

Thomas J. Shepstone

MEMORANDUM

Date: June 6, 2024

To: Village of South Blooming Grove Planning Board

Re: Hearing Notices

The public hearings of this same date were scheduled as of May 16, 2024. This meant only 10 weekdays were available to do published public notices and only 6 week days were available to do mail notices to nearby property owners.

Because the latter, in this case, involved huge volumes of certified mail (hundreds of notices in one instance) the time involved for post offices made it impossible to do mailings except over multiple days at multiple post offices. The time involved for the Village Clerk's office was also considerable.

Given this situation, I advised applicants that I would recommend a waiver of the 10-day rule, reducing it as needed provided New York State Village Law regarding hearing notices was not violated.

The reasons such waivers are appropriate are as follows:

1. The Town Subdivision Law (Chapter 163) is ambiguous on how to do notices to other property owners:

(a) §163-12B(3) provides in relevant part as follows:

"At the time of a public hearing, the applicant shall submit an affidavit stating that he has notified by certified mail, return receipt requested, each adjacent or opposite owner of property as indicated on the application for subdivision approval at least 10 days prior to the public hearing."

(b) §163-13A(1)(g) is the basic standard for notices. It says:

"An affidavit shall be submitted by the applicant declaring that the names of each owner of property within a distance of 500 feet from the proposed subdivision and addresses of the adjacent or opposite property owners are correct as within the knowledge of the applicant or as shown on the latest tax assessment roll of the Village of South Blooming Grove. The applicant shall provide proof of mailing receipts and proof of delivery to the Clerk in the form provided by the United States Postal Service."

There is no mention of a 10-day requirement.

(c) §163-13C provides in relevant part as follows:

"The Clerk submit notices for publication, as required by Village Law, will mail notices to all property owners, as specified in Article III, § 163-13A(1)(g), and will maintain file copies of the plat and construction plans for public review prior to the hearing.

This section refers to the one above which has no 10-day rule.

As these three sections indicate, there is significant ambiguity as to how, who and when notices are to be delivered. Wherever there is such ambiguity it is a matter of long-standing law that the landowner is entitled to the least restrictive interpretation which, in this case, means less than 10 days is permissible.

2. §276.5(d)(ii) of the NYS Town Law does not require a 10-day notice. It simply says in relevant part:

"The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat.

Importantly, §277.7 also provides as follows:

"Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision."

Therefore, even if one believed the 10-day rule should be applied, it can be waived, which is what I will recommend to the Board.

3. §235-55D(3) of the Town Zoning Law provides in relevant part as follows with regard to site plans:

"No decision by the Planning Board to approve or deny a site plan application shall be made until after a public hearing. Written notice of said hearing shall be published in the official newspaper and posted at Village Hall, and sent by the applicant, at his expense, by certified mail, return receipt requested, to all known owners of property located within 500 feet of each boundary of the subject property at least ten days prior to the date of the hearing."

Once again, though, NYS Town Law §274-A.5 provides as follows:

"Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or

disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.”

Importantly, §235-55C(2) provides in relevant part as follows:

“Specific requirements of this subsection may be waived by resolution of the Planning Board. In waiving any requirement, the Planning Board shall set forth the reason for said waiver.”

Therefore, the 10-day rule, as well as the return receipt request, can also be waived for site plans for good cause and, in this case, the holiday weekend, combined with the short time between meetings, is enough for me to recommend such a waiver to the Planning Board after the fact. All mailings are certified, however, and well beyond the 5-day NYS Village Law standard for newspaper publication.