

TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
December 7, 2021

Present: Members Walter Batchelder, Marc Tieger, Erlene Brayall, Carl Jevne (alt), Judy Lucero (alt), David Jeffries (alt) arrived at 6:14 pm, *alternates Jevne and Lucero will vote*

Absent: Chairman Lee Sawyer, Phil Cournoyer

Others: Nancy Clapp, Jay & Vanessa Sprague, Patty Scholl, Emily Carr, Ken & Suze Campbell, Janet Grant, Kit Schiele, Lisa Bostnar, Steve Jackson, Elizabeth Webster, Michael Osgood, Tanja Short, Attorney Jason Reimers, Attorney Phil Runyon, Attorney Joseph Hoppock

Staff: Code Enforcement/Building Inspector Rob Deschenes, Recording Secretary Newton

MEETING MINUTES APPROVAL

On a **motion** by Batchelder seconded by Lucero the minutes of November 2, 2021 were approved as amended (5-0-0)

PUBLIC HEARING

Vice Chairman Tieger called the public hearing to order at 6:00 pm. Notice of hearing for case No. ZBA 21-27, as advertised in the *Monadnock Ledger* copies were posted in the Town Office building, the Library and the town website; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicant.

The Board determined that the application had no regional impact and proceeded to the hearing.

PUBLIC HEARING NEW ITEMS

1. ZBA 21-27 Woodbine Property Holdings, LLC, Owner
169 Thorndike Pond Rd., Map 229 Lot 23.1 Zone: Rural, without town water

Variance – The applicant requests a variance to allow a wedding / event venue in the rural district (Land Use Code, Zoning Ordinance Section IV, 4.1)

Presentation: Vanessa & Jay Sprague

Mr. and Mrs. Sprague are before the Board seeking permission to use their historic barn for small private events. Mrs. Sprague noted that the verbiage used in the hearing notice was vague and may have given the neighbors the idea that the scope of the proposal was larger and more involved than what they are requesting. She emphasized the limited scope of the proposal which includes strict constraints as to the nature, size and frequency of events to limit the impact to the neighborhood.

Mr. Sprague distributed information to accompany his proposal (**attachment A**). The following is his presentation:

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Overview of Proposal

- We live at 169 Thorndike Pond Road, a property known to many as Woodbine Farm. On the property is a 4,000 square foot barn, built in 1929, which today sits largely idle. We are requesting a variance to utilize Woodbine's barn as a space for small private events.
- This might include a show for local artists. A luncheon for a town club. A Willa Cather appreciation event. Or small, intimate celebrations - a wedding, an anniversary or another special occasion.
- We'd look to utilize the barn as a community resource. A place to celebrate Jaffrey's unique character surrounded by nature and history. A space to appreciate the past while cultivating continued vibrancy of life here in Jaffrey.
- Income from these events would help to support preservation of Woodbine's barn for future generations. And events would provide numerous economic and cultural benefits to the town.

Jaffrey's zoning procedure requires that we meet 5 specific criteria for our request to be approved.

1. The first criteria is that our proposed variance not be contrary to public interest.
 - o To this end, our proposal includes strict restraints that protect the neighborhood from any material impact.
 - o Specifically, we've limited ourselves in the following way:
 - All events would stay small – never with more than 65 guests, regardless of event type.
 - Events would be held entirely out of sight from the street. This includes parking.
 - For any evening events, music would be off by 10 PM and events would be over by 11 PM. Simple. We are committed to that and committed to abiding by Jaffrey's residential noise ordinance which was created specifically to protect the public right to quiet.
 - We are proposing to hold events on no more than 12 weekends per year. That's one weekend per month. And while events would skew towards the warmer seasons, the overall frequency of events would be low. 40 weekends of the year - entirely off limits.
 - o Additionally
 - We would expressly prohibit use of fireworks, firearms or any other illicit activities.
 - And we are requesting that this variance be non-transferable with ownership to the extent that is possible.
 - o Many of these limits, which we would be 100% committed to enforcing thoroughly and contractually with guests, are the direct result of conversations we've held with neighbors

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during this process. We have welcome the street's feedback on this. And we held an 'open-barn' this past weekend, inviting everyone in our direct community to come see the space and chat in person.

- The opinions of our neighbors matter deeply to us. Their perspectives are therefore baked into our proposal. Altogether, the restrictions we've outlined offer clear and strong protections for these neighbors and the general public against any material impact.
- And to the contrary, small events at Woodbine's barn would actually have meaningful benefits to the public. Synergies with local businesses. Increased spending from visitors. Improved visibility for the town, particularly among younger generations. The preservation of one of Jaffrey's proud old barns as a new resource for public use.
 - The New Hampshire Statute 79:D, which relates to barn preservation, reads:

"It is hereby declared to be in the public interest to encourage the preservation of historic agricultural structures which are potentially subject to decay or demolition, thus maintaining the historic rural character of the state's landscape... and providing an attractive scenic environment for work and recreation of the state's citizens and visitors."

2. The second criteria is that the requested variance fall within the *spirit* of Jaffrey's existing ordinance

- As it pertains to the rural zone - Jaffrey's ordinance focuses on preservation of rural character and natural beauty. The small gatherings proposed here would not compromise either of those important values.
- And indeed the ordinance *does* allow for numerous creative and commercial uses of rural zone properties. Permissible uses include: churches, B&Bs, museums, nursery schools, public recreation facilities and more.
- The proposed use here is not specifically prohibited by the ordinance and is comparable to the other permitted commercial uses, therefore falling within the spirit of the ordinance.

3. Third, the board must feel that justice is being upheld in the granting of a variance

- Woodbine's barn has a proud history and it deserves a bright future too. Without renewed utility, the barn's vitality will fade and it will become merely a relic. This is a barn that sits within throwing distance from where Willa Cather sat in a tent and wrote My Antonia. It is a powerful example of our town's past and it deserves a place in our town's future.
- Small events proposed would: (i) bring a joyful, creative new identity to the building; (ii) provide a community resource for Jaffrey and the region and (iii) help to justify and offset the significant ongoing costs associated with thoughtful preservation.

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4. Fourth, we must ensure that neighboring properties values would not be diminished
- Woodbine is lucky to be well insulated. 3 of 4 abutters include a golf course, a state forest and our own 15-acre conservation parcel. The barn is surrounded by large, open or wooded space in all 4 directions.
 - Our only abutting residence, a property owned by the Oliver and Mandy Courtney, is up the hill and out of sight from the barn. They, like others on the street, are protected by the strict limits we've included. But given their proximity, we are particularly focused on ensuring that they not be impacted.
 - We held two test events this summer, one on June 26th and another on October 2nd. Olly and Mandy live in the UK, but their current tenant, Catherine – a lifelong Jaffrey native – has assured us numerous times that she never heard a thing from either event.
 - The only instance of noise disturbance happened on August 28th, at our own wedding, which we also held in the barn. Unlike with the two test events, which were controlled in volume and *completely over* by 10:30 PM, we used much bigger speakers, one of which was positioned outside the barn, and went until 1 AM. The relaxed standards that we allowed ourselves on this once-in-a-lifetime occasion resulted in noise that could be heard up the hill by Mandy's brother, an additional current tenant.
 - We understand that this would not be an acceptable standard going forward and therefore are committed to the noise constraints in our proposal, including the 10 PM music cutoff and 11 PM conclusion of all events.
 - Furthermore, we would ensure that speakers are inside the barn only and at a low enough volume to avoid disturbance during the permitted hours.
 - Together with the other strict constraints included in our proposal, there is no reasonable expectation of any adverse impact to theirs or other surrounding properties.
5. Lastly, we must explain why, given the unique nature of our property, the proposed use is a reasonable one and why an unnecessary hardship would result if the proposal is denied.
- Woodbine Farm is home to a barn that is unique to the area in 2 key ways:
 - One – it has been deemed historically important by local officials through its participation in the Discretionary Preservation Easement program
 - We have not seen evidence of any other barn on the street having qualified for this historic designation
 - Second – our barn is disproportionately large given the parcel it sits on. At ~4,000 sq. ft., the barn is associated with less than 4 acres rather than the 40+ acres which it supported upon construction in 1929.
 - There is only one other large scale, rural barn on the street. It sits at the corner of Gilson on a 60-acre parcel.

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- In addition to noise, visibility and frequency – which we have already discussed – another potential concern is drinking
 - o We are entirely aligned on ensuring only responsible, safe consumption of alcohol
 - o We would require all events to have licensed bartenders who are trained not to overserve
 - o Alcohol service would be required to end 1 hour *before* music and 2 hours before the event concludes
- Traffic is a point of contention as well.
 - o We have proposed a 25 car limit for each event. A handful of service vehicles related to a given event may bring the total number closer to 30.
 - One important side point to make here - should our request be approved, we would be investing in amenities like chairs, tables, toilets, etc. so that rentals would not be required.
 - The only potential service vehicles related to any one event would include catering, florals and perhaps other small ticket items.
 - o Using the numbers we've proposed, along with some conservative assumptions, we've run an analysis that you'll see on page 3 of the supplement. It suggests only a *very minor impact* on the street's traffic – approximately 1 additional car for every 200 that already drive the street.

Existing Traffic		Traffic from Proposed Events	
Houses on Thorndike Pond Rd., Gilson & McCoy		# of events	18
Approx. # of Houses	100	Max permitted cars per event	25
Trips per house per day	2	Potential service cars (i.e. caterers) per event	5
Days per year	365	Additional cars per year	540
Trips per year	73,000		
Service Providers (utilities, contractors, trees, etc.)		% Increase in Annual Traffic	0.5%
Trips per day	40		
Days per year	365		
Trips per year	14,600		
Cut-through Traffic			
Trips per day	40		
Days per year	365		
Trips per year	14,600		
Warm Season Visitors			
Thorndike Club, Summer & Fall Guests, etc.	30		
Warm days per year	150		
Trips per year	4,500		
Total existing trips per year	106,700		

* This analysis includes estimates

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Jaffrey Master Plan (2018)

Lastly, we think it is important to reference Jaffrey's Master Plan from 2018 as we consider the matter at hand. This document was crafted through collaboration between the town's citizens and government to create a framework for Jaffrey's future. As the plan itself says,

- "The Master Plan's relevance will ultimately be determined by its use in the official decision-making process... This document should be used by all residents, elected officials, Planning, Zoning, and other Town boards... to evaluate development application[s]..."

I'll now read some excerpts from the plan which can be found on page 5 of the supplement and pertain to this evening's discussion:

- "We strive to provide a high quality of life for all residents while welcoming visitors to our unique Monadnock area setting... Jaffrey has a strong sense of place; cultivates a vibrant economic climate that achieves sustainable growth and ensures public access to the many natural, historical and cultural resources while preserving these assets for generations to come."
- "Along with the beauty in the natural environment, Jaffrey residents take pride in the historical buildings and districts in Town... considered by many to be important features of Jaffrey's character."

The plan's economic development goals include:

- "Understand Jaffrey's unique place in the regional economy, identify the opportunities and attract those businesses that fit with Jaffrey's Vision."
- "Enhance Jaffrey as a tourist destination, e.g. explore synergies between community special events, retail, etc."
 - We'd certainly look to work with local vendors for events. Sunflowers, The Monadnock Inn, Daffodil's, Dublin Road Taproom, The Benjamin Prescott Inn – ALL examples of the types of local businesses that would stand to benefit from events at Woodbine.

The Master Plan speaks to how:

- "There is a balancing act required to protect our natural resources and open space and yet accommodate the inevitable growth of the town."
- It is key to "promote economic development in the context of protecting our natural resources and maintaining our rural character."

This is an important theme – an idea of 1) a welcoming attitude towards responsible growth and evolution of our town, paired with 2) preservation - of the environment, of history, and of the 'small town way of life' we hold dear.

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This kind of nuanced development won't simply happen on its own. As the plan reads:

- "Looking ahead, Jaffrey faces a few developmental challenges... Population projections indicate 0% to negative growth for Jaffrey in the next decade and beyond. Jaffrey's population is skewed toward an older sector. The State of New Hampshire, as a whole, has the third highest median age in the country at 42.8 years old. The median age in Jaffrey is 45.9. And over 24% of the current population is over the age of 62. Furthermore, there is a large gap in the 25-40-year-old population sector, who may become the future leaders of the community. While [the] older population group contributes significantly and is vital to any healthy community, this imbalance in the younger adult population is unsustainable."

Tonight, Vanessa and I stand here before you, squarely within that age bracket which the Master Plan alludes to needing. We hope to devote our energy, creativity and passion to this town. And we absolutely would aspire to be future leaders of this community.

Not by moving forward with reckless change. Not by eschewing the history and tradition here, but by embracing it and preserving it. While at the same time welcoming creative approaches to growth and development. We feel that those two things, 1) due respect for tradition and 2) openness to thoughtful change, can coexist in harmony.

A final theme to touch on is an idea of "Social Capital". The Plan reads,

- "Social Capital is about the value of social networks, the bonding of people and bridging diversity. This resource is dependent on social relationships which facilitate collective action and include trust and reciprocity. Social capital encourages bargaining, compromise, and pluralistic politics, which sustain a healthy, cohesive community."

We have worked hard to outline what we feel is a proposal ripe with compromise. We have heard our neighbors. We are grateful for them. And we have therefore integrated their perspectives and concerns into a proposal that reaches a beneficial outcome for all.

Lastly, we'd like to state that we remain open to additional constraints as it relates to any of the topics discussed tonight or to other adjustments to our proposal that may bring comfort to the board.

We thank everyone for listening to our proposal. And we sincerely appreciate the board's consideration.

W. Batchelder asked several questions:

- Is the barn heated? Mr. Sprague responded no, so the events would be held approximately May to October.
- The request is for 12 weekends, would there be three events each weekend? Mr. Sprague responded that most likely there would only be one event per weekend.
- How would you limit the number of cars and people? Mr. Sprague responded they would require the bride and groom to provide a guest list and would monitor and enforce those restrictions. The limit is 25 cars and 65 guests.
- What is the plan for restrooms? Mr. Sprague responded on-site porta potties would be provided. Those units would be rented for the duration of the event season limiting the need to drop-off and pick-up for each event. They would be placed directly behind the barn, completely out of site of the road. Eventually a permanent bathroom could be installed in the barn.

C Jevne asked how would you limit attendance at an art show? Mr. Sprague responded an event of that nature would require tickets. Private events would require a guest list. They would be prepared to turn people away if the limits were exceeded. C Jevne asked what will prevent people from parking on the road? Mrs. Sprague clarified that all events would require a contract and all restrictions would be clearly stated. In addition, Mr. & Mrs. Sprague

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would be on-site for every event and would be prepared to enforce all restrictions. The music would be off by 10:00 pm and all guests would be required to leave the site by 11:00 pm.

D Jeffries asked how did you come up with the limit of 65 guests? Mr. Sprague responded that they felt the barn could comfortably accommodate that number and still keep events low-key and intimate. They had 45 and 55 guests at the trial events held this summer. 65 guests is also a reasonable number in order to maintain the 25-car limit.

J Lucero asked is the site in compliance with fire safety restrictions? Mr. Sprague responded yes. If the variance is granted the proposal would go to the Planning Board for site plan approval and be reviewed by the fire chief.

Abutters Opposed:

Attorney Joseph Hoppock, representing Mandy & Oliver Courtney, abutter. **(attachment B)**
Attorney Hoppock asked that the Board pay attention to what the Zoning Ordinance states. There is a limitation on commercial activity that creates traffic and volume. He noted that the criteria for public interest and spirit of the ordinance do not apply to barn preservation, it is intended for the responsible development and use of the land. He noted that there are no commercial properties between Rt 124 and Gilson Rd. This area is strictly residential. The question is, does the proposed use alter the essential character of the neighborhood? He believes it does.

He does not feel that substantial justice would be done by granting the variance. A more reasonable use of the property would be to rent out the former apartment space in the barn. He believes that the added traffic and noise would be detrimental to the neighborhood and reduce the value of surrounding properties.

In addition, there is a lack of unique conditions for this property as there are other barns located on the road. A financial hardship is not a zoning hardship.

Archie McIntire, Jaffrey property owner.

Mr. McIntire is in favor of the proposal. He has known Mr. Sprague for his entire life and believes Jay and Vanessa to be thoughtful, respectful people who are an asset to the community. They have put a great deal of thought into their proposal and have addressed all concerns that have been presented to them by their neighbors.

Attorney Jason Reimers, representing Janet Grant, resident. **(attachment C)**

Attorney Reimers does not believe the Grand View variance sets a precedent as each application should stand on its own. The Grand View is in a different neighborhood on a different road. When considering the criteria for public interest and spirit of the ordinance you must ask; would the variance be injurious to the public rights of others, would it alter the character of the neighborhood and would it threaten public safety? He believes it would. It would increase traffic and noise during the busiest season of the year. He noted that during a wedding, all cars would arrive at the same time.

Substantial justice would be done by denying the variance. This business is prohibited in this location and could potentially diminish property values. The burden is on the applicant to support the statement that properties will not be devalued.

In order to prove unnecessary hardship a special condition must exist. There are other barns in the neighborhood therefore it does not meet the criteria. Applying zoning ordinance 4.1 to this property does not cause an unnecessary hardship to the applicant. They are intended to protect the neighborhood. In addition, the use variance will run with the land forever and could permanently change the character of the neighborhood.

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Sam Greene, resident is against the proposal. He does not feel that the criteria have been met. His property is located on Gilmore Pond Rd and he hears lots of noise from his neighbors. He does not feel that the Grand View is a precedent. He asked about the parking behind the house, is it a grassy area? What if it rains? Is there a site plan? He too is concerned about increased traffic. This is a quiet country road that could be forever changed.

Attorney Phil Runyon, representing Len and Tanja Short, neighbor.

Mr. and Mrs. Short live roughly 500 feet through the woods from the barn. Although they are not technically abutters, they would be affected. He agrees with the arguments presented from the other attorneys. He noted that zoning is intended to create different uses in different districts. In other communities, such as Nashua, neighborhoods have been destroyed by allowing commercial uses in residential neighborhoods. This is beyond the per view of the ZBA to decide. If uses are going to change it should be decided by a vote of the town. He reiterated that the variance would run with the property if sold. Weddings can be wild, noisy affairs. Mrs. Short stated that she heard the test events.

Mrs. Short lives at 90 Dublin Rd. Her driveway runs parallel with Thorndike Pond Rd. Her house and the corner of her bedroom is 500 feet away from the barn. She has heard amplified music at her house. Her property is zoned for livestock. They have fenced their property with the intention of getting horses and are concerned with how the noise from these events might affect them. Her husband was home during one of the test events and stated that the music went on until 11:00 pm. Attorney Runyon asked, who would deal with enforcement if there were issues with loud music, number of guests, parking etc.?

Kit Schiele, Thorndike Pond Rd resident. Is not in favor of the proposal. She walks the road, it is rural and quiet. She can hear weddings at the Shattuck and Bible Conference.

Emily Carr, Thorndike Pond Rd resident. Is concerned with noise and traffic. They recently had the speed limit reduced on the road due to vehicles driving too fast.

Patty Scholl, Thorndike Pond Rd resident. Previously lived at Woodbine Farm and noted there is a shared driveway.

Michaele Osgood, resident. Is concerned with the number of events that would be held over the twelve weekends.

J Sprague added that they really value their neighbors. They have tried to incorporate their concerns into the proposal to mitigate those factors. He does feel that the Grand View approval is a relevant precedent.

M Tieger and E Brayall – read the following letters into the record.

1. Andrew Maneval (2)
2. Bradford Lingham
3. Lillian Lauer
4. Archie & Nina McIntyre
5. Wendy Webster
6. Elizabeth Smith
7. Gunilla Johanson
8. Peter Russell
9. Affidavit of Brandon S. Seiler

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The captioned application to the Jaffrey Board of Adjustment has been called to my attention by my friends, Brad and Tina Lingham, who represent their daughter regarding her ownership of property which is near and/or adjacent to the Sprague property.

As a former member of Harrisville's Select and Planning Boards, and as the newly-elected Representative for Jaffrey in the NH State House of Representatives, I would like to make a few points in regard to this application. Attracting businesses to the Monadnock Region is very important for our communities. Stimulating engagement with our existing businesses is equally important. Encouraging younger people and families to discover our towns is a necessary part of ensuring dynamic and diverse populations in our towns into the future. There are several "event venues" in Harrisville, and they have made valuable contributions to our town and to the local economy. In general, they enhance the quality of life in our community.

This would seem to apply equally to the present application. Some years ago, my own daughter was married at an event space in Jaffrey (the Grand View); it was a wonderful event and attracted business and interest to the town. Naturally, I would hope that such experiences could also be available to many others in Jaffrey in the future. Thank you for considering my favorable view regarding the likely benefits of this use of the Sprague property.

Very truly yours, Andrew Maneval, NH State House of Representatives

Dear Ms. Newton,

With respect, could I ask you to forward this e-mail to the members of the Jaffrey Board of Adjustment? Thank you very much for your assistance.

I wrote the e-mail from yesterday (see below) in response to two specific questions: should we encourage support for local businesses, and are event venues generally a contribution to local economies. I indicated "yes" to both of those questions, in the latter instance based largely on experience we have had in Harrisville.

Since yesterday, I have been provided with certain documents submitted to the ZBA in opposition to the application before the Board this evening. I have only just seen (or become aware of) these documents since my initial e-mail. Needless to say, I did not intend specifically to recommend approval of the pending application by my e-mail, but only to comment on the above two questions under consideration. The question of whether a variance is appropriate, of course, also involves many other issues which fall within the purview of the ZBA, and involve both questions of law and fact. It has never been my intent, nor would it be appropriate for me, to opine on these more complicated questions.

As a newly-elected Representative, I felt this second e-mail might be useful to clarify the nature of my original input. I apologize for any confusion that a set of two e-mails regarding your agenda for this evening might cause.

While I am a resident of Harrisville, my daughter and her family own a home across from Shattuck Golf Course on Dublin Road backing up to the Sprague property. It is through this connection that I am aware of, and supportive of, the proposal for a use variance for the Sprague barn.

I am in complete favor of encouraging entrepreneurs to bring new opportunities to local areas. A seasonal venue like this will bring vitality and commerce to Jaffrey in the form of visitors who are staying overnight, buying meals at local taverns and supplies from local businesses. The Sprague barn would help contribute to a vibrant local economy.

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For two years the spectacularly successful Aldworth Manor in Harrisville was denied permits to open as a wedding and music venue because of concerns about traffic, influx of outsiders, and, well, NIMBYism. Now the ripple effect of the Aldworth events is stunning and Harrisville is richer as a community and destination. This is the trajectory of a vibrant business which enriches an entire community. Please consider granting a variance to Vanessa and Jay Sprague.

Thank you, Bradford Lingham Harrisville

We are writing to endorse the proposal put forth by Jay and Vanessa Sprague of Woodbine Farm (169 Thorndike Pond Road) to the Town of Jaffrey to utilize their historic barn for small private events. As one of their neighbors (our property abuts theirs), we fully support their proposal because of the endless benefits for the community and town should this variance be passed. We do not have any concerns nor foresee any adverse impact.

First and foremost, we've gotten to know Jay and Vanessa and they are both respectful individuals and have high integrity. They have been so mindful and conscientious of the impact of this zoning request, and have made adjustments to their plan to accommodate the needs of neighbors. It is clear they are committed to the well-being of this community and invested in its future.

An event space like theirs would easily generate economic opportunities for local businesses when visitors are drawn to the many rental properties and accommodations in the area, and to establishments like the Dublin Road Tap Room, Shattuck Golf Club, or the Park Theatre during their stay. The wedding clients are likely to hire local vendors for flowers and catering, for example. Their barn would also create a gathering space for residents, such as us, to attend events like art shows or social gatherings. These types of events would add so much value to the community!

The Woodbine Farm barn and property is rich with history that is inherent in the charm of the Jaffrey village. We want to support the Sprague's ability to generate income that allows them to maintain a historic property like theirs. Furthermore, the beauty and preservation of their barn would favorably impact the surrounding property values by increasing them in the long-term.

We strongly believe that the town and its residents will benefit from a small private event space at Woodbine Farm, and it will undoubtedly help Jaffrey thrive as an economic and cultural center of the Monadnock region for future generations.

Sincerely, Lillian and Christopher Lauer 50 Dublin Road in Jaffrey

We are writing in support of the issuance of a variance for the property at 169 Thorndike Pond Road to allow periodic events on the property as proposed by the owners, Jay and Vanessa Sprague.

We own conservation land in Jaffrey that directly abuts Thorndike Pond Road. We believe the proposal, as outlined by Jay and Vanessa, would have minimal impact on the neighborhood and bring new people to our community that would enhance Jaffrey's desirability and provide economic benefit to many of our local businesses.

We have known Jay for his entire life and can attest to his character as a responsible young man with strong compassion and concern for others and a desire to do what's right.

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Jay and Vanessa have moved to our community to raise their family. What is more important to the long term health of our community than to encourage young people to settle here for the economic vitality of the region.

We hope you will consider their proposal favorably. Thank you for your consideration.

Sincerely, Archie and Nina McIntyre, Dublin, NH. 03444

Thank you for the opportunity to comment on the variance proposal submitted by Jay and Vanessa Sprague for Woodbine Farm at 169 Thorndike Pond Road.

We reside beyond the Sprague property on Thorndike Pond Road, and have two comments regarding their proposal:

- 1) Like all neighbors, we are concerned about additional traffic on Thorndike Pond Rd. We think the Spragues have done a good job in their attempt to address that issue, with regard to event frequency and numbers of guests. We would also like consideration given to the traffic any trades people will contribute (caterers, tent-erecting contractors, port-a-potty and septic services, etc.). While we do not find the overall numbers proposed to be particularly onerous, the additive effect of yet more traffic on our once-quiet rural road is troubling. The increased amount and speed of traffic in recent years has been unpleasant, frustrating, and sometimes dangerous.
- 2) We would like to see language in the variance that acknowledges the potential for, and curtails, noise and nuisance from events at Woodbine Farm, beyond music and traffic. Specifically we are worried about fireworks, explosives, firearms, etc.

Respectfully submitted, Wendy Webster & Stuart Davidson

As I am unable to attend the hearing in person, I am writing to express my opposition to the proposed Zoning Variance.

While Jay and Vanessa Sprague are wonderful people and I am delighted that they are preserving and protecting the beautiful historic barn on the Woodbine Farm, I am in opposition to the proposed variance.

My first concern is increased traffic on Thorndike Pond Road and the surrounding roads. While the events are proposed to be limited to 65 people at a time, events such as weddings also bring traffic from vendors such as tent, table and chair rentals, linen service, florists, caterers and others. Increased traffic on the road has a negative impact on my home and all others in the neighborhood. In addition to vendors, there will be cars to and from the event. Not only will this increased traffic take additional toll in terms of wear and tear on a narrow and closely populated road, the return traffic later at night would be a disturbance to those of us who live close to the road, which is most of the residents of the village. 25 cars is a lot of traffic at any time, but at 11 or 12 PM is even more disruptive.

My second opposition relates to noise. The amendment to the variance proposes to end music at 10PM, and while the variance suggests that the property is insulated from the neighbors, that is not actually the case. My personal experience is that the relatively open space here with the Mountain in the background greatly amplifies any noise in the area. That has become significantly worse since major cutting was done at the Shattuck last year. From my back yard I can now hear actual conversations of golfers on the golf course, and when the Shattuck was doing

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weddings, even before the cutting I could hear the music and DJs very clearly. I was very happy to hear they are not hosting events at present.

The proposal limits the number of events to 12, however it is highly likely that those events would take place between June and September, essentially every weekend in the summer. I am concerned that the quiet enjoyment of the neighborhood when we have our windows open and are enjoying our outside spaces, usually prior to 11PM, would be significantly disrupted.

I do not think that a commercial event venue is appropriate for our quiet rural residential neighborhood. Its impact would be felt by the residents and potentially negatively impact property values.

I respectfully request that the variance be denied.

Thank You, Elizabeth Smith

My name is Gunilla Johanson and reside at 28 Thorndike Pond Road, in Jaffrey. I am writing to protest the proposed zoning change for the property located at 169 Thorndike Pond Road. I understand the owners of the property have applied for a variance to the zoning regulations for the purpose of operating a catering and event business, i.e., wedding receptions and etc. Thorndike Pond Road is a residential area with many historic homes and is part of the Historic District, the town should not allow this area to become commercial for any type of business, especially a catering and an event facility.

Sincerely, Gunilla Johanson

I cannot be there in person to share my thoughts on the Sprague's proposal. Here's my reaction:

1. For the most part I am a laissez-faire, live free or die kind of person when it comes to property rights, but we do have zoning and am convinced zoning needs to be strictly enforced if it is going to work for the long run.
2. Your barn is a great venue. My problem is with the parking. You cannot control the weather and when there is a lot of rain you simply cannot park cars in a field let alone trucks. I have a lot of experience with this as we have had many family weddings and parties at our house and parked cars in the field in front. The field gets rutted up and more than once we've had to pull cars out of the mud with our tractor. For my daughter's wedding we parked cars at the common and bused people to the house. Last summer there were several times I drove by your house when there were tent company and catering trucks parked on the side of Thorndike Pond Rd. Not sure if they would fit in your driveway.
3. Finally, I just don't see how a case can be made for "hardship" Yes, it would be a convenient way for you to generate some income off your property, but there are plenty of ways to make a living. I urge you to explore other avenues.

Thank you, Peter Russell 4 Gilson Rd

**TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
December 7, 2021**

**JAFFREY ZONING BOARD OF ADJUSTMENT
VARIANCE APPLICATION OF VANESSA AND JAY SPRAGUE
CASE NUMBER: ZBA 21-27**

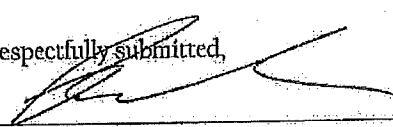
AFFIDAVIT OF BRANDON S. SEILER

I, Brandon S. Seiler, being duly sworn by the undersigned, do hereby state and depose, as follows:

1. I am over 18 years of age and have personal knowledge of the facts herein stated.
 2. I am Mandy Courtney's brother and I reside at her home located at 171 Thorndike Pond Road in Jaffrey and I have lived there since September 2020. I work as a Manager at the Longhorn Restaurant in Keene, and I usually return home from work late at night.
 3. Last summer (2021), during the first of the Sprague's "test events," I arrived home about midnight. I had to drive by the Sprague residence to get home and as I did, I could hear the loud music and the noise of congregating people as I drove by.
 4. When I got home, I went to bed around 1:00 AM. I had to close my open windows due to the loud music and the noise of the guests who sounded like they were still enjoying themselves. Even after the window was closed, I could still hear the noise from the Sprague property. It was only when I turned on my air conditioner that I was able to drown out the noise coming from the Sprague's house. The noise was still active and loud at 1:00 AM on that summer evening.
 5. I don't recall hearing the second "test event," as I was not home at the time.
- Further the Affiant sayeth not.

Respectfully submitted,

December 7, 2021

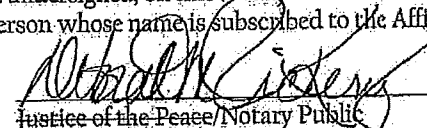


Brandon S. Seiler

**STATE OF NEW HAMPSHIRE
COUNTY OF CHESHIRE**

Signed and sworn to, before me, the undersigned, on this 7th day of December 2021, by Brandon S. Seiler, known to me to be the person whose name is subscribed to the Affidavit.

Deborah M. Pickering, Notary Public
State of New Hampshire
My Commission Expires August 5, 2025



Justice of the Peace/Notary Public

TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
December 7, 2021

J Sprague pointed out the event described in Mr. Seiler's affidavit was Mr. and Mrs. Sprague's own wedding and not one of the "test events" which had stronger restrictions.

**The hearing was continued to the site visit
on Thursday, December 9 at 10:15 am at the Woodbine Farm.**

M Tieger asked the Building Inspector to clarify the definition of a home-based business. R Deschenes explained that the events proposed would exceed the interior and exterior limits of a home-based business.

ADJOURNMENT

The meeting adjourned at 8:00 pm

Submitted:



Rebecca Newton
Recording Secretary

Attest:



Marc Tieger
Vice Chairman, Jaffrey ZBA

Woodbine Farm - Zoning Meeting Supplement

December 7, 2021

Barn Preservation Grants & Programs

- The NH Division of Historical Resources points to 5 programs. Woodbine Farm qualifies for 2 of the programs:
 - ✓ Discretion Preservation Easements for Tax Relief
 - Woodbine's Barn is already enrolled in this program. It provides a 25% cut in the barn's assessed value and saves us ~**\$293 per year**
 - ✓ Barn Assessment Grants
 - A one-time grant used towards a professional assessment of the barn's preservation needs worth **\$250 - \$400**
- Woodbine would **not qualify** for the 3 remaining programs
 - ✗ Land & Community Heritage Investment Program
 - Only for municipalities and non-profits
 - ✗ Conservation License Plate Programs
 - Only for publicly-owned properties
 - ✗ Federal Historic Preservation Tax Incentives Program
 - Income tax credit for historic income producing buildings

Mitigating Identified Concerns

Noise

- Any evening events would be subject to two key time limits, in strict compliance with Jaffrey's residential noise ordinance.
- All music would have to be off by 10 PM at latest.
- All events would have to be concluded by 11 PM at latest.
- Furthermore, we would ensure that speakers are inside the barn only and at a low enough volume to avoid disturbance during the permitted hours.

Visibility

- We are committed to hosting events out-of-sight from the street.
- All equipment, gathering areas and parking would be inside or behind the barn.

Frequency

- In order to provide added comfort to neighbors, we are proposing to limit events to no more than 12 weekends per year.
- On a per day basis, that is less than 1 day max for every two weeks in the year.

Drinking

- Given potential liability and our respect for safety protocol, we are entirely aligned on ensuring responsible, safe consumption of alcohol.
- We would require all events to have licensed bartenders who have been trained to not overserve.
- Alcohol service would be cut off 1 hour before music and 2 hours before the event concludes.
- It is also worth noting that the intimate types of events that we are proposing tend not to be boisterous.

Fireworks or firearms

- Based on a conversation with a neighbor, we have happily added the following language to our proposal - "Events would strictly prohibit use of fireworks, firearms and any illicit activities."

Traffic


- As demonstrated by the below analysis, our proposal would result in a very minor impact on traffic – approximately 1 additional car for every 200 that already drive the street

Existing Traffic		Traffic from Proposed Events	
<u>Houses on Thorndike Pond Rd., Gilson & McCoy</u>		# of events	18
Approx. # of Houses	100	Max permitted cars per event	25
Trips per house per day	2	Potential service cars (i.e. caterers) per event	5
Days per year	365	Additional cars per year	540
Trips per year	73,000		
<u>Service Providers (utilities, contractors, trees, etc.)</u>		% Increase in Annual Traffic	
Trips per day	40	0.5%	
Days per year	365		
Trips per year	14,600		
<u>Cut-through Traffic</u>			
Trips per day	40		
Days per year	365		
Trips per year	14,600		
<u>Warm Season Visitors</u>			
Thorndike Club, Summer & Fall Guests, etc.	30		
Warm days per year	150		
Trips per year	4,500		
Total existing trips per year			
		106,700	

* This analysis includes estimates

- Further, the zoning ordinance is not intended to prevent minor increases in traffic
 - Other permitted uses in the rural zone would have similar or greater impact on traffic: B&B's, nursery schools, churches, public recreation facilities, etc.

Grand View Precedent

	Grand View	Woodbine Farm
Zone	Rural / Mountain	Rural
Proposed Use	Inn, Spa, Wedding & Large Event Space, Restaurant	Small Event Space
Frequency	As often as they please	12 weekends per year
Max Guest Count	300	65
Noise Limits	10 PM outside music 12 PM inside music 1 AM cutoff	10 PM music 11 PM cutoff
Variance	Approved 	-

Quotes from Jaffrey's Master Plan (2018)

- “The Master Plan’s relevance will ultimately be determined by its use in the official decision-making process... This document should be used by all residents, elected officials, Planning, Zoning, and other Town boards... to evaluate development application[s]...”
- “We strive to provide a high quality of life for all residents while welcoming visitors to our unique Monadnock area setting.”
- “Jaffrey has a strong sense of place; cultivates a vibrant economic climate that achieves sustainable growth and ensures public access to the many natural, historical and cultural resources while preserving these assets for generations to come.”
- “Along with the beauty in the natural environment, Jaffrey residents take pride in the historical buildings and districts in Town... considered by many to be important features of Jaffrey’s character.”
- “Understand Jaffrey’s unique place in the regional economy, identify the opportunities and attract those businesses that fit with Jaffrey’s Vision.”
- “Enhance Jaffrey as a tourist destination, e.g. explore synergies between community special events, retail, etc.”
- “Promote economic development in the context of protecting our natural resources and maintaining our rural character.”
- “There is a balancing act required to protect our natural resources and open space and yet accommodate the inevitable growth of the town.”
- “There is a large gap in the 25-40-year-old population sector, who may become the future leaders of the community. While [the] older population group contributes significantly and is vital to any healthy community, this imbalance in the younger adult population is unsustainable.”
- “Social capital encourages bargaining, compromise, and pluralistic politics, which sustain a healthy, cohesive community.”

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Joseph S. Hoppock, Esquire

e-mail: jhoppock@hoppocklaw.com

**MEMORANDUM OF LAW IN OPPOSITION TO THE
VARIANCE APPLICATION OF JAY AND VANESSA SPRAGUE**

TO: Town of Jaffrey – ZBA Members
Lee Sawyer, Chair
Marc Tieger, Vice Chair
Phil Cournoyer
Erlene Brayall
Walter Batchelder
Andrew Webber

FROM: Joseph S. Hoppock, Esquire (on behalf of Oliver and Mandy Courtney)

DATED: December 7, 2021

RE: Courtney's Memorandum in Opposition To Sprague Variance Application

1. On November 12, 2021, Vanessa and Jay Sprague filed an Application for a Variance requesting a variance of the Ordinance terms to allow a commercial use in a rural zone, contrary to Section IV of the Jaffrey Land Use Code (LUC).

2. The Application seeks, among other things, permission to:

-utilize Woodbine Farm (the "historic" barn on their property) as a venue "for small private events;"

-use the property as a way to generate income to "help justify and offset the significant ongoing costs associated with thoughtful maintenance" of the barn. Application §3 (iii), p. 1.

I. Analysis

i. Background

3. The Applicant seeks a variance to allow a General Business/Commercial use¹ in a rural zone that does not permit commercial or general business use. (§4.1.1.).

4. Section 4.1 of the LUC articulates the uses permitted in the Rural Zone. Farms and housing related to farms are permitted uses; a farm stand is permitted if it is within thirty (30) feet of the street line. §4.1.1. A farm stand is the only degree of commercial use permitted in the rural zone. §§4.4.3 and 4.1, therefore, express a clear intent of the zoning that social commercial events are intended to be contained in "enclosed buildings or structures," §4.4.3, that are not located in the rural zone.

5. The Applicants suggest a maximum of 65 "guests" per event. (Application, p. 1, ¶1). They make no mention of traffic impact or parking, except to say they have sufficient space to park 25 "guest cars" in a field of undescribed dimensions. However, 65 guests are more likely to generate over 32 vehicles (assuming two guests per vehicle). No provision is provided for parking that many vehicles. In addition, Applicants propose that their "special events" will be limited to twelve weekends per year, presumably only during the warm weather, as indicated by their "test events," when their neighbors are most likely enjoying the warmer weather with their windows open at night. Twelve weekends per year could generate 24 "special events" with all the incidental noise, traffic and other disruptions that typify large gatherings. Applicants are silent as to how their suggested restrictions will be managed or enforced.

¹ See, §4.4.3 of the LUC, which refers to permitted uses in a General Business District which includes "restaurants, taverns, cafes and other places for serving food, and *private clubs in an enclosed structure.*"

6. The Applicants maintain that the Rural District does "allow for properties in the rural zone to be used for 'public recreation facilities.'" However, the Applicants confuse commercial social events with "recreational activities," such as facilities for boating, fishing, horseback riding, cross-country skiing, camping and other similar activities, all of which would not normally generate a significant traffic volume or noise levels.

7. The area of 169 Thorndike Pond Road (Applicants' address) and 171 Thorndike Pond Road (Courtneys' address) is rural. It is served by a single access public way, Thorndike Pond Road, which is a paved way from Route 124 to beyond these properties and is about 30 feet wide. The area is surrounded by large single family residences built roughly between 1850 and 1930.² There are at least four nearby properties, located between Route 124 and Gilson Road (just beyond the subject site) that have antique homes (100 years old plus) with old barns. Aside from the Applicant's property, the other properties with old barns are located at 17 Thorndike Pond Road, 27 Thorndike Pond Road and just beyond the Courtney property, at 4 Gilson Road. *See*, Exhibits B, C & D, which are photos of these barns. As far as the Courtney's are aware, these property owners use their barns as accessories to their homes, for vehicle parking or as property storage space (i.e., as garage space). Applicants' barn, therefore, is not unique in this area or to their property. The speed limit along this segment of Thorndike Pond Road is 30 mph. There are no properties on Thorndike Pond Road that are commercial in nature. The closest commercial establishment to the subject property is the Monadnock Inn, on Route 124. The people who live along Thorndike Pond Road enjoy a quiet, rural and tranquil environment with historic significance, with only residential and pedestrian traffic.

² There are also more recently constructed single family homes in the area, as well. *See*, Exhibit A, attached here, which is a Google Map.

8. Many of the residents who live on Thorndike Pond Road, enjoy walking along the road for exercise or to enjoy the abundant wildlife that may be observed in the area, such as bear, bobcats, deer, porcupines and other wildlife. It is in the public interest to preserve this habitat for the wildlife, as well as the residents.

9. Most of the neighbors are older and their houses are well maintained with ample, well-manicured gardens. There are signs in some of the gardens asking people to slow down due to pets or children playing.

10. The Applicants fail to address amplified music late into the night or early morning hours. During “two test events” referred to in the Application, held on August 28, 2021 and October 2, 2021, the person staying in the Courtney’s house could hear the music playing late into the evening, beyond midnight. He could also hear the noise of people talking. The sound easily carried the “distance up the hill” to the direct abutters’ residence. Application, §4, p. 2.

ii. Variance Criteria

11. This Board must evaluate the five variance criteria and each one must be satisfied before a variance may be granted. RSA 674:33, I (b); *Rye v. McMahon*, 117 NH 857 (1977).

I. Analysis

12. The five variance criteria are:

- a. Granting the variance must not be contrary to the public interest;
- b. The proposed use must not be contrary to the spirit of the ordinance;
- c. Granting the variance would do substantial justice;
- d. The proposed use would not diminish the values of surrounding properties; and
- e. Denial of the variance would result in unnecessary hardship to the Applicant.

13. Upon application of the five criteria to the Applicants’ Variance request, it is clear that the Application must be denied, as none of the criteria are satisfied.

a. Granting The Variance Is Contrary To the Public Interest

14. On this factor, the analysis focuses on whether granting the variance would be contrary to the public interest or injurious to the public rights of others. *Chester Rod & Gun Club, Inc., v. Town of Chester*, 152 NH 577, 581 (2005). The first step is to examine the applicable ordinance. The applicable ordinance involves an inquiry into §4.1 of the LUC.

15. Article 4.1 provides a list of permitted uses in the rural district that include farms and housing related to the farm, nurseries, greenhouses and the sale of produce, primarily raised on the premises, provided no produce stand shall be within 30 feet of the street line. §4.1.1. Detached single family houses are permitted. §4.1.2. Duplex and multi-family residences are permitted provided they are placed in an open space development plan. §4.1.3. Public recreation facilities are also permitted. §4.1.5. Other uses consistent with rural environment living are also permitted. §§4.1.6 to 4.1.16.

16. The ordinance provision plainly precludes any commercial use in the rural zone. The intent is exemplified by the fact that there are no commercial enterprises of any type or character along the entire stretch of Thorndike Pond Road and the closest such establishment is the Monadnock Inn. The provisions of the ordinance, coupled with the realities on the ground, represent a declaration of public interest that the variance requested would be contrary to the public interest.

17. The Applicant states that the subject property is "very secluded (abutted by conservation land, a golf course and state forest)." Application, p. 1, §1. The Courtneys are direct abutters to the subject property and are only collaterally mentioned and referred to as "the only direct neighbors." Application, p. 2, §4 (i). However, the Courtney's share a driveway with the Applicants, presumably the driveway their 65 guests will use to get to the "micro" events they wish to hold. Applicants' plan shows no attention to the driveway use, driveway maintenance, or

driveway erosion, or other ingress or egress issues and that inattention is injurious to their rights.

18. These circumstances establish that granting this variance will be contrary to the public interest, in terms of public safety, managing traffic congestion, noise levels (late in the evening on warm summer nights) and the welfare of the neighbors. Here, granting the variance is of no benefit to the general public, and it would be particularly burdensome to the neighbors, including the Courtneys.

b. Granting The Variance Will Be Contrary To The Spirit Of The Ordinance

19. The character of this "secluded" neighborhood would be substantially disrupted by the approval of this variance request. The public health, safety and welfare would be adversely affected by the noise, traffic volume, parking congestion and disruption to the rural character of the area.

20. For a variance to be contrary to the spirit of the ordinance, granting it must violate the ordinance's basic zoning objectives. Mere conflict with the terms of the ordinance is insufficient. *Chester Gun & Rod Club, supra*.

21. The spirit of the ordinance is violated when the variance, if granted, would unduly, and in a marked degree, conflict with the ordinance such that it violates a basic zoning objective of the ordinance. *Harborside Associates v. Parade Residence Hotel*, 162 NH 508 (2011); *Malachy Glen Associates v. Town of Chichester*, 155 NH 102 (2007). *Farrar v. Keene*, 158 NH 68 (2009).

22. There are two methods for determining whether granting a variance violates an ordinance's basic zoning objectives: First, granting the variance would alter the essential character of the neighborhood; and, second, granting the variance would threaten the health, safety or welfare of the public or otherwise be injurious to the public rights of others. *Id.*

23. A variance calling for a commercial use in a rural zone (65 guests, 25 cars for 12 weekends per year) where no other commercial uses exist, plainly conflicts with

the ordinances basic zoning objectives, which is to keep commercial uses (and the noise, traffic and congestion that accompanies same) out of districts zoned for tranquil, quiet, rural residential living. *Compare*, §§4.1.1 with 4.4.3.

24. The variance would alter the essential character of this Thorndike Pond Road neighborhood by substantially increasing traffic volume, noise (from increased traffic and people socializing and congregating), and bringing other problems associated with a large congestion of people, such as more trash, potential for increased crime and the overall loss of the quiet enjoyment of the property.

c. Will Granting The Variance Do Substantial Justice?

25. With respect to the third variance criteria, whether granting the variance will do substantial justice, the Supreme Court has provided this guidance: "The only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." *Malachy Glen Assoc's v. Chichester*, 155 NH 102, 109 (2007). In this factor, the Board may also consider whether the proposed use is inconsistent with the present uses in the affected area. *Malachy, supra; Harborside, supra*.

26. This factor requires a balancing of the loss to the individual, should the variance be denied with whether there is any gain to the general public by denying the variance. If the loss to the individual is evident and is not outweighed by gain to the general public, an injustice exists and, therefore, granting the variance would serve substantial justice. Here, there is no loss to the individual. The Applicants purchased the property in or around the spring of 2020.³ The Applicants seek a commercial venue to help them defray the costs of their property (maintaining a barn like Applicants "comes with great effort and expense"). Correspondingly, the gain to the general public, and abutting neighbors, in denying the variance, is considerable, to include

³ And, therefore, the Applicants were not responsible for the extensive renovations of "the last 10 years" described in their application at §5.B.12.

preservation of a rural environment (including wildlife protection), free of extensive traffic, parking issues and noise, and keeping high-volume commercial activity (such as delivery trucks) off of Thorndike Pond Road.

d. Granting The Variance Would Not Diminish Surrounding Property Values

27. The fourth criterion, diminution of surrounding property values, is also not satisfied by the Applicants. Here, the historic rural nature of the area will be impacted by a commercial operation that will substantially reduce the value of surrounding properties by virtue of the exposure of such properties to the proximity of a commercial operation where no such operation exists in the area. The Courtney's property is not "a good distance up the hill out of sight of the barn;" it is close enough for them to hear the noise that emanated from "the two test events." Music was heard well past midnight, guests were loud, traffic was noisy and the commercial operation was a substantial disruption to the Courtney's quiet enjoyment of their property, as well as a substantial disruption to the rural nature of the area. Given the nature of the neighborhood, it is very probable that the value of the Courtney's property, along with other properties in the area, would be substantially diminished if the variance was granted.

d. Unnecessary Hardship

28. With regard to hardship, the Board must keep this principle in mind: The basic purpose of any Zoning Ordinance imposes some hardship on all property by setting restrictions on land that are roughly equally balanced by similar restrictions on all properties in the same zone. When zoning imposed hardships are roughly equally shared by all such property owners, no zoning hardship exists. It is only when there is some characteristic (a special condition) of the subject property that makes it different from other properties, can an unnecessary hardship be claimed.

29. In order to support a variance, there must be no fair and substantial *relationship* between the general public purpose of the ordinance (here, no general

commercial use in a rural zone) and the specific application of that ordinance provision to the subject property *because of* a special condition of the property that distinguishes it from other properties in the area. The Supreme Court has held that "special conditions" must be a "unique" feature of the subject property. *Garrison v. Town of Henniker*, 154 NH 26 (2006).

30. The Applicants argue they have a financial hardship (i.e., the "costly, ongoing upkeep of an old structure becomes an unnecessary hardship if the owners are not allowed to utilize the building in a reasonable way"). Application, §5. B., p. 2.

31. Financial hardships are not zoning hardships. The Application fails to identify any zoning hardship; more particularly, the Applicants fail to show that there exists a special condition (i.e. a unique condition) of the property that distinguishes it from other properties in the same area. The Applicants' suggestion that their barn on only four acres of property is a special condition, is not supported by the facts; three other properties along the same road have old antique barns and all are believed to be used as accessory uses to residential uses, namely, garage space. The absence of a special condition of the property dooms the Application, for without a special condition of the property that distinguishes it from others in the same area, Applicants cannot show there is no fair and substantial relationship between the purpose of the use restriction and the specific application of that use restriction to this property. In fact, the Courtneys contend there is a fair and substantial relationship between the provision that precludes commercial uses in a rural district (where no such uses exist) and its specific application to this property. There is no reason why Applicants' property deserves to be exempted from the use restrictions that benefit all property owners in the area and preserve the rural, tranquil, historic environment of the neighborhood.

32. The last prong of the unnecessary hardship analysis addresses whether the proposed use is a reasonable one. Here, the question is straightforward: The Board must determine whether, *due to special conditions of the property*, the proposed use is a

reasonable one. In determining whether a proposed use is a reasonable one, the Board may rely on its findings on the other criteria, such as threat to public health, safety or welfare or change to character of the neighborhood, property diminution, etc. *Harrington v. Town of Warner*, 152 NH 74 (2005). In other words, the Board must find that the proposed use is a reasonable one, even though it violates the ordinance, because of a special condition of the property. *Id.*

33. The proposed use is not reasonable given those considerations. These Applicants, like their neighbors, may make a reasonable use of their barn as an accessory building to their residence.

II. Conclusion

33. For all of the above reasons, the Sprague Variance Application must be denied as the Applicants cannot satisfy any of the variance criteria of RSA 674:33, I (a)(2).

Respectfully submitted,
OLIVER AND MANDY COURTNEY
By Their Attorneys,
Law Offices of Joseph S. Hoppock, PLLC

December 7, 2021

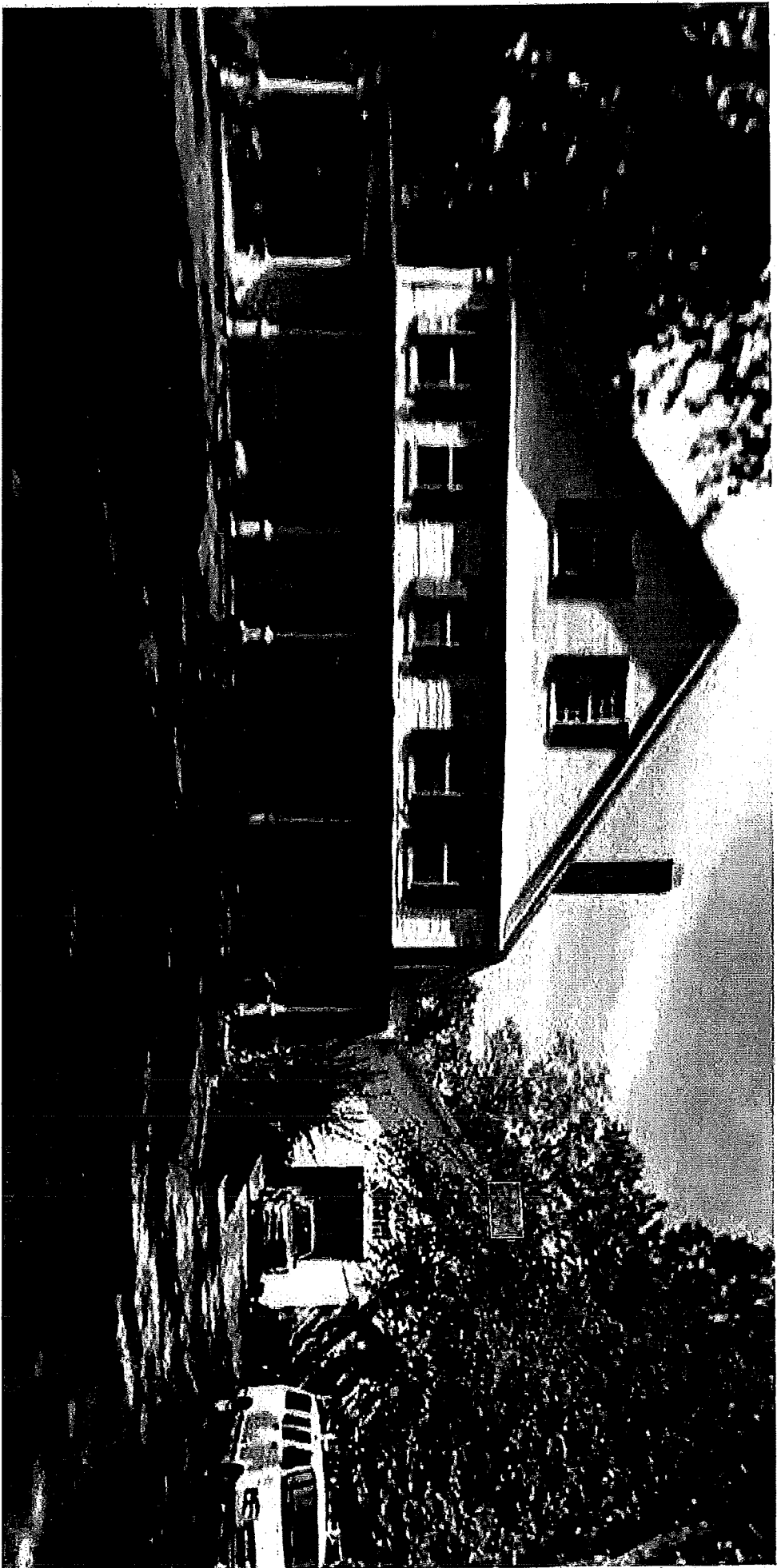
BY: _____

Joseph S. Hoppock, Esquire
NH Bar #5543
16 Church Street, Suite 3A
Keene, NH 03431
603.357.8700
jhoppock@hoppocklaw.com

CERTIFICATION

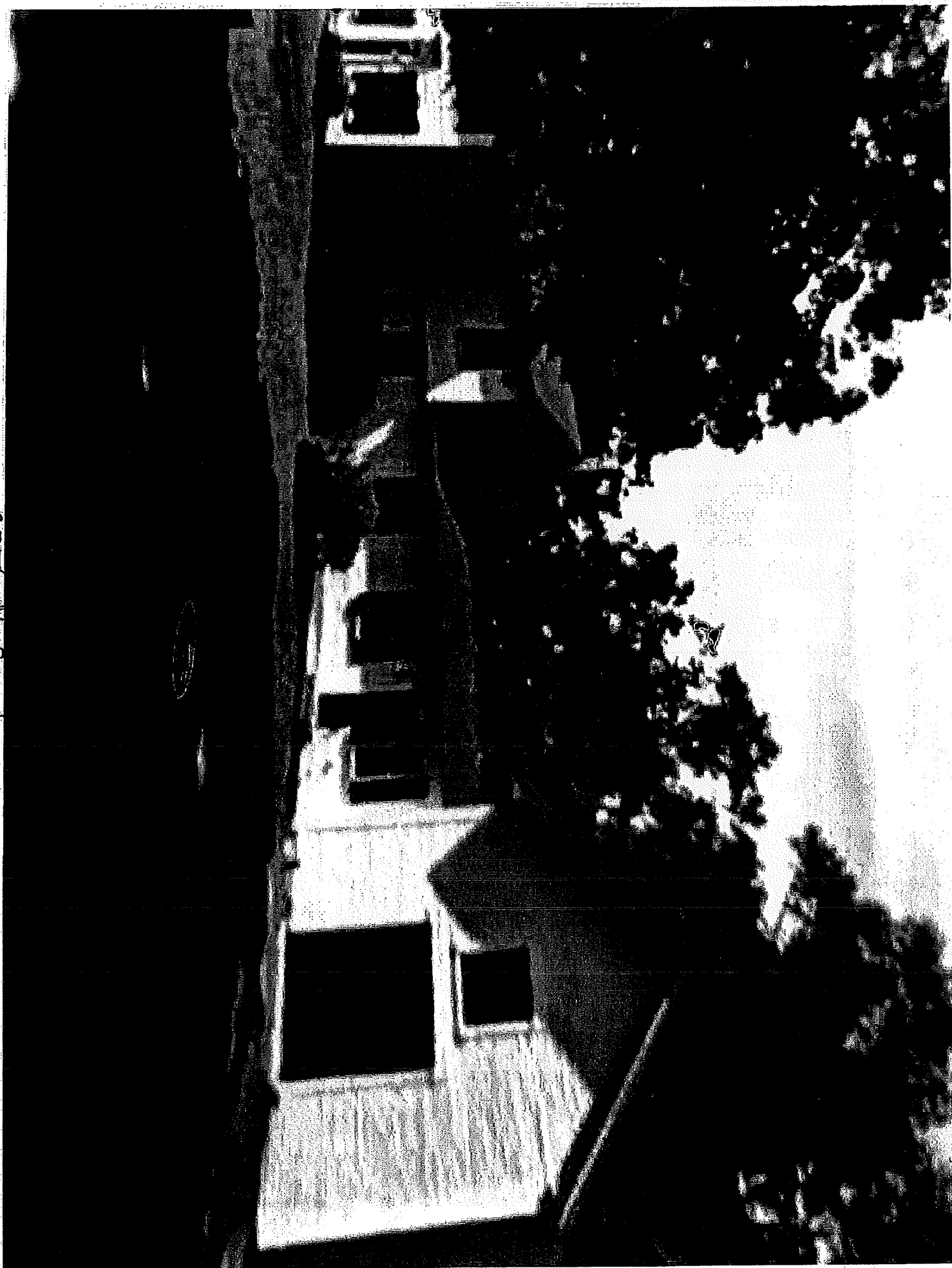
I hereby certify that a copy of the within Memorandum has been mailed this 7th day of December, 2021, by First Class US Mail, to Jay and Vanessa Sprague.

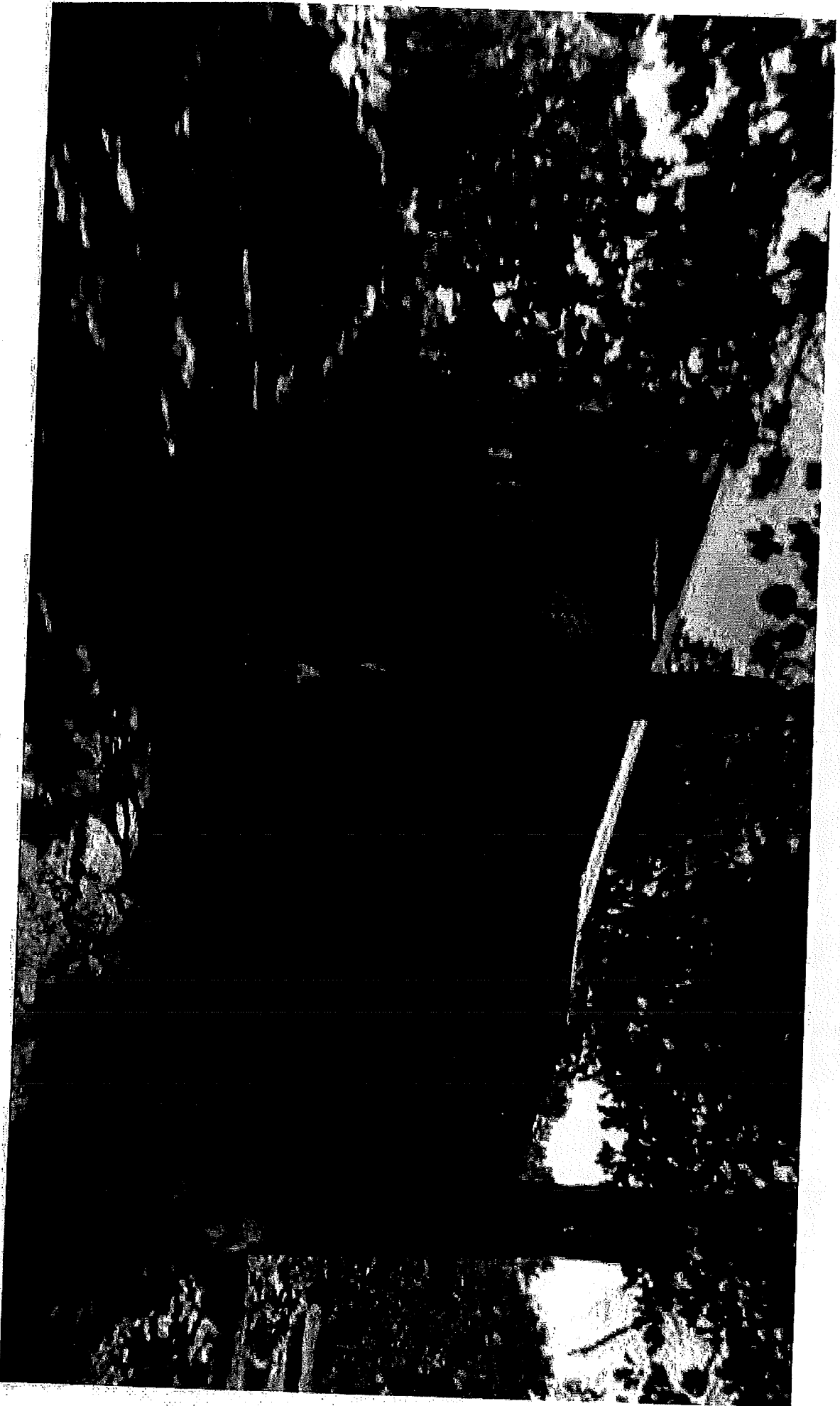
Joseph S. Hoppock



B. 17 Thendike Road Rd

277 Mainline Road, Exh. C





4 Gibson Pond Rd
"D"



December 4, 2021

Lee Sawyer, Chairman
Jaffrey Zoning Board of Adjustment
10 Goodnow Street
Jaffrey, NH 03452

Re: Variance Application of Vanessa and Jay Sprague / Woodbine Property Holdings LLC, 169 Thorndike Pond Road; Map 229 Lot 23-1

Dear Chairman Sawyer and Members of the Board:

I represent the Janet Grant of 36 Thorndike Pond Road with regard to the application for variance filed by Vanessa and Jay Sprague/Woodbine Property Holdings LLC ("Applicant") for property located at 169 Thorndike Pond Road, Tax Map 229 Lot 23-1. Ms. Grant's family has owned land in Jaffrey Center since 1921—100 years. She has spent many summers here and has lived year-round here for the last 21 years.

The Applicant seeks a variance from Section 4.1 of the Jaffrey Zoning Ordinance to conduct a wedding and event business at the property. For the reasons set forth below, the variance application should be denied.

To grant the requested variances, the ZBA must find that the Applicant has satisfied the five standards of RSA 674:33, I(a)(2), each of which is addressed below. The Applicant bears the burden of proving all five of the variance criteria. Bartlett v. City of Manchester, 164 N.H. 634, 637 (2013).

I. Granting the Variance Would Be Contrary to the Public Interest and Would Be Contrary to the Spirit of the Zoning Ordinance

These first two variance standards, from RSA 674:33, I(a)(2)(A) (public interest) and (B) (spirit of the ordinance), are related and can be considered together. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 50, 514 (2011). "The first step in analyzing whether granting a variance would be contrary to the public interest *or injurious to the public rights of others* is to examine the applicable zoning ordinance." Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005) (emphasis added). The language of the applicable zoning ordinance is a declaration of public interest, making any variance somewhat in conflict with the public

interest. *Id.* For a variance to be sufficiently contrary to public interest, it “must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Nine A LLC v. Town of Chesterfield*, 157 N.H. 361, 366 (2008). While judging whether “granting a variance violates an ordinance’s basic zoning objectives, [the court considers], among other things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare” but “such examples are not exclusive.” *Id.*

The Woodbine proposal is contrary to the public interest and to the spirit of the ordinance because it violates basic zoning objectives under both standards articulated by the Supreme Court, *i.e.*, character of the neighborhood and public safety.

First, granting the variance *would* alter the essential character of the neighborhood. Thorndike Pond Road goes from Jaffrey Center to Thorndike Pond. It is a quiet road with little to no through-traffic and low traffic in general. There are currently no commercial uses on Thorndike Pond Road. There may be a home occupation, but nothing that has any effect on the rural character of the road or neighborhood.

The Woodbine proposal would allow 65 guests and 25 cars 12 weekends per year. That is three months of weekends, and the events will inevitably be concentrated in the warm-weather months. Those are the months when neighbors have their windows open, when neighbors are enjoying the outdoors, and when neighbors are most likely to be walking or biking on Thorndike Pond Road. Those months are also the months when there is already the most traffic, as summer residents will be at the Pond, and when the most visitors are visiting the public beach on Gilson Road and visiting residents on or near the Pond. And in those warm-weather months, the weekends are when these activities are at their peak.

Thus, granting this variance would add a substantial volume of traffic to the already busiest times on Thorndike Pond Road. This will not only alter the essential character of this rural neighborhood but also threaten public health and safety. Twenty-five cars (if that can even be enforced by the applicants and monitored by the Town) is more than Thorndike Pond Road can handle while maintaining its existing character. Given that the road has many straight sections and is relatively wide, the road already invites speeding, and the people attending weddings and events will likely include people unfamiliar with the existing, rural nature and pedestrian uses of the road.¹ It is also inescapable that there is a likelihood that many (even if only some) drivers leaving weddings will have consumed alcohol, creating a danger to the neighborhood. All of these factors, as well as having events go until 11pm and guests staying as late as midnight, will further create noise and traffic that will alter the character of the neighborhood and threaten public safety. For both of these reasons, granting the variance would violate basic zoning objectives and, therefore, fail the first two variance criteria.

¹ Additionally, guests traveling from Route 101 who use GPS directional devices will likely be routed onto Upper Jaffrey Road or Route 137, causing them to approach the Woodbine property from the Dublin end of Thorndike Pond Road, or Gilson Road from Dublin Road, both of which are narrow, wholly residential, and used extensively by people walking together, often with dogs and/or young children.

The Applicant states in the application that the proposed use is “comparable to” a public recreation facility, which is a permitted use in the Rural District. The Zoning Ordinance defines “Public Recreation” as follows: “

Facilities where the public may partake of park or beach recreation or of active sports, physical activities, and outdoor life. These include State- or Town-owned and -operated parks, beaches, and picnic areas; camping facilities, golf courses, athletic and fitness centers such as gymnasiums, tennis courts, and swimming. (See ordinance at page 5.)

The proposed use of weddings and events is not a recreational facility and will have much more impact on the neighborhood. The proposed use is more like a “Place of Amusement,” which is defined as follows:

Primarily commercial facilities that offer amusement facilities to the public. These include theaters, bowling alleys, pool or billiard halls, coin-operated facilities such as video arcades, and any other facilities deemed to be similar. (See ordinance at page 5.)

Places of Amusement are not permitted in the Rural District. The proposed use is also similar to the following use that is permitted in the *General Business District* but not in the Rural District:

In an enclosed building or structure: Retail stores, sales rooms, retail services, restaurants, taverns, cafes, and other places for serving foods and alcoholic beverages, business and professional offices, banks, private clubs, hotels, inns, rooming houses, bed and breakfast establishments, theaters, halls, clubs, and other places of assembly (See ordinance at Section 4.4.3.)

That the proposed use is akin to two defined uses that are specifically not permitted in the Rural District underscores that allowing the proposed use here violates basic zoning objectives and, therefore, would not observe the spirit of the ordinance.

In some situations there are uses that violate a specific zoning provision without undermining the purposes of the Zoning Ordinance for a particular district. This is not such a situation. As stated in Section I of the Zoning Ordinance, the purposes of the Zoning Ordinance

are to promote and conserve the health and welfare of the inhabitants of the Town; to secure safety from fire; to facilitate the adequate provision of transportation, water, sewerage, and other public requirements, to conserve the value of land and buildings; to avoid undue concentration of population; to encourage the most appropriate use of land; and to further increase the general welfare of its inhabitants by preserving, promoting, and developing its many outstanding characteristics such

as open space, ridgelines, hillsides, areas of forestry, wetlands, and other prominent natural features which contribute notable scenic views or vistas and the quality of life. (See ordinance at Section I.)

The Applicant's proposed use is not a technical violation of the Zoning Ordinance that will not undermine the purposes of allowing certain uses in certain districts. This proposed use is directly contrary to the purposes of the Zoning Ordinance that are intended to maintain the character, quality, and safety of the Rural District.

For the foregoing reasons, the variance should be denied because it does not satisfy either the Public Benefit or Spirit of the Ordinance variance criteria.

II. Denial of the Variance Would do Substantial Justice

"Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007) (citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000)). In analyzing this standard from RSA 674:33, I(a)(2)(C), courts have also considered whether the proposed development was consistent with the area's present uses. See Labrecque v. Town of Salem, 128 N.H. 455, 459 (1986).

Here, denial of the variance would not cause a loss to the Applicant. The Applicant purchased the property in the last couple of years. In light of current zoning, the Applicant could not have had a reasonable expectation that it could use the property for a commercial event space or hold events that would "offset the significant ongoing costs associated with thoughtful maintenance [of the barn]," as stated in the application. The Applicant can continue to use the property as it always has been used, or it can be used for a use that is permitted in the Rural District by the Zoning Ordinance. Denial of the variance would take nothing from the Applicant upon which the Applicant reasonably relied.

Any perceived loss to the Applicant is greatly outweighed by a gain to the general public if the variance is denied. There are no other commercial uses on Thorndike Pond Road, and this use would disrupt the rural nature of the road, the neighborhood, and the Pond. Preventing the additional traffic, noise, and nighttime activity would be a gain to the general public.

In performing the balancing test that the Supreme Court guides the Board to do, it should be clear that *denying* the variance would achieve substantial justice. The proposed use is not consistent with the area's present uses. See Labrecque v. Town of Salem, 128 N.H. at 459.

III. Granting the Variances Will Diminish Surrounding Property Values

Granting the variance would diminish the values of surrounding properties. The highest and best uses of the surrounding properties in this Rural District would be compromised by the

proposed commercial facility. Of course, the surrounding properties could still be used for residential purposes, but based on the principle of substitution, the price paid for a property that abuts the commercial use would be less than an identical property that was not in close proximity to the commercial use. The commercial use would limit the number of potential buyers for the surrounding properties when compared to similar properties elsewhere. Therefore, the ability to sell property would result in a diminution of value if the variance is granted.

The principal of substitution is relevant to determine if there is a diminution in value for the surrounding properties due to the proposed commercial use. If there are two identical houses, all things being equal with the exception that one of the locations abuts the commercial use, it logically follows that the property abutting the commercial use would command a lower sale price compared to the identical parcel elsewhere. Potential buyers on Thorndike Pond Road would choose a property that is more rural and private compared to one next to a commercial use that attracts significant traffic and activity to Thorndike Pond Road.

The burden is on the Applicant to demonstrate that the variance will *not* diminish surrounding property values. The Applicant has not satisfied its burden and, to the contrary, common sense suggests that surrounding property values *will* be diminished. Therefore, the variance must be denied.

IV. The Applicant has Not Demonstrated an Unnecessary Hardship

In order to find that the Applicant satisfies the unnecessary hardship requirement, the Board must find that the property itself has special conditions that make it so “there is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.” RSA 674:33, I(b)(1)(A). Variances are appropriate when application of the zoning provision may cause a hardship but not cause the adverse impact that the ordinance provision is meant to prevent. That is what makes the hardship “unnecessary.” Here, granting the variance would undermine the protective purposes of the Zoning Ordinance with regard to the Rural District. Therefore, even if the Board perceives that denial of the variance would cause a hardship, that hardship is not *unnecessary*.

There are no “special conditions” of the property that justify allowing a commercial use that is specifically not permitted in the Rural District and allowing the first commercial use on Thorndike Pond Road. The application cites the existence of the barn on a four-acre property as being the special condition. However, other properties in the area have barns and other outbuildings. There is nothing special about the barn that makes it so there is no fair and substantial relationship between the public purposes protecting the Rural District and applying the Ordinance to this property. Rather, there is this barn in the Rural District, and there are uses that are not permitted in this District in order to protect the character of the District. The mere existence of the barn is not a special condition that justifies not applying the protective purposes of the Zoning Ordinance.

Additionally, the proposed use might be a reasonable one if the property and barn were located in a zoning district in which the impacts associated with such a proposed use have been deemed acceptable and expected by the voters (by approving the Zoning Ordinance). This is not such a District and, therefore, this is not a reasonable use of *this property*.

Finally, RSA 674:33,I(b)(2) provides an alternative unnecessary hardship test. However, the Applicant does not satisfy this test because the variance is not required to make a reasonable use of the property. The application asserts that the variance is necessary to pay for the costs of maintaining the barn. Again, however, when purchasing the property, the Applicant had no reasonable basis to rely on obtaining a variance to conduct a commercial use that is not permitted by the Zoning Ordinance. Importantly, RSA 674:33,I(b)(2) refers to a reasonable use of the *property*, not a reasonable use of the barn. The Applicant, as well as the prior owners, have all made a reasonable use of the property. As such, no variance is required for the Applicant to continue to make a reasonable use of the property.

Here, the Board cannot find that denying the variance would cause an unnecessary hardship because (1) there is no special condition of the property; (2) there *is* a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (3) a variance is not necessary for the Applicant to make a reasonable use of the property.

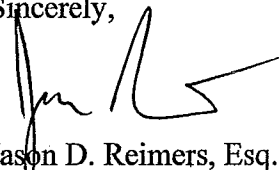
This variance should be denied because the Applicant has not demonstrated an unnecessary hardship.

Conclusion

This Applicant cannot satisfy any of the variance criteria set forth in RSA 674:33,I(a)(2). Therefore, the variance application must be denied.

Thank you for your careful consideration.

Sincerely,



Jason D. Reimers, Esq.

