

Zoning Board of Adjustment
August 29, 2023
Public Hearing
7:30 PM

Members Present: Chris Stafford, Walter Baird, Jason Holder, Michelle Cooper, David Knight

Others Present: Gail Turilli, Carsten Springer, Kurt Meisner, Charlie Donohue, Kim Farah

Chairman Stafford explains the agenda tonight consists of a review of the last meeting's minutes as they pertain to the hearing being held tonight and then proceed to the continuance of the Variance and ADU application from Kathleen McAfoose of 432 Main Street. He also mentions that at the last meeting the board had recommended Kim Farah be appointed as an alternate member. She is present tonight and will participate in the meeting portion and once the Board moves to the hearing she will step back from the table and join the audience.

The minutes from the 8/8/23 meeting were reviewed. Chairman Stafford notes 2 minor changes on line 38 should state south side instead of north side and on line 71 should state 950 sq ft instead of 9850 sq ft. Dave also notes some changes on line 15, change "was" to "were", line 60 change "Kurt asked if" to "Kurt mentioned restrictions added", line 81, end sentence at "leach field". The Board had a brief discussion about this particular change and unanimously decided to keep it as is. Line 112, change "stated" to "state". David **made** and Walter 2nd a **motion to accept the minutes as amended**. All in favor, **motion carries with a vote of 5-0**. At this time, Kim Farah leaves the table and takes a seat in the audience.

Case 2023-1 – McAfoose –Continuance of Variance & Special Exception Applications for an ADU and Garage:

Chairman Stafford explains the process prior to opening the hearing. Updated plans have been provided to both the Conservation Commission and the Zoning Board and those changes will be discussed first. The Conservation Commission met, and the Board received the minutes which will be read. The ZBA already has a couple hours into this hearing and Chairman Stafford would like to have the Board ask any clarifying questions about the application, changes to the plan, Conservation's comments, and review the Variance criteria. He also has a Variance Worksheet that he finds helpful when filling out applications and describes what each criteria means. Once questions are clarified since the last meeting, the Variance part of the hearing will be closed. There are 2 parts to the Variance part of the hearing : one is a setback buffer Variance and the other is an ADU size Variance. The Board will then deliberate, make a decision and then start another hearing to discuss the Special Exception for the ADU. There are 2 separate decisions the Board needs to make and there are 2 separate applications. A case number needs to be added to the second application which will be 2023-2. The Variance application will be 2023-1. Chairman Stafford asks if the Board has any questions prior to opening the hearing. There are no questions and the hearing is opened.

Continuance of Case 2023-1 – McAfoose – 432 Main Street – Variance:

Chairman Stafford states that this is a continuance of a previous hearing. In terms of Board membership, the same members are present tonight as the Board had previously. There are no questions about Board membership. At the last hearing there was a lot of discussion about the plans.

49 New plans have been submitted and Chairman Stafford summarizes the differences: The current
50 dwelling has an effective area of 2493 sq ft but, has 2000 ft of living space. Of the 2493 sq ft, 484 sq ft is
51 the current garage. The actual footprint is 1764 sq ft. The plan as presented previously, had an ADU
52 addition of 768 sq ft and a garage of 744 sq ft for a total of 1512 sq ft of additional footprint to the
53 existing building. Charlie Donohue stated a discrepancy that the previous ADU addition was 950 sq ft.
54 Chairman Stafford explains that he is not referring to the ADU but, the whole building. If looking at the
55 plan and looking at the footprint with the with the addition and garage, then look at the application, it
56 states 950 sq ft. The updated plan has an addition of 852 sq ft and a garage of 672 sq ft for a total of
57 1524 sq ft. Mr. Meisner states that is incorrect and that the floor plan submitted stated 794 sq ft for the
58 ADU. Chairman Stafford agrees and states what is important is that the Board has to make a decision on
59 a Variance that is basically an addition and wants to make sure the sq footage on the encroachment of
60 the wetlands is correct. In the new plan, 1524 sq ft, of that the ADU is 793 sq ft which is 43 sq ft above
61 what the Zoning Ordinance allows.

62
63 Chairman Stafford stated that the Conservation Commission met with the applicant's representatives on
64 August 17 reads through the minutes of that meeting. In summary, the Conservation Commission made
65 5 motions and are as follows:

- 66 •Carsten makes a motion requesting agreement on the location of the septic being in the best
67 possible location relative to the wetland setback. Jason 2nds. All in favor
- 68 •Carsten makes a motion that based upon the plans presented and the impact to the wetland
69 buffer zone that the board not recommend to move forward with the proposed addition as
70 as drawn. No 2nd. Motion dies.
- 71 •Jason makes a motion that we recommend the plans as presented to this committee. No 2nd.
72 Motion dies.
- 73 •Carsten makes a motion that the 4 items listed below that Conservation finds these
74 improvements to be significant over the original plans. Ed 2nds. All in favor
 - 75 1. Driveway Placement
 - 76 2. Septic Plan
 - 77 3. Water Infiltration from roof runoff
 - 78 4. Berm Placement
- 79 •Carsten makes a motion to recommend to ZBA to accept the building as drawn with 1300 of
80 the 1500 total square footage being in the wetland setback. Jason 2nds. **Vote:** Jason, Ed: Yes,
81 Carsten: No

82
83 There are no questions or comments from the Board regarding the Conservation Commission minutes.
84 Chairman Stafford mentions that there is a new plan with some slight changes in square footage and a
85 correction on the ADU size but, it still requires a Variance as it is over the 750 sq ft allowed. He also stated
86 that his interpretation from the feedback submitted is the best that could probably be for that type of
87 addition and location. In terms of accepting the building, Chairman Stafford thinks the ZBA looks for
88 feedback on impact to the wetlands and the Board has to go through the Variance process to determine
89 if the application is approved. Dave asks Jason to summarize and if the majority of the Conservation
90 Commission felt that the significant improvements were going to negate any negative impact with flow
91 to the wetlands. Jason stated that the majority of the Commission voted that what was done to improve
92 the situation in mitigation was enough to say that it would equate to a normal home that was not in the
93 wetlands. Dave noted that he still needs clarification and from what he can see, this is probably the best
94 that could be done but, he did not hear that there is no impact so it shouldn't be done at all. Chairman
95 Stafford questions if Dave is asking if the impact of no encroachment on the wetlands would be the same
96 as the mitigated plan to which Dave responded, yes. Chairman Stafford asks if Carsten will interpret the

97 minutes. Carsten stated that he would read through them to which Chairman Stafford responds that they
98 have already been read. Carsten makes the observation that it was a messy but productive meeting. The
99 Conservation Commission agreed that there were significant improvements to the original plan but, did
100 not say that it negates. At the meeting, the runoff was shown going into the abutting property. Mr.
101 Meisner stated that the plans were revised and the runoff does not go into the abutting property. The
102 Board takes a moment to review the updated plans. Dave mentions that he has 3 detail issues. Mr.
103 Meisner explains the changes and revisions: The silt sock and fence protection was initially shown over
104 the lot line by a couple of feet. This has now been stretched along the property line so that it does not go
105 over the abutting property. An earthen berm has been added along with an infiltration trench at the front
106 in order to protect the wetlands. It is infiltrating the ground water and keeping it on the property so that
107 it doesn't go into the wetlands. Four additional bushes that are 8ft on center have also been added.
108 Initially the driveway was coming to the front of the building and now it has been moved to the center of
109 the property. A septic system has been designed for proper lot loading. The now 3 bedroom home will
110 be converted into a 2 bedroom and the ADU will have 2 bedrooms. Infiltration has also been added along
111 the side of the building and driveway. A gutter system will run across the front of the building with a
112 downspout. All roof runoff will be put into the ground before it travels. By adding the extra protection
113 with the infiltration trenches, bushes and berm, Mr. Meisner feels that the wetland is far more protected
114 now under this proposal than as it is now. Dave asked for clarification if the trench to the west side goes
115 all the way along the building and if it leads off to the septic or just sits there. Mr. Meisner states that the
116 septic is before that and the gutter system off the building infiltrates into the trenches and runs off the
117 driveway. Dave summarizes that he is seeing a berm, silt fence, drainage system, less footprint on the
118 roof, stairwell in the garage instead of outside, reduction of a bathroom, reduction of living space and
119 smaller bedrooms. Chairman Stafford notes that the original plan, in terms of the addition, is still the
120 same size. Mr. Meisner believes that it has decreased by 1 ½ feet in total length. Chairman Stafford states
121 that the garage has decreased but, the footprint of the living space of the ADU is about the same. Mr.
122 Meisner stated that the living space is much smaller by almost 180 sq. ft. Chairman Stafford asked why
123 the ADU is so much smaller when there is basically the same foot print of addition of living space. Mr.
124 Meisner stated that before, there were multiple versions of the building, options 1-6. There were
125 different configurations of the interior of the building and because the Board had the position of making
126 the ADU smaller, a 7th option has been chosen. The way the town measures an ADU's square footage is
127 the interior living space and the Board has been given the total square footage without using that section
128 of the regulations.

129
130 Chairman Stafford asked if there is anything else within the 24X35 ft addition that is not ADU. Mr. Meisner
131 stated that the ADU is separate and outside. Dave noted that his issue is with the garage being a part of
132 the ADU and feels the garage is a separate addition. Chairman Stafford stated that the Board needs to
133 assess if this meets the Variance criteria based on the plan, which includes the garage and factor that in
134 deliberations. Michelle asks how far the septic is off the street. Mr. Meisner stated that the state allows
135 10ft and believes it is just over that. An old test pit was done but, he plans on having a new one done
136 along with a septic design. Walter asked about the mitigation for the runoff and references some
137 pamphlets, which he read, from the state. He also mentions that he learned that this doesn't last forever,
138 bushes die, berms deteriorate, and trenches fill up. It is based upon the owner maintaining it. If the
139 property is ever sold, it's possible that this will not be maintained. Mr. Meisner disagrees. The bushes
140 were recommended by the soil scientist because those are the heartiest plants and can handle this type
141 of utilization the best. He also points out that the grass lawn serves as an additional infiltration and is very
142 common to do as he has done this in other proposals. If no lawn was claimed, and just left as sand, it
143 would run down and fill up. Walter again notes that this is not forever permanent and dependent on
144 whoever owns the house.

145
146 Michelle questions the 2500 gallon septic tank. Mr. Meisner states that is bigger than what is needed and
147 the leach field was designed knowing that could be changed. The state would allow for a 1250 gallon
148 tank. Jason questioned if the gravel paving is 15 ft from the wetlands to which Mr. Meisner responded
149 that it is 15-20 ft from the buffer. There are no more questions from the Board about the plan and
150 Chairman Stafford asks the public if there are any questions. Kim Farah expressed her concern with one
151 of the members sitting on this Board, who has already weighed in on Conservation and given his opinion.
152 She further states that she doesn't feel this is appropriate to have the same person on both Boards.
153 Carsten, Conservation Chairman, stated that he did not see this as inappropriate but, will let Jason speak
154 to that. He also noted that there are a number of situations to speak to Dave's question about the garage.
155 Conservation was trying to give some allowance to make some changes that probably would be more
156 permissible to the ZBA. If the garage wasn't there, there would be a less wetland impact and perhaps the
157 ZBA would look at this differently. Jason stated that he looked at this 2 different ways. Right now, he is
158 looking at this under ZBA criteria other than being on Conservation. Chairman Stafford stated that if there
159 is a concern of impartiality or objectiveness, it can be raised by the Board or the individual. The Board will
160 take this under consideration, but, the individual needs to decide if they can be impartial, objective and
161 weigh all the evidence. If not, they should recuse themselves as the Board can only recommend. Dave
162 mentions that the state is very clear regarding Board conflicts and that is why mandates are put in place,
163 for example, Planning Board can only have one member on this Board. That is the only restriction. ZBA
164 has had 2 Selectmen on the Board in the past. This is not a conflict as long as members are not reviewing
165 the material discussed outside. Jason stated that he feels he can be objective, and look at this from 2
166 different perspectives. He will look at the criteria on each application and judge it as such. Charlie
167 Donohue stated that the applicant, Mr. Meisner and himself have no issue with Jason being on both
168 Boards as he has been very professional. Jason asked the Board if they have any concerns and would
169 recuse himself if that is the case. Michelle noted that The ZBA looks at this completely different than
170 Conservation, has no concerns, and the rest of the Board is in agreement. Kim Farah understands that it
171 is completely up to Jason and that there is no legal conflict. She points out that Jason has heard things
172 that other people on this Board have not. Ms. Farah asks that this Board consider the fact that they may
173 be giving approval on an area that was built on under 5 years ago and there are zoning requirements for
174 a reason. In regard to Mr. Baird's point about stormwater and runoff: if those systems are not maintained,
175 they fail to work and would dispute that these systems last forever. This is her opinion as someone who
176 has done stormwater. This is a huge addition to the footprint that is sitting on wetlands. Runoff is going
177 to be greater as we have more intense storms now. Once polluting into the wetlands, will not be able to
178 recover and she does not see any hardship here. Mr. Meisner objects to Ms. Farah's comment as he does
179 not agree. He reiterates that the wetlands will be protected more under this plan than they are now. He
180 further explains that the homeowner is trying to put an ADU for her elderly parents to live there so that
181 they are not going into a nursing home or temporary day care, and she can take care of them. Chairman
182 Stafford notes that Mr. Meisner feels that the plan is an improvement and better than having no addition.
183 The Board will take all the input and factor that in while going through the Variance criteria. Chairman
184 Stafford also notes the only change he noticed on the application was the square footage of the ADU. Mr.
185 Meisner stated that the request changed, and the narrative also changed to explain a few things. The
186 additional square footage to the ADU is internal to the building and can't be seen from the outside. The
187 in-laws require separate bedrooms that are slightly larger in size to accommodate wheelchairs and other
188 health-related instruments. He also stated that the wetlands are protected by infiltration and added
189 mitigation.

190
191 Walter mentions when looking at the beginning of this, it is noted to have 793 sq ft but, it's 1524 sq ft.
192 Chairman Stafford states that there are 2 Variance's within the application. One for the ADU size of 793

193 sq ft vs. 750 sq ft and a setback Variance for 43 ft. Michelle questions if the Variance's should be on 2
194 separate applications. Mr. Meisner states that this question was asked prior and the suggestion from this
195 Board was to have both on one application. Chairman Stafford explains that dimensional Variance's,
196 which applies to the request submitted, can be all on one application but, a separate application to
197 approve the ADU (Special Exception) in also needed. He further explains that when going through the
198 decision making process, the Board has to make 2 decisions on every criteria. Walter asked about the
199 square footage of the garage. Chairman Stafford states that the garage is part of the setback Variance as
200 the setback is impacted. The Conservation meeting minutes made a point that there is roughly a 1500 sq
201 ft addition, not an ADU, and 1300 sq ft of that is inside the wetlands buffer. Mr. Meisner states that there
202 is no limitation to the size of the garage, only to the ADU and setback to the wetlands, and that is what
203 the applicant is looking for relief from. Dave mentions that Mr. Meisner stated on the application that
204 one of the reasons this is not an issue is that it is minor and internal to the building, can't be seen. He then
205 asks to clarify why this point is being stressed. Mr. Meisner explains Variance criteria #1 by stating it is
206 not contrary to the public interest because to the public, a difference of 43 sq ft can't be seen inside of a
207 building. Criteria #2: The wetlands will be protected more after approval with added mitigation and the
208 size of the ADU is interior, doesn't increase the footprint of the building. Criteria #3: Will allow owner the
209 fullest use of the property and allow her elderly parents to remain in her care. The garage provides a safe
210 environment for the residents as well as outside caregivers. Dave mentions, when looking at the original
211 plan, footprint, and house, and if he was the buyer with or without future needs, he would say there is
212 complete full justice of what can be done to the property when the existing house touches both ends of
213 the wetlands. He then questions how there is more full justice now. Mr. Meisner stated that the last time
214 he was before the Board, a question came about if circumstances of the site had changed from before,
215 and they have but, not substantial. Wetland flags have been denoted, and there is a wetland line inside
216 of that. The original wetland line was further away from the building when the site was constructed. Over
217 the course of the years, that wetland line crept forward, closer to the house. 5 years ago, there was
218 more property to the right side. The wetlands have been flagged and delineated to today's situation and
219 the buffer is being enhanced. Chairman Stafford stated that the plan provided showed the corner of the
220 existing dwelling in the 75ft setback and questions boundary change. Mr. Meisner stated that the
221 boundary did change and varies from 18ft to 2ft in some spots. Michelle recalls that area being extremely
222 wet before being built on. Dave explains that in dealing with required setbacks, the town used to have
223 25ft, 50ft, then asked for 150ft then 100ft. The town ended up with 75ft based on state requirements.
224 One of the reasons that 100ft or more was asked for was because of this situation about the wetlands as
225 the problem is that they don't stay the same. He also recalls a property where the wetland marker was
226 in 3ft of water. One of the reason's that the town settled on 75ft was because this wetlands, most of
227 Danville which has water running North and South, is very flexible. 5 years from now the lot line could be
228 even closer to the house. Mr. Meisner notes an important factor in this is poorly drained soil. Dave
229 questioned poorly vs. very poorly and why 75ft and not 50ft. Mr. Meisner states that the regulations do
230 not call out the difference between poorly and very poorly drained soils. State setback for approval is
231 50ft to a poorly drained soil. There is an area which is very poorly drained and when asked to switch over,
232 a layout and design was done that came up with 1100 sq ft in the buffer which would be the same setback
233 distance to the wetlands. Chairman Stafford states that the Variance request is to go 43 ft to the wetlands
234 with the change and questioned if they have been re-flagged. Mr. Meisner stated that they have been re-
235 flagged to current conditions.

236

237 Carsten stated whether it is plus or minus a couple of feet because of the distance away when drawing
238 the curve up to the house for the edge of the buffer, it doesn't change much from what it was 5 years ago.
239 This one of the things focused on both with the first ZBA hearing and the Conservation Commission. In
240 terms of actual square footage of the proposed structure in the wetland buffer, it wouldn't have shifted

241 much. This property was a shoehorn fit when it was built and still is with minor changes. Conservation
242 has looked at this property a couple of times over the years and it is not an area that would have been
243 excavated because it was wet then. As far as poorly drained vs. very poorly drained soils, this is what the
244 town settled on. Walter asked in regard to the 2500 gallon septic tank, where the water is going. Mr.
245 Meisner stated the system was designed for 600 gallons per day. The leach field is an enviropipe system
246 which needs 290 lineal feet, 300 lineal feet was provided and leaches into the ground. Walter feels that
247 there will be some flow into the wetlands. Mr. Meisner states that the flow goes straight into the
248 groundwater which is the whole purpose of this design. There is septic sand underneath, sits in the pipes
249 which are perforated, and goes into the ground. For the amount of water that goes into the leach field,
250 needs to be 30ft x 15ft wide and handles the amount of water coming in on a daily basis. Michelle explains
251 to Walter that the 2500 gallon tank fills up with water and the same amount will leach out daily. The
252 outflow would be the same with a 1250 gallon tank and Michelle questions why the need for such a big
253 tank. Mr. Meisner stated when this was looked at as an apartment, it was designed for 2 bedrooms.
254 When the state rates how much waste water an elderly couple uses, it comes out to be 150 gallons per
255 day. For this property, it would be 300 gallons per day as the 150 gallons is per bedroom. The system will
256 be underutilized. Chairman Stafford notes it has to be a state certified septic system as the plan is not
257 approved by the building inspector. The Board has to decide whether or not to grant the Variance.

258
259 Criteria #4: Mr. Meisner explains if the Variance is granted, values of the surrounding properties are not
260 diminished because the proposed addition will be of equal or greater value than the surrounding homes
261 and will increase the value of this home.

262
263 Criteria #5: Unnecessary Hardship – No fair and substantial relationship exists between the general public
264 purposes of the ordinance provision and the specific application of that provision to the property because:
265 Mr. Meisner explains that the proposed use is allowed in the district and the wetlands are better protected
266 by the proposed mitigation strategies, i.e. plantings, infiltration trenches, and berm. The proposed use is
267 a reasonable one because it is allowed in the district and is common to a single family home and not an
268 ADU. Chairman Stafford mentions the use and wetlands have been addressed but, there is nothing
269 mentioned about the ADU being larger. Mr. Meisner stated that he explained that in criteria 1. The in-
270 laws require larger bedrooms to accommodate wheelchairs and other health related instruments due to
271 their special conditions. Chairman Stafford states that one of the key points this Board has to deliberate
272 and agree on is if the ADU can be supported with 750 sq ft and still accomplish what is needed. Dave
273 mentions in criteria #1, Mr. Meisner stated that this particular ADU requires 2 bedrooms because of the
274 needs of the occupants. Dave's interpretation is that without the 2 bedrooms, the occupants could utilize
275 this ADU and doesn't see this as the issue. He also recalls that this ADU has to allow for medical equipment
276 access which means more space is required. Mr. Meisner states that the lot is encumbered by wetlands
277 on both sides which limits the usable area. The wetland to the north side is a poorly drained soil and to
278 the south side is very poorly drained. He points this out because the Board had previously asked to look
279 at alternative locations. Putting the ADU in the front of the building could not be done due to the setback
280 at the street line and that area needs to be used for the leach field. If the ADU is put behind the building,
281 would still need to come back through the sides and run a driveway through that and couldn't have a
282 garage. Chairman Stafford states on the rear of the building at the corner that is outside the well radius
283 but inside the wetland setback, couldn't have a garage but could have a larger building with more square
284 footage for the ADU. In order to determine the hardship, the Board needs to agree that you can't have a
285 reasonable use of the property with creating an ADU. Mr. Meisner stated that to come back through their
286 access through the house would be impossible. The left, rear, front and side of the building were
287 evaluated and this was the best alternative and way to provide the town and community with the best
288 mitigation to make the buffer better. Mr. Meisner wants to be sure that the records reflect that the

289 Conservation Commission voted to accept the drawing as presented to this Board and additionally voted
290 that the mitigation provided was a significant improvement. Jason clarifies that it is not as good as having
291 the proposed ADU without the garage. Mr. Meisner again notes that the mitigations that were put there
292 are the best solution and when he met with Conservation, the plan did not have the infiltration trenches
293 on the front side. That was a recommendation that came out of that meeting. Chairman Stafford stated
294 that he thinks the Board will not have any criticism in regard to the mitigation provided but, the Board
295 needs to decide if the Variance is necessary, meets the criteria and is consistent with the hardship criteria.
296 The public hearing is left open, a Variance worksheet is handed out to the Board and is reviewed.
297 Chairman Stafford then asks if the Board has any further questions for the applicant or if there are any
298 other inputs needed before going into deliberation. Mr. Meisner stated that when reading the Variance
299 worksheet, a comment was made in regard to the application frustrating the requirement of the
300 ordinance. He feels that it does not and by granting relief for the 43ft, there would be better protection
301 of that wetland. The public hearing is now closed and the Board will deliberate and vote for the setback
302 variance and ADU square footage. Dave suggests going through each criteria of the variance requests
303 separately.

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Wetland Buffer Variance:

307 **2. The spirit of the ordinance would not be observed:** The Board agreed that the application
308 did not meet the spirit of the ordinance. Given the wetlands has changed in the past few
309 years, the existing house is now inside the 75 ft wetlands buffer established by the town. The
310 Board was concerned that the conditions could change further in the future and the proposed
311 mitigations may not be effective. This could impact the health and general welfare of the
312 public. Also, the size of the addition and square footage inside the wetlands buffer being
313 proposed to accommodate and ADU seemed larger that the spirit of the ordinance would
314 intend.

Vote – 5 – 0

315
316 **3. Granting the variance would not do substantial justice:** The Board agreed that granting
317 the variance would not do substantial justice. While the Board recognizes the mitigation plan
318 is probably the best proposal for the current building plan, the Board believes there is no
319 injustice as the property is being utilized as a typical residential dwelling with an existing
320 garage. The Board thought there are less impactful options to providing ADU space needs on
321 this lot.

Vote – 5 – 0

322
323 **4. The proposal use would not diminish surrounding property values:** The Board agreed
324 that granting the variance would not diminish surrounding property values. While no data
325 was presented regarding property values, the proposed addition style is consistent with
326 the neighborhood.

Vote – 5 - 0

327
328 **5. Unnecessary Hardship :**
329
330 **A. Owing to special conditions of a property that distinguish it from other properties**
331 **in the area, denial of the variance would result in unnecessary hardship to the**
332 **owner.**
333 **i. No fair and substantial relationship exists between the general purpose of**
334 **the Zoning Ordinance provision and the specific application of that provision**
335 **to the property.**

336 The Board agreed that the application did not meet the unnecessary hardship criteria. The Board also
337 agreed that the wetlands buffer restriction on the property was necessary to give the full effect of the
338 purpose of the ordinance. The Board did not recognize a hardship and believes the property has options
339 to accommodate an ADU and to grant the variance would frustrate the purpose of the ordinance.

340 **Vote – 5 - 0**

341 **ii. The Proposed Use is not a reasonable one.**

342 The Board agreed that the use is reasonable. The plan did not propose a change in use from
343 residential that is allowed in this area.

344 **Vote – 5 – 0**

- 345
- 346 **1. Granting the variance would be contrary to the public interest:** The Board agreed that
347 granting the variance would be contrary to the public interest. Based on the decision of the
348 other criteria, the board agreed that granting the variance would to a marked degree violate
349 the basic zoning objectives.

350 **Vote – 5 – 0**

351 **ADU Size Variance:**

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- 353
- 354 **2. The spirit of the ordinance would not be observed:** The Board agreed, with the exception of
355 Walter, that the application did meet the spirit of the ordinance. The Board understands the
356 needs for ADU and in this case, 2 individuals with health and mobility issues may need some
357 additional space. The Board felt the additional 43 sq ft would not impact health, safety, or
358 general welfare of the public.

359 **Vote – 4 – 1**

- 360 **3. Granting the variance would not do substantial justice:** The Board agreed that granting the
361 variance would do substantial justice as the applicant demonstrated reasonable need for the
362 additional 43 sq ft of ADU space and denial of the requested ADU size, independent of the
363 submitted plan, would not result in any significant benefit to the general public.

364 **Vote – 5 – 0**

- 365 **4. The proposal use would not diminish surrounding property values:** The Board agreed that
366 granting the variance would not diminish surrounding property values. While no data was
367 presented regarding property values, ADU's are allowed in the neighborhood subject to
368 special exception.

369 **Vote – 5 – 0**

370

371

372 **5. Unnecessary Hardship –**

- 373
- 374 **A. Owing to special conditions of the property that distinguish it from other properties in**
375 **the area, denial of the variance would result in unnecessary hardship to the owner.**

- 376 **i. No fair and substantial relationship exists between the general purpose of the**
377 **Zoning Ordinance provision and the specific application of that provision to the**
378 **property.**

379 The Board agreed that the application met the hardship criteria. The applicants need to support two
380 individuals with health and mobility restrictions, could require a reasonable amount of additional square
381 footage. In this specific case, the additional 43 sq ft of ADU size would not frustrate the purpose of the
382 ordinance.

383 **Vote – 5 - 0**

- 384 **ii. The proposed use is not a reasonable one.**

384 The Board agreed that the use is reasonable. ADU use is allowed by special exception in Danville.

385 **Vote – 5 – 0**

386 Chairman Stafford **made** and Dave 2nd a **motion to deny the request. All in favor, Variance request is**
387 **denied.** Chairman Stafford explains that the variance would need to pass in order to grant the special
388 exception. The applicant can retract the special exception application or the Board can vote on the
389 application. The applicant is aware that the request will not be granted but understands that the Board
390 needs to vote.

391

392 **ADU Special Exception Criteria for 432 Main Street:**

393

394 1. The single family home as well as accessory dwelling units are allowed in the Danville Village
395 District. **The Board agreed Yes with a vote of 5 – 0**

396

397 2. Only one unit is proposed to be added to the single family home.

398 **The Board agreed Yes with a vote of 5 – 0**

399

400 3. The ADU will remain in the same ownership as the dwelling.

401 **The Board agreed Yes with a vote of 5 – 0**

402

403 4. The ADU plans will be in compliance with the building codes of Danville.

404 **The Board agreed No with a vote of 5 – 0**

405

406 5. Any construction shall be in accordance with the building standards of the town of Danville
407 in effect at the time of construction and a building permit must be obtained to create an
408 Accessory Dwelling Unit. If the ADU is attached to the main dwelling, permanent internal
409 access between the two units shall be maintained per RSA 674:72.III A new separate design
410 will be provided in compliance.

411 **The Board agreed Yes with a vote of 5 – 0**

412

413 6. The ADU will remain when the building is sold provided it is in compliance with the above
414 criteria. **The Board agreed Yes with a vote of 5 – 0**

415

416 7. The ADU is attached to the existing dwelling. **The Board agreed Yes with a vote of 5 – 0**

417

418 8. The ADU is no more than 750 sq ft – Chairman Stafford explains that if the 793 sq ft
419 requested was submitted without the addition, it would probably be approved but, it's 793
420 sq ft requiring an addition. **The Board agreed No with a vote of 5 – 0**

421

422 9. Appropriate off street parking is provided for the ADU in conformance with Article
423 IV.A.1.d.1)d). Parking will be required and a garage will be built – Chairman Stafford
424 explains that a garage is not needed just sufficient parking.

425

426 **The Board agreed Yes with a vote of 5 – 0**

427

428 Chairman Stafford **made** and Walter 2nd a **motion to deny the Special Exception as criteria 4 & 8 are not**
429 **met.** **All in favor with a vote of 5 – 0**

430

431

432 Dave notes that when an applicant makes a false statement about the ZBA's purpose it must be corrected
433 and on record. Chairman Stafford mentions that when the Board holds hearings, to make sure that the
434 process is explained and that there is communication. The applicant needs to address the Chair. Abutters
435 and other interested parties also need to address the Chair, not the applicant or the Board members
436 individually. This will keep the hearing under control.

437
438 Chairman Stafford **made** and Walter 2nd a **motion to adjourn**. All in favor, **motion carries with a vote of**
439 **5 – 0. Meeting adjourned at 10:00pm**

440

441

442

443 Respectfully Submitted,

444

445 Gail L. Turilli

446

447