



Town of Nahant
334 Nahant Road, Nahant, MA 01908
Tel. (781) 581-9927 Fax (781) 593-0340

**FINDING AND DECISION OF THE
NAHANT ZONING BOARD OF APPEALS**

RE: 30 and 30A Emerald Road

Application as filed by Bruce and Karen Marshall (the "Petitioners") of 28 Emerald Road, Nahant, Massachusetts, seeking to appeal the issuance of a building permit pursuant to the Nahant Zoning By-laws for the construction of two homes on a nonconforming lot at 30 and 30A Emerald Road.

DATE FILED: December 10, 2024

HEARING DATE(S):

January 21, 2025

January 27, 2025

February 5, 2025 (no hearing, meeting only
to select next date)

February 11, 2025

February 18, 2025

February 21, 2025

I. PROCEDURAL HISTORY.

- 1) An appeal was filed by Bruce and Karen Marshall on December 10, 2024, in opposition to a building permit issued by the Building Inspector for the Town of Nahant, for the construction of two homes on a nonconforming lot at 30 and 30A Emerald Road, Nahant, Massachusetts.
- 2) 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, owned by Eight One Eight Design and Development LLC (the "Property Owner" or "Chris and Deanna Kallenback"). The office of the Building Inspector issued Building Permit No. R-24-00227 on November 25, 2024, with no zoning violations. The Petitioners state that they are abutters and allege violations of the Nahant Zoning Bylaws, 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 Petitioners 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 Petitioners also allege in their appeal, that the Property Owner's actions left a sewer line exposed and hit the water table causing their water pumps to run around the clock even when not raining. The Petitioners requested an order to cease and desist said construction until all issues were resolved.

- 3) An advertisement for this matter was placed in the Lynn Item on January 7, 2025, and January 14, 2025, and posted to the town's website pursuant to G.L. c. 40A §11. The advertisement was read into the record at the first hearing.
- 4) Notice of the hearing was mailed out to the Parties in interest pursuant to G. L. c. 40A §11.
- 5) After proper notice, the Zoning Board of Appeals opened the public hearing on July January 21, 2025. The Board accepted evidence and testimony on the first three full hearing dates and then deliberated over the final two hearing dates.
- 6) The application for appeal was accompanied by the following:
 - i. A letter from the Petitioners dated December 10, 2024, which is incorporated herein by reference, which includes pictures and excerpts from the Nahant Zoning Bylaws.
- 7) The following items were submitted during the course of the hearings:
 - i. Nahant Inspectional Service Building Jacket contents, Copies of permit applications, notes and the like.
 - ii. Assessor cards for 30 and 30A Emerald Road, Nahant
 - iii. Site Plan dated November 7, 2024, entitled "SITE PLAN #30 Emerald Road Nahant, MA, prepared for Christopher & Deanna Kallenback. prepared by David L. Farrar, PLS (the "Surveyor").
 - iv. Building plans.
 - v. As-Built Plan dated January 23, 2025, entitled "AS-BUILT PLAN #30 Emerald Road Nahant, MA, prepared for Christopher & Deanna Kallenback. prepared by David L. Farrar, PLS.
 - vi. Elevation dated January 26, 2025, entitled AS-BUILT BUILDING HEIGHT EXHIBIT #30 Emerald Road Nahant, MA, prepared for Christopher & Deanna Kallenback. prepared by David L. Farrar, PLS.
 - vii. Report of Robert Ives, Building Commissioner, retained by the Board, dated February 11, 2025.
 - viii. FinCom Report Book excerpt dated 2003.
Slide show presented by Attorney Sherman on behalf of the Petitioners.
 - ix. Memo regarding Bylaw §7.03E received from Attorney Sherman.
 - x. Memo regarding Bylaw §7.03E received from Attorney Tymann.

II. HEARINGS.

- 1) **Evidentiary Hearings.** The Board conducted three evidentiary hearings, January 21, 2025, January 27, 2025, and February 11, 2025. All votes are listed separately below.

January 21, 2025. At the first hearing, Mr. & Mrs. Marshall, their son Scott Marshall, and his wife Jennifer all presented the Petitioner's case (the "Petitioners"). Mrs. Marshall stated that they were a third-generation family in Nahant. Mrs. Marshall explained that there were three permit applications, she 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 stated 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 Petitioners and neighbors) have issues with flooding and water going down the street, resulting in the DPW having to stop it at one point. The Petitioners 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. The Chair asked if there was anyone to speak in favor or opposition. No one spoke in favor or opposition.

Mr. Wilson, Mr. Wilson, the Building Inspector for the town of Nahant [retired as of December 31, 2024], responded and testified at the hearing.

The demolition permit. Mr. Wilson stated that the initial permit was a demolition permit to gut the two structures and that, unbeknownst to him, the structures came down to the ground. When he learned of this, he issued a stop work order.

The first building permit application. The Property Owners then submitted a first building permit application [**June 24, 2024**] and submitted plans to reconstruct the rear building as a single-family dwelling and to reconstruct the main building as a two-family dwelling, which Mr. Wilson said was not allowed without zoning relief, and therefore, the first building permit was denied [**August 6, 2024**].

The second building permit application. The Property Owner revised their plans to include two single-family dwellings and applied for a second time for a building permit [September 26, 2024], and the permit was issued [November 25, 2024]. Mr. Wilson sent the application to conservation and calculated the dimensions. Mr. Wilson stated that the Property Owner proposed two buildings in the exact place they were previously, proposed to be 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 considered 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 Board then discussed whether to continue the matter and whether to issue a stop work order until the requested plans had been received.

- 1) **January 27, 2025.** At the second hearing, Mr. Marshall presented and discussed photos; specifically, he referred to the picture labeled No. 4, which showed the pre-existing foundation and concrete slab that remained after the main structure was removed. He stated that the slab was where the front porch was and that there was no basement under the porch, only the slab that was used for storage. Mr. Marhsall then discussed the definition of new construction in the Massachusetts Building Code and stated that once the property owner removed the prior structures, they were not allowed to rebuild within two years, as was stated by Mr. Wilson at the last hearing. Mr. Marshall stated that the By-law referred to by Mr. Wilson only applies in the event of a fire or other calamity. Therefore, he argued that the property owner should have applied for a special permit once the structures were removed. Attorney Tymann then spoke on behalf of the property owner and argued that the only issues properly before the board were whether the prior non-conformities had been extended and whether Mr. Wilson had properly issued the building permit. He stated that they had provided an “As-built Plan” and elevations showing the heights, which he said were in compliance with the height requirements. Attorney Tymann argued that the project is in compliance with Section 7.03C of the Nahant Zoning By-laws, and the height is not an issue because only prior non-conformities are at issue.

The Board then discussed some questions and concerns, such as, since the buildings were torn down, we have lost our ability to verify the existing structures, and although the calculations appear to be made in good faith, we're missing information. Cameron Merrill asked; what was the floor height of the main structure basement? A prior tax card says it was less. The chair pointed out that we were told it was an illegal basement apartment, and the property owner stated that someone lived there. Cameron Merrill stated the definition of the applicable floor area. The chair pointed out the height not measured as we usually see it, the front porch was not enclosed, and there was no habitable area or basement underneath, just a storage spot on a slab. The chair suggested we retain a professional building inspector or architect to assist with this. Wayne Wilson, Building Inspector, stated that he has always included porches that are not enclosed. He also answered Cameron Merrill's question about the vertical impact of the use of non-conforming setbacks, and he stated that it is not considered in Nahant.

Benjamin Tymann, Counsel for the property owner, then asked if there was something the property owner could do to keep his crew working or things

unrelated to the matter before us. Gerardo Rafael pointed out that the owner of the property had provided everything we asked for. The Board discussed and decided to remove the stop work order and to engage with a professional to review for the Board. The Board voted to authorize the Chair to engage a professional for this purpose.

- 2) **February 11, 2025.** At the third hearing, Attorney Benjamin Tymann read a letter that the Board received from the Property Owners, Chris, and Deanna Kallenback; Ms. Kallenback stated that she is a third-generation resident of Nahant and that she and Chris had been bullied on social media over this matter. She stated that persons through social media had made false claims about them and their businesses. The Chair told Ms. Kallenback that she was sorry to hear that this happened to them and mentioned that none of the Board members get involved in social media.

Building Inspector's Finding. The Chair then called on Mr. Wilson, the Building Inspector who was present, and asked if when he made the decision to issue the building permit, he had made a finding, and he said that he did make a finding that the proposed structures were not more non-conforming than what was there and that was the determining factor.

The Chair then introduced Mr. Robert Ives, who was retained by the Board, to review the As-Built plan and Elevation provided by the property owner and verify the calculations. Mr. Ives was introduced as a retired Building Commissioner who worked for many years for the towns of Marblehead and Swampscott. Mr. Ives read his report into the record. Mr. Ives's Report shall be incorporated herein by reference as if fully stated. A copy shall be available at the town hall. Specifically, Jake Brown asked how Mr. Ives made the assumption that the basement was seven feet high. Mr. Ives responded that he estimated the height, by looking at pictures and adding the estimated foundation height to that of the floor below and what looked like a 3.5' or 4' window. The Chair then asked Mr. Ives whether the definitions in the Nahant Zoning By-laws for Footprint and Gross Floor Area could be interpreted in more than one way. For example, the definition of "Footprint" excludes open porches, and the definition of "Gross Floor Area" excludes open porches and basement areas devoted to the operation of the building and those areas of a structure that have a ceiling of less than seven (7) feet in height. Mr. Ives responded that it was open to interpretation and that different towns have different meanings.

Attorney Sherman introduced himself as representing the Marshalls and asked Mr. Ives what he based his pre-existing information on, Mr. Ives replied that he was using the figures prepared by the surveyor hired by the property owner and the assessor's records. Attorney Sherman asked if Mr. Ives had taken into account the .49% Floor Area Ratio (the "FAR") that Mr. Wilson, the town building inspector, had written on the first permit application dimensional sheet. Mr. Ives said he was unaware of that figure and that he relied on the figures provided by the surveyor. He also said that he included the front porch as part of his calculation for the Gross

Floor Area even though it was an unenclosed porch because of the area underneath it, albeit with some makeshift boards and windows. Attorney Sherman showed a brief slide show presentation of Marshall's claims. He showed pictures of the property after the building had been completely removed. He argued that there were two areas where there were increases in non-conformities (1) the increase in the FAR and (2) the building in the front setback. Attorney Sherman said the explanations do not even pass the "sniff" test because you are increasing the FAR and not removing square footage elsewhere. Attorney Sherman then showed a brief, one minute video of the basement that showed the small area under the front porch in lattice. The video was reported to have been taken in 2023.

Attorney Tymann spoke on behalf of the property owner and said that the building permit was properly issued and that the building inspector determined a special permit was not required because there were no new nonconformities. The board members then asked Attorney Tymann questions about 703C and 703E. He and Attorney Sherman responded with opposing views.

- 3) **Public Comments.** The Board noted or received the following:
- i. Between 80-100 persons attended each of the hearings via Zoom.
 - ii. In support of the appeal;
 - 1. A petition signed by 43 persons certified by the town clerk, which will be available with the records.
 - 2. Email from Doug Breithaupt, 32 Emerald Road.
 - 3. Email from Deborah Barnes, 37 Valley Road.
 - 4. Email from William Letourneau, Emerald Road.
 - 5. Email from Dana Sheehan of 43 Valley Road.
 - 6. Ms. Barnes and Mr. Letourneau shared pictures that they had sent in via Zoom.
 - 7. Email from Sheila Hambleton, Chair of the Planning Board.
 - 8. Email from Thomas Hambleton, 17 Kenney Avenue,
 - 9. Email from Doug Breithaupt, 32 Emerald Road, submitted a second email.
 - 10. Email from Doug Breithaupt, 32 Emerald Road, who is an abutter, and this was his third email.
 - iv. In opposition to the appeal:
 - 1. A letter received via email from Deanna and Chris Kallenaback.
- 4) The Board asked questions of the Petitioners, their counsel and the parties throughout.
- 5) **Deliberations.** The Board deliberated over the course of two dates, February 18, 2025, and February 21, 2025, and discussed the facts, testimony, materials submitted, the law, and the application of the Nahant Zoning By-laws.

February 18, 2025. The Board first discussed and voted on whether to re-open the hearing prior to beginning deliberations to consider items that had been received

since the last date. The items included assessor information, an email from the applicants regarding past properties that were subject to Nahant By-law 703E, and handwritten calculations from Robert Ives, the expert retained by the Board.

The chair then reviewed the procedural steps and timeline of the Appeal with the Board. The Board then began deliberations of the issues raised in the applicant's appeal to the extent the issues were subject to the Nahant Zoning Bylaws. The first issue was whether the Building Inspector had issued the building permit #R-24-00227 timely. The applicants claim that the building permit should not have been issued because **more than 35 days had elapsed** from September 26, 2024, the date of the application, to when the permit was issued on November 25, 2024, resulting in a violation of §9.02 of the Nahant Zoning Bylaws. After a discussion about the discretion afforded to the building inspector in §9.02 of the Bylaws and the testimony of Mr. Wilson, who said that he had been working with the property owner over that time as they revised their plans.

The next issue raised in the appeal was **Repetitive Petitions**. The Board discussed the applicability of §9.10(D) of the Bylaws, which clearly states that it applies to applications before the Zoning Board of Appeals.

The next issue discussed was whether the construction at issue was to be considered new **construction or reconstruction**. After a discussion about the property owner's teardown of the original structures and current case law raised by David Walsh, the Board then discussed compliance with the zoning bylaws. David Walsh discussed the applicability of §5.02 of the Bylaws when the principal building is changed. He also raised the issue of whether the two buildings must stay under the same ownership and not be subdivided or turned into condominiums. Cameron Merrill discussed the applicability of §7.03(C) and how it is similar to G.L. c. 40A §6. The Chair raised the issue of the definitions in the bylaws not being followed by the professionals, where an unenclosed porch is excluded from the definition of both Footprint and Gross Floor Area, the calculation needed to determine the Floor Area Ratio. Gerardo Rafelle stated that the surveyor had certified the as-built plan. Cameron Merrill discussed §7.03E and stated that the language does not only apply when the structure is relocated, as suggested by the property owner's counsel because the words are intentional, and that is not what §7.03E says. Instead, he stated that it is a stand-alone paragraph, beginning with the word "Notwithstanding," and when the property owner demolished the entire property without a permit, they may have accidentally stepped into this section.

The Chair then discussed the claim by the property owner's counsel that §7.03E may nullify §7.03(C) or G.L. c. 40A §6. The Chair stated that a homeowner could seek a section six finding for any alteration except for removal and reconstruction, which requires a special permit, and that a municipality is within its right to do so. In the Bobrowski Handbook §6.03, he discusses the Blasco case, where the appeals court reviews in detail the legislative history of a G.L. c. 40A §6. Bobrowski discusses the "minimum tolerance" for nonconformities and that municipalities

have the right to maintain local control of nonconformities through their by-laws. G.L. c. 40A §6 remains in full effect, protecting single and two-family nonconforming residences that need alteration, but the town of Nahant, by a vote of its residents at a town meeting in 2003, voted to add section 7.03E to its Zoning Bylaws because they wanted to make sure that if a property owner on a nonconforming lot wanted to reconstruct and replace their home, they would need a special permit so that neighbors and town officials could weigh in, and conditions could be added if needed. David Walsh raised the issue that the Board had previously received special permit applications where the building inspector had denied building permits, and the reason given was §7.03E, such as on Flash Road and Peasant Street. Gerardo Rafelle stated that because of changes in the Stretch Code, the property owner would have had to replace everything anyway where his demolition and resonation were beyond the 50% rule set by FEMA in the Flood Zone. Town Counsel intervened and suggested that the Board request a two-page memo from counsel for the Applicants and for the Property Owner. After discussion, the Board agreed to that suggestion, and counsel agreed to provide the memoranda.

February 21, 2025, The Board continued its deliberations. David Walsh spoke first and said that he had reviewed zoning matters back several years and found many prior appeals that required a special permit under §7.03E of the Nahant Zoning Bylaws (the “Bylaws”). Cameron Merrill then spoke and said that he felt this was a complicated matter, where the properties had been demolished without a permit and to compound the difficulties, there are two structures on the small nonconforming lot. He discussed the suggestion that §703E applies when a home is removed and relocated on a lot.

Cameon Merrill said that he noticed in this case, while the structures themselves had not been relocated, the mass of the structures had moved from one house to the other. He noted that he had reviewed several cases in preparation for this matter, such as Bransford and Bjorkland, and that, in some cases, even a compliant house was required to have a special permit. He said he found the memos provided by counsel helpful, and this was what caused him to come to this idea and where. Mr. Ives explained how the mass or area taken from the front structure was utilized on the second floor of the rear structure.

The Chair said that she was still uncomfortable with the Floor Area Ratio (the “FAR”) calculations because when she divided the finished square footage on the assessor cards from the demolished structures, by the total square footage of the lot, the FAR came to .45 with the front porch, and .43 without the front porch. She also reiterated her position that the Board should not ignore the definitions in the Bylaws. In regard to §7.03E, the Chair said that the section is very clear.

All of the members chimed in on different issues; Cameron Merrill asked whether the moving of a MASS from the front house at 30 Emerald Road to the second floor of the rear house at 30A Emerald Road, constituted a move. David Walsh agreed

that the FAR on the back building was greater than before. He also stated that had this property applied for a special permit before demolishing the houses, section 5.02 of the Bylaws would have come into play.

All of the members discussed the moving of the mass of the building from one to the other. Cameron Merrill noted that the mass increase in the rear structure increased the nonconformity because the lot is so small. Gerardo Rafelle agreed with Cameron Merrill but also reiterated the position that he credits Mr. Ives's testimony. Jake Brown said he was struggling with the idea of moving the mass. Cameron Merrill responded with insight from case law, stating that small-scale improvements are illusory, and he questioned whether taking mass from the principal structure (30 Emerald) and adding it to the rear structure (30A Emerald) was more than illusory. Gerardo Rafaele pointed out that the property owner removed the basement level from 30 Emerald and was required to do so due to FEMA regulations.

David Walsh raised the issue again of applying §7.03E here as had been utilized in prior reconstructions in Nahant. Jake Brown agreed with David Walsh. The members discussed what would happen if the Board required a special permit, i.e. would the structures have to be torn down, or some alternative conditions put in place, and what would happen if the Board supported the Building Inspector's decision to issue the building permit, members asked what would be the effect on the relationship between the neighbors. Gerardo Rafelle reiterated his position that we have three professional opinions (the two building commissioners and the surveyor hired by the property owner) to rely on. David Wash commented that requiring a special permit for reconstruction has been the practice in Nahant for the past 20 years, therefore he was not clear why it was not imposed on this reconstruction.

III. FINDINGS.

a) General.

- i. The Petitioners are Bruce and Karen Marshall.
- ii. On December 10, 2025, the Petitioner filed an appeal of the Building Inspector's determination to issue a building permit for 30 and 30A Emerald Road, Nahant, Massachusetts, located in the R2 zoning district (the "Subject Property").
- iii. The Board held five public hearings on the matter and one public meeting.
- iv. The Petitioner's lot is a non-conforming lot, being less than 10,000 sq. ft.
- v. The Petitioner's existing front setback was non-conforming.
- vi. The extension of the front setback intensifies an existing non-conformity by only a few feet; it does not affect anyone's view or create shade, and no new non-conformity is created.
- vii. The Board discussed the application of the Nahant Zoning By-laws.

b) Specific.

- i. The Board made a finding that, pursuant to §9.02 of the Bylaws, the length of time to complete the building permit application process, was not grounds for overturning the building inspection decision to grant the building permit.
- ii. The Board made a finding that Repetitive Petitions in §9.10 (D) of the Bylaws did not apply to building permit applications.
- iii. The Board made a finding that the project is a reconstruction.

IV. VOTES. (all votes were taken by roll call)

January 21, 2025

- 1) David Walsh brought a motion to continue the matter and to issue a stop work order, 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.

January 27, 2025

- 1) David Walsh brought a motion to continue the matter to February 5, 2025, at 3:00 P.M., seconded by Cameron Merrill. 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.
- 2) David Walsh brought a motion to remove the stop work order, seconded by Gerardo Raffaele. A roll call vote was taken; all were in favor, and the motion passed. David Walsh, Gerado Raffaele, Cameron Merrill, and Jocelyn Campbell all voted in favor of the motion.
- 3) Cameron Merrill moved to authorize the Board chair to inquire with the new building inspector and/or engage with another professional to review for us. David Walsh seconded the motion. A roll-call vote was taken; all were in favor, and the motion passed. David Walsh, Gerado Raffaele, Cameron Merrill, and Jocelyn Campbell all voted in favor of the motion.
- 4) David Walsh brought a motion to adjourn the hearing to February 5, 2025, at 3:00 P.M., seconded by Cameron Merrill. A roll-call vote was taken; all were in favor, and the motion passed. David Walsh, Gerado Raffaele, Cameron Merrill, and Jocelyn Campbell all voted in favor of the motion.

February 5, 2025

- 1) Cameron Merrill brought a motion to continue the matter to February 11, 2025, at 4:30 P.M., seconded by Jake Brown. All members present voted in favor, David

Walsh, Gerardo Raffaele, Cameron Merrill, and Jake Brown, and the motion passed.

February 11, 2025

- 1) David Walsh brought a motion to close the hearing and not accept any more evidence, seconded by Jake Brown, after a roll call vote, all were in favor, David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.
- 2) David Walsh brought a motion to continue the hearing to February 18, 2025, at 4:30 P.M., seconded by Jake Brown. After a roll call vote, all were in favor, David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.

February 18, 2025

- 1) A motion was brought by Jocelyn Campbell and seconded by Cameron Merrill to decide whether to re-open the hearing for the purpose of accepting new evidence. A discussion ensued where some of the members stated they felt they had enough information. After a roll call vote, four members opposed re-opening the hearing: David Walsh, Gerardo Raffaele, Cameron Merrill, and Jake Brown, and one voted in favor, Jocelyn Campbell; therefore, the motion did not pass.
- 2) Cameron Merrill brought a motion to make a finding that the length of time to complete the building permit application process, was not grounds for overturning the building inspection decision to grant the building permit, seconded by Gerardo Raffaele. After a roll call vote, all were in favor: David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.
- 3) Jake Brown brought a motion that the Repetitive Petition Section of the Bylaws did not apply to building permit applications, seconded by David Walsh. After a roll call vote, all members present voted in favor: David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.
- 4) David Walsh brought a motion that the project is a reconstruction, seconded by Cameron Merrill. After a roll call vote, all were in favor: David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.
- 5) David Walsh moved to continue the hearing to Friday, February 21, 2025, at 2:00 P.M., seconded by Cameron Merrill. After a roll call vote, all members present voted in favor: David Walsh, Gerardo Raffaele, Cameron Merrill, Jake Brown, and Jocelyn Campbell.

February 21, 2025

- 1) David Walsh moved to apply the entire section §7.03E of the Bylaws (as pasted below) to the building permit and to require the Property Owner to apply for a special permit, which was seconded by Jocelyn Campbell.

§7.03E Notwithstanding any other requirements of Section §7.03, no structure constituting the principal 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.

After a roll call vote, all members present voted in favor: David Walsh, Gerardo Rafaelle, Cameron Merrill, Jake Brown, and Jocelyn Campbell.

- 2) Cameron Merrill moved to rescind the building permit but did not oppose the Property Owner's effort to continue working on the site at their own peril, seconded by David Walsh. After a roll call vote, all members present voted in favor: David Walsh, Gerardo Rafaelle, Cameron Merrill, Jake Brown, and Jocelyn Campbell.
- 3) Cameron Merrill moved to support Mr. Wilson's finding regarding G.L. c.40A §6, seconded by Gerardo Rafelle. After a roll call vote, three members voted in favor: Gerardo Rafaelle, Cameron Merrill, and Jake Brown, and two members opposed the motion, David Walsh and Jocelyn Campbell.
- 4) David Walsh moved to adjourn the hearing at about 3:00 P.M., seconded by Cameron Merrill. After a roll call vote, all members present voted in favor: David Walsh, Gerardo Rafaelle, Cameron Merrill, Jake Brown, and Jocelyn Campbell.

V. DECISION.

After reviewing the Application and materials submitted, the testimony, public comments, and considered numerous cases including but not limited to *Blasco vs. Board of Appeals of Winchendon*, 31 Mass. App. Ct 32, 35-39 (1991), *Bransford v. Zoning Board of Appeals of Edgartown*, 444 Mass. 852 (2005), *Bjorkland v. Zoning Board of Appeals of Norwell* *450 Mass. 37 (2008) and *Bellalta v. Zoning Board of Brookline* 481, Mass. 372 (2019), and giving due consideration to testimony given at the public hearings, the Board made the above-referenced findings of fact and votes. Based upon those findings and votes, the Board hereby rescinded the building permit for the Subject Property and requires that the Property Owner apply for a Special Permit pursuant to §7.03E of the Nahant Zoning Bylaws.

This Decision was filed with the Town Clerk on March 7, 2025.

NOTICE OF RIGHT TO APPEAL

Notice is hereby given that any appeal from this Decision shall be made pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty (20) days after the date of filing this Decision in the Office of the Town Clerk for Nahant, Massachusetts.

Respectfully submitted,



Jocelyn J. Campbell, Chair

I hereby certify that I am the Town Clerk for the Town of Nahant and that no appeals have been filed with this office within the appeal period.

Diane M. Dunfee
Town Clerk

Date