

**Village of Cold Spring Zoning Board of Appeals  
85 Main Street, Cold Spring New York 10516  
Phone (845) 265-3611  
Public hearing for Jennifer and Christopher Daly, 19 Garden Street**

March 19, 2015

Members present: Chair M. Early; members Alison Anthoine, Greg Gunder and John Martin  
Also present was Bill Florence; Village Counsel  
Member absent: Ed Murphy

Chair M. Early opened the meeting at 7:15 P.M. by introducing the members of the Board and then read the following legal notice:

*NOTICE IS HEREBY GIVEN the Zoning Board of Appeals will hold a Public Hearing On Thursday, March 19, 2015 at 7:00 PM at Village Hall, 85 Main Street, Cold Spring, NY for the purpose of hearing public comment on the application of Jenifer and Chris Daly, 19 Garden Street, Cold Spring, NY to construct an addition to the south side of the existing residence, at 19 Garden Street, Cold Spring, NY. The proposal will require a side yard variance from Section 134-7 (C)(5) or Section 134-17 (E). The property is in the R-1 zone. All interested parties are encouraged to attend and be heard.*

The applicant proposed an addition to the south side of the existing residence. Lot width is less than a conforming lot width therefore section 134-17 E can be applied (small lot).

Mr. Henderson presented drawings showing similar situations regarding the closeness of the homes.

Chair M. Early reviewed the 2 ways to interpret the code which will be discussed at the public hearing.

Chair M. Early noted that 9 notices to neighboring properties went out and two did not come back. The Applicant presented the Board with the certified return request receipt notices.

Chair M. Early read the following letter dated January 22, 2015 giving Paul Henderson and Beth Sigler permission to represent them:

*Dear ZBA Board,*

*Please be advised that we give Beth Sigler and Paul Henderson of Sigler Henderson studio permission to act on our behalf in front of your board regarding our proposed addition for our home at 19 Garden St., cold spring.*

*Thank you*

*Jennifer Daly  
Christopher Daly*

Paul Henderson reviewed a model that showed the lots and the neighborhood around the 19 Garden St. proposal.

Mr. Henderson read the following letter into the record:

*We originally proposed to add to the south side of house in a way that would have required only a very minor variance that was essentially the same as the variance granted to the previous owners in their 2007 addition to the house. That addition consisted of raising the rear roof of the house to create a full 2<sup>nd</sup> floor over the existing kitchen.*

*During the course of several workshops with the HDRB, the primacy of preserving the unique massing and volumetric relationships between the trio of Gothic Cottages on Garden Street was established and became the driving requirement for any addition to the house.*

*It was clear that any addition needed to replicate the rhythm of spacing and volume established by the trio, have a parallel roofline, have the same roof pitch, be spaced a similar distance from the existing house and match in width.*

*For obvious reasons, the existing and new volumes needed to have an inhabitable connector.*

*At the end of this process with the HDRB an acceptable solution that was seen to preserve the character of the trio was reached – which also satisfied the owners needs.*

*The letter of support sent to you by the HDRB conveys their view that the current proposed addition is appropriate.*

*We wish to again express our appreciation that John Martin attended the last HDRB workshop in order to understand the HDRB's position since the acceptable addition requires the owners to apply for this variance.*

*At the ZBA workshop there was discussion about at least 2 or possibly even 3 ways to understand which section of the code a variance for the proposed addition would apply.*

*Though conforming in depth, the lot is less than the required 75' width at 48.10', an existing, non-conforming condition.*

*The existing non-conforming north side yard setback is 1.7'*

*If the existing, non-conforming north side yard were to be "grandfathered" in and if the existing, non-conforming lot width could be ignored, then an argument could be made to request a variance for reduction from a 10' side yard to the 7.5' side yard we seek, i.e. a request for a variance for 2.5' in the south side yard. I will come back to this because the wording of the relevant Section of the code is ambiguous.*

*Or if the existing, non-conforming north side yard were to be "grandfathered" in and the small side yard minimum of 7.5' on the south were applicable then presumably no variance would be required for the proposed addition.*

*Setting aside precedents for granting previous variances based on less than min. lot width, we think that an application for a small side yard setback based on what we have come to refer to as “the small lot 4” rule” makes the most sense. It is the greater dimensional variance request.*

*Existing non-conforming lots in residence districts. In addition to the Provisions of §134-19 (L). for a lot that was under separate ownership from all adjoining lots on the effective date of this Chapter, and which has a total lot width less than prescribed herein, and which is proposed for use as a one-family residence, if such lot is less than sixty (60) feet wide, then the minimum side yard **shall be** reduced to seven and one half (7 ½) feet, **provided** that the two (2) side yards **shall total** at least four (4”) inches for each foot of lot width. {Amended 11-15-2011 by L.L.4-2011}*

*Let me review the criteria in the code and their application to this particular lot.*

*But what happens if it doesn’t have two (2) side yards that total at least four (4”) inches for each foot of lot width? Could the 7.5’ small lot side yard set Back apply? Does the 10’ side yard set-back then apply? This is where this Section of the code appears to be ambiguous.*

*In the case that the 4’ per foot of lot width requirement would apply, in this case a combined side yard set-back of 16.03’ would be required.*

48.10	lot width
0.33	4”
<b>16.03</b>	Side yd req’d
1.7	Ext’g N side yard ft
<b>14.33</b>	Req’d S side yard ft
7.5	Proposed S side yard ft
<b>6.83</b>	Variance request

*To review and summarize, if the existing north side yard setback is ignored and the **standard lot** 10’ side yard is to be considered, the owner could apply For a variance for a 2.5’ decreased side yard setback.*

*If the lot is to be considered a **small** lot and the board determines that the Existing north side yard can be ignored, no variance is required.*

*What we are requesting is the granting of a variance of 6.83’. We believe that this is consistent with an interpretation of the code by applying the small lot side yard setback rule of 4” per foot of lot width. The practical result would be an actual 7.5’ south side yard setback.*

*Drawing spacing studies to arrive at the variance request leading to this public hearing.*

### **Aerial view and spacing documentation**

**Conclusion.** *We appreciate this opportunity to present the owners request for the granting of a variance and for your time and consideration.*

Mr. Henderson reviewed drawings that he presented which showed different design choices including the one they preferred which was to maintain the width of the houses and between the buildings.

It was noted by Chair M. Early that the HDRB has not issued a Certificate of Appropriateness. The HDRB will review the application after the applicant receives the zoning approval.

Chair M. Early noted the submitted material is very helpful.

It was noted that no members of the public were present.

J. Martin reviewed the small lot provision 134-7 and 134-17E which appear to refer to lots that are going to be developed. He noted they looked through minutes to see what the lawmakers were thinking when the law was written. The Board reviewed previous small lot applications

A discussion ensued over grandfathering an existing addition.

G. Gunder moved to close the public hearing and J. Martin seconded the motion. It was approved unanimously. The public hearing closed at 7:55 P.M. The workshop portion of the meeting was opened at 7:55 P.M.

The Zoning Board members reviewed the following 5 questions;

1. Whether an undesirable change will / will not be produced in the character of the variance? Will not change the neighborhood. Consistent with other houses on the street having 5-7 feet between them.
2. Whether the benefit sought by the applicant can / can not be achieved by some other method feasible for the applicant to pursue other than an area variance? Could be. Additional scheme which did not require a variance were proposed, however the HDRB did not think that any of the proposals were appropriate due to the specific relationship between this property and 23 and 25 Garden St. The solution included in this proposal is considered appropriate by the HDRB at the January 15, 2015 workshop meeting and supported by the HDRB letter dated 3/1/15, and by the ZBA.
3. Whether the requested variance is substantial? The existing house was constructed well before the zoning code was enacted and the residence's placement is only 1.7' from the northern lot line. The existing house is classified as existing non-conforming. Although its' width is non-conforming, the lot has always been wider than the adjacent lots. It is not a "double lot" but rather a single, wider lot.

The side yard variance requested is for 6.83' on the southern side of the property. The distance from the property line would be 7.5'. This distance is consistent with the spacing of many houses on Garden Street and the Village in general . The proposed variance of 6.83' would meet the small lot side yard setback provided for in the zoning code exception to Yard Requirements 134-17 E for lots less than 60' wide. The side yard is reduced to 7 ½ ft. provided that the (2) side yard shall equal at least 4" per foot of lot width.

4. Whether the proposed variance will /will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

The proposed variance is for an addition that will fit in with the neighborhood and will affect neither light nor air for neighbors. The variance sought will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The addition is a type II action as per 6NYCCR Part 617.5. By definition, Type II actions have no significant adverse impacts on the environment. They include the following:

- 617.5 (9) Construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;
- 727.5(12) Granting of individual setback and lot line variances;

5. Whether the alleged difficulty was not self-created?

The HDRB believes that the addition must be parallel to the existing houses that are immediately adjacent. To have a parallel condition, maintain the spacing on the street, and still meet the client's needs, the addition requires a variance. The HDRB has supported this and only this configuration of the proposed addition and the ZBA agrees.

The Board discussed having the resolution be contingent on the final HDRB approval.

A poll vote was taken.

Greg Gunder     yes

Alison Anthoine yes

John Martin     yes

Marie Early     yes

The resolution was approved with the condition that the Applicant go back to the HDRB for final approval consistent with the HDRB's letter to the ZBA and the ZBA's decision.

Chair M. Early will notify the building inspector and the HDRB that the resolution was passed.

It was noted that the planning board has not yet been notified of the proposal for their opinion.

**Minutes:**

- The minutes of November 20, 2014 were reviewed and J. Martin moved to accept the minutes as presented and G. Gunder seconded the motion. The motion was approved 3-0. A. Anthoine abstained due to the fact that she was not present at this meeting.
- The minutes of March 5, 2015 were reviewed and approved unanimously.

**Board Business:**

Chair M. Early will recommend Greg Gunder as ZBA chair to incoming Mayor Dave Merandy

G. Gunder moved to adjourn the meeting and A. Anthoine seconded the motion. The meeting adjourned at 8:29 P.M.

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Marie Early Zoning Board of Appeals Chair

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Date