

CHILI ZONING BOARD OF APPEALS
August 28, 2012

A meeting of the Chili Zoning Board was held on August 28, 2012 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: Michael Jones, 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: Anybody have any problems with the signs?

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

1. Application of Sandra Miller, owner; 63 Emerald Point, Rochester, New York 14624 for variance to erect an above ground swimming pool 12' from side lot line (not allowed in front yard abutting a street) at property located at 63 Emerald Point in R-1-15 zone.

Sandra Miller was present to represent the application.

MS. MILLER: Sandra Miller.

PAUL BLOSER: Can I call you Sandy (Miller)?

MS. MILLER: Yes, that's fine.

PAUL BLOSER: The pool you're looking at is an 18 foot above-ground?

MS. MILLER: Yes.

PAUL BLOSER: It's hard to tell by this, but is this a deck you're putting on there?

MS. MILLER: Yes. It's an attached deck that goes around the side of the pool.

PAUL BLOSER: Kind of to the north side of the swimming pool on the left; is that right?

MS. MILLER: Yes.

PAUL BLOSER: Is that wood structure or metal?

MS. MILLER: It will be metal.

PAUL BLOSER: So it is made for the pool?

MS. MILLER: Right.

PAUL BLOSER: The fence itself, you don't have a picture of what it is, do you?

MS. MILLER: No, I don't, I'm sorry.

PAUL BLOSER: Is it open rails or is it side panels on it?

MS. MILLER: On the deck, it's rails like this (indicating), narrow rails going around it.

PAUL BLOSER: All white?

MS. MILLER: Yes.

PAUL BLOSER: You don't really have any other yard.

MS. MILLER: No, I'm afraid not.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

There was a pause in the meeting for a passing train whistle.

DEBORAH BONNEWELL (phonetic)

MS. BONNEWELL: I'm a friend of Sandy (Miller)'s that just came for support. She is a newbie doing this.

PAUL BLOSER: Are you a neighbor?

MS. BONNEWELL: No, I'm not.

MS. MILLER: I have spoken with my neighbors.

PAUL BLOSER: Pardon me?

MS. MILLER: I have spoken with my neighbors.

PAUL BLOSER: I do have -- for the record, a letter that was received on the 21st.

"Unable to attend but see no problem with Sandra Miller erecting above-ground swimming pool 12 foot from the side lot line. This is Tom Ferris and Marilyn Rizzo Ferris at 63 [sic] Emerald that is facing it directly?

MS. MILLER: They are facing it directly, on that side, yes. Then there is the neighbor across the street from my driveway is also facing it -- well, his house is.

PAUL BLOSER: Is the front of Ferris' house then, is that front of their house facing the

swimming pool and the side of your garage?

MS. MILLER: Yes, it is.

PAUL BLOSER: I just wanted to get perspective where they're at, what they look directly at.

Do you at this point have any intentions of putting a fence or barrier between the pool and the road?

MS. MILLER: I hadn't intended, unless it was necessary. I do know that it has hooking ladders for the deck. And it's 54 --

PAUL BLOSER: Inches.

MS. MILLER: -- inches above the ground.

PAUL BLOSER: I guess my bigger question is, the code is for a 4 foot fence, is what it allows.

MS. MILLER: Okay.

PAUL BLOSER: And that is shorter than what your pool wall is, so you really are not going to obstruct anything. We have had cases where homeowners have come in and asked for a 6 foot or 8 foot fence on -- on a parcel like that and it just is not a -- it just doesn't go in the neighborhoods. It is not conducive to -- it is great on a compound but not on a residential neighborhood. Just asking if you had plans.

Any type of fencing would require a permit --

MS. MILLER: Okay.

PAUL BLOSER: -- along the sides like that. So just an FYI. If you intend to do something, speak with the Building Department.

MS. MILLER: Okay.

PAUL BLOSER: As a condition of approval, I would probably write that into the paperwork that no fence can be installed or erected without Town approval.

MS. MILLER: Okay. That will be fine.

MICHAEL NYHAN: I do have one question. Is there any intention of landscaping between the edge of the road and your pool with any type of shrubs to just block the view?

MS. MILLER: Well, I thought so, maybe, you know, a little decorative stuff so it doesn't look so -- but that wasn't -- isn't all planned out or anything.

MICHAEL NYHAN: Okay. Thank you.

MS. BONNEWELL: Could be a possibility.

MS. MILLER: Yeah.

PAUL BLOSER: We have done that with other corner pools, is put, again, a condition of approval that we have like some Arborvitae, something that is evergreen through all seasons just to give a little bit of -- I don't want to say camouflage, but a little more eye appeal around it. It also gives you a little bit of privacy when you in the pool. So.

MS. BONNEWELL: May I add something that might be helpful?

PAUL BLOSER: Yes.

MS. BONNEWELL: I work for Horticultural Associates, and I know that if you plant that, it softens the -- the visual impact of the neighborhood. And Sandy (Miller) is in a position to be able to work with them in putting in a planting. My only concern would be, um, can you word it as landscape material instead of like Arborvitae so that we have shrubbery to obstruct the view of the pool and complement the area? We really look at something that is evergreen so that for all four seasons there is something there.

I have had people put Box Glove because they maintain their leaves pretty good through the winter. They loose some but they don't loose 100 percent. Something along that line will be green through the winter. Okay?

I know the wording sometimes can come back at you, and I just wanted to make sure that was nice and broad for Sandy (Miller) to be able --

PAUL BLOSER: Some type of vegetation.

MS. BONNEWELL: -- to put something attractive in. Sorry.

PAUL BLOSER: Usually what we do is -- put in there to suggest you visit the Conservation Committee. There is no charge to go in and see them and just say this is what we want and they will give you some suggestions with your lot map on placement, how far and what height to give some, you know, good visual effects so it doesn't overpower but the pool doesn't understate the plants. Okay?

MS. MILLER: Okay.

Adam Cummings 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.

MICHAEL NYHAN: I had a question on the setback from the -- it shows an easement of I think it is 10 feet. That dark line is the edge of the road; is that correct, to the gutter?

PAUL BLOSER: Yes.

MICHAEL NYHAN: To 12 feet from the edge of the road. Okay. All right.

Than my other comment would be -- the other comment that I had was I would like to see a buffer, something natural that could at least grow a little height beyond the 54 inches above the pool and be something that when planted is at least 3 or 4 feet higher so it doesn't take 10 years

to get there. I don't know how you would word that. But the intent is to be able to block visibility -- provide a buffer between the pool and the roadway for people driving by from a visibility standpoint. But not also -- because this road, I think, um, actually goes straight there. It shows that it curves around, but this road is a T intersection, wasn't it?

MS. MILLER: Yes, it is.

MICHAEL NYHAN: It's a T intersection. So it would have to be set back far enough outside of the right-of-way but not to block the view of the vehicles coming up to that intersection, as well.

That's all I had.

ADAM CUMMINGS: I have a quick question. Actually, this one is for Ed (Shero). I was reading the code that says on a corner lot a pool can't be nearer than the secondary frontage setback. What exactly is the secondary frontage setback?

ED SHERO: Secondary frontage is sometimes -- I think it is 55 feet or the building. So you have got building on the side. You have got two frontages on a corner lot. And sometimes they're different. It may say 10 foot, but this one you got 40 foot.

ADAM CUMMINGS: Okay.

ED SHERO: I don't know if that makes sense to you or not.

ADAM CUMMINGS: I never seen a secondary frontage called that before.

ED SHERO: I'm trying to come up with an example in -- this one is right at 40 on both sides.

ADAM CUMMINGS: Right.

ED SHERO: But --

ADAM CUMMINGS: If it's a frontage, it's a frontage. I didn't know if there was somewhere elsewhere we define a secondary frontage.

ED SHERO: We do. I don't know if it is in the code, but I know it's -- sometimes we have an example on a survey but we don't have one on this one.

ROBERT MULCAHY: Does it have something to do with the easement?

ED SHERO: No, not with the easement.

ADAM CUMMINGS: I was just curious just to make sure we were going off the right number there, the 40 foot.

ED SHERO: Right. Because the 40 foot was the front setback.

MICHAEL NYHAN: I interpret this pool could not be in front of the garage plane. That says the secondary frontage being the 40 feet from Emerald Point to the south. So in other words, the pool couldn't project out in front of the corner of that garage as you would measure the setback from the road to that -- to that line, is the way I interpret it.

ED SHERO: Two frontage on the corner lot.

MICHAEL NYHAN: The frontage we're dealing with where the pool would be, and the secondary would be the one with the front of the house. Can't be in front of that setback, which means it can't sit out in front of the house -- couldn't be forward of the garage.

ED SHERO: That's correct.

MICHAEL NYHAN: The only other thing I would have then is are they going to be okay with their setback based on the curve in the roadway or sit from that straight line?

ED SHERO: From the --

MICHAEL NYHAN: There is a curve in the roadway.

ADAM CUMMINGS: You're saying perpendicular -- that will be the closest distance, is right there.

MICHAEL NYHAN: The closest distance is going to be into the curve.

On this drawing you can't tell what it is --

ED SHERO: From the front of the building, the frontage -- so if actually the garage sticks out of your house a little bit, so the plane is the front of the garage and the side of the garage.

MICHAEL NYHAN: Correct.

I'm asking about the garage -- just to be okay so we don't run into trouble once the pool is up, the roadway has a curve on it. It curves to the left. Is the setback going to be --

ED SHERO: It's not in the -- it's not in the primary frontage of the building.

It's behind the garage, your frontage. You got the same street -- sometimes we have two different streets, Emerald and Emerald, the curve.

But the front, the pool is behind -- we don't have a bearing on here. But where the word says "Point" in large letters, that is the front of the house. That section of Emerald Point. You're behind the plane of the garage, so the curve is --

MICHAEL NYHAN: No longer material.

ED SHERO: The pool has to be behind that or you have to have a second variance for that too, but the proposal is to have the pool behind that frontage, only on the frontage of the side of the garage to the other side of Emerald Point.

MICHAEL NYHAN: Okay. Thank you.

Paul Blaser reviewed proposed conditions of approval with the Board.

PAUL BLOSER: I'm asking for approval by the Conservation Committee basically due to the lot, it's location, the placement. They may also want someone from Traffic & Safety to look at it so things aren't too close to the corner or obstructing traffic. These committees, they don't charge you to go to them. There is not more permits or fees. It's -- they're advisory committees only, but I am going to ask that you take your lot map to them with the placement and go in with

your suggestions and have them put their stamp of approval on it.

MS. MILLER: The -- does that have to be done like -- the -- the plan was to put it in now this fall. Does that have to be in this fall, or can it wait until next year to put that in?

PAUL BLOSER: It could wait until next year. Fall is one of the best times to put these things in the ground, the evergreens and such. They settle in better over the winter the first year. So it is entirely up to you. Sometimes you get your better deals at the end of the season, too.

I think what I am going to do is --

FRED TROTT: One growing season.

PAUL BLOSER: I will put growing season.

I will say a year. That will give you enough to -- to complete that. You know, do you think by the --

FRED TROTT: 5 foot height.

PAUL BLOSER: The pool is already 54 inches. I want the top to be at least the height of the pool right now.

FRED TROTT: I think if you're going with evergreens -- a 4 foot tree will have a foot to it. You won't go to a 5 foot. You will go to a 6 foot. And then there will be a substantial price for that. Evergreens grow fairly quick.

PAUL BLOSER: They're --

ADAM CUMMINGS: You're also sitting on an intersection, too. Do we want to make too much impact? It's 12 feet off the right-of-way. It could be an impact of people going to the intersection, too, if we put too much of a visual barrier in there.

PAUL BLOSER: It may happen over the years anyway. I'm just looking for a buffer to cover it. I can say 4 foot.

FRED TROTT: You know what I mean for one season, it will only be a foot.

ROBERT MULCAHY: She will have to have a lot of bushes there.

PAUL BLOSER: I don't know how many they will put in. We won't make that recommendation. We'll ask for the Conservation to -- to give them a reference point.

ROBERT MULCAHY: That's a good idea.

PAUL BLOSER: We don't -- I don't know what they're even putting in there, so based on the type of vegetation they're putting in, they have to make that decision and let Conservation say, okay. They have got the people in there to know that they have to be placed this far apart for healthy growth, so I -- so we're not in a position to -- to do that. We're not horticulturists.

FRED TROTT: I just think with the height, you know, no less than 4 feet or something would be fine.

PAUL BLOSER: Okay. I will put no less than 4 feet.

FRED TROTT: I think the idea is she doesn't start out with a 1 foot tree that takes 10 years. I think that was the idea behind it.

MS. BONNEWELL: 4 to 5 foot tree grows much faster than one that is 6 foot and planted. So actually it will do healthier if it is a 4.

Is there any restrictions on berm, or -- or is this flat to the ground?

PAUL BLOSER: Um, I didn't put any restrictions on berm. Again, that is something that Conservation would discuss, because they're going to look at it and say, you know, a 1 foot berm might be okay. A 3 foot berm will be out of place. Cause other problems. Because you may have drainage issues at that point. There are storm sewers through here and we don't want to obstruct any of that. Those are the things they will look at and they're better qualified to do that.

MS. BONNEWELL: I was your secretary during the January Conservation Board so I'm kind of familiar with the process.

The only question I think that Sandy (Miller) will have when she leaves, pending your stamp of approval would be, is approval after they convene at their next meeting?

PAUL BLOSER: Yes. You can proceed with the project -- once you have your variance you can start. I'm just asking before C of O is issued, that that process be completed.

MS. BONNEWELL: That is what she needs to know.

PAUL BLOSER: For the closing of the permit on the file, that those decisions be made and they're put on file.

MS. MILLER: Okay. Thank you.

PAUL BLOSER: Is a berm something you're considering?

MS. MILLER: I don't really know at the moment. I have to look at different ideas, I think.

Paul Bloser reviewed the proposed conditions of approval with the Board.

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 Michael Nyhan 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 Robert Springer seconded the motion.

DECISION: Approved by a vote of 4 yes to 3 no (James Wiesner, Adam Cummings and Robert Mulcahy) with the following conditions:

1. All necessary permits to be obtained prior to any installation of pool.

2. No fencing, additional decking, deck extensions, or other structures to be installed or erected on parcel without town approvals.
3. Vegetation with year round "green" to be planted at a height of no less than 4'. Type and placement by recommendation of Conservation Board and Traffic and Safety Committee.
4. Permit for pool can be issued prior to Conservation Board/Traffic and Safety Committee approval, but no Certificate of Compliance until recommendations are complete.
5. Work to be completed by May 15, 2013.
6. Final placement of pool/setback measurements to be updated on lot map and submitted to the Town of Chili.

The following finding of fact was cited:

1. Due to this being a corner lot configuration and the way the lots were subdivided, there is no other place to install a pool on this parcel. The variance is not significant in nature and flanking neighbors showed approval of the request.

The 7/24/12 Zoning Board meeting minutes were approved.

The meeting ended at 7:31 p.m.