

**TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
February 7, 2023**

Present: Chairman Lee Sawyer, Members, Walter Batchelder, Erlene Brayall, Carl Jevne, Marc Tieger
Phil Cournoyer (alt), David Jeffries (alt), Judy Lucero (alt)

Other: Jon Frederick, JoAnne Carr, Elizabeth Webster, Ashley Saari, John Lucero, Joan Lathrop, Michelle Salvatore, Ed Bolles, Jonathan Garhart, Jason Headlee, Attorney Bob Carey, Attorney Roy McCandless

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

The consensus of the board determined there was no regional impact for these hearings

MEETING MINUTES APPROVAL

On a **motion** by Jevne seconded by Batchelder the minutes of January 3, 2023 were approved as submitted (5-0-0)

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 6:00 pm. Notice of hearing for case No. ZBA 23-02, ZBA 23-03 and ZBA 23-04, 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 23-02 MilliporeSigma, Owner
11 Prescott Rd., Map 256 / Lot 1.1 Zone: Industrial, with town water

Variance – The applicant requests a variance to permit paving of a section of the wetland buffer area. (Land Use Code, Zoning Ordinance Section XX, 20.7)

Presentation: Michelle Salvatore, Site Head, MilliporeSigma

Millipore is before the Board to request a variance to pave a section of the wetland buffer area in order to allow a tanker truck carrying sodium hydroxide to drive into the loading area for deliveries.

Millipore constructed a state-of-the-art wastewater treatment plant roughly three years ago. Sodium hydroxide is used to treat the pH in the water as part of the wastewater treatment process. The average delivery is approximately 4,500 gallons. Currently the tanker sits outside the treatment facility and a hose is used to transfer the chemicals. The transfer is monitored by staff and a spill bucket is placed where the hose connects to the tanker. If there was a catastrophic release of chemicals they would be unable to contain it.

The additional paved area would allow them to drive the truck into the chemical loading area of the facility. This area has secondary containment as well as a drain and holding tank under the concrete. Sodium hydroxide is a corrosive chemical and is toxic to wildlife. Delivering the chemicals in this manner would provide better protection for the environment. They are requesting an 80' x 100' section of paved area within the wetland setback. This would allow the tanker truck to back into the loading area for deliveries.

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W Batchelder clarified that the paved area would just be in the buffer area, not the wetland. Ms. Salvatore responded yes.

E Brayall asked, why did it take three years to ask for this? Ms. Salvatore noted that the parent company, Merck, has industry standards for containing a maximum catastrophic spill that need to be met.

R Deschenes shared a plan indicating the delineation of the wetlands. It appears that the paving would use the entire buffer area. E Brayall asked, would it be possible to decrease the 80' x 100" paved area to reduce the impact on the buffer? Ms. Salvatore responded there is some flexibility.

Elizabeth Webster agrees that it is important to keep sodium hydroxide out of the water, but is concerned that the paving takes up all of the buffer area. She suggested that Millipore offer some community educational outreach on the importance of wetlands. Ms. Salvatore stated that Millipore has made significant contributions and grants to Jaffrey schools and library for education.

M Tieger noted that Millipore has been an excellent corporation and neighbor. Millipore has had a positive impact on the Town and in return the Town has been cooperative with Millipore.

Ms. Salvatore stated that they can explore what the minimum amount of paving would be to achieve their goal and, if possible, to pave elsewhere outside of the buffer area. Chairman Sawyer added that the Zoning Board's job is to protect the wetland, and yet the purpose of this proposal is also to protect the wetland.

J Carr noted this project is within the wellhead protection area.

The hearing was continued to a site walk on Thursday, Feb 16th at 3:00 pm

ZBA 23-03 Joan Lathrop, Owner
75 Tenacres Rd., Map 241 / Lot 2 Zone: Res A, with town water

Special Exception – The applicant requests a special exception to replace an existing shed within the 75-foot wetland buffer. (Land Use Code, Zoning Ordinance Section XIX, 19.4.2b)

Variance – The applicant requests a variance to replace an existing shed within the setback. (Land Use Code, Zoning Ordinance Section V, 5.7 and VI, 6.1)

Presentation: Joan Lathrop

Mrs. Lathrop is requesting a special exception and a variance in order to replace an existing shed within the wetland buffer area. It was discovered when a recent survey was completed that the shed they had been using for many years was actually on the abutting property. The structure was in disrepair and needed to be replaced.

Due to the slope of the property there are limited options for placement of the shed. The desired location is a flat, wooded area and would shield the shed from view. The shed would be placed approximately 1 ½ feet from the neighbor's property line and 35 feet from the water. The proposed shed is 8' x 12', has no utilities or foundation and would be built on stone piers.

D Jeffries asked if the shed is larger than the previous one? Mrs. Lathrop responded yes.

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M Tieger asked what the shed would be used for. Mrs. Lathrop responded that the shed is used to store items they use on the water.

E Webster had no objections to the proposal, as long as there is no foundation that would impede runoff.

R Deschenes is familiar with the site and the plan and has no objections. The Board had visited the site previously and felt a site visit was not necessary.

On a **motion** by Brayall, seconded by Tieger the Board waived the site visit. (5-0-0)

Chairman Sawyer closed the hearing

ZBA 23-04 Camp Berea, Owner of subject parcel, 552 Dublin Rd., Map 231 / Lot 17, Zone: Rural
Stephen & Beatrice Epstein, Jeffrey Whittemore & Robin Cassel, Applicants
Robert S. Carey, Agent

Appeal from Administrative Decision – The applicant requests an Appeal from an Administrative Decision made by the Board of Selectman on January 24, 2022. (Land Use Code, Zoning Ordinance Section VII, 7.1.3)

Presentation: Attorney Bob Carey

Attorney Carey represents the abutters on either side of the subject property. They are before the Board to appeal a decision/non-decision made by the Board of Selectmen (BOS) on January 24, 2022 regarding the grandfathered non-conforming use of the property. They asked the BOS to enforce the zoning ordinance by revoking Camp Berea's grandfathered status as the use of the subject property was abandoned for more than a year.

Because the BOS chose not to make a decision the client took their case to Superior Court where they were directed to follow the proper procedure and submit an application for an appeal from an administrative decision with the ZBA.

The property is owned equally by Camp Berea and Ed Bolles and is located in the rural district. Children's camps are not permitted in this district without a special exception. There is no special exception on file, therefore it is a non-conforming use.

Monadnock Christian Ministries (MCM) sold the property to Camp Berea in May 2021. Attorney Carey maintains that Camp Berea could not open Camp Monadnock in 2021 because they did not apply for a permit at this location. He noted that Camp Berea did run their camp in Hebron that year. A license to operate was granted for Camp Monadnock in 2022. The consensus of the board was that the issue of licensing was not relevant.

Attorney Carey shared the minutes from the Thorndike Pond Conservation Association annual meeting on Aug., 7, 2021 (exhibit 1) which states:

Jason Headlee, who had introduced himself as the point of contact for Berea, then described his organization. They took over the property that had been the Monadnock Bible Conference and then Monadnock Cristian Ministries. It will be called Camp Monadnock. Their mission is similar to that of their predecessors with a Christian focus. Headquartered in Hebron, NH, they also have property in Lyman, Maine and this is their 3rd property. They run youth camps and host church groups year around. They are currently focused on restoring the facility with the hope of opening around the first of the year. Their use of the waterfront on Thorndike will be similar to what it has been.

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M Tieger asked Attorney Carey how RSA 674:74 would apply to this situation.

674:74 - Protection of Pre-existing, Non-conforming Use Status for Summer Camps

I. Notwithstanding any provision of law or municipal ordinance or regulation to the contrary, any summer camp that has been operating in the state of New Hampshire as a pre-existing, nonconforming use under its applicable zoning ordinance that either closed for the summer of 2020 and/or 2021 due to the COVID-19 pandemic, or was forced to operate for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021 due to the COVID-19 pandemic, shall not lose its status as a pre-existing, non-conforming use due to either:

(a) Its failure to operate during the summer of 2020 and/or 2021; or

(b) Its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.

II. The summer camp's status or ability to operate as a pre-existing, non-conforming use shall not be in any way affected by its failure to operate during the summer of 2020 and/or 2021, or its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.
Added by 2021, 121:6, eff. 7/9/2021.

Attorney Carey responded that the facts indicate that Camp Monadnock could have operated in 2021 despite the COVID-19 restrictions as they had done at their other location in Hebron, but chose not to due to time constraints.

C Jevne noted that section II of the RSA does not specify COVID-19.

Jon Frederick, Jaffrey Town Manager representing the BOS presented the following.
The use of this property pre-dates the zoning ordinance as there is a site plan on record from June 12, 1984.

A letter from the Attorney Carey dated Dec 15, 2021 was received by the BOS asking them to prohibit the *proposed unlawful use* for the following reasons:

- The children's camp had been abandoned and required a special exception to continue
- The camp constituted a private nuisance
- No need for the camp to establish camp activity on the subject property.

What seems to be missing from the argument is recognition that the State shut down in 2020 due to COVID-19 restrictions. MCM was struggling to survive due to covid-related issues which ultimately lead to their demise.

The BOS received this request just as the State was coming out of COVID-19 restrictions in 2022. The BOS saw this as a "mean-spirited" request and chose not to take action on it. Chairman Sterling's response as captured in the minutes was as follows: *"Chairman Sterling then stated at this time, the Board was not going to take further action on this matter. They will not discuss, argue or evaluate the merits or lack thereof, of his argument. We are probably going to end up in litigation at some point later on regarding this matter and will be forced at that time to respond, and will do so then."*

Chairman Sterling came to this conclusion because summer camps were prohibited from operating due to COVID-19. The BOS had no desire to stop all non-confirming uses, due to a year of inactivity, because of a pandemic. The

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BOS was in no position to overrule RSA 674:74. Mr. Frederick added “common sense and an ounce of compassion would dictate that some allowances had to be made.”

Attorney Carey noted that the court order specified that the protections provided by RSA 674:74 were applicable only to those prior non-conforming uses that could not operate in 2020 and 2021 due to COVID-19. Attorney Carey reiterated that the camp told the Thorndike Pond Association that they were renovating, in addition they did not get a license to operate.

M Tieger asked Attorney Carey are you implying that Camp Berea needed to specifically state to the Thorndike Pond Association that the camp was not planning to open in 2021 due to COVID-19?

D Jeffries asked, is it possible that COVID-19 might have made it so that it was not economically viable to have camp at this location? The Hebron location was already an established camp.

R Deschenes – CEO/BI, worked closely with the staff at MCM. They had every intention of continuing the summer camp program. MCM was struggling financially before the pandemic began. They tried several different avenues such as expanding programming, extending the season, etc. to address this but COVID-19 was the final straw. They had received all appropriate approvals from the Town to operate, assembly permits, fire dept. inspections, etc.

D Jeffries asked Attorney Carey, in your opinion, what should they have done to meet the requirements? Attorney Carey responded they should have specifically stated there would be no camp due to COVID-19.

Attorney Roy McCandless, representing Camp Berea presented his case.
Camp Berea has been in business for 75 years. The main facility located in Hebron, NH is a 300-bed camp. Attorney McCandless reiterated that COVID-19 was the “death nail” for the MCM.

The following affidavit from Roy Baldwin was submitted.

- 1) I was the executive direction for Monadnock Christian Ministries (“MCM”) from 2014 - 2020.*
- 2) The COVID-19 pandemic had a tremendously negative impact on MCM operations. Due to restrictions imposed by government authorities, obvious health concerns, and the shutting down of the economy in 2020 from COVID-19, MCM was not able to provide summer camp. Many of our campers come from Massachusetts, Connecticut, Rhode Island, and New York were unable to cross State boundaries due to the pandemic. Others had no interest due to health concerns. We had to cancel many of our rentals as well during that summer. As a result of COVID-19, MCM did not operate its typical summer camp programing in 2020, and, thus, did not utilize the waterfront on Thorndike Pond as we have in the past.*
- 3) Despite the severe restriction that COVID-19 imposed on MCM, we were able to cooperate with the Jaffrey Rotary Club to provide day camping operations (Camp Best) for approximately a month (July) in the summer of 2020 for local Jaffrey children. This occurred as Franklin Pierce University closed down their summer operations and were unable to host Camp Best. Those limited operations did take place on the lake front property and included arts and crafts, games, swimming, boating, and other waterfront activities.*
- 4) COVID-19 dealt the death blow to the ministries that were founded by Russell Bryant and family and conducted at MCM. In the Fall of 2020, MCM's board began consideration of either liquidating the*

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ministry or pursuing the option of being merged into or acquired by a like-minded ministry with a similar mission as MCM so that the Christian ministries might continue on MCM's properties. Camp Berea was entertained as such a suitor. The MCM Board eventually voted to transfer its ministry and assets to Camp Berea, Inc., because Camp Berea, Inc. promised to continue the ministry of camping, conferences, and utilizing the MCM facilities to reach children and adults with the Good News of Jesus Christ. The transfer was completed at the end of May 2021.

- 5) In its due diligence MCM's board confirmed that Camp Berea, Inc., intended to continue camping ministries and the use of all of MCM's properties, including the lake front property, for summer camping, and for ministry purposes like that of MCM year-round. MCM described to Camp Berea's board that the lake front property was continually used by MCM in its ministry, not only for camping activities in 2020, but also in 2020 and through the closing date of the transaction in May 2021. After the summer camping operations were concluded in 2020, MCM continued to utilize the lake front property as storage for MCM's equipment used in its waterfront camp activities and ministry, including storage of canoes, boats and other watercraft, chairs, life preservers, and other necessary equipment used for MCM's operations at the lake. These same equipment items were transferred to Camp Berea at closing, and remained in storage at the lake front property for Camp Berea's use in continuing the waterfront activities and ministries that MCM had conducted.*
- 6) Due to the Board's decision to transfer the ministry to Camp Berea, MCM was not able to conduct summer operations in 2021.*

Camp Berea's Hebron location, having operated for 75 years, was in a much better position to operate in the summer of 2021. The transfer of assets took place on Saturday, May 29, 2021 leaving only 3 weeks to prepare for the summer camping season. It would have been impossible to obtain the COVID-19 testing supplies that were required or hire the appropriate amount of staff in time to run Camp Monadnock in 2021.

The following letter was submitted from Nathan Parks, President/CEO of Berea Ministries.

Thank you for taking the time to read this letter and to consider Camp Berea, Inc.'s side of the situation. I am Nathan Parks the President/CEO of Camp Berea Inc., the nonprofit charitable corporation that owns Camp Monadnock in Jaffrey NH.

Camp Berea's goal in accepting the transfer of assets from Monadnock Christian Ministries (MCM) was to preserve and operate this historic site to continue the mission of our predecessor MCM. MCM's board members were open to Camp Berea because we are a "likeminded ministry," that is, we have the same mission and purpose. As we understood the situation, Camp Berea's desire to continue using the property for the same purposes and in similar manner to that of MCM was the primary reason MCM agreed to consider transferring its assets to Camp Berea. Both MCM and Camp Berea's goal was to continue the ministry at all of the Monadnock properties, including using the lakefront for summer camp activities. Nothing has changed.

By the time the asset transaction was completed at the end of May 2021 it was impossible for Camp Berea to open or operate the facility for summer camp. There are many reasons.

First, in 2021 COVID-19 was still in full swing. Many camps in NH and New England remained shut down. Those that were attempting to open had to follow all of the COVID-19 rules promulgated by the State of NH. There were several rules that required significant advance notice in order comply. For

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example, for the summer of 2021 there was a COVID-19 testing requirement which required that Camp Berea acquire enough COVID-19 kits to test staff, campers, and volunteers, before entry into camp, as well as to have plenty of test kits available after entry into camp for the testing of symptomatic people. Those tests needed to be pre-ordered in advance because of the potential number of tests needed. Considering we finally signed the agreement of asset transfer (ownership) on Memorial Day weekend of 2021 and most camps start within three weeks of that time frame it was impossible to operate a summer camp because of the NH state COVID-19 testing requirements.

Second, we did not actually know we would acquire the property until the May 2021 closing. We did not and frankly could not perform any marketing to prospective families and campers. It would have been disingenuous to attempt to market a camp or to solicit funds to support that camp for something that was not yet a legal reality. Therefore, no marketing efforts or functions were in place or acted on to attract summer campers within the three-week lead time.

Third, the timing of the asset transfer combined with NH's COVID-19 protocols and regulations made hiring for the summer of 2021 impossible. Before the closing, Camp Berea had not hired the full-time staff required to run the operation. We simply did not have the staff to run a summer camp with the required COVID 19 protocols and regulations. Typically, summer staffers work about 8-10 weeks in a summer and have locked in their summer plans long before Memorial Day. All this to say Camp Berea could not fully staff up at appropriate levels both for full time and summer staff in three weeks and also comply with NH COVID 19 and safety regulations.

Fourth, it is not reasonable to expect that Camp Berea could receive a summer camp permit from the State of NH in less than three weeks after the transfer.

It should be noted, however, that Camp Berea was active on the Thorndike Pond property over the course of the summer and fall of 2021, cleaning up the beach, organizing our boats, canoes, kayaks, docks, equipment and boat house, in addition to interfacing with our co-owner Ed Bolles regarding operations on the property. Camp Berea used the Thorndike property to store the Camp's waterfront equipment obtained in the asset transfer, as MCM had done in years past. In fact Camp Berea did run our first event on 2021's Labor Day weekend in which we had participants in our ministry actively down at the Thorndike Pond waterfront swimming, canoeing, kayaking, and enjoying other waterfront activities.

All of this to say Camp Berea would have operated summer camp operations in the summer of 2021 if we could have but between the COVID-19 requirements and the short runway into the summer camping season after the acquisition it was simply not possible.

Attorney McCandless added, Camp Berea's Hebron location, having operated for 75 years, was in a much better position to operate in the summer of 2021. He noted there was never a licensing issue with MCM.

With regard to the legal proceedings, the Judge did not make a decision regarding 674:74 because the applicants did not exhaust local remedies. The case was dismissed because they did not follow proper procedure. The common-sense application of section II of RSA 674:74 says if your camp is shut down in 2020/2021 you will not lose your grandfathered use.

Attorney Carey maintains that Camp Berea did not run camp in 2021 because they ran out of time not because of COVID-19. The court order was specific on the application of 674:74. He submitted the Clerk's Notice of Decision by Jackie A. Smith, Presiding Justice, Dated August 19, 2022, which states:

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Whether by the plain language of the statute or upon due consideration of the legislative intent evident in the Emergency Order and legislative history, it is clear the legislature intended the protections of RSA 674:74 to be applicable to only those PNU summer camps that curtailed operations during 2020 or 2021 due to the COVID-19 pandemic.

Ed Bolles, co-owner of the subject property. The property was purchased by his family in 1969. His mother sold her half of the property to the Monadnock Bible Conference in 1983 and in 1985 Mr. Bolles acquired his father's half. He and his daughter camp on the property 6-8 weeks each summer.

Mr. Bolles stated that he does not like to share his property with a camp, however, when Russ Bryant was alive he was a wonderful partner. Since his passing, things have "gotten out of hand." He had spoken to Roy Baldwin on several occasions about the increased usage of the beach area and safety concerns. He stated that once the sale to Camp Berea was completed they went into "reconstruction mode" although they were operating the ministry at the camp.

Chairman Sawyer closed the hearing

DELIBERATION

W Batchelder stated, how could the camp NOT have been impacted by COVID-19? The RSA is clear. There was no possible way to operate a camp with all the restrictions that were in place. Both sections of the law apply to the camp. C Jevne agrees. There is no way COVID-19 did not impact the camp.

L Sawyer stated, the activity at the camp in Hebron, NH is irrelevant.

E Brayall stated just because there weren't campers on site there was behind-the-scenes activity in preparation of the 2022 camping season. COVID-19 affected everyone and everything was shut down. They did receive a license for 2022. C Jevne referred to the letter from Nathan Parks that states that Camp Berea was active on Thorndike Pond during the summer and fall of 2021. The first event was held on Labor Day weekend at the beach.

DECISIONS

ZBA 23-03 Joan Lathrop, Owner
75 Tenacres Rd., Map 241 / Lot 2 Zone: Res A, with town water

Special Exception – The applicant requests a special exception to replace an existing shed within the 75-foot wetland buffer. (Land Use Code, Zoning Ordinance Section XIX, 19.4.2b)

On a **motion** by Tieger, seconded by Batchelder to approve the request for a special exception to allow the replacement of an existing shed within the 75-foot wetland buffer as presented per testimony given and per plan submitted. (5-0-0)

Variance – The applicant requests a variance to replace an existing shed within the setback. (Land Use Code, Zoning Ordinance Section V, 5.7 and VI, 6.1)

On a **motion** by Tieger, seconded by Batchelder to approve the request for a variance to allow the replacement an existing shed 1 ½ feet from the property line as presented per testimony given and per plan submitted. (5-0-0)

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Plans include: Shore line PBN, Map 240 Lot 2, Joan E Lathrop, Jaffrey, NH, dated February 7, 2023.

Findings of Fact

- The existing shed was not located on their property, the placement of the new shed would correct a non-conforming situation
- The applicant will maintain a vegetative buffer
- The applicant meets all the requirements for a special exception and a variance
- The proposed shed is an 8' x 12'
- The proposed shed would be constructed on blocks, with no foundation and will not obstruct runoff
- The shed may be placed 1 ½ feet from the property line

ZBA 23-04 Camp Berea, Owner of subject parcel, 552 Dublin Rd., Map 231 / Lot 17, Zone: Rural
Stephen & Beatrice Epstein, Jeffrey Whittemore & Robin Cassel, Applicants
Robert S. Carey, Agent

Appeal from Administrative Decision – The applicant requests an Appeal from an Administrative Decision made by the Board of Selectman on January 24, 2022. (Land Use Code, Zoning Ordinance Section VII, 7.1.3)

On a **motion** by Tieger, seconded by Jevne moved to deny the request for an appeal from an Administrative Decision made by the Jaffrey Select Board of Selectmen on January 24, 2022. (5-0-0) *This motion was revised*

On a **motion** by Batchelder, seconded by Brayall to affirm the decision of the Jaffrey Board of Selectmen made on January 24, 2022 to not prohibit the “*proposed unlawful use*” and deny the request for appeal. (5-0-0)

Findings of Fact

- Monadnock Christian Ministries/Camp Berea is a legal, non-conforming use.
- Monadnock Christian Ministries received approval from the PB in 1984 and approval of a Master Development Plan in 1988.
- RSA 674:74 applies to Camp Berea.
- Camp Berea did not apply for a State License in 2021 due to COVID-19.
- The transfer of ownership was May 29, 2021.
- Camp Berea did obtain a State license to operate the camp in 2022

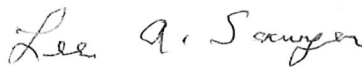
ADJOURNMENT

The meeting adjourned at 8:41 pm
Submitted:



Rebecca Newton, Recording Secretary

Attest:



Lee A. Sawyer, Chairman, Jaffrey ZBA