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DUXBURY, MASS.

# TOWN OF DUXBURY



## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES

January 9, 2020 @ 7:30 p.m.

**ATTENDANCE:** Judith Barrett, Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., & Emmett Sheehan

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

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

**ZBA Case #2019-18, Tcherepnin, 283 King Caesar Rd.:** *The Board voted to approve the permit, with conditions.*

**ZBA Case #2019-19, Calista, 315 King Caesar Rd.:** *The Board voted to approve the permit, with conditions.*

**ZBA Case #2019-11, Van Haur/McGoldrick c/o Galvin, 14 Chestnut St. (CONT'D):** *The Board voted to approve the permit, with conditions.*

**ZBA Case #2019-14, Duxbury Lincoln LLC, 0 Lincoln St.:** *The Board voted to approve the comprehensive permit.*

*The Board moved to adjourn the meeting. All in favor.*

## **BOARD OF APPEALS — MINUTES**

**Case No: 2019-18**

**Petitioner: Nicholas Tcherepnin**

**Address: 283 King Caesar Rd.**

**Parcel #'s: 135-129-000**

**Date: January 9, 2020**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, January 9, 2020 at 7:30 p.m. to consider the application of Nicholas Tcherepnin for a Special Permit under Article(s) 400 and 900, Section(s) 404.6, 404.7, 404.8, 404.20 and 906.2 of the Duxbury Protective Bylaw. The property is located at 283 King Caesar Road, Parcel No. 135-129-000 of the Duxbury Assessors Map, consisting of 0.90 acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Nicholas F. & Anne London Tcherepnin. The Applicant proposes to construct a residential pier. A Special Permit is required

**Members present:** Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., & Philip Thorn

**Members Voting:** Judith Barrett, Wayne Dennison, Borys Gojnyecz & Philip Thorn

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

- Wayne Dennison opens and adjourns until 8pm and explains that there are only four people that can sit and it's up to you if you'd like to proceed with the four, as you need all four votes to reach approval.
- Chris Leary-we're ok with four
- Wayne Dennison reconvenes
- Wayne Dennison reads the Public Hearing notice, cites application, OOC, plans, photographs, BOH memo, cc memo, PB memo, DRB memo and explains the PH order
- Chris Leary of Duxbury Construction identifies himself, explains pier specifics 62 ½" L with aluminum gang 20x10, the entire pier is 100' from coastal
- Wayne Dennison asks about open water where there are shellfish?
- Chris Leary explains at high tide yes. We are doing 25 setback from the nearest neighbor. Identifies all zones, speaks to construction and all wood except the gangway, all the spaced as required. Timber pilings with a decking elevation of 12'. We filed with the Conservation, Ch. 91 License and we got word that USAC Engineers will draft a decision soon. Our pier is about 133' vs another at 147' and the Calista's at 315 King Caesar Rd. is longer, so this has less impact.
- Wayne Dennison – 404.40 specifies about shared piers – any discussion?
- Chris Leary Lots of talk, all want their own piers.
- Philip Thorn states the definition of open water is vague-not if between two banks – does shoreline of Duxbury beach have these
- Wayne Dennison is the point that to consistently approve, we should deny the pier.
- Judith Barrett asks how so?
- Philip Thorn states Open water means that it has to reach the end of the two banks
- Wayne Dennison states my recognition is that expert determined it a salt marsh
- Wayne Dennison and Philip Thorn discuss previous thoughts
- Judith Barrett says if they don't want shared piers, the bylaw should say so or direct us.
- Philip Thorn agrees with Judith Barrett
- Chris Leary says this peculiar situation with lot lines – partly cared for by King Caesar beach trust, is this to say he walks to 315?
- Judith Barrett and Wayne Dennison discuss the shared as next to each other

- Dean Calista 315 King Caesar Rd.- states conservation asked us to put on east side and our purposed is considerable distance
- Chris Leary add
- Judith Barrett states it does not conform to ZBL?
- Wayne Dennison and Chris Leary discuss must face seaward, cannot extend 200, float is 200, rails are 3' off docking, setback is 25', nearest side landing
- Wayne Dennison asks if anyone has comments? No
- Borys asks about the rock formation nearby and if there is an issue with ice? Ice siding up the ramp and on pilings. Area takes full brunt of the tide.
- Chris says the seawall was recently raised several feet.
- Judith Barrett makes a motion to close
- Wayne Dennison second
- All in favor
- Judith Barrett motion to approve as submitted

**Motion: It was moved, seconded and unanimously voted to approve the application as is, subject to other approvals needed.**

Moved by: JB

Seconded by: WD

## BOARD OF APPEALS — MINUTES

**Case No: 2019-19**

**Petitioner: Daniel Calista**

**Address: 315 King Caesar Rd.**

**Parcel #'s: 135-127-001**

**Date: January 9, 2020**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, January 9, 2020 at 7:30 p.m. to consider the application of Daniel Calista for a Special Permit under Article(s) 400 and 900, Section(s) 404.6, 404.7, 404.8, 404.20 and 906.2 of the Duxbury Protective Bylaw. The property is located at 315 King Caesar Road, Parcel No. 135-127-001 of the Duxbury Assessors Map, consisting of 1.20 +/- acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Daniel S. & Bridget M. Calista. The Applicant proposes to construct a residential pier. A Special Permit is required.

**Members present:** Judith Barrett, Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., & Philip Thorn

**Members Voting:** Judith Barrett, Wayne Dennison, Kathleen Muncey, Philip Thorn & Borys Gojnycz

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

- Wayne Dennison (Chair) reads the Public Hearing notice, cites the application, drawings and plans from Seacoast, BOH memo, CC memo, PB memo and DRB memo
- Paul Brogna identifies himself from Seacoast Engineering & the applicant and describes the area surrounding 315 King Caesar Rd. He explains the parts of the bylaw this application has to deal with.
- Wayne Dennison asks how far off?
- Paul Brogna answers 25' off, 90' from the west
- Wayne Dennison asks if there is anything that doesn't agree with the zoning bylaws
- Paul Brogna answers that there is no salt marsh, so some don't apply and all of it is compliant, agreed with CC as to the location
- Philip Thorn asks if it reaches open water?
- Paul Bogna replies yes
- Judith Barrettin wpod or scenic overlay?
- Paul Brogna describes more details of pier, speaks of weather
- Wayne Dennison states the height of the pier should not exceed 15'
- Paul Brogna replies yes, due to the flood zone they'd like to put the pier up higher
- Wayne Dennison asks is there are any regulations requiring that height
- Paul Brogna replies not technically, but it is the rend as it's needed
- Wayne Dennison 404.20 states not higher than 15' unless required by state and federal regulation.
- Paul Brogna says nothing official, but with common sense viewpoint, it needs to and he'd like them to consider that the bylaw needs to update with the changes.
- Judith Barrett states we don't have any waiver authority with this bylaw
- Wayne Dennison Anyone here to speak?

- Borys Gojnycz went to Conservation Commission
- Kathleen Muncey asks have ch.91 yet?
- Paul Brogna no Conservation Commission had us put the pier in a different spot
- Kathleen Muncey can we conserve the license as being required and I'll change it to 15'
- Judith Barrett replies yes
- Paul Brogna says yes we're in the process with the State
- Wayne Dennison Can you do this with 15'?
- Paul Brogna asks with my stamp license? No, not with storms likely to happen and we need it
- Borys Gojnycz asks if the Army Corps of Engineers write an explanation of why more than 15'?
- Paul Brogna states he can ask
- Judith Barrett asks if there are any questions
- Wayne Dennison I don't think we can approve as planned. I'd move to deny.
- Kathleen Muncey says I can see my way on this, with subject to...
- Wayne Dennison and Kathleen Muncey discuss what the State regulation says
- Kathleen Muncey states she thinks the commission issuing orders, I'd give defense to those authorities.
- Wayne Dennison states those authorities might not have commented on the height. The pier looks fine, the bylaw is very clear.
- Philip Thorn and Judith Barrett discuss the bylaw
- Paul Brogna asks for a few minutes with the client-yes.
- Paul brogna returns
- Paul Brogna asks if there is anything new- No, we'd like to accept the 15' elevation and work with the State and Federal Agencies to reach a common goal-we'd like to go higher than 15' and two years ago during the ice storm, we lost 10+ piers.
- Borys Gojnycz asks what about a continuance? Can we get 16'?
- Judith Barrett suggests that if they apply for a variance, the ZBA would have to find it's a unique property and not common to the district as a whole.
- Wayne Dennison states I'd say it's unique as RC
- Paul Brogna says that if this was an inhabitable structure (it isn't), the code would say it has to be higher. He describes his pier, asserts that it's not uninhabitable and this may be a reach.
- Paul Brogna to Jim Wasielewski is there anything in code?
- Jim Wasielewski states I'm thinking of the definition of the structure
- Paul Brogna says that if we went beyond to get more advice to say that we can go to 16' later with the admin
- Judith Barrett states no we can't – it's all separate
- Kathleen Muncey asks continue this on?
- Judith Barrett continue?
- Paul Brogna – 15'
- Judith Barrett asks if they have a revised plan?
- Paul Brogna states that he can get a revised plan
- Wayne Dennison states that we can condition it
- Wayne Dennison states close hearing
- Judith Barrett second
- All in favor
- Philip Thorn states that we'd have to condition that the height of the pier deck shall not exceed 15', not joists

**Motion: Move to approve with the condition that the height does not exceed 15 feet above the water and the application submit with the plan must be with those dimensions for the building permit**

Moved by: WD

Seconded by: KM

## BOARD OF APPEALS — MINUTES

**Case No:** 2019-11

**Petitioner:** Peter J. Van Haur & Michael McGoldrick  
(CrossFit Kels)

**c/o** Bob Galvin, Esquire

**Address:** 14 Chestnut St.

**Parcel #'s:** 110-771-032

**Date:** January 9, 2020

(Cont'd from July 25, Sept 12, Oct 24, Nov 14, Nov 25,  
2019 and Jan 9, 2020)

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, Kathleen Muncey, Freeman Boynton, Jr., Philip Thorn & Borys Gojnyecz

**Members Voting:** Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Philip Thorn & Borys Gojnyecz

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

- Judith Barrett opens continuation and reads 11/26/19 email into record. Nothing new
- Bob Galvin says we left off that the ZBA was to hear a workout with the use of mats, Galvin goes on to give a synopsis of the appeal application and the timeline of events thus far. He continues on to point out that NB-1 district has many workshop type businesses that exist. This is unique, in that the Perenicks home is in both NB-1 and RC. He states that he thinks there is a perceptible noise, not vibration but not a nuisance. We were unable to get inside the Perenicks home, but we've installed mats and are willing to close the garage door if they think that would help, which is a significant expense. My client visited a Crossfit in Brookline with a similar problem and the gym has mitigated sound with similar things and Brookline has denied. We propose mitigations and will come back in six months if you would like. We would like to hear from all.
- Judith Barrett what are the thoughts from the site visit.
- Kathleen Muncey states she is not sure that was good example. I think the Building Inspector had the best position to make a judgement. There's a lot of outside noise, like garbage trucks. I went to a Crossfit workout and it's fun and robust and it changes and I think being next to a house and neighbors that lived without a problem with gymnastics and I think you could mitigate more with walls and perhaps a change in hours.
- Borys Gojnyecz says I had two expectations – a noisy gym and I did not hear excessive noise. It started slowly and noise was no more then what I hear at other places; it's only a part when weights drop and when they did I couldn't tell. They changed the

direction of the speaker for that hour class. So I'd say it's not a noisy class, but I cannot comment on vibration. During this time, I thought it would be fairly quiet, but there was a lot of commercial traffic and there's a difference between a truck going to a business and it's not fair to penalize one business for this noise if others are making noises as well.

- Philp Thorn states I do not have much to add. I sympathize with the Perenicks, but having spent time there, I didn't hear any noise from CFK that was over and above other ambient noise in the morning. I think that CFK is being good to install mats and I like the idea of soundproofing the garage door, but I'd be hard pressed to note to impede. I see that there is a code enforcement available and they could do that again.
- Freeman Boynton Jr. states I felt that what we witnessed wasn't unreasonable but I don't doubt that Jim Wasielewski felt the ground vibrate, but if they're willing to mitigate that would help. i.e. if they can't keep mats or get enough.
- Judith Barrett asks if a Special Permit was transferred?
- Kathleen Muncey states no. I thought Scott said that the Town Hall went to them to find the use, I'm not convinced it's a special permit use.
- Kathleen Muncey and Judith Barrett discuss applicability of use under ZBA
- Judith Barrett asks if the board found this less intensive than the other
- Bob Galvin – service
- Judith Barrett states a gym? As a service establishment? Not sure of that.
- Bob Galvin states two dozen athletic uses in town this ZBL is very restrictive. There is not a gym/yoga anywhere in ZBL as permitted use, they're services.
- Judith Barrett addresses Jim Wasielewski – please give us your thoughts
- Jim Wasielewski states that from experience and that morning aside all together, being inside the house there was no way to see or hear noise inside. I didn't see or hear that it was very loud; I know workouts are in flux and I would say if we can see if these changes are long lasting. I agree with other observations that it wasn't very loud.
- Mike McGoldrick states we tried to make that workout more intense, to get a better sample for the Board but we were limited with athletes.
- Chuck Perenick- asks if they had 5 people dropping 150lbs from 8 feet?
- Philip Thorn replies not sure. I saw people dropping and in the building, I didn't hear a ton.
- Chuck Perenick- A difference between gymnastics or gymnasium is there are only small black mats.
- Philip Thorn says mats are portable and I did not detect any vibration right then, not saying you do not.
- Chuck Perenick asks please describe the mat
- Philip Thorn states they are black 2' x 3'
- Chuck Perenick asks looks like those (as he shows a video showing no mats)
- Kathleen Muncey asks has it continued?
- Chuck Perenick states yes. The police reports are logged and there are more than just us that have complained.
- Freeman Boynton Jr asks have police responded?
- Chuck Perenick states yes, but they come to the gym first. I like the 6 month idea, move the speakers, pad the wall, keep the cease and desist alive.
- Judith Barrett says we have to choose to deny uphold l/w can file another complaint with time.
- Siobhan P-listen
- Philip Thorn states that he cannot go against what he saw
- Freeman Boynton Jr. says ground shaking not acceptable. Ok to run the gym, not shaking
- Selden Terse of King Caesar Rd. states I'm fascinated by this, was the visit announced to all?
- Freeman Boynton Jr Yes
- Selden Terse says A way to measure the vibration for the Perenicks



- Freeman Boynton Jr states on my phone
- Seldon Terse says no, another way; they need an unannounced meeting. I don't feel this is right. There needs to be an accurate way to capture.
- Chuck Perenick says we're ok with a company to test vibration but was cost prohibitive.
- Judith Barrett asks what was it?
- Bob Galvin says the best indicator is to see or feel it yourself. Did you use vibration inside/outside?
- Freeman Boynton Jr. says yes. It didn't do much then, but Tim said other times it did
- Judith Barrett says I'm not inclined to uphold building Ins det., but if this couple has to come back then there will be a vibration study and you'll pay for it and there will be a cease and desist. I'm not convinced we need to keep C&D
- Kathleen Muncey states that you can't keep the C&D in place while they mitigate
- Judith Barrett states it's not an open matter for the Board
- Jim Wasielewski states not inside the house to say, but it was less
- Judith Barrett asks recommendation?
- Jim Wasielewski says restore the peace and compatibility with NB district, ok to yield to ZBA to overturn the decision as long as you know I'll have to go out again but CFK needs to address mitigation.
- Mike McGoldrick states we bought anti-vibration (8) mats and we are using them. Vibration test cost \$8,000
- Judith Barrett says if we decide to overturn the building inspector and they come back, we will demand a vibration test and we'll need technical evidence.
- Mike McGoldrick states that if the building inspector goes out again, I'll have to pay for a test.
- Judith Barrett states that if he goes out and documents a vibration issue, we'll need more information.
- Borys Gojnycz says he did not see any direct correlation between a weight drop and hearing or feeling vibration. Even with an athlete with 150lb, I couldn't hear anything.
- Jim Wasielewski asks how many sets?
- Mike McGoldrick responds 8 (4 sets)
- Kathleen Muncey states close door
- Mike McGoldrick says we're installing cameras
- Philip Thorn motion to close
- Borys Gojnycz second
- Discussion?
- Philip Thorn ask if the Motion could be to overturn cease and desist order?
- Judith Barrett states with conditions?
- Philip Thorn states conditions that the door be closed, the garage door to be sealed and insulated and that the weights be dropped on the mats.
- Kathleen Muncey asks dropped weights on mats
- Freeman Boynton Jr says say you don't create vibrations that disturb the neighborhood.
- Kathleen Muncey says eliminate disruptive vibrations in the neighborhood
- Kathleen Muncey timeline conditions are 30 days all in favor

**Motion: Move to approve with the condition that the vibrations are eliminated in the neighborhood within 30 days.**

Moved by: PT

Seconded by: JB

## **BOARD OF APPEALS — MINUTES**

**Case No: 2019-14**

**Petitioner: Duxbury Lincoln LLC  
(Champion Builders)**

**Address: 0 Lincoln Street**

**Parcel #'s: 053-512-036 & 053-512-037**

**Date: January 9, 2020**

**(Cont'd from Nov. 6 & Dec 19, 2019)**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on WEDNESDAY, November 6, 2019 at 7:30 p.m., rescheduled from October 24, 2019, to consider the application of Duxbury Lincoln LLC for a Comprehensive Permit. The property is located at 0 Lincoln Street, Parcel No.'s 053-512-036 & 053-512-037 of the Duxbury Assessors Map, consisting of 21.52 acres in the Residential Compatibility District and owned by The Town of Duxbury. The Applicant proposes to construct twenty (20) single family homes – five (5) affordable, five (5) moderate and ten (10) market rate - that will meet the definition of low and moderate income housing under G.L. c. 40B, Sections 20-23.

**Members present:** Judith Barrett, Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., & Emmett Sheehan

**Members Voting:** Judith Barrett, Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., & Emmett Sheehan

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

- Judith Barrett opens the hearing for the project and explains it was a continued case and asks if any new correspondence.
- Wayne Dennison reads a letter from the Reeds submitted for the record.
- Walter Sullivan states that he is here to represent the Daceys and that the purchase and sales agreement has been extended into March.
- Rick Grady of Grady consulting states that we've boiled down our to do list to 3 – Nitrogen requirements which we've submitted to the Board of Health, the storm water reports and concerns which we've addressed
- Wayne asks if they fixed the concern over the Reeds driveway.
- Rick Grady responds and states that yes they have and describes how. He then goes on to states they've updated their waiver request list
- Judith Barrett states she'd waive for affordable units.
- John Denehy representing the Reeds describes that he understands there is to be a 100' buffer. He then goes on to state that he thinks the Board needs Town Counsel's opinion as this is not open space and that he believes Article 97 applies here.
- Judith Barrett and John Denehy discuss and Ms. Barrett disagrees that this is a designation of conservation land, different than open space.
- Judith Barrett states they will seek Town Counsel's advice.
- Wayne Dennison states that if minimum conservation land needs to be 70%, how does that automatically make it open space conservation land.
- Judith Barrett states that the Town meeting did not put this into conservation land.
- John Denehy disagrees again.
- Walter Sullivan states that it is their position to get to closing and that it's on the BOS to handle the land. We think we've shown proof of site control.
- Judith Barrett agrees.

- Rick Grady submits comments to the Board in support of opinion on open space designation.
- Judith Barrett requests that John Denehy submit evidence to the Board by Monday morning.
- Sullivan requests a copy.
- The Board and the applicant discuss dates to continue the hearing to. All agree on Tuesday, January 28, 2020.
- Judith Barrett any other issues
- Freeman Boynton Jr. asks fees
- Kathleen Muncey responds I'm ok with just affordable on fees

**Motion: It was moved, seconded and unanimously voted to continue the public hearing until 1/28/2020.**

Moved by: WD

Seconded by: FB