

Town of Nahant
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ZONING BOARD OF APPEALS RULES AND REGULATIONS

The Nahant Zoning Board of Appeals, pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12, hereby adopts the following Rules and Regulations governing the organization, procedures, and conduct of the Board, as well as its review and action on special permits, variances, appeals, and comprehensive permits.

ARTICLE 1—ORGANIZATION

Section 1.1: Members and Officers

The Zoning Board of Appeals shall consist of five regular members and up to four associate members, all of whom are residents of the Town of Nahant and are appointed by the Town Administrator with the approval of the Board of Selectmen. The officers of the Board shall consist of a Chair and a Clerk (who may also be a co-chair), who shall be elected annually by vote of the regular members of the Board at the Board's meeting in October. The regular members shall also adopt and/or amend these Rules and Regulations at the annual meeting and as required. For all other business or administrative matters requiring a vote at a business meeting, except the approval of the Board's minutes, all members, regular and associate, may vote, each having one vote. A majority vote shall be required to adopt or approve business matters covered by this section.

1.1.1 Chair: In addition to the powers granted by Massachusetts General Laws and the Nahant Zoning By-law and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, appoint such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. He/she shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing or meeting.

The Chair shall be responsible for the orderly conduct of the Board's business, whether conducted during a public hearing or a public meeting. The Chair may use her/his discretion to rule out of order unsolicited or irrelevant comments made by members of the public. All points of order subject to these rules shall be decided by the Chair unless overruled by a majority of the Board in session at the time. The Chair shall rule on any possible conflicts of interest in matters pertaining to the Board, or when he/she deems it necessary, shall call on Town Counsel for such a ruling. No member or associate member shall participate in cases in which he or she is deemed to have a

conflict of interest. The Chair shall name associate members of the Board to sit in place of members in cases of absence, inability to act, or possible conflict of interest on the part of any member.

In case of absence, inability to act, or conflict of interest on the part of the Chair, he/she shall designate the Clerk as Co-Chair to sit in his/her place. If the Chair is unable to designate the Co-Chair, the Clerk shall sit as Acting Chair in his/her place.

1.1.2 Clerk: The Clerk shall be a regular member of the Board and shall, subject to review by the Chair, supervise all of the clerical work of the Board, including: reviewing all correspondence of the Board, sending all notices required by law, preparing rules and orders of the Board, reviewing all applications for compliance with the rules of the Board, keeping agendas and minutes of the Board's proceedings, compiling all required records, and maintaining necessary files and indices. If the Clerk is absent from a meeting, the Chair shall appoint an Acting Clerk.

1.1.3 Associate Members: Associate members shall sit on the Board, as designated by the Chair, in the case of absence, inability to act, or apparent conflict of interest on the part of any Board member, or in the event of a vacancy of the regular membership.

Section 1.2: Zoning Board Support Staff

1.2.1 Administrative Support: The Zoning Board of Appeals does not have support staff. The secretary to the building department will process applications, distribute them to the board members and town departments for review, place advertisements, obtain the abutter's lists, conduct all mailings to abutters, and serve as the primary contact for all applicants and their counsel. The Clerk shall assume these duties in the absence of staff support.

Section 1.3: Quorum

1.3.1 Sitting Board: The sitting Board for all meetings and public hearings shall consist of the five regular members of the Board. In the event of the absence, inability to act, or recusal due to conflict of interest of a regular member of the Board, the Chair shall designate a Co-Chair who is an Associate Member to sit in his/her place. The Chair may also designate other Associate Members to sit as alternates for a case. Alternates may be later designated by the Chair to sit in place of a sitting member in the event of absence, recusal, or inability to act.

1.3.2 Quorum: Four (4) sitting members shall constitute a quorum for the purpose of opening or continuing a public hearing on an application for a variance, special permit, or appeal as a party aggrieved, or to take any action thereon unless otherwise specified by Massachusetts General Laws. Three (3) sitting members shall constitute a quorum for the transaction of routine administrative business, such as convening or adjourning a meeting, or approval of minutes.

Section 1.4: Resignations

1.4.1 Resignation from the Board: If a regular Member or an Associate Member resigns from the Board, the resignation shall be submitted in writing to the Chair of the Board of Selectmen, and a copy shall be provided to the Nahant Town Clerk (the “Town Clerk”) and to the Zoning Board Administrative Secretary. Subject to any applicable restrictions relating to the terms of the appointment of the individual, the resignation may specify a future effective date to allow the completion of any pending cases in which the member has participated. Unless otherwise stated, the resignation shall become effective upon the filing of the same with the Town Clerk.

1.4.2 Resignation of Chair or Clerk: If the Chair or Clerk resigns from office, an Acting Chair or Acting Clerk may be appointed by the Chair if not more than sixty (60) days remain in his/her term of office. When more than sixty days remain in the term of office, the Chair or Acting Chair shall call an executive meeting of the Board within ten (10) days of the certification of appointment of members to the number of five for the purpose of electing a Chair or Clerk to fill the remainder of the unexpired term.

Section 1.5: Annual Meeting

1.5.1 Annual Meeting: An annual meeting of the Nahant Zoning Board of Appeals shall be held during the Board's regular meeting date in October of each year. This date may be changed at the direction of the Chair, with the concurrence of a majority of the Board. The annual meeting shall be attended by all regular members and, whenever possible, by all associate members. The business of the annual meeting shall be: to review the Rules and Regulations and Application Packet, discuss and vote on amendments, plan for training, and elect officers as needed.

ARTICLE 2 - PROCEDURES OF THE BOARD

Section 2.1: Public Meetings

2.1.1 Scheduling of Public Meetings: Meetings will be scheduled in concert with member availability. Notice shall be posted to the town’s website at least 48 hours in advance. Meetings may be held at the town hall or via Zoom or another recognized electronic platform. The date, time, and/or location may be changed at the direction of the Chair, with the advice and consent of the Board, but any change shall be subject to the provisions of public notice as set forth in M.G.L. c. 40A. Special meetings may be called by the Chair or a majority of the Board as deemed necessary to conduct the Board's business in an orderly and timely manner.

2.1.2 Notice: All meetings of the Board of Appeals shall be public meetings and shall be conducted in accordance with the Open Meeting Law, MGL Chapter 30A, Sections 18 through 25. Notice for each meeting shall be filed with the Town Clerk and publicly posted in accordance with the Town of Nahant's meeting posting procedures at least 48 hours prior to the meeting, excluding Saturdays, Sundays, and legal holidays. Agendas for Board meetings and hearings shall be posted in like manner and sent to any interested parties, as determined by the Chair, the Clerk, or the Zoning Board Administrative Secretary.

2.1.3 Business at Public Meetings: Business conducted at public meetings shall include:

- Review and approval of documents, administrative matters, meeting with town officials, and other miscellaneous matters.

2.1.5 Minutes: The Board's minutes shall be approved by the Chair after circulating a copy via email, provided there are no objections.

Section 2.2: Public Hearings

2.2.1 Scheduling of Public Hearings: Hearings will be scheduled in concert with member availability and after a thirty-five (35) day review period by other town boards and departments pursuant to the Nahant Zoning Bylaws and M.G.L. c. 40A § 11. Hearings may be held at the town hall or via Zoom or another recognized electronic platform. The date, time, and/or location may be changed at the direction of the Chair, with the advice and consent of the Board, but any change shall be subject to the provisions of public notice as set forth in M.G.L. c. 40A.

2.2.2 Public Participation: All public hearings shall be open to the public without limitation. No person shall be excluded from attending or speaking at a public hearing unless the Chair, with good cause, determines him/her to be a "serious hindrance" to the workings of the Board. The Chair may limit the time allotted for people to speak.

2.2.3 Public Notice: Notice of public hearings shall be published twice, in each of two successive weeks, in a newspaper of general circulation in the Town of Nahant. The first publication of such notice shall be not less than fourteen days before the day of such hearing. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, not less than fourteen (14) days prior to the hearing. In all cases where notice to individuals, parties in interest, or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. All Notices for public hearings shall be in accordance with MGL Chapter 40A, Section 11.

2.2.4 Opening of Public Hearing, Extensions: In accordance with MGL Ch. 40A, Sections 9 & 15, the public hearing shall be held within 65 days of the filing of the application or appeal with the Town Clerk. The required time limits for opening a public hearing may be extended by written agreement between the petitioner and the Board. A majority vote of the sitting Board shall be required to grant an extension. A copy of such extension shall be filed with the Town Clerk.

2.2.5 Site Visits: The Board of Appeals may take a view of any properties that come before it under applications for special permits, variances, appeals, and comprehensive permits when it is determined by the Chair, or by a majority of the sitting Board, that a site visit is needed for proper consideration of the matter before the Board. Applicants will be notified of the site visit and should be prepared to meet with the Board at the site. The purpose

of the site visit shall be for Board members to view and familiarize themselves with the site and its relation to the surrounding area. No evidence or testimony shall be given or accepted at a site view, outside the public hearing. The Open Meeting Law does not apply to site visits, and the applicant or property owner may deny public access, although the Board strongly discourages such denial.

2.2.6 Representation and Absence: An applicant may present the application in person or be represented by an agent or attorney. Should no one appear at the public hearing on behalf of the applicant, the Board may act on the matter using the information it has otherwise received, or the Board may decide by the affirmative vote of four sitting members that the petition be denied or to continue the matter to a future date certain.

2.2.7 Public Hearing Procedure: The Chair will open the meeting, explain the procedures of the Board, and call on the Clerk or Acting Clerk to read the Notice for the public hearing. All hearings will generally proceed in the following order at the Chair's direction:

- a. Presentation of evidence by the applicant or his/her representative.
- b. The Board may pose questions to the applicant either before or during his/her presentation
- c. Following the applicant's presentation, comments and questions from the public will be solicited. Persons in favor or against may speak. The applicant will be given the opportunity to respond to public questions or comments.
- d. The Chair may rule out of order any question or comment from the public that is irrelevant or deemed to be a personal attack on the applicant or the Board.
- e. Following all questions and comments from the public and the Board, the applicant will be given the opportunity to make a final statement
- f. The Board will determine whether it wishes to conduct a view of the premises, if it has not already done so.
- g. The Board will determine whether to continue the public hearing to a future date or to close it. If the Board closes the public hearing, it may then either proceed directly to deliberate the matter or schedule a deliberation to be held at a future date and time.

2.2.8 Deliberations: All deliberations shall be held only during a public meeting of the Board. Consideration of an application shall be based on findings of fact which the applicant has presented, as well as specific findings that the application meets all of the necessary provisions of the Nahant Zoning By-laws. Deliberations may include, but need not be limited to: identification, review, and making findings of fact and/or law; identification, review, and making findings that may require under any applicable section of the Zoning By-law; identification, review and establishment of conditions to be attached to the Board's decision; act on a motion to approve or deny the petition, application or appeal, Approval of any application may be subject to conditions, modifications and reasonable restrictions as required by the Zoning By-law or as deemed necessary to ensure compliance with appropriate sections of the Zoning Bylaw. Denial of an application may be based on a finding that either: (1) insufficient information was submitted for the Board to adequately review the proposal or to make the findings required under the Zoning By-law; or (2) a determination, based on specific findings, that the application does not meet the requirements of the Zoning By-law for approval.

2.2.9 Voting: The record shall show the vote of each sitting Board member upon each question or, if failing to vote, indicate such fact. A concurring vote of four sitting Board members shall be required to grant special permits, variances, and appeals from a decision of the Inspector of Buildings. Sitting members shall be regular members of the Board or Associate Members designated to sit by the Chair, as set forth in Article I, Section 3.1 above. All votes taken during electronically held meetings shall be taken by roll call.

2.2.10 Minutes: The Board's minutes shall be approved by the Chair after circulating a copy via email, provided there are no objections.

2.2.11 Written Decision: During the Board's deliberation, a sitting member will generally be assigned to prepare a draft of the written decision of the Board. The Board's written decision shall state the specific findings of fact and reasons for its decision, based on the applicable sections of the Zoning By-law and other applicable laws. The content of the decision of the Board shall be considered, discussed, and voted upon only during a public meeting of the Board. Once finalized, the decision shall be available to all Board Members for their review prior to filing with the Town Clerk.

2.2.12 Filing and Recording: Decisions of the Board shall be considered final only when the written decision is signed and filed with the Town Clerk. Decisions may be signed by all Board members participating in the vote or by the Chair on behalf of the Board. Time limitations for filing are specific to the type of application, as specified in MGL Chapter 40A, Sections 9 & 15.

No Board decision that grants a special permit, variance or comprehensive permit shall take effect until a copy of the decision is recorded at the Essex South District Registry of Deeds, bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has been filed, or, if an appeal has been filed, certification that the appeal has been dismissed or denied in court. Upon certification by the Town Clerk, the decision shall be promptly recorded at the Registry of Deeds by the Applicant. The applicant shall be responsible for the payment of all fees, including the town application fee, advertising fees, recording fees, and for the physical recording of documents at the Registry of Deeds. Note that denials, withdrawals of applications, and appeals of a decision of the Inspector of Buildings will generally not be recorded at the Registry of Deeds.

2.2.13 Exercise of Rights Granted by Variance: Rights granted by a Variance must be exercised within one year of the date the decision granting such Variance is filed with the Town Clerk. If the rights are not so exercised within one year, the Variance shall lapse, unless an extension is granted, and may be reestablished only after notice and a new public hearing pursuant to these Rules and Regulations. A one-time extension of such rights granted by Variance, not to exceed six months, may be granted by the Board, provided that a written application for such extension is filed with the Board prior to the expiration of such one-year period.

2.2.14 Exercise of Rights Granted by Special Permit: Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in MGL

Chapter 40A, Section 17, from the grant thereof) with the Town Clerk. If the rights are not so exercised within the specified period, the Special Permit shall lapse and may be re-established only after notice and a new public hearing pursuant to these Rules and Regulations.

2.2.15 Reopening of Public Hearing: Once a public hearing has been closed, whether or not a vote has been taken and a decision has been made, the taking of further evidence shall require reopening the public hearing, which shall be approved by majority vote of the sitting Board. If the public hearing is to be reopened at a time other than the meeting at which it was closed, the reopened public hearing shall be advertised, and abutters notified in accordance with MGL Chapter 40A, Section 11.

2.2.16 Reconsideration: Prior to the filing of the Board's written decision with the Town Clerk, any sitting member may request that the Chair call a vote to reconsider the Board's decision, for the purpose of reopening the Board's deliberation and to further deliberate the findings, language, or conditions of the decision. The affirmative vote of a majority of the members sitting on a case shall be required to reopen a deliberation. Any further deliberation shall be done only in a duly-noticed public meeting.

2.2.17 Withdrawal: Any application may be withdrawn, without prejudice, by notice from the applicant in writing to the Town Clerk with a copy to the Zoning Board Administrative Secretary at any time prior to publication of legal notice of the hearing in the newspaper and notification of abutters. Requests to withdraw after publication of legal notice may be in writing as provided above or may be made by the applicant orally at the public hearing. After such publication of the notice, the withdrawal shall require approval by a majority vote of the Board of Appeals at a public meeting. If the public hearing on the application has been opened, a majority vote of the sitting Board for the case shall be required to allow a withdrawal, with or without prejudice.

2.2.18 Modifications: Requests for modifications or changes to the language, terms, or conditions of previously granted permits or site plans attached thereto shall be heard at a public hearing unless the Chair, with the approval of a majority of the Board, determines that such changes are *de minimis* and that a formal public hearing is not required. Such modifications or changes shall constitute an amendment to the original permit or decision.

2.2.18 Retention of Evidence: All materials and physical evidence submitted to the Board at a public hearing shall become part of the public record, be marked for identification, and be retained by the Board in accordance with applicable Public Records laws. The Building Department maintains all records.

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2.2.20 Expert Testimony: The Board may, at its discretion, seek information or testimony from any Town official, board, committee, agency, or any other person whom the Board believes may have appropriate expertise in any matter before the Board.

2.2.21 Consultants: The Board may, at its discretion and pursuant to M.G.L. c. 44, § 53G, engage a consultant to provide expert analysis, advice, and recommendations in its review of applications at an applicant's expense. The selection of said consultant may be administratively appealed if the applicant believes there is either (1) a conflict of interest or (2) the consultant does not possess the minimum required qualifications to perform a review.

The Board may set up a special revolving account pursuant to M.G.L. c. 44, § 53G, to be funded by the applicant, from which expenditures can be made without further appropriation. Upon project completion, any excess funds attributable to the project, including any interest, shall be repaid to the applicant or the applicant's successor in interest, and a final report shall be made available.

ARTICLE 3 - APPLICATIONS TO THE BOARD

3.1 Application Form: All applications to the Board of Appeals must be submitted on the official application form as approved by the Board. Applicants must submit the signed original and 12 copies of the application form (13 total) to the Board of Appeals Administrative Secretary, along with 13 copies of supporting plans and documents. Petitioners should retain their own copies of the application and all supporting plans and documents. Applications, plans, and supporting documents should be collated before submission to the Board.

3.2 Hearing: All applications will be processed in order and heard on the next available date, which shall be at least thirty-five (35) days from receipt of the application pursuant to M.G.L. c. 40A § 11.

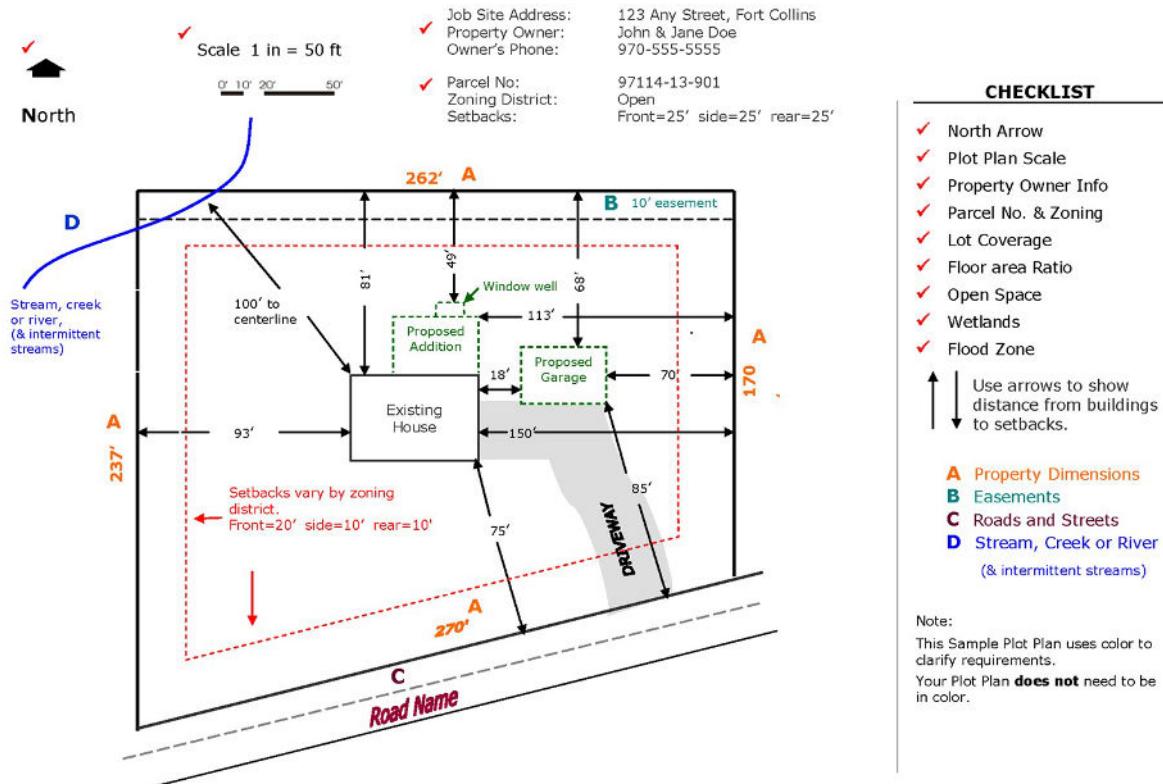
3.3 Filing of Application with Town Clerk: The Board of Appeals Administrative Secretary, located in the Building Department, will file all applications received with the Town Clerk and compare each to a previously provided checklist; missing items will be requested from the applicant(s). Filing with the Town Clerk "starts the clock" for the applicable deadlines for the Board to act on an application. Applicants who wish to receive a copy of the application bearing the date and time of filing, certified by the Town Clerk, must submit a stamped, self-addressed envelope along with their application. Alternatively, as set forth in MGL Ch. 40A, Sections 9 & 15, applicants themselves may file the application with the Town Clerk. A copy of the application, bearing the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the Office of the Board of Appeals.

3.4 Certified Abutters List: If the parcel that is the subject of the application is abutted only by properties within the Town of Nahant, the Office of the Board of Appeals will obtain a Certified Abutters List.

3.5 Certified Plot Plan Required: All applications must include a Certified Plot Plan, not less than six (6) months old, prepared by a Civil Engineer or Land Surveyor registered in the Commonwealth of Massachusetts. A plot plan is an accurate boundary survey of a parcel of land and shows all the structures on it, required building setbacks from the Town of Nahant Zoning Bylaws, any easements or rights-of-way that would affect building on the parcel, and any proposed structures or additions. A plot plan protects the property owner by providing legal proof that the proposed improvements are in compliance with the zoning requirements, or if violations would exist with the proposed project, provides the information needed to either revise the design to comply or request relief from the Zoning Board of Appeals. See Fig. A Sample Plot Plan.

Fig. A Sample Plot Plan

Sample Plot Plan



Thirteen (13) copies of the plot plan shall be provided; at least one of these must be an executed original. Plot plan drawn at a scale of not less than 1" = 100' and shall have indicated thereon the following information for existing and proposed structures:

1. The ownership of the parcel in question.
2. All abutting streets, roads, or ways.
3. The location and dimensions of all property lines.
4. The location and dimensions of all parking.
5. The front, side, and rear setbacks and distances to said setbacks and property lines from any structures.
6. The percentage of lot building coverage.
7. The floor area ratios (if not included on architectural plans).
8. The open space.
9. The location of wetlands (as defined in MGL Chapter 131, Section 40).
10. The Flood Zone designation (if any), and the date of the corresponding Flood Insurance Map,
11. Any other physical conditions or circumstances which may have affected the application (*i.e., soil conditions, shape, topography, or location of septic system, wetlands, or easements*).

Plot plans should be submitted on sheets no larger than 17" x 22" whenever possible. If larger original sheets are submitted, reduced-size copies not exceeding 17" x 22" should also be provided

3.6 Certified Plot Plan Not Required for “Use” applications: Generally, a Certified Plot Plan will not be required for applications that only request relief under the Town of Nahant Zoning Bylaw – “Use Regulations.” The Board may, at its discretion, require submission of a Certified Plot Plan before taking final action on any such application.

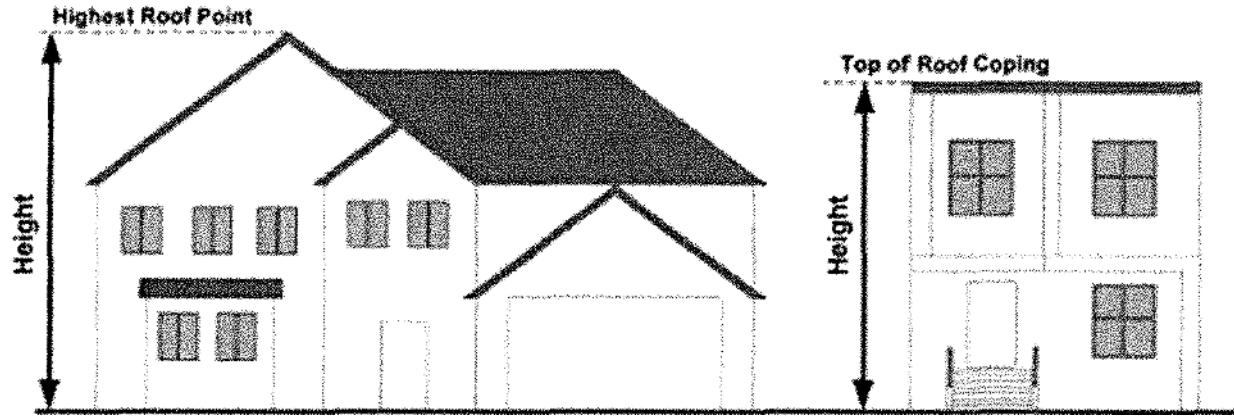
3.7 Failure to Submit Certified Plot Plan: If a Certified Plot Plan is not submitted with the application or at the time of the opening of the public hearing, the Board, at its discretion, may either:

- a. Continue the public hearing until a satisfactory Certified Plot Plan has been received, or:
- b. Deny the application as incomplete.

3.8 Architectural Plans. Plans prepared and stamped by a Registered Architect or Engineer are required for a Nahant Zoning Board of Appeals application.

- a. Architectural plans submitted must be sufficient to clearly indicate the scope, height, and nature of the work being proposed, and must contain all exterior dimensions. For applications involving changes and/or additions to an existing building, the plans shall include front, side, and rear renderings or elevations that show the proposed exterior changes to the structure, as well as all exterior dimensions. Floor plans, drawn to scale, shall also be provided for any floor where additions or alterations are proposed, showing all entrances and exits, windows, interior partitions and doorways, stairways, chimneys, ceiling height, and any other pertinent features.
- b. Exterior elevations must show building height as defined in the Nahant Zoning Bylaws, See Fig. B Example of Exterior Elevation below.

Fig. B Example of Exterior Elevation



c. For applications involving a proposed new structure, the plans include front, side, and rear renderings or elevation plans that show the proposed exterior of the structure, including all exterior dimensions and all portions of the structure below grade. Floor plans, drawn to scale, shall also be provided for all floors in the proposed structure, showing all entrances and exits, windows, interior partitions, doorways, stairways, chimneys, ceiling heights, and any other pertinent features. See Attachment A – Measuring Building Height in the Town of Nahant for more details.

Thirteen (13) copies of all plans shall be provided. Plans should be submitted on sheets no larger than 17" x 22" whenever possible. If larger original sheets are submitted, reduced-size copies not exceeding 17" x 22" should also be provided.

*** PLEASE NOTE: Final plans may not deviate from those approved by the ZBA. ***

3.9 Electronic Submission: In addition to the required thirteen (13) copies of the application form, plans, and supporting documents, applicants are encouraged, but not required, to also submit these materials in electronic form. Acceptable formats are Adobe Portable Document Format (.PDF) and/or Microsoft Word (.DOC, .DOCX). Electronic submissions may be submitted on physical media or sent as attachments to the Town Clerk. Please contact the Town Clerk's office for the current email address for this purpose.

3.10 Incomplete applications: Applications that are not accompanied by plans as required in paragraphs 3.5 and 3.6 above may be rejected or dismissed by the Board as incomplete.

3.11 Application fee; Recording fee: a non-refundable fee, in the amount of \$400.00, payable to the Town of Nahant, shall be submitted at the time of application to cover the cost of processing the application and abutter notifications. This fee does not include the cost of advertising the legal notice. In addition, a separate check,

payable to the Commonwealth of Massachusetts, shall be required for the applicant to record the Board's decision at the Registry of Deeds in Salem. Recording of the Decision at the Registry of Deeds is the Applicant's responsibility.

3.12 Legal Notice: Advertising fee: a non-refundable advertising fee is paid by the applicant directly to the Lynn Item for the cost of placing the legal notice and must be paid in full prior to the hearing date. Notices of hearings must be advertised in a newspaper of general circulation, including the Town of Nahant, as set forth in Section 2.1.2 above.

No advertisements will be scheduled for publication unless the Town is in receipt of the application form, fee, and required supporting documents, and the advertising fee is paid directly to the Lynn Item to cover the cost of placing the legal notice in the newspaper as required by Massachusetts General Laws. Applicants will be notified by the Building Department once their advertisement is ready for payment.

3.13 Consent of Owner: For any application filed by any person other than the owner of the property as recorded at the Registry of Deeds, a letter of consent signed by the property owner shall be submitted at the time of application. The property owner must also sign the application form.

Adopted (as amended) by vote of the Zoning Board of Appeals on June 4, 2025.



Chair