

CHILI ZONING BOARD OF APPEALS
September 26, 2017

A meeting of the Chili Zoning Board was held on September 26, 2017 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 Adam Cummings.

PRESENT: Fred Trott, James Valerio, James Wiesner and Chairperson Adam Cummings. Mark Merry was excused.

ALSO PRESENT: Eric Stowe, Assistant Town Counsel; Paul Wanzenried, Building Department Manager.

Chairperson Adam Cummings 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.

ADAM CUMMINGS: Any issues with signs Board members?

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

1. Application of Brian Nilles, owner; 448 Chestnut Ridge Road, Rochester, New York 14624 for variance to allow existing 8' x 12' utility shed to remain in front yard area (accessory structures not permitted in front yard) at property located at 448 Chestnut Ridge Road in PRD zone.

Brian Nilles was present to represent the application.

MR. BRIAN NILLES: Brian Nilles, 448 Chestnut Ridge Road, Rochester, New York.

ADAM CUMMINGS: You have an existing shed and you have a strange flag lot configuration which is why you have actually got two front yards. You have the Chestnut Ridge front yard and the Hunting Spring front yard and how long has that shed been there?

MR. BRIAN NILLES: That's been there since probably March.

JAMES WIESNER: Was there any consideration at all for putting it behind the house or was there some sort of --

MR. BRIAN NILLES: Well, the main concern, I guess, the reason why I built the shed is I own a tractor that I have a snow removal attachment on the front, so access to the driveway being right there is kind of the pivotal reason for putting it there. Obviously not knowing that that was a front yard.

JAMES WIESNER: So you put it there for the fact that you want to be able to pull out?

MR. BRIAN NILLES: Pull out, snow blow and remove. Obviously a long driveway there. So immediate access to the driveway is kind of crucial for me.

FRED TROTT: I had the same question about the placement. It just seems kind of odd where it is. You couldn't put the snowblower in the garage?

MR. BRIAN NILLES: I mean, I recently bought a truck. The -- the space is limited. Moving, the trucks -- moving trucks and cars out of the garage -- because it would have to go up front, um, you know, is a -- is kind of a hassle I was looking to avoid.

FRED TROTT: Yeah. It is just a very odd placement for it, with it being right along that driveway. I mean, I -- I understand he does have -- I -- he does have some room behind the house there, you know, that most people would put that kind of structure. I ---

ADAM CUMMINGS: It is a strange configured lot. It took me a while to figure out where the shed was, as you drive around there.

FRED TROTT: Yeah. You -- you didn't -- it's a different -- it's an odd color, too.

MR. BRIAN NILLES: Well, it's not painted yet. I mean, I would love to finish it, but I'm worried if I'm going to have to take it down. I mean, I would love to finish it, paint it to appeal to the eye, but I ran into this all of a sudden kind of surprisingly.

MR. VALERIO: To me, like looking at the house, I understand it is kind of front yard, but it is kind of side yard, too, just because of the lot. I understand how, you know, accessibility makes sense where it is. I also could see how maybe it could have been closer to the garage, but that would probably be side yard, too. I don't have any questions.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: There does appear to be lot of room to put it. And I -- I haven't heard any hardship. I guess that's what I'm saying, not any. If the tractor that goes on this snowblower attachment must be in the garage, the snow -- the tractor is not going to fit in that shed. So does it makes sense to have the two things in one place? Anyway. But that is beside the point. That is not up to this Board. I haven't heard hardship and there does appear to be an awful lot of room to put this elsewhere.

And I know that -- I have heard about the two front yards. I understand that. I have been at enough of these meetings, but actually the road you see it from is Chestnut Ridge.

ADAM CUMMINGS: Right. Which from Chestnut Ridge it looks like it is in the backyard.

MS. BORGUS: It stands out. Maybe because of the color it is, but it jumps right out at you. I don't know. I haven't heard hardship and I know that is what you people have to look at.

ADAM CUMMINGS: That is one of the things we have to look at.

GREGORY NILLES, 74 Charles Street

MR. GREGORY NILLES: Gregory Nilles, Binghamton -- or, no. 74 Charles Street, Dresden, New York.

He did his due diligence and my understanding is when he called, they gave him the parameters that he had to be under so many feet and not so high and off the property line and I helped him build it and we thought we were within the right area. We actually looked at it and said, "Gee, this front yard is Chestnut."

I have never heard where a piece of property has two front yards.

ADAM CUMMINGS: Corner lots. Just for education, corner lots when they're at intersections, there are two front yards.

MR. GREGORY NILLES: It is only the driveway that makes it out to the other.

ADAM CUMMINGS: But technically it is to the front road.

MR. GREGORY NILLES: He did do his due diligence when he was starting and no one really mentioned anything. He asked if he had to fill out an application. They said no as long as it is under this size and that so he kind of proceeded with that knowledge in hand.

ADAM CUMMINGS: That's correct, you wouldn't need a building permit, because your square footage is under what is required.

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

Fred Trott made a motion to close the Public Hearing portion of this application and James Valerio 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.

MR. BRIAN NILLES: I was just -- the -- the attachment is a part of the tractor.

ADAM CUMMINGS: And it would fit in the shed.

MR. BRIAN NILLES: No, it fits in the shed.

ADAM CUMMINGS: That is what I mean. It will fit in the shed when it is connected to the tractor.

MR. BRIAN NILLES: Yep.

ADAM CUMMINGS: Or mine does, too, when I buy it this winter, when my wife finds out I'm buying it. Hopefully she doesn't watch the news or Channel 15 to see this.

The point did come up from two of my Board members that we are trying to reduce variances as much as we can. And you do have -- I will call it an irregularly shaped area behind your house to fit it in there. Other than the convenience for the snowblower, um, any other issues you have out there? How about the neighbors? Have the neighbors been contacted? Any issues?

MR. BRIAN NILLES: No, no. The land behind is obviously all marsh lands, preserve marsh lands or something like that out back there. I haven't heard anything from any neighbors.

MR. GREGORY NILLES: There is a shed on the property right in front of him that has a piece of property with a shed right there next to the garage, which is probably significantly closer to Hunting Springs than his is.

ADAM CUMMINGS: That is a correct observation. I saw that out there, too. The difference is that is in their backyard because they don't have the flag lot that fronts it. But it is a good point to bring up in terms of location and reference and proximity.

MR. BRIAN NILLES: I do think that is kind of the definition of a variance, is irregular-shaped lots that, you know -- the homeowner should have the same rights as people that can accommodate with irregular-shaped lots. So that is kind of the definition.

FRED TROTT: Well, in response to that, he has the ability to put it in the back.

ADAM CUMMINGS: He does. If -- if you get denied the variance today, you can still keep the shed and relocate it. I don't want you to think coming from this decision tonight, if we approve it -- obviously it can stay. If we deny it, you don't have to get rid of the shed. You just have to move it back behind your house, still 8 feet off the side -- the side lot line, but you would still be able to have it. Just wanted to make sure that that was clear tonight.

MR. VALERIO: I would just be curious what is considered -- is backyard considered behind the frame deck?

ADAM CUMMINGS: The backyard -- this is a house at a weird angle. Paul (Wanzenried), correct me if I am wrong, but it would be measured from the northernmost corner there, because that would be behind the front of the house, and then the easternmost corner. So to point at it on the screen, it would be behind this line (indicating), and behind this line (indicating).

MR. BRIAN NILLES: And so from that way back, there's a severe slope into that marsh

that would --

ADAM CUMMINGS: So there is a severe slope going that way?

MR. BRIAN NILLES: Yes.

ADAM CUMMINGS: Yep.

PAUL WANZENRIED: The topography is somewhat debilitating behind his house.

MR. VALERIO: How about by the frame deck, is that the back?

ADAM CUMMINGS: It would be -- he could put it in this area (indicating), but once again, from what I remember growing up visiting friends, all of this goes into the marsh lands.

MR. BRIAN NILLES: Yes.

MR. VALERIO: It is sloped behind the frame deck.

MR. BRIAN NILLES: Well, the whole backyard dives off. Yes, I guess slope is an issue that I failed to mention.

PAUL WANZENRIED: That's his hardship, topography.

FRED TROTT: These corner lots have this situation.

ADAM CUMMINGS: This isn't a corner lot. This is a flag lot situation. As we pointed out, both of these can place sheds right here, which would not even -- you wouldn't even notice that shed being in there, in terms of the proximity.

So, I do want to go over conditions. I don't have any, because we don't need a building permit for the size of the shed.

Anybody think of any conditions you might want? Hearing none, any other questions? Concerns? Comments?

FRED TROTT: Only other thing I can think about is matching the house.

ADAM CUMMINGS: He will.

FRED TROTT: I know.

ADAM CUMMINGS: We went through a period of those.

FRED TROTT: I know. And I didn't like them at the time either.

ADAM CUMMINGS: Let's stick with the variances. Not construction.

Adam Cummings 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.

James Valerio made a motion to approve the application with no conditions, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION: Approved by a vote of 3 yes to 1 no (Fred Trott) with no conditions, and the following findings of fact were cited:

1. This lot configuration (flag lot), is unique in this planned development.
 2. The neighboring properties have sheds in their rear lots, which are actually closer to the roadway than this proposed structure.
2. Application of Mr. & Mrs. Charles Lillie, owner; 29 Archer Road, Rochester, New York 14624 for variance to allow hot tub to encroach in front yard area per plan submitted (not permitted in front yard) at property located at 29 Archer Road (corner Bellmawr Drive) in R-1-15 zone.

Karen Jackson and Charles Lillie were present to represent the application.

MR. LILLIE: I can't hear.

MS. JACKSON: He didn't hear anything.

ADAM CUMMINGS: I will try to speak up as best I can.

FRED TROTT: You were denied. (Laughter.)

MR. LILLIE: I heard that. (Laughter.)

ADAM CUMMINGS: If you can identify your names and addresses.

MS. JACKSON: Karen Jackson, 29 Archer Road, and this is my husband, Charles Lillie, same address.

MR. LILLIE: Same address.

ADAM CUMMINGS: Thank you. And you're looking to put --

MS. JACKSON: It's already there.

MR. LILLIE: Already installed.

ADAM CUMMINGS: Okay. I only saw the fence, so I couldn't tell if there was a hot tub.

MS. JACKSON: Our neighbors don't even know what is there. They were convinced when they got a notice that we were putting a hot tub in our front yard.

MR. LILLIE: "What's a matter with you?"

MS. JACKSON: And they were, you know -- they thought that was pretty strange.

MR. LILLIE: We're on a corner lot. So you have got two streets you're facing.

ADAM CUMMINGS: Yes. Which is two front lots. I think I did a good enough job explaining that with the first one.

MR. LILLIE: We ran into that with our fences because of that. We wanted a 6 foot

privacy fence.

ADAM CUMMINGS: You're only allowed 4 feet.

MR. LILLIE: But on the side we had to put 4 feet, but it doesn't matter because we have a -- what are they?

MS. JACKSON: Hedge.

MR. LILLIE: A hedge that is a minimum of 7 feet high.

MS. JACKSON: It is behind. Our fence is behind our hedge.

MR. LILLIE: The fence is behind the hedge.

MS. JACKSON: So people can't even -- nobody notices it.

MR. LILLIE: Nobody knows it is there -- I mean knows the hot tub is there.

ADAM CUMMINGS: Right. I didn't know the hot tub was there unless I looked at the application and saw the picture.

MR. LILLIE: Well, I worked with the engineers when I flagged for our permit to place it, and in the original site plan, um, I had a slab that was 24 feet east to west, and 30 feet north to south. But the only flat place on our entire lot, and I think you can tell that by looking at the photographs we supplied with the -- with the variance application, um, because of the two -- because we have one level place, um, the people, the contractors that we talked to about putting in the cement slab and we had -- we had other additional work done also. But anyway, they said that that was the perfect place. It's the highest, one of the highest points on the lot and they did the engineering so that the drainage problems on the basic lot are at the south right along the property line, and -- so we -- we figured that would be the place to put it.

The only problem was that that flat area is bracketed by two mature maple trees. And because we got a large pool spa-type hot tub -- it holds 1400 gallons, and because of the weight of the entire tub and water, was such that we had to put in a 6-inch thick reinforced concrete slab to carry that much weight and insure that the thing wouldn't crack and cause problems later.

Anyway, um, when we started excavating for the pad, to put in a 6 foot thick slab, you have to go down twice that and they have to put in impacted underlay in order to insure that it's a good hard surface below this big slab. And in doing that, um, at the north end, everything was fine. But as we started moving south towards the 30 foot length, we ran into problems with the roots of the two trees, because they were coming both directions we were putting the slab.

Because of this, the contractor said, "Well, I don't know how we're going to do this," and we tried to figure out different ways that we could put the thing on there, and we couldn't figure it out.

I said, "Okay, well, then just make that 25 feet long instead of 30."

And so -- and I -- I never even gave it a thought about the setback because the setback was okay in my original submission. And we went ahead and did it, and I never even gave that a thought. And now --

ADAM CUMMINGS: So the setback, you're saying that the way it's drawn up here, your spa pool goes 6 feet -- if you go across the garage, it's 6 feet over.

MR. LILLIE: Out 6 feet this way (indicating) from the face of the garage.

ADAM CUMMINGS: So we're really talking about 6 feet for tonight's application.

MR. LILLIE: Yes. It's a 6 foot encroachment on what the correct setback should be.

ADAM CUMMINGS: Let me interrupt you real quick. I will throw a question from the side table. From the hedges, I was not -- I wasn't aware you had a fence there. I couldn't tell. Do we have a variance for a 6 foot fence?

PAUL WANZENRIED: Well --

MR. LILLIE: If I had known, I --

MS. JACKSON: We're not going to spend more money for a 6 foot fence.

MR. LILLIE: If I had known --

PAUL WANZENRIED: Slow down. Slow down. He doesn't -- there is -- there is a section of 6 foot fence that comes from the front of the garage to this 4 foot fence which runs behind the fence behind the hedge. There is a 4 foot hedge -- 4 foot fence that runs behind his 7 foot hedge. His hardship, again, topography. Okay? He -- he originally came in, proposed the hot tub behind the front of the garage.

During the course of construction, there is only two inspections required -- or one inspection required rather for a hot tub. You come in, you apply for your permit and show us where it is on the site plan and we go and inspect. When we went to inspect and came back and did some research, we found that, yeah, he put it 6 feet in front.

Okay?

ADAM CUMMINGS: Yeah.

PAUL WANZENRIED: Yeah.

ADAM CUMMINGS: Thank you.

So the fence is 4 feet. I was confused of -- I'm staring at a picture and I can see a 6 foot fence, but the hedge -- I couldn't really tell what the fence was at the front yard part. So that cleared it up.

MR. LILLIE: Well, in hindsight, if we had known we were going to have to come in for this, I would have applied to make all that fence 6 feet, because we wanted privacy. Not for security. Because the unit that we got has a canopy that goes up and down and it only goes up and down with a key. So the pool is always secure. The only way you can get in it is with a key. The fence was for privacy.

ADAM CUMMINGS: Yep. Understood.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

Fred Trott made a motion to close the Public Hearing portion of this application and James Valerio 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.

ADAM CUMMINGS: One condition of approval is to get a building permit, which you have already started that, so you can continue on to get the building permit from the Building Department.

MR. LILLIE: Right. I have a building permit.

PAUL WANZENRIED: The only thing we're waiting is your approval and then we sign off. We're good to go.

ADAM CUMMINGS: So he doesn't have a building permit until he gets a variance.

PAUL WANZENRIED: He has a building permit. Doesn't have a C of O.

ADAM CUMMINGS: Got you.

PAUL WANZENRIED: He will obtain the C of O once he obtains this variance.

ADAM CUMMINGS: So no conditions on this one.

Adam Cummings 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 Valerio seconded the motion. The Board all voted yes on the motion.

Adam Cummings made a motion to approve the application with no conditions, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with no conditions, and the following finding of fact was cited:

1. The proposed variance is minor. The hot tub structure is not visible from the road and is adequately screened.

Fred Trott made a motion to approve the 8/22/17 Zoning Board of Appeals meeting minutes, and James Valerio seconded the motion. The Board was unanimously in favor of the motion.

The meeting ended at 7:27 p.m.