

**TOWN OF JAFFREY NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT**  
**Meeting Minutes**  
**February 6, 2024**

**Present:** Chairman Lee Sawyer, Members Erlene Brayall, Walter Batchelder, Carl Jevne, Phil Cournoyer (alt) *will vote on ZBA 24-02 and 24-03*, David Jeffries (alt) *will vote on ZBA 24-04*, Judy Lucero (alt)

**Absent:** Marc Tieger

**Other:** Robert & Vikki Jewell, Peter Mandryk, Michelle & Joshua Tarr, Gary Arceci, Richard and Deborah Roberts, James DePaul, Elizabeth Webster, Charles Cook, John Lucero, Barry Furnival, Pam Gordon, Attorneys Tom and Ariane Ice, Attorney Kelly Dowd.

**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 Jevne seconded by Batchelder the minutes of January 2, 2024 were approved as presented. (5-0-0)

On a **motion** by Jevne seconded by Batchelder the minutes of January 5, 2024 were approved as presented. (5-0-0)

**PUBLIC HEARING**

Chairman Sawyer called the public hearing to order at 6:00 pm. Notice of hearing for case No. ZBA 24-02, 24-03 & 24-04, 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 24-02** Robert & Vikkie Jewell, Owner  
489 Dublin Rd, Map 231 Lot 4, Zone: Rural, without Town water

Equitable Waiver – The applicant requests an equitable waiver to permit a house, driveway and utilities within 75’ of the wetland conservation district, (Land Use Code, Zoning Ordinance Section XX, 20.3 & 20.4)

Special Exception – The applicant requests a special exception to permit a driveway and utilities within 75’ of the wetland conservation district, (Land Use Code, Zoning Ordinance Section XX, 20.4, 20.6.1 )

By unanimous consent, the Board determined that ZBA 24-02 would not have regional impact.

Presentation: Robert Jewell

This property has been in Mr. Jewell’s family for many years. Until recently it had a small run-down cottage on the site set close to the road. Once he took ownership of the property he planned to remove the cottage and replace it with a new home further back from the road. A septic designer was contracted to design a pump-up septic system for the property. Using this plan as a reference, the house/driveway were located on the lot accordingly. The foundation was laid, framing was done and driveway nearly completed. After construction began Mr. Jewell decided a gravity-fed septic system would be a better option. A new septic plan was drawn up by a different septic designer which identified wetlands not shown on the first plan, indicating the newly framed home and driveway to be in the wetland buffer. This was an unintentional error based on conflicting septic plans.

R Deschenes stated, according to the second septic plans, most of the house is located within the 75-foot wetland buffer area. Having two sets of conflicting plans on file with DES could lead to issues later on, therefore, he advised Mr. Jewell

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to request the equitable waiver. The request for a special exception would allow him to complete his driveway and utilities. The septic plan did not include the exact location of the 75-foot buffer area but does indicate the 100-foot setback.

Mr. Jewell described the location of the driveway. Lacking exact measurements, the Board stated that the driveway shall not be any closer to the wetland than the existing driveway. W Batchelder asked, what is the driveway made of? Mr. Jewell responded that he would like to pave it eventually. Elizabeth Webster, Conservation Commission stated because the driveway is within the wetland buffer she would prefer that it be left unpaved.

No abutters spoke for or against.

On a **motion** by Brayall, seconded by Batchelder to waive the site walk.

Plan #1 Septic Plan eCA2023061621, prepared for Suzanne M Jewell Rev Trust 2010, 209 Gilson Pond Rd, Jaffrey, NH 03452, stamped by Carl J Hagstrom, Monadnock Septic Design, dated May 26, 2023

Plan #2 Septic System Design Plan eCA2023122207, 489 Dublin Rd, Jaffrey, NH 03452, Map 231 Lot 4, prepared for Robert Jewell, stamped by Paul F Grasewicz, Graz Engineering, LLC, dated Dec 19, 2023.

**Chairman Sawyer closed the public hearing**

**Findings of Fact:**

The application meets the dimensional requirements of an equitable waiver, RSA 674:33a.

The driveway would be located no closer to the wetland than the existing driveway.

The application meets the requirements for a special exception.

**DECISION**

On a **motion** by Batchelder, seconded by Jevne the equitable waiver to permit a house, driveway and utilities within 75' of the wetland conservation district, was approved as presented per testimony given and plan submitted. (5-0-0)

On a **motion** by Batchelder, seconded by Jevne the special exception to permit a driveway and utilities within 75' of the wetland conservation district was approved as presented per testimony given and plan submitted. The driveway shall no be closer to the wetland than the existing driveway. (5-0-0)

Plans include: Septic System Design Plan eCA2023122207, 489 Dublin Rd, Jaffrey, NH 03452, Map 231 Lot 4, prepared for Robert Jewell, stamped by Paul F Grasewicz, Graz Engineering, LLC, dated Dec 19, 2023.

**ZBA 24-03** Valeria Riccardo & Peter Mandryk, Owners  
574 Fitzwilliam Rd, Map 207 Lot 2, Zone: Rural, without Town water

Variance – The applicant requests a variance to permit a two-family dwelling in the Rural district, (Land Use Code, Zoning Ordinance Section IV, 4.1.2 & VI, 6.1a)

By unanimous consent, the Board determined that ZBA 24-03 would not have regional impact.

Presentation: Peter Mandryk

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**Present:** Chairman Lee Sawyer, Members Erlene Brayall, Walter Batchelder, Carl Jevne, Phil Cournoyer (alt) *will vote on ZBA 24-02 and 24-03*, David Jeffries (alt) *will vote on ZBA 24-04*, Judy Lucero (alt)

**Absent:** Marc Tieger

**Other:** Robert & Vikki Jewell, Peter Mandryk, Michelle & Joshua Tarr, Gary Arceci, Richard and Deborah Roberts, James DePaul, Elizabeth Webster, Charles Cook, John Lucero, Barry Furnival, Pam Gordon, Attorneys Tom and Ariane Ice, Attorney Kelly Dowd.

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

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**PUBLIC HEARING**

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**PUBLIC HEARING NEW ITEMS**

**ZBA 24-02** Robert & Vikkie Jewell, Owner  
489 Dublin Rd, Map 231 Lot 4, Zone: Rural, without Town water

Equitable Waiver – The applicant requests an equitable waiver to permit a house, driveway and utilities within 75’ of the wetland conservation district, (Land Use Code, Zoning Ordinance Section XX, 20.3 & 20.4)

Special Exception – The applicant requests a special exception to permit a driveway and utilities within 75’ of the wetland conservation district, (Land Use Code, Zoning Ordinance Section XX, 20.4, 20.6.1 )

By unanimous consent, the Board determined that ZBA 24-02 would not have regional impact.

Presentation: Robert Jewell

This property has been in Mr. Jewell’s family for many years. Until recently it had a small run-down cottage on the site set close to the road. Once he took ownership of the property he planned to remove the cottage and replace it with a new home further back from the road. A septic designer was contracted to design a pump-up septic system for the property. Using this plan as a reference, the house/driveway were located on the lot accordingly. The foundation was laid, framing was done and driveway nearly completed. After construction began Mr. Jewell decided a gravity-fed septic system would be a better option. A new septic plan was drawn up by a different septic designer which identified wetlands not shown on the first plan, indicating the newly framed home and driveway to be in the wetland buffer. This was an unintentional error based on conflicting septic plans.

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to request the equitable waiver. The request for a special exception would allow him to complete his driveway and utilities. The septic plan did not include the exact location of the 75-foot buffer area but does indicate the 100-foot setback.

Mr. Jewell described the location of the driveway. Lacking exact measurements, the Board stated that the driveway shall not be any closer to the wetland than the existing driveway. W Batchelder asked, what is the driveway made of? Mr. Jewell responded that he would like to pave it eventually. Elizabeth Webster, Conservation Commission stated because the driveway is within the wetland buffer she would prefer that it be left unpaved.

No abutters spoke for or against.

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**Chairman Sawyer closed the public hearing**

**Findings of Fact:**

The application meets the dimensional requirements of an equitable waiver, RSA 674:33a.

The driveway would be located no closer to the wetland than the existing driveway.

The application meets the requirements for a special exception.

**DECISION**

On a **motion** by Batchelder, seconded by Jevne the equitable waiver to permit a house, driveway and utilities within 75' of the wetland conservation district, was approved as presented per testimony given and plan submitted. (5-0-0)

On a **motion** by Batchelder, seconded by Jevne the special exception to permit a driveway and utilities within 75' of the wetland conservation district was approved as presented per testimony given and plan submitted. The driveway shall no be closer to the wetland than the existing driveway. (5-0-0)

Plans include: Septic System Design Plan eCA2023122207, 489 Dublin Rd, Jaffrey, NH 03452, Map 231 Lot 4, prepared for Robert Jewell, stamped by Paul F Grasewicz, Graz Engineering, LLC, dated Dec 19, 2023.

**ZBA 24-03** Valeria Riccardo & Peter Mandryk, Owners  
574 Fitzwilliam Rd, Map 207 Lot 2, Zone: Rural, without Town water

Variance – The applicant requests a variance to permit a two-family dwelling in the Rural district, (Land Use Code, Zoning Ordinance Section IV, 4.1.2 & VI, 6.1a)

By unanimous consent, the Board determined that ZBA 24-03 would not have regional impact.

Presentation: Peter Mandryk

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Mr. Mandryk and his wife purchased the house at 574 Fitzwilliam Rd in April 2023. The house was advertised by the real estate agent as having a “HUGE in-law apartment in the finished basement with its own entrance and utilities.” In addition, they were provided a copy of the lease from the previous tenant that expired in April 2022. Their plan is to have their son live in the smaller basement apartment and rent the upstairs. The rental income of the second unit would enable their son to live independently and affordably in his own home. They have chosen to seek permission for a two-family instead of an ADU as the house will not technically be owner-occupied as his son’s name is not on the deed. Mr. Mandryk and his wife work in MA and plan to purchase a home in the area this summer, so even though they won’t live in the house, they would be nearby. They may move into the house while they search for their new home.

After the purchase they discovered that the septic system needed to be replaced and learned that the previous owners never received approval for the in-law unit. On the 2008 property record card the assessors identified the property as a single-family with an in-law unit, it has likely been used that way even longer. Mr. Mandryk and his wife intend to make all necessary repairs up to code and to secure all required permits. There is a considerable amount of work to be done on the inside, but no changes will be made to the exterior.

C Jevne asked, would it have been easier to ask for an ADU? R Deschenes responded they would not technically meet the requirement of owner-occupied as their son, who is not on the deed, will live in the home and it may exceed the maximum square footage.

E Brayall asked are there other two-family units in the area? The response was, none that have received approval.

James DePaul, abutter, asked, is the issue that it is not owner occupied? E Brayall clarified an ADU requires the house to be owner-occupied, a two-family does not. As a two-family, both units could be rented if the son chose to leave. Mr. DePaul stated he would not be in favor if the property was not owner-occupied.

Deborah Roberts’ children have taken over their property on Fitzwilliam Rd. She doesn’t want to see development on that road. Mr. Roberts added that he was not originally in favor of the proposal. He has since realized Mr. Mandryk is just asking to use the house as a two-family as it has been used for the last 20 years. He appreciates that Mr. Mandryk has been honest enough to ask for the proper approvals.

Michelle Tarr, abutter, is concerned about too much traffic on the road and how fast people drive. Because the area is at the edge of the town the response time from the Police Dept could be delayed in case of an emergency. There is much wildlife in the area.

Gary Arceci, resident. The area is zoned rural, approving this would set a bad precedent. The owner’s son may not continue to live there. He stated it is unfortunate that the property was misrepresented. L Sawyer noted that each application stands on its own, no precedent would be set.

Charlie Cook, resident, was forced to live in apartments for many years due to his job. Apartment buildings should be in town. He chose to build his house in a remote area to be away from apartments. He also has lots of wildlife in his yard and doesn’t want to see it change. One family could ruin the whole neighborhood.

R Deschenes added this was brought to his attention due to the failed septic system. He cannot sign off on the septic system until this decision is made.

J Carr asked, would this be considered owner-occupied if the son’s name was on the deed? The answer is yes.

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Mr. Mandryk noted that you cannot choose your neighbors. As a homeowner, he could live in the house and do whatever he pleased and the neighbors would have no say in it. He is giving his assurance that his son will live on site and that they will rent to good people. They are prepared to make a significant investment in the house.

E Brayall doesn't feel that there is a hardship. Mr. Mandryk responded that they may be forced to sell the home at a loss if they are unable to get a variance. If that happens, the abutters would still not have a say in who the neighbors are. L Sawyer stated that a financial concern cannot be the hardship.

On a **motion** by Cournoyer seconded by Batchelder to waive the site walk. (5-0-0)

**Chairman Sawyer Closed the Public Hearing**

**DELIBERATION**

E Brayall - the application does not meet the criteria for a hardship. W Batchelder agrees. What makes this property unique is that it has been an illegal two-family for many years.

P Cournoyer - if the son had ownership it could make a difference.

D Jeffries – does not see a basis for approving it.

**Findings of Fact:**

The application does not meet the criteria for a hardship

**DECISION**

On a **motion** by Brayall, seconded by Batchelder the variance to permit a two-family dwelling the Rural district, was denied as presented per testimony given. (5-0-0)

**ZBA 24-04** Paula Geraghty Rev Trust, Owner, Ariane Ice, Agent  
74 Great Rd (62 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 dated December 8, 2023.

Presentation: Attorney Ariane Ice

Attorney Kelly Dowd will be representing Rob Deschenes, Code Enforcement Officer/Building Inspector (CEO/BI) as a Town Functionary. He is not representing the ZBA Board.

Attorney Ice stated this should be a simple decision for the Board; should the building inspector have issued a BP, did the building inspector make the right decision?

Paula Geraghty applied for a building permit to rebuild the barn manager's house, a three-bay garage with an apartment above in which the Barn Manager has lived in for 10 years. She was single when she began working for Ms. Geraghty but has since married and had a child. The apartment is no longer large enough for her family. The plan is to demolish the existing structure and replace it with a single-family home. The expansion increases the footprint by 10.6%, but greatly increases her living area. This will improve the neighborhood and allow Ms. Geraghty to retain a valuable employee.

Attorney Ice shared her "suggested" findings of fact with the Board.

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1. **It is unnecessary for a farm to show an increase in farm operations in order to improve the living conditions of its farm workers.**

This “smacks of elitism, it presupposes that farm workers, even those with college degrees, are only entitled to a low-level of living condition; shacks and the like.”

2. **Jaffrey's Site Plan Review Regulations do not apply to residences, including those on farms.**

Is site plan review required under the Jaffrey Zoning regulations? A site plan review was not done when the primary residence was rebuilt. The 2008 site plan was done for the stables and riding arena. Site plan review only applies to non-residential or a multi-family home as stated in the Jaffrey LUC 5.2.

3. **The subject project is not the “significant expansion of an operation involving the keeping of... animals...” that would trigger site plan review under NH Rev Stat§ 674:32-b I (2022).**

This is a single-family home only, not an expansion of the farm operations.

4. **Without assigning fault, The Board recommends that the Select Board appoint an independent Building Inspector and Code Enforcement Officer for this and future projects involving Ms. Geraghty.**

Attorney Dowd rebuttal. The letter that the CEO/BI sent stated that this property has already received site plan review, therefore, with this expansion, it would once again be subject to site plan review. The ZBA lacks subject matter jurisdiction to make this decision. Section III of the Jaffrey Site Plan Regulations states whenever any changes are proposed that differ from an existing site plan previously approved by the Planning Board, the owner shall apply for Planning Board approval. This is not a residential property, but a commercial farm.

Attorney Dowd addressed the accusation of bias by the CEO/BI stemming from enforcement action at 580 Mountain Rd.

Jaffrey Site Plan regulations are open-ended, but specifically state that new construction and external modification requires site plan review. The applicant switches between being a farm or residential, whichever suits them best. The Board should advise the applicant to go to the Planning Board.

Attorney Ice rebuttal. Zoning regulations state you cannot have site plan review unless it's non-residential or multifamily over two family. Site plan review was not needed when the primary residence was replaced.

L Sawyer stated he was not clear if this belongs to the PB or ZBA but perhaps it should go to the PB. D Jeffries suggested if we are not sure, perhaps we should hire our own council.

D Jeffries attempted to clarify the opposing points of view:

Attorney Ice – there is nothing in the statute to prevent a dwelling on the farm, therefore it is not subject to site plan review so there would be no reason to go to the PB.

Attorney Dowd – it's appropriate to go to site plan because this is not a single-family home. The use is the farm, with residential activity on the lot, a farm is non-residential. If there is a dispute, the PB should decide if it needs site review or not. The CEO/BI felt the change was significant enough to trigger site plan review.

D Jeffries asked when the primary house was taken down was that subject to site review? Attorney Dowd answered no. The house was replaced prior to the property being deemed a farm. R Deschenes stated he considered the house to be the primary residence which is not accessory to the farm, farm housing is. Attorney Ice responded farm housing is not an accessory use, a farm includes housing. Other areas of a farm should be subject to site plan review, such as a farm stand or barns. D Jeffries asked, how is site plan review triggered in this case?

J Carr responded the site plan process is for those uses which already comply with zoning. A new farm, for example, would come to the PB for conceptual review, if there were issues with zoning they would be directed to the ZBA.

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The original plan done in 2008 may not have addressed the housing specifically, however, those houses are depicted on the plan. It documents what is on the landscape at that time. The threshold that triggers a site plan review is 1,000 SF of change. It's a pretty straightforward process to come before the PB.

After considerable discussion as to whether this was a farm or residential, W Batchelder read  
RSA 21:34-a Farm, Agriculture, Farming. –

I. The word “farm” means any land, buildings, or structures on or in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land.

**Chairman Sawyer closed the public hearing**

W Batchelder - does not understand what the reluctance is to go to the PB and be done with this. E Brayall agreed. This is an increase in farming operation as defined by Section III of the site plan regulations:

SECTION III: PROCEDURE (A) General Whenever any development or change of use of a site governed by these regulations is proposed or whenever any changes are proposed that differ from an existing site plan as previously approved by the Planning Board, before any construction, land clearing, building development or change is begun; before any permit for the erection of any building or authorization for development on such site shall be granted; the owner of the property or his authorized agent shall apply for and secure from the Planning Board approval of such proposed site development in accordance with procedures outlined in this regulation.

C Jevne – section V references non-residential structures. He does not feel this is the purview of the ZBA and should go to the PB. The Board unanimously agreed.

**Findings of Fact:**

The decision was denied based on the interpretation of the following statutes: RSA 21:34-a, RSA 674:32-b and Section III Procedure (A) of the Jaffrey Site Plan Regulations.

**DECISION**

On a **motion** by Batchelder, seconded by Jevne the appeal from an administrative decision made by Rob Deschenes, Building Official/Code Enforcement Officer on December 8, 2023 denying the issuance of a building permit for 62 Great Rd was denied. (5-0-0)

**ADJOURNMENT**

The meeting adjourned at 9:11 pm  
Submitted



Rebecca Newton, Recording Secretary

Attest:

Lee Sawyer, Chairman, Jaffrey ZBA

