

**Village of Cold Spring
Zoning Board of Appeals
Meeting Minutes – April 21, 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, April 21, 2022. Members present: Chair Eric Wirth, Heath Salit, Marianne Remy, Laura Bozzi, and John Martin. Chair E. Wirth called the meeting to order at 7:02 p.m.

Chair Remarks

E. Wirth noted a full board present. Meeting minutes for April 7, 2022, are added to agenda for review and approval.

Old Business

Public Hearing for 20 Rock Street, 48.12-2-41, Julian Cornwell, Owner/Applicant; application for a variance to install a six-foot privacy fence in a side yard. Application materials, including additional photographs of the area as requested by the board at the 4/7/2022 workshop, were shared with all participants.

J. Martin made a motion to open the public hearing. E. Wirth seconded the motion, and it passed unanimously.

E. Wirth noted board had received postmarked mail receipts for notices to neighbors and the receipts are in order. Board also received a sign affidavit from applicant. The notice of public hearing was posted in the PCNR. No comments have been received from the public to date.

J. Cornwell presented an overview of the proposed fence:

- Single-family residence;
- Backyard of residence is adjacent to a busy parking lot frequented by tenants and business employees;
- Side yards run along busy private driveways;
- Property resides in the R-1 district but sits between two (2) B-1 district driveways along its western and eastern sides.

J. Cornwell presented the dimensions of the proposed fence for which the variance is sought: twenty-two (22) feet by twenty-one (21) feet. He also clarified that the markings on the site plan as they refer to a highlighted, small right-angle jog on the western side yard do not represent an encroachment into the side yard. That segment of the proposed fence will end at the rear line of the house and thus does not trigger a need for a variance.

J. Cornwell stated that in addition to the traffic on the eastern driveway, there are commercial parking spaces running adjacent to the driveway. These commercial driveways are daily thoroughfares for workers and tenants. The

constant activity is disruptive and potentially dangerous to the homeowners' child. The traffic in that area increases the possibility of an accident if the child was to get over the fence. A six (6) foot fence would be significantly more difficult for a child to jump over. Anything less than a six (6) foot fence would pose a significant safety risk to the child as he plays in that area. These safety hazards render the eastern side yard virtually unusable. A six (6) foot fence would also prevent trash and litter from coming into the yard.

In addition, the code's requirement of a six (6) foot fence in the back of the house and a four (4) foot fence along the short section of the side of the house would create an unsightly and incongruous fence that does not preserve the character and charm the village strives for. A fence of uniform height would create a better neighborhood aesthetic. Applicants have settled into the village and have met many of their neighbors. They do not believe the proposed fence would have a negative impact on those relationships.

Board Comment

M. Remy asked if J. Cornwell had any photographs of the front of the residence to show where the fence would be located. A photograph was shared with the board. E. Wirth asked if the last segment of the fence in the side yard will run perpendicular across the driveway. J. Cornwell said yes and agreed a car would be in front of the gate most of the time. He clarified that the variance sought includes the segment of the proposed fence that jogs across the driveway back towards the house, and a gate will be a part of the fence.

Discussion ensued about the change to the Village Code in 2021 (§42-3(H)) where a six (6) foot fence is now permitted, as of right, in the entire rear yard up to the rear line of the residence.

J. Martin stated he did not see a case for the variance in this case. Applicants could build a four (4) foot fence and plant some arbor vitae for additional privacy and safety. J. Martin noted that the four (4) foot fence restriction in a side yard is designed to maintain open spaces. He further commented that many residents advance the "virtually unusable" claim, but he does not find it necessary in this case to bring the proposed fence forward into the side yard. J. Martin stressed that the board must follow what the law directs it to do. How would the board except this application from others? The Board must weigh all considerations and avoid impact on the public.

E. Wirth commented that J. Martin made a strong point about child safety and that even a swimming pool fence is not required to be higher than four (4) feet under NYS Code. However, E. Wirth did find merit in an "exceptional nuisance" argument in that the house is directly adjacent to a B-1 district.

H. Salit asked if the business traffic on the eastern driveway included mail and package delivery and/or service vehicles for Main Street. J. Cornwell replied

yes, and that the driveway is not used just for foot traffic or a driveway; rather, it is a road that becomes congested. H. Salit agreed it is not just a private lane.

L. Bozzi commented that this is not a typical configuration. Applicant's house is an island surrounded by parking lots and driveways. The location reduces privacy.

H. Salit commented that the parking is not typical of neighbors. The parking spaces are used by business employees and short-term-rental tenants. He was leaning more toward granting a full variance because of the traffic, which is likely to only increase with time, and the existing sightline from the residence windows to the eastern side of the commercial driveway.

E. Wirth asked if any members of the public were present. There was no response. Board comment continued.

J. Martin agreed this is an unusual circumstance for the board because access to the village is on both sides of the residence. He stated there may be an exception in this case based upon child safety because the driveway to the east is not serving as a driveway for a private residence but is used by many vehicles and the back side of many structures which front on Main Street.

M. Remy suggested limiting the as-of-right six (6) foot fence to the rear yard back to the house line, and dispense with L-shaped variance in the side yard. Alternatively, applicants could plant hedges. J. Cornwell answered that the problem of the side yard being unusable would still exist.

E. Wirth asked if there are any windows on the house that would fall behind the sightline of the fence. J. Cornwell responded that there are three (3) windows that view out to that area. E. Wirth suggested that there may be a privacy argument for the variance. The proposed fence would not only be used to shelter the yard but to also to shelter the house. J. Martin did not find that a compelling argument and commented that the board must follow the purpose of the law which seeks to maintain openness and neighborliness. H. Salit commented that the house in question is surrounded on three sides by thoroughfares.

E. Wirth noted that the board does not automatically require applicants to install hedges instead of tall fences and has granted six (6) foot fence variances in similar circumstances. However, he noted it is the duty of the board to protect the public, and a six (6) foot fence detracts from neighborliness. In addition, one wants to protect the sightline of the public on the street.

Discussion ensued regarding a possible compromise on the application.

E. Wirth presented three options:

1. Grant the application in its entirety;
2. Allow the six (6) foot fence in the side yard parallel to the B1 driveway, but limit the left leg segment running across the driveway and facing Rock Street to a four (4) foot fence.
3. Deny the application for variance and require the entire side yard fence to be no more than four (4) feet high.

Public Comment

There was no public comment on the application.

After weighing the five factors as they applied to the application, E. Wirth made a motion to approve a modified version of the application as follows:

- Grant the variance along the side yard that runs parallel to the B-1 driveway for a six (6) feet maximum fence; and
- No approved variance for the fence segment that runs back towards the house and across the driveway parallel to Rock Street.

The board determined, on balance, that the benefit of this compromise to the applicants is significantly strong to outweigh whatever minor detriment the variance might cause.

J. Martin seconded the motion, and it passed unanimously. E. Wirth advised applicant that the board would approve a resolution for the variance at the next meeting.

E. Wirth made a motion to close the public hearing. H. Salit seconded the motion, and it passed unanimously.

Approval of Minutes – April 7, 2022

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

Adjournment

E. Wirth made a motion to adjourn. M. Remy seconded the motion, and it passed unanimously. Meeting adjourned at 8:38 p.m.

Submitted by Karen Herbert



Eric Wirth
Chair, Zoning Board of Appeals
Dated: June 2, 2022