

TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
November 1, 2022

Present: Chairman Lee Sawyer, Members, Walter Batchelder, Erlene Brayall, Carl Jevne, Marc Tieger
Phil Cournoyer (alt), Judy Lucero (alt) *left at 6:59 pm*, David Jeffries (alt)

Other: Carolyn Garretson, Conservation Commission, Rebecca & Wayne Barton, Jo Anne Carr, Jon Frederick, Tom Coneys, Geoff Murray, Pam Royce, Paula Geraghty, Bruce Gilday, BAG Land Consultants, John Lucero, John Noonan, Jake Wagner, Stephen Longley-Martines, Amy Meyers, Attorney Jason Reimers, Attorney Kelly Dowd, Attorney Jonathan Sistare.

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

MEETING MINUTES APPROVAL

On a **motion** by Jevne seconded by Batchelder the minutes of October 4, 2022 were approved as submitted. (5-0-0)

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 6:09 pm. Notice of hearing for case No. ZBA 22-20, ZBA 22-21 and ZBA 22-22, 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 22-21 Geoffrey & Elizabeth Murray, Owner
79 Turnpike Rd Map 244 Lot 95 Zone: Res B, with town water

Variance – The applicant requests a variance to allow the construction of a 22' x 32' garage within the setback (Land Use Code, Zoning Ordinance Section V, 5.7 & VI, 6.1)

Presentation: Geoffrey Murray

The applicant is requesting a variance to construct a 22' x 32' garage on a cement pad within the front and side setbacks. *30-foot front and side setbacks are required.* The applicant feels there would be no negative impact to the neighbors.

The rear right corner of the building would sit 6 feet from the property line.
The front right corner of the building would sit 10 feet from the property line.
The front of the garage would sit 8 feet from the highway.

L Sawyer asked if it could be set back further. Mr. Murray responded, possibly, however the rear property line has an angle to it and is only 64 feet wide. The abutting property on the east side has a large hill with trees and no structures visible from the subject property. M Tieger clarified that the garage would be for residential use.

Tom Coneys, TAC Properties, abutter – noted that this lot is a very narrow piece of land and he feels that the structure would be too close to his property line. He shared a survey of the area with the Board. Mr. Coneys stated there is room in the back for the garage. M Tieger noted that applicant would need a variance for the garage in any

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location on the property. Mr. Murray stated if the garage were pushed back he would lose all of his yard and a long driveway would be required.

E Brayall asked where is the nearby waterway mentioned in the application? Mr. Murray responded that is drainage and it is located on the left side of the house.

The Board continue the hearing to the site walk on Wednesday, Nov 2 @ 4:00 pm.

ZBA 22-22 Teleflex Inc, Owner, Fieldstone Land Consultants, Agent
50 Plantation Dr, Map 243 Lot 29.1 Zone: Industrial, with town water

Variance – The applicant requests a variance to allow an addition and exterior stairway within the setback (Land Use Code, Zoning Ordinance Section V, 5.6 & VI, 6.1)

Presentation: John Noonan, Fieldstone Land Consultants, Jake Wagner and Stephen Longley-Martines, Teleflex

Teleflex is proposing to build a four-story addition used for extruding and cooling of manufactured goods developed by Teleflex. This addition would require two variances, one for the building height and one for the setback. The proposed tower building would be 61 feet tall exceeding the 45-foot maximum height allowed. In 2010 a height variance was approved for the existing tower which is 61 feet at the lower section and 71 feet at its highest. The new tower addition would align with the existing building that is located within the setback, parallel to Plantation Drive. The stairwell will encroach another 11 feet further toward Plantation Drive, 3 feet from the property line. The tower would be 13.8 feet from the ROW. An enclosed stairwell would replace an existing fire escape and provide a safer egress from each floor.

M Tieger asked what is the purpose of the tower? Mr. Noonan responded extrusion and cooling. Mr. Longley-Martines added the unique process requires towers to be able to extrude vertically. This addition will add multiple extruders to the facility to keep up with demand.

Mr. Noonan read the answers to the five variance criteria as presented in the application:

1. Granting the variance would not be contrary to the public interest because:

Granting this variance would allow for the productive use of the property and allow a successful business in town to grow. The building addition would fit in with the industrial character of the building and surrounding neighborhood and would not present a threat to the health, safety or welfare of the public. The proposal would be in favor of the public interest by expanding an existing use and providing for growth in the production of the Teleflex facility, which provides employment and a generous tax base for the town.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

We believe the proposed addition is a perfect fit into the existing building layout and will be identical to past building additions that required variances from the same zoning regulations. The building would be in alignment with the existing eastern wall of the industrial facility, and the building materials will match the existing building. This proposal will not negatively impact the public's health, safety or welfare, nor change the character of the industrial park neighborhood. The enclosed stairwell will be a feature that will increase the safety and welfare of employees and emergency responders at the facility. For all of these reasons we believe that granting the variance would observe the spirit of the ordinance.

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3. Granting the variance would do substantial justice because:

Granting the variances would do substantial justice because it would allow for the productive use of the property, within a reasonable footprint matching the existing building structure. The additional building space would expand the Teleflex production capability and the public would realize no appreciable gain from denying a variance for encroaching the setback or for the additional building height.

4. Granting the variance would not diminish the values of surrounding properties because:

By granting the two variances, the owner would be able to construct a new building addition, increase production, and improve safety concerns by providing an exterior access stairwell for emergency response. These improvements to the site will likely increase the business and increase the value of the subject lot and surrounding lots. For these reasons we do not believe that this development should have any negative impacts on the value of surrounding properties.

5. Unnecessary Hardship.

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The eastern wall of the existing building was provided relief in the past for encroaching the same front setback line and allowing for the taller tower. The eastern elevation of the building is not visible from other public roads and only encroaches the end of Plantation Drive that provides access to the lots in the Industrial Zone. As this portion of the building will not be visible to the public and only those within the industrial park, we don't believe there is a fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The proposal is to simply construct a building addition within an alcove of the existing building footprint and the location of the existing building walls, utilities, and production equipment are special conditions of the property that limit where a suitable location for the tower can be proposed.

2. The proposed use is a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for the reasonable expansion of the production capacity at a successful industrial business.
- The exterior stairwell will provide the safest alternative for egress in emergency situations and was favorable to the fire department.
- The building addition would be in harmony with the surrounding industrial use and match the existing building tower.
- The setback encroachment would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. The encroachment will be the same as the past additions that were granted a variance for the 30' side setback and a building height over 45 feet.
- This proposal would in our opinion observe the spirit and intent of the ordinance.
- This project would have no measurable negative impacts on the surroundings or their property values, and would likely increase the property values and the town's tax base.

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For all of the reasons we believe that the proposed request is a reasonable one.

- B. Explain how, if the criteria in paragraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

A denial of this variance would result in an unnecessary hardship on Teleflex due to the existing special conditions of the property. The existing building footprint, location of utilities, and location of production equipment really limit where a building addition would be feasible on the property. The proposed location is clearly the best choice in working with these special conditions and the relief from the variances are needed to allow for the expansion of this successful business, which is a reasonable request that would benefit both the town and applicant.

M Tieger asked how many people does Teleflex employ? Mr. Wagner responded 300 employees on three shifts. The facility operates 24/7.

C Jevne asked will there be any equipment on top of the tower? Mr. Longley-Martines responded possibly an HVAC system. C Jevne asked are there any issues with the nearby airport? Mr. Longley-Martines responded no, there are lights on the existing tower.

On a **motion** by Batchelder, seconded by Jevne the Board voted to waive site review (5-0-0)

**ZBA 22-20 580 Mountain Rd LLC, Owner, BCM Environmental & Land Law, Agent
580 Mountain Rd Map 212 Lot 17 Zone: Mountain Zone, without town water**

Appeal from an Administrative Decision – The applicant requests an Appeal from an Administrative Decision related to a Stop Work Order/Notice of Violation alleging a violation of Section XX Wetlands Conservation District (Land Use Code, Zoning Ordinance Section XX, 20.3, 20.4 and 20.4.2)

The Board determined that this appeal would not have a regional impact.

Presentation: Attorney Jason Reimers, BCM Environmental and Land Law

In early September the client, 580 Mountain Rd LLC, replaced a single, existing concrete culvert with two PVC culverts at the same depth. The culverts run perpendicular across the field to Rte. 124 and tie into a culvert that runs under the highway. The trench was filled and the elevation of the field was restored to the pre-construction elevation. No trees were removed. Mr. Reimers shared photos of existing conditions (exhibit 1). Prior to the removal of the culvert the client removed a beaver dam that was at the inflow of the culvert (exhibit 2). A game warden was consulted prior to its removal.

On Sept 7 the owners were served a stop work order (SWO) by Code Enforcement Officer (CEO) Deschenes, while working on the trench replacement which was roughly 50% complete at that time. The owner chose to resume work and finish the project rather than leave an open trench due to forecasted rain.

The SWO alleged a violation of Article 20.4 Permitted Uses; Any of the following uses that do not result in the erection of a structure or dwelling or **alter the surface configuration by the addition of fill, dredging or excavation**. The landowner disputes these allegations. A formal complaint was filed with NHDES, which Attorney Reimers felt was the appropriate course of action. NHDES issued a Letter of Deficiency to the property owner on

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October 18, 2022. They are currently working with NHDES to obtain an after-the-fact permit. Attorney Reimers stated this is more of a NHDES issue than a zoning violation.

The SWO was issued on Sept 7 and a Cease and Desist (C&D) was filed on Sept 12. The question before the board is; is the improvement of a culvert a zoning violation? He asserts that it was not. Attorney Reimers maintains that his client replaced a legally existing, non-conforming use (culvert) therefore no zoning approval would be required, and that the surface configuration of the land was not altered.

The culverts were installed in the 1930s prior to zoning therefore they are grandfathered. They were used initially for agriculture and later for an airfield. The culverts have kept the field "somewhat dry" although the wetlands have expanded and contracted throughout the years. These culverts were never willfully abandoned and the field is mowed twice a year.

A 2016 Google map/street view (exhibit 6) shows water coming from the end of the culvert to Rte. 124, in between the outlet of the culvert and Rte. 124 proving they were not abandoned. The conclusion is that this is a legal non-conforming use. Their performance has lessened due to ingrown roots, beaver dams, etc. hence the need for improvement. Section 20.5 allows for the improvement of a non-conforming use. The single, existing concrete culvert was replaced with two, 18-inch PVC culverts. If the Board does not allow the owner to maintain the culvert the field would become unusable for agriculture.

Zoning approval is only needed if the work *results* in the alteration of the surface configuration by the addition of fill, dredging or excavation. Attorney Reimers explained the construction process for the installation of the new culverts. The culvert was removed by excavating a trench, wet fill was removed, two loads of clean loam were brought in, sand and stone were put down, the single culvert was replaced with two new culverts at the same depth/grade as the original culverts and the trench was filled in. The net material remained the same as did the surface configuration. In the C&D the CEO alleges that the work altered the surface configuration.

In 2019 the client consulted with Heidi Konesco from the USDA NRCS (exhibit 8). Ms. Konesco described the culvert which controls the water level in the wetland area and transports the water to the other side of the field. She opines that the watershed contributing to the pond is "pretty big" and removing it could impose a risk to Rte. 124.

Bruce Gilday, Certified Wetland/Soil Scientist, BAG Land Consultants. Mr. Gilday was contacted by the owner to file an after-the-fact NHDES permit. He will generate a report outlining the impact of the work that was done to determine if mitigation is necessary. In his estimation, the trench was 4-5 feet wide, clean fill was used and it does not appear that pools, plants or animals were adversely affected. He believes that it was constructed well and that the elevation has not changed based on the photos he has seen. The culvert was originally installed to allow mowing of the field without getting the tractor bogged down. He plans to speak to the Conservation Commission to get their recommendations as well as NHDES to address the requirements of their Letter of Deficiency.

W Batchelder asked, why wasn't all of this done before the excavation was started? Mr. Gilday responded that the owner felt that she had done her due diligence in speaking to the NRCS in 2019 and didn't think she needed permits to replace a culvert in-kind. W Batchelder asked Mr. Gilday, would you characterize the area as a wetland? Mr. Gilday responded yes, the work was done in a wetland. Dredging was done, but he does not feel that the extra fill was detrimental, everything is stable, there is no erosion.

E Brayall asked what is the length of the culvert? Mr. Gilday responded that it is the same as the concrete culvert. The original pipe was a 24" reinforced concrete pipe that was replaced with two 18" corrugated high-density

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plastic extrusion pipes (HDPE) which allow more water to flow through. W Batchelder asked will the increased flow deplete the wetlands? Mr. Gilday responded no. He is unsure whether the invert in/out elevations of the concrete pipes were checked prior to removal, but those will be measured when he goes out to assess the natural flow. The water flow in the pipe is moving well without scouring or flushing. Mr. Reimers asked Mr. Gilday to explain why this won't drain the wetland. Mr. Gilday responded that the twin pipes have settling ponds, the water trickles down to the settling ponds which allows the sediments to drop out. A tremendous drop in elevation is what would drain the wetlands and the elevations appear to be the same as pre-construction. Beaver activity will shrink and swell a wetland.

C Jevne asked when was the field last hayed? Pam Gordon responded in June; the second cut has not been done. C Jevne asked for clarification of the phrase from the 2019 email with the CEO that states your goal is "to bring the land back to what it was before and hope to reclaim the field for haying and agricultural purposes." Ms. Gordon responded the field has been hayed every year, however, some years are too wet in certain areas to hay. When referring to "before" she meant back in the 30s and 40s when there was less wet meadow.

Attorney Kelly Dowd, representing the CEO and the Town of Jaffrey shared photos of the area. The first GIS image shows the location of the stream that flows under the road and the marshy/wet areas. The culvert runs along that stream. The Sept 6 image was taken at the time the SWO was issued showing the heavily impacted area with the old concrete pipes that had been removed stacked in the back and the new uncovered pipes laid in the trench. The applicant confirmed that they added fill and replaced one pipe with two. After the SWO was issued the owner chose to continue work and complete the project, therefore it was necessary to issue the C&D.

Attorney Dowd noted that in addition to the wetland, there is also a 75-foot buffer area that is protected. W Batchelder asked if the excavated culvert was located in the buffer area? Attorney Dowd responded, yes, the stream flows through the culvert. Additional photos provided by the Conservation Commission show the stream on the south side. J Carr asked, is the water in that photo clear? C Garretson responded no, it was very silty. Attorney Dowd added that no erosion controls were in place while the work was being done. Photos and GIS images indicate significant wetlands on the property back to the 1980s and the Town Wetland map shows the designation of the wetlands. The culvert was important in the 30s when the property was used as an airfield to drain the marsh.

Attorney Dowd stated that the purpose of replacing the culvert seems clear, to drain the marsh to allow the expansion of the hayfield as stated in the email of March 2019 from Pam Royce to the CEO (exhibit 7). Every stage of the work was a violation of the wetlands area. There is no way to verify that the surface configuration is the same because measurements were not taken prior to work commencing. The CEO advised the owner in a 2019 email to retain a wetland scientist and contact NHDES before starting any work in the wetland. Neither was done. NHDES is now seeking enforcement action. A Letter of Deficiency was sent to the owner on October 18, 2022.

Section 20.4 of the Land Use Code states: *"Any of the following uses that do not result in the erection of any primary structure or dwellings or alter the surface configuration by the addition of fill, dredging or excavation, and that are otherwise permitted by the Land Use Ordinance."* It will be very difficult to determine, after-the-fact, the extent of changes made when evidence of flow capacity and the levels of the wetland have been destroyed.

20.5.1 *Any lawful use of buildings, structures, premises, land, or parts thereof existing at the effective date of this Section or amendments thereto and not in conformance with the provisions of this section shall be considered to be a nonconforming use.* The wetlands ordinance does not mention grandfathering structures, only uses. The use of the premises when the culverts went in was an airfield. It is clear this is no longer an airfield, it has been abandoned. No work has been done on the culverts and no maintenance records are available.

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20.5.2 *Any nonconforming use may continue and any may be maintained, repaired, and improved without a variance from the Board of Adjustment, no such nonconforming use may be: a) Expanded; b) Changed to another nonconforming use; or c) Renewed after it has been discontinued for a period of 12 months or more.* The ordinance states that a non-conforming use cannot be expanded without a variance. The installation of the twin culverts is clearly an expansion.

Attorney Reimers' rebuttal

- The use is drainage, the stream still flowed through the culverts therefore they are not abandoned. It is not normal to maintain a culvert. 20.4.4 states drainage ways are a permitted use.
- The surface modifications done during construction were temporary, therefore allowed. W Batchelder disagrees referring to the Sept 6 photo taken during construction showing the extensive excavation of the area.
- Drainage is a non-conforming use that can be maintained and improved.
- The applicant did not feel that there was a violation, therefore they did not stop working even after receiving the SWO.

Attorney Dowd's rebuttal

- Drainage is not a primary use of a property, it is an accessory use.
- We are unable to measure the flow or effectiveness of the previous culvert because the evidence has been removed.
- The applicant continued the work even after received a SWO. The SWO directed the applicant to apply for a variance to complete the work, work continued therefore the C&D was issued.

L Sawyer stated that he remembers the property being a hay field prior to the airfield. Attorney Reimers shared some information and historic photos from the Jaffrey Town History depicting agriculture in the field prior to the airfield showing cows in the field and an active hayfield. Agriculture is not a new use.

Carolyn Garretson, Conservation Commission, believes that permits should have been applied for before the work was started. Several years ago, a local non-profit planned to hold a polo match in the field however the horses were not allowed in that section of the field because it was overgrown and marshy. It will be very difficult for a wetland scientist to say what the existing conditions were prior to construction. If a wetland scientist had examined the area before construction began they would have recorded the exact level of the existing culvert. Those measurements were not taken. It appears that the culvert must have been leaking as demonstrated by the photos showing marshland plants growing in the area.

E Brayall notes that a non-conforming use cannot be expanded. This went from one, 24" culvert to two, 18" culverts, would you consider this an expansion? Attorney Reimers responded it's an "improvement." Referring to the appeal application, Attorney Dowd notes that the land owner states that the objective was to replace the culverts and "increase their capacity." C Garretson agreed that this change would increase the capacity and wonders if it will alter the wetlands. CEO Deschenes noted that two pipes, side by side have a wider area at a lower elevation than a single pipe which increases the volume. In addition, NHDES was very concerned with the change in soil types due to the addition of gravel.

Pam Gordon stated that the current pipes were installed at the exact same elevation so there should be no significant change. When she met with Ms. Konesco and examined historical photos of the property Ms. Gordon expressed her desire to return the field to the pristine condition that it once was and increase the hay yield. Ms. Konesco stated that based on conditions of the field now and the length of time that the wetland had been there, this was not realistic. A significant amount of permitting would be needed to accomplish this. Ms. Gordon stated

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they decided that the least invasive option was to address the beavers and improve the aging infrastructure. They understand that there are years that they will not be able to hay the wet meadow area, she is confident that the wetland will continue to exist.

Attorney Sistare summarized each attorney's presentation:

Attorney Reimers:

- Acknowledges that the area in question is a wetland
- Drainage is a use
- The surface condition was not altered because it was returned to its original condition upon completion
- Grandfathering; this is an improvement not an expansion

Attorney Dowd:

- Acknowledges that the area in question is a wetland
- Once the work commenced, this became an alteration of the surface configuration, which is a violation of the ordinance
- This is clearly an expansion of a non-conforming use

The Board continued the hearing to the site visit on November 2, 2022 at 4:30

DECISION

ZBA 22-22 Teleflex Inc, Owner, Fieldstone Land Consultants, Agent
50 Plantation Dr, Map 243 Lot 29.1 Zone: Industrial, with town water

Variance – The applicant requests a variance to allow an addition and exterior stairway within the setback (Land Use Code, Zoning Ordinance Section V, 5.6 & VI, 6.1)

On a **motion** by Tieger, seconded Batchelder the request for a variance to allow a 61-foot tall addition, 13.8 feet from Plantation Drive with an exterior stairway that is 3 feet from Plantation Drive was granted as presented per testimony given and plan submitted. (5-0-0)

Plans include "Site Plan – Building Addition Tax Map 243 Lot 29.1, 50 Plantation Drive, Jaffrey New Hampshire" dated October 11, 2022, stamped by Chad Branon, P.E. and Michael D. Ploof, LLS.

Findings of Facts:

- The height of the proposed tower is 61 feet
- There is an existing tower on site that is 71 feet tall located within the setback
- The Board felt that all five criteria were met

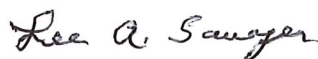
ADJOURNMENT

The meeting adjourned at 8:51 pm
Submitted:



Rebecca Newton, Recording Secretary

Attest:



Lee Sawyer, Chairman, Jaffrey ZBA