

**Village of Cold Spring Zoning Board of Appeals  
85 Main Street, Cold Spring New York 10516**

**Public Hearing**

The Village of Cold Spring Zoning Board of Appeals held a workshop via video conference pursuant to Executive Order 202.1 on December 3, 2020, at 7:30 pm. Attending were: Chair Eric Wirth and board members: Laura Bozzi and John Martin. Also attending was Village attorney John Furst.

**CALL TO ORDER:**

E. Wirth called the meeting to order at 7:30 pm and noted that the purpose of the meeting was to hold a public hearing for a code interpretation relating to construction of a 6' fence in the B-1 district at 33 Market Street and for a variance to construct the 6' fence, in case one was necessary after the code interpretation.

E. Wirth noted that Putnam County has not yet responded to the village's referral of the variance request to the county planning department (under New York State General Municipal Law 239-M). J. Furst commented that lacking the response, the ZBA can hold the public hearing but cannot take any action. The ZBA may elect to hold the hearing open until a response is received.

**PUBLIC HEARING**

**33 Market St. Request for an interpretation of the code that led the building inspector to issue the referral for a 6' fence in the B-1 district and application for a variance if necessary.**

Anthony Morando (attorney for the applicant) described the request for an interpretation and noted that:

- The 4' fence height restriction is in section 134-17, under a title that refers to "residence districts." The subject property is in a B-1 district. Applicant believes that this allows construction of the proposed higher fence.
- Any ambiguity in the code should be interpreted in the applicant's favor.
- Applicant wishes to construct a 6' fence along the northern property line, running approximately 50'. Fence would start approximately 60' from Market Street and would not be visible from the public way.
- Applicant's original application was referred to the HDRB, which issued a Certificate of Appropriateness. Subsequently the new building inspector issued a referral to the ZBA.

The ZBA noted during its discussion that:

- The code must be viewed holistically. A specific code section can't be viewed in isolation from the entirety of the code and its general intent.
- The section containing regulations for B-1 includes a cross-reference in 134-9(G)(3) that incorporates the "applicable" requirements in 134-17. There is no apparent reason why the

fence height restriction in 134-17 would not be “applicable” to the B-1 district. Similar cross-references appear in the sections defining B-2, B-3, and most of the other districts.

- The interest the Village has in limiting fence height in the R-1 district is also valid in the B-1 district (which includes residential uses). Similarly, other requirements in 134-17 (such as the restriction on obstacles that block drivers’ view at corners) are important in B-1 as well as in R-1.
- A code provision should not be interpreted in a way that negates it. This principle is violated by the applicant’s contention that the cross-reference in 134-9 to 134-17 points to a section irrelevant to the B-1 district.
- The fact that 6’ fences exist in the B-1 district is less relevant than the history of how they got there.

Describing the application for a variance, Anthony Morando noted that:

- There would be no harm to the neighborhood character. The fence would not be visible from the public right-of-way. The adjacent neighbor has indicated he is in favor of the fence.
- The HDRB has issued a Certificate of Appropriateness.
- Plans and elevations of the proposed fence were presented.

J. Martin made a motion to adjourn the public hearing and continue it at the next ZBA meeting on 12-17-2020. L. Bozzi seconded and the motion passed unanimously.

#### **MINUTES**

L. Bozzi made a motion to adopt the 11-19-2020 minutes as amended. J. Martin seconded and the motion passed unanimously.

#### **BOARD DISCUSSION**

The Mayor is considering a candidate to fill one of the open positions on the ZBA. Anyone interested in applying for the remaining open seat should send a letter of interest and résumé to the Mayor.

The Board and J. Furst discussed general considerations relating to variances for fence heights and, specifically, how much weight the ZBA should give to privacy as a reason to grant such variances.

#### **ADJOURNMENT**

L. Bozzi made a motion to adjourn. J. Martin seconded and the motion passed unanimously at 9:08 pm.

Submitted by M. Mell



Eric Wirth, Zoning Board of Appeals Chair

Dec. 18, 2020

Date