

CHILI ZONING BOARD OF APPEALS  
June 30, 2020

A meeting of the Chili Zoning Board was held on June 30, 2020 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, Philip Supernault, Fred Trott, 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 signs?

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

1. Application of James and Carolyn Emerson, owner; 93 Freedom Pond Lane, North Chili, NY 14514 for variance to erect a structure (deck) to be 19' from rear property line (25'-0" allowed) at property located at 93 Freedom Pond Lane in PUD zone.

Carolyn Emerson, James Emerson and Tim Emerson were present to represent the application.

MS. EMERSON: Good evening. My name is Carolyn Emerson. I'm here with my husband, Jim (Emerson), and my son, Tim. We're a long-time resident of Chili, but this is our very first variance request. Bear with us.

Last year we moved to 93 Freedom Pond Lane in College Greene in North Chili. And last year we concentrated on the inside and now our concentration is to make our backyard a little more appealing. And so we have -- it currently consists of a narrow strip of land with slightly rolling contours, leading up to a berm and we have the original 20-year-old steps coming from down -- down from the porch.

Our first pass was to remove a whole row on top of the berm of deer-eaten Arborvitaes and replace 5 to 6 foot deer-resistant Arborvitaes. That has been taken care of.

Next -- and that's why we're here -- we would like to construct a 14 by 16 deck. It will be level with the rear door and the steps would be located to the right going behind the porch. And the reason for that is because that is the higher and drier ground of the property. We are -- we're here to request a variance because of the setback. The 25 foot setback is required and basically from the back of our front rear porch to the property line, is 25 feet. So our -- this deck would be 19 feet from the property line. That rear property line abuts the common area of Chili -- College Greene.

We have applied and have received acceptance from the College Greene Homeowners' Association. They have given our approval it is okay for us to do this, so that's why we're here for the next step, so to speak.

We have considered other options. A patio. But that would require four steps down and as we're seeking to age in place, we didn't think that would be a very safe option. We considered a 14 by 10 foot deck which would be just within the confines of the house and that really would not give us very much space. They -- at one point the homeowners had suggested a 16 by 10, but that would be protruding to the side of the house and we didn't think that would be very attractive either from the roadside.

So thus, we would prefer this 14 by 16. It will be more usable space, level with the back door, not attached to the house and the steps would go down to the higher and drier ground.

We do not change any topography of the land. We do not feel that we're infringing on any other homeowners or our homeowners around us have -- they're not here. They're very happy with the plan. And it is really not very visible from the street. You might on one side -- as you're looking down, depending how you come around the curve, you might see a railing. That is it. It will definitely be more appealing and make use of our backyard much more functional.

ADAM CUMMINGS: Okay. And I did receive -- everybody should have seen it in the packet, the change request and the approval from the Homeowners' Association here in College Greene.

MARK MERRY: I have no questions, but I just want to thank you, Mrs. Emerson, for being prepared for your application tonight and doing your homework. It's much appreciated. Thank you very much.

ADAM CUMMINGS: Agreed.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Fred Trott made a motion to close the Public Hearing portion of this application and Philip Supernault 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, you will have to get a building permit.  
MS. EMERSON: We submitted that.  
ADAM CUMMINGS: Okay.

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 Mark Merry seconded the motion. The Board all voted yes on the motion.

Mark Merry made a motion to approve the application with one condition, and Philip Supernault 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 from the Town of Chili Building Department must be obtained.

The following finding of fact was cited:

1. The proposed deck location will not be easily visible from the public right-of-way.
  2. The HOA Variance/Change Request Committee has previously approved this change and that it will not adversely change the character of the neighborhood.
2. Application of Gary Mosburger, owner; 25 Irvington Drive, North Chili, NY 14514 for variance to erect an accessory structure (shed) to be 4 ft. from rear and side property line (8' allowed) and to erect fence of 8ft. in height (6ft allowed) at property located at 25 Irvington Drive in R-1-15 zone.

ADAM CUMMINGS: If the Board is in agreement, I would like to split this up and call letter A the shed variance request; and letter B, the fence variance request.

MARK MERRY: I think that's a good idea.

ADAM CUMMINGS: A will be the shed. Just to be clear to you, we'll split up the decision. We would like to do that so we have a record that shows two distinct decisions. But then you also lose the risk if we vote one down and they're combined together, they both get denied.

MR. MOSBURGER: I appreciate that. Gary Mosburger, 25 Irvington Drive. Thank you members of the Board for hearing my application and thank you, Paul (Wanzenried), for all your guidance through this process. I don't know if you got approvals of the copy from the State.

ADAM CUMMINGS: We do.

MR. MOSBURGER: I think you said A is the shed?

ADAM CUMMINGS: A is the shed.

MR. MOSBURGER: With respect to A, I'm asking to build a larger shed. I'm a collector of various things and probably have too many of them, as some of us do, but the current shed I have is not large enough to contain everything I have. I have a two-car garage and using space in the garage that you can't put my cars into, so I would like to build a larger space area.

The neighbor to me east of me, I believe, has a 10 by 16 shed in place, so I don't think this really changes the character of the area from the perspective size of the building. The neighbors to the north of me, immediately to the north of me, has a shed that is within 3 feet of the boundary line and I didn't walk down the border and measure, but there are two other the sheds immediately to the west that are also directly on the borderline.

The shed existing on my property will be torn down. That shed, I assume the prior owner had a variance for in terms of the distance from the border because it is within 8 feet of the boundary or 3 or 4 feet from the boundary, as far as I can tell.

ADAM CUMMINGS: 3.9 officially on the survey map.

MR. MOSBURGER: Thank you. I didn't know. That would help me know where the fence would go if we get that.

ADAM CUMMINGS: Okay. That was a good explanation. Once again, we did get a variance request. The State requirement is 5 feet and they did grant your variance, which is very nice to have it before our Board meeting. Typically we don't have this. So thank you for submitting that ahead of time and thank you to the State for such a quick turnaround. It is dated May 26, 2020. So just to make sure everyone is aware, that that has been decided upon.

JAMES WIESNER: So you're proposing the corner as to where you would site the shed.

Is that a final decision or final location?

MR. MOSBURGER: I'd prefer to place it there. To the immediate north of me is an individual that keeps care of her yard, it's attractive, well taken care of. Immediately to either side of her are rental units not in the best of repair. One unit to the northeast is missing shingles, paint, has a number of dogs in the yard. The neighbor to the northwest is also a rental unit and could use some paint, has two large dogs that run frequently. When I'm out in my yard, they bark at me. Placing this unit on the corner where I am proposing it would effectively block a large portion of the yard from the dog sight and his house from my sight and effectively create a sight obstacle where noise goes down a little bit and I can enjoy my backyard.

JAMES WIESNER: It looked like there was a big tree on one corner of your yard. I don't know if that is where the shed was being cited.

MR. MOSBURGER: If you're speaking of the pine tree, that is on the northeast corner and the shed proposal is on the northwest.

JAMES WIESNER: Opposite corner?

MR. MOSBURGER: Yes.

JAMES WIESNER: That's all I have.

MARK MERRY: I don't have any questions.

ADAM CUMMINGS: I just want to -- at one point, it looks like the State gave a generic and said from the property line. It doesn't differentiate between the side and rear, so I'm taking it to mean either or both. I will point that out. I don't have any other questions. It's a very good question.

Fred (Trott)?

FRED TROTT: If you were denied, where would you move the shed to?

MR. MOSBURGER: I would probably wish to keep it in the same general area. If I'm denied, I might turn it 90 degrees. Candidly, the neighbor to the north of me, his shed is on the same area. And by -- this is hard to do without a drawing board, but if this is the lot, the corner I'm proposing is right here (indicating). My neighbors' shed is right here (indicating). Anything I do here (indicating) will essentially be for a full view of my shed and block the view of my house. I can do that. It is kind of where the shed is now. It's a smaller structure. By aligning this way, it kind of screens this area (indicating) from my deck, which is over here and I align my shed with the back of hers, actually, which kind of puts the two in the same visual context. I guess that is what I was trying to do.

PHILIP SUPERNAULT: So the purpose of the variance -- the shed doesn't have to be there to fit your property, correct? You want the shed there for cosmetic reasons or to --

MR. MOSBURGER: That's correct.

PHILIP SUPERNAULT: But it could still serve a purpose if it were 4 feet more into your property because you're looking for 4 feet basically, right?

MR. MOSBURGER: It could. That essentially leaves an 8 by 16 foot area that will be difficult to take care of and maintain because there is a fence next door. And basically it becomes useless space.

ADAM CUMMINGS: So would you say it enhances your functionality of the backyard if it is tucked more into the corner and gives you more available space?

MR. MOSBURGER: I would agree with that statement.

ADAM CUMMINGS: Does that answer it okay, Phil (Supernault)?

PHILIP SUPERNAULT: Yeah.

ERIC STOWE: Just the condition of the variance or building permit, prior shed comes down first.

ADAM CUMMINGS: Yes. He has it in his application. We'll make sure to affirm that.

MR. MOSBURGER: I can do that.

ADAM CUMMINGS: So we'll just reiterate that as a condition.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

SUE SAMPSON, 21 Irvington

MS. SAMPSON: I'm to the west of him, so I can understand why he wants the shed where he can because I have to look at that shed.

ADAM CUMMINGS: Thank you.

Mark Merry made a motion to close the Public Hearing portion of this application and Fred Trott 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: For this one, you will have two conditions of approval. One is to get a building permit. And the second one is the existing shed must be removed.

On item A of this application, 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 Fred Trott seconded the motion. The Board all voted yes on the motion.

Mark Merry made a motion to approve the application with no conditions, and Philip Supernault seconded the motion. All Board members were in favor of the motion.

DECISION ON ITEM A: Unanimously approved by a vote of 5 yes with no conditions and the following findings of fact were cited:

1. Location of shed does not adversely encroach neighboring properties.
2. There are numerous properties in this neighborhood with similar structures.
3. A variance for relief from the rear and side property lines was granted by the NYS Department of State on 6/26/2020 and the request was decided to be routine variance and will not substantially adverse effect the neighborhood.

ADAM CUMMINGS: Now we'll move onto B, which is the 8 foot tall fence, a variance request which is 2 feet higher than the 6 feet that is allowed by the code in the backyards.

Anything else to elaborate on there? Sounds like it will just be a privacy fence.

MR. MOSBURGER: 6 foot tall solid white vinyl fence. I considered a 6 foot tall vinyl white fence, and similar to the lady over here, I walk out my back door on the deck and the next the neighbor to the east walks out on her deck. If we're at 6 feet, we look at each other. That is the only reason for the extra 2 feet.

I have a question for the Board, for Mr. Wanzenried. I'm not sure who the appropriate party is to address this. This is if I can afford to it and then when. So I'm looking for approvals so that if I can proceed if and when I can do this. It is not something I'm looking to go do immediately. So if there is a term of --

ADAM CUMMINGS: A sunset clause?

MR. MOSBURGER: Yeah. That -- if there is a term where I have to get it done.

ADAM CUMMINGS: No. The variances actually go with the land, so they stay permanently on there. So this -- if we grant this for this one property, it will stay. Even if the property changed hands, this variance with still stay with that land.

MR. MOSBURGER: Okay. I'm also doing a new kitchen and it's a lot. Tough on the budget. Always is.

PAUL WANZENRIED: You can make it specific as to the location on the property. You can delineate that. But yes, you're accurate.

ADAM CUMMINGS: I don't think -- I'm assuming that you're doing it along the property line?

MR. MOSBURGER: I would probably back off a foot, based on the discussions I had with the lady to the north. There's a phone pole on one side and the neighbor's fence on the other. He said he stayed a foot off his northern neighbor. I would probably line up with his and go across.

ERIC STOWE: If you're a foot off -- I'm not trying to give you legal advice, but that creates a title objection if and when you go to sell your property if you're more than a foot off the property line. So the mere fact that the Town approved it does not mean it doesn't create an issue when you go to sell.

ADAM CUMMINGS: So in laymen's terms, would that be inferred that's your property line, in essence, because the --

ERIC STOWE: Correct.

ADAM CUMMINGS: So you could lose land.

ERIC STOWE: Potential adverse possession charge that your neighbor could say they own that foot. It is not a Town issue. It would become your issue. And just the Town approving it does not remove that issue.

MR. MOSBURGER: Thank you.

MARK MERRY: The neighbor to the left is a picket fence; is that correct? How high is that?

MR. MOSBURGER: You said west or left?

MARK MERRY: Facing your home, to the left of your home appears to be a --

MR. MOSBURGER: To the east is a solid, white vinyl. To the west is Sue Sampson's fence.

MS. SAMPSON: It's a rail fence. It's a rail fence. I got -- I put it at the same place where there was an existing fence and I think that existing fence had been there about the same time the houses were built.

MARK MERRY: That is about roughly how high?

MS. SAMPSON: Just three rails high. It's not something for privacy or anything. Just a demarcation of the property.

MARK MERRY: You live -- a nice neighborhood. I didn't see any 8 foot fences. So I'm a little concerned about the height requirement you're looking for.

Would you be willing to drop it down to 6 and have the ability to have the fence?

MR. MOSBURGER: So I guess my question would be, is the -- the Town permits a 6 foot fence on the boundary.

ADAM CUMMINGS: You wouldn't need a variance. So meaning you wouldn't need the

variance. Even if we deny it tonight, you could still build the 6 foot fence. But I believe you would like it for privacy along your deck for the neighbors that would be visible when you're elevated on your deck, correct?

MR. MOSBURGER: I was looking to place the fence on the rear of the property, but to provide privacy for the deck.

ADAM CUMMINGS: And your deck is in the middle portion of your house?

MR. MOSBURGER: Yes.

ADAM CUMMINGS: So --

MR. MOSBURGER: So your question was would I be willing to drop the variance?

I don't know that a 6 foot fence would serve my purpose, Mr. Merry. I would build a fence and look at my neighbor unless I -- anyway on my deck so I probably wouldn't build the fence.

MARK MERRY: But it would save you some money. Okay.

MR. MOSBURGER: It is 3500 bucks, which is why it might not get done anyway, but that was on a 6 foot fence.

ADAM CUMMINGS: But you don't have a quote for the 8 foot fence?

MR. MOSBURGER: I don't have a quote for that, but I know it will be more.

ADAM CUMMINGS: I doubt they will give any price break that will somehow match the price.

MARK MERRY: Okay. Thank you.

ADAM CUMMINGS: I do have one for the Side Table. You did make a statement that there were no more 8 foot fences. I didn't see any in the neighborhood and, in fact, 8 foot fences, the only ones I'm aware of is Paul Road and those are the military installation and more industrial properties. Would that be a fair statement? Or do you know?

PAUL WANZENRIED: Can I take the Fifth?

ADAM CUMMINGS: Okay.

MR. MOSBURGER: That's fine. I'm not aware of any. I'm just speak --

FRED TROTT: I have never had one come ---

ADAM CUMMINGS: I had a lot of requests where front yards want to be 4 feet up to 6 feet and I have seen 6 feet, but I -- I can't recall an 8 foot fence, off the top of my head.

JAMES WIESNER: I think the FedEx -- I think it was the FedEx off of Union Street that had 8 foot with barbed wire.

ADAM CUMMINGS: But more industrial, a commercial place. And yes, I think it was the barbed wire that brought it up to the 8 feet. I just want to point it out because I really haven't seen any. But it is also tough with yours. As you're describing it, your ground terrain, does it fall off or just the peoples' decks that bring the elevation higher?

MR. MOSBURGER: The ground falls away, but not much.

ADAM CUMMINGS: They are tightly -- tightly clustered around there. But it is also set back quite a bit. So as I mention, your deck is in the middle of the property. So a fence does keep your vantage point blocked more fully than a shorter fence would. Okay. I don't have any other questions.

Is there such a thing as a fence permit?

PAUL WANZENRIED: Not in the Town of Chili.

ADAM CUMMINGS: That's what I thought. We permit a lot of other things but not those.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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.

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

On item B of this application, 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.

Fred Trott made a motion to approve the application, and Mark Merry seconded the motion. All Board members were in favor of the motion.

ERIC STOWE: Perhaps a few findings of fact.

ADAM CUMMINGS: I was just leaning towards that. I would like at this point to reach out to the -- since we have done a denial, I would like to change things up and ask the Board members if you could volunteer, as Eric (Stowe) said, a finding of fact or a reason out of the five criteria that's we usually evaluate of why you chose "no."

MARK MERRY: I would say character of the neighborhood.

ADAM CUMMINGS: All right. Because there aren't any other 8 foot fences?

MARK MERRY: Correct.

ADAM CUMMINGS: All right.

Jim (Wiesner), could you add any? Or what's your thinking on it?

JAMES WIESNER: I just -- I think this is excessive for residential property.

ADAM CUMMINGS: I would say -- my thought on it is it's a self-created hardship. Just about every variance is. I have yet to see one that's not self-created. But in terms of this, the case pled of why you needed this, um, in -- my opinion is it's just not strong enough because it does significantly change it and not to set a precedent, but it does change the character where the fences become more "institutional" is the word I used earlier or industrialized and I would like to -- I believe the intent of the code is not to have tall fences like that. Unless the grade dictates it or the elevations do.

I would like the right side of the Table, anything you would like to add or you would be willing to add for your decision-making?

FRED TROTT: Mine was the same as yours. Just doesn't seem to be in character of the neighborhood and looking -- I don't remember ever giving approval for an 8 foot fence. I think that would cause issues down the road.

ADAM CUMMINGS: Phil (Supernault), you're new.

PHILIP SUPERNAULT: I concur. I just think an 8 foot fence in a neighborhood is excessive. And I think it sort of detracts from the whole purpose of neighborliness.

DECISION ON ITEM B: Unanimously denied by a vote of 5 no with the following findings of fact/reasons having been cited:

1. The proposed fence was determined to be substantial since it would result in an exceedance of 33% of the code requirement for height.
2. Additionally, it was stated that the variance was self-created and there was not a definite need for this variance.
3. Lastly, it will create an undesirable change in the neighborhood as no other residential fence in 8-feet in height in this area of town.

MR. MOSBURGER: I respect and understand your decision, but I have a question for you.

MS. SAMPSON: Can I make a comment?

ADAM CUMMINGS: Technically, Public Hearing is closed. I will look at my Side Counsel.

ERIC STOWE: Comments after the meeting.

ADAM CUMMINGS: After we adjourn it, we can talk.

MS. SAMPSON: If I would have known you would say "no," I would have said something. But I didn't think with the questions you were issuing, it would have warranted it.

MR. MOSBURGER: So my question is --

ADAM CUMMINGS:

MR. MOSBURGER: -- Sue (Sampson) takes care of her yard. Andy next door takes care of his yard. The lady behind me takes care of her yard. There are two rental properties on either side of the residence where they don't take care of the property.

How am I changing the character of the neighborhood by screening my view of properties that are not under good care?

Mr. Merry, if you visited and saw Sue (Sampson)'s fence, perhaps you saw the condition of the blue home to the northwest and the yellow home to the northeast?

MARK MERRY: Fortunately, I did not focus on the condition of that residence. But I also in my neighborhood have a similar condition with homes that are not well maintained and I would not want to put up an 8 foot wall in my yard to block my view of that one yard, because overall it would ruin the character of our neighborhood, which had wide open yards. So it would be out of character. And I don't think it would be fair to my neighbors to construct a wall just to screen my view of a next-door neighbor's house. As much as I would like to, I would find it out of character for my neighborhood.

MR. MOSBURGER: I can respect your opinion. I just find it interesting that the character of the neighborhood is degrading and that is acceptable to the Town.

ADAM CUMMINGS: I don't think you -- you can share that opinion with us, but I'm not saying I -- I don't agree with it because there are other property codes, whether the New York State Code or local ones, that get into maintenance and upkeep of properties that are not under our jurisdiction.

But in terms of this one, the same with -- to reiterate my point about self-created, is an application, um -- I will just be candid at this point. When it becomes a variance that stays with the land forever, we take the applicant, the personal applicant out of the mix and the need for this didn't seem to be strong enough since you even attested to it may or may not happen.

MR. MOSBURGER: That's why I said I respect your decision. I just -- it is interesting.

MARK MERRY: I can feel your frustration. I really can, firsthand.

ADAM CUMMINGS: And I do thank you for coming in here, because I will be honest, I see a lot of people in my neighborhood that would not come in and follow the rules and just go and build it and either never tell or ask for forgiveness. So I appreciate you coming in.

MR. MOSBURGER: I have one other comment for you and this is meant with the best

intentions. But I think the application is seven pages long and nine copies requested and in a day when we're trying to save trees and electronic anything can be freely distributed, if you guys can do something to save paper, it would be greatly appreciated.

ADAM CUMMINGS: I like that. Duly noted. I really, really like that.

MARK MERRY: So don't walk away frustrated tonight. Work with the Town. There -- as Adam (Cummings) mentioned, there are other venues and we, as neighborhood folks, have approached the Town, as well, with what we're concerning -- what we're dealing with. And the Town has been very good to work with. It's a series of steps, but it will eventually help get both of us where we need to be and get things rectified.

ADAM CUMMINGS: I really applaud the paperless effort. That made my night.

MR. MOSBURGER: Good. I'm glad you like it.

ADAM CUMMINGS: I cringe on the amount of paper I get here and other places. So I will bring that -- and I welcome you to bring it to the Town Board, as well, to continue on any efforts they have to go document -- electronic documents as oppose -- or a reduction in paper. So thank you.

MR. MOSBURGER: Thank you for your time, gentlemen. Appreciate it.

ADAM CUMMINGS: I've been having email issues. I will be honest, my minutes, did I get them in my email? That what I thought. I will recuse myself because I am having technical difficulties, but I did understand they were transmitted.

So I ask for a motion to approve the minutes from last month's meeting.

Fred Trott made a motion to approve the 5/26/20 Zoning Board of Appeals meeting minutes, and Mark Merry seconded the motion. The vote on the motion was 4 yes with 1 recusal (Adam Cummings).

ADAM CUMMINGS: We'll also do the February minutes. Those I did read, but I missed it when we had back-to-back months we were off.

Fred Trott made a motion to accept the 2/25/20 Zoning Board of Appeals meeting minutes, and Philip Supernault seconded the motion. The Board was unanimously in favor of the motion.

Adam Cummings made a motion to adjourn the meeting, and Mark Merry seconded the motion. The Board was unanimously in favor of the motion.

The meeting ended at 7:34 p.m.