

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
June 12, 2013

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of June 12, 2013 was called to order at 8:00 P.M.

2. PUBLIC HEARING:

- a) **Dreyer, Marilyn (formerly owned by Tyre, James & Anne)** - 2 Cedar Lane. Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.13 Block 4 Lot 54. Request for front yard variance for existing carport and to enclose carport to a garage. (*Adjourned from 10/17/12*).

Mr. Levitt recused himself from the application.

The application was presented by Julie Evans, Architect for the proposed project. She was joined by Ms. Dreyer to help answer any questions. Chairman Davis wanted to first clarify whether or not there was any difference in tonight's application submitted by the new owner compared to the previous application. Ms. Evans responded that the application was the same and the variances being sought were the same also. She then went on to explain the application.

The property has an existing carport which was erroneously built, more than 50 years ago, 10 feet past the required setback. (Secretary's Note: As per Joe Sperber's memo to the ZBA dated September 20, 2012, the variance needed is only 9 feet). The new owner thought she was buying a property that she could fully use, which meant including the use of the carport. The neighborhood is eclectic with irregular lots and some have garages and some do not. The owner would like to enclose the carport and make it a garage. Ms. Evans continued, saying the carport is no more than a roof on stilts and is not harmonious with the house. It has existed for more than 50 years and through more than three different owners. The proposed project would enclose the volume that is already built, with no change of footprint, with windows, and a harmonious design with the house. The application package included a plot plan, an aerial map, drawings of the

existing carport vs. the proposed garage, and photos of neighboring homes (later identified as no. 4 Cedar Lane and no. 6 Cedar Lane.)

Ms. Stephens asked if the proposed garage would have one door or two. Ms. Evans replied that it would have one large door 16 feet in width.

Mr. Macdonald thought the proposed size of the garage was rather large, to which Ms. Evans disagreed, saying it measured 20 feet by 20 feet, which is minimal for a garage.

Chairman Davis asked Mr. Sperber if the property next store at 4 Cedar Lane was in compliance. Mr. Sperber said he believed they had gotten variances for the second story addition and for the garage.

Ms. Evans then distributed 8 letters of support to the Board from the following:

Goran and Donna Nikic, 21 Franklin Avenue
John and Mary Lally, 7 Cedar Lane
Robyn Levitt, 6 Cedar Lane
Joseph Fiorentino, 23 Truesdale Drive
Nicholas and Danielle Damiano, 3 Cedar Lane
Julie and Kevin Kennedy, 31 Truesdale Drive
David and Sheila Lally, 8 Cedar Lane
George and Debra Fletcher, 11 Cedar Lane.

Chairman Davis asked if the application had been noticed and the Secretary said it had been when the application was first submitted.

Mr. Olcott suggested that if the application were to be granted, the Board include a condition that the applicant adhere to the design for the garage.

Ms. Jennifer Schmidt, Ms. Dreyer's daughter and neighbor, stepped forward to say she thought the plans were well thought out with a good sense of aesthetics and unity. Ms. Dreyer then spoke of her commitment to adhere to the plans as presented. She said she moved to Croton to be close to family in her retirement. She loved the house but found the carport to be distasteful. She said she has worked with Ms. Evans closely on the plans to create a tasteful garage that would enhance the neighborhood.

Chairman Davis then reopened the hearing to the public. Mr. Walter Schmidt stepped forward. He said he had built a few houses in Croton. He supported the application, saying that the project proposed building on the existing footprint. He said that the house had been bought and sold several times since the carport was originally erected and that he knew the new owners and that they were "classy" people. Ms. Colleen Coxen of Houlihan Lawrence spoke next to say that she supported Ms. Dreyer and thought the garage would be an enhancement to the property. No one else from the public stepped forward so Chairman Davis then closed the public hearing.

Chairman Davis said there were two issues – the existence of the structure/carport in its current dimension requiring a variance and enclosing it would be increasing the degree of non-conformity which would also require a variance. He said he thought the aerial views were persuasive because the garage at 4 Cedar Lane comes out very far and that a variance given for that supported granting the variance for this application. He said he was also inclined to grant the second variance (increasing the degree of non-conformity by converting the carport to a garage) because it had been very well thought out.

Mr. Macdonald said he thought the carport wasn't very pretty now and enclosing it would result in a massive structure that would only look worse. At least with the carport you could see through it. Alternatively, he believed the carport could be taken down and a new one built for not much more money.

Mr. Olcott said he agreed with Chairman Davis that the proposed garage as designed would be an improvement.

Ms. Stephens said she had driven past the property several times and each time the car was only partially contained within the carport. With a garage instead, it would look better with the car totally within the garage. She was assured by Ms. Dreyer that the garage would be used for the vehicles.

Mr. Sperber asked Ms. Dreyer to address the steps at the back of the carport which concerned Ms. Stephens. Ms. Dreyer said it was suggested that a railing be put in for safety and added that the storage area in the carport would be removed which would allow for her 2 cars to fit inside the newly proposed garage.

Ms. Stephens said then she would be inclined to grant the variance and proceeded to make a motion to grant a 9-foot front yard variance to enclose the existing carport in order to convert it to a garage with the condition that it be built in accordance with the plans submitted with the application. Mr. Olcott seconded the motion. A vote was taken and the motion passed 3 to 1. Chairman Davis, Mr. Olcott, and Ms. Stephens voted in favor, Mr. Macdonald voted against it. Mr. Levitt did not vote having recused himself.

- b) **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. (*Adjourned from 05/15/13.*)

Chairman Davis explained that the application was a continuation of the hearing from last month and for Mr. Olcott's benefit, who was not present at that meeting, recapped the application. He said the sole issue was whether the Board agreed with the Village Engineers Office's ruling that a proposed gun repair business in Mr. Seelke's home did not constitute a customary home occupation under the Village Zoning Code. Since the last meeting Chairman Davis had consulted with the Village Attorney and expressed the

Board's wish that the Village Code section on customary home occupations be made more specific. The Village Attorney also said that since the Zoning Board of Appeals sits as an appellate body, without any action taken by the Board, the present determination would stand. The burden was therefore upon Mr. Seelke to prove otherwise.

Mr. Seelke started off by saying that his daughter and her family were moving in with him and there was a need to change the location of the proposed home business from the garage to a utility room within the house and that would also mean a change in scale of tools that would be used.

Chairman Davis said that if a favorable decision were rendered, he believed a full recitation would be needed to address things such as access to the guns, where in the house the business could be conducted, disallowing any bullets in the guns, and requiring the business to be by appointment only.

Mr. Levitt had concerns that granting a favorable decision would set an undesirable precedent, allowing future applicants the ability to sell guns because the license Mr. Seelke was applying for allowed sales of guns as well as repair. Ms. Stephens was in agreement with Mr. Levitt.

Mr. Seelke stressed that his business would be the repair of guns; the license he is seeking allows for both repair and sales. He said he would be using hand tools, a drill press, a lathe, springs; basically the same tools a woodworker, carpenter, or machinist would use. He would not be able to sell ammunition, and would not be able to discharge a gun for testing in the Village. Ammunition would be stored separately.

Mr. Macdonald said he would have no problem if the business were in a shop in the upper Village where police were cruising by daily but had concerns that if the Board granted Mr. Seelke's appeal, he could move anywhere in the Village without needing to notify Village authorities.

Chairman Davis explained that the ATF (The Bureau of Alcohol, Tobacco, Firearms and Explosives) wants to know if the proposed business is within local law and although the Board might feel comfortable with the business being on Melrose Avenue, should the Board say it is a customary home occupation, the Board could not rule on where the business could be run in the future. This could result in a precedent.

Chairman Davis then asked Mr. Sperber, who had made the unfavorable determination, what had motivated his decision. Mr. Sperber said it was a reaction to recent events. He further explained that in the past, such activities as yoga classes as a home occupation had come before the Board, so he preferred to defer to the Zoning Board for a ruling.

Chairman Davis said he had spoken to a number of people and although he found someone in the northern part of the County, no one in Croton is doing what is proposed here. Because it is so rare, that would make the proposed business not customary.

However, if one examines exactly what Mr. Seelke plans to do, one could see it as a craft and it would not be a public safety issue. He added that he wished the Board had more guidance with the issue.

Mr. Olcott stated that Village Code specifically excludes day care centers and bed & breakfasts and asked Mr. Sperber if he had found any other home occupations taking place in Croton. Mr. Sperber said he knew of a picture framer, jewelry maker, and yoga instructor.

Ms. Stephens and Mr. Levitt again expressed their concern about the “sales” part of the license. Mr. Levitt added that, if granted, he would be worried about the results of doing so. Mr. Olcott said this was not like a regular variance.

Chairman Davis said he was prepared to suggest a limited reversal of the determination and vote that gun repair (and nothing to do with sales) is a customary home occupancy. With the other members of the Board still expressing objection, Chairman Davis asked whether Mr. Sperber or the Secretary had a copy of Mr. Seelke’s application for the federal license to see the exact wording involved. Mr. Sperber responded that neither he nor the Secretary had such a copy. They did however have conversation(s) with the Federal Agent, Tina Palmieri, who had come to the Engineer’s/Building office. Chairman Davis then said that the Board really needed a copy of Mr. Seelke’s application to the ATF to see what he is specifically asking for on the application and what types of limits are put on the license. Mr. Seelke said he believed there were 3 copies of the application – one went to the ATF, one went to the Chief of Police and he thought he had a copy.

Mr. Seelke said he understood the Board’s concern about sales of guns, but said that the license he is seeking does not separate sales from repairs.

Mr. Olcott and Mr. Levitt wanted to make it clear to Mr. Seelke that the Board would not be ruling for or against Mr. Seelke but would be voting on the interpretation of Village Zoning Code as to whether or not his proposed gun repair business is a customary home occupation. Mr. Olcott added that unless sales can be separated from the repairs, he could not vote in Mr. Seelke’s favor.

Chairman Davis concluded that the Board needed to see the ATF application. Ms. Stephens and Chairman Davis both said it would be helpful to discuss the Village Code at issue with the Village Board. He then adjourned the application until the next scheduled meeting of the Zoning Board.

3. APPROVAL OF MINUTES:

Ms. Stephens made a motion to approve the amended minutes and the resolutions of the May 15, 2013 Zoning Board of Appeals meeting. The motion was seconded by Mr.

Zoning Board of Appeals Meeting

June 12, 2013

Page 6

Levitt. The motion passed 4 - 0 in favor. Mr. Olcott did not vote on the minutes having not been present at the May meeting.

4. ADJOURNMENT:

The meeting was adjourned at 10:10PM.

Respectfully submitted,

Toni Cruz

Secretary, Zoning Board of Appeals