

TOWN OF NAHANT
ZONING BOARD OF APPEALS

MEETING MINUTES
May 22, 2024



Scheduled and noticed hearings of the Nahant Zoning Board of Appeals (the “Board”) were called to order by Chairperson Campbell at or about 3:00 P.M. at the Nahant Town Hall, 334 Nahant Road, Nahant, Massachusetts, via Zoom (remote technology). Board members present for the hearings below were David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell. All votes are taken by roll call.

3:00 PM PUBLIC HEARING, 24A Emerald Road, Nahant, Massachusetts, Bruno and Stephanie DiPrimio, Petitioners.

The Board held a public hearing on May 22, 2024, at 3:00 PM via ZOOM at the request of the owners of the property located at 24A Emerald Road, Nahant, Massachusetts, appealing the denial of a building permit by the Building Inspector, demolish and replace an existing screen porch at the front of the building and construct a new enclosed sunroom adding approximately 184 square feet and new front steps to the existing structure. The Building Inspector denied the building permit on March 19, 2024, where the proposed project violates Section 5.03 of the Nahant Zoning By-laws, where the proposed lot coverage is 29%, and the maximum allowed is 25%, where the proposed left side setback is 5.2’, and the minimum allowed is 10’, and, where the proposed right-side setback is 4.1’, and the minimum allowed is 10’. The applicant submitted a plan package dated February 21, 2024, entitled “DiPrimio Residence, Addition & Renovations” prepared by Pitman & Wardley Associates, Architecture & Design, 32 Church Street, Salem, Massachusetts (“Pitman & Wardley”). Said plan package contained a certified plot plan dated March 22, 2024 (2 pages), prepared by Peter J. Ogren, Professional Land Surveyor, Hayes Engineering, Inc. Civil Engineers and Land Surveyors, 603 Salem Street, Wakefield, Massachusetts, and architectural plans prepared by Pitman & Wardley, comprised of several pages showing existing conditions, schematic designs and elevations. A revised plan package, dated May 8, 2024, was submitted. The hearing was advertised in the Lynn Item on May 8, 2024, and May 15, 2024. The advertisement was read into the record. The matter was presented by Chris Drucas, Esq., who discussed his client’s application. Mr. Pitman, an Architect from Pitman and Wardley, then described the plans in detail. The chair asked if any persons were present to speak in favor or opposition. The following persons submitted an opposition to the application in writing: Catherine and William Letourneau of 24 Emerald Road, Nahant, Massachusetts. William Letourneau was present at the hearing and read his opposition with pictures into the record. Mr. Letourneau discussed the requirements of variance and special permit and his opposition, citing congestion in the neighborhood and the potential for a fire and safety hazard, and said that further encroachment would negatively affect air circulation and access to sunlight. No other persons opposed the petition. The following persons spoke in favor of the application: Peter Barba of 22 Emerald Road. It was noted at the hearing by the chair that Peter Barba was a former member of the Zoning Board of Appeals. Mr. Barba noted that the lot was deep in shape (like a bowling alley), and the lot coverage figure was likely incorrect. Also, Mr. Barba states that the changes requested were minimal, no views were being blocked, and the applicants were adding space only and would not be a detriment to the neighborhood. Stephanie

Bruno of 24A Emerald Road (applicant) spoke in favor at the hearing. She wanted to clarify that a picture of three cars parked on her front lawn submitted by Mr. Letourneau was not the norm and that there were usually one or two cars. (not three). The following persons signed a statement stating that they were in favor of the proposed addition and renovation of 24A Emerald Road: Christine and Ryan McSheehy, 21 Emerald Road; Scott Kirkland and Janice DeSimone of 27 Emerald Road, Greg and Karen York of 18 Emerald Road and William Healey of 10 Emerald Road, all of Nahant, Massachusetts. The board asked questions of the attorney and architect and then discussed and voted on the continuation of the matter to June 12, 2024. All members were in favor: David Walsh, Gerardo Raffaele, Cameron Merril, Jake Brown, and Jocelyn Campbell. The matter was continued to June 12, 2024, at 4:00 P.M. The hearing was adjourned at approximately 4:00 PM.

4:00 PM PUBLIC HEARING, 38 Swallow Cave Road, Nahant, Massachusetts, Mark and Susan Murphy, Petitioners.

The Board held a public hearing on May 22, 2024, at 4:00 PM via ZOOM at the request of the owners of the property located at 38 Swallow Cave Road, Nahant, Massachusetts, appealing the denial of a building permit by the Building Inspector, to demolish an existing home and construct a new home. The Building Inspector denied the building permit on April 10, 2024, where the proposed dwelling violates the Nahant Zoning By-laws, Section 5.02A, due to the number of residential buildings on the lot, and Section 7.03E, where no structure constituting the principle use, located on a nonconforming lot, whether such structure is conforming or nonconforming, may be removed and reconstructed or removed and replaced elsewhere on such lot without a special permit. In addition to the application, the applicant submitted a plot plan dated March 31, 2023, entitled "Zoning Board of Appeals Plan, 38 Swallow Cave Road, Nahant, Property of Susan & Mark Murphy" stamped by Gail C. Smith Professional Land Surveyor, North Shore Survey Corporation, 14 Brown Street, Sale, Massachusetts, and architectural plans dated February 12, 2024, entitled "Murphy Residence, 38 Swallow Cave Road, Nahant, MA 01908" with several pages depicting elevations from all sides of the proposed dwelling. The applicant also submitted a copy of a Board of Appeals Decision granting a variance on May 21, 1958, recorded at the Essex South District Registry of Deeds in Book 12794, Page 511. The applicant submitted a one-page document containing two photos showing, on the top, the subject property and the neighboring property at 36 Swallow Cave Road with a large number of trees and brush, and on the bottom, a photo showing the properties with the trees and brush cleared (4-5 years later). Before the hearing, counsel submitted, on behalf of the applicant, three additional photos showing the subject property and the surrounding properties entitled "aerial photo 1", "aerial photo 2", and a composite of four photos on one page depicting various views of the subject property. The hearing was advertised in the Lynn Item on May 8, 2024, and May 15, 2024. The advertisement was read into the record. The matter was presented by Stephen Smith Esq., who first reviewed the list of filed documents. Attorney Smith stated that the proposed home was placed strategically to preserve views and that the location of the home was changed and designed around this. Attorney Smith reviewed the dimensional requirements for the district and pointed out that the home either meets or exceeds those requirements, but for the size of the lot, the petitioner could have planned to build a much larger house in the R1 district where the maximum height is 35 feet, and the proposed home is only 28 feet. He further stated that his clients were agreeable to the granting of a Demolition Lien pursuant to Section 5.02 of the Nahant Zoning Bylaws. Attorney Smith argued that the proposed home would not be more detrimental to the

neighborhood where a single-family home was to be replaced with a single-family home; there would be no increase in traffic or noise. Attorney Smith asked that the Zoning Board of Appeals grant two special permits, one under section 7.02 (d) (e) of the Nahant Zoning By-laws and one under section 5.02 and that the proposed home would not be more detrimental to the neighborhood. The chair then asked if any persons were present to speak in favor or opposition. In opposition, the Board received a letter dated May 20, 2024, from Roger and Marie Pasinski, next-door neighbors at 36 Swallow Cave Road, both of whom appeared with counsel and had an opportunity to speak at the hearing. Attached to Pasinski's letter was a memo to the Nahant Board of Appeals from their counsel, Samuel A. Vitali, Esq., dated May 20, 2024, regarding 38 Swallow Cave Road, Special Permit Application of Mark and Susan Murphy and two photographs taken from a picture window at 36 Swallow Cave Road and another picture with a black marker outline of what the author depicted as the proposed home. Attorney Vitali spoke on behalf of the Pasinskis and stated that his clients had purchased their home from his wife's parents, who obtained the home from their parents, the "Duggins." It appears that the land was initially subdivided into two conforming lots, and the Duggins built a small house on the front lot that didn't impact the views of the house at 36 Swallow Cave Road and then sold it. sold off the front lot of the land and sold the front lot (now the subject lot) to two conforming lots of equal sizes, only to later ask the town to move the lot line between #36 and #38 so as to leave #38 with a nonconforming lot. It appears the variance was granted in 1958, but no record of the recording of the variance appeared until 1994, at a time when, according to Attorney Vitali, there was some effort to clean up the title, and a subdivision plan was also recorded. Attorney Vitali said that the issue was really the view and that his clients are not opposed to new construction. He implied that the Town of Nahant has provided protection for a view in its by-laws and that his client had a unique view of the ocean and Egg Rock, and he believed that the proposed home would impact the view and the value of his client's home. Attorney Vitali described his client's opposition as including the chain of title, the recording of the variance many years after it was granted, and the fact that the home is in a trust and, therefore, the applicants are "not the record owners." He then asked for an opportunity to have an engineer take some pictures and for him to provide more information to the board. He then introduced his client to make some comments. Mr. Pasinski made a statement that coincided with his letter for the record. He cited the history of the property and stated that the proposed home would impact their view, and he felt it would impact the value of his potential inheritance for his children. Mrs. Pasinski was afforded an opportunity to speak but declined. The board members then asked questions. Jocelyn Campbell, Chair, indicated she did not believe there was a right to a view in Massachusetts and that the board was familiar with the cases in the counsel's memo. Member Gerardo Raffaele said that the plan was well done and that the applicants had made a significant effort to design the house around the neighbor's view, and they appeared to have taken a lot into consideration; he noted the difference in elevation, the property at 36 Swallow Cave Road being approximately at least eight (8') feet higher in elevation than the land at 38 Swallow Cave Road thereby leaving less impact on the view. In favor, the Board received an email forwarded from the building inspector's office from next-door neighbors Ellen and Bruce Kutcher, 427 Nahant Road, Nahant, Massachusetts, indicating their support for the project. Also, Susan and Mark Murphy (Petitioners) appeared to speak and were able to add that they have no historic restrictions on the property but that the site was at one time the location of a first tennis game, and there is a sign indicating that, but then they lost their connection to the Zoom; therefore, we offered to continue the matter to June 5, 2024. With the consent of all members, David

Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell, all in favor and with the agreement of counsel presented for the Petitioners and the abutters. The hearing was adjourned at approximately 5:00 PM.

Respectfully submitted,
Jocelyn J. Campbell, Chair
Minutes approved 6/20/2024