Board of Adjustment

Canterbury, NH

Minutes of Hearing

24 November 2025

Case No. 2025-7 Variance

Present were: Chairman Jim Wieck, Web Stout, Scott Herrick, Sean O'Brien, Randi Johnson and Gary Spaulding. Christopher Evans was an excused absence.

Also present were: Applicant Michael Pelkey and his wife, Selectboard member Calvin Todd.

Chairman Jim Wieck advised those present **Michael Pelkey** is seeking a variance involved in a newly constructed ADU at his property. The application involves Tap Map 101; Lot 037 located at 17 Nottingham Road. The proposed use states "1,000 max size ADU. The Selectmen said I have to add mechanical room to ADU". The application references Articles 18, 18.3 1A. Chairman Wieck gave a detailed description as to the conduct of the hearing procedure.

Mr. Pelkey advised those present he built a brand-new house in Sherwood Forest and got the information about how to go forward from the ladies at the town office, 1,000 square feet, egress, smoke detectors, everything I needed to do. I built the house; towards the end of the house, I got a letter from the building inspector saying the mechanics room is part of the ADU. Chairman Wieck asked part of your construction is an ADU. Yes, it is. Mr. Pelkey went on to say his foundation is 1,200 square feet. He was told he could only have up to 1,000 square feet for an ADU. So, the boiler room; I provided pictures of the boiler room, framed it all off. I got everything built, the sheetrock and power are in, everything is in. I came to the end and got a letter at the end of October saying I have too much square footage. When I went to the town office, they didn't give me a piece of paper saying if my foundation was more than 1,000 square feet, I can't put in an ADU. Chairman Wieck asked for clarification for the record, The footprint of the building, your foundation, is 1,200 square feet and the ADU would be in the basement level which includes the utility room which you are talking about? Yes. Mr. Pelkey advised he looked at NH ADU laws. The utility space is not part of it. It is not habitable space that you are living in. The boiler room is not habitable. There are no windows, no egress windows, it's a boiler, everything that has to do with the house. There is no sheetrock on the walls. Chairman Wieck asked, so it serves both the ADU and the upstairs main house. It does. Mr. Pelkey advised the State of NH says if it serves both it's not part of the ADU. Chairman Wieck asked if there is any way of entering into that mechanical room without going through the ADU? No, there is not. That door is locked. If I needed to go in there at any time for plumbing or fire or emergency I could. It is not a place to store clothes; I have tools in there. He provided pictures. Chairman Wieck noted the foundation could be any size, The ADU can only be 1,000 square feet. Mr. Pelkey went on to say the state looks at it one way, the town is looking at it if you have another room, it's part of the ADU square footage by the outside foundation square footage. Mr. Pelky stated when I did the septic, the framing, the building inspector should have come out and spoken with me. The plans were all there. Coming down to the end of the project to be told, hey guy you need an entrance.... everything is finished. I didn't get a framing inspection, I didn't get an electrical inspection, I didn't get a plumbing inspection. Just take pictures through my whole three months of building. Now when it comes down to the end, he comes to my house and says you can't do this. This is the first ADU I've ever built. I told people in the office this is going to cause other people problems. If I had known I could have done it during the prep, but nobody ever came. Not when 90% done, my house was never inspected. I've got 150 pictures. I was told at the electrical, insulation, foundation, drainage, every inspection I called for was never inspected, it was take pictures. Three months of building a house, never once was it inspected. He came during the middle of framing and told me to put three brackets up. The interior framing wasn't even done. A brief discussion took place about changes that took place in July to the ordinance that affected the staircase and not needing a second means to access the ADU from the main building. This came to a head when he came to see the installation of the meter. He called an hour after coming. I'm not using it for living space. It's locked up. I've got too much money, time and boilers, water systems, generators, electrical things, there is no venting.

Gary spoke saying his issue is with the ordinance. The letter the applicant received from Ken Folsom, the Town Administrator, said it's not allowed because there is no access to the primary residence. The building code does not require primary access to the basement. You can build a house with no stairs to the basement, and you have to go outside to get into a boiler room. There is no requirement. To say now the boiler room is part of the ADU when it's a shared common space, that goes against the RSA. Chairman Wieck concurred that is what we need to determine here tonight. The applicant added all of this could have been resolved at the time of the framing inspection. He did not know then. Web noted that the boiler room is in the back corner. Mr. Pelkey said his property is on a hillside. He could have revised his plan and put a door out the side. If he had to revise it now, it would be at great expense. Chairman Wieck asked Mr. Pelkey to go through his application responses to the criteria for a variance. He asked if anyone wished to speak in favor or in opposition. No one spoke. He asked if the board had any further questions about the structure or the circumstances. Web said he does not have a problem with the livable area, it's the access is the issue here. Randi asked is this is the footprint of your foundation. Your ADU, the utility room, where is the floorplan. Sean asked is the rear of the house below grade. The front is below grade. A review of the pictures provided took place. Chairman Wieck asked if there were any more questions from board members, there were none. For the last time he asked if anyone wished to speak in favor or in opposition. No one spoke. The testimony portion was closed.

Chairman Wieck noted the issue is access to it. The NH Municipal Association legal counsel advised this board does have the latitude to decide whether it needs to be included or not in the calculation of the space of the ADU. He shares the concern about access and future access when the house is sold and someone who is no longer related is in there, what challenges that creates. Gary stated there is no building code requirement from the upstairs to the downstairs. Chairman Wieck confirmed there is no code that requires access from the primary unit into the accessory. Discussion ensued about the varying ways to access the primary, accessory unit, and boiler room according to our current codes. If you read the ordinance, it says the total gross living space is 1,000 square feet total. We don't define habitable living space in this town. If you look at the building code it says utility rooms, closets, hallways, are not considered living space. An example could be a 500 square foot, a 20x25 foundation, first floor, second floor, basement, ADU on the first floor, that's 1,000 square feet from the first floor and the second floor. The RSA says the town can't regulate anything under 750 square feet…t seems the me the ordinance needs to be correct and clarified so this doesn't happen again. The problem is between the ordinance and the RSA as he sees it. The building application clearly says two-family. This needs to be corrected. Chairman Wieck concurred that could be considered as part of the hardship. Randi spoke saying because it is not habitable space, it is different to your concern about access, but to your point where the ordinance says gross floor shall mean the sum of the several floors of the ADU measured from the exterior walls, she does think that needs to be changed. If you have a 1,200 square foot basement and put in a 500 square foot apartment….entrance……discussion ensued about the board's concerns for the ordinance wording and future concerns. Sean added he does not see the concern if you can access the utility room if there is an emergency, you can write it in any future rental lease that you have access in the case of an emergency or need to do work in the utility room, so why wouldn't you grant this variance. Discussion ensued about alternative ways to access the utility room that would be time-consuming and costly. It does not seem necessary to him to make the applicant go through that if there is access to the utility room through a door. You do not need tenant permission to go through if there is an emergency. More discussion ensued about what the issue before the board is tonight: access or livable space dimensions.

Chairman Wieck made a motion to approve the variance request saying it is reasonable to say in summary in dealing with that space, it should not be included in the space that is considered part of the ADU. One of the conditions that will be placed on the decision is the utility room space would not be used by the occupant of the ADU. Scott seconded the motion. The Board vote was a unanimous decision to **GRANT** the variance. Chairman Wieck explained the thirty-day appeal process.

The board voted to approve the 23 July 2025 Minutes of Meeting and 22 October Minutes of Hearing as written.

After the hearing was officially closed the board remained to discuss hearing procedures and completeness of applications so decisions are not left vulnerable. Follow-up will be done to ensure applications are complete and criteria is thoroughly addressed and applicants are advised about the conduct of hearings and their responsibilities by the Land Use Administrator. Discussion again about getting the town ordinance and RSA's in compliance and compatibility.

Respectfully submitted,

Lisa Carlson, Clerk

Board of Adjustment