

CHILI ZONING BOARD OF APPEALS
April 26, 2011

A meeting of the Chili Zoning Board was held on April 26, 2011 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

PRESENT: Adam Cummings, Robert Mulcahy, Michael Nyhan, Robert Springer, Fred Trott, James Wiesner and Chairperson Paul Bloser.

ALSO PRESENT: Keith O'Toole, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector

Chairperson Paul Bloser declared this to be a legally constituted meeting of the Chili Zoning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PAUL BLOSER: Signs, I will go to those first. Any problems?

The Board indicated they had no problems with the notification signs.

PAUL BLOSER: We'll move forward to Application 1.

1. Application of Mr. and Mrs. Jerry Patterson, owner; 268 Archer Road, Rochester, New York, 14624 for Land Use Variance to allow a second dwelling on property to remain (previous variance approved for previous owner only) at property located at 268 Archer Road in R-1-20 zone.

Jerry Patterson was present to represent the application.

PAUL BLOSER: For the record, will you state your name and address, please?

MR. PATTERSON: Yes. I'm Jerry Patterson. I live at 268 Archer Road. And by some bizarre twist of the postal service, that's actually a Churchville address, 14428.

PAUL BLOSER: Okay.

MR. PATTERSON: It does provide for some interesting mail once in a while.

So -- so you have all received copies of the application, right?

PAUL BLOSER: We have. Would you tell us a little bit about what you have got going there? We have the application before us.

When did you buy the house? And let's go from there.

MR. PATTERSON: Yes. We closed on the house on the 25th of February.

PAUL BLOSER: Okay.

MR. PATTERSON: And we started looking at the house in October, and saw from the real estate advertising that there was an apartment on the property, and that was appealing to us as an opportunity for us to supplement our income and also to provide some younger people with a -- some decent housing in -- in Chili.

So we checked in with all of that and had indications from the sellers that they -- they had the necessary paperwork. Although, we didn't really investigate further than that, and I think that is probably what has got me in the predicament I'm in right now. They told us that the apartment was ready to rent, and then it really wasn't even until after we made application for a home equity line of credit at ESL that the appraiser's report came back and said, "No, you have an illegal situation going on with your zoning."

I was really surprised. Illegal situation?

So they suggested that we come before the Board here and apply for a variance for the property, and that is why we're here. I would answer any questions that you might have.

PAUL BLOSER: Okay.

JAMES WIESNER: Are there tenants in the apartment right now?

MR. PATTERSON: No, there are not tenants. It has been empty, I understand for about a year. We didn't want to go ahead by renting it with that kind of situation. No. We haven't done a thing to it.

MICHAEL NYHAN: The rental property is the back property; is that correct?

MR. PATTERSON: That is correct.

MICHAEL NYHAN: The shed is in between the two, the garage and the rental property, is that attached or detached?

MR. PATTERSON: That's a -- detached from the main house. It is attached to the rental property.

MICHAEL NYHAN: The shed is attached to the rental property, as well as the garage?

MR. PATTERSON: Yes.

MICHAEL NYHAN: You have not changed anything on the structure since you --

MR. PATTERSON: As it stands on the map, that is how it is, yes.

ADAM CUMMINGS: I see the mortgage amount. What is the amount of the line of credit, the home equity line of credit?

MR. PATTERSON: We technically don't have a mortgage because there -- we have been homeowners for a long time so we didn't really need to go through all of the mortgage process, so we have a personal loan. That's what is listed as the mortgage. And we're applying for -- it is either 50 or 100, whichever was the better rate, but we don't need all of that. We just want to use the home equity line of credit for the better interest rate.

PAUL BLOSER: According to the Building Department, there is no open violations for anything, any building permits? The structure is fine?

ED SHERO: That's correct.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BARB DENIGRIS, 254 Archer Road

MS. DENIGRIS: Barb Denigris, 254 Archer Road, neighbor, that we just met.

The building has always been taken care of over the years with Barb Ireland and her son. It's in good shape, and it offers good possibilities there for a lot of things, so I can't see that there is any reason why we can't just leave it there and pass it over to the new owners.

PAUL BLOSER: Okay. Thank you.

Paul Bloser made a motion to close the Public Hearing portion of this application and Robert Mulcahy seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: This has been used like this for a lot of years. I don't have a problem with this being carried with the property as opposed to the owner, as long as it remains a single-family dwelling, as a separate unit. You're subject to all Town codes. If you make any changes, modifications, decks, sheds, permits are required.

MR. PATTERSON: Any kind of change I need to come.

PAUL BLOSER: Anything. You go to the Building Office. You know, everything applies. You know vehicles, storage of vehicles, commercial vehicles. Can't be running a business out of there. Those are all standards within the residential code. I'm not really going to put them down as conditions of approval. They're already in the code.

MR. PATTERSON: Sure.

PAUL BLOSER: I guess if you're -- if this is something new to you to have rental property like this, I would pose any questions you have to the Building Department so that, you know, you're not in violation.

There is no record of anything -- complaints on the property, and we kind of expect it as business as usual with that.

So if we don't have any other questions for the Board, I will move forward with SEQ. R.

Paul Bloser made a motion to declare the Board lead agency as far as SEQ. R, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

Robert Mulcahy made a motion to approve the application with no conditions, and Michael Nyhan seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following finding of fact was cited:

1. The proposed variance met all of the Use Variance criteria and is a continuance of previously granted variances for the property.
2. Application of Melissa Pernesky, owner, 95 Sheffer Road, Scottsville, New York 14546 for variance to allow existing barn and fenced pen area for private animal kennel to be 38 feet from side lot line (200 feet required) at property located at 95 Sheffer Road in AC zone.

Melissa Pernesky was present to represent the application.

MS. PERNESKY: My name is Melissa Pernesky. I reside at 95 Sheffer Road, which is in the Town of Chili with the mailing address of Scottsville.

So I am obviously here today because with the lot line being where it is, because of the New York State Thruway -- I don't know if everybody has driven by -- the barn has obviously been there way before the Thruway, so regarding the distance there, um, I guess I should have been approached when the Thruway came in.

But regardless, a few years ago I called the Town about a chain link fence and they said,

um, you know, there wouldn't be a problem. I don't recall what she said. I thought it was like more than 10 or 20 feet from the property.

Apparently, I was unaware that a dog fence would be different than just a regular chain link fence. But regardless, where I am, I obviously didn't think being in an Agricultural District it would be a problem. Like I said, I called ahead.

Last year when I came here to apply for the dog kennel permit, which was approved, they said, I would have to be sure that the fence line would be okay and to go through this process.

PAUL BLOSER: For the kennel, how many animals are you planning on having in there?

MS. PERNESKY: Currently, I have a permit for four German Shepherds and I have no intention of getting any more.

PAUL BLOSER: Are you breeding them?

MS. PERNESKY: No. I have -- my one female is spade. My two males are neutered, and I only have one male that is not neutered.

PAUL BLOSER: Okay.

ROBERT SPRINGER: Are these dogs your personal dogs?

MS. PERNESKY: Yes, they are -- all are. Again, I don't believe the kennel permit is the question here, sir. We're just talking about the -- the fence and the -- the kennel permit has already been approved.

MICHAEL NYHAN: Actually, a question I have is, is this for the kennel? The Zoning Board or -- the Planning Board approval with our approval to have the kennel less than 200 feet from the property line. I think this is for the fence, I believe. I believe this is for the kennel.

MS. PERNESKY: Could you define then?

MICHAEL NYHAN: Is that correct?

MS. PERNESKY: Could you define the difference between a kennel and a fence? Are -- I do think the kennel is an indoor kennel. I don't have an indoor kennel.

MICHAEL NYHAN: Looks like on here that -- maybe I am misreading it, but it looks like a structure.

MS. PERNESKY: That is the carriage barn that has been there about 200 years.

Then I drew in, I believe, in your copy a red line. That would be the chain link fence that the dogs run inside of.

MICHAEL NYHAN: So this is nothing more than a fenced area that is a kennel.

MS. PERNESKY: A chain link fence, right.

MICHAEL NYHAN: It's a kennel.

MS. PERNESKY: Okay.

MICHAEL NYHAN: Okay. I got it. It's for the kennel.

JAMES WIESNER: The specialty use permit for the kennel, is that just because of the amount of dogs you have?

MS. PERNESKY: Yes. I believe the Town Code only allows two dogs.

JAMES WIESNER: When I saw it, I thought you must board dogs, but that has nothing to do with it.

MS. PERNESKY: No. Do not need any more dogs in there.

JAMES WIESNER: Just to bring yourself in compliance with the code for the Town?

MS. PERNESKY: Exactly, right.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

PETER WIDENER, 4280 Union Street

MR. WIDENER: Peter Widener, 4280 Union Street, North Chili. I'm two fences over neighbor of hers, farm fences, about 5, 10 acres away. I don't see a problem with this fence and the existing fence. It is a covenant that goes with a farm permit or a land that is in the Ag District. If it was considered livestock or a cattle, it might be something different, but for the kennel permit and what has already been granted and the fence that we're seeking -- that she is seeking out, I speak in favor of it. I -- I will support it. Thank you.

MS. PERNESKY: Thank you.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Adam Cummings seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: I will put a couple conditions of approval on here. This is just to pigtail with what you have got with the Planning Board. No more than four animals.

MS. PERNESKY: I have cats, so did you want to define that to just dogs?

PAUL BLOSER: Pardon me?

MS. PERNESKY: I said I do have cats. Do you want to define that to just dogs, because I certainly wouldn't --

PAUL BLOSER: In the kennel.

MS. PERNESKY: Oh, okay.

PAUL BLOSER: I will put "animals" on --

MS. PERNESKY: Okay.

PAUL BLOSER: Cats we look at as kind -- I look at them as rodents, but their -- they

don't really --

MS. PERNESKY: Just trying to be honest here. I mean, you know, could be -- you know, my neighbor up the street he has cows and my other neighbor has goats.

PAUL BLOSER: I'm putting "animals" because I don't want to see llamas appear or --

MS. PERNESKY: Okay. That's fair. That's fair.

PAUL BLOSER: -- or goats or anything else.

MS. PERNESKY: I would have to apply for something special for one of those.

PAUL BLOSER: If you're going to go additional, yes. I just want to clarify what you're doing there.

MS. PERNESKY: That's fine.

PAUL BLOSER: Okay.

MS. PERNESKY: Uh-huh.

ADAM CUMMINGS: Is this variance just for the distance off the lot line or is it for the residence of the --

PAUL BLOSER: It's for the --

ADAM CUMMINGS: -- kennel?

MICHAEL NYHAN: For the distance off the lot line, 200 feet from the lot line.

PAUL BLOSER: Distance off the lot line.

ADAM CUMMINGS: I'm just curious what the residence of the kennel has to do with the distance of it.

MS. PERNESKY: Especially that my neighbor is the Thruway, which is louder than anything else, right?

ADAM CUMMINGS: Depends on the drivers. Nascar might be noisier.

MS. DE NAGEL PERNESKY: You get those truckers or those cars on that strip, right?

ADAM CUMMINGS: You wake up.

MS. PERNESKY: Yes. You get those Jerry brakes, or whatever they're called because of the stop area, just a couple tenths of a mile down, it's pretty loud down there.

FRED TROTT: You're not in an Agricultural District?

MS. PERNESKY: I am in an Agricultural District, so really I didn't know --

FRED TROTT: You have a limit on the dogs in an Agricultural District?

MS. PERNESKY: That was my -- I have been there 13 years. I wouldn't think I need a permit for dogs, but apparently I do, and that's fine. I applied and I got granted.

Again, you can see my neighbors are nowhere around me anywhere down there, and trust me, Chris Austin's (phonetic) cows moo probably louder than my dogs bark, because I hear them.

PAUL BLOSER: What I am going to do for conditions of approval, like the first one, no more than four animals is requested to be kenneled.

MS. PERNESKY: Okay.

PAUL BLOSER: So that just limits animals in those kennels. So cats are free to wander as they -- come and go as they please.

The second condition of approval is no boarding of any animals on a temporary or permanent basis.

MS. PERNESKY: That's fine.

PAUL BLOSER: In the kennels. Okay?

MS. PERNESKY: Yep. That is fine.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

Robert Mulcahy made a motion to approve the application with the following conditions, and Michael Nyhan seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. No more than four animals as requested within the kennel.
2. No boarding of any animals on a temporary or permanent basis in the kennel.

The following finding of fact was cited:

1. The proposed variance is not substantial in nature and will not create an undesirable change in the neighborhood or nearby properties.

MS. PERNESKY: I have one last question.

Now is my barn, my carriage barn, is that an issue with the distance, too, and is that clarified now as being approved?

PAUL BLOSER: Your setback issues are clear at this point.

MS. PERNESKY: Okay. You were talking just kennel. I just want to --

JAMES WIESNER: According to the code, the portion of the code that is being addressed here is the distance of the kennel off the property line.

PAUL BLOSER: This says to allow existing barn and fenced pen area to be 38 foot, so it is inclusive.

JAMES WIESNER: Okay. Because the section in the code says just the kennel, that it is referencing.

PAUL BLOSER: How they have the application -- we voted based on both of them. And that barn has been there a long time.

MS. PERNESKY: He would know.

MR. PETERSON: 180 years, plus or minus.

PAUL BLOSER: You were there, right? (Laughter.)

FRED TROTT: We'll take note if any tractor-trailers complain.

The 3/22/11 Zoning Board minutes were approved as submitted.

The meeting ended the 7:22 p.m.