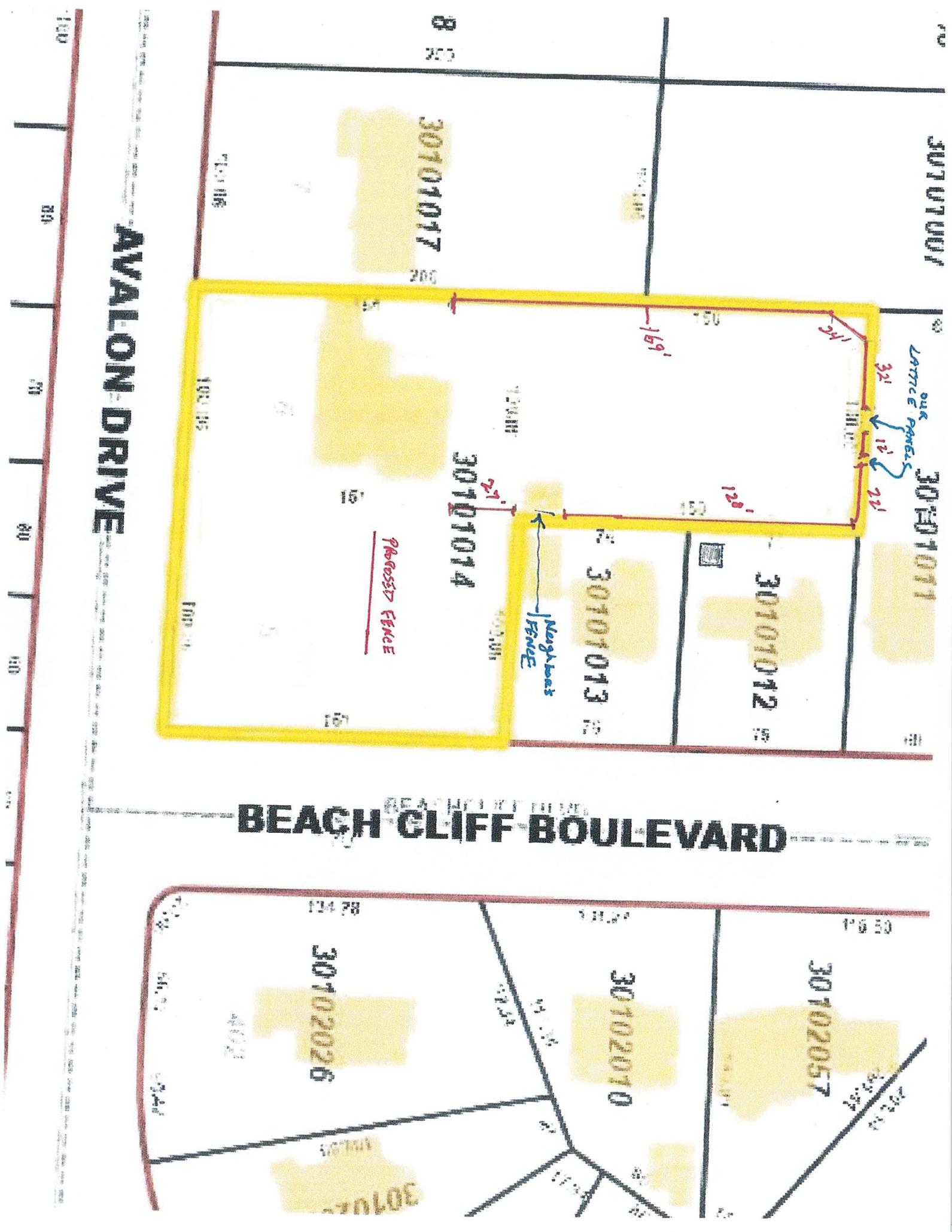
- J.) Explain whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

We are not aware of any special privilege that would be conferred. Granting this variance merely would result in less damage to our property, restore our privacy, and provide a more aesthetically pleasing alternative to the neighbors.

- 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.

We are unaware of what variances all other properties in this district have obtained. We know that an adjacent property owner was recently granted a height variance for an outbuilding and do not see how a literal interpretation of the Code would have deprived that owner of rights commonly enjoyed by others in this district. Our situation should be analogous to that one.

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.



30707007

30101011

OUR LITTLE PANELS

32'
12'
22'

30101012

30101013

30101014

30101017

Processed FENCE

Neighbors FENCE

BEACH CLIFF BOULEVARD

AVALON DRIVE

30102057

30102010

30102026



SUBMITTED 3-29-23
FOR
APRIL
BZA
MTG

Ruth and Thomas Stafford Variance Application Addendum

PRACTICAL DIFFICULTIES

- A) A sketch of the rear yard is enclosed showing how the unique configuration of this rear yard with 5 adjacent neighboring lots results in exceptional numbers of deer trails which would not exist except for the unique site configuration.
- B) In support of the need for an 8-foot fence, we note that the Ohio Revised Code when addressing obtaining a license for raising deer states in Section 1533.71(B)(1) "A person who wishes to obtain a captive white-tailed deer propagation license, prior to applying for the license, shall construct an authorized enclosure that is surrounded by a fence that is **eight feet in height** (emphasis added) with a minimal deviation not to exceed four per cent..."
- C) No additions
- D) The fact that letters of support from surrounding property owners support this request should demonstrate that the essential character of the neighborhood will not be substantially altered nor that adjoining properties would suffer substantial detriment as a result of the variance.
- E) No additions
- F) No additions
- G) No additions
- H) No additions. Reference is made to B) above.
- I) No additions.
- J) No additions.
- K) No additions.

Overall, the Ohio Constitution states in Article I, Section 1 (Bill of Rights) that one of our Inalienable Rights is "acquiring, possessing, and **protecting** (emphasis added) property." Granting this variance directly gives us this right to protect our property. A person can be kept from trespassing on property and/or walking onto our property and taking landscape plants, produce from our vegetable garden or any other item of our property. The result of granting this variance will keep deer from doing the same thing. Taken as a whole, the Practical Difficulties as described in this application warrant the granting of the variance.

30107007

30107011

MAJOR
DEER ROUTES

30107017

30107014

30107012

30107013

BEACH CLIFF BOULEVARD

30102057

30102010

30102026

AVALON DRIVE



SUBMITTED FOR
4-13 BZA Mtg.

March 30, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

Re: Variance Application of Ruth and Thomas Stafford for a Proposed 8' Fence

I/We have received information about the variance being requested by Ruth and Thomas Stafford for an 8' black polyethylene fence to be installed in the rear yard of their property at 20860 Avalon Drive. I/We understand that the Building Code requires that a rear yard fence generally must not exceed 6' which necessitates this variance request. In addition, we believe this fence will be visually superior to the wooden fence alternative that does not require a variance and would prefer it.

I/We are owner(s) of property contiguous to this property and believe the proposed variance for the fence proposed is visually superior, is reasonable in the circumstances and should be approved.

Michael Joyce
Signature

Kathleen A. Joyce
Additional Signature

20874 Avalon
Street Address

SUBMITTED 3-29-23
FOR APRIL
BZA MTG.

**Stafford—Sample Deer Fence Photos
Showing the Visibility in the Backyard Setting**

I was only able to get a scrap piece of the deer fence we would use but it still illustrates how invisible the fence material is compared with a board-on-board wood fence. Since the poles will be black, powder-coated poles, they will show up much less than the poles in the two pictures. Also, the pictures were taken from only 8-10 feet away. Per the manufacturer, the fence is virtually invisible from 20 feet and has a life of 15-20 years. When installed with the extensive new landscaping, this fence will be even less visible than what is shown in these photos and will much less visible than other fence options tall enough to deter the deer.







Stafford Rear Yard Photos—Variance Application



Full Rear Yard Looking North



West Property Line

Stafford Rear Yard Photos—Variance Application



North Property Line



East Property Line

February 21, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

Re: Variance Application of Ruth and Thomas Stafford for a Proposed 8' Fence

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I/We believe the proposed variance for the fence proposed is reasonable in the circumstances and should be approved.

Donald Mc Grayer Bunnell
Signature

Additional Signature

20860 Avalon Dr. Rocky River Ohio
Street Address

44116-1302

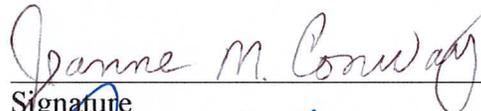
February 20, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

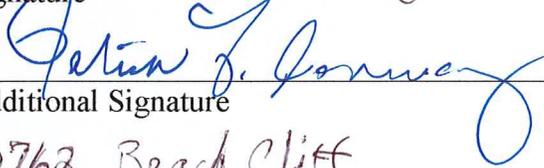
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I/We believe the proposed variance for the fence proposed is reasonable in the circumstances and should be approved.



Signature



Additional Signature

20762 Beach Cliff

Street Address

February 19, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

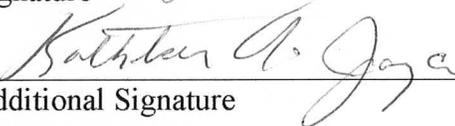
Re: Variance Application of Ruth and Thomas Stafford for a Proposed 8' Fence

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I/We believe the proposed variance for the fence proposed is reasonable in the circumstances and should be approved.

 FRANCIS MICHAEL JOYCE

Signature

 KATHLEEN A. JOYCE

Additional Signature

20874 AVALON

Street Address

SUBMITTED
3-29-23

**Additional Letters of Support for Ruth and Thomas Stafford
Variance Application**

Attached are two additional letters supporting the above variance application from Mr. and Mrs. Patrick Conway and Mr. and Mrs. Edgardo Riveiro, both of whom are neighboring property owners. They had provided letters of support previously but these new letters explicitly voice approval of the type of deer fence proposed compared to other options should the variance not be approved. Two additional neighbors each of whom had submitted letters of support in our initial submission have, as of this date, not given us a supplemental letter. However, we know from prior conversations and the earlier letters that they, too, support this fence over the other options.

March 27, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

Re: Variance Application of Ruth and Thomas Stafford for a Proposed 8' Fence

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I/We are owner(s) of property contiguous to this property and believe the proposed variance for the fence proposed is visually superior, is reasonable in the circumstances and should be approved.

Jeanne M Conway
Signature

Patrick Y Conway
Additional Signature

20762 Beach Cliff Blvd
Street Address

March 24, 2023

Rocky River Board of Zoning & Building Appeals
Rocky River Building Department
21012 Hilliard Boulevard
Rocky River, Ohio 44116

Re: Variance Application of Ruth and Thomas Stafford for a Proposed 8' Fence

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I/We are owner(s) of property contiguous to this property and believe the proposed variance for the fence proposed is visually superior, is reasonable in the circumstances and should be approved.



Signature



Additional Signature

Street Address

20780 Beek Cliff Blvd
RR 44116