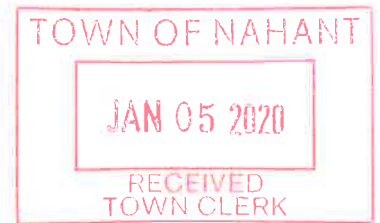


TOWN OF NAHANT
ZONING BOARD OF APPEALS
MINUTES OF MEETING
December 21, 2020



A scheduled and noticed meeting of the Nahant Zoning Board of Appeals was called to order by Chairperson Campbell at or about 5:00 P.M. at the Nahant Town Hall, 334 Nahant Road, Nahant, Massachusetts, via Zoom (remote technology). Present were Board members, Campbell, Walsh, Barba, Kasper and McCool. All votes were taken by roll call.

SCHEDULED HEARING:

5:00 p.m. 96 Willow Road, Petitioners Paul Smith and Judith Flaherty

The Board of Appeals held a public hearing on December 21, 2020 at 5:00 PM. on the petition filed by Paul G. Smith, Esq. and Judith Flaherty, for the property located at 96 Willow Road, Nahant, for an Appeal of Determination of Inspector of Buildings for the following: Appeal of Building Inspector allowing building permit R-18-00243 to be “amended” and the issuance & validity of the “amended” permit. The chair read into the record the Governor’s order regarding remote meetings and the advertisement that was placed in the Lynn Item on December 7th and December 14th 2020. Attorney Dennis Murphy presented the case for the applicants. Attorney Murphy argued that he was not aware of our September 15 meeting, despite it being noticed. Attorney Murphy argued that there was no repetitive petition and claimed there were faults in the Board procedures regarding notice for the September 15, 2020 and tonight’s hearing. He made a lengthy argument claiming that the property at 96 Willow Road was non-conforming and that sections 10.4 and 10.5 of the Nahant Zoning Bylaws (the “Bylaws”) require a special permit for the work and that Building Inspector did not have authority to amend the building permit for a property in a flood zone area. Attorney Murphy also argued that the building permit should not have been amended while a court case on the matter was pending. The applicant Mr. Paul Smith spoke as well on the issues and alleged that the September 15, 2020 meeting was a secret meeting.

Attorney Webb Primason spoke on behalf of the owner at 96 Willow Road and argued that his client has brought his property into compliance. Attorney Daniel Skrip spoke on behalf of the town of Nahant indicating that the September 15, 2020 meeting was held pursuant to M.G.L. c. 40A §16 and the Bylaws for the purpose of determining whether an application was repetitive or not. Attorney Skrip mentioned that the meeting was properly noticed and was not a secret meeting.

Mr. Wayne Wilson, Nahant Building Inspector testified and responded to the claims and questions. Specifically, when asked for a response to Attorney Murphy’s assertions that the Building Inspector did not have the power to amend a building permit for a property in a flood zone, Mr. Wilson responded that a building inspector does have the ability to amend a permit and really it makes no difference whether he issued a new permit or amended the old one. He said that the section of the Code (780 CMR - Massachusetts Regulations - Building Code) Attorney Murphy was referring to was in fact being mis-interpreted. Mr. Wilson explained

that the section referred by Attorney Murphy was in regard to the inability to modify rules in regard to a project in a flood plain not the amendment of a building permit.

Mr. Wilson was then asked to state his position on the matter in general. Mr. Wilson responded that in the beginning he felt that Mr. Rizzo, (owner of 96 Willow Road), initially attempted to skirt the 50% rule, but he then decided to bring his property into compliance, and he has done so. To bring his property into compliance Mr. Rizzo is/was required to fill in his basement and make flood openings for water to flow through. Where the first-floor elevation is above the flood zone, there was nothing more for him to do except pay the increase cost of his permit which he did. The project had been on a voluntary hold from the October hearing, therefore Mr. Wilson amended the permit and let him go forward. Mr. Wilson testified that all written materials submitted to him by or on behalf of Mr. and Mrs. Rizzo complied with the requirements of the Bylaws and the State Building Code and that he shared the Property Owners' plans with the Massachusetts Department of Environmental Protection to verify compliance with State Building Code and the local Bylaws for a substantial improvement to a structure sited on land located in a flood plain zone. Mr. Wilson testified that the new request for enforcement was a carbon copy are the one previously received, except for a change in the names, it was the same topic in the same items. Mr. Wilson expressed that he did not understand Mr. Smith's point of view.

Board questions and comments. Peter Barba added that it wasn't right for Mr. Wilson to say that Mr. Rizzo's attempt to obtain the building permit was an attempt to skirt the law, and there was no "ah ha" moment. Essentially, Mr. Rizzo started out with one project then added onto it and when he realized it was going to be greater, he agreed to bring the property into compliance.

David Walsh then asked Attorney Murphy questions regarding his assertion that Section 10.5 of the Bylaws was applicable to this property. David Walsh pointed out that the both the plans and the Flood Elevation Certificate on file with the Building Department show the elevations above the floodplain. Attorney Murphy responded that the property was less than 1/2 acre and later stated he was not aware of the plan. Attorney Murphy did not produce any evidence that the amended plans were in violation of Sections 10.4 or 10.5 of the Bylaws.

Max Kasper asked Attorney Murphy if this was a newly issued permit would he still have an issue with it? Attorney Murphy said it would be a different issue. Attorney Murphy responded that he was not aware that Mr. Wilson had consulted with an expert nor was he aware that there was a plan showing the elevations.

Mr. Murphy responded further by raising issues from prior hearings and decisions, specifically regarding nonconformities. He expressed his opinion that the existing building permit was void. The chair reminded him that in one prior decision he was referring to, that no special permit was required at that time because there were no new non-conformities.

The chair asked if there were any members of the public who would like to speak in favor or in opposition of the matter. No one spoke in favor. Mr. Rizzo of 96 Willow Road, Nahant, Massachusetts spoke in opposition to the petition.

The board deliberated the matter. The board discussed what was required specifically including sections 10.4 and 10.5 of the Bylaws.

In regard to Section 10.4, (#1-5), #1 being the state Building Code had already been addressed by Mr. Wilson; #2, #3 and #4 having been addressed by the Conservation order of conditions that stated that the wetlands did not apply; and #5 which is in regard to Title 5 (Septic) which did not apply where the property in question is connected to town sewer.

In regard to Section 10.5, where both the plan and the Elevation Certificate on file with the Building Department show that the elevation is above the flood plain and the Building Inspector testified that the basement was to be or had been filled in and the flood vents installed, it does not apply.

After discussion amongst the Board members and asking further questions of Attorney Murphy such as “What is your client’s wish?” to which he replied - to see that renovations done next door are in conformance with the code to protect their property. The Board also discussed amending the permit while the applicant case was pending in the court and it seemed the only way to bring the property into compliance was to either amend the existing permit or issue a new permit.

The Board made the following findings:

Peter Barba brought a motion for a finding that Section 10.4 and 10.5 does not require a special permit. Seconded by David Walsh. A roll call vote – all in favor were Peter Barba, David Walsh, Max Kasper, David McCool and Jocelyn Campbell.

Peter Barba brought a motion for finding that on information provided by two building inspectors and three attorneys that a Building Inspector does have the ability to amend a building permit, Seconded by David Walsh. A roll call vote – all in favor were Peter Barba, David Walsh, Max Kasper, David McCool and Jocelyn Campbell.

Peter Barba brought a motion that no evidence of new nonconformities was presented. Seconded by David Walsh. A roll call vote – all in favor were Peter Barba, David Walsh, Max Kasper, David McCool and Jocelyn Campbell

Max Kasper brought a motion that we deny the Petitioner’s appeal of the determination of the Building Inspector allowing building permit R-18-00243 to be “amended” and the issuance & validity of the “amended” permit. Seconded by David Walsh. A roll call vote – all in favor were Peter Barba, David Walsh, Max Kasper, David McCool and Jocelyn Campbell. There is a 20-day appeal period.

Respectfully submitted,
Jocelyn Campbell, Chair