

**Newfields Zoning Board of Adjustment**  
**November 29, 2023**

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

**Guests:** Richard Burke and his counsel, Brett Allard

Chairman Lawrence called the meeting to order at 7pm and introduced the Board Members above. Jack recused himself from the vote on the Burke variances because he is an abutter.

Chairman Lawrence introduced a new case. Case #23-11-29-01 Thomas H Conner Variance on behalf of the Conner Revocable Trust. They asked for a continuance until the regularly scheduled January 31, 2023, meeting. Chairman Lawrence proposed to approve, Betsy seconded. **Vote Yes—5, No—0**

There were two cases with Mr. Burke of 3 Hilton Ave, Newfields, Map 101, Lot 33. The first was Case #23-11-29-02 Request for a variance from Article IV, section 4.14.4.1.1 to allow for an ADU to be built on a nonconforming lot of .27 acres where 1 acre is required by zoning. Chairman Lawrence asked for Mr. Burke or his counsel to present the case.

Brett Allard, of Shaughnessy Allard, introduced himself as Mr. Burke's lawyer. He referenced the supplemental letter submitted with Mr. Burke's application responses. He wanted to address both variances at once but noted that Chairman Lawrence only introduced the case so said he could parse them out if necessary. Chairman Lawrence responded that he should.

Mr. Allard said this is 3 Hilton Avenue, Map 101, Lot 33, which is .27 acres. There've been multiple meetings and plans and options explored along with variances and requests for relief. His understanding was that at the last meeting, the Board found that all the special exception criteria were satisfied except for the lot size, and so the special exception was denied, and the setback variance was continued. We filed a second variance for the lot size. Chairman Lawrence clarified if Mr. Allard said setbacks because we haven't discussed setbacks whatsoever. Mr. Allard affirmed and said it was continued at the last meeting until tonight. As it relates to the lot size variance, these are the same variances that would be required for a simple home addition, but the ADU is less intensive. It's more conforming to the ordinance than maybe just a home addition with more bedrooms would be.

1. Granting the variance will not be contrary to the public interest.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives, and that comes from the New Hampshire Supreme Court. And in that case and in other cases, they've also said that the relevant tests for evaluating whether this criteria satisfies are whether granting the variance will alter the essential character of the neighborhood, and whether it threatens public health, safety, or welfare. He doesn't see that granting the variance will alter the essential character of the neighborhood. The property would remain consistent with the single-family nature of the area. The garage and the ADU are designed to be architecturally consistent with the existing residence. We're not asking for a use variance to do something that's not allowed there in terms of activity that could potentially

compromise the character of the area. These types of residential uses are permitted and consistent with the character of the neighborhood, so there is no threat to public safety or health or public rights.

2. Granting the variance will be consistent with the spirit of the ordinance.

The first thing you must look at is what is the purpose of this ordinance. The purpose of minimum lot size requirements is primarily to prevent overcrowding and congested development. There is sufficient buildable area, and there are no wetlands that limit the ability to build in the area. The proposed structure is attached to the primary dwelling. There is sufficient parking. So, we don't think this would be contrary to the spirit of the ordinance. Another thing you have to look at in relation to the spirit of the ordinance is that we kind of have conflicting ordinances where you have the ADU ordinance and its spirit and purposes, and then the minimum lot size requirements and its spirit and intent. The legislature and the zoning ordinance didn't contemplate ADUs on preexisting nonconforming lots of record like this, so it's a bit of a unique situation. But in terms of the spirit of ADUs in general, the legislature has said, when they adopted RSA 674.71 in 2017, that there's a growing need for more diverse, affordable housing opportunities for the citizens of New Hampshire. The demographic trends are producing more households where adult children are living with their parents in semi-independent living arrangements. Elderly and disabled citizens need independent living space for caregivers, and there's many societal benefits associated with the creation of ADUs. There's a whole litany of similar types of purposes that the legislature set forth when they required municipalities to adopt these types of ordinances. The spirit of that really needs to be balanced against the spirit of minimum lot size requirements. Here we don't see any threat to the spirit of the minimum lot size requirements being waived because we have sufficient buildable area, it's attached to the primary dwelling, and has parking.

3. Granting the variance would do substantial justice.

The Supreme Court has held that this is the balancing test between public and private rights. It has said that "perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice;" that is from the Harborside case in 2011. Here there's no injury to the public if the variances are granted, and we don't see any gain to the public if the variances are denied. The only loss would be to Mr. Burke if the variance for minimum lot size is denied because it would prevent him from realizing reasonable property rights. It would prevent him from a reasonable living accommodation that the ADU statute is intended to provide. ADU's are specifically intended to accommodate landowners in these types of living situations. Therefore, when balancing public and private rights, the loss to the Applicant if the variances are denied outweighs any loss or injury to the public if the variances are granted. The proposed ADU is "appropriate for the area," and granting variances for requests that that are appropriate for the area does substantial justice.

4. The values of the surrounding properties will not be diminished.

The proposal is in harmony with the neighborhood. The new garage and ADU will be an aesthetic improvement to the area. If the variances are granted, the lot will remain consistent with the residential character of the other lots in the neighborhood such that there will be no adverse effect on surrounding property values. Externally, the proposed garage is consistent with the abutting residential uses, and the existence of the internal living space will not alter that external consistency. Therefore, surrounding property values will not be diminished. It wouldn't be obvious to the naked eye that there is an ADU and a variance would be needed because of the overall aesthetics. It works on this lot. I think the Board previously found this particular criteria satisfied in respect to other variances during past meetings, so I don't think that necessarily that has been a huge area of discussion and contention but wanted to address anyways.

5. Unnecessary hardship

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and there is no fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and the proposed use is reasonable. First, you need to address whether the property has special conditions. We think this property has several special conditions that distinguish it from other properties in the area. The lot is a legal

preexisting nonconforming lot of record created in the 1870s. It abuts Town land, and on that land is a very thick wooded buffer. It's located essentially on its own island between two public streets and the state highway, and the result of this is that you have a very wide and shallow lot, but at the same time a very private and isolated lot because the neighbors are really the streets on every side. Other lots in the area don't share these unique characteristics, and so there are special conditions of that property that meet that first prong for unnecessary hardship. Owing to these special conditions, there is no fair and substantial relationship between the purpose and application of the zoning ordinance's minimum lot size requirements. The lot can support the ADU and garage. We have sufficient buildable area; no overcrowding; and consistent with the character of the area and the existing conditions of the property. There is no harm to the public or abutters. I think I read in one of the last meeting's minutes that a Board member said this lot comes as close to qualifying for hardship as you can come, and we would agree. This minimum lot size requirement we think is far from a gross deviation from the purpose and intent of the zoning ordinance, especially under these circumstances.

Mr. Allard continued: to get back to the interplay between the ADU statutes, the ADU ordinance, and the minimum lot size ordinance, it wasn't really envisioned by anyone how ADUs would fit into the picture when you have a preexisting nonconforming lot of record that was substandard in terms of the minimum lot size requirements. I think that some municipalities have started to look at this in terms of amending their ordinance to contemplate this. But right now, it's a unique situation: we have this property that could have qualified for a special exception if it was three quarters of an acre bigger. But due to its unique features, shape, and location, we are asking for the variance on minimum lot size because we could not satisfy that minimum requirement.

Chairman Lawrence asked for questions from the Board. He wanted to recognize that all the plans were designed to fit within the area requirements on the lot, and as an addition on the house. And then when we got to the ADU thing, it fails because it doesn't meet the lot size requirement in lots that are serviced by water and sewer, but it's close. This situation has been brought up with the Planning Board for discussion. If there was a lot challenged by its size and otherwise large enough to support a residence, past history shows that those typically pass. Whether it supports an Accessory Dwelling Unit, that state statute and our ordinance pretty much follow the state statute, and that brings into question whether that is something that's going to work. He recognized that the Town property is virtually an open space, but he doesn't think it constitutes an argument for open space. Mr. Allard clarified that he meant that in regard to diminishing property value and building too close to encroaching houses, and that might make future buyers want to pay less because they don't have open space. That same analysis doesn't apply because the Town land is open, and Mr. Burke building an ADU on his land will not diminish the value of the Town land, so he does feel it's relevant to the variance criteria in that respect.

Bob said the other thing we took up last time and saw as an issue was if in fact there's room to park four cars, which is required, and if they're able to be parked in a way that they're not stacked. Mr. Burke said he has no problem with having unstacked parking. He's the only one parking there, and even when his daughter is there, his driveway is quite wide and will become a little bit wider and will have room for 3 cars wide at least outside of the garage, plus two inside the garage.

Mr. Allard asked if that was a special exception criterion. Chairman Lawrence confirmed it is one of the criteria for a special exception. Mr. Allard clarified we aren't asking for a special exception anymore, but that it could be helpful to know how that fits into the bigger picture. Chairman Lawrence said that if this goes forward, he will be asking for a special exception. Mr. Allard said they can't qualify for the special exception; they can't meet the special exception criteria because it's not an acre. Chairman Lawrence said that they've asked for a variance from that section of our ordinance. Mr. Allard said no, we've requested a variance from the minimum lot size requirement for an ADU and from the setback requirement. It's not possible to ask for a variance from the

special exception criteria and then go get the special exception. You either qualify for the special exception criteria and you can satisfy them all, and if you can't, then you must ask for a variance from the dimensional portion that you don't meet. Chairman Lawrence said in this case, and what the variance is asking for, is 4.14.4.1.1: Proposed use must conform to dimensional requirements of a single-family lot and meet all existing requirements.

Mr. Allard said the request is from a variance from having to satisfy the special exception criteria in general, which can be really confusing. If you can't satisfy all the special exception criteria, you can't ask for a variance from one of the criteria that you can't satisfy and then go back and get the special exception. That's well accepted in New Hampshire. You either meet the special exception, and if you don't, you satisfy the variance criteria for whatever dimensional aspects you're trying to waive. In this case it's the minimum lot size and the setbacks for an Accessory Dwelling Unit. Peter Loughlin wrote the bible on land use, planning, and zoning in New Hampshire, and I bring this book with me for when issues come up. He wrote: "Variances from the terms of the special exception: the question sometimes arises as to whether an applicant for a particular land use can obtain a variance from one of the terms of the special exception to qualify for a special exception. For example, if a zoning ordinance permits a stable and two horses on a lot with a special exception and provided conditions are met, including a requirement for 2.5 acres, could a board of adjustment grant a variance to a landowner who only had 2 acres and didn't meet the minimum lot size requirements, and then grant the special exception if all the other condition were met? The short answer is no, but the applicant could seek a variance for the project overall rather than a special exception, and whether the property qualified for the variance would have to be a determination by the ZBA by applying the variance requirements. So, I think the special exception criteria, which were relevant when we requested one, are still helpful to determine whether we're asking for a gross deviation of what would otherwise be allowed if we were going for a special exception. But it would be procedurally impossible to grant a variance from special exception criteria and then go back and get the special exception, because you either qualify for the special exception or you don't. Catherine added it's either or.

Chairman Lawrence said there was a denial of the request for a special exception, so that's off the table now. There's a request for a variance from one of the criteria for the special exception. Mr. Allard said he doesn't view it that way. Chairman Lawrence said it's his understanding. Mr. Allard said it would be contradictory because a special exception is a use that is permitted by law if you meet the criteria, whereas a variance is a request for something that the zoning ordinances don't allow, and he thinks those are irreconcilable. Catherine said this variance request is a new, free-standing request that is heard on its own merits, and has nothing really to do with the special exception. Mr. Allard said correct. It can't. Chairman Lawrence said Catherine explained it the way he understands it, but the counsellor is saying we can't grant a variance for this and then hear the special exception, and that's the order in which he feels is appropriate. Catherine said it sounds like the special exception just doesn't apply. If the variance is granted, there's no need for a special exception because it becomes a moot point. Chairman Lawrence said you're right in that the application always suggested that the addition was an Accessory Dwelling Unit, whereas the addition could be without an ADU, and the setbacks are a separate variance request. That's almost unfortunate because if this doesn't pass, the application is for an ADU and not for an addition to the building, and it would be theoretically possible to add a living room and another bathroom, the garage and not have an ADU element. Mr. Allard said we'd come back for a two-family. Catherine agreed but said we must look at what's right in front of us. Chairman Lawrence said the two-family thing is tough because there is an allowance for that on houses built before a certain date, so this addition would kind of put that in a mess. He asked for any other questions or comments from the Board or from the public.

Rick Holland, 30-year resident, 57 Main Street, an abutter, said he is here to support Mr. Burke's request for the addition. Mr. Burke said he's not in favor of a two-family. He needs a place for himself, and his daughter would

be living in the house. Mr. Allard added in terms of the parking, it's better if it's an ADU because one of the requirements is that it is owner-occupied. It can be messy when people don't know each other, so an ADU helps the parking situation. Chairman Lawrence said that a change of use would go through the Planning Board and not the Zoning Board.

Chairman Lawrence closed the session to the public and asked for questions from the Board on the five criteria. Steve said he's staying within the lot coverage restrictions. It's nonconforming for the ADU. He thinks it's a unique situation in the fact that there are no other residents around him. Bob said he thinks some of it might be handled in the conditions. One of the things is presently it's a Town lot, but we don't know that it will always be a Town lot. Does the deed require that it remains a Town lot? Selectman Sununu said he doesn't believe there are any restrictions on the Town to sell the property, but it would take a town vote. Bob said presently, the Town lot is unbuildable given its current conditions without going through a variance. Chairman Lawrence said if that were privately held piece of land, serviced by water and sewer, they might have rights to build a single-family lot with a variance on a substandard lot. Bob said in favor of this is that it's an unbuildable lot. He's not sure if there's anything we can do regarding the Town and making it an unbuildable lot. Chairman Lawrence said we can't do that; it would be overstepping, especially if that were a private lot. Bob said that's correct, we can't do that, so that is kind of a special condition. We're supposed to look at hardships about the land and the lot; it has nothing to do with the people and the money. Chairman Lawrence agreed the people will change eventually. Bob continued, given that it's an unbuildable lot today, that makes it kind of special that it is next to a Town-owned, unbuildable lot. Chairman Lawrence said he didn't like that argument, and Betsy added she didn't see that at all. Chairman Lawrence said it's a separate lot and it has its own set of issues. Bob said that's in their favor, he's not saying that's the reason not to approve it. Chairman Lawrence said the problem is that the lot is a quarter acre and it's narrow. Bob added that the zoning board is to look for ways of granting relief when there's a hardship. Betsy asked if Bob was saying he would want Newfields to acquire that lot to make his lot less nonconforming? Bob said no, to add the story in terms of what makes this lot different and special than surrounding lots is that fact that is this island that we've already talked about, and what it does butt up against is unbuildable lot. So, there's far less chance that in a year from now someone's going to buy that house and have an issue with this variance. Chairman Lawrence did not agree.

Selectman Sununu said that because this was regarding the Town lot, he would weigh in. If the Town was to decide to dispose of the lot, saying this as somebody in the town, he doesn't have a horse in this at all, but if the Town were to decide to dispose of it, then it would be in the interest of the Town that the value of the lot was maintained. And if you are saying that overcrowding could potentially decrease the value of the lot, that is having an impact on the potential for the Town to dispose of the lot at its highest and best use. You're saying because it's the Town, it doesn't matter. Chairman Lawrence said it does. Selectman Sununu said he's saying that the Town matters, and then you would be minimizing the ability of Town and the taxpayers here to maximize the value if they were to decide to dispose of the property. Mr. Holland asked if that lot presently is a buildable lot, and Selectman Sununu said no and Mr. Holland responded it's a moot point. Selectman Sununu argued it's not because the Town could go get variances to build on that lot, and in fact, if the Town's the owner of the lot, it could get permits to build on that lot before it disposed of the lot. Mr. Holland argued only if it goes through the variance process that Mr. Burke is going through presently. Selectman Sununu said the Town doesn't have to follow the same rules as a private landowner. Selectman Sununu said he didn't have a stake in this game, and Mr. Holland said neither did he. Selectman Sununu emphasized he is representing the people of the Town, and that's a Town lot, and if what you're saying here is that by building here, you are diminishing the value of that lot, then he thinks the Town needs to be aware of that and weigh in on it. Mr. Allard said there is something to be said about that. However, he thinks the bigger question is if granting this variance is really going to devalue the Town's lot? Is granting this variance really going to create overcrowding? Someone said no,

and Mr. Allard agreed. He added that academically, there is wisdom there, but as a practical matter in this situation, it's not going to devalue the Town land, it's not going to create overcrowding. Catherine added that there's been multiple meetings with public notice on this topic in which that hasn't come up as far as townspeople saying that's a concern. Betsy added she hadn't looked at it that way until Selectman Sununu brought it up, and he concurred that he hadn't thought of until now either that the Town would potentially dispose of the lot. But in that scenario, then of course, there is value there that is diminished. Mrs. Holland asked if that's realistic because isn't there a memorial on that lot? Selectman Sununu answered yes, but from the perspective of the Town, the Town has moved memorial around before. He added he doesn't think the Town is going to dispose of the lot, but that we do need to acknowledge it diminishes the argument you're making. The Board must decide on weighing that. We should not cast aside the fact that it potentially diminishes the value for the taxpayers of the Town. Steve said he doesn't see how it could diminish the value because it's still within the coverage regulations for a small lot. Selectman Sununu said if the argument here is that granting these variances has the potential is to diminish the value of the Town land's, he's just asking the Board not to dismiss the idea that the Town could lose value in that lot if the Town at some point decides to dispose of it. Chairman Lawrence said that sort of goes back to his observation that should the setbacks pass, their area to build an addition on this property, they're within the area requirements for zoning for the proposed addition. And the fact that they're considering the Accessory Dwelling Unit within that poses some additional complications, but they're also met by the requirements for a special exception. And we would have to go through all of those with the case for ADU and the setback variance, and it's bizarre that we don't deal with the ADU as a special exception.

Chairman Lawrence held a vote on the five criteria on the dimensional requirements of a single-family lot: proposed use must conform to the dimensional requirements of a single-family lot and meet all existing requirements. Mr. Allard asked if that was the special exception criteria, and Catherine said it was the answering of the questions on the variance. Chairman Lawrence said that was the special exception condition that the variance is requested for.

1. The variance will not be contrary to the 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. **Vote: Yes—3, No—2**
2. The spirit and intent of the ordinance is observed. **Vote: Yes—4, No—1**

Betsy said the vote was confusing, and Chairman Lawrence said the spirit of the ordinance is that proposed use must conform to the dimensional requirements of the single-family lot and meet all existing requirements. Mr. Allard said that wasn't the variance criteria. They aren't asking for a special exception; the special exception has been denied. The variance criteria only should be addressed. Chairman Lawrence said we have a variance from a condition of the special exception. Mr. Allard said the law doesn't permit that, it's not a thing. Catherine said it seems the answer to #2 in counsel's letter has a much more detailed answer than on prior applications, and it seems to answer in a way that says the spirit of the ordinance is to prevent overcrowding. And with this building project, even though it's an undersized lot that doesn't meet the minimum lot size requirements, it's consistent with the spirit of the ordinance because it doesn't appear or cause overcrowding. That is the answer to #2 that's been proposed is whether we agree that answer makes sense and is consistent. Betsy said she now understood and changed her vote from no to yes. Bob asked if there were any no's and Chairman Lawrence said he doesn't believe it meets the spirit and intent.

3. Substantial justice is done: the benefit to the applicant shall not be outweighed by the harm to the general public. **Vote: Yes—5, No—0**
4. Values of surrounding properties are not diminished. **Vote: Yes—3, No—2**

Bob said so this is where what Selectman Sununu was talking about is illustrated, and his argument is specifically to #4. Chairman Lawrence said without discussing ADU, the building is within the area. It remains yet to be seen whether the setbacks are a problem for this Board or not.

5. The literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

**Vote: Yes—3, No—2**

Betsy said although she said it came as close as it can to meeting the requirements, she still doesn't believe it does meet hardship. She took a walk around town, and there are worse lots. Chairman Lawrence said he has a worse lot. Betsy said it's getting congested with unusual lot lines.

The Board finds in favor of relief from 4.14.4.1.1 to allow relief from the ADU requirement of a 1-acre building lot.

Chairman Lawrence said we are continuing now to the next case which is setbacks. Case #23-10-25—01 Continued Hearing: Request for a variance from Article III, section 3.4.1.2, proposal to contract a 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. Mr. Burke said the most recent survey shows that it's 16 ft. from the rear property line and meets the other setbacks on the front and the side.

Chairman Lawrence said he assumes that counsel has the same argument for the case of setbacks as for minimum lot size, and Mr. Allard says yes but he will go through them briefly and incorporate everything from the last case to this one for the record.

1. Granting the variance will not be contrary to the public interest.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives, and that comes from the New Hampshire Supreme Court. And we're looking at whether it alters the essential character of the neighborhood, or threatens public health, safety, or welfare. There is no alteration to the essential character of the neighborhood by allowing the ADU to be built 4 ft. to the rear of the lot from where it is. It's designed to be architecturally consistent, and we're not asking for a use variance that would compromise the character of the area. No threat to public health or safety. No adverse impact or threat, just a waiver of 48 inches.

2. Granting the variance will be consistent with the spirit of the ordinance.

The spirit and purpose of setback ordinances are similar to those for minimum lot size: to prevent overcrowding and congested development. There is sufficient buildable area, and there are no wetlands. The proposed structure is attached to the primary dwelling. There is sufficient parking. If the proposal on the land is where it is, there is no overcrowding because it's .27 acres, we're going only 4 ft. into that rear property line. Not a gross deviation from the spirit and intent of the ordinance.

4. The values of the surrounding properties will not be diminished.

The proposal is in harmony with the neighborhood. I know in the last case we talked about the encroachment towards the Town land, and the Town has a valid reason to want to preserve its land. The practical question is will granting a 4 ft. variance devalue the Town's land? Will it create overcrowding? There's just no way that it would devalue the Town's land, and certainly not anyone else's land, given that it's isolated by streets, on its own island, and won't even be obvious to the naked eye.

5. Unnecessary hardship

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and there is no fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and the

proposed use is reasonable. We've talked about all the special conditions, which are the same for the purposes of the lot size as the for the purposes of setbacks. It's on its own island. It's surrounded by streets. It's a wide shallow lot which is why we need the 4 ft. relief. It's an isolated lot and other lots in the area don't have the same unique features. He noted that there was mention of all these funky lots around town, but the special conditions require the lot to be compared to a narrower scope and looking block-by-block instead of the entire town. The lot can support the ADU and garage. There's sufficient buildable area. There's no harm to the public or to abutters or to the Town.

Mr. Allard continued that it's not a gross deviation from the terms of the ordinance. The zoning board is the constitutional safety valve for landowners who need just a little bit of relief from the features of this lot in order to do something very reasonable, and that's what we are asking for.

Bob asked if Mr. Burke knew that it was a nonconforming lot when he bought it. Mr. Burke said absolutely not. He was told that the shed was on his property, but he did not know that when he purchased it. Betsy said but you do construction. Mr. Burke said yes, but he is retired. He just never looked into the conformity of the lot.

Chairman Lawrence said it appears as though we are taking the issue of the 4 ft. setback on the rear property line and adding to it the Accessory Dwelling Unit, as opposed to a building addition. Bob corrected it would be a 16 ft. setback with a 4 ft. encroachment. He thinks the attorney overplayed it in regard to 4 ft. for effect, and in reality, one could hear that and think, oh, it's only 4 ft. Chairman Lawrence said his point is that we've got to deal with any other issues with the Accessory Dwelling Unit within this discussion. Car parking could be one thing that would affect neighbors if the garage were filled with stuff. It was at one point documented to the Board that space was needed for stuff. Bob asked would the driveway be paved and what would that do to the impermeable surface. Chairman Lawrence said he thinks that's one of the building engineer's criteria to review. His initial thought is he has removed the dwelling unit from the uphill side of his garage, and he'll have to increase his parking area. And perhaps we should discuss a requirement for having drainable material in additional parking area. That may just make the building inspector's job easier if that gets defined. Betsy asked if this was to prevent stacking cars; Chairman Lawrence said yes. Betsy said its their own problem if they park each other in, and Chairman Lawrence said it's our problem if they park on the street. Mr. Burke said there would never be a need to park on the street, and Mr. Allard said he would be okay with a condition that says no street parking. There was discussion of the winter parking ban and configuration for parking, which is ultimately up to the landowner. The Board looked at past and current design plans. Chairman Lawrence said that the original design met the area requirement gave him some confidence that this was going to be okay. He encouraged impervious surface and additional parking area, and asked if he would agree to four non-stacked parking spots. Mr. Burke said he doesn't think it's going to be a problem, but with the wider driveway, there'd be enough to have three cars in front of the garage. Bob clarified that there's a potential for five cars, and Catherine added that it meets the minimum requirement of four.

Chairman Lawrence read 4.14.4.1.9.1: Town health officer performs a qualified review of the town septic system. Bob told Mr. Burke he will have to pay a betterment fee. Mr. Burke affirmed that he has town water and town sewer, and Chairman Lawrence accepts as evidence on personal recognizance. Next, evidence must be submitted to the building inspector that all building requirements can be met, and the building inspector shall then indicate his approval in writing to the zoning board. We don't have that. We have allowed at times that a representative of the Zoning Board of Adjustment must have that to sign off on an approval. Catherine asked if it becomes a condition, and Chairman Lawrence said it becomes a requirement before the paper is signed. Additional discussion about this condition occurred. The only condition is 4.14.1.9.4 building inspector's letter to the ZBA.

Chairman Lawrence closed the session to the public. Catherine asked about potentially requiring the maintenance of the wooded buffer separating the neighboring lot line as a condition, but it's on Town land so it's not applicable.

Chairman Lawrence proposes a vote on the five criteria:

1. The variance will not be contrary to the public interest. The 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.

**Vote: Yes—5, No—0**

2. The spirit and intent of the ordinance is observed. **Vote: Yes—5, No—0**

3. Substantial justice is done. The benefit to the applicant shall not outweigh the harm to the general public. **Vote: Yes—5, No—0**

4. Values of surrounding properties are not diminished. **Vote: Yes—4, No—1**

5. The literal enforcement of the provision of the ordinance would result in unnecessary hardship.

**Vote: Yes—4, No—1**

Chairman Lawrence made a motion to approve the application for the setback, building of an Accessory Dwelling Unit within the garage, and the new addition, and Bob seconded. The one condition is that the building inspector must send a letter to the chairman of the ZBA before this gets signed as approved.

**Vote: Yes—4, No—1**

Mr. Burke asked what happens after the building inspector writes the letter of approval. Chairman Lawrence said the building inspector will have to look at the plans and say the area is okay. He may review the previous area. He can't say that the building standards will all be met, but he can say that based on the plan the building standards can be met. Bob and Chairman Lawrence noted that there's a 30-day waiting period for appeal and beginning construction prior to that would be a risk.

Betsy moved to close the meeting at 8:35 pm, and Bob seconded.

Kent Lawrence, Chairman