



TOWN OF NAHANT

Planning Board

September 3, 2021, 6 PM

LOCATION: ZOOM CONFERENCING, NAHANT, MA

Meeting Minutes

Dan Berman called the meeting to order at 4:36 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 – Not Present
Patrick O'Reilly – Here
J Shannon Bianchi – Not Present
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 (and others who could not be identified):

Sam Minton, *Lynn Item*
Steve Smith
Kathleen Marden

Dan opened the meeting by saying our site plan review of Northeastern's proposed expansion is not on the agenda for this meeting. Dan said we will not entertain any questions or comments on any subject related to Northeastern, and that this meeting will not be part of the record of the site plan review.

Dan Berman then asked members to review the minutes of joint meeting with the Board of Selectman on August 3, 2021 meeting. Dan and Cal made requests to revise the minutes and those changes were made (and marked in blue italics on the final minutes for approval).

Sheila moved to approve the minutes of August 3, 2021, and Cal seconded. The Board voted as follows:

Daniel Berman, Chairman – Yes
Calvin Hastings, Vice Chairman – Yes
Shelia Hambleton – Not present at the time (joined later)
Patrick O'Reilly – Yes
J Shannon Bianchi – Not present
Steven Viviano – Not present at the August 3 meeting
Rob Steinberg, Recording Secretary – Yes

Dan Berman decided to not discuss at this time issues others than the Surf Shop issue at 2/2A Wilson Road. Dan noted he called Steve Smith and received a return call and noted that the two applications for a construction and use permit were in process and being signed. Steve noted that the Special Permit on use had been denied and the Special Permit for construction was being submitted directly to the PB.

Dan inquired about the Surf Shop use of part of the Tides and Steve Smith said the operator was only using the Surf Shop for storage and to pick-up items not stocked at the other stores. Dan went to the Tides and found there were retail style window displays, and there were signs noting that a door was for access for the Surf Shop. Dan heard that the Surf Shop employees were in and out, but not there now. Dan observed that the store did not look like it was for storage and was clearly set up at a retail store.

Dan searched for the Surf Shop online. He noted that there were hours posted for the Surf Shop and listed the location on 2 Wilson Road. There was a note that there would not be rentals available until the move to 2A Wilson Road. And, there was an on-line offer related to a special Labor Day sale.

Dan concluded that there is no ambiguity that they are operating a store and have not requested nor received a permit to operate a store. Dan also said they have been up and running since prior to Memorial Day.

Cal noted that all these facts were a surprise to him, and then said very specifically that nothing was to be done, including any modification to the Tides and the Dunkin Donuts buildings, and the operator who runs the Tides signed the document. Cal noted that the owner changed the Tides and replaced the Dunkin Donuts buildings. Dan noted that ~~that~~ reconstructing the Dunkin Donuts building requires a Special Permit per the by-laws.

Shelia said there have been other violations throughout the Town where there have been teardowns and changes that required a Special Permit either by the ZBA or Planning Board.

Pat asked when are we going to see the Special Permit applications.

Rob noted that our determination to forbear was based on his understanding that a use permit was not ripe for submission.

Steve Smith noted that the permit application requires original signatures so that could take some time. Steve also asked what constitutes a sufficient change of use to require an owner/operator to get a use permit.

Shelia noted that the Tides is also selling clothing, and that is an issue we should look at in addition to the surf shop. Sheila said we need to differentiate the construction of the new surf shop as a separate violation. Dan said that if the Tides is selling T-shirts with a Tides logo, that doesn't trouble him.

Steve Smith asked if the meeting is being recorded, and Dan said that the Zoom system automatically records the meeting, which recordings are preserved.

Steve said that Mr O'Callahan isn't present because he had business issues.

Steve Smith stated he had several corrections to prior statements made, including that he can't require the website be corrected and isn't to blame for issues in that regard. Steve said that there were isolated incidents when customers would pick-up goods at the Tides. Steve said he can't comment on Surf Shops efforts to market online.

Steve said that the Surf Shop presence at the Tides, with limited exceptions, is for storage only. Steve Smith said there is no attempt to deceive in the PB. Steve said you are asserting they are running a retail Surf Shop and we say they are not. Steve said he has never seen anyone shopping there.

Dan said the operator is displaying all items on shelves and, in a storage facility, the items would not be on display shelves. Shelia noted that she has seen the Surf Shop open and there was an employee selling goods, with the transaction conducted via a Square. Kristen Standish said her personal experience is that it is operated as a retail store with employees and other customers. Kristen bought a cap there, and also noted she is highly supportive of the Tides and of the Surf Shop opening appropriately. Kristen said she did not notice any boxes. Dan asked if she thought she was shopping in a retail store and she said yes. She said that it was staffed and people were purchasing, including her girlfriend who bought a surfboard.

Sheila said she entered the store and said there were helpful staff members there. She asked a Tides person if they are open for business at the Surf Shop, and was told that they were. Sheila said she isn't against them, just against the process.

Dan asked Steve Smith the status of the building, and he said there is still finish work in the interior and some exterior work. Steve said they are trying to get the building completed as quickly as possible.

Steve said the intent is for the space in the Tides to be storage only and not run a retail use in the restaurant, and he is unwavering in his view.

Dan said that he isn't disputing anyone's intent, but that it is clear that they are running a retail store. John Stabile noted that Tides is either running or not running a retail store. Steve Smith said they are struggling to keep business going through a long drawn out process. Steve said he still does not have a fully executed application at this time. Steve said the application would be filed sometime next week. Steve held up a FedEx envelope to show that he had just received a-completed applications for construction and use of the Surf Shop.

Dan said we don't want to see any retail transaction in the back of the Tides. Dan asked if that could occur without the PB issuing a cease and desist order. Dan said pickup of online sales at the Tides is a transaction. Steve asked why the PB isn't supporting a retail business in Nahant. Dan noted that the PB could have issued a cease and desist order to stop construction and we didn't. And, Dan noted that Steve did not mention the Surf Shop at any time prior to us. Steve said that the PB is being unfair.

Rob said he agrees with Dan that there seem to be a lack of certain disclosures that could have been provided to the PB.

Rob moved that the Ocean House Surf Shop not engage in any retail sales, rentals and deliveries until granting of a use permit, and Sheila seconded.

Steve Viviano said that he would be more lenient. He recounted a discussion several months ago in which one of the Surf Shop owners asked him if he knew of any commercial spaces to rent for 60 days, to operate the shop until the new building would be ready. Steve V said that he recommended against that approach, because the 60-day use would require a permit, and the application process likely would take close to 60 days if not longer. Dan said we don't have authority just to say it is ok to have a retail shop until the new building is completed, without having a permit application to act on. Dan said we have to grant a permit and noted that the owner of the Surf Shop knew that the operator essentially acknowledged that he couldn't open a pop-up shop without a permit in his discussions with Steve. Steve V then suggested that the conversation might not have gone exactly as he had related it. He stated that the Planning Board should be more supportive of new businesses attempting to come to Nahant. Dan said if they come to us and asked us for help, formally or informally, we would have guided them to apply for a change of use permit so they could open a legal business in the back of the Tides or elsewhere. Dan said this isn't the way this should have proceeded or the way we should have found out about it. Steve Viviano said he didn't believe there was any maliciousness about opening in the Tides instead of a different location.

Rob noted that the motion does not preclude the storage use in the Tides, which was what Steve Smith purported was the main, current use.

Dan noted we are ready to vote

The vote was as follows:

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

The motion passed 4-2. Dan noted that we aren't proceeding with a cease and desist order at this time.

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 – Not Present

Steven Viviano - Yes

Rob Steinberg, Recording Secretary – Yes

Meeting adjourned at 5:49 pm.

Meeting Minutes prepared by Recording Secretary Rob Steinberg.

Approved by Planning Board on September 21, 2021