

**TOWN OF JAFFREY D HAMPSHIRE
ZONING BOARD OF ADJUSTMENT**

**Minutes
February 11, 2021**

Present: Chairman Lee Sawyer, Members Walter Batchelder, Marc Tieger, Andy Webber, Phil Cournoyer, Erlene Brayall (alt), and Carl Jevne, (alt).

Staff: Jo Anne Carr (via Zoom), Code Enforcement/Building Inspector Rob Deschenes, Recording Secretary Newton, Chief David Chamberlain

Via Zoom: Elizabeth Webster, Pam Royce, Jack Savage, Ken Campbell, Janet Grant, Michelle Salvatore, Laurie Murray, Deb, John & Ed Madigan, Rosemary Poole, Courtney Cotner, Stephanie Minter, David Jeffries, William Taylor, Amy Cabana, Chris Heyes, Ashely Saari, William Jack, Mark Beckwith, Ann Royce, Ken Bacon, Steve Jackson, Carolyn Garretson.

MEETING MINUTES APPROVAL

On a **motion** by Tieger, seconded by Batchelder the minutes of December 1, 2020 were approved as presented (5-0-0) AW, MT, LS, WB, EB

On a **motion** by Webber, seconded by Batchelder the minutes of the December 2, 2020 Site Walk were approved as presented. (4-0-0) MT, AW, WB, EB

On a **motion** by Tieger, seconded by Batchelder the minutes of the December 7, 2020 Deliberations were approved as amended. (5-0-0) LS, WB, MT, AW, EB

On a **motion** by Webber, seconded by Brayall the minutes of the January 12, 2021 Rehearing Request were approved as presented. (5-0-0) LS, WB, MT, AW, EB

DISCUSSION OF REGIONAL IMPACT

ZBA 21-03, Timothy J Gordon Rev Trust, Owner, 616 Mountain Rd
ZBA 21-04, Douglas Clayton & Kyung Kim Owners, 822 Mountain Rd

W Batchelder read the six factors that could be used to determine Regional Impact. R Deschenes added the question of Regional Impact was presented because the Mountain Zone involves four towns, Dublin, Marlborough, Troy and Jaffrey. Would either of these proposals constitute regional impact of those neighboring towns?

W Batchelder noted that two of the letters received in support of Mr. Clayton's project were from the Troy Water Dept. and the Jaffrey Conservation Committee. After carefully reviewing those six standards WB does not feel that these proposals would have Regional Impact. M Tieger agrees.

On a **motion** by Batchelder, seconded by Tieger, that ZBA 21-03 does not have Regional Impact (5-0-0) AW, MT, LS, PC, WB

On a **motion** by Batchelder, seconded by Tieger, that ZBA 21-04 does not have Regional Impact (5-0-0) AW, MT, LS, PC, WB

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PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 6:01 pm. Notice of hearing for cases No. ZBA 21-01, ZBA 21-02, ZBA 21-03, ZBA 21-04, 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.

PUBLIC HEARING NEW ITEMS

ZBA 21-01 Millipore-Sigma, Owner – 11 Prescott Rd
Map 256 Lot 1.1 Zone: Industrial (with town water)

Variance – The applicant requests a variance to allow the temporary relocation of the smoking gazebo and a temporary paved pathway within the Wetlands Conservation District (Land Use Code, Zoning Ordinance Section XX, 20.4.9 and 20.7)

Presentation - Michelle Salvatore

Millipore is currently undergoing a significant construction project. This proposal is for a temporary pathway to allow employees to safely traverse from an exterior parking lot to the main office during construction. Additionally, it would allow employees from one section of the plant to traverse to the main office. It is estimated that construction will be completed by August 2021. At that time the temporary pathway would be removed and the area would be restored.

W Batchelder noted that the walkway had already been constructed and asked why was it paved prior to approval? M Salvatore responded that there was an internal miscommunication within Millipore and it was believed that a variance would not be needed.

W Batchelder asked about the gazebo/smoking hut. M Salvatore explained that the gazebo was moved because it was located in the construction zone. It will be returned to its original location upon completion of the project by August 2021.

No abutters spoke for or against.

E Webster, ConCom, stated that she believes this is reasonable accommodation.

**The board unanimously voted to waive the site visit.
Chairman Sawyer closed the public hearing.**

ZBA 21-02 3 Dionne St, Owner, Jed Paquin, Agent – 3 Dionne St
Map 238 Lot 271 Zone: Gen Business (with town water)

Variance – The applicant requests a variance to allow a single-family dwelling on a non-conforming lot of record within the setbacks (Land Use Code, Zoning Ordinance Section VI, 6.1, VII, 7.1.3 & 7.3)

Presentation – Jed Paquin

Marc Tieger recused himself, Erlene Brayall will vote

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3 Dionne Street is an existing non-conforming lot with very restrictive setbacks and insufficient area. The previous two-family dwelling was taken down several years ago. The proposal is to construct a single-family, 1 ½ story cape that would be consistent with other houses in the neighborhood. The proposed structure is similar in size to, and more conforming than, the previous structure which was located at the front of the lot on Dionne Street. He believes construction of the new home could increase neighboring property values.

Strict enforcement of the ordinance would preclude a dwelling with a porch and deck on the parcel and would result in a structure that would resemble a single-wide mobile home. J Paquin read through each of the three variance applications that were presented. L Sawyer suggested checking with David Chamberlain to make sure there would be no address confusion for 911 due to its location on the corner of Dionne and Cross.

Laurie Murray, abutter, stated that most houses in the neighborhood have either a porch or deck, but not both. J Paquin agreed, but did not revise his request. She asked are there height restrictions in this neighborhood? R Deschenes stated the height restriction is 45 ft. This house would be well below that.

**The board unanimously voted to waive the site visit.
Chairman Sawyer closed the public hearing.**

ZBA 21-03 Timothy J Gordon Rev Trust, Owner, 616 Mountain Rd
Map 212 Lot 16 Zone: Mountain (without town water)

Variance – The applicant requests a variance to allow an accessory structure within the setback (Land Use Code, Zoning Ordinance Section V, 5.7, VI, 6.1)

Presentation – Tim Gordon

Mr. Gordon is requesting a variance from the front setback to allow him to construct a garage/workshop. This parcel was subdivided pre-zoning and with the added restrictions of the Mountain Zones it leaves only 39% of the lot as usable land. A unique characteristic of the parcel is the location of the driveway which was formerly Rte. 124. The driveway was relocated in the 1950's so that the entrance to the house is where the road was diverted. At the top of the driveway there are several stone walls and a pad where items have been stored previously. The location at the top of the driveway, tucked into the woods, would be the perfect spot for this garage. Mr. Gordon stated he could put the garage elsewhere on the property outside the setbacks. Unfortunately, this location would result in the garage being located in the open yard which would block the view of Temple Mountain and be much less esthetically pleasing. The proposed location would retain the view for eastbound travelers on Rte. 124.

At its closest point, the garage would be 31 feet off the ROW and 53 feet off of the pavement. The garage would be completely enclosed by stone walls. The plan calls for a 1 ½ car garage with a hip roof. The roofline will mimic the pitch of the outbuildings at the Grand View. The finished garage would be painted a deep color that would blend with the surroundings. The building would not be visible most of the year once the foliage is out.

M Tieger asked how many feet is the variance request for? T Gordon replied 29' from the edge of the ROW.

W Batchelder asked if it would have a cement foundation. T Gordon responded yes. He stated he may put in a bathroom in the future. If so, he would contact the BI for the necessary permits at that time.

W Batchelder asked would it be used as a garage? T Gordon responded that it would be used primarily for equipment/tool/golf cart storage.

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Janet Grant, resident, asked if it would reduce the visibility? T Gordon replied it would be located in the area where he parks his tractor in a wooded area which should not block the view.

Jason Reimers of BCM Environmental & Land Law is representing Paula Geraghty, abutter, in opposition. They would like to clarify the question of the use of the structure as Mr. Gordon set up a concession stand last year which created a safety issue and is a violation of the Mountain Zone. L Sawyer noted that Mr. Gordon is not asking for permission to allow retail sales.

Mr. Reimers asked if it would have a septic system and if so, where would it go. Mr. Gordon responded he is not asking for a septic system. He has contacted a septic designer and there is a location that would work, within the setback, if and when he chooses to install one.

Mr. Reimers stated he feels that the garage would be more visible in the suggested location. He is uncertain that Mr. Gordon is satisfying the necessary criteria for variance acceptance. He noted that this seems to be a case of preference rather than hardship. The garage could be constructed on the property within the building envelope. Doug Clayton, neighbor who is quite familiar with the view disagrees with Mr. Reimers. He believes that the location proposed by Mr. Gordon would be preferable.

A letter of support from David Jeffries, neighbor, was read into the record.

Paula Geraghty requested that Mr. Gordon go on record stating that there will not be a retail concession stand. Mr. Gordon did not wish to respond to this request.

The hearing was continued to the Site Visit on Wednesday Feb. 17 at 3:00 pm

ZBA 21-04 Douglas Clayton & Kyung Kim Owners, 822 Mountain Rd
Map 204 Lot 9 Zone: Mountain (without town water)

Variance #1 – The applicant requests a variance to allow a greenhouse up to 1,200 sf in the Mountain Zone (Land Use Code, Zoning Ordinance Section IV, 4.8.3)

Variance #2 – The applicant requests a variance to allow retail sales from a nursery business in the Mountain Zone (Land Use Code, Zoning Ordinance Section IV, 4.8.3)

Presentation: Doug Clayton

The proposal is for a nursery business located at 822 Mountain Rd. The endeavor will be known as Fassett Farm and will focus on the propagation of native pollinator and wildlife supporting plants as well as perennial food plants. Mr. Clayton has partnered with Aaron Abitz on the day-to-day running of the nursery. Much of what will be produced would be used by Mr. Abitz in his landscaping business or sold wholesale to other landscapers. The 200-year-old farmhouse on site is vacant and in need of work. A timber cut was done recently to improve the view and clear out the invasive plants.

Mr. Clayton is requesting permission to allow retail sales from the nursery as a permitted agricultural use. This request should not be considered a home occupation. It is in the public interest to have access to a local nursery. The spirit of the ordinance is met because this business would protect and preserve the fragile and rural habitats and ecosystems of the Mountain Zone. Landscaping improvements and view enhancements will have a positive effect on the neighboring properties. Some retail sales to the public would contribute to the economic viability of the project. Much of the available stock will be in the ground to be freshly dug upon request. Agriculture is an

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allowed use in the Mountain Zone, yet limiting sales discourages agriculture. A nursery devoted to the agricultural health of the Monadnock Region would be a reasonable use of the property.

The other towns in the Mountain Zone, Troy, Marlborough and Dublin, all allow farm stands and commercial agricultural. Of those four towns, Jaffrey has the most restrictive rules. This operation would not be a retail store like Agway or Coll's Garden Center. This is a production nursery where native plants are started from seed.

Jaffrey's Land Use Code would allow Mr. Clayton to construct multiple 600-sf greenhouses, instead he is requesting a single, larger greenhouse of 1,200-sf. It is more efficient to have one larger greenhouse rather than several smaller ones. This greenhouse would be largely out of site from the highway/abutters located in the old fenced-in tennis court area between the house and the mountain. L Sawyer asked if it would be a greenhouse (with heat) or a tunnel. Mr. Clayton responded a greenhouse.

W Batchelder asked where do you access the farm and where will people park? Mr. Clayton replied the old Rte. 124 road bed where the road was diverted.

M Tieger asked will you operate 7 days a week? D Clayton responded no.

M Tieger asked will you have employees? D Clayton responded no. This is a partnership with Aaron Abitz. Aaron will lease Fassett Farm from Mr. Clayton, to grow the plants that he uses in his landscaping business. Aaron will not be running Katsura Landscaping from the farm.

Mark Beckwith, resident, feels the timber cut has enhanced the property greatly and it now has a beautiful mountain view. Mr. Clayton's proposal honors the history of the land. He is in full support of the application.

Janet Grant, resident, is in total support of the plan. She would like the Board to be cautious with the approval to protect future uses of the property.

Jack Savage, SPNHF, abutter, commends Mr. Clayton for taking on the revival of the property. He wants to remind the Board that they can impose conditions that would limit a future owner from expanding the use/retail sales and stay consistent with the spirit and intent of Mountain Zone.

Carl Querfurth & Tory McCagg and Chris Heyes, residents, are in full support of the project.

Carolyn Garretson, ConCom, stated the majority of the Conservation Commission members support the project. It makes sense to use native plants in NH. This would be a great resource.

Ken Campbell, resident, asked will Katsura Landscaping be run out of the property? D Clayton replied there would not be a business office, but there may be a truck parked there. Mr. Abitz explained that Katsura Landscaping is going through a transition. Moving forward they will focus solely on gardens/landscaping. They will no longer do property maintenance. K Campbell noted that a landscaping business is a commercial use. Mr. Abitz responded they are not running the landscaping business out of that property. There will be no signage for Katsura Landscaping on the property.

Elizabeth Webster, ConCom, stated how can you allow a nursery and not sales? D Clayton responded that his interpretation of the RSAs allow both.

Pam Royce, resident, states that she thinks the proposal is great, but the location is not. The intent of the Mountain Zone is to encourage a pattern of protection. If Jaffrey allows retail sales in the Mountain Zone, it opens it up for other towns. She is concerned about future owners and retail use. What if Fassett Farm becomes very successful with respect to retail and parking?

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Mr. Abitz responded, it could be a successful operation, however, the goal is not to have a booming industry. The goal is to propagate and grow plants that will be beneficial for the community and to teach and educate the community. At this time, they are considering only being open a few days a week or maybe by appointment only. His primary focus will be installing and maintaining gardens. L Sawyer asked do you intent to sell only what you grow on site? Mr. Abitz responded yes. D Clayton added they do not intend to buy wholesale items for resale. They will sell what they grow. J Carr added agricultural use is clearly defined in the State Statue which includes selling what is grown on the property. D Clayton added the regulations state that 35% of the products sold must be produced on site. J Carr suggested referring the case to counsel for an interpretation of agricultural use within the Mountain Zone.

Ann Royce, resident, stated the request for a greenhouse is double the size of what is allowed. She asked do they need to request a variance to return to agricultural use? L Sawyer responded the property has been growing timber. Forestry is a form of agriculture. R Deschenes added agriculture is an allowed use and does not need to be grandfathered.

Ken Campbell asked will there be any provision for when the land changes hands in the future? L Sawyer responded restrictions could be put on if /when the variance is granted. K Campbell asked can limited hours be part of restrictions?

A Abitz reiterated the importance of the educational aspect of the proposal. The sharing of knowledge of propagation and grafting of plants. The priority is not a retail business.

The hearing was continued to the Site Visit on Wednesday Feb. 17 at 3:30 pm (approximately)

DECISIONS

ZBA 21-01 Millipore-Sigma, Owner – 11 Prescott Rd
Map 256 Lot 1.1 Zone: Industrial (with town water)

Variance – The applicant requests a variance to allow the temporary relocation of the smoking gazebo and a temporary paved pathway within the Wetlands Conservation District (Land Use Code, Zoning Ordinance Section XX, 20.4.9 and 20.7)

On a **motion** by Tieger, seconded by Cournoyer to allow the temporary relocation of the smoking gazebo and a temporary paved pathway within the Wetlands Conservation District as presented per testimony given. (5-0-0) AW, MT, LS, PC, WB

ZBA 21-02 3 Dionne St, Owner, Jed Paquin, Agent – 3 Dionne St
Map 238 Lot 271 Zone: Gen Business (with town water)

Variance – The applicant requests a variance to allow a single-family dwelling on a non-conforming lot of record within the setbacks (Land Use Code, Zoning Ordinance Section VI, 6.1, VII, 7.1.3 & 7.3)

On a **motion** by Cournoyer, seconded by Batchelder the request for a variance to allow a single-family dwelling on a non-conforming lot of record within the setback was granted as presented per plan submitted. (5-0-0) AW, LS, PC, WB, EB

Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.

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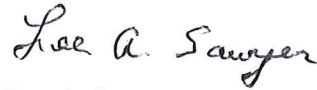
ADJOURNMENT

The meeting adjourned at 8:50 pm
Submitted:



Rebecca Newton
Recording Secretary

Attest:



Lee A. Sawyer
Chairman, Jaffrey ZBA