

CHILI ZONING BOARD OF APPEALS
March 23, 2021

A meeting of the Chili Zoning Board of Appeals was held on March 23, 2021 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, Philip Supernault, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Eric Stowe, Assistant Counsel for the Town; Paul Wanzenried, Building Department Manger.

Chairperson Adam Cummings declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. He explained the meeting's procedures and introduced the Board and

ADAM CUMMINGS: Any issues on the sign?

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

1. Application of Michael and Mary Beth Casaccia owner; 112 Loyalist Avenue, Rochester, New York 14624 for variance to allow a 6 ft. fence in front yard (4 ft. permitted) at property located at 112 Loyalist Avenue in R-1-15 District.

Michael and Mary Beth Casaccia were present to represent the application.

MR. CASACCIA: I have one -- what did you say in the beginning of your statement about the sign?

ADAM CUMMINGS: We have a public notification sign, where it is -- the red and white one that has to go up announcing tonight's meeting. That has to be up for ten days for our Town Code.

MR. CASACCIA: You know there was two violations, right?

ADAM CUMMINGS: We're not here to discuss violations. We're here to talk about the height of the fence. So what you have is a non-compliance, which was noted by the Code Enforcement Officer where -- or sorry -- Code Enforcement Office, the Building Office, where in front of your house, there is a fence --

MR. CASACCIA: Right.

ADAM CUMMINGS: -- that has been existing that is 2 feet higher.

MR. CASACCIA: I received a letter with two codes.

ADAM CUMMINGS: We're only listening to the one, which is --

MR. CASACCIA: Why is that?

ADAM CUMMINGS: Because that is what is on the denial form. I believe you're referring to the sign of non-commercial speech exceeding 16 square feet?

MR. CASACCIA: Yes. That won't be addressed tonight?

ADAM CUMMINGS: No. No.

MR. CASACCIA: I kind of wanted to address it just to clarify. It is not -- it is not supposed to exceed?

ADAM CUMMINGS: What is that?

MR. CASACCIA: The sign.

ADAM CUMMINGS: The sign should not exceed 16 square feet.

MR. CASACCIA: 15 square feet or 16?

ADAM CUMMINGS: 16.

MR. CASACCIA: Okay. All right. Okay.

ADAM CUMMINGS: But we're not hearing that tonight. Public notice did not include that on there so we're not considering that tonight.

MR. CASACCIA: All right. Fair enough.

ADAM CUMMINGS: I hope I explained that sufficient enough.

MR. CASACCIA: Yes, I mean there was -- there was two violations on the notice that I had. I just -- I don't understand why that one code isn't brought up tonight, too. Because that -- because that is the whole --

JAMES WIESNER: It is on the form. I saw it.

ADAM CUMMINGS: Is it handwritten on all of the forms?

FRED TROTT: Yeah.

ADAM CUMMINGS: I'm not -- I don't know. According to Paul (Wanzenried), this was not on the original one.

MR. CASACCIA: It's on the original one. The first letter that I received, there was two violations. One for the fence --

ADAM CUMMINGS: That may be. That might be, but on your variance, the Land Use Variance application form, this handwritten part, did that get added on today? Go ahead, Paul

(Wanzenried).

PAUL WANZENRIED: When I signed the denial page, I reviewed for completeness of -- and what the applicant is asking for. It appears that the applicant has written in a violation after I signed the denial page.

ADAM CUMMINGS: So I guess what --

PAUL WANZENRIED: So the only thing that -- when he came -- and it is written on the ticket, that it is -- the variance to erect a 6 foot fence in the front yard, 4 foot allowed at the property located at 112 Loyalist. When -- and I'm assuming this was written after the prior -- when he submitted his copies.

ADAM CUMMINGS: Right. So on January 28th, 2021, is when we had the application form that came in.

PAUL WANZENRIED: Correct.

ADAM CUMMINGS: It addressed the fence and you issued a denial of that fence permit.

PAUL WANZENRIED: Correct.

ADAM CUMMINGS: Because it did not meet our Town Code.

Now, if there is something about this non-commercial speech exceeding 16 square feet, that's actually added in -- that -- I'm not --

PAUL WANZENRIED: It was added in after.

ADAM CUMMINGS: So that makes this not --

MR. CASACCIA: On mine -- on my letter that I received there was two violations.

PAUL WANZENRIED: Okay. There is. He -- he -- the applicant -- how do you say your last name, sir?

MR. CASACCIA: "Casaccia."

PAUL WANZENRIED: Mr. Casaccia is correct. There was an order to remedy, which I believe you all have in your packets. There was an order to remedy two violations. One, that the fence exceeded the allowable height in the front yard.

ADAM CUMMINGS: Yep.

PAUL WANZENRIED: Two, that the sign that was on the front of that fence exceeded the allotted square footage for non-commercial speech.

ADAM CUMMINGS: Yep.

PAUL WANZENRIED: In my conversations with the applicant, when he came in to address this, he led me to believe that the sign was taken down and we were going to address the fence. Filled out the application to that effect. If the sign is taken down, then the violation goes away.

ADAM CUMMINGS: Right. That is -- if the sign is not up, then your order to remedy, which is not what we're addressing tonight -- that's done. Go ahead.

MR. CASACCIA: I kind of wanted to bring the sign up in today's discussion because I kind of wanted to make my point about the fence.

ADAM CUMMINGS: So -- so with the fence, that -- we're trying to get your property back in compliance with the Town Board Code. That is why this variance is here. In terms of the sign, for your order of remedy violation, if the sign -- as Paul (Wanzenried) just said, if the sign goes off, the remedy has been made. If -- if -- if you want a sign there that is 16 square feet or less, then you don't come in front of here. If you want something that is greater than 16 square feet, you would fill out another variance application and come in front of us.

MR. CASACCIA: The sign that I had up was in bad taste, so I did take it down. I mean if I could, I could put up -- a 3 by 5 up and keep the sign up. But -- but I realize it was in bad taste.

My problem is, the -- the -- I would like to know the original complaint. The original complaint I'm guessing was the sign. Until the Town came there and decided -- I mean, I'm going kind of off the -- the chart here -- I'm -- I want to guess that when the Town, Mr. James Wiesner --

ADAM CUMMINGS: "Wiesner."

MR. CASACCIA: -- Wiesner came there to investigate the sign, he decided oh, well, by -- I'm just -- I'm not saying you're a Biden supporter or Trump supporter, but I bet my bottom dollar you came there just for the sign and then from there, you decided "Oh, well, I'm a Biden supporter. I really don't like that flag."

ADAM CUMMINGS: Well, I'm -- I'm going to put a time out -- because I don't want a soap box here to talk about what you may or may not --

MR. CASACCIA: I kind of want to make my point --

ADAM CUMMINGS: But my point is we're just trying to remedy your property in terms of that sign --

MR. CASACCIA: Right.

ADAM CUMMINGS: -- that is not compliant with the code.

MR. CASACCIA: I hear you, but I just kind of want to make a quick point. If the -- if the -- if the original complaint was about the sign, shouldn't you just come there and say, "Hey, look, well, he is in violation of the sign" and -- and be done with it? That fence has been sitting there for over 12 years. It hasn't bothered a single soul. In fact, I had compliments. Back then, 12 years ago, I did not -- didn't know about the code. I -- I didn't think of even looking for a code for the size of the fence because it only sticks out 8 -- I think 8 foot.

ADAM CUMMINGS: Uh-huh.

MR. CASACCIA: I wrote it on there. It is not even in front of the house. It's like off to the side of the house. I -- I didn't think there was such a code. And it's been sitting there for 12 years. The Town has been up and down my street, stopped over a couple of times within that 12

years. And has -- it never -- it never complained about it. I'm guessing that sign must have triggered whoever came there and looked at the Complaint for the sign -- didn't like the sign himself -- and came -- and took it upon himself to come back here, get on your computer and probably look up my address, your home or however you guys did it and -- to see if I ever applied for a -- what is the word?

FRED TROTT: Variance.

ADAM CUMMINGS: It's a variance. You may have -- if you had come in maybe for a permit or asking if you needed a permit for the fence, and if you constructed it asking the definition of if it goes beyond the front plane or front side of the house, that is how the code is written that -- we're here to talk about the relief request that you're -- granting because it does go in front.

Now, I'm not going to surmise or conjecture what may have happened or come across. These happen all of the time. It could be a real estate transaction where the realtor says "That's not compliant. These people have to come in."

Our job is to listen to your ask of getting relief from the code, whether it is minor or major, and we make the decision which in the end --

MR. CASACCIA: Fair enough.

ADAM CUMMINGS: If you ever decide to sell, it makes it easier on yourself going through to make sure the property is compliant with the code. Less obstacles to come in. Same with if you come in for other permits -- if you come in for a pool permit, we do the same thing to make sure the property is up to our code compliance.

MR. CASACCIA: If the Town does grant a variance to a homeowner and he does sell the house -- I mean that is already --

ADAM CUMMINGS: It stays with the land.

MR. CASACCIA: It's fine?

ADAM CUMMINGS: Yes. It stays with the land, not with the property owners.

MR. CASACCIA: Right. Okay.

ADAM CUMMINGS: That is us in a nutshell, of what the Zoning Board is here for.

MR. CASACCIA: My question is the original complaint was about the sign, not the fence.

ADAM CUMMINGS: We don't actually have anything on the complaint here in our packet. Now, most of the complaints do come in anonymously, but there is -- we're just trying to address the -- the odor -- order -- order to remedy violation. So that is where we're trying to work with you on that tonight.

MR. CASACCIA: Okay. Fair enough. Thank you.

ADAM CUMMINGS: All right.

MR. CASACCIA: Is that it?

ADAM CUMMINGS: I'm good. Are you all set? Board questions? Unless you have something else to add.

MR. CASACCIA: No. Like I said, it has been sitting there for 12 years and nobody has ever complained about it. I mean it's well maintained. Like I said, I have got -- I had compliments about it.

ADAM CUMMINGS: That's great.

MR. CASACCIA: I have a little bit of privacy from my neighbor next to me on my left side. It doesn't bother him a bit. I mean I have got signatures saying -- from each of my neighbors, two across the -- the front of me, the side of me. Nobody -- doesn't seem to bother anyone.

ADAM CUMMINGS: That's exactly what helps our cases up here of trying to evaluate. We'll get to the Public Hearing and then you can speak. But that is what actually helps us, to have a record to know what the neighbors say instead of you, the applicant, saying they're okay with it. It is even better if we have their signatures, too. So your application helps us out immensely compared to -- I don't want to compare it to other applications, but to the level we do get some other applications, this does help us with that type of documentation. And bringing neighbors in to -- to speak about it.

MR. CASACCIA: I've got some more signatures. I had them after the -- I handed you the guys the packet.

ADAM CUMMINGS: I will take those. I can add that to the project file, as well. While you're doing that, any questions?

PHILIP SUPERNAULT: I think the map explains it. The -- the -- the width of the fence facing the street is -- is it -- I'm not seeing it here. The -- the -- as I look at the fence.

PAUL WANZENRIED: Has no bearing.

ADAM CUMMINGS: We're just looking at how far off the front of the house it goes. We don't need to know how wide it is.

PHILIP SUPERNAULT: Okay. Okay.

ADAM CUMMINGS: Because the variance we're -- that is being requested, he has a setback that he is allowed to have. He is just breaking that plane of that whole thing.

PHILIP SUPERNAULT: Okay.

ADAM CUMMINGS: Which is the dimension he shows here. It even shows the corner of the house. It goes 8 feet forward, so that is what we're addressing here.

PHILIP SUPERNAULT: Okay.

FRED TROTT: That would be the only 8 foot section, correct?

ADAM CUMMINGS: This moves it to the front. This moves it 8 feet from the front of the house. So it reduces his front setback.

FRED TROTT: The only other question I had, because on this map, is he -- with his side setbacks, is he all right with that?

ADAM CUMMINGS: Yep.

FRED TROTT: Okay.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

LYNN KNAUF, 100 Loyalist Avenue

MR. KNAUF: Lynn Knauf, K-N-A-U-F. 100 Loyalist. And they -- they actually did not ask us to come. We volunteered because I can honestly say, their home is the most meticulous home on our street. Beautiful. The -- the yard, the grass, the landscaping, the driveway and the fence, they're beautiful. We have no complaints. The yard is meticulous. I wish every neighbor was like them. That fence is by far not an eyesore. It's clean. It looks like it is brand new honestly. I can't believe it is 12 years old. We just wanted to come and support that. When we saw the sign in their driveway, we inquired and wanted to give support.

KIM PATTI, 95 Loyalist Avenue

MS. PATTI: Kim Patti. And I live at 95 Loyalist Ave. and I would just have to back what Lynn (Knauf) has said, that their yard is meticulous. It's very nice compared to other houses in the neighborhood and I walk by there almost every day and I just -- there is nothing wrong with their house. And the fence does look like it is new. It's very well kept and it is just very nice. I was actually surprised to hear that there was an issue with the fence because I think there should be -- if there is an issue with that fence, there should be other issues in our neighborhood then.

ADAM CUMMINGS: Well, most places end up with their time into this place. There is a -- there is a lot that goes on in this Town that we --

MS. PATTI: I'm just saying, their yard -- they're nice people, good neighbors.

ADAM CUMMINGS: Good.

MS. PATTI: We just moved in the neighborhood, too, like a year and a half ago. Like I said, it's one of the nicer homes in the neighborhood.

ADAM CUMMINGS: And to ask both of you, where the fence stands, it doesn't block your view when you're walking down the street or anything like that?

MS. PATTI: Oh, no.

ADAM CUMMINGS: I know it's a common sense question. I'm just asking so I have it in the minutes.

MS. PATTI: No, not at all.

MS. KNAUF: Not at all. I'm curious. Is there any type of a grandfather clause since the fence is so old?

ADAM CUMMINGS: No.

ERIC STOWE: It would have to predate the code. Yes, it is, but it has to be older than the code.

ADAM CUMMINGS: But in this case, because the code is older, it doesn't get grandfathered in. It is non-compliant.

MS. KNAUF: Understand. Understand.

Adam Cummings made a motion to close the Public Hearing portion of this application, and Fred Trott seconded the motion. The Board unanimously approved the motion.

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

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 Philip Supernault seconded the motion. The Board all voted yes on the motion.

James Wiesner made a motion to approve the application with one 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 no conditions and the following findings of fact were cited:

1. There have been no complaints associated with fence.
2. The fence does not hinder or impede line of sight or views of traffic and pedestrians along the public right-of-way.
3. Additionally, this fence provides screening of neighboring properties for the expanded driveway.

Philip Supernault made a motion to accept and adopt the 2/23/21 Zoning Board of Appeals meeting minutes, and Fred Trott seconded the motion. All Board members were in favor of the motion.

Adam Cummings made a motion to adjourn the meeting, and Philip Supernault seconded the motion. All Board members were in favor of the motion.

The meeting ended at 7:23 p.m.