



Brian Cavanaugh <brian@cavanaughpartners.com>

Cavanaugh Cherry Hill Road Opening Permit Letter

30 messages

Susan Semrau <ssemrau@dorseysemrau.com>

Fri, Jan 5, 2024 at 3:54 PM

To: Brian Cavanaugh <brian@cavanaughpartners.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>

Please see the attached sent on behalf of the administration of Mendham Borough.

Thank you,

Susan

Susan Semrau

Dorsey & Semrau

Attorneys at Law

714 Main Street

Boonton, N.J. 07005

973-334-1900

www.dorseysemrau.com

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 **Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf**
245K

Brian Cavanaugh <brian@cavanaughpartners.com>

Mon, Jan 8, 2024 at 9:12 PM

To: Brian Cavanaugh <brian@cavanaughpartners.com>

Look into this.

[Quoted text hidden]

 **Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf**
245K

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "gcludlow@gmail.com" <gcludlow@gmail.com>

Thu, Jan 18, 2024 at 2:47 PM

Here is the latest letter, the only one that provides ANY detail about their motives.

-- Brian
[Quoted text hidden]

 **Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf**
245K

Brian Cavanaugh <brian@cavanaughpartners.com>
To: Susan Semrau <ssemrau@dorseysemrau.com>

Sat, Jan 27, 2024 at 6:13 PM

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>

Susan, I am in receipt of your email of January 5, 2024. I have had a chance to review and consider it.

My response is as follows:

1. I now understand that the issue/concern that the Borough Council has with my proposed replacement fence is a concern that it will block the mutual view of westbound traffic on Cherry Lane and southbound traffic on Talmage Road. This was not an issue/concern ever previously raised by any Mendham Borough official with whom I had discussed the matter (Rob, Paul or Christine) in the nearly 2 months in advance of the Borough Council meeting at which this permit application was first considered. As you may know, I reside in FL, so I was unable to make the meeting, a meeting I had been given the impression was a mere formality, rather than one where I might need to "defend" the proposed plan. Thank you for being the first one to explain in detail why the Borough rejected my proposal. I am happy to hear that there were no other objections and feel that this objection may be overcome appropriately. Had I known in advance of the Borough Council meeting that this issue was one being considered, I would have made an effort to present my perspective on it and to consider amending the specific layout of the proposed fence.
2. Did the Chief of Police offer any perspective on what adjustments to the proposed fence plan would be advisable in order to view the proposed fence as NOT being a public safety hazard?
3. Did the Chief of Police consider the public safety hazard of NOT allowing this proposed fence replacement. I hope he is aware -- I specifically noted it to each of the officials with whom I did have communications -- of how many times (6 overall, and 3 in the past 2 years) an irresponsible passing motorist has driven into our yard, knocking down our existing wood fence, existing stone fence and existing hedge in the process. Because our home pre-dates the forming of this country, it is very close to the road. That's the way they preferred it back then, before the advent of dangerous motor vehicles careening onto one's property and toward one's home. We have raised our family (including 4 children) in this home and expect to welcome future grandchildren to this property. I appreciate the Chief's concern about public safety, as I think that is an important issue. but I am wondering what consideration, when "balancing the equities" he gave the fact that our yard has been repeatedly and dangerously violated by passing motorists. I have a right to protect my family, when no effort to reduce such motorist incursions has been made over the years by the municipalities, despite my requests.
4. I have just recently had, in my absence, the opportunity to have some kind friends put in place a temporary plywood model of exactly how the proposed fence would impact the view around the corner. This model represents the face of the proposed fence facing the road. I would request that the Police Chief return to the site and reconsider his position, now that a precise model of what I have proposed is in place. These friends were able to shoot multiple videos from multiple angles at a height of "one's eyeballs, when seated in a low-lying car," and determined that they could see (above the top of this scale model) even a *small* car's (let alone the more typical large sedan or SUV) top around the corner. Was the Chief's position that the only safe view around the corner would be of the *entirety* of the car (down to its tires) on the other side of the wall or would seeing even a portion of the car be deemed to be "seeing it?" In short, I would like this to be more of a dialogue with the Chief, aimed at reaching a mutually agreeable solution, rather than a wholesale rejection of the concept of a replacement stone fence. Please advise. (By the way, now that this model is there to consider, I plan on reaching out to the Chief to discuss. It will likely be more efficient than emails back and forth. However, I have tried to discuss this matter with certain Borough Council members, in the interest of efficiency and transparency, but have not received any responses. I hope the Chief is more responsive.)

5. As noted above, I reside in FL for the Winter and Spring, so I would prefer to avoid "removing" any existing fence already constructed until we have both resolved the outcome of this process (perhaps some modification of the proximity of the fence to the corner, if necessary) and until I'm back to supervise such work. I note that the existing very small portion of partially installed fence is not creating any public safety hazard, since it is well over 100' away from the corner in question, where the visibility is viewed as a potential safety issue.
6. Since you brought up the topic of the partial installation of the fence, I will note that, apparently unlike nine other properties on Talmage Road alone, I did file a permit to replace my existing fence BEFORE I began installation. I began installation because I got the distinct impression from the Borough "fence permit" official that the Borough had a consistent record of NOT enforcing rules regarding the installation of stone fences within the road right of way, and that it was going to take many weeks more to hope to actually receive the permit, given the fact I was informed that I would now have to go obtain (at a cost to me of thousands of dollars) a current survey of the property to help the Borough determine where any right of way may be located in relation to the proposed fence. I had a construction deadline (returning home to FL for the Winter and Spring) and wanted to complete the project before leaving, since this type of aesthetically important project requires close supervision and I preferred not to leave the eyesore of my broken down (because it had been knocked down by one of those dangerous motorists) existing fence for another year. I will also note that, despite my outside counsel's (at the time -- I've since fired him for providing inconsistent advice) assurance that I had every right to replace my existing fence with a new, conforming fence (which my proposed fence is), I DID stop work after receiving a formal stop work order from the Borough. So, while it is true that I continued to install just a small section of the fence -- so that Borough officials could see how attractive, diminutive and in keeping with the pre-Revolutionary War nature of the home and property -- AFTER the INFORMAL request was received to stop work, I did promptly comply with the formal written stop work order. Facts are important.
7. I hope that the people making these decisions on behalf of the Borough are carefully considering the reasonable right of a property owner and taxpayer to further enhance the beauty of such property, especially given its unique historic nature, and to protect his family and property from the damage caused by irresponsible passing motorists.

Thank you for your consideration.

-- Brian

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>

Sat, Jan 27, 2024 at 8:29 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>

Apologies for a second email, but I now understand that my friends actually removed the model after taking lots of pictures and video. I can have it reinstated for you if that is helpful. In the meantime the holes that marked the perimeter of the model remain intact and marked, so everyone can see what layout the pictures and videos correspond to.

They also asked me to pass along a public safety suggestion. Move the Stop sign at that intersection of Talmage and Cherry 10-15' closer to the actual intersection. They have both observed over many years that *everyone* -- including themselves -- always feel compelled to pull up to a stop, not at the white stripe with the Stop sign, but 10-15' beyond that white stripe. The reason for this is that they seek to improve their visibility of the oncoming traffic UP TO THE RIGHT on Cherry Lane (because this traffic tends to be "hurtling down" Cherry Lane faster and the trees on the property across Talmage Road from my property block the view of that oncoming traffic *until* you pull up significantly further from that white stripe toward the intersection. After they mentioned it to me, and showed me a video of them and other motorists doing just that, I realized that I myself have done the same thing for years. This simple move to improve the visibility at this intersection may actually also mitigate the issues the Chief may have with visibility looking DOWN Cherry Lane, which would be nice. Just a public safety suggestions from a few Borough residents.

Thank you for your consideration.

-- Brian

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>

Mon, Jan 29, 2024 at 8:12 AM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Lauren McBride <lmcbride@mendhamnj.org>, Paul Ferriero <paul.ferriero@ferrieroengineering.com>

My friends now tell me that they reinstalled the model for the Chief to come view.

Thank you.

— Brian

[Quoted text hidden]

Susan Semrau <ssemrau@dorseysemrau.com>

Fri, Feb 23, 2024 at 10:19 AM

To: Brian Cavanaugh <brian@cavanaughpartners.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Susan Sharpe <ssharpes@dorseysemrau.com>

Dear Mr. Cavanaugh- below please find correspondence from Borough Attorney, Fred Semrau and the Borough of Mendham:

Dear Mr. Cavanaugh,

I am writing in response to your communications regarding a road opening permit of Cherry Lane. In response to your correspondence I wanted to provide you with the following (I have placed the response of the Borough Administration and Professionals in red).

In conclusion, Mr. Cavanaugh, there are no new facts or information that would change the position of the Borough. The fence needs to be removed and you are in violation of the Borough Code. More importantly, the existing location presents a serious health and safety concern.

You are on notice of this condition and immediate steps need to be taken to remove the fence. In the meantime you will be responsible for any injuries that occur at the site and because this fence is not on your property, it is unlikely that your insurance carrier will defend you in such action especially after the Borough has repeatedly advised you that the fence is unauthorized construction in the Borough right of way.

Again, I attempted to respond to many of your comments below in red.

Very truly yours,

Fred Semrau

Sent by:

Susan Semrau

Dorsey & Semrau

Attorneys at Law

714 Main Street

Boonton, N.J. 07005

973-334-1900

www.dorseysemrau.com

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From: Brian Cavanaugh <brian@cavanaughpartners.com>

Sent: Saturday, January 27, 2024 6:14 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>; Lauren McBride <lmcbride@mendhamnj.org>; Fred Semrau <fsemrau@dorseysemrau.com>; Joyce Bushman <jbushman@mendhamnj.org>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

Susan, I am in receipt of your email of January 5, 2024. I have had a chance to review and consider it.

My response is as follows:

1. I now understand that the issue/concern that the Borough Council has with my proposed replacement fence is a concern that it will block the mutual view of westbound traffic on Cherry Lane and southbound traffic on Talmage Road. This was not an issue/concern ever previously raised by any Mendham Borough official with whom I had discussed the matter (Rob, Paul or Christine) in the nearly 2 months in advance of the Borough Council meeting at which this permit application was first considered. As you may know, I reside in FL, so I was unable to make the meeting, a meeting I had been given the impression was a mere formality, rather than one where I might need to "defend" the proposed plan. Thank you for being the first one to explain in detail why the Borough rejected my proposal. I am happy to hear that there were no other objections and feel that this objection may be overcome appropriately. Had I known in advance of the Borough Council meeting that this issue was one being considered, I would have made an effort to present my perspective on it and to consider amending the specific layout of the proposed fence. **The traffic safety impact of the fence is not simply the obstruction to the line of sight. It is the fact that a solid structure (i.e. stone wall) is being constructed in close proximity to the edge of pavement. Paul Ferriero explained this to you last Fall. Your contention that the fence needs to be rebuilt because people "hit it" is supports the idea that if it were a solid stone wall, the damage to vehicles and people in those vehicles will be significantly greater.**
2. Did the Chief of Police offer any perspective on what adjustments to the proposed fence plan would be advisable in order to view the proposed fence as NOT being a public safety hazard? **The structure needs to move out of the right of way.**
3. Did the Chief of Police consider the public safety hazard of NOT allowing this proposed fence replacement. I hope he is aware -- I specifically noted it to each of the officials with whom I did have communications -- of how many times (6 overall, and 3 in the past 2 years) an irresponsible passing motorist has driven into our yard, knocking down our existing wood fence, existing stone fence and existing hedge in the process. Because our home pre-

dates the forming of this country, it is very close to the road. That's the way they preferred it back then, before the advent of dangerous motor vehicles careening onto one's property and toward one's home. We have raised our family (including 4 children) in this home and expect to welcome future grandchildren to this property. I appreciate the Chief's concern about public safety, as I think that is an important issue. but I am wondering what consideration, when "balancing the equities" he gave the fact that our yard has been repeatedly and dangerously violated by passing motorists. I have a right to protect my family, when no effort to reduce such motorist incursions has been made over the years by the municipalities, despite my requests. **Once again, vehicles hitting the fence is a major safety problem.**

4. I have just recently had, in my absence, the opportunity to have some kind friends put in place a temporary plywood model of exactly how the proposed fence would impact the view around the corner. This model represents the face of the proposed fence facing the road. I would request that the Police Chief return to the site and reconsider his position, now that a precise model of what I have proposed is in place. These friends were able to shoot multiple videos from multiple angles at a height of "ones eyeballs, when seated in a low-lying car," and determined that they could see (above the top of this scale model) even a *small* car's (let alone the more typical large sedan or SUV) top around the corner. Was the Chief's position that the only safe view around the corner would be of the *entirety* of the car (down to its tires) on the other side of the wall or would seeing even a portion of the car be deemed to be "seeing it?" In short, I would like this to be more of a dialogue with the Chief, aimed at reaching a mutually agreeable solution, rather than a wholesale rejection of the concept of a replacement stone fence. Please advise. (By the way, now that this model is there to consider, I plan on reaching out to the Chief to discuss. It will likely be more efficient than emails back and forth. However, I have tried to discuss this matter with certain Borough Council members, in the interest of efficiency and transparency, but have not received any responses. I hope the Chief is more responsive.) **A "temporary" fence is in violation of the Borough Code and must be removed immediately.**
5. As noted above, I reside in FL for the Winter and Spring, so I would prefer to avoid "removing" any existing fence already constructed until we have both resolved the outcome of this process (perhaps some modification of the proximity of the fence to the corner, if necessary) and until I'm back to supervise such work. I note that the existing very small portion of partially installed fence is not creating any public safety hazard, since it is well over 100' away from the corner in question, where the visibility is viewed as a potential safety issue. **The fence is a safety hazard and must be removed.**
6. Since you brought up the topic of the partial installation of the fence, I will note that, apparently unlike nine other properties on Talmage Road alone, I did file a permit to replace my existing fence BEFORE I began installation. **This is incorrect, you stated that you applied for a permit after the work began.** I began installation because I got the distinct impression from the Borough "fence permit" official that the Borough had a consistent record of NOT enforcing rules regarding the installation of stone fences within the road right of way, and that it was going to take many weeks more to hope to actually receive the permit, given the fact I was informed that I would now have to go obtain (at a cost to me of thousands of dollars) a current survey of the property to help the Borough determine where any right of way may be located in relation to the proposed fence. **You cannot obtain a fence permit without a survey.** I had a construction deadline (returning home to FL for the Winter and Spring) and wanted to complete the project before leaving, since this type of aesthetically important project requires close supervision and I preferred not to leave the eyesore of my broken down (because it had been knocked down by one of those dangerous motorists) existing fence for another year. I will also note that, despite my outside counsel's (at the time -- I've since fired him for providing inconsistent advice) assurance that I had every right to replace my existing fence with a new, conforming fence (which my proposed fence is), I DID stop work after receiving a formal stop work order from the Borough. So, while it is true that I continued to install just a small section of the fence -- so that Borough officials could see how attractive, diminutive and in keeping with the pre-Revolutionary War nature of the home and property -- AFTER the INFORMAL request was received to stop work, I did promptly comply with the formal written stop work order. Facts are important.
7. I hope that the people making these decisions on behalf of the Borough are carefully considering the reasonable right of a property owner and taxpayer to further enhance the beauty of such property, especially given its unique historic nature, and to protect his family and property from the damage caused by irresponsible passing motorists.

Thank you for your consideration.

-- Brian

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Brian Cavanaugh <brian@cavanaughpartners.com>
To: Martin Scheidl <mscheidl@gmail.com>

Sun, Feb 25, 2024 at 10:55 AM

As suspected. The conspiracy continues.

-- Brian

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>

[Quoted text hidden]

[Quoted text hidden]

Martin Scheidl <mscheidl@gmail.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Sun, Feb 25, 2024 at 1:59 PM

The attorney seems pretty confident that there is no option but to do what the town has decided...

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Sun, Mar 3, 2024 at 11:28 PM

Latest comms with Semrau..

I'm still drafting my response to this one.

I'll send you the other ones before this.

— Brian

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Fri, Feb 23, 2024 at 10:19 AM

Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Sun, Mar 3, 2024 at 11:28 PM

Fiat comm from semrau...

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Fri, Jan 5, 2024 at 3:54 PM

Subject: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

CC: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>

[Quoted text hidden]



Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf
245K

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Sun, Mar 3, 2024 at 11:29 PM

My response to Senraus first email to me...

— Brian

----- Forwarded message -----

From: **Brian Cavanaugh** <brian@cavanaughpartners.com>
Date: Sat, Jan 27, 2024 at 6:13 PM
Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter
To: Susan Semrau <ssemrau@dorseysemrau.com>
CC: Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Lauren McBride <lmcbride@mendhamnj.org>, Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>

Mon, Mar 4, 2024 at 8:03 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>
Cc: Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Lauren McBride <lmcbride@mendhamnj.org>, Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Susan Sharpe <ssharpes@dorseysemrau.com>

I am quite surprised by your most recent communication on behalf of the Borough. I had expected that, now that the Chief of Police, finally armed with accurate information, had clarified his perspective, that the Borough Council would now be provided the opportunity to review, and likely reverse, its objection to my application to replace my fence. Instead, I am getting unexpected comments from who I can only assume is Joyce Bushman, the Borough Administrator, since that was the author of the original letter you sent me. So, with that in mind, Ms Bushman, I'll now address you directly.

I am disappointed that the Borough is now spending our taxpayer dollars on what appears to be (from this email's cc list) two people from an outside law firm to spend time on what I would have hoped would be a very simply-resolved matter. I've been trying for nearly 6 months now to work WITH the Borough on this, from the time I first filed the initial fence permit 2 WEEKS BEFORE I began the installation of the replacement wall, which the Borough Engineer eventually required me to desist from with his formal Stop Work Order (with which I complied). After realizing nearly two weeks after filing the fence permit that that my fence permit would not be processed until after I obtained the survey (which had already been ordered, but it was scheduled weeks away still at that point) I did commence the fence replacement in the interest of time. I had every reason to believe that I would be granted the permit from the Borough fence permit fellow and it became clear that the Borough had a long history of not enforcing whatever fence permitting process it had, as evidenced by the Borough's repeated inability to produce even one approved stone fence permit for any of the 9 such stone fences within the ROW just on Talmage Road. So, in the interest of time (an issue I have already shared with you), I decided to proceed with the fence and related permit in tandem, since it was so certain that the permit would be granted. I was not even aware of the existence of -- or need to file an application for -- a "road opening permit" prior to my beginning installation of the replacement fence. The fence permit administrator to whom I timely submitted the fence permit never mentioned any "road opening permit." In fact, even the mayor had not heard of a "road opening permit" -- she said that she couldn't recall any road opening permit coming before the Borough Council in the 4+ years of her service when I spoke to her after learning about this requirement from the Borough Engineer, which was only AFTER I had begun installation of my replacement fence. Once again, going to the "selective enforcement" issue, I will remind you all that there are 9 other solid stone fences, just along Talmage Road, that are closer to the road than my proposed replacement fence (two of which were installed on the property of Borough officials -- Bryan Seavey and Dennis Santos -- at the time they were installed), and no Borough administrator -- I've asked the fence permit fellow, the Borough Engineer, even the Mayor -- has yet to be able to confirm for me that ANY of those 9 other solid stone fences -- let alone *all* of them -- ever even bothered even filing for a fence permit and "road opening permit," as I did, let alone receive approval from the Borough to install such stone fence. So, please do not try to imply that I did not try to work with the Borough administrators PRIOR to beginning my installation. In fact, I took the "high road" (unlike most, apparently) and I have paid the price ever since for doing so in the form of what I can only describe as administrative obstruction.

Your previous letter, forwarded by the Borough's outside attorneys, clearly stated that the reason (presumably, the ONLY reason, for I'm sure that your letter would have otherwise enumerated any other reasons, had they existed, that the Borough Council considered) that the Borough Council rejected my proposal was because of a "traffic sight line" issue the Chief of Police had with what had been described to him (apparently, it now appears) in a misleading manner, as the proposed replacement fence. So, whomever misled the Chief of Police regarding the nature of this proposed stone fence also likely misled the Borough Council. The Chief of Police told my friend (who met him "on site" to show him and explain the temporary model of the proposed fence I had constructed for the Chief to review) that he had previously been under

the impression (a mistaken impression at the time he shared his assessment with the Borough Council) that the solid stone fence would be constructed to be at roughly *eye height, when standing*, which is clearly not the case from the plans (clearly showing it to be "conforming" and well below the eye height of a motorist, at only 30" in height) I submitted, at the Borough Engineer's insistence, as part of my "road opening permit" application. I could understand why the Chief of Police might have had such concerns had the proposed solid fence, regardless of building material selected, been proposed to be so high. But, that is NOT what I proposed, as the Borough Engineer knows full well. So, let me ask directly if the plans for the wall, complete with detailed measurements, submitted at the insistence of the Borough Engineer, were shared with the Chief of Police *and* the Borough Council prior to the Chief's review and advice to the Borough Council, and prior to the Borough Council's decision? If not, why not? The only reason I ask is that it seems that the only possible way that the Chief might be under such a significant mis-impression is if those plans were not shared with him.

I am also quite bothered by how you appear, in your most recent communication, to prioritize the safety of passing motorists over that of my family. Just to put a fine point on how incredible that apparent position is, we are residents and taxpayers, and have been for over 30 years, paying over 3/4 of a million dollars to support this community (and your salaries, I might add). The motorists that have driven into my yard over the years have included both non-residents of Mendham and drunk drivers. Thank God one of our dedicated school bus drivers witnessed one of these drunk drivers, who fled the scene after running into our hedges, and promptly notified the police. He was caught in Chester two hours later, still drunk, with two children in his car. Every motorist (there have been six of them over the past 30 years, including 3 in just the past 2 years) that has run off the road into our property and caused damage has been at least a "distracted driver," likely on their phone while driving, given the distance off the road they traveled onto my property and the speed/force with which they did it. None of them appeared to have observed the Stop sign at the end of Hardscrabble Road. Had they done so, they would never have had anything close to the momentum required to mow down a section of my hedge, stone fence or wooden fence with the force with which they have done so over the years. So, I must ask, "Whose "safety" does the Borough prioritize?" That of the law-abiding property owner or that of the law-breaking (it is against the law for a motorist to careen off the road and into someone else's private property, isn't it?) motorist? If the roads are insufficiently safe as to enable a reasonable (not running a Stop sign or speeding, which they also do frequently on Cherry Lane) driver to stay on the road, then might I suggest that the Borough improve the condition of its roads. This is a particularly sensitive issue for us, as we have just entered the "grandchildren stage" (our first was just born last week) of our life, and we'd like to understand how safe these children should expect to be playing in our yard. So, I really must insist on having our elected representatives -- the Mayor and Borough Council -- clarify for us -- and, for that matter, our entire community -- whose rights to safety they prioritize -- those of their law-abiding, taxpaying constituents, or those of "transient motorists" who *break* the law (driving off the road into other people's private property, causing damage, sometimes while drunk)? Based upon my very short interactions with the Police Chief, I'm pretty sure that he would prioritize the residents/property owners, thank God, but I think it's time to hear from our elected officials on this, given your recent communications to me, which, presumably, represent the priorities of the elected officials of the Borough. I think our community deserves to have this point clarified by THEM, not their representative.

In fact, one of the reasons that I am proposing to replace my wooden fence with a stone fence (with large, immovable base stones set in the ground) is **PRECISELY** to keep these transient law breakers from injuring/killing any of our family members while enjoying our private property. I have already explained this to the Borough Engineer and Mayor in the past. While the Borough Engineer didn't seem to care too much about that risk to my family, he did not go so far as to tell me that he prioritizes the right to safety of the motorists over those of my family. If this is now the case, I would like to know that. The Mayor, for her part, seemed to agree with me that no family, including mine, should have to accept such frequent dangerous motor vehicle incursions into their private property. So I am quite surprised by *your* comments. I would see your point, of course, were I to be proposing to place my wall **IN** the existing roadway (which I am not, of course), as that is a place where the transiting public *should* reasonably expect to be protected. There is, however, nothing to suggest to those motorists that they have a right to be protected -- at our expense -- on **OUR** private property. The right of way easement exists for 25' from the road's centerline -- I understand that -- but it's just an easement, not ownership, to be clear. Moreover, the Borough has only used 10' of that easement, **EVER!** The Borough has never used -- and has never maintained -- the rest of that easement, the 15' of my property closest to the road -- I own, use and maintain that property. Because the Borough does not use it in **ANY** manner, motorists rightly have *no reason to believe* that they are *entitled* to drive onto my private property, even if it exists as an unused easement. I simply don't understand the logic -- or wisdom -- of using this type of argument in what appears to be this latest attempt to frustrate my legitimate interests in protecting my family and property, and in being allowed the enjoyment of my private property, a right to which all private property holders are entitled, so long as that "enjoyment" complies (as does the fence replacement I have proposed) with the local codes.

It's also disappointing to understand that the Borough, which benefits so much from its Colonial-era history, would hold in such disregard my reasonable property improvement proposal -- completely in keeping with the Colonial era -- of the owner of the second oldest home in the town which, unfortunately, is situated only 30' from the road. To, instead suggest that this historic property sacrifice *fully half* of that property's front yard, by requiring it to install its property border fence 15' in from the road, is tone-deaf, at best, in a community that so values its rich history, such as ours. I could, perhaps, understand why the Borough *might* take such a position were the home situated very far back from the road, but that's clearly not the case here. Does the Borough now have such little regard for both private property rights *and* the

community's historical jewels (dating back to 1740, our home is apparently loved by many in the community, who would, no doubt, prefer to see it protected and enhanced by the proposed stone fence) that it would knowingly communicate as cavalierly as you have in this matter? Is anyone over there actually *thinking* before *communicating* these evolving, surprising (some might say, crazy) perspectives? Who's "in charge" over there? Are you taking personal responsibility for all of this? Does the mayor approve these communications before you send them to me? The Borough Council?

I'm copying the mayor and several Borough Council members (with whom I have been acquainted with over the past 20 years), to make sure they fully understand the perspectives being articulated on their behalf and to alert them to the facts of what I see as an bureaucratic -- and, perhaps, nefarious -- travesty of process. It may not change anything, but I want to make sure that everyone has the same information, so we don't run into the inevitable, "Oh, had we known that, we would have behaved differently, of course" type of excuse for the existence of what appears to be a bureaucratically deficient system.

By the way, I want to correct what I view as your ill-advised and poorly researched *legal guidance* (?) regarding land ownership and insurance coverage issues in your last communication -- apparently, you feel that this unused right of way area adjoining the roadway is *not*, my property *and* that my insurance carrier would *not* cover any damage (including to the motorist) caused by a motorist leaving the roadway and trespassing onto my property. I'm no lawyer, but I believe that both of those pieces of guidance are inaccurate.

First, regarding the question of *who* owns the property, I provided the Borough with an independent survey *clearly indicating* that *my* property extends to the *middle of the road*. At the time of receiving this survey, I asked the surveyor if his survey indicated that the property I owned extended to the middle of the Borough's road. He confirmed that it did. This is the very survey the Borough required that I obtain and provide them, because its administrators could not independently confirm the Borough's own ROW on these roads. So, to be clear, the Borough is currently utilizing, at its election and as is its right, 10' (from the centerline of the road) of property that I OWN under the Borough's 25' (from the centerline of the road) ROW -- which is an easement, *not* a transfer of ownership -- in order to provide a road for the public. All of this is clearly marked on the survey. To be clear, the Borough does NOT "own" even that 10' of property over which it currently exercises its ROW easement, let alone the other 15' further (onto my property) feet of its unused (and, never used to date) ROW easement. I just want to remind you of the information already clearly included in the survey I provided to the Borough as part of this process.

Separately, contrary to your "guidance," not only do I believe that my insurance company *would* cover me in the event a passing motorist was injuring after leaving the roadway, driving onto my property and impacting any structure on my property, including a stone fence 4' away from the road's edge, but other insurance companies (including USAA) already have proactively accepted the liability, on behalf of *their* insureds, for doing just that when their insureds have collided with my "structures" only 2-3' from the road's edge -- and have paid me "settlements" for the damage to my property as a result. But, since you bring it up, I'll confirm with my insurance company that they do, in fact, cover whatever damage (including to the motorist themselves) occurs as a result of a motorist driving onto any portion of my property *not* currently being used under an easement (such as the existing road). If they don't, perchance, I can assure you that they will no longer be *my* insurance company. I'm sure that the other 9 properties along Talmage Road (or in the many other areas of the Borough) where stone fences are already installed within the Borough's right of way *all* have insurance companies that will cover them, as well. But, if you really believe that all of these unpermitted stone fences within the right of way present their homeowners with the risk of being liable and uninsured for the injuries sustained by those motorists that drive off of the road and impact those stone fences, then I fail to understand why you have not *already* warned *all* of the residents of the Borough of this risk, perhaps by posting a public service warning on the Borough website. Also, while we're on the topic, motorists that careen at high speed into the trunks of large trees or into other items that might be located, even temporarily, within the ROW of private property abutting a road, can injure themselves just as severely as they would driving into a stone fence. Does the Borough have a consistent policy of enforcing the type of "public safety concern" you have now articulated across ALL such potential hazards? Does, for example, the Borough prevent any trees of species that can grow to be large from being planted with the right of way of its roads? The answer to that is clearly "no", because the Borough doesn't exercise a consistent enforcement of even *just* the many unpermitted stone fences within its ROW, let alone all of the many hazards an out-of-control motorist might encounter when driving into the private property of the residents of Mendham Borough.

Please provide answers to all of my many direct questions, as you did for much of my last email.

Thank you, Ms Bushman.

-- Brian

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>

Mon, Mar 4, 2024 at 8:24 PM

To: cglassner@mendhamnj.org, malthoff@mendhamnj.org, sandrew@mendhamnj.org, Joyce Bushman
<jbushman@mendhamnj.org>

Sorry I neglected to copy these elected Borough officials as promised, in my response to your last communication, Ms Bushman. With this email, I hereby forward them our communications, below. Unfortunately, it does not include Ms Bushman's original official letter to me, but I'll send that separately. BTW, the "fence administrator" I refer to is Code Enforcement Officer, Rob Rosendale (just looked at the website to refresh my memory), who appeared to want to be helpful back at the beginning of this, but the matter was moved to the Borough Engineer's purview even before the survey was obtained and provided to the Borough (the survey that determined that the proposed fence was in the Borough's ROW).

So, for the benefit of the mayor and the council members, I am copying you to make sure you are aware of the communications being made on your behalf by the Borough Administrator in relation to the fence replacement proposal (presented to you as a "road opening" permit request) that you unanimously rejected at your December meeting.

I still hope to find a reasonable and amicable resolution to this very unfortunate process.

Thank you.

-- Brian Cavanaugh

----- Forwarded message -----

From: **Brian Cavanaugh** <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>

Mon, Mar 4, 2024 at 8:27 PM

To: cglassner@mendhamnj.org, malthoff@mendhamnj.org, sandrew@mendhamnj.org, Joyce Bushman <jbushman@mendhamnj.org>

Please find below the original email sent by the Borough Administrator, as mentioned in my last email.

-- Brian

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Fri, Jan 5, 2024 at 3:54 PM

Subject: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]

 **Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf**
245K

Susan Semrau <ssemrau@dorseysemrau.com>

Thu, Mar 14, 2024 at 11:34 AM

To: Brian Cavanaugh <brian@cavanaughpartners.com>

Cc: Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Lauren McBride <lmcbride@mendhamnj.org>, Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Susan Sharpe <ssharp@dorseysemrau.com>

Please see the following sent on behalf of Fred Semrau, Esq.:

Mr. Cavanaugh,

As you know, this office serves as the Attorney for the Borough of Mendham and in that capacity, the administration has requested that I respond to your recent detailed correspondence pertaining to the aforementioned matter.

The administration has had an opportunity to review your correspondence and share same with the Borough Engineer and Chief of Police. In view of the fact that the position of the Engineer and the Chief of Police has not changed with the information you provided, I am therefore writing to advise you that the decision of the Borough is final.

Thank you for the information you provided,

Fred Semrau

Sent by:

'Susan Semrau

Dorsey & Semrau

Attorneys at Law

714 Main Street

Boonton, N.J. 07005

973-334-1900

www.dorseysemrau.com

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From: Brian Cavanaugh <brian@cavanaughpartners.com>

Sent: Monday, March 04, 2024 8:03 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Fred Semrau <fsemrau@dorseysemrau.com>; Joyce Bushman <jbushman@mendhamnj.org>; Lauren McBride <lmcbride@mendhamnj.org>; Paul Ferriero <paul.ferriero@ferrieroengineering.com>; Susan Sharpe <ssharpe@dorseysemrau.com>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

I am quite surprised by your most recent communication on behalf of the Borough. I had expected that, now that the Chief of Police, finally armed with accurate information, had clarified his perspective, that the Borough Council would now be provided the opportunity to review, and likely reverse, its objection to my application to replace my fence. Instead, I am

getting unexpected comments from who I can only assume is Joyce Bushman, the Borough Administrator, since that was the author of the original letter you sent me. So, with that in mind, Ms Bushman, I'll now address you directly.

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[Quoted text hidden]

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<https://link.edgepilot.com/s/8b354357/MFFSe-uDWE6avNo-9IS1fA?u=http://www.dorseysemrau.com/>

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From: Brian Cavanaugh <brian@cavanaughpartners.com>

Sent: Saturday, January 27, 2024 6:14 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>; Lauren McBride <lmcbride@mendhamnj.org>; Fred Semrau <fsemrau@dorseysemrau.com>; Joyce Bushman <jbushman@mendhamnj.org>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

Susan, I am in receipt of your email of January 5, 2024. I have had a chance to review and consider it.

My response is as follows:

1. I now understand that the issue/concern that the Borough Council has with my proposed replacement fence is a concern that it will block the mutual view of westbound traffic on Cherry Lane and southbound traffic on Talmage Road. This was not an issue/concern ever previously raised by any Mendham Borough official with whom I had discussed the matter (Rob, Paul or Christine) in the nearly 2 months in advance of the Borough Council meeting at which this permit application was first considered. As you may know, I reside in FL, so I was unable to make the meeting, a meeting I had been given the impression was a mere formality, rather than one where I might need to "defend" the proposed plan. Thank you for being the first one to explain in detail why the Borough rejected my proposal. I am happy to hear that there were no other objections and feel that this objection may be overcome appropriately. Had I known in advance of the Borough Council meeting that this issue was one being considered, I would have made an effort to present my perspective on it and to consider amending the specific layout of the proposed fence. **The traffic safety impact of the fence is not simply the obstruction to the line of sight. It is the fact that a solid structure (i.e. stone wall) is being constructed in close proximity to the edge of pavement. Paul Ferriero explained this to you last Fall. Your contention that the fence needs to be rebuilt because people "hit it" supports the idea that if it were a solid stone wall, the damage to vehicles and people in those vehicles will be significantly greater.**
2. Did the Chief of Police offer any perspective on what adjustments to the proposed fence plan would be advisable in order to view the proposed fence as NOT being a public safety hazard? **The structure needs to move out of the right of way.**
3. Did the Chief of Police consider the public safety hazard of NOT allowing this proposed fence replacement. I hope he is aware -- I specifically noted it to each of the officials with whom I did have communications -- of how

many times (6 overall, and 3 in the past 2 years) an irresponsible passing motorist has driven into our yard, knocking down our existing wood fence, existing stone fence and existing hedge in the process. Because our home pre-dates the forming of this country, it is very close to the road. That's the way they preferred it back then, before the advent of dangerous motor vehicles careening onto one's property and toward one's home. We have raised our family (including 4 children) in this home and expect to welcome future grandchildren to this property. I appreciate the Chief's concern about public safety, as I think that is an important issue. but I am wondering what consideration, when "balancing the equities" he gave the fact that our yard has been repeatedly and dangerously violated by passing motorists. I have a right to protect my family, when no effort to reduce such motorist incursions has been made over the years by the municipalities, despite my requests. **Once again, vehicles hitting the fence is a major safety problem.**

4. I have just recently had, in my absence, the opportunity to have some kind friends put in place a temporary plywood model of exactly how the proposed fence would impact the view around the corner. This model represents the face of the proposed fence facing the road. I would request that the Police Chief return to the site and reconsider his position, now that a precise model of what I have proposed is in place. These friends were able to shoot multiple videos from multiple angles at a height of "ones eyeballs, when seated in a low-lying car," and determined that they could see (above the top of this scale model) even a *small* car's (let alone the more typical large sedan or SUV) top around the corner. Was the Chief's position that the only safe view around the corner would be of the *entirety* of the car (down to its tires) on the other side of the wall or would seeing even a portion of the car be deemed to be "seeing it?" In short, I would like this to be more of a dialogue with the Chief, aimed at reaching a mutually agreeable solution, rather than a wholesale rejection of the concept of a replacement stone fence. Please advise. (By the way, now that this model is there to consider, I plan on reaching out to the Chief to discuss. It will likely be more efficient than emails back and forth. However, I have tried to discuss this matter with certain Borough Council members, in the interest of efficiency and transparency, but have not received any responses. I hope the Chief is more responsive.) **A "temporary" fence is in violation of the Borough Code and must be removed immediately.**
5. As noted above, I reside in FL for the Winter and Spring, so I would prefer to avoid "removing" any existing fence already constructed until we have both resolved the outcome of this process (perhaps some modification of the proximity of the fence to the corner, if necessary) and until I'm back to supervise such work. I note that the existing very small portion of partially installed fence is not creating any public safety hazard, since it is well over 100' away from the corner in question, where the visibility is viewed as a potential safety issue. **The fence is a safety hazard and must be removed.**
6. Since you brought up the topic of the partial installation of the fence, I will note that, apparently unlike nine other properties on Talmage Road alone, I did file a permit to replace my existing fence BEFORE I began installation. **This is incorrect, you stated that you applied for a permit after the work began.** I began installation because I got the distinct impression from the Borough "fence permit" official that the Borough had a consistent record of NOT enforcing rules regarding the installation of stone fences within the road right of way, and that it was going to take many weeks more to hope to actually receive the permit, given the fact I was informed that I would now have to go obtain (at a cost to me of thousands of dollars) a current survey of the property to help the Borough determine where any right of way may be located in relation to the proposed fence. **You cannot obtain a fence permit without a survey.** I had a construction deadline (returning home to FL for the Winter and Spring) and wanted to complete the project before leaving, since this type of aesthetically important project requires close supervision and I preferred not to leave the eyesore of my broken down (because it had been knocked down by one of those dangerous motorists) existing fence for another year. I will also note that, despite my outside counsel's (at the time -- I've since fired him for providing inconsistent advice) assurance that I had every right to replace my existing fence with a new, conforming fence (which my proposed fence is), I DID stop work after receiving a formal stop work order from the Borough. So, while it is true that I continued to install just a small section of the fence -- so that Borough officials could see how attractive, diminutive and in keeping with the pre-Revolutionary War nature of the home and property -- AFTER the INFORMAL request was received to stop work, I did promptly comply with the formal written stop work order. Facts are important.
7. I hope that the people making these decisions on behalf of the Borough are carefully considering the reasonable right of a property owner and taxpayer to further enhance the beauty of such property, especially given its unique historic nature, and to protect his family and property from the damage caused by irresponsible passing motorists.

Thank you for your consideration.

-- Brian

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Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Thu, Mar 14, 2024 at 6:31 PM

Here's the updated chain. At this point, I think I've about exhausted all "normal channel" options and it's time to prepare the public awareness strategy and consider suing, between you and me.

-- Brian

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Thu, Mar 14, 2024 at 11:34 AM

Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

Cc: Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Lauren McBride <lmcbride@mendhamnj.org>, Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Susan Sharpe <ssharpes@dorseysemrau.com>

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Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>

Fri, Mar 15, 2024 at 1:40 PM

Brian,

Good afternoon. Meredith is reviewing the local code, master plan and legal research as to owner's right of land in unused ROW.

Hope to have a better handle by Monday.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
56 Livingston Avenue | Roseland, NJ 07068

Phone 973.535.0500

Direct 973.840.2462

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rdeangelis@connellfoley.com

[website](#) | [bio](#) | [map](#) | 



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From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Thursday, March 14, 2024 6:31 PM
To: Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
Subject: Fwd: Cavanaugh Cherry Hill Road Opening Permit Letter

External email: careful w/links or attachments.

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>

Fri, Mar 15, 2024 at 4:33 PM

Thanks, Rich and Meredith. Much appreciated.

-- Brian
[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>

Wed, Mar 20, 2024 at 1:06 PM

Rich and Meredith, are you prepared to brief me yet? Thank you.

-- Brian
[Quoted text hidden]

Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>

Wed, Mar 20, 2024 at 1:08 PM

Actually drafting outline now that will follow shortly.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

Phone 973.535.0500

Direct 973.840.2462

Mobile 973.558.2148

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From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Wednesday, March 20, 2024 1:07 PM
To: Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>

Cc: Meredith Rubin <MRubin@connellfoley.com>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

External email: careful w/links or attachments.

Rich and Meredith, are you prepared to brief me yet? Thank you.

-- Brian

On Fri, Mar 15, 2024 at 1:40 PM Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com> wrote:

Brian,

Good afternoon. Meredith is reviewing the local code, master plan and legal research as to owner's right of land in unused ROW.

Hope to have a better handle by Monday.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

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[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>

Wed, Mar 20, 2024 at 1:22 PM

Thanks, Rich.

-- Brian

[Quoted text hidden]

Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Wed, Mar 20, 2024 at 4:30 PM

Brian,

Sorry. Had a few calls. See below and lets discuss.

Curiously, Semrau accuses you in his 2/23/24 email of being in violation of Boro Code and had previously directed that the “structure needs to be moved out of the [ROW]”, but he does not cite to any particular code provision in support of those assertions. I assume because there aren’t any. We have not found any code provisions governing use of unpaved portion of ROW. That said, it is the public ROW and the Boro has general police powers, although they must be exercised uniformly, by ordinance and may not be arbitrary.

Based on anecdotal evidence, we know the Boro permits construction of fences in the ROW, although not clear whether by permit or “looking the other way.”

The Boro code does permit erection of a solid or partially open fence under 2.5' high on any portion of a lot. § 215-29B(1). Interestingly, the code includes a separate provision that indicates any fence in excess of 2.5' may be built "in any front yard or any yard that abuts either a public or private street" provided 20% of structure is not solid. § 215-29B(2). So code permits solid fences in front yard. The issue is whether that includes the unused portion of the ROW.

By code setting standards for subdivisions and laying out street, the ROW is 50' from lot line to lot line, but the pavement width is 24—32'. But again, this governs new development by subdivision, but at least provides some support as to distinction between ROW and paved street.

Also, under easement law a servient owner (in this case you) may not unreasonably interfere with an easement holder's (the Borough by way of its ROW) rights. So you cannot build a fence in the street. It is "[e]qually well recognized is the corollary principle that there is, arising out of every easement, an implied right to do what is reasonably necessary for its complete enjoyment, that right to be exercised, **however, in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner [you].**" Tide-Water Pipe Co. v. Blair Holding Co., 42 N.J. 591, 604 (1964). The instrument granting or reserving a right-of-way must be read as a whole and construed to carry out the evident intent of the parties. Hyland v. Fonda, 44 N.J. Super. 180, 187 (App. Div. 1957). The servient tenement will not be burdened to a greater extent than was contemplated or intended at the time of the creation of the easement and the use of the easement must not unreasonably interfere with the use and enjoyment of the servient estate. Hyland, 44 N.J. Super. at 189. We are unaware of any cases that have applied these doctrines of easement law to public ROW, which are, essentially, easements to the public.

So, where do we go from here?

In one of your emails to Semrau you stated you did apply for a permit before commencing work. Was this the road opening permit or did you previously apply for a fence permit? If for a fence permit, do you have a copy of that submission to send me?

If not, then perhaps you submit such an application with survey and consider showing wall a little further in off of the pavement beyond the 12' to 16' from the centerline to accommodate the paved portion in recognition of the code provision cited above. It looks like road is less than 24' – can you confirm width around property?

Another option is to submit application for a fence permit to replace "in-kind" (split rail) and see how the zoning officer responds? I think a grant of permit for split rail demonstrates Boro arbitrarily denying stone wall that is permitted under the code.

In terms of pushing back hard now and asking for Semrau to provide code citations and threatening lawsuits I am concerned that the record is a little murky. And remember, the municipality get the benefit of the presumption of correctness. I'd want to show the Court you reviewed carefully and attempted to accommodate the Boro's stated concerns

While I suspect compromise is not likely, perhaps there is a path if the wall is moved back to accommodate the pavement width.

After you had a chance to review, let's set a time to discuss next steps.

Before signing off, some requests, can you ask your surveyor to send pdf copy of survey.

Also, what is lot size shown on survey (want to compare to tax records)

Do you have some address with none concrete structures along the road.

We could start peppering Boro Clerk with requests for records under Open Public Records Act (OPRA) for permits and site plan, approvals for homes with fences, walls, concrete structures in the ROW, but that can get time consuming an expensive. So give that some thought before going down that road.

Talk soon.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
56 Livingston Avenue | Roseland, NJ 07068

Phone 973.535.0500

Direct 973.840.2462

Mobile 973.558.2148

Fax 973.535.9217

rdeangelis@connellfoley.com

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[Quoted text hidden]

Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Thu, Mar 21, 2024 at 4:58 PM

Brian,

Good afternoon. Following up to confirm receipt and see if you wanted to set a time to discuss.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

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From: Richard P. DeAngelis, Jr.
Sent: Wednesday, March 20, 2024 4:31 PM
To: Brian Cavanaugh <brian@cavanaughpartners.com>
Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter

Brian,

Sorry. Had a few calls. See below and lets discuss.

Curiously, Semrau accuses you in his 2/23/24 email of being in violation of Boro Code and had previously directed that the “structure needs to be moved out of the [ROW]”, but he does not cite to any particular code provision in support of those assertions. I assume because there aren’t any. We have not found any code provisions governing use of unpaved portion of ROW. That said, it is the public ROW and the Boro has general police powers, although they must be exercised uniformly, by ordinance and may not be arbitrary.

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Talk soon.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

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From: Richard P. DeAngelis, Jr.
Sent: Wednesday, March 20, 2024 1:08 PM
To: Brian Cavanaugh <brian@cavanaughpartners.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>
Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter

Actually drafting outline now that will follow shortly.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

Phone 973.535.0500

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From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Wednesday, March 20, 2024 1:07 PM
To: Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
Cc: Meredith Rubin <MRubin@connellfoley.com>
Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

External email: careful w/links or attachments.

Rich and Meredith, are you prepared to brief me yet? Thank you.

-- Brian

On Fri, Mar 15, 2024 at 1:40 PM Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com> wrote:

Brian,

Good afternoon. Meredith is reviewing the local code, master plan and legal research as to owner's right of land in unused ROW.

Hope to have a better handle by Monday.

Richard P. DeAngelis Jr.

Partner

Connell Foley LLP
[56 Livingston Avenue | Roseland, NJ 07068](#)

Phone 973.535.0500

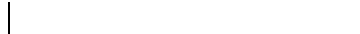
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From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Thursday, March 14, 2024 6:31 PM
To: Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
Subject: Fwd: Cavanaugh Cherry Hill Road Opening Permit Letter

External email: careful w/links or attachments.

Here's the updated chain. At this point, I think I've about exhausted all "normal channel" options and it's time to prepare the public awareness strategy and consider suing, between you and me.

-- Brian

----- Forwarded message -----

From: **Susan Semrau** <ssemrau@dorseysemrau.com>
Date: Thu, Mar 14, 2024 at 11:34AM
Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter
To: Brian Cavanaugh <brian@cavanaughpartners.com>
Cc: Fred Semrau <fsemrau@dorseysemrau.com>, Joyce Bushman <jbushman@mendhamnj.org>, Lauren McBride <lmcbride@mendhamnj.org>, Paul Ferriero <paul.ferriero@ferrieroengineering.com>, Susan Sharpe <ssharpe@dorseysemrau.com>

Please see the following sent on behalf of Fred Semrau, Esq.:

Mr. Cavanaugh,

As you know, this office serves as the Attorney for the Borough of Mendham and in that capacity, the administration has requested that I respond to your recent detailed correspondence pertaining to the aforementioned matter.

The administration has had an opportunity to review your correspondence and share same with the Borough Engineer and Chief of Police. In view of the fact that the position of the Engineer and the Chief of Police has not changed with the information you provided, I am therefore writing to advise you that the decision of the Borough is final.

Thank you for the information you provided,

Fred Semrau

Sent by:

'Susan Semrau

Dorsey & Semrau

Attorneys at Law

714 Main Street

Boonton, N.J. 07005

973-334-1900

www.dorseysemrau.com

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IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Brian Cavanaugh <brian@cavanaughpartners.com>

Sent: Monday, March 04, 2024 8:03 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Fred Semrau <fsemrau@dorseysemrau.com>; Joyce Bushman <jbushman@mendhamnj.org>; Lauren McBride <lmcbride@mendhamnj.org>; Paul Ferriero <paul.ferriero@ferrieroengineering.com>; Susan Sharpe <ssharpe@dorseysemrau.com>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

I am quite surprised by your most recent communication on behalf of the Borough. I had expected that, now that the Chief of Police, finally armed with accurate information, had clarified his perspective, that the Borough Council would now be provided the opportunity to review, and likely reverse, its objection to my application to replace my fence. Instead, I am getting unexpected comments from who I can only assume is Joyce Bushman, the Borough Administrator, since that was the author of the original letter you sent me. So, with that in mind, Ms Bushman, I'll now address you directly.

I am disappointed that the Borough is now spending our taxpayer dollars on what appears to be (from this email's cc list) two people from an outside law firm to spend time on what I would have hoped would be a very simply-resolved matter. I've been trying for nearly 6 months now to work WITH the Borough on this, from the time I first filed the initial fence permit 2 WEEKS BEFORE I began the installation of the replacement wall, which the Borough Engineer eventually required me to desist from with his formal Stop Work Order (with which I complied). After realizing nearly two weeks after filing the fence permit that that my fence permit would not be processed until after I obtained the survey (which had already been ordered, but it was scheduled weeks away still at that point) I did commence the fence replacement in the interest of time. I had every reason to believe that I would be granted the permit from the Borough fence permit fellow and it became clear that the Borough had a long history of not enforcing whatever fence permitting process it had, as evidenced by the Borough's repeated inability to produce even one approved stone fence permit for any of the 9 such stone fences within the ROW just on Talmage Road. So, in the interest of time (an issue I have already shared with you), I decided to proceed with the fence and related permit in tandem, since it was so certain that the permit would be granted. I was not even aware of the existence of -- or need to file an application for -- a "road opening permit" prior to my beginning installation of the replacement fence. The fence permit administrator to whom I timely submitted the fence permit never mentioned any "road opening permit." In fact, even the mayor had not heard of a "road opening permit" -- she said that she couldn't recall any road opening permit coming before the Borough Council in the 4+ years of her service when I spoke to her after learning about this requirement from the Borough Engineer, which was only AFTER I had begun installation of my replacement fence. Once again, going to the "selective enforcement" issue, I will remind you all that there are 9 other solid stone fences, just along Talmage Road, that are closer to the road than my proposed replacement fence (two of which were installed on the property of Borough officials -- Bryan Seavey and Dennis Santos -- at the time they were installed), and no Borough administrator -- I've asked the fence permit fellow, the Borough Engineer, even the Mayor -- has yet to be able to confirm for me that ANY of those 9 other solid stone fences -- let alone *all* of them -- ever even bothered even filing for a fence permit and "road opening permit," as I did, let alone receive approval from the Borough to install such stone fence. So, please do not try to imply that I did not try to work with the Borough administrators PRIOR to beginning my installation. In fact, I took the "high road" (unlike most, apparently) and I have paid the price ever since for doing so in the form of what I can only describe as administrative obstruction.

Your previous letter, forwarded by the Borough's outside attorneys, clearly stated that the reason (presumably, the ONLY reason, for I'm sure that your letter would have otherwise enumerated any other reasons, had they existed, that the Borough Council considered) that the Borough Council rejected my proposal was because of a "traffic sight line" issue the Chief of Police had with what had been described to him (apparently, it now appears) in a misleading manner, as the proposed replacement fence. So, whomever misled the Chief of Police regarding the nature of this proposed stone fence also likely misled the Borough Council. The Chief of Police told my friend (who met him "on site" to show him and explain the temporary model of the proposed fence I had constructed for the Chief to review) that he had previously been under the impression (a mistaken impression at the time he shared his assessment with the Borough Council) that the solid stone fence would be constructed to be at roughly *eye height, when standing*, which is clearly not the case from the plans (clearly showing it to be "conforming" and well below the eye height of a motorist, at only 30" in height) I submitted, at the Borough Engineer's insistence, as part of my "road opening permit" application. I could understand why the Chief of Police might have had such concerns had the proposed solid fence, regardless of building material selected, been proposed to be so high. But, that is NOT what I proposed, as the Borough Engineer knows full well. So, let me ask directly if the plans for the wall, complete with detailed measurements, submitted at the insistence of the Borough Engineer, were shared with the Chief of Police *and* the Borough Council prior to the Chief's review and advice to the Borough Council, and prior to the Borough Council's decision? If not, why not? The only reason I ask is that it seems that the only possible way that the Chief might be under such a significant mis-impression is if those plans were not shared with him.

I am also quite bothered by how you appear, in your most recent communication, to prioritize the safety of passing motorists over that of my family. Just to put a fine point on how incredible that apparent position is, we are residents and taxpayers, and have been for over 30 years, paying over 3/4 of a million dollars to support this community (and your salaries, I might add). The motorists that have driven into my yard over the years have included both non-residents of Mendham and drunk drivers. Thank God one of our dedicated school bus drivers witnessed one of these drunk drivers, who fled the scene after running into our hedges, and promptly notified the police. He was caught in Chester two hours later, still drunk, with two children in his car. Every motorist (there have been six of them over the past 30 years, including 3 in just the past 2 years) that has run off the road into our property and caused damage has been at least a "distracted driver," likely on their phone while driving, given the distance off the road they traveled onto my property and the speed/force with which they did it. None of them appeared to have observed the Stop sign at the end of Hardscrabble Road. Had they done so, they would never have had anything close to the momentum required to mow down a section of my hedge, stone fence or wooden fence with the force with which they have done so over the years. So, I must ask, "Whose 'safety' does the Borough prioritize?" That of the law-abiding

property owner or that of the law-breaking (it is against the law for a motorist to careen off the road and into someone else's private property, isn't it?) motorist? If the roads are insufficiently safe as to enable a reasonable (not running a Stop sign or speeding, which they also do frequently on Cherry Lane) driver to stay on the road, then might I suggest that the Borough improve the condition of its roads. This is a particularly sensitive issue for us, as we have just entered the "grandchildren stage" (our first was just born last week) of our life, and we'd like to understand how safe these children should expect to be playing in our yard. So, I really must insist on having our elected representatives -- the Mayor and Borough Council -- clarify for us -- and, for that matter, our entire community -- whose rights to safety they prioritize -- those of their law-abiding, taxpaying constituents, or those of "transient motorists" who *break* the law (driving off the road into other people's private property, causing damage, sometimes while drunk)? Based upon my very short interactions with the Police Chief, I'm pretty sure that he would prioritize the residents/property owners, thank God, but I think it's time to hear from our elected officials on this, given your recent communications to me, which, presumably, represent the priorities of the elected officials of the Borough. I think our community deserves to have this point clarified by THEM, not their representative.

In fact, one of the reasons that I am proposing to replace my wooden fence with a stone fence (with large, immovable base stones set in the ground) is **PRECISELY** to keep these transient law breakers from injuring/killing any of our family members while enjoying our private property. I have already explained this to the Borough Engineer and Mayor in the past. While the Borough Engineer didn't seem to care too much about that risk to my family, he did not go so far as to tell me that he prioritizes the right to safety of the motorists over those of my family. If this is now the case, I would like to know that. The Mayor, for her part, seemed to agree with me that no family, including mine, should have to accept such frequent dangerous motor vehicle incursions into their private property. So I am quite surprised by *your* comments. I would see your point, of course, were I to be proposing to place my wall **IN** the existing roadway (which I am not, of course), as that is a place where the transiting public *should* reasonably expect to be protected. There is, however, nothing to suggest to those motorists that they have a right to be protected -- at our expense -- on **OUR** private property. The right of way easement exists for 25' from the road's centerline -- I understand that -- but it's just an easement, not ownership, to be clear. Moreover, the Borough has only used 10' of that easement, **EVER!** The Borough has never used -- and has never maintained -- the rest of that easement, the 15' of my property closest to the road -- I own, use and maintain that property. Because the Borough does not use it in **ANY** manner, motorists rightly have *no reason to believe* that they are *entitled* to drive onto my private property, even if it exists as an unused easement. I simply don't understand the logic -- or wisdom -- of using this type of argument in what appears to be this latest attempt to frustrate my legitimate interests in protecting my family and property, and in being allowed the enjoyment of my private property, a right to which all private property holders are entitled, so long as that "enjoyment" complies (as does the fence replacement I have proposed) with the local codes.

It's also disappointing to understand that the Borough, which benefits so much from its Colonial-era history, would hold in such disregard my reasonable property improvement proposal -- completely in keeping with the Colonial era -- of the owner of the second oldest home in the town which, unfortunately, is situated only 30' from the road. To, instead suggest that this historic property sacrifice *fully half* of that property's front yard, by requiring it to install its property border fence 15' in from the road, is tone-deaf, at best, in a community that so values its rich history, such as ours. I could, perhaps, understand why the Borough *might* take such a position were the home situated very far back from the road, but that's clearly not the case here. Does the Borough now have such little regard for both private property rights *and* the community's historical jewels (dating back to 1740, our home is apparently loved by many in the community, who would, no doubt, prefer to see it protected and enhanced by the proposed stone fence) that it would knowingly communicate as cavalierly as you have in this matter? Is anyone over there actually *thinking* before *communicating* these evolving, surprising (some might say, crazy) perspectives? Who's "in charge" over there? Are you taking personal responsibility for all of this? Does the mayor approve these communications before you send them to me? The Borough Council?

I'm copying the mayor and several Borough Council members (with whom I have been acquainted with over the past 20 years), to make sure they fully understand the perspectives being articulated on their behalf and to alert them to the facts of what I see as an bureaucratic -- and, perhaps, nefarious -- travesty of process. It may not change anything, but I want to make sure that everyone has the same information, so we don't run into the inevitable, "Oh, had we known that, we would have behaved differently, of course" type of excuse for the existence of what appears to be a bureaucratically deficient system.

By the way, I want to correct what I view as your ill-advised and poorly researched *legal guidance* (?) regarding land ownership and insurance coverage issues in your last communication -- apparently, you feel that this unused right of way area adjoining the roadway is *not*, my property *and* that my insurance carrier would *not* cover any damage

(including to the motorist) caused by a motorist leaving the roadway and trespassing onto my property. I'm no lawyer, but I believe that both of those pieces of guidance are inaccurate.

First, regarding the question of *who* owns the property, I provided the Borough with an independent survey *clearly indicating* that *my* property extends to the *middle of the road*. At the time of receiving this survey, I asked the surveyor if his survey indicated that the property I owned extended to the middle of the Borough's road. He confirmed that it did. This is the very survey the Borough required that I obtain and provide them, because its administrators could not independently confirm the Borough's own ROW on these roads. So, to be clear, the Borough is currently utilizing, at its election and as is its right, 10' (from the centerline of the road) of property that I OWN under the Borough's 25' (from the centerline of the road) ROW -- which is an easement, *not* a transfer of ownership -- in order to provide a road for the public. All of this is clearly marked on the survey. To be clear, the Borough does NOT "own" even that 10' of property over which it currently exercises its ROW easement, let alone the other 15" further (onto my property) feet of its unused (and, never used to date) ROW easement. I just want to remind you of the information already clearly included in the survey I provided to the Borough as part of this process.

Separately, contrary to your "guidance," not only do I believe that my insurance company *would* cover me in the event a passing motorist was injuring after leaving the roadway, driving onto my property and impacting any structure on my property, including a stone fence 4' away from the road's edge, but other insurance companies (including USAA) already have proactively accepted the liability, on behalf of *their* insureds, for doing just that when their insureds have collided with my "structures" only 2-3' from the road's edge -- and have paid me "settlements" for the damage to my property as a result. But, since you bring it up, I'll confirm with my insurance company that they do, in fact, cover whatever damage (including to the motorist themselves) occurs as a result of a motorist driving onto any portion of my property *not* currently being used under an easement (such as the existing road). If they don't, perchance, I can assure you that they will no longer be *my* insurance company. I'm sure that the other 9 properties along Talmage Road (or in the many other areas of the Borough) where stone fences are already installed within the Borough's right of way *all* have insurance companies that will cover them, as well. But, if you really believe that all of these unpermitted stone fences within the right of way present their homeowners with the risk of being liable and uninsured for the injuries sustained by those motorists that drive off of the road and impact those stone fences, then I fail to understand why you have not *already* warned *all* of the residents of the Borough of this risk, perhaps by posting a public service warning on the Borough website. Also, while we're on the topic, motorists that careen at high speed into the trunks of large trees or into other items that might be located, even temporarily, within the ROW of private property abutting a road, can injure themselves just as severely as they would driving into a stone fence. Does the Borough have a consistent policy of enforcing the type of "public safety concern" you have now articulated across ALL such potential hazards? Does, for example, the Borough prevent any trees of species that can grow to be large from being planted with the right of way of its roads? The answer to that is clearly "no", because the Borough doesn't exercise a consistent enforcement of even *just* the many unpermitted stone fences within its ROW, let alone all of the many hazards an out-of-control motorist might encounter when driving into the private property of the residents of Mendham Borough.

Please provide answers to all of my many direct questions, as you did for much of my last email.

Thank you, Ms Bushman.

-- Brian

On Fri, Feb 23, 2024 at 10:19AM Susan Semrau <ssemrau@dorseysemrau.com> wrote:

Dear Mr. Cavanaugh- below please find correspondence from Borough Attorney, Fred Semrau and the Borough of Mendham:

Dear Mr. Cavanaugh,

I am writing in response to your communications regarding a road opening permit of Cherry Lane. In response to your correspondence I wanted to provide you with the following (I have placed the response of the Borough Administration and Professionals in red).

In conclusion, Mr. Cavanaugh, there are no new facts or information that would change the position of the Borough. The fence needs to be removed and you are in violation of the Borough Code. More importantly, the existing location presents a serious health and safety concern.

You are on notice of this condition and immediate steps need to be taken to remove the fence. In the meantime you will be responsible for any injuries that occur at the site and because this fence is not on your property, it is unlikely that your insurance carrier will defend you in such action especially after the Borough has repeatedly advised you that the fence is unauthorized construction in the Borough right of way.

Again, I attempted to respond to many of your comments below in red.

Very truly yours,

Fred Semrau

Sent by:

Susan Semrau

Dorsey & Semrau

Attorneys at Law

[714 Main Street](#)

[Boonton, N.J. 07005](#)

973-334-1900

<https://link.edgepilot.com/s/8b354357/MFFSe-uDWE6avNo-9IS1fA?u=http://www.dorseysemrau.com/>

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From: Brian Cavanaugh <brian@cavanaughpartners.com>

Sent: Saturday, January 27, 2024 6:14 PM

To: Susan Semrau <ssemrau@dorseysemrau.com>

Cc: Paul Ferriero <paul.ferriero@ferrieroengineering.com>; Lauren McBride <lmcbride@mendhamnj.org>; Fred Semrau <fsemrau@dorseysemrau.com>; Joyce Bushman <jbushman@mendhamnj.org>

Subject: Re: Cavanaugh Cherry Hill Road Opening Permit Letter

Susan, I am in receipt of your email of January 5, 2024. I have had a chance to review and consider it.

My response is as follows:

1. I now understand that the issue/concern that the Borough Council has with my proposed replacement fence is a concern that it will block the mutual view of westbound traffic on Cherry Lane and southbound traffic on Talmage Road. This was not an issue/concern ever previously raised by any Mendham Borough official with whom I had discussed the matter (Rob, Paul or Christine) in the nearly 2 months in advance of the Borough Council meeting at which this permit application was first considered. As you may know, I reside in FL, so I was unable to make the meeting, a meeting I had been given the impression was a mere formality, rather than one where I might need to "defend" the proposed plan. Thank you for being the first one to explain in detail why the Borough rejected my proposal. I am happy to hear that there were no other objections and feel that this objection may be overcome appropriately. Had I known in advance of the Borough Council meeting that this issue was one being considered, I would have made an effort to present my perspective on it and to consider amending the specific layout of the proposed fence. **The traffic safety impact of the fence is not simply the obstruction to the line of sight. It is the fact that a solid structure (i.e. stone wall) is being constructed in close proximity to the edge of pavement. Paul Ferriero explained this to you last Fall. Your contention that the fence needs to be rebuilt because people "hit it" is supports the idea that if it were a solid stone wall, the damage to vehicles and people in those vehicles will be significantly greater.**
2. Did the Chief of Police offer any perspective on what adjustments to the proposed fence plan would be advisable in order to view the proposed fence as NOT being a public safety hazard? **The structure needs to move out of the right of way.**
3. Did the Chief of Police consider the public safety hazard of NOT allowing this proposed fence replacement. I hope he is aware -- I specifically noted it to each of the officials with whom I did have communications -- of how many times (6 overall, and 3 in the past 2 years) an irresponsible passing motorist has driven into our yard, knocking down our existing wood fence, existing stone fence and existing hedge in the process. Because our home pre-dates the forming of this country, it is very close to the road. That's the way they preferred it back then, before the advent of dangerous motor vehicles careening onto one's property and toward one's home. We have raised our family (including 4 children) in this home and expect to welcome future grandchildren to this property. I appreciate the Chief's concern about public safety, as I think that is an important issue. but I am wondering what consideration, when "balancing the equities" he gave the fact that our yard has been repeatedly and dangerously violated by passing motorists. I have a right to protect my family, when no effort to reduce such motorist incursions has been made over the years by the municipalities, despite my requests. **Once again, vehicles hitting the fence is a major safety problem.**
4. I have just recently had, in my absence, the opportunity to have some kind friends put in place a temporary plywood model of exactly how the proposed fence would impact the view around the corner. This model represents the face of the proposed fence facing the road. I would request that the Police Chief return to the site and reconsider his position, now that a precise model of what I have proposed is in place. These friends were able to shoot multiple videos from multiple angles at a height of "one's eyeballs, when seated in a low-lying car," and determined that they could see (above the top of this scale model) even a *small* car's (let alone the more typical large sedan or SUV) top around the corner. Was the Chief's position that the only safe view around the corner would be of the *entirety* of the car (down to its tires) on the other side of the wall or would seeing even a portion of the car be deemed to be "seeing it?" In short, I would like this to be more of a dialogue with the Chief, aimed at reaching a mutually agreeable solution, rather than a wholesale rejection of the concept of a replacement stone fence. Please advise. (By the way, now that this model is there to consider, I plan on reaching out to the Chief to discuss. It will likely be more efficient than emails back and forth. However, I have tried to discuss this matter with certain Borough Council members, in the interest of efficiency and transparency, but have not received any responses. I hope the Chief is more responsive.) **A "temporary" fence is in violation of the Borough Code and must be removed immediately.**
5. As noted above, I reside in FL for the Winter and Spring, so I would prefer to avoid "removing" any existing fence already constructed until we have both resolved the outcome of this process (perhaps some modification of the proximity of the fence to the corner, if necessary) and until I'm back to supervise such work. I note that the existing very small portion of partially installed fence is not creating any public safety hazard, since it is well over 100' away from the corner in question, where the visibility is viewed as a potential safety issue. **The fence is a safety hazard and must be removed.**
6. Since you brought up the topic of the partial installation of the fence, I will note that, apparently unlike nine other properties on Talmage Road alone, I did file a permit to replace my existing fence BEFORE I began

installation. **This is incorrect, you stated that you applied for a permit after the work began.** I began installation because I got the distinct impression from the Borough "fence permit" official that the Borough had a consistent record of NOT enforcing rules regarding the installation of stone fences within the road right of way, and that it was going to take many weeks more to hope to actually receive the permit, given the fact I was informed that I would now have to go obtain (at a cost to me of thousands of dollars) a current survey of the property to help the Borough determine where any right of way may be located in relation to the proposed fence. **You cannot obtain a fence permit without a survey.** I had a construction deadline (returning home to FL for the Winter and Spring) and wanted to complete the project before leaving, since this type of aesthetically important project requires close supervision and I preferred not to leave the eyesore of my broken down (because it had been knocked down by one of those dangerous motorists) existing fence for another year. I will also note that, despite my outside counsel's (at the time -- I've since fired him for providing inconsistent advice) assurance that I had every right to replace my existing fence with a new, conforming fence (which my proposed fence is), I DID stop work after receiving a formal stop work order from the Borough. So, while it is true that I continued to install just a small section of the fence -- so that Borough officials could see how attractive, diminutive and in keeping with the pre-Revolutionary War nature of the home and property -- AFTER the INFORMAL request was received to stop work, I did promptly comply with the formal written stop work order. Facts are important.

7. I hope that the people making these decisions on behalf of the Borough are carefully considering the reasonable right of a property owner and taxpayer to further enhance the beauty of such property, especially given its unique historic nature, and to protect his family and property from the damage caused by irresponsible passing motorists.

Thank you for your consideration.

-- Brian

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Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Fri, Mar 22, 2024 at 12:48 AM

Would Friday afternoon work, Rich?

— Brian
[Quoted text hidden]

Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Fri, Mar 22, 2024 at 6:36 AM

Sure. What time!

Get [Outlook for iOS](#)

From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Friday, March 22, 2024 12:48:55 AM

To: Richard P. DeAngelis, Jr. <RDeangelis@connellfoley.com>

[Quoted text hidden]

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: "Richard P. DeAngelis, Jr." <RDeangelis@connellfoley.com>

Fri, Mar 22, 2024 at 4:29 PM

Just tried you. Sorry, been jammed today. Available the rest of the day or tomorrow am.

Look forward to speaking, Rich.

-- Brian

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Sun, Jun 2, 2024 at 6:05 PM

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From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Fri, Jan 5, 2024 at 3:54 PM

Subject: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]



Cavanaugh. Cherry Hill Road Opening Permit Letter.pdf
245K

Brian Cavanaugh <brian@cavanaughpartners.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Sun, Jun 2, 2024 at 6:07 PM

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From: **Brian Cavanaugh** <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]

Brian Cavanaugh <brian@cavanaughpartners.com>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Sun, Jun 2, 2024 at 6:08 PM

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From: **Susan Semrau** <ssemrau@dorseysemrau.com>

Date: Fri, Feb 23, 2024 at 10:19AM

Subject: RE: Cavanaugh Cherry Hill Road Opening Permit Letter

To: Brian Cavanaugh <brian@cavanaughpartners.com>

[Quoted text hidden]

[Quoted text hidden]