

TOWN OF NAHANT
ZONING BOARD OF APPEALS

MINUTES

October 4, 2021

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, Jocelyn Campbell, David Walsh, Peter Barba, Caitlin Kelly, Max Kasper, and Michael Rauworth. All votes were taken by roll call. The Board approved the minutes from the prior meeting.

5:00 P.M. 10 Tudor Road, Andrew Smethurst, Petitioner

The Board of Appeals held a public hearing on October 4, 2021, at 5:00 PM, on the petition filed by Andrew Smethurst owner of the property at **10 Tudor Road, Nahant, Massachusetts**, seeking a Special Permit to add a second-floor addition. The Inspector of Buildings has denied a building permit on July 13, 2021, where the proposed addition is in violation of Section 5.03 of the Zoning By-laws of the Town of Nahant and where the proposed floor area ratio is 56% where the maximum allowed is 45%. The advertisement appeared in the LYNN ITEM on September 20, 2021 and September 27, 2021 and was read for the hearing as well as a Planning Board comment letter expressing their concerns with the proposed plan as it would crowd a small lot. The Board also called attention to a 2008 Special Variance granted on this property with a condition on the variance was to not enclose the porch or put a second floor on the structure. The Zoning Board did not see any reference to the variance on the appeal application. Tony Roosien, the architect of record on the project, then proceeded to speak about the existing house which has an original two-story structure closest to the street, with a one-story porch structure and a one-story portion in the rear of the home. The proposed project will add square footage over the one-story portion over the

rear of the house, which will allow for more space on the second floor. Mr. Roosien understood that the previous special permits restriction meant that the porch would never be enclosed, have a foundation or second floor, and that the restrictions did not apply to the home itself. The Board then asked if there were any questions for the applicants. The original conditions were discussed, and the members agreed that the previous restriction applied solely the porch. The Board then asked if there was anyone to speak in favor or opposition of the application. Andrew Smethurst spoke to the fact that he has support from the surrounding neighbors, but he does not have their signatures yet. No person spoke in opposition. The Board then began deliberations. Peter Barber made a finding that the proposed action on the lot is not substantially more detrimental to the neighborhood. David Walsh seconded the finding. A roll call vote was taken and the motion passed, all voting in favor were Jocelyn Campbell, Catilin Kelly, Peter Barber, David Walsh, and Max Kasper, with none opposed. A motion was made by Peter Barba that a Special Permit be granted for relief of the floor area ratio from 45% to 56% as long as the construction is performed as the plans have been presented now. David Walsh seconded the motion. A roll call vote was taken, and the motion passed, all voting in favor were Jocelyn Campbell, Catilin Kelly, Peter Barber, David Walsh, and Max Kasper, with none opposed.

**5:30 P.M. 238 Wilson Road, Theunis Arend DeJong and Habitat for Humanity et al.,
Petitioner**

The Board of Appeals held a public hearing on October 4, 2021, at 5:30 PM, on the petition filed by Theunis Arend DeJong and Habitat for Humanity et al. for the property located at **238 Wilson Road, Nahant, Massachusetts**, seeking Eight (8) Variances to build a new residence on a non-conforming lot in place of a demolished (fire damaged) original dwelling. The Inspector of Buildings has denied a building permit because the proposed building is in violation of Section 5.03 of the Zoning By-Laws of the Town of Nahant where the existing area of the lot is 2,800

square feet and the minimum allowed is 10,000 square feet; the existing frontage is 35' where the minimum allowed is 75'; the proposed lot coverage is 31% where the maximum allowed is 25%, the proposed floor area ratio is 100% where the maximum allowed is 45%; the proposed number of stories is 3 where the maximum allowed is 2.5; the proposed rear yard setback is 17.5' where the minimum allowed is 20'; the proposed left side setback is 4.8' where the minimum allowed is 10'; and the proposed right side setback is 4.8' where the minimum allowed is 10'. The advertisement appeared in the LYNN ITEM on September 20, 2021 and September 27, 2021 and was read aloud for the hearing along with a comment letter from the Planning Board, commenting on the fact that the application does not meet the timing requirements of 7.03D and therefore cannot be rebuilt as a matter of right. Mr. DeJong then presented his case, stating that this is the third proposed design for the dwelling on this property, where the first one was 2,450, the second was 2,010, and this one is 1,950 square feet. The new design attempts to comply with six of the previous required variances for relief that were needed with the previous application. However, once he applied with the new design, he learned that he needed two additional variances in addition to the previous six. The lot being 35ft where it should be 75ft, was not a variance on the original design. He believes that the building inspector made a mistake on the lot property area by including floor space that is not part of the design. He designed the house to be exactly 25% of the lot coverage, with a 700 square-foot footprint. The Zoning Board proceeded to ask questions. Mr. DeJong, comparing the previous structure that was on the lot, stated that the side setbacks are exactly the same as the previous structure, the rear wall on the left side ends at exactly the same place, the right side is 8ft longer, and the house was 19ft from the street while the proposed plan is 25ft from the street. The square footage of the original house was 2,800 square feet. The heights of the stories are exactly the same as the original property. The Board then asked what hardships are singular to this property and not to any of the abutting properties. Mr. DeJong answered that the conditions of this property are the same as the lots next door. The hardship is that the value of

this property requires a minimum square foot footprint to make it economically viable. Also considering that the lot is 45 degrees steep and is a small lot size. The Board asked if the applicant would be able to get out of the deal with Habitat for Humanity if the variances are not granted, and Mr. DeJong said he would. The Board then asked if anyone would speak in favor of the application. Meegan O'Neil, 29 Argilla Road, Ipswich, Massachusetts, Executive Director of Habitat For Humanity, 14 Park Street, Danvers, Massachusetts, 01923, as the current owners of the lot spoke stating that when they were originally gifted the lot they thought they may build affordable housing, but that it would not be an ideal location, and that there are significant financial hardships in building anything on this lot. Gram Salsberg, 5 Roland Court, Marblehead, Massachusetts, the designer of the project, also spoke in favor of their attempts to design a home with the least amount of possible variances. The Board asked if anyone would like to speak in opposition; none spoke in opposition. The Board then began deliberations. A motion was made by Michael Rauworth for a finding that there is nothing relating to the soil, topography, or shape of the lot that permits the Board to find circumstances to differ from those of the other lots in the neighborhood. The motion was seconded by David Walsh. The Board continued to discuss the matter. A vote was taken on calling the question and ending the discussion on this particular motion. A roll call vote was taken with the majority voting in favor with Jocelyn Campbell, Michael Rauworth, and David Walsh, and with Peter Barba and Max Kasper voting against. A roll call vote was taken, and the motion passed with the majority voting in favor with Jocelyn Campbell, Michael Rauworth, Peter Barba, and David Walsh; Max Kasper voting against. The Board then discussed the criteria for a variance as it applied to the side setbacks and other areas of relief needed, that the topography for this lot was no different from the neighboring lots and that there was no hardship where economic viability is not a hardship. Where the criteria for a variance could not be met, it was not likely the relief would be granted, therefore the Board asked the petitioner, Mr. DeJong, if we would like to withdraw his application, he replied that he would withdraw his application. Peter Barba, made a

motion to accept Mr. DeJong's withdrawal without prejudice, and the motion was seconded by David Walsh. A roll call vote was taken and the motion passed all voting in favor were Jocelyn Campbell, Michael Rauworth, Peter Barba, David Walsh, and Max Kasper; none voting against. The meeting adjourned at or about 6:30 P.M.

Respectfully submitted,

Jocelyn J. Campbell, Chair