



Brian Cavanaugh <brian@cavanaughpartners.com>

Questions Regarding my Proposed Stone Fence

4 messages

Brian Cavanaugh <brian@cavanaughpartners.com>

Sat, Sep 28, 2024 at 10:19 AM

To: cglassner@mendhamnj.org

Mayor, I'm writing to better understand the process the Borough employed to review and unanimously reject my application to replace my fence last year. I have resubmitted my application, which has been rejected again. Again, I am wondering why it appears, for numerous reasons, that my application has been singled out for this unusually dismissive treatment. Those reasons include:

1. My proposed replacement fence, a solid fieldstone fence, conforms in every manner with all local ordinances
2. My proposed fence is both further back from the road and lower in height than my existing wood fence, which has been in place for over 30 years
3. Many other stone fences are located at homes along the same Talmage Road, one of the two roads that intersect at my property, where those other fences are closer to the road (thus, also in the road's right of way) than my proposed fence. Not one of those stone fences filed for, or had approved, a permit to install such a stone fence and none of them appear to have faced any apparent enforcement actions from the Borough over the past 10-20 years. Moreover, two of these were installed by property owners who were, at that time, Borough officials.
4. Early on, when invited to provide any *practical* reason for denying my application, the Borough (represented by both you and Paul Ferrero, the Borough Engineer who, amongst Borough officials, first objected to my proposed fence replacement) has been unable to provide a reasonable reason. In fact, you originally *told me* that you also considered it to be reasonable. (Eventually, only a month after the Borough Council rejected it, the first definitive reason provided by the Borough was provided not by any of you I had spoken with about the issue, but by the Borough's outside counsel. As you are likely aware, the reason they gave has changed from a "visibility concern expressed by the Police Chief" to a concern expressed by the Borough Engineer, a part-time consultant to the Borough, that a passing motorist might drive onto my property and impact my stone fence, a patently ridiculous position to take, especially given the lack of any enforcement by that very same individual over the past 20 years for any of the other stone fences along Talmage I have noted.) The Borough Engineer, when specifically asked the following questions about a possible practice need for the additional right of way not currently in use (my property, I might add) to remain clear of any proposed stone fence, answered my questions as follows:
 1. Q: Would the Borough ever need the additional space to widen either Cherry Lane or Talmage Road in the area of my property? A: No, the Borough would face a hue and cry from residents if it ever proposed such a move, so we do not envision needing the right of way for that purpose.
 2. Q: Would the Borough ever seek to extend the Talmage Road sidewalk out as far as my property from the center of town? A: No, the Borough would never do that.
 3. Would the Borough ever need more than the 4' of additional right of way that I already plan to leave as grass for burying utilities underground along the road. No, the Borough has no such plans and, yes, 4' would likely be a sufficient amount of extra space even if it did.
 4. Again, the only reasons the Borough, and only through its outside counsel, has provided were, first, that its installation would present a visibility issue -- but that was easily debunked -- by the Police Chief -- once he actually understood that the fence would be only 30" high -- and second, that it represents a hazard to passing motorists that might drive onto my property and collide with it (this *does* happen, and, as I shared with the Borough from the beginning, preventing such motorists from trespassing even further onto my property in such a dangerous manner is one of the reasons I have proposed installing this more robust stone fence. Those motorists just knock my wooden fence down and continue plowing into my front yard, right up close to my house, creating a potentially grave hazard to my family's safety.

The Borough has been remarkably opaque about the review process for my application. I have been forced to engage legal counsel and submit OPRA requests in order to get simple questions answered by the Borough that its officials have otherwise been unwilling to answer without the formality of such OPRA requests. For such a small community, that lack of transparency and cooperation is disappointing.

As I discover, via these OPRA requests, more "pieces of the puzzle" regarding the process the Borough employed, I find myself with even more questions, so let me review the history of this process, at least the portion of the history with which I am familiar.

When I first called you last October, I asked for your "high level" assistance in streamlining what appeared to be a process quickly becoming excruciatingly and unnecessarily bureaucratic, wasting both my money and, potentially, that of the taxpayers of Mendham Borough. I explained the facts: that I was trying to replace my 36" high wooden fence along the Talmage Road and Cherry Lane roads (currently 3' back from the roads) with a 30" high solid fieldstone fence, set 4' back from those roads. I noted that, despite the fact that my proposed fence completely conformed to the local ordinances, that my fence replacement permit application had been inexplicably rejected by the Borough Engineer, Paul Ferrero, a part-time consultant to the Borough (who, I understand, is likely paid by the hour, so his creation of an "issue" that he then needs to "work on" may pose a conflict of interest, his indirectly bilking Borough taxpayers he is supposed to be serving). I noted that I was then being told by the Borough Engineer that I now needed to apply for a "road opening" permit, which his office would review, and that this type of permit would need approval by the Borough Council at one of their monthly meetings. The reason given by him for my needing to submit a "road opening" permit for approval by the Borough Council (a time consuming process, given they only meet occasionally) was that the replacement fence (like my existing fence, I might note, and like all of those other "unpermitted" stone fences on Talmage noted above) was within the Borough's roadway right of way. At the time of my first conversation with you about this issue, you told me that you were surprised that such a "road opening" permit was even necessary -- specifically, you noted that you had "never even seen an application for a 'road opening permit' come before the Borough Council" in any of their monthly meetings during your years as Mayor. I appreciated your offer, made on that call, to investigate the matter. To support you in your investigation, I specifically noted that there were many such stone fences in existence that were closer to the same road, Talmage Road, than my proposed stone fence, and that no one in the Borough administration could tell me whether or not those property owners had filed for, or received, permits to install such fences "within the Borough's Talmage Road right of way" (I had not yet filed and received responses to the OPRA requests regarding the existence of any permits filed for these other stone fences). I wanted you to be as aware of all of the relevant facts as possible as you began your inquiry.

You then called me back a week later with the results of your "investigation." Your tone was very different. You seemed *resigned* to what you described to me as the "bureaucratic realities" of our local government. You indicated that I *did*, after all, need to go through this bureaucratic process, even though no one in the Borough, including you, could explain to me what practical purpose this additional bureaucratic process served. You noted that you continued to agree with me that my project seemed reasonable and that you couldn't imagine any reason why it wouldn't be approved, but that I just needed to go through this perfunctory process, even though you knew that it would practically serve to delay my project for 7-8 months. Disappointed by the delay imposed by this needless bureaucracy, but at least confident that it would ultimately be approved, I proceeded as suggested and invested the time and money the Borough required of me to obtain the required (by the Borough Engineer to even accept my application for review and consideration) property survey and create the required detailed drawings of the proposed fence. I submitted them all to the Borough Engineer's office in October last year. Then, I headed back to my residence in Florida and waited patiently. I heard nothing back.

While back in Mendham in the second half of December for the holidays, I decided to call the Borough to find out how my application process was going. To my surprise, I was informed that my permit application had been unanimously rejected by the Borough Council. I was disappointed that no one in the Borough had even bothered to notify me of such a decision, especially given the fact it was a very different outcome than what I had been led to believe would occur. I was also very surprised by this outcome. I immediately called you to ask if you could shed any light on why my application had been rejected, rather than approved (as I had understood you expected it to be when we had spoken in October). You assured me that you had not *personally* voted against it (because, you indicated, that your tie-breaking vote was not needed, given the unanimous vote against it), giving me the impression that you still supported my proposal, and you indicated, when I asked if you knew why it had been rejected, that you believed that it was somehow due to some sort of concern about my planned stone fence representing a public safety hazard. I can't recall if you even noted that it was the Chief of Police (who I had no awareness was even involved in this process at the time) who expressed such an opinion, but I recall getting the impression that you were not as well informed as I might have expected the Mayor to be about the details of why my application had been rejected. In fact, I got the impression at that time that you were seeking to "wash your hands" of the matter entirely.

After failing to get a specific answer for the rejection from you, I tried emailing two of the Borough Council members (these were the individuals that actually voted against my application, so they would, presumably, understand specifically why they did so) with whom I have been acquainted for decades to see if they could explain why they voted against this application. Neither responded. I tried emailing them again about a week and a half later. Again, no responses. These emails were sent to their official Borough email addresses, so I was surprised by the lack of any responses.

I then received a formal letter from the Borough's outside counsel in mid-January, informing me that my application had been unanimously rejected, ostensibly due to the Police Chief determining that my solid stone wall was a possible public safety hazard because it "might block the visibility of oncoming traffic" at the intersection of Talmage Road and Cherry Lane. While I was disappointed that our elected representatives were now spending additional taxpayer dollars on outside counsel for a matter which seemed so non-controversial, I was gratified that the Borough, even if through its outside counsel, had finally seen fit to provide me with a definitive and specific answer as to why my application was rejected. I was, needless to say, surprised that a 30" high barrier would be deemed to obstruct the view of cars on the other side of the fence, so I decided to investigate further. I informed the Borough's outside counsel that I intended to

discuss with the Police Chief both his assessment and what modifications, if any, he would deem necessary to address what I was being told were his "visibility concerns" about the proposed solid fence.

I proceeded to have constructed a temporary solid plywood fence at the exact height and distance from the road, at the corner of Cherry Lane and Talmage Road, of my proposed solid fieldstone fence. It remains there today. Because I was in Florida at the time, another Borough resident, an engineer by training, assisted me in taking photos and videos demonstrating that this solid fence would *not* interfere with sufficient automobile visibility at the intersection, and I provided that visual evidence, via email, to the Chief, as part of my mission to find out what modifications to my proposed fence the Chief might deem necessary. I found the Chief to be far more responsive than other Borough officials, which I appreciated, so I also invited him to come over to inspect the mocked up fence, in person, and my friend met him for that in-person inspection. When the Chief saw the mock fence, he expressed surprise to my friend regarding its low height. He indicated that he had been under the impression, when asked to provide his opinion for the Council, that the solid fence was to be "eye height" (standing up), which is about 5-6' of height, not the 30" that I had proposed in my drawings and applications. He did not specify which Borough official had provided him with that mistaken impression. He indicated to my friend that he saw "no problems" with a solid stone fence with the dimensions (30" of height, 4' back from the road). Again, these dimensions were formally provided to the Borough Engineer as part of my application (again, the Borough Engineer had informed me back in October that such detailed drawings, along with a survey, were *required* in order to have my permit application even considered, so I complied, by hand delivering these supplemental materials last October to his administrative assistant in her Phoenix House office), but apparently never provided to the Chief when asked to opine for the Borough Council. I could not understand how the Chief of Police could have developed such a misunderstanding of the proposed fence height, but I was grateful that he had come out to personally inspect the mock fence, and "see for himself." I was also happy to hear that he no longer had any objections to the installation of my proposed solid stone fence.

I followed up with the Chief of Police a couple of days later to ask him to please provide me with *an email* containing his new perspective, so that I could provide it to the Borough Council and have them reconsider their decision. However, unlike my prior interactions with him, this time I received no prompt response from him. I emailed him again a couple of days later. Still no response. Strange, because he had been so responsive before his inspection. I called him the next day and was told that he was unavailable. Again, strange, relative to his earlier responsiveness. I did, however, receive an email response from him the next day, indicating, somewhat cryptically, that he would *not* be able to help me with my request for his written confirmation of his updated assessment (already delivered verbally) and that I "needed to just go through the process," whatever that meant. To this day, even after retiring, he prefers to "not get involved." It certainly appears that someone "got to him." As the Mayor, that type of behavior, if it does exist, in our local Borough government should be of great concern to you.

Weeks later, I received another letter from the Borough's outside counsel, noting that my application remained "rejected," but now he had a new reason for such rejection. The *new* reason for the "public safety hazard" was apparently that the Borough (it now attributed the concern to Paul Ferreiro, the Borough Engineer, instead of the Police Chief) was concerned that a passing motorist might run onto my property and into the proposed solid stone fence. Of course, as you may recall from our first conversation on this matter last October, part of my motivation for installing a solid stone fence is to protect my family and property from just such irresponsible, law-breaking motorists, who have driven out of control onto my property a half dozen times in the past 30 years, including 3 times in the past 2-3 years. I was shocked to have the Borough communicate to me that it, effectively, prioritized the safety of passing motorists, who are breaking the law by driving off of the road, onto my property, and damaging my property (existing stone and wooden fences, hedges), let alone typically being recklessly drunk or distracted while doing so), *over* the personal safety and property rights of Borough homeowners and taxpayers. You may recall that I copied you and the two Borough Council members on my response to your outside counsel at that time, expressing my surprise and concern about the implied priorities of our local government contained in this new formal reason for the application denial. None of you bothered to respond to me.

I have since filed numerous OPRA requests, since I can't seem to get straight answers from Borough officials regarding this matter in the normal course. The Borough has been somewhat responsive to those requests. From those responses, I have learned that not one of those other stone fences along Talmage Road filed -- let alone had approved -- a permit to install such a fence. Why your Borough administrative staff couldn't provide this requested information to me -- which I requested -- without my having to pay a lawyer to file an OPRA, baffles me. This fact, of course, begs the question of whether or not my project is being singled out for "selective enforcement." If so, why? The response to a separate OPRA request, seeking all detailed communications related to the Borough Council's consideration of my application was, effectively, "nothing but air." There appears to have been absolutely NO discussion of the proposed fence, its drawings and survey, etc. Also, it appears that no questions were asked of the Police Chief (who appears not to have testified) about how he drew his conclusion, who asked him to opine on this matter, etc. It's strange for a, presumably, deliberative body of government to ask NO questions. Not a single one. Is this the way this Borough Council typically operates? Or, were there other private communications between Borough officials on this matter in violation of the State of New Jersey's "sunshine laws?" Is it really the case that our Borough Council members typically ask *no* questions when matters come before them for their approval? Why did *you* ask *no* questions about the reason for the application rejection, after previously giving me the impression that this process was "just a formality?" Did you simply not care?

Most interesting of these OPRA request responses, however, was the response to our request to produce all correspondence involving the Police Chief regarding this matter. The ONLY document produced in response to this request was an email exchange between the Police Chief and YOU (to my great surprise, as I had always been under the impression that the Borough Engineer was the nefarious force behind all of this bureaucratic obstruction), our Mayor, where he provides his initial assessment, at what is apparently YOUR request. It reads:

"Mayor --

As requested, I did drive by and review the stone/rock wall being build (sic) at 610 Cherry. I do agree that there are potential safety concerns, specifically the sight distance from Cherry Lane in the Twp., turning right onto Talmage Road and on Talmage turning left onto Cherry. The current wood fence now removed abled (enabled?) motorist (sic) to see through the fence and see oncoming traffic to make safe turns. The solid stone/rock wall would eliminate that visual. If the wall were permitted, I feel that a height restriction should need to be implemented.

Respectfully Submitted,

John Camoia"

Your email reply to this November 30, 2023 email from Chief Camoia is:

"Thank you Chief, we are grateful to have your professional assessment."

So, I find much to unpack here, Mayor.

First, I now wonder, given your now apparent *first-person involvement* with the Police Chief in this matter, why you chose not to proactively reach out and inform me that this "road opening" permit application may no longer be just a "bureaucratic requirement", but may actually be viewed as problematic by the Borough. That would have been a nice courtesy, and it would have permitted me some time to try to understand the objection and then respond in a timely manner, before the December Borough Council meeting.

Second, I now wonder why you were not able to more precisely answer my question in our December conversation (weeks after this email exchange with the Chief) about why the permit application had been rejected. You appeared to only have some vague recollection that it was deemed to be some sort of "public safety hazard," but you assured me that *you yourself* had not voted against it, giving me the impression that you still supported my project. In light of this email exchange with the Chief, it now appears that you attempted to deceive me on that call.

Third, there are several nuances and caveats in the Chief's communication to you that I suspect were never brought to the attention of the Borough Council. There is certainly no *public record* (in the Borough Council meeting minutes) of any testimony or report being submitted by the Chief. I only discovered this email communication because my lawyers filed an OPRA request. The Chief notes in his email to you that he was "requested" to drive by and offer an opinion. Who made this request? One would presume that the request was made by the person, you, to whom he is responding in his email. Is that the case? Was the Borough Council ever informed of *why* such a request was made of the Chief in the first place? He goes on to note that he "agrees" (which begs the question, "With whom?") that there "are *potential* safety concerns..." Clearly, someone (you?) had planted that perspective of concern in his mind. Why was such a perspective shared with him in the first place? Are you not seeking an *unbiased* opinion from him? What reasonable concern existed? Was the fact that he expressed only "potential" concerns ever brought to the attention of, or discussed by, the Council, or was the "potential" nature of those concerns not revealed to the Borough Council? Again, there is no public record and our OPRA request regarding communications with the Borough Council on this matter have produced NO disclosure, which suggests that no such communications ever occurred *in a public forum*, as required by law. In fact, was this email from the Chief even provided to the Council in their deliberations, or was it "paraphrased" by someone? If the latter, by whom? Again, with whom was he "agreeing?" That person is likely the same person that also failed to provide him with the detailed drawings that accompanied my application, or even the applications themselves, all of which indicated that the proposed fence height was only 30", rather than the "eye height" that, the Chief indicated, had been suggested to him, likely also by the person with whom he was "agreeing." Finally, he ends his email to you with, "If the wall was permitted, I feel a height restriction should be implemented." Was this clear *condition of his acceptance* of the proposed solid fence as NOT being a public safety hazard ever mentioned to the Borough Council or was the fact that this stone fence was conditionally acceptable to him not revealed to the Council? If it was revealed or discussed, we couldn't find it in the Council meeting minutes provided in the response to our OPRA request..

So, what do you suggest I make of your detailed involvement in this matter? What possible reason might you have had for going from communicating to me that "your proposal sounds very reasonable" and "I've never even seen a 'road opening' permit come before the Council" to, only weeks later, having this correspondence with the Police Chief, placing you knee deep in the behind-the-scenes machinations that served to undermine my very reasonable request to replace my fence.

Why did you first even consider the need to have the police chief get involved in this matter? Was there something about a 30" high solid fieldstone fence that you found offensive or dangerous in a way that you don't find objectionable about all of the other stone fences along Talmage Road? Why did you allow the Police Chief to be so misled as to the height of the proposed fence? Why did you not respond to the Chief's condition noted at the end of his email by asking the obvious question -- at what height *would* you find this acceptable?" Is it because you didn't want that type of response "on the record," because you understood that the proposed height would clearly be acceptable to him, were he to know this information? Were you, in other words, intentionally seeking a specific response from the Chief, so that you could frame the issue for Council members before they voted on this matter? If so, why?

This looks very bad, Mayor. I would have expected more from our Mayor. I would have expected more from someone I considered a neighbor and friendly acquaintance for many years. It does not appear to paint the picture of a local caring, responsive government, which is what most of us seek to have to represent our collective interests. Nonetheless, I want to provide this opportunity to you to help me understand the facts, as you see them.

One year after starting this process, I have yet to hear a single reasonable reason for not having this proposed fieldstone fence in place, protecting the second oldest home in Mendham and the family that deserves to safely enjoy this home. Please feel free to provide such a *reasonable* reason -- even just one -- to me. But, if you reiterate that the Borough's position is that it prioritizes the safety and welfare of passing, law-breaking motorists over that of its tax paying residents, then I would suggest that you be prepared to live with that perspective hanging around your neck for a very long time.

I deserve a response from our Mayor. Based upon past experience, I expect that I will get it, instead, from the Borough's outside counsel. That would represent just one more needless waste of our taxpayer dollars on this matter, over which you now appear to have presided.

Disappointedly yours,

Brian Cavanaugh
610 Cherry Lane

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

Sat, Sep 28, 2024 at 10:21 AM

FYI, I thought I might have a shot at speaking to the retired police chief, so I waited a week to send this, but he still wants to avoid "getting involved." Disappointing public servants. :>(

-- Brian
[Quoted text hidden]

Christine Glassner <cglassner@mendhamnj.org>
To: Brian Cavanaugh <brian@cavanaughpartners.com>

Thu, Oct 10, 2024 at 1:08 PM

Dear Mr. Cavanaugh, such a lengthy letter deserves a thorough digesting. I am writing to let you know that I will reply to your letter when I have had a chance to thoroughly review it.

Best regards,

Christine Serrano Glassner

Mayor

From: Brian Cavanaugh <brian@cavanaughpartners.com>
Sent: Saturday, September 28, 2024 10:20 AM
To: Christine Glassner <cglassner@mendhamnj.org>
Subject: Questions Regarding my Proposed Stone Fence

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If unsure, do not reply to this email and call the sender directly.

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Brian Cavanaugh <brian@cavanaughpartners.com>
To: Christine Glassner <cglassner@mendhamnj.org>

Fri, Oct 11, 2024 at 6:07 PM

Thank you, Mayor.

I am just trying to understand how this whole process unfolded.

Thank you.

-- Brian

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