

TOWN OF NAHANT
ZONING BOARD OF APPEALS
MINUTES OF MEETING
January 21, 2025

Chairperson Campbell called a scheduled and noticed meeting of the Nahant Zoning Board of Appeals to order at or about 4:00 P.M. at the Nahant Town Hall, 334 Nahant Road, Nahant, Massachusetts, via Zoom. Present were board members David Walsh, Gerado Raffaele, Cameron Merrill, Jake Brown, Jocelyn Campbell, Max Kasper, and Josie Reis. All votes were by roll call.

HEARINGS:

4:00 P.M. Administrative Appeal of Building Permit for 30 and 30A Emerald Road, Nahant, Massachusetts, Bruce and Karen Marshall Petitioners. The Board of Appeals held a public hearing on an administrative appeal filed by Bruce & Karen Marshall of 28 Emerald Road, Nahant, Massachusetts (the “Appellants”). This appeal is from the determination of the Building Inspector to issue a Building Permit for the property located at 30 and 30A Emerald Road, Nahant, Massachusetts, owned by Eight One Eight Design and Development, LLC. The office of the Building Inspector issued Building Permit No. R-24-00227 on November 25, 2024, with no zoning violations. The Appellants allege violations of the Nahant Zoning By-laws, including but not limited to sections 5.02, 5.03, 6.01(A-B), 7.03, 9.02(A-F), 9.03, 9.04, and 10(1-6). Specifically, the Appellants allege the following: the building permit was not issued timely, a repetitive petition; the project is not compliant whether new or reconstruction; no parking is shown on the plans; no construction supervisor license is listed on the application; the building permit has not been posted at the site; the building plans were not certified; and, the property is in a flood zone. The Appellants sought an order to cease and desist said construction until all issues were resolved. The matter was advertised in the LYNN ITEM on January 7, 2025, and January 14, 2025. At the hearing, Mrs. Marshall, her son Scott Marshall and his wife Jennifer all presented the applicant's case (the “Applicants”). Mrs. Marshall stated that they were a third-generation family in Nahant. Mrs. Marshall took issue with the issuance of a building permit for the first application, which was over 35 days, where the Zoning By-laws state that the Building Inspector must approve a permit application within 35 days (the first permit was applied on 6/24/24 and issued 8/6/24) and she stated that first plan presented to the conservation commission was later modified. Mrs. Marshall states that the project was new construction because the owner tore down both houses beyond the studs in violation of the permit; it then became a vacant lot. She stated that the setbacks for new construction were not applied addresses. Now they (the Applicants and neighbors) have issues with flooding and water going down the street, resulting in the DPW having to stop it at one point. The Applicants said that the height is now 42 feet, which is above that which is allowed by the By-laws, and the foundations were expanded beyond the original footprints; further, the property owner has installed steps on the driveway side, which were not there previously. The height has affected their skyline view, and now their yard is now $\frac{3}{4}$ shade and no sun. Parking is now intended to be near where people sleep. There have been three (3) plot plans presented,

first as a two-family, then revised and revised again. and the permit was granted. Also, the building permit is not on site. Mr. Wilson, the Building Inspector for the town of Nahant [retired as of December 31, 2024], responded at the hearing. Mr. Wilson stated that the initial permit was to gut the two structures and that, unbeknownst to Mr. Wilson, the structures came down to the ground. He then issued a stop work order. The property owner submitted plans to reconstruct the rear building and to construct the main building as a two-family building, which Mr. Wilson said was not allowed without zoning relief, and therefore, the property revised their plans to include a single-family dwelling. Mr. Wilson sent the application to conservation and calculated the dimensions; what they ended up with was two buildings in the exact place they were previously, compliant with the Flood Plain By-law: out of the ground, with no basements, and above the flood plain. Mr. Wilson stated that neither building is above 30' and that the 41' mentioned on the site plan is 41' above sea level. Mr. Wilson stated that they ended up with two structures that were completely compliant. He explained that the 35-day rule only applies when no one responds, but this was an ongoing matter. Mrs. Marshall then asked, "Why, if it was torn down, was it not new?" Mr. Wilson replied that the 10,000-square-foot lot size only applies to new lots. This was not a vacant lot unless the owner left it for two years. The Board then asked Mr. Wilson questions regarding the stop work order issued when he discovered the property owner had exceeded the scope of the permit, the site plan provided that shows the existing and proposed foundations, and whether the work in a flood zone required bringing it up to code. Mr. Wilson responded that when work in a Flood Zone is at 50% the property owner must bring it up to code and that the two buildings were not worth keeping, but it is considered a reconstruction under zoning. David Walsh asked if the buildings looked larger than the previous structures. Mr. Wilson said they are the same. Cameron Merrill asked about the building height, and Mr. Wilson stated the back building height is not over 30' from grade and it stays on the footprint. Mr. Wilson added that the gravel area is considered open space. Jocelyn Campbell asked Mr. Wilson why the property owner included the open front porch as part of the footprint when the Nahant By-laws state that unenclosed porches are not part of the footprint. Mr. Wilson stated that the basement level of the porch was enclosed and, therefore, included. Ms. Campbell also asked whether there were any as-built plans for the foundation or elevations showing the height. Mr. Wilson responded that the rear building was at grade and was a two-story building and was rebuilt as a two-story, the front house had a basement and two floors and now is a three-story building. Cameron Merrill asked if we had any information that we could rely on to show the buildings were built as they proposed. Attorney Benjamin Tyman then spoke on behalf of the property owners and stated that he had submitted a letter the day prior. He stated that the project is on the same footprint. The first permit application was denied, and the issues were corrected, and they reapplied. He said the rear line is now one inch from where the prior structure was. He said this is not an expansion but is new building code and FEMA regulations but not under zoning and is a reconstruction not exceeding the footprint. He requested that the Board deny the appeal. The Board then asked questions of counsel. Ms. Campbell asked how he knew the rear line was "one inch" from where the prior structure was, and he replied, "from the plan." Ms. Campbell pointed out that the plan showed only the existing (before construction footprint) and the proposed, but there was no as-built (showing post-construction) and that the

allegations here today were that the project was not built as proposed. The Board then discussed whether to request as-built plans from the property owner, and the property owner replied that he could provide this because his surveyor was at the property at every stage. The Board then asked the property owner to provide (1) a certified plot plan and (2) elevations of the property (showing height), and the owner agreed. The chair then noted that the Board had received a petition signed by 43 persons in support of the Applicant's appeal, and certified by the town clerk, which will be available with the records of this matter at town hall, and had also received emails and/or opposition from Doug Breithaupt, 32 Emerald Road, Deborah Barnes, 37 Valley Road, William Letourneau, Emerald Road, and Dana Sheehan of 43 Valley Road. Ms. Barnes and Mr. Letourneau shared pictures that they had sent in. Sheila Hambleton, Chair of the Planning Board, mentioned that she had sent an email, but it was not received. Ms. Hambleton expressed that they were concerned about the application of section 7.03, which the town had approved in 2003, due to a lot of properties being torn down and that neighbors were questioning the failure to issue the first permit within 35 days, the stop work order and whether this was a repetitive petition. Ms. Campbell pointed out that the Bylaws refer only to repetitive petitions to the Board and, therefore, are not applicable. The Board then discussed whether to continue the matter and whether to issue a stop work order until the requested plans had been received. After hearing objections from the property owner and counsel, David Walsh brought a motion to continue the matter, which was seconded by Cameron Merrill. After a brief discussion on the motion, a roll call vote was taken, all were in favor, and the motion passed. David Walsh, Gerado Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell all voted in favor of the motion. The hearing was adjourned at 5:34 PM, and the matter continued to January 27, 2025, at 3:00 PM. Hearing this matter were board members David Walsh, Gerado Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.

5:00 P.M. 5 Ward Road, Nahant, Massachusetts, Richard Bozarjian, Petitioner.

The Board of Appeals continued a public hearing on January 21, 2025, at 5:34 p.m. at the request of Richard Bozarjian, owner of the property located at 5 Ward Road, Nahant, Massachusetts. The petitioner seeks a Special Permit or a Variance to construct an accessory building 12' x 20' x 13.3.' The Office of the Building Inspector denied a building permit on October 7, 2024, where the proposed project would be in violation of Section 5.03 of the Zoning By-laws of the Town of Nahant in the following areas: (1) the proposed Left side setback is 2.2' where the minimum allowed is 10' and (2) the proposed Rear setback is 4.1' where the minimum allowed is 20.' The advertisement was read into the record. The advertisement for this matter was placed in the Lynn Item and ran on December 2, 2024, and December 9, 2024. The application was presented by Richard Bozarjian, who stated that he started to rebuild a shed that had been there previously because he did not think he needed a permit for it, but that Mr. Wilson had come by and said he needed a permit and that he had exceeded the footprint of the prior structure by one foot on the left. He stated further that he had made a mistake with his paperwork when referring to the structure as a dwelling when it is a shed. The Chair asked if there was anyone to speak in favor or in opposition and no person appeared. The Chair read a letter from the Planning Board into the record. The Board began deliberations and then asked the applicant questions related to

the timeline of the tear-down and attempted reconstruction; the applicant said he was unsure of the dates. The Board then asked if it was possible for him to move the shed, and he said it would be very difficult. With the consent of the applicant, the Board continued the matter to January 21, 2025, to allow the applicant time to put together a timeline and facts. At the continued hearing, the applicant stated that a contractor said the location was correct. After discussion by the Board members and questions asked of the applicant, the applicant stated that he spoke with a contractor and would obtain more information from the contractor. Gerardo Raffaele brought a motion to continue the matter, which was seconded by Josie Reis. After a roll call vote, all were in favor, and the motion passed. Gerado Raffaele, Jake Brown, Jocelyn Campbell, Max Kasper, and Josie Reis all voted in favor of the motion. The matter was continued to March 24, 2025, at 5:00 PM. Hearing this matter were board members Gerado Raffaele, Jake Brown, Jocelyn Campbell, Max Kasper, and Josie Reis.

Respectfully submitted,
Jocelyn Campbell, Chair
Approved on February 3, 2025