

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
July 17, 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 July 17, 2013 was called to order at 8:00 P.M.

2. PUBLIC HEARING:

- a) **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 06/12/13.*)

Chairman Davis began the meeting by explaining that since last month's meeting two new documents have been submitted to the Board. One was a copy of Mr. Seelke's application for a federal firearms license submitted to the ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives) and the other was a letter from Mr. Seelke addressed to the Zoning Board of Appeals dated June 14, 2013. Chairman Davis also said that he had a conversation with Lt. Russell Harper of the Croton Police Department which did not result in any more clarification. Lt. Harper said he was not aware of anyone else in the area engaged in gun repair at his or her residence.

Mr. Seelke said that he wrote the letter to the Board to address its concern regarding the sale of firearms and stated in the letter that he only wished to be a gunsmith and not a firearms dealer.

Chairman Davis, in review of the application, said that the Board was an appellate board and was hearing an appeal of the Assistant Building Inspector's determination that gun repair is not a customary home occupation and that the burden is on Mr. Seelke to prove otherwise. He added that the Board has had a couple of sessions regarding the application, that a lot of information has gone back and forth, and that he wished he had even more information. He then asked the other Board members for their thoughts.

Ms. Stephens said she felt that in this community gun repair is not a customary home occupation and expressed concern regarding the legality of it should the Board decide to rule in Mr. Seelke's favor.

Mr. Levitt said that although the Board spoke about separating the sales of firearms from the repair of them, the federal license would give Mr. Seelke the ability to sell firearms. The federal license does not separate them. Mr. Levitt also said that the Board needs to concentrate on the language of the Village Code concerning customary home occupations.

Chairman Davis then asked Mr. Sperber if he was aware of anything in the Village Code that would shed a different light on the application if Mr. Seelke engaged in the gun repair as truly a hobby with no financial aspect to it. Mr. Sperber said he was not aware of anything in the code but added that if there was, it would not have altered his determination.

Mr. Levitt then brought attention to Item #9 of the federal firearms license application in which Mr. Seelke wrote "I wish to be in business as gunsmith and to buy and sell firearms". Mr. Sperber explained that Mr. Seelke had filled out the application well before he knew there would be an issue with the sale of firearms.

Ms. Stephens told Mr. Seelke that the Board was not questioning his intentions but questioning the interpretation of the law. Chairman Davis added that the Board is so concerned with the interpretation of the Village Code that the Board plans on meeting with the Village Board to discuss the definition of customary home occupation and whether or not a more elaborate definition is needed.

Chairman Davis then asked the Board members what stand they would take if a hypothetical motion were to be made stating that gun repair is a customary home occupation. Chairman Davis said he, himself, would have to oppose it. Mr. Macdonald said he would vote against it but would have no problem if Mr. Seelke planned on doing the gun repair in a commercial district in the Village. Mr. Seelke said financially he could not do that. Mr. Seelke added that there would be no signage, no one would be coming to his house, and that he would not sell any firearms.

Mr. Levitt said that if the interpretation could be based on the tools Mr. Seelke would be using than he might be able to say it was customary. Under the Village Code as currently written, he would not be able to vote that gun repair is a customary home occupation and expressed his concern that a favorable interpretation would stick for future cases.

Mr. Olcott said that if sales of firearms cannot be separated on the ATF application, he could not support Mr. Seelke.

Ms. Stephens said that the Board has been trying to work with Mr. Seelke but it came down to an interpretation of the law as written.

Chairman Davis said the Board was not convinced that the interpretation should be reversed and that it would likely rule against Mr. Seelke's appeal. He said that with a lack of guidance and given the law, the Board does not think gun repair is a customary home occupation. He added that the problem is the way the law is written and that by Mr. Seelke's own admission, gun repair is rarely done.

In conclusion Chairman Davis said the application was being tabled to the August meeting but it was the consensus of the Board that the Assistant Building Inspector's determination was correct. A formal vote will be taken at the August meeting.

Ms. Stephens wanted it noted that neither Village Liaison had been present at tonight's meeting.

3. APPROVAL OF MINUTES:

Ms. Stephens made a motion to approve the amended minutes and the resolution of the June 12, 2013 Zoning Board of Appeals meeting. The motion was seconded by Mr. Levitt. The motion passed 5 - 0 in favor.

4. ADJOURNMENT:

The meeting was adjourned at 9:05PM.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals