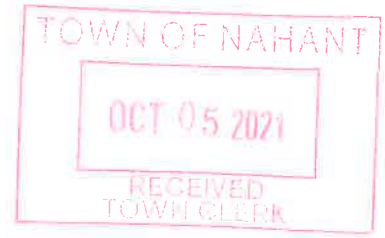


**TOWN OF NAHANT**  
**Planning Board**  
**September 21, 2021, 6 PM**



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

**Meeting Minutes**

Dan Berman called the meeting to order at 6:08 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  
Shelia Hambleton – Joined at 6:20 pm  
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 persons:

Michael O'Callaghan  
Jeff Blake (Town Counsel)  
Steve Smith (attorney for Tides and the Surf Shop)

Dan first asked to review the minutes of the September 3, 2021 meeting. Pat moved to approve the minutes, seconded by Cal. The vote was as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton – Not Present  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Not present at the meeting  
Steven Viviano – Yes  
Rob Steinberg, Recording Secretary – Yes

Sheila Hambleton joined the meeting.

Dan noted that we are now resuming our NU discussion on its proposed expansion. Dan asked if any representative from NU was present and no one from NU was in attendance at the time of the request.

Dan then outlined how the decision could be structured. Dan said we want to avoid the judge deciding that Dover applies and approving the site plan without regard to the conditions that we believe are

important to impose in the event the court rejects our denials. The court could pay attention to our conditions either by remanding to the PB or by recognize our conditions if it finds Dover applicable. Dan noted that since the deadline for our decision falls on Saturday, we have until the following Monday to file. However, we have to file by 5 pm and we might have problems getting a quorum during the day on Monday. Accordingly, Dan recommended we wrap our business and approve the document before the weekend, and then give authority to finalize the document to a member of the PB. Dan said will seek to have a document for review and approval at the meeting scheduled for Thursday night.

Patrick asked whether we need to approve with conditions for the court to give deference to our conditions. Patrick said if we deny, he believes we put at risk our ability to set conditions. Dan said we have grounds to deny based of a lack of sufficiency of evidence in support of the petition. Dan said we could include height as a denial point as well as a condition.

Patrick cited a case where the court notes that it doesn't have to give deference to conditions if there is a denial. Jeff Blake said to the extent we are denying, we could be giving up our right to condition development. Jeff said, however, that if you recite the conditions and then deny for insufficient evidence, the court will often time remand it back to the PB. So, if we were to deny without discussion of any condition, the PB may lose the right to set conditions. Dan said, when there is a drastic change in the evidence before the Court and before the Board, the Court is apt to remand it back to the Board.

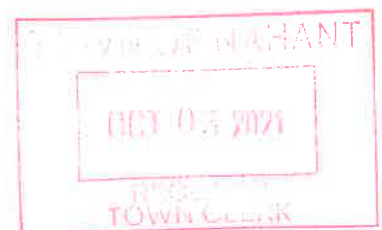
Jeff Blake then spoke about conditions that can be issued by the PB in his view. He noted that he believed conditions that the PB can issue in this proceeding are limited, but the Building Inspector's decision can be reviewed by the ZBA. Jeff Blake notes that abutters have standing to contest the Building Inspector's determination.

Dan asked whether the Building Inspector has jurisdiction over issues that other Boards don't have, like fire protection. Jeff said the Building Inspector has jurisdiction over those type issues. The Dover Amendment has nothing to do with building code issues; it only applies to zoning issues. Dan noted that lighting and signage are zoning issues, but they are exempt if Dover applies. However, to the extent noncompliance becomes a nuisance, an affected neighbor could challenge it.

Dan noted that the administrative record is still open, and Rob suggested that certain documents be added including a Statement from Christian Bauta, an email from Alice Cort and Susan Solomon, an email from Diane Monteith and the study of fiscal impacts. Dan said we will be posting the minutes into the record. Dan noted that Shannon was researching property documents related to this matter, which will be posted to the administrative record.

Sheila moved to authorize the Chairman and Recording Secretary to work to prepare draft findings of fact, conclusions of law, and a determination for our next scheduled meeting on September 23, 2021. The motion was second by Pat. 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 – Yes

Rob Steinberg, Recording Secretary – Yes

Rob then summarized how the Chairman and Recording Secretary are thinking about the key points of the decision. Dan said that with respect to the whether the Dover Amendment applies, we are to make a decision on the record. Dan noted that NU repeatedly denied invitations to show how Seventh Day Adventist does not apply. On the record, therefore, there is nothing to refute or even challenge the holding of Seventh Day Adventist.

Shannon noted that he has been at the Essex County registry of deeds to back-up the high tide and low tide, FEMA map, and boundary issues. Shannon noted that we did receive a submission from NU to the Town Clerk's office this week that was 13 copies of a single pages, which was their resubmission to show the proper FEMA citation. However, NU cited a FEMA citation to a 2021 revision that wasn't in effect. We asked them to submit new plans showing the 2014 maps.

Dan asked Shannon to prepare those documents for upload into the drop box. Rob said it would be useful to add a summary describing that the document was based on a request from the PB in the title of document.

Shannon noted that in certain deeds there is a reference to uplands and asked what that means. Sheila and Cal offered their definitions of uplands.

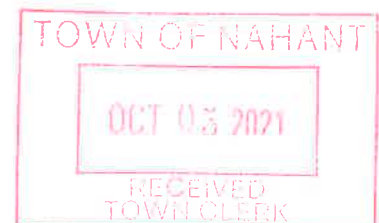
Dan noted that we don't have a full submission. Dan said page 1 had changed and the electronic submission was shorter than the paper submission. NU confirmed that the first page of the electronic submission was superseded, and but said the missing pages were obsolete. They had no comment on why the electronic submission was 10 pages shorter. NU said they had delivered 13 pages of the complete submission to the Town Clerk, and the Town Clerk said she didn't get them. Dan said they never submitted a full petition on paper.

Sheila asked if we can still add to the drop box. Sheila said she is looking at the deed and she is plotting it. Dan said we would allow that into the drop box.

Dan noted at 7:36 pm we are closing this discussion on NU, and we will close the record subject to adding:

- All documents submitted electronically to the PB or to Dan or Rob by email, plus
- The new document today which include the intertidal area deeds, the plotted plan, a second statement submitted by Christian Bauta, Diane Monteith and any reply to a question posed by email, the email from Alice Cort and Susan Solomon, and the minutes of all meeting (which will be finalized after this meeting), our decision document

Cal moved to close the record except to include the specified items above, seconded by Sheila. 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 – Yes  
Rob Steinberg, Recording Secretary – Yes

Dan next turned to the application for Special Permits for construction and use filed for 2/2A Wilson Rd. Dan said we need to publish notice 14 days in advance for the public hearing. Sheila said we received a request for a different retail use, and a tear down and reconstruction of the building. Sheila said she completed the abutters list who will receive notification of the hearing. Sheila said it is a small list and it doesn't matter whether the abutter is commercial or residential. Dan said we will refer to the former Dunkin Donuts building as 2A and the Tides restaurant as 2 Wilson Rd.

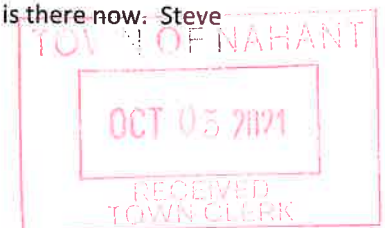
With respect to the reconstruction permit application, Sheila said it is insufficient because it should show the existing building (before the tear down) and then show the proposed use. Dan asked if we need only the "as complete" drawing, but Sheila said, and Dan agreed, we need to see what we had before to make the finding that this structure is no more nonconforming than the previous structure. Sheila said she hasn't heard from the Conservation Commission and the building is definitely in the buffer zone. Dan noted that the Building Inspector already issued a permit, albeit invalid, but Shelia said the determination of the Conservation Commission was not certified by the Assessor's Office. Shelia said she did not believe the applicant showed the buffer zone to the Building Inspector. Sheila noted that the parking drawing is from the original parking design from the Special Permit from 30 years ago.

Dan said the application was received on September 8, 2021, and we have to hold the hearing after 35 days or after October 13, 2021. Dan asked counsel if he would be able to supplement with the flood plain demarcation per the 2014 FEMA maps as well as the drawing before construction.

Steve said the PB concluded at the August 3 meeting that the applicant could file application to get the process started and that they would be able to supplement. Steve said he can't provide the existing drawing but can show how the roof line would be different. Steve said that he is working with a surveyor to upgrade the site plan. Steve said the applicant filed with the Conservation Commission and Board of Health.

Steve Smith said he could meet the deadline for an October 19 hearing, but the survey work could be delayed. Steve Smith said that there is time to get through the Special Permit process, and there is no rental income so the applicant is motivated to get materials to the PB as quickly as possible. Steve Smith said there is no prejudice if the PB hears case but not issue a final decision until the surveyor's work is done. Steve asked that we have the hearing before final plans. Steve said there might be request for modification and he wants to have time to make those modifications.

Dan noted that generally we have to have a hearing on the plan. Steve Smith said the plan is great but the physical building better. Steve Smith said a plan isn't going to change what is there now. Steve



Smith said for the sake of moving on, and not having this linger, we should have the hearing before submission of the plot plan.

Steve Smith said this is the same size building. Dan said the building is nonconforming and it requires a Special Permit and we are to decide if the building is more nonconforming. Steve Smith said the pitch of the roof is higher. Steve Viviano said in the back of the building there was an office and room that went out to the dumpster. Viviano said it looks bigger but the foundation is in the same spot (in fact, they pulled the building in). Steve Smith said he will invite the PB members down to the building. He said walls are opened up but the footprint and volume is the same. Dan noted that we will have a site visit.

Steve Smith pointed out that we have to hold a hearing within 65 days. Sheila said we could meet the first Tuesday on November 2 on this matter. Steve asked that it be held October 19 so there is time for modification. Dan scheduled the hearing for October 19. Sheila said Patrick is charged with sending the abutter notices (but said she will do it for Patrick and send the documents). Cal was asked to be point person for the PB site visit, and Steve is point person for the applicant. Dan asked that Steve Smith to communicate our request that Michael O'Callaghan and the proprietors of the proposed surf shop be present at the hearing.

Cal moved to schedule the hearing on the two special permit applications for 2 Wilson Road on October 19, 2021, with the administrative tasks and expense authorized, Pat seconded.

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

Sheila moved to close the meeting, seconded by Cal. The vote was as follows:

Daniel Berman, Chairman – Yes  
Calvin Hastings, Vice Chairman – Yes  
Shelia Hambleton – Did not vote  
Patrick O'Reilly – Yes  
J Shannon Bianchi – Yes  
Steven Viviano – Yes  
Rob Steinberg, Recording Secretary – Yes

Meeting adjourned at 8:36 pm  
Meeting Minutes prepared by Recording Secretary Rob Steinberg.  
Approved by Planning Board on October 5, 2021.

