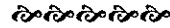




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# TOWN OF DUXBURY



## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES

November 14, 2019 @ 7:30 p.m.

**ATTENDANCE:** Judith Barrett (Chair Pro Tem), Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz & Philip Thorn

**CALL TO ORDER:** Judith Barrett

**ZBA Case #2019-11 CrossFit Kells, 14 Chestnut St. Appeal:** *The Board voted to continue the public hearing until November 25, 2019.*

*Judith Barrett voted to adjourn the meeting. Philip Thorn seconds. All in favor (5-0).*

## BOARD OF APPEALS — MINUTES

**Case No:** 2019-11  
**Petitioner:** CrossFit Kells  
**Address:** 14 Chestnut St  
**Parcel #'s:** 110-771-032  
**Date:** November 14, 2019

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, November 14, 2019 at 7:30 p.m., continued from July 25, 2019, to consider the application of CrossFit Kells for a Comprehensive Permit. The property are located at 14 Chestnut Street, Parcel No.'s 110-771-032 of the Duxbury Assessors Map, consisting of .082 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. The application may be viewed in the Municipal Services Department between the hours of 9:30 a.m. and 2:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

**Members present:** Judith Barrett (Chair Pro Tem), Kathleen Muncey, Freeman Boynton, Jr., Borys Gojyncz & Philip Thorn

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Asst. ZBA

**Members Voting:** Judith Barrett (Chair Pro Tem), Kathleen Muncey, Freeman Boynton, Jr., Borys Gojyncz & Philip Thorn

- Judith Barrett opens the hearing and states it's continued. She states that there are new complaints and an inspection report dated 10/29/19 and then briefly summarizes the inspection report and she reads/summarizes 11/14/19 inspection report into record. Judith Barrett then reads 85-7 and 90-12 special permits into record, stating that in 1990 the Board agreed to a change in use as a gym with parking restrictions and number of participant restrictions.
- Judith Barrett invites the Applicant to speak
- Tony Riley states he is there to represent Crossfit Kells with Mike McGoldrick and states that they have no violation notices in regards to special permit violations.
- Judith Barrett states that we do have to make sure that use is allowed in the District.
- Angela Ball interrupts to ask to use the microphone.
- Tony Riley states that he has two separate things to talk about. We don't think we've violated nuisance for vibration and noise. The letter on its face is

unenforceable, the violation is unenforceable; it never stated what kind of noise and I know the issue, but since this is an appeal of it, how can you go on. Aside, the gym has done a lot to mitigate the noise problem. Part is the dropping of weights. Normally you use metal weights, this gym has bought rubber weights and purchased new pads. As of today, only one man was using pads, that's true, as they want to see how they work before buying all and they've installed a rubber floor and have since kept the garage door closed and they store the equipment there to block doors and they have wall insulation and also – just cause it's noise, doesn't mean it's a nuisance. Not too much from other neighbors complaining and with police reports that do not show.

- Judith Barrett asks adjacent land uses?
- Tony Riley shows the map and points out the house with the complain, the Chestnut St Grille, the gym, residential property and no one else has complained about noise or vibration.
- Kathleen Muncey asks one is a professional building with apartments?
- Borys Gojnycz Weights?
- Tony Riley describes the layout of the gym
- Philip Thorn states the layout is similar to gymnastics? Mike McGoldrick states the only change was the lobby; the main gym space is the same.
- Philip Thorn states I recall at the last meeting that there was an additional homeowner.
- Jim Wasielewski states it's not a written complaint but my understanding is that she was not wishing to complain.
- Philip Thorn states I've spoken with another resident that's heard noise, but can't weight either of these without complaints.
- Judith Barrett states I'm much more concerned with staff and what they heard.
- Philip Thorn asks Jim you are hard of hearing and you still heard
- Tony Riley asks how do we respond
- Jim Wasielewski states I agreed that the letter could have been more clear and when (observed that noise) it's not a constant noise, but at an early hour the ambient noise is low and this is plain as day as early and the plan was to mitigate with mats and then with noise study and I understand why they'd wait. Today I was able to see it and it was pretty clear there was noise.
- Tony Riley states I have police reports and I'm not sure what to do when the gym isn't open and they are calling the police. The fact that they called at all is important. I am shocked that Jim isn't acknowledging that the mat was helping.
- Judith Barrett states I get the idea that the 6/4 letter was vague but the understanding of the problem is there, as you've demonstrated.
- Tony Riley states the gym has been responsive.
- Judith Barrett I am aware of discussion from the Board in regards to noise amongst crossfit owners.
- Mike McGoldrick states when we spoke with the company that does these mats, all were on a shared slab with other businesses but ours is 25 feet away, so with a lot of these, it's about direct abutters.

- Judith Barrett states the fact that this isn't the first crossfit with these problems and residences should have an expectation of harmony and balance with...
- Tony Riley states that others around haven't complained
- Judith Barrett states that doesn't invalidate the one
- Tony Riley states others around that aren't complaining and it means something that they call police and there is no class and from the gyms perspective they are trying.
- Judith Barrett one property owner is not less important
- Tony Riley states more complain isn't less
- Kathleen Muncey states it was conformed by the town, the walls shake and that's awful
- Tony Riley states the building department is sending violation notices without a description and without decibel levels
- Judith Barrett asks do you think this complaint doesn't involve unreasonable...
- Tony Riley states I see people have the right to complain, but noise isn't as loud...
- Judith Barrett states the building department did. How do we remedy without decibel
- Philip Thorn states the bylaw doesn't have decibel
- Judith Barrett states it's a reasonable standard amongst most
- Borys Gojnycz states no level of noise – none
- Tony Riley replies I disagree with that, you can't expect to live in a business area and have no noise
- Borys Gojnycz states it's about vibration and dropping of weights that's the problem. We can work with the time, 5am is unreasonable, maybe 7am
- Tony Riley asks why? Nothing is falling on shelves at the gym if it is at 24 Chestnut, it seems not credible to me that this is happening. The gym has done things to mitigate but not everything the neighbors are saying is true, I understand that you can't deal with that there.
- Borys Gojnycz asks what more can you do?
- Tony Riley replies that it's primarily one neighbor and it's a small business and can't spend thousands of dollars – they can do more matting, but only one neighbor.
- Kathleen Muncey states one neighbor verified by the Town and that's important.
- Judith Barrett states and the Building Department
- Tony Riley responds I guess we have a disagreement we can do more
- Jim Wasielewski states the first violation was 6/4 and it's November, how was one mat doing more to change or help the noise. I received several emails about this complaint and the letter says to cease and desist and then...
- Kathleen Muncey states since the letter, you said you did insulation, is that before or after the letter.
- Mike McGoldrick states we did measure the noise with a study and another \$6,000 and \$2,500 and mats are expensive and we can't buy without knowing if it'll help. We've changed out product since this complaint on workouts and I can't

just do the change to the detriment of our Members and they are about 500 per Member/mat

- Kathleen Muncey was this specifically done since last meeting
- Mike McGoldrick states he bought two kinds of mats, lowered music, kept the doors closed
- Freeman Boynton Jr asks is there a drop in sound
- Mike McGoldrick responds not safely. We teach athletes to do it safely
- Kathleen Muncy how would new mats make it bump in to the knees
- Mike McGoldrick states that rubber weights bounce
- Kathleen Muncey asks Why not use the mats in the entire gym, gymnastics had to do that for safety of the athletes
- Mike McGoldrick states our athletes are safe, we can do a station with mats and...
- Kathleen Muncey states I'm having trouble understanding, he stands on one mat and drops on an elevated...
- Mike McGoldrick replies yes
- Kathleen Muncey asks if you do mats in the whole gym, what would that cost?
- Jim Wasielewski asks if mats come in different sizes?
- Mike McGoldrick replies I don't know what a reasonable amount is
- Freeman Boynton Jr. replies 2x2 mats and can drop weights on these?
- Mike McGoldrick responds yes
- Freeman Boynton Jr. states have Jim go to the house and you can drop weights. Two Mats at \$250 and how many people?
- Mike McGoldrick responds 15, Yes, so that's more reasonable at \$2,500
- Tony Riley states we're not opposed to watching this; but I'm concerned about a way to do noise level measurement.
- Judith Barrett states it's not reasonable to feel vibration in the house
- Tony Riley responds I disagree
- Jim Wasielewski responds here's an idea, get C. Perenick to agree to a 5am visit with 15 people dropping weights and you can join me. There is a big difference between 1 person and 15 people and the time to listen is at 5am, as that's when the complaint is.
- Tony Riley responds I agree with that, but the equation is finding the level of noise that is too much
- Judith Barrett states vibration and excessive noise in the house is not reasonable
- Tony Riley states ok, that meets nuisance standard
- Judith Barrett states it may not be the best locale.
- Philip Thorn asks how much weight?
- Mike McGoldrick responds 95-135 pounds with male athletes
- Kathleen Muncey asks 10-15?
- Mike McGoldrick responds probably 4 males, with women at 35-40 pounds and they don't drop
- Kathleen Muncey replies 80, 95-135 pounds apiece at 5am, then when?
- Mike McGoldrick responds 12 noon class and then 6-7pm

- Freeman Boynton Jr. asks do women get a good workout without dropping the weights?
- Mike McGoldrick responds it's a safety thing, at 135 pounds you can't reasonably bring down to shoulders etc., so the time of the day is the bigger issue
- Freeman Boynton Jr. states if the weight dropping stops, they're ok with the other stuff
- Kathleen Muncey states it's a part of their business
- Freeman Boynton Jr. states I'd hate to see you buy without some work
- Judith Barrett and Wayne Dennison discuss the next options
- Judith Barrett asks Jim Wasielewski if it is worth seeing the difference with the mats early in the morning
- Jim Wasielewski states if it's a question of witnessed, then let's see the comparison between 5am with and without the mats
- Kathleen Muncey states I would go to listen
- Freeman Boynton Jr. states I would go
- Borys Gojnycz states I'll bring the coffee
- Philip Thorn states see if Mr. Perenick would be ok with you in his house and the ZBA at the gym and have an open line of communication
- Jim Wasielewski states see if one ZBA member will sit with me, if the Perenicks are ok with that
- Judith Barrett states we're not ready to shut the business down, but this town is residential comm. with peace and quiet and if the business can fix the problem, then it's compliant
- Borys Gojnycz asks for the timeframe, I live near the DPW and it's noisy but with reason of a time frame. 5am-7am is quiet time, the first part of it is just a timeframe or is it the entire day?
- Judith Barrett asks when are the police calls?
- Jim Wasielewski states sometimes during the whole day
- Kathleen Muncey states this is where change of use matters, the gym wasn't beginning at 5am, this is much different
- Judith Barrett states I'm concerned about lawful use too
- Tony Riley states the site visit, could it be during class
- Kathleen Muncey et al discuss time to do site visit
- Wednesday 11/20/19 is discussed as a date-Kathleen Muncey, Borys Gojnycz, Philip Thorn and Freeman Boynton Jr. could
- Jim Wasielewski can confirm with the Perenicks and you
- Mike McGoldrick states if we can get the mass
- Judith Barrett states let the Perenick's know it'll be advantageous for them to help
- Discuss dates
- Jim Wasielewski states the other aspect is cease and desist letter is about height dropping at 5am
- Judith Barrett states that'll be hard pressed
- Philip Thorn states in order for cease and desist letter to be rescinded, we have to vote on that-yes
- Judith Barrett are we available the night of 11/26/19?

- Borys Gojnycz states no; 12/26/19 meeting in the morning?
- The Board talks about the morning meet up?
- 8am on 11/25/19-amendable?
- All ok with that? 11/20 test and 11/25 meeting at 8am
- Mike McGoldrick states he will order or borrow mats

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to 11/25/19**

- |                      |                   |
|----------------------|-------------------|
| • Moved by: PT       | Seconded by:      |
| • Number in favor: 5 | Number opposed: 0 |