

STATEMENT OF PRACTICAL DIFFICULTY

To obtain a variance, an applicant must show by a preponderance of the evidence, to the satisfaction of the Board of Zoning Appeals (BZA), that strictly adhering to the Zoning Code's standards would result in a "practical difficulty" for the applicant. To this end, a written statement of practical difficulty must accompany an application for a standard variance. Please complete this Statement of Practical Difficulty, by addressing all of the factors listed below that are relevant to your situation. Additional documents may be submitted as further proof.

In deciding whether to grant a variance, BZA will consider the following factors in determining whether a practical difficulty exists:

A. Explain special conditions or circumstances that exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District. (examples of this are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions):

When the applicants purchased this property, a pre-existing fence had recently been installed by the previous owners surrounding the backyard and in conjunction with adjacent residential plots/fencing. To meet the 6' height requirement of 1121.12(h)(3), the applicant would need to remove and replace:

- *Approximately 59 feet of chain link fence (less than 5 years old) in excellent condition along the west side of the back yard connecting the existing dwelling with the adjacent southern plot*
- *Approximately 143 feet of chain link fence (less than 5 years old) in excellent condition along the southern border of the property*
- *Approximately 90 feet of wrought iron fence (less than 5 years old) in excellent condition along the northern border of the backyard adjacent to the driveway*
- *Current foliage/trees/arborvitae along the chain link fence lines planted by the prior owners*

Furthermore, the current fence surrounding the back yard of this property is abutting a wooden fence on the eastern edge of the property owned by the adjacent plot at 2308 Stillman Road which ranges in height from 6' on the northern end to 5'3" on the southern end and is approximately 105 feet in length. To meet the 6' requirement, a new fence would need to be erected on the eastern border of the plot directly facing the aforementioned fence that would be 6' in height along the entire 105 foot length. This would be a visually nonconforming and inharmonious structure that would limit owner access to the full extent of the property and would require the removal of approximately 100 feet of bamboo (up to 25 feet in height) planted by the previous owners along this border of the property.

B. Explain how the property in question would not yield a reasonable return or there could not be any beneficial use of the property without the variance:

As the pool is an elective structure, canceling this project would not completely eliminate the beneficial use of the rear of the property for other activities, however, it would limit the enjoyment during use by the applicants and immediate family.

C. Explain whether the variance is insubstantial:

The requested variance reduces the required height of the safety fence surrounding the proposed swimming pool by less than 1 foot on average. According to the US Consumer Product Safety Commissions (CPSC) Safety Barrier Guidelines for Residential Pools, "...fences should be a minimum of 4 feet high, although fences 5 feet or higher are preferable..." The existing fence at 2301 Coventry Road meets and exceeds these recommendations. The CPSC further notes in their guidelines that installing "...door alarms on all doors leading to the pool area..."; "...self-closing and self-latching devices..." and "...Pool covers add another layer of protection..." All of these devices along with photocell activated lighting, motion sensing lighting and IP cameras (motion activated and accessible from any

internet connected device both on and off the property) will be installed to maintain safety on the property. Furthermore, the offset of the pool from the perimeter of the property will increase safety given the large size of the lot. Distances from the edge of the property to the edge of the proposed swimming pool are as follows:

- Southern border: approximately 70 feet
- Eastern border: approximately 75 feet
- Northern and western borders: greater than 100 feet

Furthermore, the current pre-installed fencing conforms with safety recommendations from the National Drowning Prevention Alliance and the BOCA/ICCs International Building Code section 305, regarding "pool barriers."

Explain whether the variance is the minimum necessary to make possible the reasonable use of the land:

The variance requested is the minimum necessary to maintain the current installed barrier surrounding the proposed swimming pool. No other variances have been requested in conjunction with this project.

D. Explain whether the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment as a result of the variance.

With an approval of this variance, no changes to the existing fencing structures would be required, therefore, the essential character of the neighborhood and adjoining properties would be unaffected.

E. Explain whether the variance would adversely affect the delivery of governmental service (e.g., water, sewer, garbage).

With an approval of this variance, no changes to the existing fencing structures would be required, therefore, no adverse results related to the delivery of governmental services would occur.

F. Did the applicant purchase the property without knowledge of the zoning restriction?

As the fence in question was installed by the previous owners and the applicants had not yet pursued the proposed swimming pool project (and had never done so before in Cleveland Heights), no prior knowledge of the zoning restriction existed at the time the property was purchased.

G. Explain whether the special conditions or circumstances (listed in response to question A above) were a result of actions of the owner.

The circumstances described in question A above were not a result of actions of the current owners. The fence was pre-existing at the time of purchase of the property and was installed by the previous home owners.

H. Demonstrate whether the applicant's predicament feasibly can be resolved through a method other than a variance (e.g., a zone-conforming but unworkable example).

This request for variance could be resolved in a zone-conforming way, but only at high cost to the home owners and via a largely negative environmental impact. The quoted contractor price to remove and replace the existing fence is approximately \$16000. This does not include the price to add a secondary fence to the eastern edge of the property at a height of 6 feet and a length of approximately 105 feet (quote pending). Following this process would result in the removal and destruction of approximately 290 feet of fencing less than 5 years old, adding a significant burden to the environment and the applicants. Alternatively, fence extenders (at a lower cost) could be applied to the entire perimeter of the fence to attain the extra 1 foot of height required, however, this would alter the essential character of the neighborhood (no fencing extenders surrounding swimming pools exist in the proximity of the applicant property) and potentially cause a substantial detriment to the adjoining properties. Fencing extenders are often described as "unsightly" and may reduce safety in comparison to a standard fence of equal height.

I. Explain whether the spirit and intent behind the zoning requirement would be observed and/or substantial justice done by granting the variance.

The intent of the zoning requirement is to maintain safety related to residential swimming pools. As stated above, the pre-existing fence related to the requested variance remains in compliance with national and international standards. Furthermore, as stated in response to question C, enhanced safety features related to all other elements that exceed zoning requirements are planned as a part of this project.

J. Explain whether the granting of the variance requested will or will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

The granting of this variance will not confer special privilege to the applicant as other residential properties in the immediate neighborhood have swimming pools with surrounding fences that in whole or in part do not meet the 6' requirement related to fencing enclosures including:

- *2824 Corydon Road (0.2 miles from the applicant property)*
- *2805 Fairmount Boulevard (0.4 miles from the applicant property)*
- *2888 Fairfax Road (0.6 miles from applicant property)*