

**TOWN OF JAFFREY NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT**  
**Meeting Minutes**  
**July 5, 2023**

**Present:** Chairman Lee Sawyer, Members Marc Tieger, Erlene Brayall, Walter Batchelder, Carl Jevne, Judy Lucero (alt) *will vote for CJ*, David Jeffries (alt)

**Absent:** Phil Cournoyer (alt)

**Other:** David Peragallo, Conservation Commission, Attorney Ariane Ice, Attorney Tom Ice, Cathy Furze, Cyndy Burgess, Paula Geraghty, Pam Gordon, Dick & Sandra Pastor, Laurie Yergeau, Larry Clayton, Justin Dellogono, Branwen Gregory, Diane Reenstierna, Kelly Bergeron, Andy Cotzin.

**Staff:** Rob Deschenes, Code Enforcement/Building Inspector, Jo Anne Carr, Director of Planning and Economic Development, Recording Secretary Newton

**MEETING MINUTES APPROVAL**

On a **motion** by Batchelder seconded by Brayall the minutes of June 6, 2023 were approved as submitted. (4-0-1)  
*MT abstained*

**PUBLIC HEARING**

Chairman Sawyer called the public hearing to order at 6:00 pm. Notice of hearing for cases No. ZBA 23-13 through ZBA 23-18, 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 23-13** Paula Geraghty Rev Trust, Owner, Ariane Ice, Agent  
74 Great Rd, Map 222 Lot 24, Zone: Rural, without town water

Appeal from an Administrative Decision – The applicant is appealing a decision made by the Jaffrey Building Inspector/Code Enforcement Officer on April 21, 2023.

By unanimous consent it was determined that ZBA 23-13 would not have regional impact.

Presentation – Attorney Ariane Ice

Attorney Ice addressed the staff review submitted by CEO Deschenes. She believes that the CEO was in error when he denied the issuance of a Certificate of Occupancy (CO) for 74 Great Rd. In his staff review, the CEO stated:

*The owners are appealing a denial of a Certificate of Occupancy (C-0) for a single-family residence. The denial was issued via email on April 21, 2023, due to that fact that the living space above the garage was not consistent with the construction documents submitted with the building permit application and the building permit issued. Additionally, the email concludes with a request to "discuss resolution to the current situation."*

*A permit was issued for a single-family residence with 3 bedrooms. The final construction yielded the inclusion of an Accessory Dwelling Unit. Section 5.4 of the Land Use Code only permits one Accessory Dwelling per single-*

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*family dwelling unit. Prior to new construction, there were already 2 accessory dwelling units on site. The application was not presented as housing related to a farm.*

The CEO classified the space above the garage as a potential Accessory Dwelling Unit (ADU). Attorney Ice stated that the possible future use of that space is irrelevant at this time. There are two other residences on the property, one houses the farm manager, the other the barn manager. According to State and Town codes employee housing for farm staff are not considered ADUs. She added that an additional kitchen in a home does not constitute an ADU however, if Ms. Geraghty wanted an ADU, it would be allowed. There are no current violations of the zoning, planning or State ordinances that would cause the CEO to deny the CO.

In her rebuttal of the staff review Attorney Ice stated that there is no question that the property at 74 Great Road meets the definition of a farm and offered to provide the board with proof of farm activities if necessary. According to RSA 21:34-a(5) *husbandry, boarding, training, or riding instruction of equines* are considered farming activities. Housing relating to farming is a right and is not restricted. The size of the farm would naturally limit the number of housing units needed. The addition of the room cannot be considered a significant expansion large enough to warrant a site plan review.

L Sawyer, asked for confirmation that the space above the garage will not be used for farm-related housing at this time. Attorney Ice stated there is no immediate plans for anyone to live in that space. She noted that the denial of the CO included the house and the space above the garage.

R Deschenes noted that the habitable space above the garage is attached to the main house by a breezeway. When discrepancies were discovered during the final inspection he reached out to Pam Gordon to contact him so that they could discuss and resolve those issues in order to move forward. Those discrepancies were the reason for the denial.

C Jevne asked, did the original plans included the bedroom, kitchen and living room? R Deschenes responded that the original plans included a kitchenette, at that time he informed the owners that there were already two existing ADUs on the property, therefore, he could not approve a third one. The plans were modified and the kitchen was removed. A CO could not be issued once construction was complete because the as-built plans were different than the final construction plans submitted. He explained that habitable space is allowed. A property can have multiple bedrooms and as many bathrooms as the septic system will allow. To be considered a “dwelling unit or ADU” three criteria must be met; sleeping, cooking and sanitation. M Tieger noted that the other dwelling units on the property were pre-existing, one of which had only been used seasonally.

L Sawyer asked, is it classified as an ADU because the space has plumbing and electrical in place for the kitchen? R Deschenes responded all that is missing to meet the three criteria of an ADU is kitchen appliances.

J Carr noted that the discrepancy between the building plans submitted and as-built plans can be easily rectified with updated as-built plans. For clarification she noted that if the property is considered residential, only one ADU is allowed, if it is considered a farm there is no limit to the number of ADUs as long as they are used for farm-related housing. What needs to be considered is the use of the land, is it an allowed use, and was the withholding of the CO proper; are the as-build plans the same as what was submitted with the building permit?

R Deschenes stated the determination of whether or not the property is a farm is for the Board to decide. If there is a significant expansion, i.e., enough increased farm activity to warrant more housing, a site plan would be required.

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W Batchelder asked are there animals on the farm? Attorney Ice responded that there are six horses and chickens owned by Ms. Geraghty. W Batchelder asked is there any animals currently being boarded, equestrian training, or dressage being done? Ms. Geraghty responded not at this time. Those activities had taken place in the past, and may again in the future. C Jevne asked do you sell the eggs or chickens? Ms. Geraghty responded no, she gives them away. Attorney Ice noted that the statute defines a farm states, the husbandry, boarding, training or riding instruction of equines. No specific definition of husbandry was provided.

Attorney Ice argued that in the April 29 email from the CEO, his denial of the CO was due to the construction of a third ADU, not because the as-built plans did not meet the construction plans submitted with the building permit. She added that the question of a third ADU is irrelevant because the two existing ADUs are utilized as farm-related housing. The modification to the kitchen was done at the request of the building inspector.

*Pam,*

*I am responding to the results of the final inspection for a certificate of occupancy for 74 Great Road, and potentially the Accessory Dwelling Unit (ADU) over garage. At the conclusion of this inspection I informed you that I would have to review plans that had been submitted for permitting and review any other documentation you may have to submit that may allow an additional ADU on this property. I have not received any other information from you.*

*During this inspection it was determined that the habitable space over garage was constructed in a manner and with provisions made to use as an accessory dwelling unit (ADU). All plumbing, electric and space for the kitchen have been provided to meet the definition provided in the Jaffrey Land Use Code (LUC) for both an ADU and/or a dwelling unit.*

*At rough inspection I informed the general contractor that the plumbing for a sink in a counter could remain but a kitchen or provisions for a kitchen could not be allowed to be installed and would be a violation. In pre-construction meetings and review of original plans you were notified that the property already has two pre-existing detached ADU's and Jaffrey town zoning LUC 5.4 permit only one ADU per single family dwelling unit on a lot.*

*Original plans were modified and kitchen area was removed from this space over garage, leaving only a bedroom, bathroom and living area. Permit issued for plans as modified and dated April 15, 2021 do not show any counter space, or provisions for any kitchen or appliances, including stove, refrigerator, sink and dishwasher, which all are present now.*

*Jaffrey LUC Section V 5.13, prohibits the use or occupation of a building or structure until the issuance of a Certificate of Occupancy that is not found to comply withal the provisions of the Jaffrey Zoning Ordinance or Jaffrey Land Use code.*

*NH RSA 676:13 I States "The Building Inspector shall not issue a building or occupancy permit for any proposed construction, remodeling or maintenance which will not comply with any or all zoning, building codes or planning board regulations which are in effect."*

*NH State Building Code, International Residential Code R105.4 and R110-R110.3 has provisions for validity of permits and issuance of certificates of occupancy.*

*At this point, until the space over garage is brought into compliance, I am not able to issue a Certificate of Occupancy.*

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*The third (3rd) ADU space over garage, bringing the total number of occupiable dwelling units on property, including the main dwelling unit, to 4 (four) will have to be permanently modified to not meet the definition of a dwelling unit. At this time the space would be a violation of the Jaffrey Land Use Code section V, 5.4.1 and section VI 6.1 - a)*

*I am available next week to discuss resolution to this current situation.*

*Regards,  
Rob Deschenes*

D Jeffries asked the CEO, is this is a farm? He responded yes, it has farm buildings, however, at no time prior to this appeal was this presented as farm-related housing.

L Sawyer asked if in the future the farm had significant growth that would require more farm-related housing, would they need permitting? R Deschenes responded yes. L Sawyer asked if a CO could be issued for the house and not the space above the garage. Attorney Ice stated that the CO was denied because the space above the garage could *possibly* be used as an ADU in the future. She stated, the board is looking for ways to deny Ms. Geraghty a CO. This hearing is an opportunity for the Town to correct their mistake, she believes the CEO's decision was unlawful.

D Jeffries stated that the CEO's denial was correct based on the information provided at that time which was a residential building permit for a 3-bedroom single-family residence. The new evidence presented suggests that the property is a farm. If we agree that this is a farm, and the two existing ADUs are farm-related housing, then the addition of another ADU would be irrelevant. R Deschenes stated it was not presented as farm housing and he was not aware that the other residents of the properties were farm employees. He added that he did ask to meet with the owner to resolve the issue. L Sawyer agreed that it meets the criteria for a farm.

J Lucero asked, now that it has been deemed a farm, does it need a new permit since the building permit was issued for single-family residence? R Deschenes responded, a new or amended building permit should be submitted.

Attorney Ice noted that they chose to file an appeal instead of responding to the email in order to meet the 30-day requirement so Ms. Geraghty would not lose her right to appeal.

The Board expressed their support of the Building Inspector/Code Enforcement Officer.

No abutters spoke for or against.

On a **motion** by Tieger, seconded by Brayall to waive site visit. (5-0-0)

**Chairman Sawyer closed the hearing.**

**Findings of Fact:**

- The property in question is a deemed a farm as defined by State law.
- The NH Statute for farms does not limit the number of farm-related housing units.
- The potential future use of the space is not a current use.

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**DECISION**

On a **motion** by Brayall, seconded by Tieger the appeal from an administrative decision of the CEO to refuse to issue a CO is overturned and the parties are instructed to finalize expeditiously any remaining issues with the issuance of a CO. (5-0-0)

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**ZBA 23-14** Justin & Elizabeth Dellogono, Owner  
218 Fitzwilliam Rd, Map 206 Lot 21.1, Zone: Rural, without town water

Variance – The applicant requests a variance to construct a shed within the property line setback. (Land Use Code, Zoning Ordinance Section V, 5.7 & VI, 6.1)

By unanimous consent it was determined that ZBA 23-14 would not have regional impact.

Presentation: Justin Dellogono

Mr. Dellogono is requesting a variance to build a 16' x 20' shed, set on pre-fab piers, within the property line setback. Placement options for the shed are limited as the well is located behind the house and the septic in front of it. The house sits within the property line setback. Due to the configuration of the lot, the only option to put the shed outside of the setbacks would be in the woods which would make access difficult. The new shed would allow for inside storage of his tractor and snowblower, etc.

W Batchelder asked, what is the distance from the property line to the shed? Mr. Dellogono responded it is 14 feet from the property line. M Tieger asked what are the side setbacks? R Deschenes responded 40 feet.

E Brayall clarified that the shed would be located in the driveway turnaround.

R Deschenes had no issues with the application, the measurements are taken from a septic plan.

D Jeffries asked is it possible to put the shed right behind the garage? Mr. Dellogono said no, there is a large boulder and it is within range of the well.

David Peragallo, Conservation Commission noted that this property also located within the 75-foot wetland setback. There is a stream on the adjacent property located within 20 feet of the proposed shed.

The Board determined that the applicant would need to apply for a variance for the wetland setback. A special meeting will be scheduled and noticed accordingly.

On a **motion** by Tieger, seconded by Batchelder to waive site visit. (5-0-0)

**Chairman Sawyer closed the public hearing.**

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**Findings of Fact:**

- A hardship exists as there is no other location for the shed.
- The proposed shed is 16' x 20'.
- A 14-foot side setback is requested.
- Meets the less than 25% requirement as required by Section 5.7.
- The application meets the five variance criteria.

**DECISION**

On a **motion** by Tieger, seconded by Brayall the variance requesting to construct a shed 14 feet from the property line side setback was approved as presented per testimony given and plan submitted. (5-0-0)

Plans include: Septic System Design for Justin Dellogono, 218 Fitzwilliam Rd, Jaffrey, Map/Lot 206/21.1, created by Freihofer Septic Design, dated December 10, 2018.

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**ZBA 23-15** Richard & Sandra Pastor, Owner  
136 Crestview Dr, Map 246 Lot 16, Zone: Rural, without town water

Variance – The applicant requests a variance to construct a shed within the property line setback. (Land Use Code, Zoning Ordinance Section V, 5.7 & VI, 6.1)

By unanimous consent it was determined that ZBA 23-15 would not have regional impact.

Presentation – Richard Pastor

Mr. Pastor is requesting a variance to build an 8' x 14' shed on cement blocks, 20 feet from the property line. An existing shed sits 14 feet from the property line. The lot is primarily ledge so the house was constructed without a cellar. The shed is needed for additional storage. All the properties in the surrounding area are similar in that the driveways are situated on the edge of the property, possibly due to ledge. The site has a paved area used for parking; they are proposing to put the shed partially on the paved area, and partially on the grass. The other side of the lot slants away. The only other possible location has overhanging trees and is further away from the garage.

No abutters spoke for or against.

On a **motion** by Tieger, seconded by Lucero to waive site visit. (5-0-0)

**Chairman Sawyer closed the public hearing.**

**Findings of Fact:**

- The proposed shed is 8' x 14' built on cement blocks
- The proposed location will not require site prep or tree removal.
- The other side of the lot has a steep slope.
- The new shed will sit 20 feet from the property line which is further away than the existing one.
- The application meets the five variance criteria.

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**DECISION**

On a **motion** by Tieger, seconded by Batchelder the variance to construct a shed 20 feet from the property line setback was approved as presented per testimony given and plan submitted. (5-0-0)

Plans include: ZBA 23-15 Map 246/16 Shed Variance for Pastor, dated July 5, 2023

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**ZBA 23-16** Diane Reenstierna, Owner  
122 Squantum Rd, Map 243 Lot 15.2, Zone: Res B, with town water

Variance – The applicant requests a variance to construct a 12' x 16' addition within the property line setback. (Land Use Code, Zoning Ordinance Section VI, 6.1)

By unanimous consent it was determined that ZBA 23-16 would not have regional impact.

Presentation – Diane Reenstierna

Ms. Reenstierna is proposing to construct a 12' x 16' four-season porch addition to her home. Due to the narrowness of her lot and the layout of the home there are no other locations suitable for the addition. The setbacks in Res B are 30 feet, she is asking for a variance to place the addition 18' 3" from the property line.

M Tieger asked will any trees be taken down? Ms. Reenstierna responded that one spruce tree will be removed and replanted in the neighbor's yard.

On a **motion** by Tieger, seconded by Batchelder to waive site visit. (5-0-0)

David Peragallo, abutter had no objections to the proposal.

**Chairman Sawyer closed the hearing.**

**Findings of Fact:**

- There is no other practical location for the addition because of the way the house sits on the lot.
- The addition will be 18' 3" from the property line.
- The proposed addition is 12' x 16'.
- The parcel is an odd shaped lot and the addition would be at the narrowest point.

**DECISION**

On a **motion** by Batchelder, seconded by Lucero the variance to construct a 12' x 16' addition within the property line setback was approved as presented per testimony given and plan submitted. (5-0-0)

Plans include: Variance application, Map 243/15.2, 122 Squantum Rd, ZBA 23-16, Reenstierna, dated July 5, 2023.

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**ZBA 23-17** Jaffrey Chamber of Commerce, Owner

7 Main St, Map 238 Lot 5, Zone: General Business & Main Street Program Area, with town water

Variance – The applicant requests a variance for an outdoor lighted LED signboard. (Land Use Code, Zoning Ordinance Section XVI, 16.11.5)

By unanimous consent it was determined that ZBA 23-17 would not have regional impact.

Presentation – Cyndy Burgess & Cathy Furze

The applicants are requesting a variance to replace their existing 4' x 8' outdoor, back-lit sign board with a new outdoor LED display board. The new sign will be the same size as the existing sign. The display will have white letters on a black background. There will be no flashing lights, banners, or rotating messages. It will be used in a similar fashion as the existing sign. The only way to access the current board to change messages is the climb a ladder which is a safety concern. Messages on the new board will be able to be programed electronically from inside the building. This will also enable them to better serve the town in case of emergency. According to the Chamber sign policy all announcements are approved by the committee prior to being posted.

W Batchelder asked will it be lit up 24-7? Ms. Burgess responded it will be the same as it is now. The current board is on a timer.

L Sawyer noted that the Chamber has been a good neighbor.

E Brayall asked will the LED lighting be brighter? Ms. Furze stated it would be similar to the sign at Conant High School, but the messages will be stationary.

No abutters spoke for or against.

On a **motion** by Brayall, seconded by Batchelder to waive site visit. (5-0-0)

**Chairman Sawyer closed the hearing.**

**Findings of Fact:**

- The new sign will provide a service to the Town.
- The proposed sign is the same size as the existing one.
- The proposed sign will not be a distraction as it will not blink.
- The proposed sign will be safer for the staff.

**DECISION**

On a **motion** by Tieger, seconded by Lucero the variance to permit an outdoor lighted LED signboard was approved as presented per testimony given. (5-0-0)

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**PUBLIC HEARING**

**ZBA 23-18** Laurence & Valerie Clayton, Owner, HDA Carpentry, Agent  
125 Michigan Rd, Map 240 Lot 98, Zone: Res A, with town water

Variance – The applicant requests a variance to construct an accessory structure with the 75-foot wetland buffer. (Land Use Code, Zoning Ordinance Section XX, 20.3, 20.4, 20.4.9 & 20.13)

By unanimous consent it was determined that ZBA 23-18 would not have regional impact.

Presentation – Andy Cotzin, HDA Carpentry

The applicants are requesting a variance to construct a 30' x 40' accessory structure within the wetland buffer. The wetlands have been delineated by a certified wetland scientist, those measurements have been used on the plan provided. The proposed building would sit almost entirely within the buffer. Placing the building on the other side of the house, outside of the side setback, would put it right in front of the door.

W Batchelder noted that this is a large structure; will you be able to build without dredging and filling? Mr. Cotzin responded that they will be putting in a frost wall and the structure will sit on a concrete foundation. They will not be bringing in any fill.

M Tieger asked what will it be used for? Mr. Cotzin responded cold storage, parking of equipment, and as a workspace. The exterior will be T1-11 wood-based siding.

David Peragallo, Conservation Commission noted that purpose of the Conservation Commission is to protect the water sources, not to prevent construction. Mr. Cotzin added that the blue line depicted on the plan was measured from the pin. R Deschenes noted that the site was pinned by the wetland scientist and should be accurate. L Sawyer clarified that the structure would be 25 feet into the wetland buffer.

No abutters spoke for or against.

**The hearing was continued to a site walk on Monday, July 10 at 3:00 pm.**

**ADJOURNMENT**

The meeting adjourned at 8:40 pm  
Submitted:



Rebecca Newton, Recording Secretary

Attest:



Lee Sawyer, Chairman, Jaffrey ZBA