

Village of Cold Spring Zoning Board of Appeals
85 Main Street, Cold Spring New York 10516
Phone (845) 265-3611
Continued public hearing

November 6, 2014

Present: Chair, Marie Early, members: Alison Anthoine, Greg Gunder, John Martin, Ed Murphy and Nancy Tagliafierro, legal counsel for the ZBA.

Chair M. Early opened the continued public hearing at about 7:06 P.M. by reading the legal notice dated September 12, 2014 and noting it was still in effect.

NOTICE IS HEREBY GIVEN the Zoning Board of Appeals will hold a Public Hearing on Thursday, October 2, 2014 at 7:00 PM at Village Hall, 85 Main Street, Cold Spring, NY for the purpose of hearing public comment on the application of Gary D'Urso, 15 Parrott Street, Cold Spring, NY to approve a 6 foot fence at the rear (west) side, and at portions of the north west and south west sides of the property at 15 Parrott Street. The proposal will require a variance for exceptions to yard requirements from Section 134-17(D)(1). The property is in the R-1 zone. All interested parties are encouraged to attend and be heard.

Chair M. Early noted there were meetings October 2nd and 16th and now November 6th regarding the fence. It was noted that there were no public comments. J. Martin noted he tried to contact the fence manufacture to let them know there are requirements regarding fences in the village.

A discussion over the code and 6 ft. fences ensued between the Board members and Ms. Mennes.

J. Martin reviewed case law.

A. Anthoine moved to close public hearing and E. Murphy seconded the motion. The public hearing closed at 7:16 P.M.

Chair M. Early opened the workshop meeting at 7:16 P.M.

Chair M. Early read the following draft resolution:

IN THE MATTER OF THE APPLICATION OF
GARY D'URSO
For an Area Variance for
an Existing Fence

WHEREAS, GARY D'URSO is the owner of real property located at 15 Parrott Street, Cold Spring, (R-1 Zoning District), also identified as **Tax Map Parcel #49.5-3-36**; and

WHEREAS, GARY D'URSO ("Applicant") has made application to the Cold Spring Zoning Board of Appeals for an area variance pursuant to Section 134-17(D)(1) of the Cold Spring Village Code, in order to legalize an existing fence which exceeds four (4') feet in height; and

WHEREAS, Section 134-17(D)(1) of the Cold Spring Village Code requires that fences with a height in excess of four (4') feet must conform to the requirements set forth for buildings; Applicant's existing fence is six (6') feet in height and does not comply to the requirements set forth for buildings as it located on the property line; **Variance requested is for 2 feet**, and

WHEREAS, the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and

WHEREAS, a public hearing was held on the application at the Cold Spring Village Hall, 85 Main Street, Cold Spring, New York on October 2, October 16 and November 6, 2014; and

WHEREAS, the variance application was transmitted to the Planning Board for opinion in accordance with Section 134-24 (E) of the Village Code and the Planning Board has no opinion on the application; and

WHEREAS, the Cold Spring Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearing and finds that:

WHEREAS, the Cold Spring Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearing and finds that:

1. The proposed application **will not** produce an undesirable change in the character of the neighborhood **because** there is vegetation present which hides much of the view of the fence.
2. The benefit sought by the Applicant **can** be achieved by other feasible means **because** a four foot fence would achieve the stated goal of the Applicant, which was to install a fence for child safety. In addition, a six foot high fence is not a deer deterrent.
3. The variance requested **is** substantial **because** the variance sought is two feet higher than permitted under the Village Code, and because there is no precedent for this type of variance under these circumstances.
4. The proposed variance **will not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district **because** there has been no opposition to the variance request by neighbors, and because the fence is not solid – each of the vertical rungs are set three inches apart.
5. The alleged difficulty necessitating the variance **was self-created, and is sufficient** so as to cause a denial of the requested variance.

NOW, THEREFORE BE IT RESOLVED, that the Cold Spring Zoning Board of Appeals hereby **denies** the application of GARY D'URSO for a variance pursuant to Section 134-17(D)(1) of the Cold Spring Village Code in order to legalize an existing fence which exceeds four (4') in height and does not comply with the requirements set forth in the Village Code for buildings.

Board Member Anthoine -	YES
Board Member Gunder -	YES
Board Member Martin -	YES
Board Member Murphy -	NO
Chair Early -	YES

Dated: November 6, 2014

Marie Early, Chair

J. Martin moved to accept the resolution and E. Murphy seconded the motion. The motion was accepted unanimously. (The poll votes are listed above.)

Gary D'Urso expressed his disappointment with the decision.

Christopher and Jennifer Daly, 19 Garden St.

Paul Henderson and Beth Sigler architects represented the applicant. The Board members noted that a letter from owner noting that they are representing the owner is needed. Mr. Henderson and Ms. Sigler noted the applicant is proposing an addition and vertically extending an existing exterior wall. Mr. Henderson noted that this is the portion of the project that will require a variance and noted the HDRB did not like massing of the project. The Board reviewed the proposal. The property is a double lot. Houses on the street are very close to one another. M. Early suggested the applicant continue with the HDRB and then return to the ZBA after obtaining HDRB approval.

Dan Valentine, 6 Garden St.

The applicant proposed a dormer over the front roof and a small dormer in the back. The roof line will not change. The proposal requires two side yard setbacks and a front yard variance. The Board reviewed the code regarding third floors with the applicant. The applicant must provide the Board with the following before the next meeting:

- Dimensions from side yards to beginning of dormers
- Distance from front property line to west side of dormers.
- 3rd floor measurement of areas for which the ceiling is 7 ft. or higher
- The total square footage of the second floor.

The Board reviewed list of neighbors. The Board will consult with the Building Inspector to determine if this project will require a variance. If so, a public hearing will be scheduled for November 20, 2014.

Sean Kearney, 24 Paulding Ave.

The Applicant proposed to restore a previously existing third floor. The house was destroyed by a fire in 1960. The building was built in the late 1800's. The roof was slate. The zoning code was enacted in 1968. The proposed third story will exceed the two and one/half story restriction. The HDRB strongly recommends the third floor.

The Board reviewed a list of materials that would need to be submitted including the HDRB letter of support.

The Board reviewed a list of neighboring properties. A public hearing was scheduled for Thursday, November 20, 2014.

Minutes:

- The minutes of Oct. 2, 2014 were reviewed. E. Murphy moved to approve the minutes as presented and G. Gunder seconded the motion. The motion was approved 4-0. J. Martin abstained due to he was not present at that meeting.
- The minutes of October 16, 2014 were deferred until the next meeting due to Board questions regarding the minutes.

The Board discussed the Joint meeting with other boards which was held October 29, 2014.

A. Anthoine moved to adjourn the meeting and J. Martin seconded the motion. The meeting adjourned at 9:13 P.M.

Marie Early Zoning Board of Appeals Chair

Date