

TOWN OF NAHANT
ZONING BOARD OF APPEALS
Minutes of Meeting
September 5, 2018

A scheduled and noticed meeting of the Board of Appeals was called to order by Chairperson Campbell, at or after 7:00 p.m. at the Nahant Town Hall. Present were Board members David Walsh, Peter Barba, Paul Morse, Donnalee Leonardo and Max Kasper.

HEARING:

7:00 p.m. 51 Little Nahant Road, Jayne DesLauriers

The Board of Appeals held a public hearing on Wednesday September 5, 2018 at 7:00 p.m. at the Nahant Town Hall, on the request of Stephen Viviano, representative for the owner of the property located at 51 Little Nahant Road, Nahant, to vary the application of the present Zoning By-law for special permit, variance, wetlands permit, or other such relief. Chairperson Campbell recused. Sitting for this matter were David Walsh as Chair, Paul Morse, Peter Barba, Donnalee Leonardo and Max Kasper. The applicant sought to allow for the increase in the height of a two and one-half story structure to a maximum height of thirty-four feet, eleven inches (34'11") above the mean original grade on the subject property. The proposed structure is 4' taller than the original making the "as-built" 34' above grade where 30' is allowed by the Nahant Zoning By-laws. The hearing was advertised in the Lynn Item on August 22, 2018 and August 29, 2018. The application was presented by Stephen Smith, Esq. The chairperson asked if there was anyone in the assembly to speak in favor or in opposition. The following persons spoke in favor; Stephen Viviano, 47 Little Nahant Road (petitioner), Jayne DesLauriers (petitioner), Holly Estrella of 42 Little Nahant Road, Emmanuel Speare of 57 Little Nahant Road, Pat Gerard, 53 Little Nahant Road, George Mastoras of 5 Linda Lane, Andrea Butera of 98 Little Nahant Road and Calli Serino, of 47 Little Nahant Road. The following persons spoke in opposition; Robert Silva of 7 Burpee Road, Kristine Standish of 19 Baker Road, Erik Peterson of 52 Little Nahant Road, Derick Stephens of 56 Little Nahant Road, Jack Gavin of 75 Lennox Road, George Mihovan of 64 Lennox Road, Joe Donovan of 27 Baker Road, Kelly Stevens of 56 Little Nahant Road and Mario Spinucci of 12 Sunset Road. The Board then deliberated the application of the Nahant Zoning By-laws to the project. The Board discussed the dimensional requirements, the existing height and the criteria for special permit and variance and that the owner constructed the building over height without permit and seeks this relief after the fact. The Board considered all of the exhibits and testimony submitted. A motion was made and seconded to admit exhibits into the record received from Attorney Smith and large photo presented by Mr. Peterson, all in favor (5-0). A motion was made and seconded that the floor area ratio is not increased, vote failed (3-2). A motion was made and seconded that the increased height of the structure interferes with view, and to find that the increase in height would be more detrimental to the neighborhood, all in favor (5-0). A motion was made and seconded to deny a special permit or variance, all on favor of the denial (5-0). The hearing adjourned at 8:03 p.m.

Respectfully submitted,
David Walsh
Chair

8:15 p.m. 8 Tudor Road, James R. Malone

The Board of Appeals held a public hearing on September 5, 2018 at 8:30 p.m. at the Nahant Town Hall, on the request of James R. Malone and Rose Malone for the property located at 8 Tudor Road, Nahant to vary the application of the present Zoning By-law for a special permit or variance for proposed lot coverage of 29% where the maximum allowed is 25% and proposed rear setback of 18' where the minimum allowed is 20'. The hearing was advertised in the Lynn Item on August 22, 2018 and August 29, 2018. Sitting for this matter were Jocelyn Campbell chairperson, David Walsh, Peter Barba, Donnalee Leonardo and Max Kasper. The chair asked if there was anyone in the assembly to speak in favor or in opposition to the petition. Tom Hosker of 6 Tudor Road spoke in favor. No persons spoke in opposition. The Board discussed Section 7.03 of the Nahant Zoning By-laws the plan provided and indicated that the plan as proposed improved parking, reduced the existing height of the structure, improved the right-side setback and the rear setback and increased open space despite a 3% increase in lot coverage and rear setback being two feet short of compliance. The Board deliberated the application of the Nahant Zoning By-laws to the project. The Board considered all of the exhibits submitted. A motion was made and seconded to find that the change to the existing non-conformity was not more detrimental to the neighborhood, all in favor (5-0). A motion was made and seconded to grant a special permit, all in favor (5-0). The hearing adjourned at 8:29 p.m.

8:30 p.m. 21 High Street, Peter Vernam

The Board of Appeals held a public hearing on September 5, 2018 at 8:30 p.m. at the Nahant Town Hall, on the request of Peter Vernam for the property located at 21 High Street, Nahant to vary the application of the present Zoning By-law for a variance where the front setback of the solar array would be 5 feet where the minimum allowed is 25 feet. Sitting for this matter were Jocelyn Campbell chairperson, David Walsh, Peter Barba, Donnalee Leonardo and Max Kasper. The chair asked if there was anyone in the assembly to speak in favor or in opposition to the petition. The application was presented by Dustin Vitagliano and Thomas Janowski, representatives of the property owner. The Board asked questions regarding the size and shape of the panels, whether cutting the number down would help, whether they could be attached to the roof (they could not where the structure has historical significance and the roof contains dormers). The Board discussed the abutting paper road and that the topography of the land is such that it slopes down making a good place for the solar panels and there seemed to be no other suitable place on the property. The Board discussed that solar panels are not mentioned in the Nahant By-laws. The Board then deliberated the application of the Nahant Zoning By-laws to the project. The Board discussed the use and dimensional requirements, the existing height and the criteria for special permit and variance. The Board considered all of the exhibits submitted. A motion was made and seconded to find that the project as proposed is not substantially more detrimental to the neighborhood. All in favor (5-0). A motion was made and seconded to find that an inability to effectuate this project would cause an undue hardship on the petitioner. All in favor (5-0). A motion was made and seconded to find that due to the soil or topographical conditions and structure that a literal enforcement of the By-laws would be difficult. All in favor (5-0). A motion was made and seconded to grant a variance to the dimensional requirement of the front setback. All in favor (5-0). The hearing adjourned at 9:11 p.m.

9:13 p.m. 2 Linda Lane, Paul Gallagher

The Board of Appeals held a public hearing on September 5, 2018 at 9:13 p.m. at the Nahant Town Hall, on the request of Paul Gallagher (Petitioner) for the property located at 2 Linda Lane, Nahant for zoning enforcement. Sitting for this matter were Jocelyn Campbell chairperson, David Walsh, Peter Barba, Donnalee Leonardo and Max Kasper. The hearing was advertised in the Lynn Item on August 22, 2018 and August 29, 2018. The application was presented by Michael Sullivan

Esq. The Board asked when the photograph was taken and discussed the width (narrow) of Wilson Avenue and that residents of this street were accustomed to extra room prior to the subject property being built even though it was not their land and that the property located at 2 Linda Lane was sometimes used for parking. The Petitioner sought enforcement of Nahant Zoning Bylaws 502.G, 502 J, 502 E, which state in part, respectively; that the land was not left in a natural state, that no permit was obtained for a rock wall and that a clear triangle area is required on the corners of corner lots. The Petitioner also stated that construction was carried out at all hours of the day and night and there was a mess created in the street. Wayne Wilson, Building Inspector responded that this was the second request for zoning enforcement and he had replied fully on the first occasion, and that he responded on this occasion and communicated with the property owners over issues. Mr. Wilson stated that he finds no violations on the property at this time. Mr. Wilson noted that although a permit is not required for a wall unless it is over eight (8) feet in height (which the subject wall is not), in retrospect, he probably should have asked the owners to obtain a permit. Mr. Wilson stated that the homeowners at 2 Linda Lane have since hired an engineer to inspect the wall and the engineer provided a signed and stamped letter indicating that the wall is safe, the letter was submitted as an Exhibit to the homeowner's response submitted by their counsel and a copy provided to Petitioner at the hearing. Mr. Wilson stated that the triangle at the corner of the lot was addressed previously and the homeowners made the adjustments necessary. The chair asked if there was anyone in the assembly to speak in favor or in opposition of the request for zoning enforcement. Those speaking in favor; Margaret Ackerman of Lenox Road, Susan Sherry of 6 Wilson Road, Linda Chistophitis of 4 Wilson Road, Dierdre Pocase and Matt Pocase of 2 Linda Lane. Those speaking in opposition; Anthony McCone of 3 Fallon Way, Michael Cabral Esq. attorney for homeowners, Wayne Wilson of Spring Road, Joe Mosha of 73 Little Nahant Road, Steve MacLone of 111 Little Nahant Road, Coleen Snell of 4 Linda Lane, Frank Durion of 106 Wilson Road, Ed Wong of 121 Little Nahant Road, Dan Hamil of 86 Little Nahant Road. On behalf of the homeowners, Attorney Michael Cabral questioned whether the Petitioner's request for zoning enforcement was proper where he brought a similar request approximately one year prior and never appealed it. He added that no fill was brought into the site. The Board deliberated the facts and request for zoning enforcement. The Board discussed that the disturbance created by the construction by contractors working odd hours. The Board discussed Section 5.02 J of the By-laws that refers to leaving the land in a natural state and that the By-law also states "to the extent practicable" which would likely be impossible when building a new home on a small lot. The Board discussed the problems that arose as a result of the construction, and that it was unfortunate that the neighbors had to suffer the issues that were complained of and that there did not appear to be good communication among the parties. The Board considered all of the exhibits. A motion was made and seconded to make a finding that there are no zoning violations, all in favor (5-0). A motion was made and seconded to affirm the decision of the Nahant Building Inspector of no zoning violations, all in favor (5-0). The hearing adjourned at 10:42 pm.

Respectfully submitted,
Jocelyn Campbell
Chair