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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

September 12, 2019 @ 7:30 p.m.

ATTENDANCE: Judith Barrett, Emmett Sheehan, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

CALL TO ORDER: Judith Barrett called the meeting to order.

EXECUTIVE SESSION

- *Emmett Sheehan makes a motion to enter into executive session. Borys Gojnycz seconds. There was a unanimous roll call vote to enter into executive session.*
- *Judith Barrett motions to close the executive session and return to open session. Emmett Sheehan seconds. There was a unanimous roll call and all were in favor.*

OPEN SESSION

- **ZBA Case #2019-04 McGrath, 16 Pine Pt. Rd. (CONT'D):** *The Board voted unanimously to approve the special permit, 5-0.*
- **ZBA Case #2019-11, Van Haur /McGoldrick c/o Galvin, 14 Chestnut St. (CONT'D):** *The Board voted to continue the public hearing until October 24, 2019.*

The Board voted to voted administratively to approve the proposal for 66 Tussock Brook Road, subject to the submission of a site plan approved by the Building Inspector.

The Board voted to approve meeting minutes from January 10, 2019, July 11, 2019 & July 25, 2019.

The Board moved to adjourn the meeting.

BOARD OF APPEALS — MINUTES

Case No: 2019-04

Applicant: Glenn R. McGrath

Property Address: 16 Pine Pt Road

Date: September 12, 2019 Time: 7:30 p.m.

(Continued from May 23, 2019)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, May 23, 2019~~ at 7:30 p.m. to consider the application of Glenn R. McGrath for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 #4, 402, 410.4, and 906.2 of the Duxbury Protective Bylaw. The property is located at 16 Pine Point Road, Parcel No. 139-941-023 of the Duxbury Assessors Map, consisting of .10 Acres in the Residential Compatibility (RC) & Flood Hazard Area Overlay Districts (FHAOD) and owned by Glenn R. McGrath. The Applicant proposes to raze and rebuild a pre-existing, nonconforming dwelling. A Special Permit is required.

Members present: Judith Barrett, Emmett Sheehan, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

Members Voting: Judith Barrett, Emmett Sheehan, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

- Judith Barrett, Chair Pro Tem, calls the meeting to order and explains that the Board will be going into executive session and that they will return to open session [proper motions are made via rollcall]
- The Board returns to open session
- Judith Barrett explains there are two matters on the agenda, and the first is a continuance regarding 16 Pine Point Road. She then goes on to summarize the order of events of the hearings.
- Judith Barrett cites and reads, some in part, the correspondence received: the application, the plans, a memo from the BOH stating the property is connected to the Marshfield Septic treatment and therefore the Board of Health has no comments, a Memo from April from the Conservation Commission, an updated Memo from the Conservation Commission from May, a Memo from the Planning Board from April recommending deferral of the special permit to the ZBA with a few considerations, the Design Review Board Memo stating that overall the proposed new structure will be an improvement, a letter from abutters Woodall in support of the proposal, and a Memo from the Conservation Commission dated 9/12/19 citing Orders of Conditions and special conditions.
- Judith Barrett invites the Applicant to present the case.
- Glenn McGrath of 16 Pine Point Road explains the history of the project - that in 2016 they changed the flood plain to a velocity zone and rewrote the FEMA maps but the model they used was the west coast and the west coast doesn't have salt marshes, so it was in error that they put my house in a velocity zone while the seawall is an AO. He goes on to state that the Towns had petitioned FEMA to redo the maps to get the zone back to AO and that has been approved but there is a process and it'll be done and back to AE but not until January. He states that he understands that no work can begin on his project until the FEMA maps are officially updated and wonders if he needs another continuance.

- The Board discusses and decides they do not need another continuance, they can grant the approval with a condition that he waits until the flood zone designation is final from VE/AO to AE.
- Judith Barrett asks if anyone has any questions.
- Freeman Boynton, Jr. asks about the plans dated March 22nd and if there have been any changes, height, etc.
- Glenn McGrath states that no changes have been made, the plans are the same.
- Freeman Boynton, Jr asks if he meets all the setbacks.
- Glenn McGrath states there was one concern over a deck on the side but it has been reduced and changed to comply.
- Freeman Boynton, Jr. confirms per the plans.
- Judith Barrett asks if anyone has comments or questions.
- Emmett Sheehan motions to close the hearing. Borys Gojnyecz seconds. All in favor.
- Emmett Sheehan makes a motion to approve the project as proposed, with a condition that the building department doesn't issue a permit until the FEMA map is officially amended to reflect the conditions in the Conservation Commission's Order of Conditions. Philip Thorn seconds. All in favor, 5-0.

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: ES	Seconded by: BG
Number in favor: 5	Number opposed: 0

Motion: It was moved, seconded and unanimously voted to grant the special permit with conditions for #2019-04.

Moved by: ES	Seconded by: PT
Number in favor: 5	Number opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2019-11

Petitioner: Van Haur /McGoldrick

c/o Bob Galvin

Address: 14 Chestnut Street

Date: September 12, 2019

(Continued from July 25, 2019)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, July 25, 2019~~ at 7:30 p.m. to consider the application of Peter J. Van Haur and Michael McGoldrick c/o Robert W. Galvin for an Appeal under Article(s) 400 and 900, Section(s) 421.2, 906.1 and 911 of the Duxbury Protective Bylaw. The property is located at 14 Chestnut Street, Parcel No. 110-771-032 of the Duxbury Assessors Map, consisting of 0.82 Acres in Neighborhood Business District 1 (NB1) and owned by South Shore Capital, LLC. The Applicant disputes the basis of a zoning violation notice citing offensive noise and vibration and the Town's By-laws meaning therein.

Members present: Judith Barrett, Emmett Sheehan, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

Members Voting: Judith Barrett, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

- Judith Barrett, Chair Pro Tem, opens the hearing for 14 Chestnut Street and reads the public hearing notice into record and cites the correspondence received – an appeal petition, a memo from Jim Wasielewski bldg. inspector and a series of emails between Jim Wasielewski and Charles Perenick.
- Emmett Sheehan interrupts to discuss the fact that he is an abutter to the petitioner's property. The Board, Atty Galvin & Emmett discuss. Emmett Sheehan opts to recuse himself from the discussion.
- Judith Barrett resumes citing correspondence received and summarizes the basis for the petition. She and Atty Galvin discuss why the hearing was continued from the original July date.
- Attorney Robert Galvin representing South Shore Capital and CrossFit Kels hands out packets to the Board for their review, stating that it's a letter he will summarize and some photographs, and 22 emails from members and residents in support, and a copy of the DEP air quality control policy
- Robert Galvin goes on to state that the appeal concerns the June 4th letter from Mr. Lambiasi that cited a zoning section 421.2 and in substance I contest that as a matter of law that the section cited is inaccurate as it's a neighborhood business district and a gym is not a prohibited use. He goes on to state that the Perenicks are the first in a pattern that encompasses the RC & the NB district. Mr. Galvin states that he didn't specify the types of activities that are offensive to the bylaw and these cases work in that you need to be clear and non-ambiguous with the order. Mr. Galvin gives a brief history of the background of the property, that was a toy manufacturer and then a gymnastic facility and has always been heavily commercial property, then he gives a synopsis of the CrossFit gym.
- Robert Galvin states that they believe the issue today is the dropping of the weights and that the noise is perceptible to those at the Perenick property, he is not aware of any other complainants. He states that it was originally a concrete slab floor and they kept the door open during workouts, and they have mitigated this by keeping the doors closed, installing insulation on the walls, a brand new rubber floor system, and a stockade 6' fence between the two properties. Mr. Galvin states that he attended a class today and

stood about 30' from the building up against the fence and took a video to get a feel for the noise and in his opinion there was hardly a perceptible sound at the boundary line and no perceptible vibration and with puddles on the ground he saw no ripples in the puddles that would indicate a vibration; but he noted there was a sound of trucks and traffic at Halls corner.

- Robert Galvin continues, by stating that he has reviewed Mr. Wasielewski's letter and regrettably there is no way to mitigate some of the sound like traffic etc. Mr. Galvin goes on, stating that he's given some law to show what a nuisance is and that the case law in Massachusetts requires a land owner's use of his land to be beyond the regulars of everyday life in a civilized community and I've included some case law surrounding this and certainly many things can be a nuisance, but a petty nuisance; My clients have told me that there was a complaint made to the Duxbury police about members of CrossFit members running, but I have also heard of other complaints made by the Perenicks – those to the Chestnut Street grille and about the speaker at the Dunkin' Donuts. He states he feels for them, but this is a dense area and not all noise can be mitigated in a neighborhood district. Mr. Galvin concludes by stating that they certainly don't want to interfere with their daily routines, but they have to be reasonable about noise, that he is submitting 22 letters of support for the gym, is asking the Board to overturn the violation decision.
- Judith Barrett asks where in the Bylaw this use is allowed.
- Mr. Galvin states that the use is as a gymnastics use.
- Judith Barrett asks if there is a special permit or site plan decision.
- Mr. Galvin states not to our knowledge, it was a use that was determined to be permitted.
- Freeman Boynton and Judith Barrett discuss uses allowed in the NB district.
- Borys Gojnycz asks what the response was from the Police.
- Mr. Galvin states that it was his understanding that a report was filed.
- Freeman Boynton, Jr. asks if there have been any other complaints filed and how effective improvements they've done have been.
- Mr. Galvin states that some of the emails that were submitted there are some in there that talk about it being tolerable noise and asks if he may show the video I took today?
- Mr. Galvin shows the video to the Board.
- Mr. Van Haur states that he thinks it's important to note that today's workout was 200lbs and it doesn't get heavier than that.
- Mr. Galvin, referencing the video, states that every time a truck goes down Chestnut it is louder than that and he references the DEP noise pollution policy used by most municipalities and the 1st page of that in order to constitute air pollution noise has to be 10% higher than the ambient noise condition and the one I have on my phone only increased when a car went by on Chestnut, it wasn't even registering. Mr. Galvin wonders aloud if the police dept has something to measure that and he thinks they would find it doesn't even register.
- Borys Gojnycz states that normally when we deal with a business, we have hours of operation and I think that's important and when it comes to noise, it's important. Borys describes an issue at his home nearby the DEP and states he's called the police for noise disturbance before 7am and after 7pm.

- Mr. Galvin states that Duxbury is one of the few towns that don't have a set of time regulations, it tends to be imposed as one of the conditions of the permit and my clients moved in on the conditions of another permit in the same category.
- Judith Barrett invites the building inspector to present.
- Jim Wasielewski introduces himself and states that he did have a conversation with Scott and confirms there are no hours set on that. Jim goes on to state that the Building Dept. were made aware of CrossFit Kels via a complaint and there were no business certificates filed, so he went down there and let the owners know what they had to do, they did that and we reviewed it and found the similar use to the gymnasium. Jim states that as time went on the complaints start to roll in and I observed this at an early morning hour and I suggested Mr. Perenick keep a log, which he did, and then I went back and I found that on another day around 6:45am I heard it. He states that a phone is not capable of recording this sound, and ambient noise or sound is very different depending on the time and it was loud enough that he could feel it in the couch that he was sitting on and I also need to say that I am deaf in one ear and I could still hear it. Jim W. states that he sent the complaint only after he heard the noise himself.
- Borys Gojnycz asks what his scale of annoyance would be if Mr. Perenick states a 4 on a scale of 1 to 10.
- Mr. Wasielewski states that he couldn't say as he doesn't hear it to wake him, and he has to imagine that it depends on the number of people working out there on a given day and that sound travels through a solid, not the air and it comes through the house and you can feel it.
- Freeman asks if the dropping of the weights was the basis of the complaint.
- Jim W. states that there yes and there were others – the garage doors open in the morning and the radio is playing at 5am and Mr. Perenick sent me a video of a recent time and I suggested he show you tonight.
- Freeman asks if the number of or degree of complaints has changed since the July opening.
- Jim W states that the number of complaints stayed the same, but I told Mr. Perenick to keep a record, no need to email me every time as a hearing date has been set, but to call the police if he feels it's necessary.
- Atty Galvin asks if anyone else has complained other than the Perenicks.
- Jim W. responds not to his knowledge.
- Judith Barrett opens the floor to the public.
- Charles Perenick of Chestnut Street states that he met Mike McGoldrick back in April of 2018 and as a neighbor he let me know if there's anything I can do to make things amicable he would. Mr Perenick goes on to explain that about 2 weeks later he made Mike aware of the problem with the vibration, discussed getting mats to mitigate it and that what he had wasn't working and explained how the fact that he is a combat veteran makes the sudden noises difficult, as well as the disturbance it poses for animals and the kids. Mr. Perenick states that Mr. McGoldrick attempt to help was to offer with free memberships and to hold a fundraiser for vets, but Mr. Perenick states that he explained that wasn't the problem, it was the dropping of the weights that cannot be compared with activity from a kids gymnastic business and that if you google this you will find that this is a nation-wide complaint, and goes on to state that aside from the weights he has concerns over runners carrying weights running on Chestnut Street. Mr. Perenick submits to the Board a MA General Law copy, a story about shock mats, pictures

from recently when the doors were open, information from across the nation about CrossFit complaints and how to sound proof.

- Sibohan Perenick of 24 Chestnut Street states she has video to show you from inside my house at 7:30 at night and it is nothing like the other video you saw... I was in my office at the front of the house with windows closed and a/c going and I can still hear every word of the songs playing over there and I can live with the songs, with clients at my desk, but the vibration with things falling off our shelves and my husband being disturbed I cannot take. Ms. Perenick states that they are trying to work with them and were met with resistance and that they are trying to go through the proper channels for compromise. Ms. Perenick states that they have not seen any difference and shows the video she has to the Board.
- Connor Perenick of 24 Chestnut Street states that he is happy to see the business back in Town after Gymnastics place shut down, that after a few weeks of the noise they realized it wasn't just construction and they have all noticed the significant noise and it is bothersome and he hopes they can resolve it.
- Mr. Galvin asks Judith Barrett when the video Siobhan Perenick played was taken and Judi asks Siobhan.
- Siobhan Perenick answers, August 15, 2019 at 7:25pm.
- Mr. Galvin states that they'd be willing to hire an independent noise company to come out and observe the property, at our expense, to measure the noise impacts so that there is something else out there besides a cell phone video and also would like to reiterate our offer so that you can come out and see it for yourself.
- Judith Barrett states that she thinks that some kind of technical documentation from a reliable source would be good.
- Mr. Galvin requests that they get a continuance until a night when there is a full board since there is only 4 tonight.
- Judith Barrett explains to the audience how the continuance works and states that she thinks they need additional information, that she'd like a copy of the special permit for whatever use that is there.
- Borys Gojnyecz states that when we deal with situations where a business is transferred, we usually have an open discussion on it if the permit requires it, but he's not sure if it came up.
- Bob Galvin states it's unlikely 20 years ago but it would be helpful.
- Charles Perenick states that for clarification purposes, is this now saying that an outside company is going to come inside my house in the early morning and set up listening devices and how do I know the weights will be dropped in the same way and it's an inconvenience.
- Judith Barrett states that this an adjudicatory board and we need evidence and have unanswered questions, so we are going to do what we need to do to get that information, we are not asking you to open your home.
- Freeman Boynton, Jr. states that the issue seems to me to be mostly the thumping of the weights and that he'd like to see Mr. Perenick come in to the next meeting and say that it is no longer happening in the early morning.
- William Berry of 19 Simmons Drive states that he gets the sense that it won't fix it as what he heard about the owners is not at all what he sees from the owners of CrossFit, that they are a huge part of the community, and goes on to describe different instances of Mike McGoldrick's community support.
- Jim Wasielewski states that he doesn't think it's reasonable to tell a business to stop all their activity, but to perhaps stick to state regulation which is 7am -9pm,

those are operational hours for that kind of noise and that maybe they could be stopped at those early hours as that seems to be the main nuisance.

- Freeman Boynton, Jr. states that he wonders if they'd be amenable to minimizing the hours of the dropping of the weights or if it's any time of day that it is a nuisance for them.
- Mr. Galvin states that the first letter that was written gives an example of a gym member that can only attend the gym at that time, so we will certainly consider that as an option, but I think it'll be helpful to get the noise professional and we were thinking about the property line not inside the property.
- Judith Barrett asks if they'd be willing to have the Board hire the consultant.
- Mr. Galvin states that their idea was to get a qualified and independent and he might even be inclined to having Mr. Perenick aware of whom etc.
- Freeman Boynton, Jr. wonders if the property line results are going to be the same as inside of Mr. Perenick's house and then he asks why they drop the weights.
- Mr. Galvin states that it's a safety issue, you cannot safely slowly lower it, you have to drop it.
- Judith Barrett states that she'd like the appellants to collect sound data and work with the neighbors; I'd insist that you have Scott Lambiase review that person's qualifications and then she asks what kind of extension they would like.
- The Board and Galvin discuss dates and agree on October 24th, 2019.
- Phil Thorn makes a motion to continue the hearing until October 24, 2019. All in favor, 4-0.

BOARD OF APPEALS — MINUTES

Applicant: Sweetser
c/o Shiretown Glass
Property Address: 66 Tussock Brook Road
Case No: 2018-13
Date: September 12, 2019

Members present: Judith Barrett, Emmett Sheehan, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

Members Voting: Judith Barrett, Borys Gojnycz, Freeman Boynton, Jr., & Philip Thorn

ADMINISTRATIVE:

Sweetser, 66 Tussock Brook Rd.: Applicant has requested a building permit for an 8' x 7' deck extension in their Bay Farm Condo. The Zoning Board of Appeals shall determine whether the proposed addition exceeds the terms of the Special Permit under which the development was constructed and requires an amendment to said Special Permit.

- Judith Barrett states that they have an administrative matter to attend to for 66 Tussock Brook Road and invites the application to speak.
- Bill Hallisey of Shiretown Glass states he's here to represent 66 Tussock Brook Road and that they are proposing a small deck extension. He states that there is another one in that development that's already been done and is a foot longer.
- Freeman Boynton, Jr. asks if they have a site plan. Bill hands out packets.
- Freeman Boynton, Jr. states that this is a picture, but he is wondering about a site plan and thinks they should be able to build as long as they submit a proper site plan.
- Janice Schroeter of Shiretown states that the pictures will show that there is already a non-conforming one at #68 and the one we propose will be shorter
- Freeman Boynton, Jr. states that he suggests if we approve it, it should be subject to the Building department getting a site plan.
- Judith Barrett agrees, stating that we wouldn't hold it up again, but subject to what it needs.
- Bill Hallisey states that maybe make it subject to the approval of the site plan by the building inspector, it's a very simple project and there is already one there that goes further out than we propose.
- Freeman Boynton, Jr. states we need something showing it meets the zoning bylaws.
- Judith Barrett concurs.
- Freeman Boynton, Jr. states that the bldg. dept is probably going to ask you for it anyways.
- Bill Hallisey states that we will have to file it anyway at that point, yes.
- Janice Schroeter states that we've been approved by Design Review and HOA and we just need you guys.
- Judith Barrett states that it is ok, subject to the receipt of a site plan that is acceptable to a site plan that's approved by the building department.
- The Board votes unanimously in support, 4-0, that the Board has no objection to the issuance of a building permit for the deck as long as the building department receives a site plan that is satisfactory to the building inspector.