

Village of Croton-on-Hudson  
Zoning Board of Appeals Meeting of  
May 15, 2013

PRESENT: Seth Davis, Chair  
Andrew Levitt  
Alan Macdonald  
Rhoda Stephens

ALSO PRESENT: Joe Sperber, Assistant Building Inspector  
Casey Raskob, Village Board Liaison

ABSENT: Doug Olcott

**1. CALL TO ORDER:**

The Zoning Board of Appeals Meeting of May 15, 2013 was called to order at 8:00 P.M.

**2. PUBLIC HEARING:**

- a) **Sperber, Stephen** – 31 Radnor Avenue. Located in a RA-5 District and designated on Tax Maps of the Village as Section 79.09 Block 2 Lot 71. Request for rear yard variance for an existing shed and a side yard variance for an existing patio.

Mr. Stephen Sperber, came forward to present his application and was asked by Chairman Davis if he was any relation to Joe Sperber. He said he was not and then went on to explain his variance request. He said he was seeking a rear yard variance for a garden shed that had been built about 7 years ago and a side yard variance for an existing 6-foot square patio along the side of the property. Photos of both were included in the application package, along with a letter stating no objection to the variances, by Mr. Sperber's neighbor, Michelle McCarthy, of 35 Radnor Avenue. He further added that the property is currently up for sale.

Mr. Macdonald asked who had built the shed and Mr. Sperber said he had. Ms. Stephens asked if the shed was sitting on a permanent foundation. Mr. Sperber said it was not; that it was on skids which were on a bed of gravel. Mr. Joe Sperber added that such a setup was considered permanent because there is no intention of moving it. After getting confirmation that the patio was not raised, Ms. Stephens also got confirmation that a 2.5-foot rear yard variance and a 3-foot side yard variance were being sought. Mr. Levitt asked if the neighbor who had written the letter was the next door neighbor on the side of the property with the patio at issue. Mr. Sperber said it was.

Chairman Davis then opened the hearing to the public. No one stepped forward and so the hearing was then closed. This was followed by a motion made by Ms. Stephens to grant a 2.5-foot rear yard variance for the existing shed and a 3-foot side yard variance

for the existing patio. Mr. Levitt seconded the motion and the motion passed with a vote of 4 to 0.

- b) **Liss, Mr.** – Barton Place. Located in a RA-5 District and designated on Tax Maps of the Village as Section 78.08 Block 5 Lot 54. Request for side yard variance for a proposed second floor dormer addition.

Ed Gemmola, Architect for Mr. Liss, presented the application. He displayed photos and drawings for the Board. With the use of these, Mr. Gemmola indicated where the dormer was proposed. He said that Mr. Liss had just purchased the property in October of 2012 but back in September of 1971, a variance had been granted for the main house and that there had been subsequent additions. He showed two schemes for the proposed dormer; one that would set the dormer back at the main wall of the existing second floor wall and the other preferable scheme that would bring the dormer out to line up with the bottom floor wall. Mr. Gemmola added that the space was there, the height was there, and that the proposed dormer would add just 23 square feet, and would also not make much of a difference in elevation. He said that a 1.5-foot side yard variance was being sought.

Mr. Macdonald asked if the proposed dormer would interfere with Mr. Liss' neighbors' view of the river. Mr. Liss said it would not.

Chairman Davis then asked Mr. Sperber about the 1971 variance, questioning whether the variance granted was valid since it had been approved with a 2 to 1 vote. Mr. Sperber said the original house predated zoning, and that there was only a partial second floor at the time which was setback. He added that the 1971 variance was for an addition that was never built.

Mr. Sperber also explained that the variance Mr. Gemmola had said was needed was only an average variance and that the maximum variance needed for the side yard was 1.8 feet. Mr. Gemmola agreed with this.

Chairman Davis then opened the hearing to the public and with no one stepping forward he then closed the hearing.

Mr. Levitt made a motion to grant a 1.8-foot side yard variance for the proposed second floor dormer. The motion was seconded by Ms. Stephens. The motion was passed with a vote of 4 to 0.

- c) **Seelke, Kurt** – 65 Melrose Avenue. Located in a RA-5 District and designated on Tax Maps of the Village as Section 79.05 Block 4 Lot 30. Request for interpretation of the determination made by the Assistant Building Inspector under Village Code Section 230-9A(10) that a gun repair business is not a customary home occupation.

Chairman Davis started off by explaining that the application presented a gray area for the Board. Mr. Seelke was seeking an interpretation from the determination made by Mr. Sperber, the Assistant Building Inspector, that the gun repair business Mr. Seelke was proposing to start from his home was not a customary home occupation. The determination letter Mr. Sperber had written to Mr. Seelke was included along with Mr. Seelke's application. Chairman Davis said that the Board would be looking closely at the piece of Zoning Code at issue and if the proposed business met the Code, Mr. Seelke would be entitled to engage in his business. Chairman Davis also wanted it noted that Village Code did not require neighbor notices for Board interpretations.

Mr. Seelke then spoke about the proposed home business. He said it would be more like a hobby than a business. He said he would only be using a 10-foot by 15-foot area of his garage which has solid walls and no windows. He would need a small lathe, drill press, vise(s) and some hand tools. There would be no signage, no advertising, and very little impact on traffic since it would be by appointment only. He said he thought he might also be of help to the local police department. He added that to get the required licensing from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), he needed confirmation from his local municipality that the intended use of his property was legal. He would be required to take a set of courses before the federal license would be issued.

The Board had a lot of questions for Mr. Seelke. Ms. Stephens asked if Mr. Seelke was aware that he could not fire any gun in the Village even to test his repair work. Mr. Seelke said he was aware of it and that he would have to go to a firing range. She also wanted to know if he had an alarm system in his house and he said he did. She said she was concerned that if the Board gave Mr. Seelke a favorable decision, the Board might be setting a precedent for other residents unaware that the granting of a favorable decision would be the result of considerations on a case by case basis.

Mr. Levitt asked Mr. Seelke if he would also be handling ammunition. Mr. Seelke said he would not. Mr. Levitt also expressed concern that Mr. Seelke's home was located in the shadow of the high school.

Mr. Macdonald asked if the federal license he was seeking allowed Mr. Seelke to sell firearms. Mr. Seelke said he didn't think so but he wouldn't be doing it anyway.

The members of the Board stressed that whether or not they approved of the business was not the issue at hand, but that the determination of whether the gun repair business would be considered a customary home occupation was.

Chairman Davis said that it had been very difficult to gather data on similar applications. He said he could not find any New York cases on point. He said that Mr. Sperber and the Building Department, in an effort also to gather information on the subject, had looked at local codes and made calls to neighboring municipalities. There was quite a range of results. Some municipalities were specific as to what did constitute a customary home occupation while others were specific about what was not a customary home occupation,

and still others were not specific at all. Some mentioned equipment as a guideline, and some excluded businesses that required a federal license. None of the municipalities had any similar applications in the recent past. Calls were also made to the few “Guns & Gunsmiths” listed in the Yellow Pages and only one was found to be located in a home rather than a commercial establishment. The results of the research were included with Mr. Seelke’s application.

All members agreed that Croton’s code on the subject was very vague. Chairman Davis said that because Village Code does not specifically delineate customary home occupations, the code is left wide open for interpretation.

Chairman Davis said he was leaning towards granting a favorable interpretation. However, being that there were only four Board members present tonight and that input from the Village Attorney would be helpful, as suggested by several Board members, he asked that the application be adjourned. He added that if a favorable interpretation were to be granted in the near future, he would suggest that a recitation of what is proposed be included that would spell out what Mr. Seelke’s plans were, any effect on traffic, signage, etc., so that if another such request came before the Board, the Board could treat it as a separate and distinct application. If the Board made an unfavorable interpretation, the grounds for that would need to be spelled out also.

After Mr. Sperber brought up the fact that the ATF had already extended its deadline for Mr. Seelke’s federal license application, the Board asked Mr. Seelke if he was agreeable to the adjournment. Mr. Sperber then offered to call the ATF to explain the situation to the federal agent handling Mr. Seelke’s case and to possibly get more information about ammunition handling. Mr. Seelke said he was agreeable to the adjournment to give the Board more time to make a decision with a full Board present. The application was adjourned to the next meeting of the Zoning Board.

### **3. APPROVAL OF MINUTES:**

Ms. Stephens made a motion to approve the amended minutes and the resolutions of the April 10, 2013 Zoning Board of Appeals meeting. The motion was seconded by Mr. Macdonald. The motion passed 4 - 0 in favor.

### **4. ADJOURNMENT:**

The meeting was adjourned at 9:30PM.

Respectfully submitted,

Toni Cruz  
Secretary, Zoning Board of Appeals