

# TOWN OF MILFORD

Office of Community Development  
Planning • Zoning • Building Safety • Code Enforcement • Health  
Economic Development • Active Projects



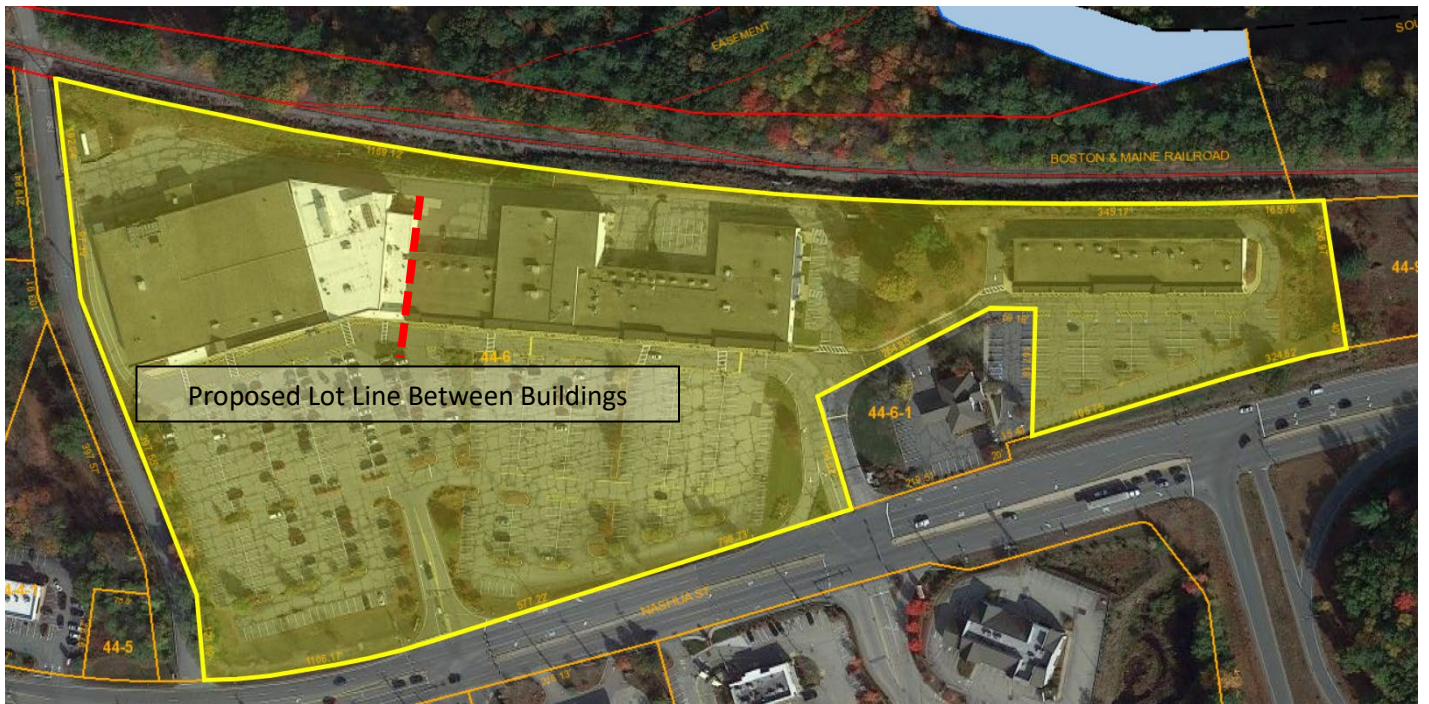
## Administrative Review

**Date:** January 14, 2022  
**To:** Jason Plourde, Chair, Zoning Board of Adjustment  
**From:** Lincoln Daley, Community Development Director  
**Subject:** **Case #2021-27:** Dubai Group, Inc./Doug McGuire, 586 Nashua Street, Milford Tax Map 44, Lot 6 – Special Exception Application, Dimensional Setback. (*Cont. from 1/6/22*)

The applicant is before the Board of Adjustment seeking a Special Exception from Milford Zoning Ordinance, Article V, Section 5.05.5 to allow a zero side dimensional setback and permit a proposed subdivision line delineated through an existing plaza building where 15 feet is required in the Commercial ‘C’ Zoning District. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
  - a. The subject property is approximately 15.386 acres with more than 600 linear feet of frontage on Nashua Street. The property is fully developed with minimal open space.
  - b. The property consists of two large, large multi-tenant plaza buildings. The property is access via of two dedicated signalized intersections on Nashua Street and serviced by municipal water and waste water.
  - c. The subject property is situated along the Town’s primary commercial and multi-family corridor. To the west and south, the property is bounded by both residential and commercial uses. The Milford waste water treatment facility, Pan Am Railroad, and the Souhegan River lie to the north. To the east, the property abuts Nashua Street ant Route 101.
2. The proposal calls for the subdividing the parent lot into three total lots, 44-6, 44-6-3, and 44-6-4. For purpose of this application, the Special Exception request applies only to the easterly plaza building. The lot line between lots 44-6 and 44-6-3 is being proposed along the shared wall between Shaw’s Supermarket and the abutting tenants. The applicant requires a Special Exception as the respective sections of the plaza building will no longer meet the required 15 foot side dimensional setback in the Commercial ‘C’ Zoning District. Please refer to the Applicant’s application narrative for a summary of the purpose and intent of the proposed subdivision to create three total lots.
3. Pursuant to Article V, Sections 5.05.5 and 5.05.2.A.3, a structure can be placed within the side (15’) dimensional setback within the Commercial ‘C’ Zoning District with the issuance of a Special Exception by the Board of Adjustment.
4. The applicant should be prepared to provide information regarding any/all alternative subdivision plans considered for the plaza buildings.
5. At the December 2, 2021 meeting, the Board requested additional information regarding parking calculations, cross easements, and shared maintenance agreements. The applicant recently amended their application to include a parking analysis and memo detailing the anticipated covenants and reciprocal easements. See attached.

**Aerial Photos of Subject Property:**





Street Photos of Subject Property:





**ZBA Application**  
**MILFORD ZONING BOARD OF ADJUSTMENT**  
**GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS**

TOWN OF MILFORD  
 RECEIVED  
 NOV 04 2021  
 PB ZBA Office

Date Received: 11-4-21  
 Case Number: 2021-27  
 Application Number: 20211650  
 Hearing Date: \_\_\_\_\_  
 Decision Date: 12-2-21  
 Decision: \_\_\_\_\_

**PROPERTY INFORMATION**

Street Address: 586 Nashua Road  
 Tax Map / Parcel #: Map 44/Lot6      Lot Size: 15.41 Acres

**PROPERTY CURRENTLY USED AS**

Commerical use

*If the application involves multiple lots with different owners, attach additional copies of this page.*

**PROPERTY OWNER**

Name: B33 Lordens Plaza, LLC  
 Address: 9330 W. Sahara Ave., Suite 270  
 City/State/Zip: Las Vegas, NV 89117  
 Phone: (    )  
 Email: marko@bridge33capital.com

*The applicant is the person who is making this proposal on behalf of themselves, the owner or a third party. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, an engineer or lawyer, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.*

**APPLICANT/REPRESENTATIVE**

SAME AS OWNER  
 Name: Doug MacGuire; The Dubai Group, Inc.  
 Address: 136 Harvey Road, Bldg B101  
 City/State/Zip: Londonderry, NH 03053  
 Email: doug@thedubaygroup.com  
 Phone: ( 603 ) 458-6462      Cell: (    )

The undersigned property owner(s) hereby authorize(s) the filing of this application and agree to comply with all code requirements applicable to this application.

Property Owner's signature

11/4/21  
 Date:

**Zoning District (check one):**

- Residence A
- Residence B       Residence R
- Commercial
- Limited Commercial
- Industrial
- Integrated Commercial-Industrial
- Integrated Commercial-Industrial-2

**Overlay District (check any that apply):**

- West Elm Street Overlay
- Nashua/Elm Street Overlay
- Commerce & Community Overlay
- Open Space & Conservation
- Wetlands Conservation
- Groundwater Protection
- Floodplain Management

**APPLICATION FEES**

Application Fee:	\$75.00
Abutters Fee: \$4 x <sup>10</sup>	\$40
Amount received:	\$115
Date Received:	

Check  Cash   
OK # 1675

*THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.*



# ZBA Application - Special Exception

## MILFORD ZONING BOARD OF ADJUSTMENT

TOWN OF MILFORD  
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NOV 04 2021  
PB ZBA Office

Date Received: 11-4-21  
Case Number: \_\_\_\_\_  
Application #: 2021 1650  
Date Complete: \_\_\_\_\_  
Hearing Date: 12-2-21  
Decision Date: \_\_\_\_\_  
Decision: \_\_\_\_\_

### PROPERTY INFORMATION

Street Address: 586 Nashua Road

Tax Map / Parcel #: Map 44/Lot 6

*A Special Exception is a use which is permitted by the Zoning Ordinance, but requires approval from the Zoning Board of Adjustment. Most special exceptions have a list of additional criteria that must be met in order for the ZBA to approve the application.*  
**\*Note that in addition to the specific criteria that may be listed for a particular special exception, all special exceptions are subject to the general criteria in Section 10.02.1 of the Zoning Ordinance.**

What section of the Zoning Ordinance are you applying under?  
  
Article 5 Section 5.05.5 Yard Requirements  
Describe the **use** you are proposing under the above section of the Ordinance.  
The current and proposed use is commercial.

### Application for (check all that apply):

- Change/Expansion of Non-conforming Use/Structure (2.03.1.C)
- Wetland Buffer Impact (6.02.6)
- Accessory Dwelling Unit (10.2.6)
- Office in Res-A & B (10.2.7)
- Home Business (7.12.6)
- Side/Rear Yard Setback Reduction (Zoning District Specific)
- Other

### General Criteria Section 10.02.1

Describe the project you are requesting a Special Exception for:  
See Attached

#### **Explain how the proposal meets the general criteria as specified in Article X, Section 10.02.1 of the Zoning Ordinance:**

A. The proposed use is similar to those permitted in the district because:  
See Attached

B. The specific site is an appropriate location for the proposed use because:  
See Attached

C. The use as developed will not adversely affect the adjacent area because:  
See Attached

D. There will be no nuisance or serious hazard to vehicles or pedestrians because:  
See Attached

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:  
See Attached



The Dubai Group, Inc.

136 Harvey Road Bldg B101

Londonderry, NH 03053

603-458-6462 thedubaygroup.com

TOWN OF MILFORD  
RECEIVED

NOV 04 2021

PB ZBA Office

## MEMORANDUM

To: Milford Zoning Board

Date: November 4, 2021

From: The Dubai Group, Inc  
Doug MacGuire, PE

Re: Special Exception Request  
Side Setback Requirement

The applicant is respectfully requesting the Zoning Board of Adjustment consider a special exception from **Article V, Section 5.05.5 Yard Requirements** to permit a proposed subdivision line to be delineated through an existing plaza building. This results in a side setback of zero feet for proposed lots 44-6 and 44-6-3. The subject parent parcel is an existing developed site located in the Commercial "C" zoning district. The 15.386 acre property has two buildings on site, with supporting infrastructure. As the owner continues to maintain the overall parcel's functions, it has become evident that subdividing the parcel between the building uses is most convenient to the ongoing operations of the site. The applicant feels this is a reasonable request because the proposed lot line located through the building is placed based upon the tenants within. Therefore, the subdivision line creates two lots (44-6 and 44-6-2) for the tenants within the plaza building in question. In particular, one proposed lot (westmost lot) is intended only for the Shaw's business. Conditions for the variance are detailed below.

*A. The proposed use shall be similar to those permitted in the district.*

The proposed use shall remain as the existing use on-site, which is similar to other lots within the Commercial "C" District. There is no proposed alteration to the use of the existing development.

*B. The specific site is an appropriate location for the proposed use.*

The proposed use does not alter the existing use/development on-site. The proposed subdivision line is consistent with the commercial use on-site, and provides a feasible delineation of lots based on the tenants' use within the plaza building.

*C. The use as developed will not adversely affect the adjacent area.*

The proposed subdivision line will not adversely affect adjacent areas because the developed site will not be changed. The reduction in setback is created internally between existing uses on site and therefore have no impact on adjacent areas.



*D. There will be no nuisance or serious hazard to vehicles or pedestrians.*

No nuisance or serious hazard shall occur based on the development remaining unchanged with the proposed subdivision. All traffic circulation and pedestrian travel areas shall remain consistent.

*E. Adequate appropriate facilities will be provided for the proper operation of the proposed use.*

Appropriate facilities shall remain on-site as the existing development is to be unchanged. The proposed lot line is appropriate for proper operation because it accurately reflects the uses of the building and the delineation between the tenants.









**The Dubai Group, Inc.**

136 Harvey Road Bldg B101

Londonderry, NH 03053

603-458-6462 thedubaygroup.com

## MEMORANDUM

To: Milford Planning Board

Date: January 13, 2022

From: The Dubai Group, Inc  
Doug MacGuire, PE

Re: Parking Calculations  
Lordens Plaza

### Lordens Plaza Parking Calculations

Business	Use	Parking Requirement	Unit	Required Spaces	Provided Spaces
Lot 44-6-0 (Shaw's)	Retail Shopping Center +50k SF	3.5 spaces/1,000 SF	71,780 SF	251.2	263
Lot 44-6-3	Retail Shopping Center <50k SF	4 spaces/1,000 SF	56,330 SF	225.3	233
Lot 44-6-2 (Starbucks)	Fast Food	0.6 spaces/seat + 1/Employee	50 Seats 8 Employees	38	20
<b>West Side of Lordens Plaza Subtotal</b>				<b>515</b>	<b>516</b>
Lot 44-6-4	Retail Shopping Center <50k SF	4 spaces/1,000 SF	18,100 SF	72.4	67
Lot 44-6-1 (St. Mary's Bank)	Banks	3 spaces/1,000 SF	3,400 SF	10.2	28
<b>East Side of Lordens Plaza Subtotal</b>				<b>83</b>	<b>95</b>
<b>Total for Plaza</b>				<b>598</b>	<b>611</b>

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**MEMORANDUM**

To: The Dubay Group, Inc.  
Douglas MacGuire, P.E.

Date: January 14, 2022

From: Patrick C. McHugh, Esq.

RE: Lordens Plaza Declaration of  
Covenants & Reciprocal Easements

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On behalf of B33 Lordens Plaza, LLC (the “Applicant”), this Memorandum addresses several of the requirements contained in the Declaration of Covenants and Reciprocal Easements filed against the Applicants property located at 586 Nashua Street in Milford, New Hampshire (the “Property”). The Applicant, through the Milford Planning Department, filed the Declaration of Covenants and Reciprocal Easements with the Hillsborough County Registry of Deeds at Book 9447, Page 2534 on March 30, 2021 (hereinafter, the “Reciprocal Easement Agreement” or “REA”).

As stated in the Background section of the Reciprocal Easement Agreement, the Applicant (also defined in the REA as the “Declarant”) intended for each part of the Shopping Center to be developed, operated, and maintained in conjunction with each other. In order to effectuate the common use and operation thereof, the Applicant intended to (i) establish certain covenants, agreements and restrictions, and (ii) grant certain reciprocal easements, in, to, over, under and across the Shopping Center as part of a general plan for its development. REA at Background para. B. Pursuant to the Reciprocal Easement Agreement, these covenants, agreements and reciprocal easements run “... with and against the land and shall...be a benefit thereto and a burden thereon.” REA at Sec. 14(A). Any present or future ownership interest in the Shopping Center – whether sold, conveyed, leased, rented, mortgaged (etc.) – remains subject to the covenants, restrictions, easements, charges and lines set forth in the Reciprocal Easement Agreement. REA at the “NOW, THEREFORE” Clause. Importantly, no owner of any portion of the Property has the right to terminate the Reciprocal Easement Agreement. REA at Sec. 13(F). The Declarant may enforce any provision of the Reciprocal Easement Agreement in the event of a breach by one of the owners. REA at Sec. 13(E).

The Reciprocal Easement Agreement contains multiple requirements related to the care and upkeep of the Property. First, there is an Access Easement Area which includes the main entrance off of Nashua Street, as depicted on the Site Plan, and is defined in the REA as the “Main Entrance Roadway”. REA at Sec. 2(A). The Applicant must maintain the Access Easement Area in good condition and repair, which includes any maintenance over the pavement, drainage, landscaping, lighting, snow removal, janitorial, property management, security, traffic controls, irrigation, and any common utilities. REA Sec. 2(B). All owners of a portion of the Property must share in these expenses on a pro rate basis. REA Sec. 2(B) and Sec. 7. There are similar requirements in the Reciprocal Easement Agreement for upkeep of the drainage/storm water management system (REA at Sec. 4), shared parking (REA at Sec. 5), and the pylon sign (REA at Sec. 6).

In addition, the Reciprocal Easement Agreement requires each owner of the Property to maintain its portion of the Shopping Center at all times in good condition and repair, including, without limitation, all improvements and landscaping areas (including trees, shrubbery, grass and other landscaping) located

thereon. Each Owner shall maintain or cause to be maintained the exterior of all improvements located thereon in a neat, orderly, and attractive manner and consistent with the general appearance of the entire Shopping Center. Painting or other exterior maintenance shall be periodically performed as reasonably required for the improvements to be maintained in a good condition. REA at Sec. 10.

The Reciprocal Easement Agreement contains enforcement mechanisms in the event an owner fails to abide by the obligations contained therein, especially as it relates to the maintenance of the Property. First, as stated above, the Applicant may enforce any provision of the Reciprocal Easement Agreement in the event of a breach by one of the owners. REA at Sec. 13(E). Second, a non-defaulting owner may seek injunctive relief against a defaulting owner for the failure to upkeep its portion of the Property. Third, under certain circumstances, a non-defaulting owner may undertake necessary repairs and maintenance to a defaulting owner's portion of the Property, especially if there is an emergency situation created which could cause damage to a non-defaulting owner's portion of the Property. REA at Sec. 13. The Reciprocal Easement Agreement also contains indemnity obligations on an owner which causes damage to another owner's portion of the Property. REA at Sec. 12(A).

In summary, the Reciprocal Easement Agreement contains a number of legally binding and reciprocal obligations on owners of the Property intended to ensure that (i) all owners enjoy the benefits of the Shopping Center and (ii) the Shopping Center is well maintained and kept in a neat, orderly and attractive manner. These legally binding and reciprocal obligations apply to the current owners of the Shopping Center, as well as any future owners. The Applicant's current request to further subdivide the Shopping Center in no way lessens or reduces the impact of the Reciprocal Easement Agreement on any future owners.