



Brian Cavanaugh &lt;brian@cavanaughpartners.com&gt;

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**Cavanaugh Cherry Hill Road Opening Permit Letter**

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

Fri, Feb 23, 2024 at 10:19 AM

To: Brian Cavanaugh &lt;brian@cavanaughpartners.com&gt;

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

**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

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**From:** Brian Cavanaugh <[brian@cavanaughpartners.com](mailto:brian@cavanaughpartners.com)>

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

**To:** Susan Semrau <[ssemrau@dorseysemrau.com](mailto:ssemrau@dorseysemrau.com)>

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