

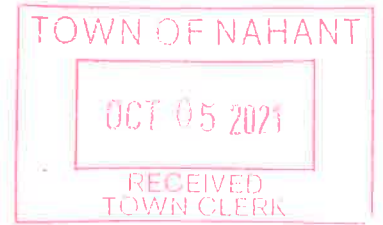
**TOWN OF NAHANT**

**Planning Board**

**September 9, 2021, 6 PM**

**LOCATION: ZOOM CONFERENCING, NAHANT, MA**

**Meeting Minutes**



Dan Berman called the meeting to order at 6:09 pm, stating that the meeting was properly noticed, and called the roll of those members attending:

Daniel Berman, Chairman – Here  
Calvin Hastings, Vice Chairman – Here  
Sheila Hambleton – Here  
Patrick O'Reilly – Here  
J Shannon Bianchi – Here  
Steven Viviano – Here  
Rob Steinberg, Recording Secretary – Here

Kristen Standish (alternative member) - Here  
John Stabile (alternate member) - Here

Public in attendance included the following representatives of Northeastern and Town Representatives:

Mark Cullinan (Selectman)  
Gene Canty (Selectman)  
Jeffrey Blake (Counsel to the Town)  
David Linhart (Counsel to Northeastern)  
Josh Antrim (Selectman)

Dan Berman opened the meeting by asking members to review the minutes of August 17, 2021.

Sheila moved to approve the minutes of August 17, 2021, and Cal seconded. The Board voted as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Sheila Hambleton – Yes  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano – Yes  
Rob Steinberg, Recording Secretary – Yes

Dan Berman next noted that we have a draft letter to the ZBA regarding 10 Tudor Road. Dan recommended that we should add a sentence stating that it may be unfair to address our concern with a particular application, but we are concerned about crowding of small lots in town and particularly along

the coastline. Dan recommended that we add in the second paragraph that we did not see any reference to the 2008 variance in the appeal materials.

Shelia moved to approve the subject letter and Cal seconded. The Board voted as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton – Yes  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano – No  
Rob Steinberg, Recording Secretary – Yes

The motion passed 6-1.

Dan Berman next provided an update on 2 Wilson Rd. Dan stated he is not aware that the special permit application has been filed, but it may have been. Sheila said the town clerk accepted the two applications yesterday. Sheila said we must convene a hearing within 60 days.

Dan noted that we received a ZBA package on 238 Wilson Road and they are seeking a special permit to build a new house. Steve said that the applicant said the new structure will be more conforming than the prior structure. The applicant noted that they don't have the right to build because the owner didn't seek the permit within two years. (The applicant expected to buy the property for \$1 million from the non-profit current owners if allowed to build.) Dan noted that crowding is an issue, but the size of the house relative to the lot size is consistent with other houses in area. Patrick noted that we did write a letter regarding this property, and the application was withdrawn and now a new application has been filed. Steve noted that the Town could get real estate taxes if the owner is allowed to build, and we should defer to what the neighbor's think. Dan said the issue is whether there should be a new house on the lot and allow people to squeeze houses in. Or, should the stated goal of the grandfather rule to reduce congestion over time be respected after a change of ownership or destruction of house when building as of right no longer exists because the two year period has lapsed? Patrick read the letter dated May 10, 2021 to the ZBA regarding this property.

Sheila moved to send an updated version of the May 10 letter and recognize that the applicant has addressed some of the concerns of the previous application, seconded by Shannon. The vote was as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton – Yes  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano – No  
Rob Steinberg, Recording Secretary – Yes

The motion passed 6-1.



Dan then noted that the record is now open for discussion of NU at 6:53 pm. First, Dan updated everyone on the drop box and noted that the by-laws on the website now include Zoning By-law Section 9.09A. Dan said he has the ability to edit the drop box. He said it now includes the PB's question and NU's response. Dan said that a lot of comments came in by email, and we have not had the opportunity to add those to the drop box.

Sheila asked if we could hire an engineer to guide us through the plans submitted. Dan Berman said it is not clear that what the engineer would offer that is within the scope of the site plan review.

Rob asked whether there is a representative of Northeastern who can answer factual questions on the proposal, and David Linhart said there wasn't but he could follow-up. Rob asked if someone who could provide more information on the proposal of NU gets on the phone to alert us.

Dan noted that we have the duty to evaluate whether the use qualifies for the Dover Amendment and we can't do that if NU doesn't provide us information on the use. Dan said it appears that your approach is to "take our word for it that it is an educational use". David said all NU does is engage in education, and that it isn't a landlord.

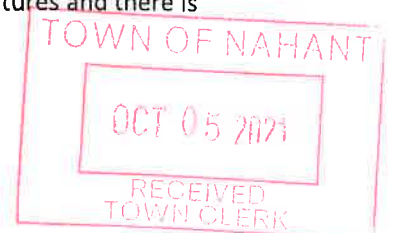
Dan asked whether NU will have sufficient students and grants for research to fill this building day 1. David said that NU is a growing school needing a larger facility, but can't say NU will immediately double up in space needs. Dan noted it could be the project is aspirational and you don't have the people or grants but rather are waiting the need. David says he can't say one way or the other, and it isn't on point for the proceeding. Dan said it is relevant if it means you are intending to rent the space to profit-making entity.

Rob asked are you saying that you don't know what the specific use will be and when it will occur (i.e. how fast). David said the use is an expansion of what we are doing. Dan noted that he is looking at an advertisement online for hotel space and rental space on the Burlington campus and that use is in no way educational. Rob asked David to define an "educational purpose". David said educational purposes are defined in zoning code and read a provision, and Dan noted that the provision just read doesn't define educational purpose.

A caller asked why is NU expanding when most other schools are contracting. David said the "use" is not impacted by how many people use it. David said there will be a certificate of occupancy that describes use.

Rob asked whether the companies and start-ups renting space on NU's Burlington campus are engaged in educationally related, and whether or not the certificate of occupancy allow such projects. David said he didn't know.

Dan ask is the Ocean Genome Legacy project educational. Dan asked what that project is doing. Dan said it is my understanding that you are accumulated genetic sample of ocean creatures and there is money involved. David again said he didn't know.



Rob suggested that we send the specific question to NU in writing to get a specific response.

Dan next turned to the high water mark and low water mark, because it is relevant to the buffer zone or to the floor-to-area ratio. Dan said that NU's response referenced an assignment of ownership in 1641 that passed the land to the low water mark. David said the surveyor used the low water mark to set the boundaries of the property, and then NU hired a professional to put together a plan. Dan said whatever the surveyors practices are don't affect the deed and the assignment of ownership in 1641 can't affect it either. Dan said there is no basis to claim you own the land to low water mark. David said it isn't material. Dan said it could be very material.

Dan noted that we can presume there is no counter legal argument when we ask three times for a counter legal argument and there is no legal response that refers to law (but only a response that this is how the surveyor did it). Dan said you submitted a plan claiming that you own the intertidal land, and that the PB is entitled to a plan that correctly shows what property you own and don't own. Shannon noted that the National Geodetic Survey or NOAA gets information over a course of time when they monitor tide levels over 19 years – it seems like NU determined the tides using a drone in on one afternoon. Shannon said there is a scientific way to determine the tidemark and it was not followed. Shannon said it seems the survey is incorrect and it is too bad there isn't someone from NU who can answer. Dan said everyone who sails in this area knows the tidal range is at least 9 feet and the document claims that it is less than 5 feet. Dan said it must have been an unusual day.

Shannon said that NU has 20 acres accordingly to Patriot Properties, and NU has to leave 13 acres of open space. But, if NU expands their ownership to whatever water mark they say, that would throw off the open space ratio which needs to be 65%. Unless we know the actual property line, we don't know if the open space requirement is met. Dan noted that it doesn't appear we have the facts to make a decision on this issue. David said NU doesn't even come close to having a lot coverage issues. Three members of the PB said they don't agree. Patrick said use of the low water mark could make a 5 acre difference. Dan noted that NU refused to provide the alternative size with different water marks as requested in the PB's written questions.

Rob asked NU if you want to supplement the responses you have given? David said he doesn't. David said NU's calculations show they are under the open space ratio. Dan asked for the ratio, and David said he didn't know but it was below 65%. Dan said we are disagreeing with how those calculation are done. David said all our calculations include the intertidal area.

A citizen noted Northeastern needs to provide information here, for full public view. The single person, the building inspector, cannot be expected to examine matters like this when he will not be provided with full information. Dan said the Building Inspector should be provided accurate information and the correct legal boundaries.

Dan then raised the issue of the 2014 FEMA maps. Shannon noted that the NU response to the FEMA question was to rely on the interpretation of the Conservation Commission and we aren't bound by it. David said that supplemental submission was because the original submission had the wrong floodplain



line. David said based on what everyone decided in 2019 the line was incorrect, but that there was no design change. Shannon noted that the Town has adopted the 2014 FEMA maps. David noted that when the question came up in 2019 we worked with the Conservation Commission to agree on the proper line.

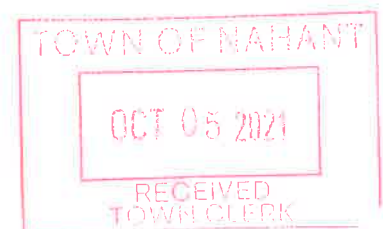
David said there was an original submission which was mistaken and that error was corrected on the supplemental submission. Shannon said that he told NU they were using the wrong FEMA maps but the submission doesn't use the 2014 maps. Shannon said the site plan includes the 2017 FEMA maps. David confirmed that what was delivered today on paper was the same as the content on the flash drive delivered.

Shannon said when we looks at the updated plan he should see a notation to the 2014 FEMA maps and he should see the floodplain district as identified by the 2014 FEMA maps and that the floodplain runs right through the pumphoom. Shannon said is NU asking the PB to approve a building in the flood zone. David said that building can occur there as long as it complies with Section 10.4 (state regulations). Shannon said he doesn't think that the building is allowed. In fact, in Section 10.3, it provides that no building can occur. Shannon said the Town adopted specific maps and those have to be followed. Dan said that even if the Town Meeting had adopted the 2017 maps, the zoning by-law references the 2014 maps. The PB is required to use the 2014 maps regardless of what happened for the Conservation Commission. If the Concom chose not to make the FEMA maps ~~up as~~ an issue, that is their prerogative. Dan said whether or not the 2017 maps were adopted, the zoning by-law requires use of the 2014 maps.

Dan next turned to height and noted the definition is the grade before any construction is commenced. Dan said that otherwise you could build a house 25 feet high, and regrade the land, and then build another 25 foot building on top. Dan noted that NU's response is "we comply." David said that the measurement starts based on existing condition in anticipation of the currently proposed construction. Dan said that the interpretation is inconsistent with the plain meaning *of the words*.

Rob said where there is disagreement on the plain meaning of a statute, you look to the intent of the law and the intent was to prevent tall buildings. David responded that it is up to the Building Inspector. Dan said it is up to the PB to instruct the Building Inspector and for the Building Inspector to apply those rules. If the Building Inspector decides to disregard us, that is not going to work. Dan noted that NU's interpretation of the word "original" is to mean "current." Dan noted that the original topography of the land was at the base of the building.

Dan next turned to parking. Dan said we aren't finding sufficient detail on how NU determined that they needed 125 parking spaces. Dan said we need to understand peak usage and overall usage. Dan noted that the by-law was developed for the Town of Nahant that has only an elementary school and there aren't businesses where people commute into the Town. When you talk about all these people who have various times when they come here, FTEs don't tell the whole story. The parking needs for an operation like this was not contemplated when the rules were drafted, so the issue becomes how many parking place are needed given the use. You can't just rely on a formula and say it is per se reasonable.



David says we have a self-interest in having sufficient parking spaces. If it is the case that the parking is a problem, there is a zoning amendment process. Dan said that that NU is arguing our laws are per se reasonable even though they didn't contemplate a proposal like NU, but that PB may not require standards of reasonableness with respect to parking. David said the AG letter approving this review, limits review by the PB.

A citizen said that for at least 10 years NU has been in violation of the permissible parking spaces. David responded that as long as we are within the zoning law, we are in compliance.

Rob raised the issue of the parking minimum required space and said by his calculation the by-law requires a minimum of 197 spaces and not 125 spaces. David was unable to opine on the calculation.

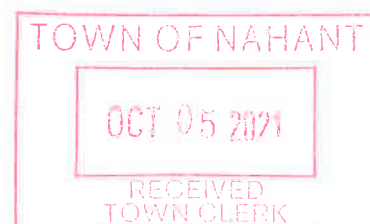
A citizen asked how many people will present when they are "convening" and where will they park. David said they will park in the 125 parking spaces. Dan asked about whether a condition that NU not have more than 125 cars on campus. Dan noted that you only have 125 spaces because that is the minimum requirement. If you say the code is reasonable, you should be willing to agree to a limit of 125 cars. David confirmed that he would consider that reasonable.

Rob noted you have an assembly hall for 160 people. You typically have 50 people parking pre-covid and now you are going to double the size of the on-site population. There is no way 125 parking space could be sufficient if nonFTEs are invited to the assembly, which I assume is likely.

Rob said that NU has noted at least 8 times that the issues we have raised are for the Building Inspector to decide and we have countered 8 times that it is the responsibility of the PB to instruct the Building Inspector how to do his job. Rob noted we have two lawyers on the PB that have worked at major law firms and a top level surveyor. Our Building Inspector, albeit a very talented builder, does primarily home renovations in Nahant. He is not in a position to interpret laws or make engineering, parking needs and other such issues. Rob said it is the job of the PB to implement the laws of Nahant and make sure applicants to build follow the law. Rob noted that NU has access to top legal talent and other professionals and what we have seen today is there are major errors as to legal boundaries and use of improper standards to a degree that is disturbing.

Sheila moved to have Dan and Rob develop follow-up with written questions based on the meeting today, and Cal seconded. The vote was as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton – Yes  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano – No  
Rob Steinberg, Recording Secretary – Yes



Sheila asked if NU conducted a traffic or a sustainability study? Can we impose a bond if there is noncompliance? Sheila noted that our by-law provides that you can't bring in dirt from anywhere else. David said we need to stay within the parameters of this hearing.

Dan asked how close the retaining wall can be to the property line. Cal said it would have to be on the NU property. David said we are certainly staying out of any set-back areas, and he would be happy to show that he complies with the dimensional requirement. Cal said if you got very close to Lodge Park, the wall would have to be 30-40 feet high.

Rob asked again if there were any persons from Northeastern who would provide factual information. No one responded and Rob said it appears that Northeastern only sent an attorney to respond. David said that they prefer to respond in writing and Rob said the problem is that more information is elicited through talking with people knowledgeable about the proposal and construction.

With respect to the drop box, Dan noted that we have received a lot of documents from the public and Dan said we would like to avoid loading up the drop box with documents. Dan suggested Rob and Dan look through the submissions and decide where to put them.

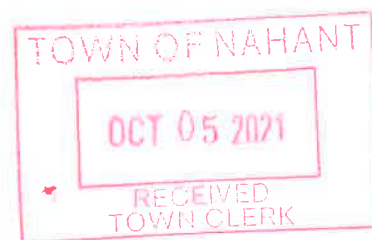
Jeff Blake said that everything in the drop box at this time as well as items we have received to be included in the drop box should be part of the record. Jeff said anything that is submitted is part of the record. Dan said unless NU is interested in an extension or that the clock doesn't start ticking until the plan given to the Planning Board, we need to file with the Town Clerk by noon on September 24<sup>th</sup>. David confirmed that it is his understanding and did not indicate NU wanted an extension.

Dan said our next scheduled meeting is on September 21<sup>st</sup>. Dan said, before we file, we need to approve the final language. Dan said that we will need to receive final responses and close the record, and then deliberate on our findings of fact and conclusions of law.

Dan said we will need the response to our questions from NU by Tuesday. Cal noted that if NU gave us an extension, we could give NU more time. David said they didn't have an extension in mind. Dan asked to secure meeting times on Sept 14 starting at 4pm for questions and then 6:30pm for deliberations. Dan also asked to reserve time for a meeting on September 23<sup>rd</sup> and maintain the meeting for September 21<sup>st</sup>.

Dan then asked for a motion to close the meeting. Cal so moved, seconded by Sheila. The Board voted as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton - Yes  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano - Yes  
Rob Steinberg, Recording Secretary – Yes



Meeting adjourned at 9:35 pm.  
Meeting Minutes prepared by Recording Secretary Rob Steinberg.  
Approved by Planning Board on October 5, 2021.

