

**Village of Cold Spring  
Zoning Board of Appeals  
Meeting Minutes – October 5, 2023**

The Village of Cold Spring Zoning Board of Appeals held a Meeting on Thursday, October 5, 2023. Members present at Village Hall: Chair Eric Wirth, Marianne Remy, John Martin, and Heath Salit. Jesse St. Charles was absent. Chair E. Wirth called the meeting to order at 7:07 p.m.

**Chair Remarks**

E. Wirth noted a quorum of members present.

**Public Hearing for 37 Fair Street (48.8-1-21)**

**37 Fair Street – Application for a variance to install a six-foot fence in the side yard.** Architect Miriam Peterson, and attorney for Nina Abney, Crystal Wheatley, Esq., present at Village Hall. Nina Abney appearing via videoconference. Application materials, including a section drawing showing the elevation of the side yard in relation to the sidewalk, were provided to all participants.

E. Wirth opened the public hearing. He noted the following:

- Public hearing notice was duly published in the PCNR;
- Proof of mailing to neighbors via certified mail has been received;
- Affidavit of public hearing sign provided.

E. Wirth referenced the governing law, Chapter 42 Section 42-3.H(2), which permits a side yard fence no higher than four (4) feet. The application was declared a Type II action under SEQRA requiring no environmental review as it is an area variance for single-family residence.

M. Peterson noted that installation of the six-foot fence in the rear yard is as of right. She then described the application for the variance as follows:

Applicant Nina Abney, LLC has been rehabilitating 37 Fair Street for several years. The property has a large area that serves as a parking and loading area. The six-foot fence in the rear of the property will continue approximately forty-four feet into the side yard, touching the building on the north side, and enclosing the parking area. The fence will have a swinging gate for cars. The entire fence will be constructed of 1x6 mahogany pieces with ¾ inch horizontal gaps, finished on both sides, and clear coated. There will be no fence in the front yard.

The side yard fence will provide privacy and security for the Applicant from public passersby traveling on Fair Street, who may consider it a public building given its size and design. N. Abney further noted that the laundry room is in the garage and is visible from the north through transparent panes in the garage door. There is little

privacy in the interior of her house on that side. The fence will enhance the aesthetics of the building and blend in with the Cold Spring community.

#### *Public Comment*

Lisa Silvestro of 36 Fair Street submitted her comments in writing to the Board (see attached). E. Wirth read them into the record. She stated she has witnessed many passersby looking into the windows of 37 Fair Street, using the workers' Port-a-Potty at the rear of the property, and walking up the driveway. Recognizing the need for privacy, she supports approval for the side yard fence application.

Janet Rust of 41 Fair Street commented that she is 88 years old and has lived in her home all her life. She opposes the installation of the six-foot fence and does not approve of the aesthetics. It would interfere with her view from her porch. She commented that the strong north wind might cause excessive snow to accumulate against the fence on her side.

Steven Rust, also of 41 Fair Street, spoke to oppose the side yard fence, commenting that he did not understand what it would accomplish that a four-foot fence could not. While he appreciates the need for privacy, he noted the large terrace in the rear of the building that will be visible to the public. Pedestrian traffic on Fair Street is part of living on Fair Street, and no neighbors have a six-foot fence. In response to the argument that the fence is necessary because of the partly commercial nature of the property, he noted that Riverview restaurant on the opposite side of his residence does not have a fence, and he doesn't think it needs one although it has truck traffic.

Robert Plant, president of the Springbrook condominiums across the street from 37 Fair Street, commented that a four-foot fence should be a sufficient remedy to the problems of pedestrian traffic that he has observed. He acknowledged that the Rusts would be the most affected by the fence.

C. Wheatley acknowledged the cordial relationship between the Applicant and the neighbors and expressed gratitude for their support and patience during the ongoing construction. She provided an alternate argument for the fence: given the coming and going of delivery trucks to the property, gatherings of art dealers and curators, and tours of the art studio, the fence would shield neighbors from disturbances. She further noted that the building is not only a residence, but a commercial business with full-time employees.

#### *Board Comment*

J. Martin asked if there were six-foot fences in the area. M. Peterson replied they did not do an analysis of precedents in the area. J. Martin suggested hedges, shutters, or interior blinds to address the privacy concerns. He further commented that the proposed fence may affect snow accumulation and restrict air flow. He rejected the

argument that the fence would protect the neighbors from disruptive activity at the studio. In addition, the Applicant chose to build the structure on the existing footprint instead of further back on the property to increase privacy.

M. Remy agreed with J. Martin that other options could be considered to achieve the desired privacy and that tourism is a part of Cold Spring. She further noted that the commercial nature of the property was not emphasized at the workshop.

E. Wirth noted that an argument on the basis of privacy is not in and of itself sufficient to support such a variance. He asked for a better description of the likely future traffic activity at the site. C. Wheatley replied it could be daily. Only part of the property is living quarters.

H. Salit asked about parking as it relates to the use of the property. Discussion ensued about what was discussed about parking with the Planning Board. M. Peterson noted that parking spaces were not calculated by square footage as other commercial spaces would be. Applicant was asked to provide four spaces, one of which is in the garage.

There were no further public comments or questions.

J. Martin made a motion to close the public hearing. M. Remy seconded the motion, and it passed by a vote of 4-0-0-1 (J. St. Charles absent).

After the board weighed the five factors as they applied to this application, E. Wirth proposed a resolution denying the application because the fence would cause an undesirable change to the neighborhood and a detriment to nearby properties, the Applicant can achieve the desired benefit by other feasible means, the requested variance is substantial, and the claimed difficulty is particularly self-created in this case. J. Martin seconded the motion, and the vote was approved 4-0-0-1 (J. St. Charles absent).

### **Updating the ZBA application form.**

The Board discussed revisions to the ZBA application to reflect changes in the newly enacted Zoning Code, including escrow fee amounts, requiring a disclosure of official interests by applicant, and changes in dimensional requirements. E. Wirth said he would draft a new version of the conformance worksheet that the board members could review at the next meeting.

### **Review of draft minutes for June 2, 2022 (EW, MR, HS)**

E. Wirth made a motion to approve the minutes of June 6, 2022, as modified. M. Remy seconded the motion, and it passed by a vote of 3-0-1-1 (J. Martin abstained; J. St. Charles absent).

**Adjournment**

H. Salit made a motion to adjourn. M. Remy seconded the motion, and it passed 4-0-0-1 (J. St. Charles absent). The meeting was adjourned at 9:33 p.m.

Submitted by Karen Herbert

A handwritten signature in black ink that reads "Eric Wirth". The signature is written in a cursive style with a stylized flourish at the end of the word "Wirth".

Eric Wirth  
Chair, Zoning Board of Appeals  
Dated: Oct. 19, 2023