

CHILI ZONING BOARD OF APPEALS  
February 26, 2019

A meeting of the Chili Zoning Board was held on February 26, 2019 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: Mark Merry, Fred Trott, James Valerio, James Wiesner and Chairperson Adam Cummings.

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 the signs posted for the properties?

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

1. Application of Mr. and Mrs. Jerald Patterson, owner; 268 Archer Road, Churchville, New York 14428 for variance to allow existing barn to be 38' from rear lot line (40' previously granted 9/23/63); variance to allow up to 20 chickens on property with 1 acre (5 acres required), variance for building housing chickens to be 125' from front lot line (200' required), 145' from rear lot line (200' required), 87' from south side lot line (200' required) and 115' from north side lot line (200' required) at property located at 268 Archer Road in R-1-20 zone.

ADAM CUMMINGS: With this application, I would like to split this one up into three. The first one being the existing barn to be 38 feet from the rear lot line with that setback being the first one.

The second one being the variance to allow 20 chickens on the property with one acre, so the acreage requirements.

The last one being all of the setback requirements. So I just wanted to point that out so we'll do it that way. That was going to be my next one.

JAMES VALERIO: I would like to make a request to recuse myself given I have had a similar variance in front of this Board that was denied a few years back, in order to avoid any appearance of impropriety.

ADAM CUMMINGS: So for this application if you just take that front seat, we'll invite you back for Application 2.

JAMES WIESNER: I'm curious as to why you're separating those two out. You can't have one without the other on those two.

ADAM CUMMINGS: Yeah. I have been kind of conflicted -- well, the acreage, you could have a different level of acreage and still have different setbacks. If you would prefer, we could combine it back, too, and have two of them.

JAMES WIESNER: I guess I don't see them -- if one of them goes through and the other doesn't, how does that -- it essentially eliminates the whole thing.

ADAM CUMMINGS: Correct. If Number 3 is denied, you really can't have Number 2. Because it's only a one-acre parcel. Is that what you're saying?

JAMES WIESNER: One acre -- it's all written under one code, so I personally view that as one -- one aspect all together.

But that's my opinion.

ADAM CUMMINGS: I can be swayed to agree with that.

MARK MERRY: It makes sense.

ADAM CUMMINGS: I would like to ask the applicant, as well, what their preference would be.

Fred (Trott), anything to add to that.

FRED TROTT: No. It makes sense to leave them all together.

ADAM CUMMINGS: So with that, I would like to invite the applicant up to the podium. This goes for both applicants when you come up. If you could say your name and address, for the record, so she can capture that and a brief description of your application tonight with more detail than I described.

Jerry Patterson was present to represent the application.

MR. PATTERSON: I'm Jerry Patterson, Jerald Patterson of 268 Archer Road, Churchville, New York. And I listened to my wife and said, "Sure, let's get chickens."

And we looked into it. And I -- I did see the Town zoning -- I did see the Town Code online and I saw it was quite long, so I didn't read all of it. But I did use the internet search

function for the word "chickens" and didn't find the word "chickens," so we went ahead and got chickens. And then as I talked with other people, found, oh, you're supposed to have five acres for that. So here I am to say yes, I should get a variance for that, or at least request the variance for that and see what we can do to be in compliance.

ADAM CUMMINGS: Okay. Now, as I first approached to separate those into three distinct applications or votes tonight, um, and -- and Mr. Wiesner over on the far side offered up maybe 2 and 3 should or could be combined into one, do you have a preference which way? Do you want them individual votes or you want them counted together?

MR. PATTERSON: I can't change the geometry of the situation, so either way it would cancel it and be unchangeable anyway.

ADAM CUMMINGS: Okay. So with that said, I think we'll go with two. So we'll have the first part of it being the 38 feet from the rear lot line and then we'll go on to discussing the remainder of all those variances or those variance requests.

So with regard to -- it looks like it was a -- for an existing barn, it was supposed to be 40 feet and now we found more accurately it is now 38 feet.

Is that fair? You haven't moved the barn? As far as you know, the barn has not been moved?

MR. PATTERSON: I have not moved the barn.

ADAM CUMMINGS: And it is from 1963, so --

MR. PATTERSON: I doubt that Windsor Ireland moved the barn either. He built it.

ADAM CUMMINGS: Yep.

Any questions on the existing barn?

JAMES WIESNER: I don't.

FRED TROTT: So the barn was all built at once in 1963?

MR. PATTERSON: To the best of my knowledge, yes.

FRED TROTT: That's not where the chicken coops are?

MR. PATTERSON: That's right.

ADAM CUMMINGS: Correct. So I believe -- that one is just to get it compliant on the site. The chicken coop is pointing towards the other --

MR. PATTERSON: I wasn't aware of that particular problem, but Paul (Wanzenried) and his helpful staff made sure they found everything else.

ADAM CUMMINGS: Yes. Just cleaning it up.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Fred Trott made a motion to close the Public Hearing portion of this application and James Wiesner seconded the motion. All Board members were in favor of the motion to close the Public Hearing, with James Valerio having been recused.

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

ADAM CUMMINGS: We have taken care of that one. We'll vote on that in a little bit. I would like to do SEQR all at one time.

Is that okay, side table?

ERIC STOWE: Preferable.

ADAM CUMMINGS: Thank you.

So now moving on to the remaining ones, which is the number of chickens -- which is not really the number of chickens. It is that it is less than five acres, and then the setback limits I mentioned earlier.

JAMES WIESNER: 20 chickens are a lot of chickens. I reviewed -- they produce a lot of eggs. Is that more than what your family consumes?

MR. PATTERSON: Yes. We're doing fine with 14 now. Some -- I forget the lady's name, she said maybe we should put down for 20, and I said, "Well, okay, but I don't know that I would ever go as far as 20."

ADAM CUMMINGS: And we're not actually limiting the number of chickens, correct? Even if has one -- he is not actually allowed to have one with less than --

JAMES WIESNER: You could put a limit. Other towns do.

ERIC STOWE: That is a reasonable.

JAMES WIESNER: I would be more open to less than more for sure.

ADAM CUMMINGS: Especially if it is like a ratio how big the acreage is.

JAMES WIESNER: That is why I kind of asked what -- I do know some people that have chickens and they certainly have smaller quantities and they certainly feed a pretty good size family. I didn't know if you were totally consuming the eggs with your family on the property, giving them away or possibly selling any of them. I don't know --

MR. PATTERSON: Um, 8 to 12 keeps up with us. If we have others, we do give and sell.

MARK MERRY: So just going right to your application, Number 1, what did you do for eggs before you bought the chickens?

MR. PATTERSON: We bought eggs.

MARK MERRY: So you did buy eggs, commercial grown and purchased?

MR. PATTERSON: Yes.

MARK MERRY: Just -- I guess it says here in your application you have the support that your neighbors aren't bothered.

Do you have any letters of support for you to have these chickens on your property, from your neighbors?

MR. PATTERSON: My neighbor Dave Ketchum is here. He takes care of the chickens when we're away. He lives across the street from us. To the south of us, Brian has cared for the chickens in our absence on some occasions. And Barb Denigris is two doors down. She has helped, as well, and is favorable. Bob and Gail live next door. They -- they don't seem to mind. They -- they like seeing them every once in a while. Those adjacent neighbors are all happy.

MARK MERRY: So in the event that your application were to be denied for the acreage change and you were not allowed to have the chickens on the property, where would they go, just out of curiosity?

MR. PATTERSON: Well, I have seen various places that would take -- take hens, advertised in various places.

MARK MERRY: So the purpose of these chickens is just for the eggs themselves?

MR. PATTERSON: Just for the eggs themselves. Gets me up in the morning. Something to do.

ADAM CUMMINGS: So we have talked about hens and chickens. How many roosters do you have?

MR. PATTERSON: Zero. It happened once and he found a nice home in the Hamburg area. He didn't become hamburg, but he went there.

ADAM CUMMINGS: Understood. Understood.

And looking at that map, it looks like the width of your lot is 200 feet and then the depth is between 260 and 286 feet, almost 287. Just pointing that out, this chicken coop is located in the central part of your property, so with it being 200 feet wide, there really is no way for you to meet the 200 foot requirement.

MR. PATTERSON: That's right.

ADAM CUMMINGS: That same width, with the depth, there is no way for you to meet the front and rear setbacks.

MR. PATTERSON: Right.

ADAM CUMMINGS: Not just say minimizing it.

MR. PATTERSON: There is no way to make the math work. And it -- and I think I'm also hearing you say it's in the middle of the lot, as far away from everybody as possibly could be.

To the east of us is Barb Denigris' pasture and east of there is -- is the unimproved zone before you get into the next neighborhood that is under development.

ADAM CUMMINGS: I think that is Vista Villa.

MR. PATTERSON: Vista Villa, yes.

FRED TROTT: Do you have like a history of the house? It seems like it has been there for a while.

MR. PATTERSON: Our place is the place in the first photo on the wall over here (indicating). It's the Brown-Zuber-Ireland house.

FRED TROTT: So was there acreage to it before and they subdivided it?

MR. PATTERSON: Used to be a 4-acre lot, that's true. And then the Irelands subdivided it and made a small lot to the north and then a flag-shaped lot north of that so there is a -- the house two doors down has a barn and a pasture that go behind our house.

FRED TROTT: Just curious.

Now, the way the picture is shown here, is that chicken coop -- that's for -- to hold all of the chickens or is that just like --

MR. PATTERSON: The chickens all stay in there.

FRED TROTT: The whole building?

MR. PATTERSON: Not all of that building. I would say a quarter of that building is dedicated to the chickens. Part of that building is completely enclosed for the coop area and then there is also a covered area that is surrounded with chicken wire as a run.

FRED TROTT: That's all I have.

ERIC STOWE: Beyond our precedent in setting precedent and bringing that to the Board's attention, I would be more interested and concerned with the conditions of approval.

FRED TROTT: Has the Building Department had any complaints?

PAUL WANZENRIED: No.

ADAM CUMMINGS: No complaints.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

##### DAVE KETCHUM

MR. KETCHUM: I live across the street and we have no problems. We never hear the chickens. We never see the chickens. I take care of them periodically and get a couple of eggs. But we have Barb Denigris -- we have had ducks that have wandered the area over the years. The community is very comfortable with the way we are, with the animals.

ADAM CUMMINGS: Thank you.

Fred Trott made a motion to close the Public Hearing portion of this application and Mark Merry seconded the motion. All Board members were in favor of the motion to close the Public Hearing, with James Valerio having been recused.

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

ADAM CUMMINGS: So on the second one, I think Jim (Wiesner) had a good point on that one of limiting the number of chickens as a condition of approval if this were to be approved.

Any thoughts by the Board what a reasonable amount would be?

MARK MERRY: Well, it sounds --- I don't know hen markets or anything like that. It sounds like you're comfortable with 12 for what they have today so I don't know why would we exceed that number.

ADAM CUMMINGS: So 12 chickens it sounds like what is on the table.

JAMES WIESNER: It is interesting, because a lot of towns have started to address this and I did some research on it and some of the towns allow pretty small quantities, like three or four chickens.

ADAM CUMMINGS: Right.

JAMES WIESNER: And I think Pittsford is one of them. 12 seems to be a lot to me, just because we are setting precedent for possible more people coming in. And --

MARK MERRY: Good point.

JAMES WIESNER: I don't necessarily know the answer, but it is definitely something that should be based on the size of the property at a very minimum, I think.

FRED TROTT: So what would you say to somebody who has a half-acre lot?

JAMES WIESNER: Not many. Probably they're in a residential area.

ADAM CUMMINGS: So say if we do 12 for one acre, you could be at 6 for a half-acre, just as an example.

MARK MERRY: But I'm hearing more your comfort level may be between there, maybe eight.

JAMES WIESNER: Somewhere, half a dozen maybe. I don't know what it takes to feed a family, but it is not very many chickens. I don't know how many eggs they -- you know, they lay a day, if they each lay one --

MR. PATTERSON: Each chicken can lay up to one egg per day, maximum amount. But currently in the winter, because of the lack of sunlight, they lay considerably less. I picked up three today. I would say the average in the -- in the winter is more like seven per day. And that -- that runs us short.

JAMES WIESNER: You must eat a lot of eggs. We only go through a dozen a week.

FRED TROTT: I eat a lot of eggs.

As they get older, they produce less eggs?

MR. PATTERSON: That's true.

FRED TROTT: Where are they as far as our timeline?

MR. PATTERSON: The class of 2019 will graduate this year and we'll get baby chicks to replace them. And I keep three years of hens. So I always get rid of 1/3 and put another 1/3 on.

ADAM CUMMINGS: All right. So it sounds like we're down to six chickens.

FRED TROTT: To be honest, I think six is a little light. I mean, if we had to reduce the number, I would say maybe eight. My opinion. I also had 40 chickens and my family had hundreds of chickens, so...

ADAM CUMMINGS: Got you.

MARK MERRY: So with your background, are you thinking eight is the number then?

FRED TROTT: Yeah. I would say that ---

ADAM CUMMINGS: For an acre parcel?

FRED TROTT: Yeah. I think it seems -- I know, you probably could get by on a small amount of them, but chickens don't -- like he says, in the wintertime, they don't lay the eggs. You get chickens are just in a mood, they don't lay eggs either. So...

JAMES WIESNER: That sounds good to me.

ADAM CUMMINGS: So eight chickens it is, is what the Board is -- never thought I would be counting chickens.

MARK MERRY: Before they're hatched.

ADAM CUMMINGS: They are hatched.

FRED TROTT: Could we put a condition of like a time of a year or whatever -- like a conditional use?

ERIC STOWE: No.

ADAM CUMMINGS: Is that correct?

ERIC STOWE: No.

ADAM CUMMINGS: It goes with the land. It's a land variance or area variance, so no. There is no sunset.

FRED TROTT: I didn't mean to sunset it, but more review it in a year, like a conditional use permit on --

ADAM CUMMINGS: That is for more "occupational."

PAUL WANZENRIED: That's conditional use, not a special use.

ADAM CUMMINGS: Any other conditions for the part with the setbacks and --

JAMES WIESNER: I think you should say hens only, no roosters.

ADAM CUMMINGS: No roosters. So roosters are prohibited.

And that they all have to be contained. It sounds like you have them contained, whether it is inside the building or inside the run, but no free range. Can we restrict that or does that get into Ag & Markets?

ERIC STOWE: I believe you would be fine to restrict that. Your poultry must remain on your all parcel at all times.

JAMES WIESNER: They usually roost overnight.

ERIC STOWE: Without regard to where they sleep, it's at all times.

ADAM CUMMINGS: Poultry to remain --

JAMES WIESNER: On the property.

ADAM CUMMINGS: -- on this parcel.

ERIC STOWE: Confined to the parcel.

ADAM CUMMINGS: Confined. I like that. To remain confined to the property at all times.

Those three conditions to specify again, we'll have to limit the number of chickens to eight chickens.

Roosters are prohibited for obvious noise nuisance issues and poultry to remain confined to the property at all times.

ERIC STOWE: No sale on premise.

ADAM CUMMINGS: No sale on premise. That would trigger to a home occupation, wouldn't it?

ERIC STOWE: It would, but as a condition of any variance you may or may not grant, the sale of any products related to the chickens is prohibited.

ADAM CUMMINGS: No sale of any product related to chickens shall take place on the property.

That gives us four.

All clear on those conditions?

MR. PATTERSON: Yes, sir.

ADAM CUMMINGS: Okay. So now going back, once again, I will do one SEQR statement and then two votes because there is two separate -- we split up the variance requests.

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 an Unlisted Action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion, with James Valerio having been recused.

James Wiesner made a motion to approve Application 1A, existing barn to be 38 feet from the rear lot line, with no conditions, and Mark Merry seconded the motion. All Board members were in favor of the motion, with James Valerio having been recused.

DECISION: Approved by a vote of 4 yes with 1 abstention (James Valerio) with no conditions and the following finding of fact was cited:

1. Variance is minor and barn has been at that location for more than 55 years with zero complaints or issues with neighboring properties.

ADAM CUMMINGS: Moving on to the second application portion with those four conditions I stated, ask for a motion to adopt this application with those conditions.

Fred Trott made a motion to approve the application with the following conditions, and James Wiesner seconded the motion. All Board members were in favor of the motion, with James Valerio having been recused.

JAMES WIESNER: So with James (Valerio) out, we have to have a majority which would be about three, right?

ADAM CUMMINGS: Yes.

DECISION: Approved by a vote of 3 yes to 1 no (Adam Cummings) with 1 abstention (James Valerio) with the following conditions:

1. Number of chickens to not exceed 8 chickens at one time.
2. Roosters are prohibited.
3. Poultry to remain confined to the property at all times.
4. No sale of any products related to chickens shall take place on property.

The following finding of fact was cited:

1. Variance request was minimized and precedent was already established as boarding of ducks was permitted on nearby property.
2. Application of Harold Halpin, owner; 7 Freedom Pond Lane, North Chili, New York 14514 for variance to erect a deck (23'7" by 6' and 9'5" by 10') 20' from rear lot line (25' required) at property located at 7 Freedom Pond Lane in PUD zone.

Harold Halpin was present to represent the application.

MR. HALPIN: Good evening, gentlemen and lady. My name is Harold Halpin and I live at 7 Freedom Pond Lane in the College Greene Subdivision and I would like to build a deck on the back of my house on the northwest corner, but I don't have access to it from that corner, so I want to extend it over to the back farthest part of the house where my door is.

ADAM CUMMINGS: Okay.

MR. HALPIN: So I would be 20 feet from the --

ADAM CUMMINGS: Understood. Matching where your vinyl fence is. So you're following along the line of where your vinyl fence is and then just --

MR. HALPIN: Yes. Right in line -- that part of the fence will come down.

ADAM CUMMINGS: Yep. All right.

FRED TROTT: This is going to be -- that is your narrowest point where you're getting the variance for?

ADAM CUMMINGS: That's what it appears to be.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

James Valerio made a motion to close the Public Hearing portion of this application and Mark Merry 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: On this, one condition of approval would be to get a building permit from the Building Department, which they would have already told you that because that is why you're here. You went in to get one. So if you continue to work with the Building Department to get a permit. That's the one condition.

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.

James Wiesner made a motion to approve the application with the following condition, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with the following condition:

1. Building permit must be obtained prior to construction.

The following finding of fact was cited:

1. Location of deck does not adversely encroach neighboring properties.

ADAM CUMMINGS: Any comments or revisions on the minutes from January 22nd, 2019?

Fred Trott made a motion to approve the Zoning Board of Appeals 1/22/19 meeting minutes, and Mark Merry seconded the motion.

Fred Trott made a motion to adjourn the meeting and James Valerio seconded the motion.

The meeting ended at 7:31 p.m.