

April 15, 2024

Zoning Board of Adjustment  
Phyllis Eldridge, Chair  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, New Hampshire

Re: 5 Cleveland Drive Pool Fence  
Amended Variance Request (Building Permit Application BLDG-22-309)  
(Land Use Application LU-23-92)

Dear Members of the Zoning Board of Adjustment,

On July 18, 2023, the Zoning Board of Adjustment granted us a variance from Section 10.515.13 to allow a 6-foot fence to be installed along the primary and secondary front of our property where a 4-foot fence is allowed ("July 2023 Variance"). We initially requested the Variance because our lot is uniquely situated at the intersection of Taft Road and Cleveland Drive and has a resulting street frontage which accounts for more than three-quarters of our total property line. Our home is situated facing Cleveland Drive, with the rear of our house (our "backyard") facing the front yards of our neighbors on Taft Road. The Variance allowed us to install the 6-foot fence along the street of our backyard, providing privacy and security for an inground pool.

After receiving the Variance, we installed the inground pool and ground level patio in our backyard. Brentwood Fence was scheduled to install the 6-foot fence along our property line and Taft Road, in accordance with the Variance. However, in November of 2023, we received notice from Planner Stefanie Casella that we needed to request an amended variance because the retaining wall, constructed with the patio portion of the project, was not consistent with the Variance granted by this Board. Ms. Casella instructed us that we could not install the fence unless we took down the retaining wall or requested an amended variance.

As shown in the pictures of our property along Taft Road (part of the July 2023 Variance and included again here), our backyard slopes downward toward the street. When construction began on the inground pool in August of 2023, Northern Pool and Spa informed us that they needed to dig away soil from this natural slope because the excavator and dump truck were slipping down the slope when entering the backyard to dig the hole for the inground pool. As such, the slope was dug away to create a road for the trucks to enter the backyard.

After the hole was dug and the pool was installed, Landscapes by Aurelindo began installing the patio around the pool. The original plan, as noted in the July Variance, was to install a natural rock wall with the 6-foot privacy fence at the height of the inground pool (see sample photo submitted with initial variance application and included again here). However, Landscapes by Aurelindo said that a natural rock wall would not be strong enough for the patio project and recommended an Allan Block wall be installed instead. We took this advice and the Allan Block wall was installed instead of the natural rock wall, but in the same approximate location.

We met with Ms. Casella in November of 2023 and explained the above, and that our plan was to put back the soil removed by the pool company to get the trucks into the backyard. After this meeting, we

decided to wait until spring to request the amended variance because Ms. Casella stated that the final height of the retaining wall may decide the need for an amended variance.

This spring, we returned soil to the front of the wall, but the weather conditions have made it difficult to ascertain the final height of the wall above ground. The final height of the wall will be 38 inches but currently measures 38-40 inches due to the heavy rainfall moving the soil. We contacted Ms. Casella with the final height of the wall after returning the soil, but she informed us that we needed to file an amended variance.

Please note that in June of 2023, we requested a variance to install a 6-foot fence at the top of our backyard, not at street level. This is similar to the location that the previous owner had a chain link fence (see attached Google Map photo). It was never our intention to install a 6-foot fence at the bottom of the slope of our backyard as it would not have provided any security or privacy for the inground pool which was installed at the height of the yard that aligns with the house and the previously installed deck attached to the house.

By way of this Amended Request for a Variance, we are requesting to finish the project and install a 6-foot fence instead of a 4-foot fence along our property line and Taft Road to provide privacy, safety and a more aesthetic yard for our neighbors and pedestrians to enjoy. If approved, the 6-foot fence will be located at the top of our backyard, behind and slightly above/at the level of the 38-inch retaining wall. We reiterate the following from our initial Variance:

This fence would run along the Taft Road side of our property, coming as close as 12-feet from the edge of the road, measured 24 feet to the center of Taft Road (see diagram, attached with addition of a dotted line to show the retaining wall). Based on the natural curve of Taft Road, this is the closest the fence would be to the road with other parts of the fence being 20 feet or further from Taft Road. The fence will join with the side of the existing house, to provide a seamless, aesthetic, secure barrier between pedestrians and the pool, consistent with the requirements and intent of the building code.

Because our property sits lower than our neighbors on the Taft Road side of our property, a four-foot fence would not provide a decent amount of coverage.

We have spoken with the abutters, and they do not object to a 6-foot privacy fence consistent with the many other improvements we have made to our property since purchasing it in 2015.

This request respects the five principles variance enforcement as follows:

**1. Section 10.233.20:10.233.21 The variance will not be contrary to the public interest.**

As the map shows, the proposed fence would not limit light or circulating air to the abutters on 5 Cleveland Drive as their houses are set back considerably from our property line and one of them is set substantially higher than the proposed fence line. The fence and attendant landscaping would additionally provide them a more attractive view than a lower fence which would provide unobstructed views of the pool, equipment and personal effects.

Elwyn Park is a residential neighborhood without sidewalks, and erecting a higher fence will additionally provide privacy and safety for those walkers and joggers who come into the yards to avoid vehicle traffic.

Many other homes within the Elwyn Park neighborhood already have six-foot or higher fences which are much closer to the roads, and this fence will not be “overly tall” or obstruct views other than those intended to provide privacy for our neighbors.

**2. 10.233.22 The spirit of the Ordinance will be observed.**

The spirit of the Ordinance, to prevent unsightly, tall, fences which obstruct or interfere with abutting properties, full access to air and light will be respected. The uniqueness of the plot having no backyard, as well as having abutting homes built at a higher level than our property, renders a four-foot fence insufficient to meet the substantial needs of privacy and security offered by a six-foot fence. The intent is to provide similar privacy that an orthodox plot would benefit from and improve the lives of neighbors and pedestrians by providing sufficient separation between the pool and personal effects at 5 Cleveland and our neighbors full use and enjoyment of their properties. At the same time, the additional height of the fence offers no impairment to abutters rights.

**3. 10.233.23 Substantial justice will be done.**

This request is substantiated by the unorthodox nature of the lot design and situation of the building on the property at time of construction, and not by the special need of the owner or disagreement with the ordinance.

**4. 10.233.24 The values of surrounding properties will not be diminished.**

The values of the surrounding properties will be improved by looking at an aesthetic fence consistent with the character of the neighborhood rather than a neighbor’s personal effects that would typically be in a backyard. Likewise, they will enjoy increased security and privacy with a higher fence providing adequate separation between our proposed improvement and their front-facing windows and doors. All mechanicals for the pool will be at a height which is sufficiently below the proposed six-foot fence, hiding them from view.

**5. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

The literal enforcement of the ordinance would not provide the privacy and security offered by a six-foot fence along Taft Road. It would effectively render this unorthodox lot without the privacy and utility of a traditional backyard. The privacy and safety of a six-foot fence is desirable to both the property owner and abutters. Because of the orientation of the home on the lot, and the spacing between the one directly abutting neighbor, there is no other way to create a backyard with a six-foot fence that would respect the setback.

We appreciate your time in consideration of this request.

Respectfully submitted,  
John Wallin & Jeanine Girgenti  
5 Cleveland Drive  
Portsmouth, NH

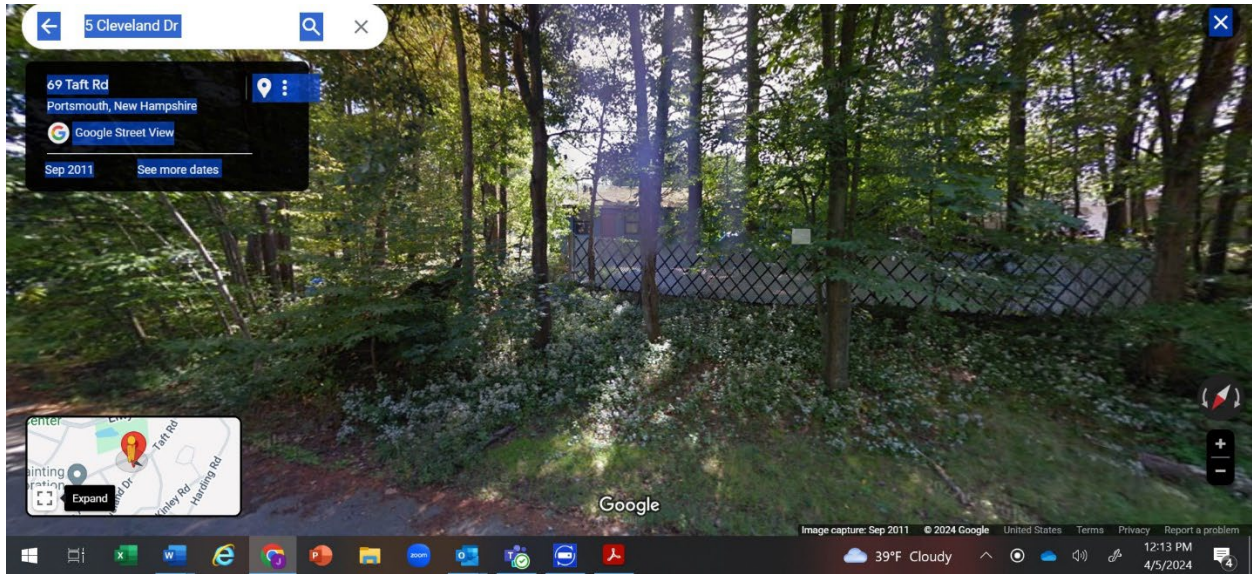
Pictures of our property along Taft Road (included in the July 2023 Variance)







This is an image from Google Maps of the chain link fence at approximately the same height relative to the road that existed when we purchased the home in 2015. In addition, this image shows the natural slope of the yard downward toward the street. This soil was removed to facilitate construction of the pool and replaced after the construction of the retaining wall. The proposed fence is further from Taft Road than the pre-existing fence and sits at the same height relative to the road.



This is the sample image from the July 2023 Variance of proposed fencing with the natural rock wall.





These are sample images of the current plan to install the fence behind the Allan Block wall with plants to be installed in front of the fence (though these photos are not exact, they were selected to show the fence behind/above the retaining wall and the intending landscaping).





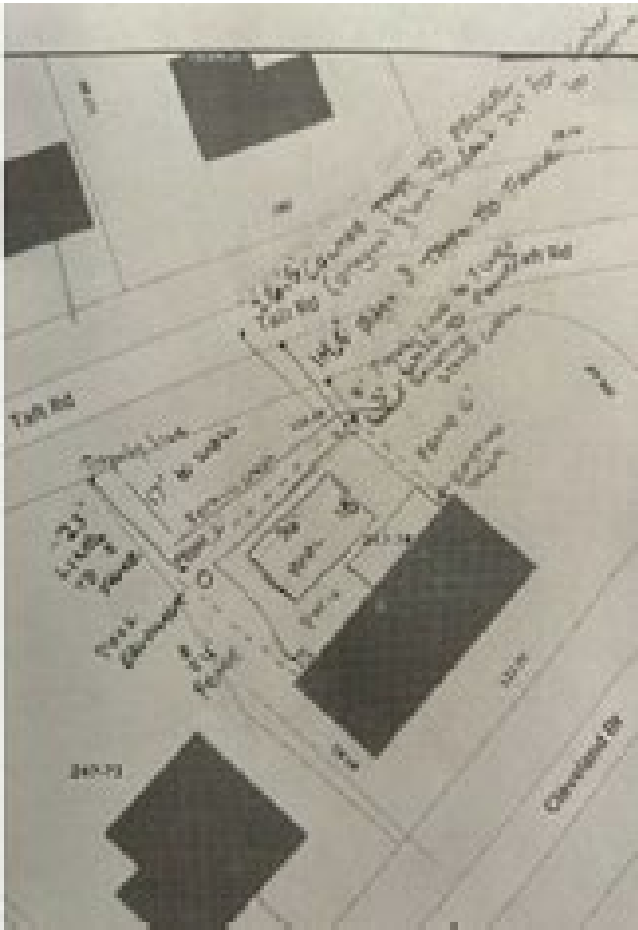
These are three images of the currently constructed/installed retaining wall, which is approximately 38 inches – 40 inches above soil. The frequent and intense weather conditions, including rainfall and recent snow, have caused the final calculation of the retaining wall above ground to fluctuate. But the final result is planned to be 38 inches of retaining wall above ground with plantings in front of the fence and the wall.







Sketch of site plan with dotted line added to show location of fence in relation to retaining wall.





Google App Geo

1" = 44.62598551129037 ft



MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 08/24/2023  
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.









# CITY OF PORTSMOUTH

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Portsmouth, New Hampshire  
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(603) 610-7216

## ZONING BOARD OF ADJUSTMENT

July 25, 2023

John C. Wallen and Jeanine M. Girgenti  
5 Cleveland Drive  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 5 Cleveland Drive (LU-23-92)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, July 18, 2023**, considered your application for installing a 6 foot fence along the primary and secondary front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is shown on Assessor Map 247 Lot 74 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to to **approve** the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

David Rheaume, Acting Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor