

*Town of Milford*  
**ZONING BOARD OF ADJUSTMENT**  
**Select Board Meeting Room, Town Hall**  
**SEPTEMBER 19, 2024**  
**Public Hearings**

**Case 2024-06: 30 Mill St., LLC, VARIANCE**

**Members**

**Present:** Joan Dargie, Vice Chair  
Rich Elliott, Member  
Kevin Overby, Alternate  
Dan Sadkowski, Member  
Tracy Steel, Member  
Michael Thornton, Alternate

**Not Present:** Andrea Kokko Chappell, Chair (recused)

**Non-Members**

**Not Present:** Terrey Dolan, Town Planner, Community Development  
Jane Hesketh, Recording Secretary, Community Development

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**MEETING AGENDA**

1. Call to Order

2. Public Meetings:

a. Continuance of Case #2024-06: **Variance** Request to allow for the Transfer of Density Within Multi Zoned Lot, 30 Mill Street, LLC The applicant, **30 Mill Street, LLC, for property located at 30 Mill Street, Map 25 Lot 95, is requesting a Variance** from Article V Section 5.02.1, to allow for a density transfer of approximately twenty (20) multifamily units from the 6.99-acre Residence "A" portion of their overall 9.877-acre Lot. This requested multifamily density transfer is proposed to be added to the more northerly 2.89 acre Commercially-zone (C") portion of their Lot located along the Mill Street frontage. The Commercially-zoned portion of the Lot allows for multi-family units up to a density of 5 DU's/acre (Section 5.05.1.P), requiring conformance with Residence "B" multi-family criteria (Section 5.03.4A). The Variance would provide for the approval to construct 34 rental multi-family apartments contained within one (1) building, with three (3) living floors. The building height is proposed to have a maximum height of forty (40) feet. A Variance is required due to the Residence "A" "Acceptable Uses" (Section 5.02.1) does not permit multi-family units.

**Continuance of the July 25, 2024 Mtg.**

3. Other Business: TBD

5. Next Meeting(s): October 3, 2024 & October 17, 2024

# MINUTES OF THE ZBA MEETING SEPTEMBER 19, 2024

## 1. CALL TO ORDER

Vice Chair Joan Dargie, acting as Chair, opened the meeting at 6:00 pm.

The Chair stated you may attend this meeting in person at the Milford Police Training Room.

If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and enter the Meeting ID: 851 6407 7601 and Password: 269952 or log in via [www.zoom.com](http://www.zoom.com) using the Meeting ID and Password previously stated.

A digital copy of the meeting materials can be found on the Town website at:

<https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda>. We will be live streaming this meeting on Granite Town Media, Government Channel 21, but will be on Zoom.

<http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>.

Chair stated there is a 5 member board with Alternate Mike Thornton acting as a full member. Chair introduced the board members in attendance at Milford Town Hall: Tracy Steel, Mike Thornton, Kevin Overby (Alternate), Dan Sadkowski, Rich Elliott, and Joan Dargie (Chair). Chair noted there is one case to be heard.

The Chair explained how the meeting would proceed for cases that may not be heard or need to be continued to another agreed upon date and time.

Chair moved to the Public Hearings.

## 2. PUBLIC HEARINGS

### a. **Case #2024-06: Variance** was read into the record by the Chair; **Continuance of the June 6, 2024 and July 25, 2024 Mtg.**

The applicant representatives came forward to make a presentation and answer questions; Attorney's Emily Goering and Ari Pollock from Gallagher, Callahan and Gartrell and Sam Ingram from Meridian Land Services.

Emily Goering began by saying the presentation will be to reorient the committee since it has been sometime since it was last heard, and then proceeded to hand out plans.

Emily Goering:

- Plan shows the layout of the 9.8 acre property that is currently undeveloped.
- Back of the property is 7.0 acres located in Residential Zone A that consists of wetlands.
- Front of property is 2.8 acres located in the Commercial Zone.
- Plan drawings show the proposed use in the Commercial Zone outside of the wetland areas in Zone A.
- Developer is proposing a 34 unit multi-family apartment building with 3 stories (40 ft.), parking, drainage improvements, and ADA improvements for sidewalks and a softer curb for road improvements.
- Displayed conceptual rendering drawings of the building.
- **Benefits:** market rate units to assist with housing shortage in Milford; Hitchiner has contacted developer to designate units for employees; remainder of units will be for families or employees of other businesses; residential use introduced into a Commercial Zone will keep with the residential feel of the neighborhood and provide sidewalks; rear 7 acres will remain untouched (refer to the Conservation Commission letter) and will be put into conservation.
- **Community Infrastructures:** drainage to capture and treat runoff from Mill Street before getting into the wetlands; softening of curb and changes to the road; sidewalk; removal of the current building that is an eyesore and not consistent with the neighborhood.

# MINUTES OF THE ZBA MEETING SEPTEMBER 19, 2024

## 2. PUBLIC HEARINGS

### **a. Case #2024-06: Variance**

Emily Goering:

- **Density:** To make an improvement with the housing crisis, more units need to be added to the rental market; the Commercial Zone could support 14 units which would barely make a dent in the housing problem and not what Hitchiner wants to do; 34 units was determined by taking the 14 units from the Commercial Zone and then calculating Zone A could support 20 units; Town Staff and Town Counsel were consulted about the project to transfer density and felt calculating it this way would be an appropriate use of the property.

Emily Goering noted they are trying to avoid having Residential A land broken up into various lots by proposing the variance which will allow the 7 acres to remain untouched.

Even though the **Variance Criteria** (as shown on the application) was **presented at the June 6, 2024 meeting**,

Emily Goering presented the following points from the criteria in support of the variance:

- In Commercial Zones multi-family units are allowed by the ordinance.
- Proposed building will introduce residential use in a residential neighborhood.
- In the best interest of the public to: have affordable, safe, quality housing; preserve natural spaces; provide safer roads and provide walkability.
- Density calculation was derived directly from the ordinance which determined 34 units could be supported.
- There will be no gain to the public in denying this.
- Denial will render this lot undevelopable and it will be treated as 2 separate parcels with 2 separate uses; prohibits cohesiveness.
- There is no indication it will affect the property values.
- It will preserve wetlands.
- The parcel is unique by the zoning line which prohibits harmonious development.
- Letters of support from: Hitchiner, Andrea Kokko Chappell as a resident and not as a Zoning Board Member; two letters from Town Counsel supporting the calculation for density.

Emily Goering finished the presentation and asked for questions or comments.

### **Discussion**

D. Sadkowski: How will Emergency Services access the property?

E. Goering: There have been discussions with the DPW, and this will be addressed with the site plan review.

M. Thornton: Citing the ordinance, the intent was not to allow the packing of a parcel with residential units but to permit the constrained development of a small lot. Also, would like to know how many units will be reserved and for what period of time.

J. Dargie noted this will not be Workforce Housing but will be at the Market Rate.

A. Goering: Hitchiner will work out a rate with the developer. In addition, the goal is to make the units affordable.

J. Dargie: This is a transfer of density but does not see how 16 units could be developed on Zone A parcel; dividing this parcel up is not realistic given the condition of it. Pointed out the property was like this (Divided Zones) when it was purchased. J. Dargie asked if there is another number besides the 20 units that was calculated that would be a more realistic option.

E. Goering: The applicant is asking for only 4 more than what could be supported (20 from Res. A and 14 from Commercial and not 16 from A and 14 from Comm.). In addition Residential A parcel could be divided into 8 units with ADU's, but this would impact the wetlands. The developer wants to keep the wetland areas untouched.

M. Thornton: The idea of taking the number from Res. A to the Commercial Zone would pack that area and that is not the intent of the zoning ordinance.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2024-06: Variance**

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8 **Discussion**

9 J. Dargie is concerned about the street itself with a cemetery, no sidewalks, and the possible hazards for  
10 pedestrians.

11 E. Goering: Other uses could be put on the 2.8 acre Commercially Zoned parcel that would create even more  
12 traffic, i.e. gas stations, retail businesses.

13 T. Steel: This is a quiet road right now and with 34 units and possibly 2 cars per unit that is an increase of  
14 vehicles.

15  
16 Attorney Ari Pollock then stated he wanted to address the questions and concerns:

- 17 - It appears the biggest concern is about how the 20 units were determined.
- 18 - The easy development sites in NH are gone therefore; developers need to be creative for  
19 housing.
- 20 - A Special Exception would be needed to develop the back 7 acres and there would be wetland  
21 issues to address.
- 22 - Developers go where there is a need and this project is a trade-off; 7 acres of conservation land  
23 in turn for 20 units vs 16 units.
- 24 - The commercially zoned unit calculation would be more than the 34 units being requested.
- 25 - The developer has tried to be as efficient as possible.
- 26 - Traffic concerns are up to the Planning Board.

27 Mike Thornton stated the main concern is about the calculation result.

28 Joan Dargie stated the controlling of density is the purpose of the ordinance and there are other multi-family  
29 units currently in development. In addition, no emergency services have been added in response to the increase  
30 in housing.

31 Discussions continued regarding housing needs and if these projects actually get built.

32 Attorney Pollock stated this is a unique property and feels this is a good solution.

33 Mike Thornton stated he is questioning the thinking behind the decisions made by staff and town counsel.

34 Joan Dargie noted the applicant could go to the Town to request a change in zoning.

35 Discussions continued about the zoning ordinance and the transfer of density; there is no clear cut guidance on  
36 this.

37 Kevin Overby asked what exactly is the hardship to the land owner.

38 Attorney Goering: The hardship to the land owner is that the property is divided into 2 zones that require 2 uses  
39 which prohibits the owner from developing the entire lot; the different uses are what makes the property unique.

40  
41 Chair Dargie asked if there were any more questions and there were none. The Public Portion of the meeting  
42 was opened.

43  
44 **Public**

45 Charlene Cobb, 2 Johnson Street came forward as an abutter that is next door to the project. These concerns  
46 were raised:

- 47 - The road is very tight and many walkers; it is dangerous.
- 48 - Junior High and High School students use the street as a cut through when walking to and from school.
- 49 - Concerned about run off onto her property and the number of additional people moving into the area.

50 Emily Goering stated drainage will be put in place to protect adjoining properties and the Planning Board will  
51 address the safety concerns.

52 J. Dargie and R. Elliott explained the abutter will be notified of the Planning Board hearing.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2024-06: Variance**

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8 **Public**

9 Scott Kimball not an abutter, but a resident of Milford came forward with these concerns:

- 10 - Feels this project should not be approved.  
11 - The building does not fit into the residential area.  
12 - The area is a historical district which the Master Plan is addressing for historic areas and to keep them  
13 walkable.  
14 - Feels there are too many apartment complexes in Milford and addressed the housing situation.  
15 - Feels Milford should not be the Town to solve housing for all the surrounding towns.  
16 - There will actually be a tax loss to the Town and cited numerous figures.  
17 - Feels this is not in the public's best interest.  
18

19 Andrea Kokko via Zoom as a resident and not a Zoning Board member stated the following:

- 20 - Her recusal is for personal reasons in that family members are abutters.  
21 - If it were to be developed as a Commercial Zone this would mean a gas station or retail space.  
22 - The alternative is to leave it as undeveloped which is not in the best interests of Milford.  
23

24 **Deliberations:**

25 **Variance Criteria per New Hampshire RSA 674:33.I:**

26 **1. This will not be contrary to the public interest.**

27 T. Steel: This is permitted with a variance if it was just for the 14 units and it would not be contrary to the  
28 public interest. The increase in density will be significant and the concern is not the variance but the number  
29 of units being requested for one area.

30 R. Elliott: There is nothing in the zoning law that speaks to a density transfer. While in agreement with the  
31 need for more housing, the public has never addressed a density transfer therefore there is no guidance for  
32 the intent.

33 J. Dargie: Concerned with the number of units; 20 units from the Zone A parcel. The road itself is a hazard  
34 and the height of the building.

35 M. Thornton: This variance, because of the calculations, does not make sense to transfer density, i.e. the  
36 number of units.

37 Discussions continued about what could be built on the Commercially Zoned parcel, the wetlands and the  
38 number of units as well as the parking lot right on the street is not in character with the neighborhood.

39 Further discussions began about the lack of an ordinance that addresses this situation and how to make a  
40 decision on a density transfer. In addition, there were comments about what questions were presented to  
41 Town Counsel.

42 **2. The spirit of the Ordinance is observed.**

43 R. Elliott: Again, there is no guiding ordinance that speaks to this.  
44

45 At this time, deliberations for the criteria were paused.

46 J. Dargie noted the wording of the Variance as a transfer of density is in question.

47 M. Thornton stated he does not see the mechanism of the transfer.

48 Attorney Pollock stated they do not have the authority to change the number of units since not all parties are  
49 in attendance, and would be open to a continuance after the board has an opportunity to confer with Town  
50 Counsel.

51 Attorney Goering stated she would like the board to continue deliberating the rest of the criteria which will  
52 give them an opportunity to address another number of units.  
53

54 Deliberations continued for the Variance Criteria.  
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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2024-06: Variance**

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8 **Deliberations:**

9 **Variance Criteria per New Hampshire RSA 674:33.I:**

10 **3. Substantial Justice is done.**

11 M. Thornton: As is, there would not be justice to the ordinance because of the logic for calculating the  
12 number of units.

13 D. Sadkowski: Needs more information.

14 R. Elliott: There is no ordinance to justify a density transfer.

15 **4. The Values of Surrounding Properties will not be diminished.**

16 J. Dargie: Thinks property values will not be diminished by this project except it is totally different from  
17 anything in that area.

18 R. Elliott: Feels property values would be diminished if the entire parcel (both zones) were to be developed  
19 vs. consolidating.

20 M. Thornton: Reserving the wetland area is ideal, but transfer does not go with the intent of the ordinance.  
21 This would be a large change to the neighborhood.

22 D. Sadkowski: Cited concerns expressed by the abutter for pedestrians and students.

23  
24 There was another pause with the deliberations.

25 J. Dargie: The bottom line is the 14 units are allowed and the problem is the density transfer and the  
26 calculation that determined the 20 units. She would be comfortable with less than the 16 units and  
27 developing the commercial parcel for commercial use is not ideal.

28 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

29 M. Thornton: Does not see that taking units from Zone A and moving them to the Commercial Zone is an  
30 unnecessary hardship. The lot was like this when it was obtained by the owner.

31  
32 Deliberations ended and more discussion continued.

33 Attorney Pollock stated if they are to come back with a reasonable number of units, they do not want to keep  
34 coming back and asked for a consensus on the number for guidance.

35 J. Dargie: 8-10 units with the 14 units, but remove the idea of a density transfer and look at it as a how many  
36 will be allowed in the Commercially Zoned parcel (look at what can be allowed in addition to the 14).

37 Discussions:

- 38 - 12 additional units with the 14 units
- 39 - Change the variance to be an increase in density in the Commercial Zone and a not a density
- 40 transfer
- 41 - Different from what the public is aware of; density transfer vs a density adjustment
- 42 - E. Goering asked for 14 additional units
- 43 - Number of floors (this will be up to the Planning Board)
- 44 - M. Thornton stated he is ok with a density adjustment and not a density transfer

45  
46 ***Attorney Pollock amended the application:***

47 ***“Adjust the application to request a density adjustment to the Commercial Density Formula to result in a***  
48 ***total number of units at 28 for the project and the parcel as a whole”.***

49  
50 ***Chair Dargie made this a condition to read:***

51 ***“The application will be adjusted to reflect 28 units from 34 by removing the density transfer calculation”.***

52  
53 Chair asked for a motion to approve this condition. Mike Thornton made a motion to approve the condition and  
54 it was seconded by Rich Elliott. A vote was taken and all were in favor.

55 Chair moved to Voting.

**2. PUBLIC HEARINGS**

**a. Case #2024-06: Variance**

**Voting:**

**Variance Criteria per New Hampshire RSA 674:33.I:**

**1. This will not be contrary to the public interest.**

T. Steel yes; M. Thornton yes; R. Elliott yes; D. Sadkowski yes; Chair votes yes.

**2. The spirit of the Ordinance is observed.**

R. Elliott yes; D. Sadkowski yes; T. Steel yes; M. Thornton yes; Chair votes yes.

**3. Substantial Justice is done.**

D. Sadkowski yes; M. Thornton yes; T. Steel yes; R. Elliott yes; Chair votes yes.

**4. The Values of Surrounding Properties will not be diminished.**

R. Elliott yes; D. Sadkowski yes; T. Steel yes; M. Thornton yes; Chair votes yes.

**5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

D. Sadkowski yes; T. Steel yes; M. Thornton yes; R. Elliott yes; Chair votes yes.

Chair Dargie stated **Case #2024-06 has been approved as amended.** There is a 30 day appeal period that can be filed with the Zoning Board.

**Motion to Adjourn**

Chair asked for a motion to adjourn. T. Steel made a motion to adjourn and it was seconded by R. Elliott. A vote was taken and all were in favor. Meeting adjourned.

**Motion to Approve:**

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**Seconded:**

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**Signed**

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**Date:**

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