

TOWN OF NAHANT

Planning Board

July 6, 2021, 6 PM

LOCATION: ZOOM CONFERENCING, NAHANT, MA

Hearing Minutes

Dan Berman called the hearing to order at 6:11 pm, stating that the hearing was properly noticed, and called the roll of those members attending:

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

Public in attendance:

Dan Skrip
Lisa Devaney
Michelle Capano
Emily Potts
Michael O'Callaghan
Steve Smith

Dan Berman opened the meeting by asking members to review the minutes of the June 2, 2021 and June 17, 2021 meetings.

Shannon moved to approve the minutes of June 2, 2021, and Cal seconded. The Board voted as follows:

Daniel Berman, Chairman – Yes
Calvin Hastings, Vice Chairman – Yes
Shelia Hambleton – Not present at the June 2 meeting and did not vote
Patrick O'Reilly – Not present today
J Shannon Bianchi – Yes
Steven Viviano – Not -present at the June 2 meeting and did not vote
Rob Steinberg, Recording Secretary – Yes

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

Daniel Berman, Chairman – Yes
Calvin Hastings, Vice Chairman – Yes
Shelia Hambleton – Not present at the June 17 meeting and did not vote
Patrick O'Reilly – Not present today

J Shannon Bianchi – Not Present at the June 17 meeting and did not vote
Steven Viviano – Yes
Rob Steinberg, Recording Secretary – Yes

The Board then discussed the draft letter to the Conservation Commission regarding the Board's intention to conduct site plan review of Northeastern's expansion proposals. Dan Berman asked whether we should send the letter to Northeastern, and Dan Skrip suggested that, since it was discretionary to send the letter to the Con Comm, there was no need to send the letter to Northeastern, although it would be a matter of public record once received. Dan Skrip noted it was appropriate to copy various parties on the draft including the Selectmen. Dan Skrip suggested that Jeff Blake be copied on the letter as well.

Sheila moved that we submit the letter identified above (and attached as Attachment 1) to the Con Comm, seconded by Cal. The Board voted as follows:

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

Dan then began a discussion of the construction at 2A Wilson Road. Dan noted that a Special Permit was required from the Planning Board prior to construction of this building and that a permit for a change of use is also needed, and that we have not heard from anyone. Attorney Steve Smith said that the building inspector issued a permit. Steve Smith then stated that his client will be applying for a permit for use of the structure.

Steve Viviano asserted that Building Inspector did not know that a Special Permit was required prior to construction. Dan Berman said that, if this Board issues a Special Permit with conditions, how can the Board ensure that the Building Inspector knows about it? Dan Skrip then questioned whether a Special Permit was needed or not. Dan said attorney Smith needs to let the Board know why the Special Permit does not apply, and that argument could be submitted with an application for a change of use. Dan Skrip said the Building Inspector has spoken and does not think the special permit applies.

Steve Smith then said his clients are not doing an end around and that they will be applying for a special permit - the work is being done because a building permit was issued.

Cal said the PB does not understand why construction proceeded without coming to the PB, and noted that the permitting requirement applied not only to the old Dunkin Donuts building but the Tides building renovations as well.

Addressing Steve Smith in response to a question raised prior to this meeting, Dan Berman said it is unusual to invite people to come to the PB, as he was invited to this meeting, because applicants know that any item headed to the ZBA comes before the PB for our opportunity to comment. Dan then said he is still concerned that there was a condition precedent to construction on a particular property, and yet no one seemed to know about it. Dan said that the Town has to do a better job disseminated information on conditions to construction.

Dan asked that the owner/lessee come forward with a special permit application for the construction in order for it to be considered legal. Steve Smith asked that the PB not issue a cease and desist because his clients have a building permit, and that the owner/lessee is willing to provide an application for a special permit application for a change in use. Dan Berman said he was not willing to agree that the building permit is valid.

Dan Skrip said the PB could send a letter to the Building Inspector to enforce a by-law or a condition of the permit. If the Building does not act appropriately, there would be appeal. Dan Skrip said the other avenue is an argument that the special permit does not apply or to make a dual application for structure permit and a use permit.

Shannon noted that the agreement regarding permit conditions for construction at 2 and 2A Wilson Road was made by the owner and the operator, as well as the Building Inspector. Shannon said Wayne Wilson should be part of these discussions, but we should work with the operator and his attorney, and then turn our attention to issues with the Building Inspector's office.

Dan then noted that there had been a 2005 request to the owner and the operator for zoning enforcement filed by the PB for construction at the Tides because it was not in compliance with the prior special permit.

Rob moved to request that the forthcoming application for a change of use permit also include a separate special permit to construct the building at 2A Wilson and for the Tides renovation, or to provide evidence that a special permit is not needed. The motion was seconded by Sheila.

Discussion then ensued as Dan noted that the condition relating to the construction should have been recorded, and we do not know if the Building Inspector checked the County records for the deed. Dan asked if an applicant must certify that there is nothing prohibiting construction in the County records. Steve Viviano said he did not believe the burden of checking of the County records is on the applicant. Steve noted that a permit is considered valid once paid. Dan asked Dan Skrip if Steve is correct. Skrip said just because the Building Inspector issues a permit, it does not mean the decision can still be challenged and overruled.

Based on the discussion that ensued, Rob withdrew his pending motion.

Dan Berman suggested that PB should send a letter to the Building Inspector requesting that he explain why the permit is valid and asking the owner/lessor to submit a special permit application both for construction and change of use.

Cal moved to authorized the Chairman to draft a letter consistent with the above conclusion, and Dan seconded.

The Board voted as follows:

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

Dan Berman then raised the ZBA issue at 237 Nahant Road, a house that is mostly finished. The original plan showed the zoning set back envelope at 25 feet and 10 feet to show conforming use. The Owner is now applying to build one of the decks, and has a hand drawing of the deck that is not sufficient to allow the PB to determine compliance with setback requirements. Cal said that engineering drawings should be submitted and that the application should be an amendment to the permit application submission.

Dan proposed sending a letter that, if the ZBA wants to accept a supplemental submission, the PB would have 14 days to review the supplemental submission. Cal suggested adding the need for engineering drawings.

Cal moved to authorized the Chairman to send the letter that is attached hereto as Attachment 2, second by Rob.

The Board voted as follows:

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

Dan then suggested that we may need to elect some alternate members to the Board for any hearings related to the Northeastern site plan. Dan said we should ask the Town to post a solicitation of resumes.

Cal moved to authorize Dan to ask the Town to so post, and Rob seconded. The vote was as follows:

Daniel Berman, Chairman – Yes

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

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

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

Hearing adjourned at 7:56 pm.

Hearing Minutes prepared by Recording Secretary Rob Steinberg.

Approved by Planning Board on July 20, 2021.

Attachment 1

July 6, 2021

Ms. Kristin Kent
Chair, Nahant Conservation Commission
Town Hall
Nahant, MA 01908

Re: Letter of Intent – 430 Nahant Rd
Review by Planning Board

Cc: Board of Selectmen
Town Administrator
ZBA Chair
Building Inspector
Jeffrey T. Blake, Esq.

Dear Commissioner Kent:

Please be advised that, as required by Section 9.09A of the Nahant Zoning By-Law, the Nahant Planning Board intends to exercise site plan review of Northeastern University's expansion proposals.

We understand that there has been some discussion at Conservation Commission meetings as to whether review of Northeastern University's proposals by other Nahant boards and committees should be concurrent with consideration by the Conservation Commission or sequential afterwards. We express no view on that issue. But we request to be kept informed as to your determinations that affect the timing of our review.

Thank you.

Respectfully,
The Nahant Planning Board

by _____
Daniel M. Berman, Chair

Attachment 2

July 6, 2021

Jocelyn J. Campbell, Esq.
Chair, Nahant Zoning Board of Appeals
Town Hall
Nahant, MA 01908

Re: 237 Nahant Rd
Requested Variance re Addition to Deck

Cc: Nahant Building Department

Dear Jocelyn:

This letter shares the Planning Board's comments on the above-captioned appeal to the ZBA, which is set for a hearing next week.

First, we note that the application is seriously deficient. According to the original building permit submission, this property was designed and built for the applicants just

last year. The original plans were highly detailed, and delineated a “Zoning Envelope” that reflected the applicable setback requirements from the irregular perimeter of the corner lot. The plans indicated an expectation that two decks would be built. Yet the application on appeal presents only a hand-drawn sketch that does not locate the proposed construction on a plot plan; all such applications are required to include detailed drawings signed by a registered professional. Moreover, the “Dimensional Requirement” page of the application on appeal offers only a question mark where it is required to indicate the Side 2 Setback resulting from the proposed construction. Inasmuch as the existing Side 2 Setback requirement is satisfied with only one foot to spare, this deficiency must be considered significant.

Second, in light of the above-described significant deficiencies in the application on appeal, we must anticipate that the applicant may supplement the application at or prior to the ZBA hearing. This implicates an issue that we have recently begun to discuss – the lack of opportunity for the Planning Board to review supplemental submissions. Current practice, as we understand it, is (1) where the supplemental submission fundamentally changes the application, the ZBA will require a new application, which will carry a new 35-day review period; and (2) otherwise, the ZBA will discourage supplemental submissions, but where a supplemental submission is accepted, the ZBA will respect the deadline it faces for action and thus deny the Planning Board an opportunity to review and comment on the supplementary materials.

We would like to suggest that supplementary submissions described in category (2) above be handled as follows: Accept a supplementary submission only upon the condition that the applicant agrees to extend the deadline for ZBA action by 14 days from the date on which the supplementary submission is provided to the Planning Board, and delay final ZBA action on the application by at least that period of time. This would afford the Planning Board with the opportunity to review and comment on the supplementary material. Of course, we would welcome further discussion on this issue.

Thank you in advance for your consideration of these comments.

Respectfully,
The Nahant Planning Board

by _____
Daniel M. Berman, Chair