

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 <u>Openness</u> 	<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); Detached Garages:</i> <i>(Complete Building Permit Application)</i>		
<i>Note: 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 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).

The existing grade level pool presents an added liability risk in the absence of the approval of the privacy fence. 2 children under the age of 5 live in the adjacent property, which risks proximate access through non privacy fence options, which not only temp access through visibility, but also 25% or higher visibility fences are more prone to climbability. With the existing 25% visibility fence, vandals were able to see the pool through the fence and more easily climb the fence, destroying the pool filtration when they dumped shrubs and potted plants into the pool.

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 BZA should grant the requested variance to mitigate potential liability arising from foreseeable risk in the absence of an approved privacy fence. While the specific fence type may not conform to the 25% visibility requirement, the purpose of those regulations is to ensure safety and prevent hazards. The request is not to avoid safety rules, but to enhance them beyond baseline compliance.

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 fence would be constructed entirely in the backyard, in the footprint of the exiting fence, so it already meets the right of way, set back, and height requirements.

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 primary impetus for this request is safety of neighboring children under the age of 5 in close proximity to the existing pool, but the fence intended to be installed is high quality vinyl, which is an upgrade over the existing 40 yr old wooden fence, not only aesthetically, but a quality increase that increases property value.

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

No impact

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

The similar existing fence was in place when we purchased the property.

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

The existing pool was already in place when we purchased the house. The intent is to replace a 40 year old fence with a new fence to ensure safety of children from houses in close proximity to the pool.

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).

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).

In addition to safety and mitigating liability, the vinyl fence is replacing a 40 year old wooden fence, upgrading the quality of materials and aesthetics of the property and surrounding properties, with no "supporting members" or unfinished side of the fence, so both sides are visually appealing.

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. There is no special privilege. The installation of a privacy fence simply constitutes

the most effective method to mitigate the risk of toddler access to the existing pool and to ensure that such hazard is reasonably safeguarded.

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.

The spacing between members of non opaque fence types present risk of inadvertent toddler access. There are 2 children under the age of 5 in the house adjacent to this property. Disallowing a privacy fence would expose to undue and avoidable liability.

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.

UNNECESSARY HARDSHIP STANDARD

ONLY ANSWER THESE QUESTIONS IF YOU ARE REQUESTING A VARIANCE FOR ANY FUNCTIONAL, LAND OR BUILDING USE NOT SPECIFICALLY PERMITTED IN EITHER A PARTICULAR ZONING DISTRICT, OR OTHERWISE NOT PERMITTED BY THE DEVELOPMENT CODE. (See Typical Variance Sheet for guidance.)

ALL QUESTIONS REQUIRE A COMPLETE RESPONSE

In order to grant a use variance, the Board of Appeals shall determine that strict compliance with the terms of this Code will result in unnecessary hardship to the applicant. **THE APPLICANT MUST DEMONSTRATE SUCH HARDSHIP BY CLEAR AND CONVINCING EVIDENCE** that the criteria in Rocky River Codified Ordinances, sub-section 1133.17(c)(2) is satisfied.

R.R.C.O. Chapter 1133.17(c)(2)A. Please demonstrate hardship with the following:

- i.) Explain how the variance requested stems from a condition that is **UNIQUE TO THE PROPERTY AT ISSUE** and not ordinarily found in the same zone or district. (i.e., topographical or geological limitations; unique structure of original building, etc.)

The spacing between members of non opaque fence types present risk of inadvertent toddler access. There are 2 children under the age of 5 in the house adjacent to this property. Disallowing a privacy fence would expose to undue and avoidable liability. 25% or greater visibility fences are prone to invite trespassing due to increased pool visibility and are also a safety risk due to climbability

- ii.) Explain how the granting of the variance will not have any material adverse effect on the rights of adjacent property owners or residents.

The rights of adjacent property owners are not impacted, and are able to enjoy the same added benefit of safety, better aesthetics, & privacy. Right of way sight lines are also not impacted because the fence would be constructed on the footprint of the existing fence in the backyard of the house, more than double the 20 foot requirement of the public right of way/sidewalk, and more than the 20 foot restriction from the driveway.

- iii.) Explain how the granting of the variance will not have any material adverse effect on the public health, safety or general welfare of the City of Rocky River.

The impetus for this variance approval is to insure safety. The spacing between members of non opaque fence types present risk of inadvertent toddler access to an existing in ground pool. There are 2 children under the age of 5 in the house adjacent to this property. Disallowing a privacy fence would expose to undue and avoidable liability.

iv.) Explain how the variance will be consistent with the general spirit and intent of the Code.

This request complies with the line of sight requirements (it would be constructed more than 20 feet from the driveway & right of ways). It also complies with height requirements (it is 5 feet tall). The 25% visibility restriction of the code does not mitigate the risk of inadvertent toddler access to the existing pool that the fence encloses. The privacy fence would mitigate this safety risk.

v.) Explain how the variance sought is the minimum that will afford relief to the applicant.

The variance mitigates the safety risk of inadvertent access from the children under 5 years old in the adjacent residence. This variance is the most expedient risk mitigation means to protect against this liability. The privacy fence discourages trespassing and reduces public safety risk, while upgrading the aesthetic beauty of the neighborhood and avoiding right of way sightline obstructions

R.R.C.O. Chapter 1133.17(c)(2)B. If applicable, explain what further evidence you would like the Board of Appeals to consider, as follows:

i.) Whether the property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located

ii.) Whether, and to the extent to which (if applicable), the hardship condition is not created by actions of the applicant.

The requested variance seeks to protect against the safety risk for a pool that was already in place at the time the property was purchased. The variance request would replace an existing 40 year old fence that is in poor condition. The new installation would be a material upgrade over the exiting fence, adding both to the safety and aesthetic beauty of the surrounding properties. Denying the variance would directly insure a less secure pool area, and increases legal risk exposure.

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