

June 21, 2023

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

Re: 5 Cleveland Drive Pool Fence Variance Request (Building Permit Application BLDG-22-309)

Dear Members of the Zoning Board of Appeals, we are requesting a variance to erect a six-foot fence along our property line with Taft Road in Portsmouth's Elwyn Park neighborhood. 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. As you can see from the attached images, 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.

As part of our proposed property renovations, we will be installing an in-ground pool and ground level patio in our backyard. The requested variance to erect a six-foot fence instead of a four-foot fence along our property line and Taft Road will provide privacy, safety and a more aesthetic yard for our neighbors and pedestrians to enjoy.

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). 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 six-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:

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.

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.

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.

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.

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

Attached: sample image of proposed fencing, lot map showing proposed fencing lines and heights, and three images of current rear yard and Taft Road.









