

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

December 3, 2012

Members present: Chairman; Donald Mac Donald, John Martin and Richard Turner
Member absent: Greg Gunder and Edward Murphy

Chairman Mac Donald opened the meeting about 7:04 P.M.

Chairman D. Mac Donald opened the meeting by noting the Board has 60 days to schedule a public hearing and also noted the Board referred this application to the Village Attorney, Steve Gaba, who reviewed it briefly and recommended that the Board schedule a public hearing.

The following ground rules were reviewed and discussed:

#1. No emails to the Board – all communications to the Board should be in writing and given to Mary, Village Clerk, who will put the document(s) in the ZBA box, the ZBA will be notified of the document(s) and the ZBA will respond accordingly.

#2. Each party is responsible to notify the other party first – It is the responsibility of the party sending the document(s) to the other party first. After the other party has been notified then it can get sent to the ZBA. The item(s) being sent to the other party must be sent return request receipt. It is not the responsibility of the ZBA to send any information from one party to the other. The ZBA will double check to make sure everything gets done. Mr. Hall took exception to the proposal that everything submitted must be fully disclosed to the other party before it is given to the ZBA.

#3. Minutes of meetings – present at the public hearing will be a stenographer and Village Attorney Steve Gaba.

The following discussions ensued:

Mr. Henderson noted he is not a party in this lawsuit. Mr. Hall noted that the appeal is against the village not Sigler/Henderson. J. Martin responded that it is true that Sigler/Henderson are not direct parties on the appeal, but that they should be given prior notice of all arguments, as they are clearly an interested party.

Ms. Sigler noted that no other information should be received by the ZBA because anything else received falls after the 60day time limit. J. Martin responded that no other new arguments should be raised, absent a showing of adequate notice of the arguments and an appropriate explanation as to why the other side is not prejudiced by the delay in making an argument.

Ms. Peehl noted she was told by the Trustee ZBA Liaison, Chuck Hustis, that the application needed to be filled out and then any papers and detailed back up requirements relating to the case can be turned in at the public hearing. Ms. Sigler responded that is not true. Ms. Sigler noted they couldn't submit

anything else other than what was submitted already. There can be no new codes added to what was submitted. Ms. Peehl noted that is what was told to her by Trustee Hustis. J. Martin responded that the only arguments Peehl/Hall could present would be those, which Sigler/Henderson had been given adequate notice of, in addition to supporting case law arguments. There can be nothing new added that could surprise the other party at the public hearing.

Chairman Mac Donald noted he will contact Village Attorney, Steve Gaba, to compose a letter regarding all the issues presented at this meeting.

Ms. Peehl noted the following: This case is about the building inspector's decision to issue a Certificate of Occupancy. The building inspector is the one who needs to be defended and it is not proper to have the Village Attorney representing both the ZBA and the building inspector. She noted that the ZBA is an appellate body, and that Steve Gaba is in a position of conflict if he represents the Building Inspector and submits a proposed decision for the ZBA to consider.

D. Mac Donald noted Mr. Gaba is giving the ZBA what he believes the law is.

Ms. Peehl noted that she feels it is not appropriate for the Village Attorney to defend one party (building inspector) and advise the other (ZBA).

R. Turner added that the instant appeal of the C/O issuance should wait until the Second Department decides the first appeal which found a timeliness issue. Mr. Hall noted the outcome of the first appeal is not determinative of the issues on the instant appeal, and that the ZBA should hear this case on the merits.

J. Martin noted we don't know the outcome of the initial appeal before the Second Department appellate court. The purpose of the workshop is to get people to understand what is important, to know what is being raised so there are no surprises at the public hearing and to explain why current arguments will not be subject to timeliness issues noted by this Board in its first determination (now on appeal to the Second Department).

Ms. Peehl noted that at the end of the ZBA Board's prior decision it was noted that the Board reserved the right to change their mind.

Sigler/Henderson expressed concern over the following:

- How the Certificate of Occupancy can be contested?
- What is the basis for an appeal?

D. Mac Donald responded the shed is subject to a building permit, and that issues raised include whether the shed was built as shown in the drawings and as shown in the permit documents.

D. Mac Donald noted that Peehl/ Hall have to prove the shed was not built according to the drawings or as described in the building permit. They have to prove that the Building Inspector was in error issuing a Certificate of Occupancy.

Ms. Peehl again questioned how Village Attorney, Steve Gaba, could represent one party and advise the other. Ms. Peehl stated that a conflict of interest existed, in that Mr. Gaba was acting as a village employee representing the Building Inspector but also advising the ZBA Board at the same time. J. Martin noted Mr. Gaba is the Village Attorney. Ms. Peehl noted the ZBA is the appellate Board and Mr. Gaba should not be advising the ZBA while defending the Village interest. Ms. Peehl suggested the Board contact the state for advice on the conflict of interest issue.

Mr. Hall asked the following:

- For a summary of what would be established as the hearing ground rules.
- For the Board to question Mr. Gaba on the conflict of interest issue raised.
- The permitted scope of the Certificate of Occupancy appeal (whether there was confinement to issues to date).

D. Mac Donald noted the ZBA will do the best they can but they know that all parties will not be happy.

Ms. Peehl again made clear that this case is against the Village and Peehl/Hall. Ms. Peehl noted she did not understand why she should have to send anything to Sigler/Henderson. Ms. Sigler clarified this case is not against them (Sigler/Henderson) it is with the building inspector. R. Turner noted they are an interested party that is why they should get the same information. Ms. Peehl noted they are an interested party and they don't need to get all the same information. Ms. Peehl noted she should not give any information to anyone except the Village. They did not get timely copies of any building information previously filed by Sigler/Henderson, and that they had to make FOIL requests for such information. Mr. Hall noted that all information presented becomes part of the public record, and that Sigler/Henderson could simply check the public record.

Mr. Hall noted it is not their responsibility to copy an interested party Sigler/ Henderson, and that Sigler/Henderson could make FOIL requests for any documents they might want.

The Board discussed whether or not a public hearing date should be scheduled. It was noted that the Board has until January 3, 2013 to schedule a public hearing. The Board members agreed that since both procedural and legal issues were raised, it was better to schedule another workshop meeting to discuss the issues raised at this meeting prior to scheduling a public hearing. A workshop meeting was scheduled for Monday December 17, 2012.

Ms. Sigler raised the following concerns relating to the public hearing:

- How will the public speak at the public hearing?
- Is there a sign-up sheet?
- She would like to see more control at the public hearing.

Mr. Henderson expressed concerned over the relationship between the ZBA and the Building inspector and how that works. He noted the instant appeal was citing the Building Inspector's decision and certain mis-information as to the construction.

R. Turner noted that is what they asked for an interpretation of the code.

R. Turner noted this case is about the Building Inspector's decision. Peehl/Hall is asking for an interpretation of the code. If the Second Department appellate court rules against this Board's initial decision, the next step will have to be decided.

The workshop meeting will consist of the following:

- The minutes will be reviewed.
- The Board will try to have answers to the questions brought up regarding the Village Attorney.
- If the Board feels the appeal is ready for a public hearing, a public hearing will be scheduled.

R. Turner moved to close the meeting and J. Martin seconded the motion. The meeting was closed at 7:45 P.M.

Donald Mac Donald Chairman, Village of Cold Spring
Zoning Board of Appeals

Date