

**Newfields Zoning Board of Adjustment**  
**November 8, 2023**

**Attendance:** Chairman Kent Lawrence, Betsy Coes, Steve Yevich, Bob Elliott, and alternate Catherine Tarnowski. Alternate Scott Sakowski was absent from the meeting and Jack Steiner recused himself as an abutter.

**Guests:** Richard Burke and his daughter, Miss Burke

Chairman Lawrence called the meeting to order at 7pm and introduced the Board Members above and clerk, Hillary Meserve. He explained tonight's meeting is a continuance of Richard Burke of 3 Hilton Ave, Newfields, Map 101, Lot 33, for the following cases:

1. Case #23-10-25-01: Request for a variance from Article III, section 3.4.1.2, proposal to construct garage and Accessory Dwelling Unit closer than 20 ft. to the rear property line. The proposal places the building 15 ft. from the property line.
2. Case #23-10-25-02: Request for a variance from Article IV, section 4.14.3.1, that defines an Accessory Dwelling Unit as being located within a single-family dwelling.
3. Case #23-10-25-03: Request for a special exception according to Article IV, section 4.14.4.

Chairman Lawrence explained that the last meeting ended with a rejection based on the Accessory Dwelling Unit appearing as a single-family residence. There is a new drawing, and he proposed the Board view it and vote yes or no on that part of the plan.

Betsy agreed that it's straightforward.

Mr. Burke said between the garage and the house, he needs something to put a set of stairs in that are 7-inch risers, and since a fair amount of space is needed for that, he figures it could also act as a mud room. On the second floor, you can walk directly into the home, and you could also use that for an office.

Board members reviewed the new floor plan.

Mr. Burke mentioned one other small change to the site plan. He was a little over 15 ft., and now he's a little over 16 ft. setback. That's gotten a little better because when the ADU was to the left of the garage, it was encroaching more on the town land. Now it's over 16 ft., almost 17 ft., behind the garage.

Chairman Lawrence asked if it was 25 ft. to the front setback.

Mr. Burke confirmed the front setback is 25 ft., and no problem on the sides. The existing house is not anywhere close to conformance; it doesn't meet any of the setbacks.

Bob said that's because it was built at a different time, so it was grandfathered in, and Betsy said few of the houses meet the requirement in the Village.

Mr. Burke said it's called a three bedroom, but it's only a two-bedroom home. The third bedroom is up in the attic and it's not really suitable for a bedroom, especially in summer and winter.

Bob asked for clarification on which dwelling the third bedroom would be in.

Mr. Burke explained it's in the existing dwelling. He's not adding a third floor. The heights of the existing home and the new ADU are similar, but he's trying to have a larger ceiling height in the proposed ADU and have a little attic storage.

The Board members continued to analyze and discuss the floor plan.

Chairman Lawrence said the appearance looks decent. He reads: The appearance shall remain that of a one-story dwelling. There shall be one egress to the primary living area from the accessory apartment. Any new entrances shall be located at the side or the rear of the building.

Mr. Burke showed the egress on the side of the building to get into the home. At the front of the home, it has a door. Presently, there's a door and vestibule in the back that would probably get taken off and it would have a side door to come into the house, and it also goes up to the ADU or into the garage. And maybe a rear door to go out to the yard off the mudroom.

Bob said all the egress requirements would be covered by the building inspector.

Chairman Lawrence said the Board must comply with 4.1.3 for the planning stage, and it appears as those he's got this section. He started reading at the beginning of the list of requirements for a special exception. Proposed use must conform to dimensional requirements of a single-family lot and meet all existing requirements. He explained that this is a nonstandard lot that supports a single-family residence. As he read that and reviewed the state requirements for lot size for ADUs, it does indicate to him that we must have our published lot size for ADUs, and in the case of the Residential District, with public services, it's 1 acre. He asked what size Mr. Burke's lot is.

Mr. Burke said his surveyor determined the lot size is .24 acres, although he is paying taxes on .27 acres. It abuts three streets and the Town of Newfields, which is land that will probably never get developed.

Chairman Lawrence asked how big the Newfields lot is.

Mr. Burke said he thinks it's close to a half-acre. He doesn't think adding that chunk of land would get to the full acre requirement.

Chairman Lawrence requested discussion from the Board about the 1-acre lot size.

Selectman Sununu confirmed the town parcel is .27 acres.

Chairman Lawrence said he was curious, and the actual size is almost immaterial. This was something that he kind of got into both reviewing state and Newfields' statutes. It's something that he's going to

discuss tomorrow evening with the Planning Board regarding how do we make this clearer or do we change the way it reads.

Bob asked clearer on what.

Chairman Lawrence said it reads now that we need to have the dimensional requirements of a single-family lot. If it referred back to our scheduled dimensional regulations, that would clarify it. If it is the will of the Planning Board and then the townspeople, it could be revised. But of course, that doesn't happen here or now.

Bob clarified maybe changing it for the Village District, like having a village override.

Chairman Lawrence said that's a vote for a different day.

Steve said Chairman Lawrence brings up an interesting point because he hadn't been reading it that way.

Bob said it could be open to interpretation.

Mr. Burke said he is paying tax on a building lot and not paying taxes on a nonconforming building lot.

Catherine said that state guidelines say that whatever is proposed needs to meet the town's dimensional guidelines with regards to that.

Chairman Lawrence said the first sentence in the guidelines said there's a right to an ADU. But the hard thing is that even though that comes to the forefront of your mind, the Board still must follow all the guidelines and pass all of the tests that follow. And this happens to be the first one, and it's almost identical all the way through with some modeling done from the state statute when our regulations were written. Chairman Lawrence's observation is this is the guard against overdeveloping the really tight spaces. And he may have been a little shocked because he visited Winter St. in Portsmouth, and there was only the width of bicycle paths between the houses. He felt that was a valid reason that we need regulated lot size.

Mr. Burke said his proposal does not overdevelop the lot. He has a wide and shallow lot.

Chairman Lawrence said one of the things he observes is that it's quite possible that this building expansion could happen without the approval of an ADU, so long as you get the waiver for the setback. It doesn't expand beyond the 25%. As a single-family residence, I think you could do that, but the ADU part is in question right now.

Catherine asked if this was a building proposal for a two-car garage with a master suite above and it's all a single-family home and the words ADU weren't used, if it's all in one place, then wouldn't that eliminate the phrase?

Chairman Lawrence clarified that there are a couple of distinctions. If a kitchen area goes in, then the building inspector has it flagged as an ADU. And either way the town water and sewer department is going to want a betterment fee for the increase of one bedroom.

Chairman Lawrence goes through the list of requirements for the Accessory Dwelling Units. The proposal may not pass on all of them, but it will make clear what, if any, shortcomings there might be. The Board will vote on each requirement.

4.14.4.1.1: Proposed use must conform to dimensional requirements of a single-family lot and meet all existing requirements.

Multiple board members said it doesn't because the lot is under an acre.

Vote on meeting the dimensional requirements: Yes—0, No—5.

4.14.4.1.2: The occupancy of the Accessory Dwelling Unit shall comply with the standards for maximum occupancy per bedroom consistent with the policy adopted by the United States Department of Housing and Urban Development.

Chairman Lawrence did not have the policy right in front of him and didn't recall exactly what we have accepted.

Bob recalled they looked it up in the past, and it was two people and based on the applicant's statements.

Chairman Lawrence asked if Mr. Burke brought a statement about meeting the Housing and Urban Development requirements.

Mr. Burke replied that he did not but felt that he does meet them all because he's familiar with them.

Chairman Lawrence said it's important that the Board has paper to document everything.

Mr. Burke said he will get that for the Board.

Board members further discussed the meaning of this requirement to clarify that it's saying you can't have more people than there is safely room for (i.e., 10 people in a 3 bedroom).

Chairman Lawrence debated whether the Board should say yes even without the evidence, or do we suggest it could be approved and we should revisit.

Mr. Burke said he's very familiar with HUD and the requirements because he is a retired builder.

Chairman Lawrence noted this requirement could be met but needs documentation.

4.14.4.1.3: The accessory apartment shall be designed so that the appearance of the building remains that of a single-family dwelling. There shall be one egress to the primary living area from the accessory apartment. Any new entrances shall be located at the side or the rear of the building.

Vote based on the proposed drawing: Yes—5, No—0.

Chairman Lawrence clarified that the version in this proposal is approved, but should there be changes, it will be subjected to the process again.

4.14.4.1.4: The size of the accessory apartment shall not exceed one-third of the living area of the entire dwelling on both units, but shall not be required if less than 750 sq. ft.

Mr. Burke shared his calculations. The existing living space is 1661 sq. ft., the proposed ADU is 817 sq. ft., that comes to 2478 sq. ft.  $817 \div 2478 = 0.3297$ , so it's less than one-third.

Vote: Yes—5, No—0.

4.14.4.1.5: At least one of the units in a single-family dwelling must be, and continue to be, owner-occupied. As part of the approved special exception, the ZBA may set reasonable conditions to ensure this compliance is provisioned.

Chairman Lawrence said it appears this is the intent and therefore meets this requirement.

Mr. Burke said the intent is for him and his daughter to live in the home.

Vote: Yes—5, No—0.

4.14.4.1.6: No more than two bedrooms are permitted in the Accessory Dwelling Unit.

Chairman Lawrence said it appears this meets.

Vote: Yes—5, No—0.

4.14.4.1.7: Off-street paved or gravel parking shall be provided for at least four vehicles.

Mr. Burke said he will need to increase the driveway size to accommodate the two-car garage. The driveway will fit five or six cars.

Chairman Lawrence asked if the parking spaces in front of the garage are counted in the total so that cars would have to move to get a car out of the garage.

Mr. Burke said you can stack two cars to the left of the house, or there might be enough room to have them side-by-side, and then the two cars in the garage can come and go without interfering with the other spaces.

Steve clarified that the ordinance doesn't say that specifically, it just says the cars must be off the street.

Chairman Lawrence said that will also be discussed at the Planning Board meeting the following evening.

Vote: Yes—5, No—0.

4.14.4.1.8: Structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single-family dwelling.

Chairman Lawrence said that appears to the intent of the plan.

Bob said it would just have to be a condition.

Vote: Yes—5, No—0.

Chairman Lawrence said the Board wouldn't vote because they don't have the paper from the signed health officer that the septic is adequate, and Mr. Burke should bring in evidence when this continues.

Chairman Lawrence continued: Floor plan to scale—it appears he met that. Planned sketch of the lot is present. Evidence must be submitted to the building inspector that all building requirements can be met, and then the building inspector must submit his approval in writing to the Zoning Board of Adjustment. He left that section off; there's four items there.

4.14.4.1.10: Accessory Dwelling Unit shall be subject to the standards and conditions for a special exception set forth in the ordinance.

Chairman Lawrence said in Newfields, the ADU is the only special exception there is.

Bob added that you can get a variance to the special exception to one of the conditions.

Chairman Lawrence said that Mr. Burke didn't apply for a variance to these conditions.

Based on 4.14.4.1.1 failing, Chairman Lawrence moved to deny the application for an Accessory Dwelling unit based on the first criteria. Vote: Yes—5, No—0.

Chairman Lawrence asked if Mr. Burke wanted to continue with the request for a variance for setbacks for the residence as shown.

Mr. Burke said yes. He's already at the 25 ft. front setback, and he's gone as small as he possibly could for his truck. The back setback is greater than 16 ft., so it's shy less than 4 ft. to the town-owned land.

There was a brief discussion on getting a lot line adjustment on the town land, but the ZBA approach is quicker.

Chairman Lawrence said variance for setbacks have the five conditions that must be met, and the wording of the answers to the questions needs to really address what's being asked.

Mr. Burke said the lot line on the front is considerable inward of the street. There is a large setback on the front, it's probably close to 32 ft. or something to the edge of the street.

Bob said the setback is from the property line and not from the street.

Mr. Burke said he understood he's landlocked to try and have a garage. Five or six years back, there was a garage that was approved but some of the ordinances were different.

Chairman Lawrence explained that's immaterial at this point. He asked if Mr. Burke had his application with the answers to the questions re: meeting the five conditions.

Mr. Burke was provided with a copy of his variance application, and after looking them over, said they have changed.

Chairman Lawrence read the first question: Describe the unnecessary hardship created on the property based on the existing zoning ordinances (the zoning restriction as applied to the applicant's property interferes with the proper use of the property, considering the unique setting of the property in its environment).

Mr. Burke said that has changed. He needs to have a set of stairs that goes up to the apartment or the suite or the ADU -whatever you want to call it- above the garage.

Chairman Lawrence said he doesn't think the Board is ready to call it an ADU. He asked if Mr. Burke was able to go down through the list of conditions.

Mr. Burke read/stated his answers:

1. He feels it's a hardship because he needs to have an apartment for himself and a garage for storage and to put the cars in. The house and the proposed addition are landlocked. It's a unique lot that was developed in 1870, and it should be allowed to add an ADU.
2. Granting this variance will allow him to have an in-law suite and his daughter to live in the house. Miss Burke added that it will allow him to age and be independent, but also allow her to check on him because she lives in Florida. He's fallen down the stairs.

Chairman Lawrence explained that the questions specifically have to do with the lot and not the property owner's needs. He explained that it might be better for Mr. Burke to come back with a better set of responses to the questions.

Bob reminded Mr. Burke that this was discussed at the last ZBA meeting because the original answers provided didn't have anything to do with the lot.

Mr. Burke said the garage needs to be 22 ft. deep.

Bob said that beyond the dimensions, Mr. Burke must answer in terms of how this is not contrary to public interest.

Selectman Sununu gave Mr. Burke a copy of the five criteria with explanations.

Chairman Lawrence continued to read down through criteria:

3. Not contrary to public interest: proposed use must not conflict with the explicit or implicit purpose of the ordinance. It must not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights.
4. The spirit and intent of the ordinance is observed. These two are closely related because it's in the public's interest to uphold the spirit of the ordinance.
5. Substantial justice is done. The benefit to the applicant shall not be outweighed by the harm to the general public.

Miss Burke asked for an example of an adequate response for substantial justice.

Chairman Lawrence responded he couldn't provide one because each case is going to be different.

Miss Burke doesn't understand why Mr. Burke's response in the application isn't adequate.

Catherine explained the way the questions are asked, they're about the uniqueness of the land in its location or hindrances on the property. When the word hardship is used, it's being interpreted as a personal hardship when it's supposed to be about the property. The same applies for substantial justice.

Miss Burke asked again for an example of a great answer, so she can try to help him complete it and answer better.

Chairman Lawrence offered to give a copy of the variance criteria guidelines but clarified it's not going to give an answer.

Miss Burke said she has a copy.

Chairman Lawrence said the guidelines will explain the question and what is sought for as an answer.



Miss Burke said she thought how Mr. Burke answered for substantial justice is correct because she thinks it depends on how it impacts the community as well as him personally.

Mr. Burke said their point is that it's about the lot size and the setbacks.

Catherine added that it may need to be just clearly stated. For substantial justice is done, it says the benefit of the applicant shall not be outweighed by harm to the general public, so that needs to be addressed explicitly in the answer.

Mr. Burke said he needs to consider the law and the abutters.

Miss Burke said that there's been several cases where the state law does supersede the municipality law. And in the issue of 1 acre, there's been two cases so far where the municipality has been overruled.

Chairman Lawrence read: literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown either of two ways. First is to show that because of the special condition of the property that distinguish it from other properties in the area A) there is no fair and substantial relationship between the general public purposes of the ordinance and the provision of the specific application of that provision to the property, and B) the proposed use is a reasonable one.

Betsy said this lot comes about as close to qualifying for hardship as you can come.

Mr. Burke asked when his revised answers could be heard.

Chairman Lawrence asked would he be asking for a continuance.

The Board members discussed their availability and topics for the next regularly scheduled meeting. Chairman Lawrence asked Mr. Burke if he wanted to request a continuance.

Mr. Burke asked for a continuance regarding the 1-acre issue.

Chairman Lawrence clarified that Mr. Burke would have to apply for a variance for that issue.

Mr. Burke asked if that would be an additional variance.

Chairman Lawrence confirmed that would be an additional variance and is separate. The continuance is for the setbacks for this building proposal for Case #23-10-25-01 for setbacks. A variance for the lot size for an ADU would require an additional application.

Miss Burke said it was her understanding that when the governor made this law, municipalities had to either adopt it as is or they could create special exceptions, and the special exceptions must agree with the state law.

Chairman Lawrence said they do.

Miss Burke said that requiring Mr. Burke to have 1 acre doesn't necessarily agree with it.

Chairman Lawrence said the state law does suggest that.

Miss Burke said the state law suggests that lot size can't be required.

Chairman Lawrence said that's not exactly the way it's interpreted.

Miss Burke said there are so many cases in the Supreme Court right now because there's issues with the municipalities that are fighting to allow this. That is why the state law was created, and they are currently trying to create another bill to prohibit this activity. She said it's ridiculous that he's having to do all of this.

Chairman Lawrence said in Newfields, if you want to have a two-family unit on a lot, it needs to be two acres.

Miss Burke doesn't think that is in line with the state law effective in 2017.

Bob confirmed two families, two acres.

Chairman Lawrence said the Board isn't requiring anything additional; they are requiring that you meet the town lot size.

Miss Burke requested that the Board follow the state law.

Chairman Lawrence said it's 674.72.

Mr. Burke asked why the lot size is 1 acre and not up to interpretation based on a Village lot.

Bob said the simple answer is because that's what the Planning Board put together for a schedule.

Mr. Burke said it makes no sense.

Bob said the ZBA doesn't get to rule on what the Planning Board puts in place.

Miss Burke said there have been seven lawsuits in the Supreme Court on this exact issue. She mentions state law 674.72.

Chairman Lawrence said yes and reads: one Accessory Dwelling Unit shall be allowed without additional requirements for lot size, frontage, space limitations, or other controls.

Selectman Sununu finishes reading the sentence: beyond what would be required for a single-family dwelling without an accessory. In other words, it's saying it must comply with the same rules in the town as a non-accessory single-family dwelling.

Chairman Lawrence adds that the requirement is published as 1 acre.

Miss Burke said that seeing his home was built on something that was grandfathered in, she thinks that's where the general exception is and that's why the state law was created in the first place. She said she didn't want to see this go to the Supreme Court, but that's what's going to happen if this is denied.

Chairman Lawrence said maybe so, maybe no.

Miss Burke said she didn't fly in from Miami for nothing.

Chairman Lawrence asked for a vote for all those in favor of a continuance to November 29<sup>th</sup>: Vote Yes—5, No—0.

Miss Burke said the five Board members have the power to make a decision to be able to change somebody's life and help them, and she thinks the state law was created for this purpose so to her it doesn't really make sense.

Chairman Lawrence said Mr. Burke can apply for a new variance for that, and there's a continuance for the setbacks. He asks Mr. Burke to please use the explanation of the criteria very carefully to provide good answers.

Bob said that documentation is what goes in the file so if a neighbor comes and appeals, we have it.

Mr. Burke said he will submit a request for a variance tomorrow because it will be 20 days before the last Wednesday of the month.

Chairman Lawrence asked for further comment from the Board, and there was none.

Chairman Lawrence motioned to close the meeting, and Bob seconded at 8:04 pm.

Kent Lawrence, Chairman