

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

December 17, 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 7:10 P.M.

Chairman D. Mac Donald opened the meeting by noting that this is the 2nd workshop meeting regarding this appeal and then proceeded to read the following statement regarding additional submissions from Village Attorney, Steve Gaba: "In regard to additional submissions, I think it is helpful to think of the situation as though this were a garden variety of appeals seeking a variance. That is the application form requires the applicant to provide: an exact statement of the details of the variance sought and to list code sections involved and state the grounds on which the appeal should be granted. The appeal form states that additional sheets or documents may be attached but also advises the applicant to submit supporting facts at the public hearing. Since additional materials can be submitted at the public hearing, I see no reason why they can't be submitted before the public hearing too. That the ZBA or a member of the public claims that they are being unfairly surprised by this submission of the additional materials, the ZBA can simply hold the public hearing open for an additional month and give itself or the public time to review or digest the additional materials or arguments. What an applicant cannot do is seek relief that is new or different from the relief sought in the application of the ZBA. The ZBA is limited to appellate jurisdictions (except for special permits). A timely appeal is required for the ZBA to have authority to act. Appeals are limited to the relief sought and grounds identified in the application to the ZBA. Applying the forgoing to Peehl/Hall, I believe that they can submit additional supporting papers and documentation in support of their application between now and the public hearing. I note that many municipal Boards have adopted cut off dates for submission of additional materials and specifically advise applicants that submission of new material at a public hearing may result in keeping the public hearing open but I don't think the Village office, Cold Spring Zoning Board of Appeals has done so. However if additional supporting papers or documentation do not pertain to the relief sought in the application then they should not be considered by the ZBA."

The Board members discussed the above statement from the Village Attorney and Ms. Susan Peehl read the following: "at the hearing the applicant may submit written evidence in their argument to support his or her case. Obviously, the sooner that written testimony or materials are received the more time ZBA members will have to consider the case and reach a proper decision, therefore it is a good idea to submit written material with the application or soon thereafter as possible so that it can be sent to ZBA members prior to the hearing. Please note that the applicant can present written evidence at any time up to the close of the hearing or even after the hearing if the ZBA allows the record to remain open."

The Board members reviewed and discussed the statement read by Ms. Susan Peehl regarding submission of documents after the close of the public hearing.

The Board members proposed the following distribution of material received:

- Any materials to be submitted are to be brought to the Village Office.
- It will be stamped with the date.
- Put in the ZBA box
- Chairman D. Mac Donald will be notified of the item.
- An email will be sent to the opposite party letting them know that an item was received.
- A copy can be made at the office, however it was recommended that the person submitting the document make an appropriate number of copies for all interested parties.
- The person is not to respond to the email
- They should just pick up a copy of the item.

Ms. Peehl asked why Sigler/Henderson are being referred to as the other party. The Board members responded that it is the best way to explain how the copies can be sent to the other person; however Sigler/Henderson will be addressed as an interested party from here on.

Ms. Susan Peehl asked why the building inspector was not present at this workshop meeting. D. Mac Donald noted that this was just a workshop meeting.

Ms. Susan Peehl noted the previous hearing should have been conducted differently. If the Building Inspector spoke at the previous public hearing questions could have been answered. J. Martin explained that the issue at the prior hearing concerned timeliness of the prior appeal application. The previous public hearing did not involve the merits of Peehl/Hall's claims.

Ms. Susan Peehl then read the following: "Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case; the side which supports the enforcement officer's decision. Each side will be given the opportunity to question the other or the others witnesses in addition ZBA members may ask questions. "

J. Martin responded that the ZBA are not obligated to call witnesses and that it is the applicant's burden to make its case. Ms. Peehl noted she felt the Board was not being well advised by the Village Attorney. She noted that Steve Gaba is also representing the Building Inspector. Ms. Peehl opined that The ZBA was being poorly advised. Ms. Peehl recommended that Sigler/Henderson speak at the public hearing like any other interested party. J. Martin responded that all interested parties could point out facts they feel are relevant. The Board will then look at the Village law.

D. Mac Donald noted the Village is very aware of this action. He added that the board is presently laying the ground rules before the public hearing. He noted that if the building inspector speaks at the public hearing, the Village Attorney will advise him. Ms. Susan Peehl noted that if the Building Inspector wants to call Sigler/Henderson to speak, they can at that point.

D. Mac Donald noted that the ZBA would like to have Steve Gaba involved in the hearing and he then read the following from Village Attorney, (Steve Gaba): "Peehl/Hall are correct. That a city, town or village attorney can never represent the municipality and the ZBA in the same proceeding that seeks a ruling from the ZBA particularly where the municipality has a stake in that determination. It is common practice for municipal attorneys to represent all officers and Boards so it seems that their position might not be right as a general proposition, but I'll look into the issue and get back to you. As of this meeting Steve Gaba has not gotten back to the ZBA. "

The ZBA members state that a decision on the appeal will involve the following considerations:

- The evidence presented.
- The applicable law.
- Steve Gaba needs to be involved in the public hearing so he knows what is going on in case an article 78 issue comes up. He has to know what is going on.
- The Board will ask Steve Gaba, and the parties, for applicable case law.
- Mr. Gaba will be available to offer advice on evidentiary/procedural issues during the public hearing.

Ms. Peehl thanked the Board members for all they are doing.

Ms. Peehl noted that she (as an applicant) pays Steve Gaba, but that he is also advising the ZBA and the Village in case law, and serving as the Village Attorney.

Mr. Henderson noted as an interested member of the public on the instant application, he would be prepared for the hearing with necessary proofs and/or arguments.

Mr. Andrew Hall noted they might have questions to ask the building inspector. Ms. Peehl noted she wanted the Building Inspector at the public hearing. The Board will advise The Building Inspector that the applicant would like him present at the public hearing.

Mr. Andrew Hall asked that if the building inspector submits information, what will happen. D. Mac Donald noted it would work the same way as stated above, and Henderson/ Sigler would also be notified that there is something from the building inspector since they are an interested party.

Ms. Susan Peehl asked how much time will be allowed to cross examined and how much time is usually allowed to cross examine the interest party. D. Mac Donald responded that the Board would allow any questions seeking unasked, relevant information. He added that the Board does not want people to say the same thing over and over.

Ms. Susan Peehl then asked if they would have an opportunity to speak again after Henderson/ Sigler had a chance to speak (if they do). The Board stated that it would consider such request.

Mr. Paul Henderson also noted the Board is going a great job and appreciate at the time and effort the Board is putting in.

The Board noted that the appeal is between the Village and the Applicant. Peehl/Hall has to present their case, and they can question the building inspector. Steve Gaba will be at the public hearing to represent the Village and to advise the ZBA on procedural matters. Chairman Mac Donald stated to Ms. Peehl that Peehl/Hall will have to pay for Attorney costs. Ms. Peehl noted she has nothing to gain by paying for the Village Attorney and felt that they have to pay a lawyer to give them the privilege to tell the Village that their code is broken. Ms. Peehl noted that if an anonymous code violation comes in, the village has to look into it as soon as possible, in such circumstance, the Village pays any legal fees.

Mr. Hall noted he doesn't want to feel that a conclusion was pre-decided on their application. The Board members responded by saying that the Board follows the law and they make their own decisions based on the facts established at the hearing. Paul Henderson noted he was glad to hear the Board's response; he felt Mr. Hall's comment sounded like a threat.

Ms. Susan Peehl recommended that the Board call the Department of State and ask how to handle the situation where the lawyer who is being paid by the applicant, and the applicant is paying for their own lawyer, can the Attorney represent the Village and advise the ZBA at the same time. Ms. Peehl noted she is not comfortable with Mr. Gaba advising the ZBA.

Ms. Susan Peehl asked if the Board can limit the comments from the members of the public to the facts and not let them say it is beautiful or he's a great guy. D. Mac Donald noted that it was more of a concern that the Board not overly restrict public comment. It is the nature of the public hearing.

A tentative date was scheduled for Wednesday, January 16, 2013 at 7:00 P.M. That date could change if Steve Gaba, Building Inspector or Peehl/Hall Attorney is not available.

Mr. Paul Henderson read the following: I would like the Board and the Village lawyer to clarify what issues can be addressed in the upcoming public hearing. The appeal filed on November 2, 2012 is a challenge to the C of O not a challenge to the Building Permit. The building permit has been challenged in three previous appeals dated April 18, 2012, May 1, 2012 and June 28, 2012. These Appeals were found to be untimely by the ZBA ruling as of August 2, 2012. The petitioners then filed an Article 78, which is now under a judge's review. Most of the issues brought forth in the petitioner's appeal to the C of O are duplicate the challenges they have already brought in their previous appeals challenging the building permit's issuance. We have been counseled that ONLY if the petitioners are successful in the Article 78 Petition can a challenge to the underlying building permit be addressed in a separate proceeding. It is NOT permissible to address the building permit in the public hearing for the Appeal filed that challenges the C of O.

The Board members asked for a copy of the above statement.

Ms. Susan Peehl commented on Mr. Henderson's statement and asked him where he got the information. Mr. Henderson will make a copy of his statement and will bring it into the Village office. When the item is received the above noted procedure will take place to get it to Peehl/Hall.

Minutes:

The minutes of December 4, 2012 were reviewed Ms. Susan Peehl asked for a copy since open meetings law allows her to have a copy. Ms. Peehl was given a copy. Revisions were requested and approved by a vote of 3-0. The minutes will be made available for review 12/18/12.

R. Turner moved to adjourn the meeting and J. Martin seconded the motion. The meeting was adjourned at 8:40 P.M.

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

Date