

**MINUTES
BOARD OF BUILDING AND ZONING APPEALS**

September 4, 2014

MEMBERS PRESENT: Ken Suchan, Gregg McIlvaine, Doug MacMillan, Tate Emerson and Adrian Eriksen (arrived at 5:35 p.m.)

MEMBERS ABSENT: Pat Zoller and Lukas Gaffey

I. MINUTES

Ken Suchan moved, Gregg McIlvaine seconded, to approve the Minutes of July 10, 2014 as received. Motion carried.

II. PUBLIC HEARINGS

Appeal #2014-19. Robert Stutzman representing Lytle Squad, LLC, is requesting a use variance to Section 1141.02, note #2, to allow a health club use (**Declaration Crossfit**) with operations located outside of the principle building at 1694 Cleveland Road in a C-2 (Neighborhood Business) District.

Robert Stutzman, attorney for Lytle Squad, LLC, who operated Declaration Crossfit at 1694 Cleveland Road, was present. Mr. Stutzman stated the applicant was requesting a use variance to allow them to engage in temporary, limited exercises in a paved portion of the property that adjoins their interior space. Mr. Stutzman stated the applicant leased a portion of the property located to the rear of the property (no frontage), and the parking area in question was located immediately to the south of their leased portion of the building.

Mr. Stutzman stated Section 1141.02, Note #2, of the Zoning Code prohibited outdoor activities in a C-2 District. Mr. Stutzman stated that in order to operate a successful business center, such as the strength and conditioning program that they used, a variety of exercises needed to be performed, some of which could not be completed using traditional equipment and machines and required that they be performed outside. Mr. Stutzman stated without the variance, the business would not be able to offer the necessary exercises to its members which would limit its potential for profitability.

Mr. Stutzman stated there were a number of other commercial properties in the area, but almost all of the paved area around the properties was dedicated solely for parking. Mr. Stutzman stated that was not the case for the property in question because the paved area used by Declaration Crossfit was completely unused and something the business had access to.

Mr. Stutzman stated at the time Declaration Crossfit leased the property, it was not made clear to them by the property owner that their proposed activity would violate the Zoning Code. It was not until after they began to operate from the location that they were made aware that the outdoor activities in question violated the Zoning Code. Mr. Stutzman stated once the applicant became aware they were in violation, the applicant ceased the outdoor activities associated with their business.

Mr. Stutzman stated the use of the parking lot for exercise, which would be on a very temporary, limited basis, would not occur during hours which were outside normal business hours. Mr. Stutzman stated the exercises would not “spill over”, damage or otherwise intrude on adjacent properties.

Mr. Stutzman stated the activities proposed were no different than those of other businesses in the area including the insurance company, the video store or the hospital. Mr. Stutzman stated the proposed use would not adversely affect the public health, safety or general welfare and all exercises that would occur outside of the leased building would remain on the property and would involve no interaction with the public. Mr. Stutzman stated it could be argued that the approval would positively affect the health, safety and general welfare of the public through the promotion of general strength and conditioning programs which would involve the public.

Mr. Stutzman stated the applicants were great donors to local charities and organizations, and if their business were not allowed, the public would lose that benefit potential. Mr. Stutzman stated the spirit and intent of the Zoning Code would still be observed should the use variance be granted. Mr. Stutzman stated the Zoning Code did allow for fitness centers to operate in the C-2 District, so approving the use variance to allow part of the operations to occur outdoors would be in line with that. Mr. Stutzman stated since the leased premises was part of a larger property that included other tenants, the lease premises could not be enlarged to include the space necessary for all of the activities which was why the outdoor space was needed.

Mr. Emerson questioned the intent of being “temporary” and “limited”. Mr. Stutzman stated the activities of the Crossfit Declaration program were such that they had a per day, set schedule of exercises. Mr. Stutzman stated activities would not be conducted outside every day, and in the winter, would be limited as well. Mr. Stutzman stated once the actual outdoor exercises were conducted, the participants would then move inside. Mr. Stutzman stated while there were daily exercises, not all would necessarily be outside every day. Mr. MacMillan questioned if the exercises were done as a group. Mr. Stutzman stated the exercises were done as an individual, but there was a team collaboration event to compete with one another.

Mr. Emerson questioned the hours of operation. Samantha Stine, 2772 Fox Lake Road, stated that 5:00 a.m. was the time of the first class; 8:00 p.m. was the last. The business was not open on Sunday’s, and on Saturday’s, they were open 4 hours. Mr. MacMillan questioned if there was a possibility they would be outside at 5:00 a.m. It was indicated that yes, they could be.

Ms. Stine stated when they originally entered into the lease with Family Video, it was her understanding that everything was fine with using the building. Because the building owner was from Chicago, they really did not have any concept of the zoning regulations. Ms. Stine stated when they opened and they began receiving complaints from the neighbors, there were many steps which were taken to try to accommodate the neighbors. Ms. Stine stated they did not turn the radio up over a certain point so as not to be disruptive. Ms. Stine stated the workout outside was typically 5 – 20 minutes. Mr. Stutzman stated his clients would likely be receptive to limiting the outdoor activities to occurring within normal business hours (8:00 a.m.).

Mr. McIlvaine questioned the length of the lease. Ms. Stine stated they were getting ready to sign a 5-year lease.

Mr. Suchan questioned how much space was leased. Mr. Stutzman stated the indoor leased area was 5,800-sq. ft.

Mr. McIlvaine questioned if they had looked for other properties where the zoning would be appropriate. Ms. Stine stated they looked for 1 ½ years to find this property, and they now had over 100 members. Ms. Stine noted the building had been unused for 8 or more years, and they went in and cleaned it up and painted it.

Mr. Suchan questioned the existing fence on the property. Mr. Stutzman stated on the south side, there was an existing 4' fence (abutting the church property); there was also a fence on the west side of the property which abutted the R-1 District, and that fence was 6' high.

Mr. McIlvaine questioned if outdoor uses were permitted in other zoning districts. Mr. Dutton stated the C-2 District was the only district which had the caveat which required all operations be indoors, but that in the C-3, C-4 and C-5 Districts, that caveat did not exist. Mr. Stutzman stated many of the properties in the other districts could not be readily leased for this activity.

Mr. MacMillan questioned lighting, especially since some of the activities occurred at 5:00 a.m. Ms. Stine stated lighting which existed in the parking lot was sufficient; there was also emergency lighting as well. Ms. Stine stated the lighting was existing, but new fixtures were added. Mr. MacMillan questioned if the lighting was directed downward. Ms. Stine stated yes.

Ms. Stine noted that after receiving complaints regarding noise, the stereos were moved from the north side of the building to the east side of the building. Because the neighbors continued to complain, they were again moved to the very southwest corner of the building. Ms. Stine noted the bass was completely turned off.

Ms. Stine stated her landlord had “absolutely zero issues” with it, was willing to extend their lease, and that they had signed a 1-year lease upfront. Mr. MacMillan questioned if the music was played outside. Ms. Stine stated no. Mr. MacMillan questioned if there was support/encouragement from others when activities took place outside. Ms. Stine stated yes—comradery and cheering occurred but was no different than a siren going by from the hospital. Declaration Crossfit taught the concept of self and the concept of team and helping people become a better you through fitness, health and overall concept of wellbeing. Mr. Stutzman stated if the Board wished, the applicant would be willing to have a noise restriction placed on them during activities which were conducted outside normal business hours.

Mr. Suchan questioned the business hours of Family Video. Ms. Stine stated they were open from 10:00 a.m. until 10:00 p.m.

Mr. Suchan stated the number of parking spaces on the site were from when the building was a grocery store, and the other business (Family Video) did not use all of the spaces which were provided. Mr. Stutzman stated the parking lot was never full. Mr. Dutton stated

he did not believe the entire building was leased out. Mr. Stutzman stated 1/3 of the building was used by Family Video, 1/3 by the fitness club and then the remaining 1/3 (north side/front) was vacant.

Mr. Emerson questioned if a paved area was needed to perform the activities. Ms. Stine stated paving was safer for some of the exercises (moving large items) as there were no uneven areas for someone to injure themselves. Ms. Stine stated the paved portion which was available on the property was a huge benefit to the business. Ms. Stine stated the space was exactly what was needed for Crossfit—5,000-sq. ft. open area, 20' high ceilings. Ms. Stine stated Family Video was also willing to allow them to use a portion of the parking lot for the outdoor portion of the Crossfit business.

Andreas Schmid, 2108 Burbank Road, stated he began Crossfit in January 2014 and was a 5:00 a.m. participant, 5 times a week. Ms. Schmid stated the activities completed outside were done so on an individual basis and with others. There was cheering going on for one another but was not ongoing for an hour straight. Portions of the workout were done inside, and portions occurred outside when weather permitted. Mr. Schmid stated that with any moisture on the ground, they did not typically go outside because of safety and health concerns. Mr. Emerson questioned how long they would be outside on a typical day. Mr. Schmid stated the times varied but typically ranged from 15 to no more than 30 minutes. Mr. Schmid stated there were some Saturday workouts that started at 10:00 a.m. and sometimes, those days involved being outside for 1 – 1 ½ hours, weather permitting. Mr. Schmid stated when activities were done outside, it was done as a group and everyone would complete their outdoor exercises individually, but as a team. Mr. Emerson questioned if other classes throughout the day would also do outdoor activities. Mr. Schmid stated yes.

Penny Constantino, 1506 Cleveland Road, stated she and her husband joined Crossfit about a year ago, and they also attended the 5:00 a.m. class. Ms. Constantino stated she had lived in the neighborhood for 20 years, and she had never heard any noise coming from the gym at her home which was six houses south of the facility. Ms. Constantino stated she heard college parties, tractor pulls at the Fairgrounds, and her neighbor's kids playing, but nothing from the Crossfit gym.

(Name inaudible), representing the synagogue at 1670 Cleveland Road, property located adjacent to the Crossfit gym, stated it had not been so noisy that they felt there was a need to complain, but it was extremely loud and distracting a various times during the day. He indicated he heard music and very loud clanking. He indicated the synagogue's main activities were on Saturdays between 9:00 a.m. and noon. He indicated it was "almost tolerable" the way it was now, but any increase they would find to be distracting. Ms. Stine stated it would not get any noisier than it was now. Ms. Stine stated they would take into account noise on Saturday's, but noted no one from the synagogue had ever been in contact with her.

Mr. Emerson questioned why the activities needed to be performed outside. Ms. Stine stated that in tradition with Crossfit, which was originally conducted in California, most operated out of open aired gyms and most were done in an outdoor setting on rubber matting. Ms. Stine stated everything with Crossfit was functional-type training (no machines) and free weights, kettle bells, etc. Jake Stine stated they had rubber matting inside the gym to silence some of the noise, but outside the gym, they did activities they

could not normally do inside and noted that they could not use their sled push over rubber matting. Mr. McIlvaine questioned if there was space available to do activities inside. Mr. Stine stated yes, but not all activities could be done inside.

Jim Butler, owner of Butler Apartments, 1708 Cleveland Road, along with John Shaffer of the Critchfield Law Firm, were present. Mr. Butler stated since the issue was so important to him, he wanted to personally address the Board of Zoning Appeals with his concern. Mr. Butler stated that, according to Table 1141.02, Permitted Uses for a C-2 District, Category 5, health clubs were permitted but only if all operations took place in a principle or accessory building. Mr. Butler stated looking at other things which were not permitted in the C-2 District included school specialty personnel instruction, and outdoor display, sales. Mr. Butler stated Section 1141.01 (c) indicated that the intent of the regulations were to “protect the residential neighborhoods adjacent to businesses by regulating the types of establishments, particularly at the common boundaries which would create congestion, noise or other objectionable influences”. Mr. Butler stated he owns property on the north side, directly adjacent to the building in question, and the apartments had been in his family since 1954 and were currently a senior citizen living complex with a total of 5 duplexes with 10 apartments. Mr. Butler stated the issue of noise had been an ongoing problem since the start of the business approximately a year ago. Mr. Butler stated the noise caused by the music system was played at various times of the day, evening and early in the morning. Mr. Butler stated the area of the building Crossfit was located in was within 25’ of his rear duplex known as apartment “J”. Mr. Butler stated the other apartments, known as “G”, “H” and “K”, were all within 100’ of the building. The bass on the system created a vibration which penetrated the building and created a “boom, boom, boom” sound even inside the buildings. At the beginning, he contacted J. T. Lytle, one of the owners, and he came over and they talked, and he seemed to be interested in finding a remedy to the situation. The problem persisted during last summer and fall and into the winter, and he contacted him several more times to no avail. Mr. Butler stated his tenant, John Jacobsen, in apartment “J”, also called Crossfit several times and received comments like, “We can turn it up louder” or “We are running a business, and we are not turning the music down”, and “We could care less what the neighbors think”. Mr. Butler stated he contacted J. T. Lytle as late as Monday, July 28, 2014 and complained about the noise, and he told him that if he had any issues to call his attorney. Mr. Butler stated efforts to resolve the problems included the tenant calling the police and filing a noise complaint. Jay and Mary Beth Henthorne and Roberta and Dick Kinder, who lived adjacent to the building on Burbank Road, had also called the police and filed a noise complaint. Mr. Butler stated he had also called the management at Family Video numerous times, who leased the space occupied by Declaration Crossfit, to no avail. Mr. Butler stated the residents in the area were all fed up with the noise and lack of concern by the owners of Declaration Crossfit. Mr. Butler stated contacting the City was also not of much help, and it was clear that the business was in violation of the regulations. Mr. Butler stated his current tenant had given him notification that he was moving by the end of the summer, and as a landlord, he questioned how he, in good conscious, could rent an apartment knowing there was a noise issue. Mr. Butler also noted it could also impact the remaining units that were within range of the noise which could result in not only an annoyance but also a loss of income if he could not rent the apartments. Noise from Crossfit was interfering with area residential uses and enjoyment of the land for the past year. Mr. Butler stated the intrusive noise had occurred while Crossfit operated indoors, and now that they want to operate outside, it would likely increase the amount of noise that the residents would be exposed to. Mr. Butler stated this was not a case of the rules changing after Crossfit moved in—they knew the restrictions when they leased the space, and the

rules should not be changed for them. Mr. Butler asked the Board to deny the variance request, but to also enforce the current status under Section 1141.01 (c) - that the intent of the regulations were to protect residential neighborhoods adjacent to business uses by regulating the types of establishments particularly at the common boundaries that would create congestion, noise and other objectionable influences. Mr. Emerson questioned if he had received complaints from more than one of his tenants. Mr. Butler stated yes. Mr. McIlvaine questioned if when the complaints were made, was it during a time when the operations were occurring from inside the building. Mr. Butler stated yes. Mr. Butler stated you did not have to be standing outside to hear the noise—it was a point of reverberation.

Occupant, 4465 Burbank Road, stated she was a new member of Declaration Crossfit. She indicated she moved to Wooster a year ago and worked for LUK, and was recruited from the University of Akron. She stated Akron had more to offer, and when she moved to Wooster, she was looking for things to do after work. She joined the running club at Vertical Runner, and they met every Wednesday to run. She indicated they utilized the space outside, and had never heard anyone complain about that. Declaration Crossfit was exactly what young people needed and noted that it was good that the City could offer it to its residents. She indicated Wooster had a really hard time competing with bigger cities who could offer more to young people, and Declaration Crossfit created community and promotes health and wellbeing which should be encouraged.

Jay Henthorne, 1727 Burbank Road, stated he owned three acres of land, and they oftentimes liked to have meals outside. Mr. Henthorne stated he called the police twice about the noise from the business and indicated it was unbearable indoors and could not imagine what it would be like outdoors. Mr. Henthorne stated he would be having measurements taken by a certified sound person in the near future and hoped that the Board realized it had been a very exasperating time for the neighbors. Mr. Henthorne stated the business caused vibration and noted the 6' fence which existed, as noted by the applicant, was his fence.

Dick Kinder, 1681 Burbank Road, stated he did not feel that one of the Board members would have put up with what the neighbors in the area had dealt with for the past year. Mr. Kinder stated the noise was very disturbing, and if you had guests coming to visit, it was embarrassing to sit out in the backyard with the “boom, boom, boom” going on. Mr. Kinder stated he could not see a reason to expand it and make it more disagreeable.

Bee Smith, 1634 Cleveland Road, stated her property was 229' away from Declaration Crossfit. She stated residents had listened to this “boom, boom, boom” in the winter time, ever since the business opened, all the time when they were there. Ms. Smith stated they also did not confine the business to their property but also went down the sidewalks every day. Ms. Smith stated she had two dogs, and it had been so loud that even overtop of the TV, with the doors and windows closed, the dogs would bark because they did not know what the noise was and it was ridiculous to have to live that way. Ms. Smith stated at 5:30 a.m. this morning, they were running down in front of her house. Ms. Smith stated when they first opened, she would hear someone yelling at one of the members, “Go. Go. Go.” which was disturbing when you were trying to sleep. Ms. Smith stated if the variance were granted, she questioned if they would then have the right to make whatever noise they wished not just indoors but outdoors as well.

Kathryn (inaudible), 550 Williamsburg Court, stated she was two streets down from Declaration Crossfit and stated she was a member of Declaration Crossfit. She stated sometimes, her teammates did encourage her, and indicated that when on a sidewalk, she could “say what she wanted”. She stated they were never that noisy and while they did run up and down the sidewalks at 5:30 a.m., they did not mean to be that loud. She indicated she did not hear the noise from the business from her apartment which was not that far away, and stated more noise came from the hospital/Lifeflight.

Christian Science Church member who lived on Northwestern Avenue stated the church had had a rather quiet, Wednesday night service and they were concerned that if the noise went outside, it would disturb the church service. She stated she felt that neighborhoods needed to be protected from noise pollution for everyone’s mental health, not just physical health.

Adrian Eriksen moved, Doug MacMillan seconded, to move into Executive Session. Motion carried by a 5-0 vote.

Doug MacMillan moved, Gregg McIlvaine seconded, to come out of Executive Session and into public session. Motion carried by a 5-0 vote.

Roberta Kinder, 1681 Burbank Road, stated she felt that Declaration Crossfit had made some effort to “tone it down some”, but if the music had to be as loud as it was, maybe this was not the location for it.

Adrian Eriksen moved to approve the variance request of Declaration Crossfit at 1694 Cleveland Road as read. Doug MacMillan seconded the motion.

Mr. Eriksen voted no. Mr. Eriksen stated he agreed with the message and philosophy and even some of the methods of Declaration Crossfit, but he could not in good conscious do that to a residential neighborhood. Mr. Eriksen stated he felt there were other places which would be a better fit for the business.

Doug MacMillan voted no. Mr. MacMillan agreed with Mr. Eriksen and stated he, too, liked the program but could not in good conscious vote in favor of the appeal. Mr. MacMillan stated he felt there was another place in town for the business, and with the objections from the neighborhood, he would vote no.

Mr. Suchan voted no. Mr. Suchan stated he wanted to protect the C-2 integrity which was a neighborhood business district which did not allow outdoor activities because there was an interface with residential neighborhoods. Mr. Suchan stated Crossfit could stay inside the building, and wondered if there was room inside the building to put more space in. Mr. Suchan stated the nature of the C-2 District was a specific district which was neighborhood business and not general business.

Gregg McIlvaine voted no. Mr. McIlvaine stated while he did encourage the business and what they were trying to do, it was their responsibility to know exactly what the zoning was prior to moving in, and felt the business needed to be in a different location where the noise would be less aggravating to their neighbors.

Tate Emerson voted no. Mr. Emerson stated he felt the applicant failed to meet the criteria for a use variance – the it would not negatively affect adjacent property owners and the

intent of the Code. Mr. Emerson stated he hoped they could find another place to operate their business.

Motion failed by a 0-5 vote.

Meeting adjourned at 6:47 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant