

**Village of Cold Spring  
Zoning Board of Appeals  
Meeting Minutes – March 17, 2022**

The Village of Cold Spring Zoning Board of Appeals held a meeting via videoconference as per Chapter 1 of NYS Laws of 2022 on Thursday, March 17, 2022. Members present: Chair Eric Wirth, Heath Salit, Marianne Remy, and Laura Bozzi. John Martin absent. Chair E. Wirth called the meeting to order at 7:02 p.m.

**Chair Remarks**

E. Wirth noted that a quorum was present. He advised that the Governor's Executive Order for videoconferencing has been extended until mid-April.

**New Business - Workshops for 30 Fair Street and 20 Church Street**

**30 Fair Street, 48.8-2-2.** Edward Fortier and Sheng Wang, owners/applicants. Application for variance to add a deck at rear of house. Application materials shared with all participants.

Applicants presented an overview of the proposed addition, including:

- Renderings of proposed addition;
- Application is for a deck at the back of the house at first floor level;
- Proposed deck will extend approximately four feet and four inches (4'4") into the eight foot four-inch (8'4") side yard setback;
- The variance is to a very limited portion of the side yard and allows the deck to align with the house;
- Estimated size of the deck is twenty-four (24) feet by fourteen feet (14) plus a stairway which is behind the existing garage.

**Board Comments**

E. Wirth commented that the house precedes the code and is nonconforming because it is located partly in the side yard. The property qualifies for the narrow-lot exception in §134-17.E. He asked if there was to be a roof on the deck. Applicant E. Fortier answered no.

E. Wirth clarified that unroofed decks are apparently not prohibited in yards. The code requires yards to be kept "unoccupied." "Unoccupied" apparently means "open to the sky." And having no roof apparently counts as being open to the sky (§134-2). Therefore, unroofed features like walkways, steps, terraces, patios, and decks may extend into yards.

E. Wirth made a motion that the application does not call for a variance. H. Salit seconded the motion, and it passed 4-0-0-1 (J. Martin absent).

**20 Church Street, 48.8-5-3.** Jenny and Allan Kempson, owners/applicants; architect

Tom McElroy for the owners. Application for variance to expand the building within the required front yard. Application materials shared with all participants.

T. McElroy presented an overview of the proposed addition, including:

- ZBA/HDRB referral;
- Photographs of subject property and surrounding properties;
- Renderings of proposed addition;
- Building is single-family residence built in 1951 within the front and side yards;
- Subject lot is nonstandard and smaller than minimum required lot size in this zoning district (5,316 sq. ft vs 7,500 sq. ft.);
- Nine (9) foot wide, off-street parking garage attached to front of house;
- Existing garage is in the front yard and has a deck on top with a railing;
- Plans include adding dormers on top floor to expand living space and interior changes to open up the floor plan;
- Seeking variance to expand width of existing garage to one side from nine (9) feet to sixteen (16) feet;
- Expansion of garage thus expands existing deck on top which will become screen-enclosed porch.

T. McElroy stated that the existing garage is substandard. A. Kempson stated that they cannot park in the garage and so park on an off-street side pad. H. Salit asked if the plan was to make a two-car garage. T. McElroy stated that expanding the garage the additional seven (7) feet will serve more as storage than a two-car garage. He noted that the front line of garage will not change.

### **Board Comments/Discussion**

E. Wirth commented that the proposed plan is complex given the existing deck on top of the garage which is attached to the house and not a separate building. The Board discussed the particulars of the subject property:

- The lot is pre-existing nonconforming;
- The proposed plan for the building (house and attached garage) in the aggregate does not exceed thirty (30) percent lot coverage (§134-7.D(2));
- Existing front setback is sixteen (16) feet and six (6) inches - proposed change does not change front setback measurement;
- Existing north side setback is seventeen (17) feet seven (7) inches - proposed change reduces the side setback by seven (7) feet seven (7) inches to 10 feet;
- Existing south setback remains at four (4) feet nine (9) inches;
- Garage is also pre-existing nonconforming, at less than ten feet from the front line of property;
- Increase in height of building does not increase an existing nonconformity or create a new nonconformity;
- Screened, roofed porch extension at northeast corner of house ends at setback line.

- New shed in the rear of the property is ten (10) feet from the house and ten (10) feet from the sideline.

E. Wirth noted that the ZBA previously addressed whether an increase in height of a pre-existing nonconforming house partly located in a yard requires a variance. A past village attorney advised the board that no variance is needed so long as the setback dimensions are not reduced. The same logic applies to the expansion of the width of the garage in this application. The nonconforming front setback of the garage remains the same after the expansion, and so it does not increase in degree. Equally, no new nonconformity is created, because before and after the expansion there is only one and the same nonconformity: insufficient setback in the front (§134-19.H).

Based on the foregoing analysis of the proposed application and of §134-19.H, E. Wirth made a motion that no variance is required. M. Remy seconded the motion, and it passed 4-0-0-1 (J. Martin absent).

Owner asked if they must return to the board to create a basement under the extended screened porch that is behind the ten (10) foot setback. E. Wirth stated that they are allowed to make changes outside the yards, so no variance required. Owner should advise Building Department and add to the plan.

#### **Approval of Minutes – November 18, 2021**

H. Salit made a motion to accept the minutes as amended. L. Bozzi seconded the motion, and it passed 4-0-0-1 (J. Martin absent).

#### **Adjournment**

E. Wirth made a motion to adjourn. M. Remy seconded the motion, and it passed 4-0-0-1 (J. Martin absent). Meeting adjourned at 7:38 p.m.

Submitted by Karen Herbert



Eric Wirth  
Chair, Zoning Board of Appeals  
Dated: April 7, 2022