

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 #2021-28:** Dubay Group, Inc./Doug McGuire, 586 Nashua Street, Milford Tax Map 44, Lot 6 – Variance Application, Open Space Requirements. *(Continued from 1/6/22)*

The applicant is before the Board of Adjustment seeking a Special Exception from Milford Zoning Ordinance, Article V, Section 5.05.6 Open Space to permit a three lot subdivision with two of the proposed lots resulting in less than the required 30 percent open space 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. The applicant seeks a variance from Article V, Section 5.05.6 Open Space to permit a three-lot minor subdivision (44-6, 44-6-3, and 44-6-4) with two of the respective lots, Lot 44-6 and 44-6-3, resulting in an open space coverage of less than 30 percent. The parent lot does not meet the open space requirement in its current configuration. The proposed subdivision would create one lot which would meet the open space requirement and two additional lots that have open space that fall below the 30% open space requirement pursuant to Section 5.05.6 Open Space. 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 and Variance criteria.
3. Pursuant to Article V, Sections 5.05.6 Open Space, open space shall be provided for all uses, other than single-family and two-family dwellings, in an amount equal to not less than thirty (30) percent of the total lot area for properties in the Commercial 'C' Zoning District.
4. The applicant should be prepared to provide information regarding any/all alternative subdivision plans and/or expansion of the open space opportunities considered for the proposed properties.
5. At the December 2, 2021 meeting, the Board requested additional informaiton regarding parking calculations for each of the lots/uses and proposed maintenance agreements, and easements. 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: 2021-28
 Application Number: _____
 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 <i>COPY 2021-27</i>	
<i>If the application involves multiple lots with different owners, attach additional copies of this page.</i>	
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	
<i>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.</i>	
APPLICANT/REPRESENTATIVE	
<input type="checkbox"/> 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.	
Date: <u>11/4/21</u>	

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 <u>10</u>	\$40
Amount received:	\$115
Date Received:	

Check Cash _____
ck # 1675

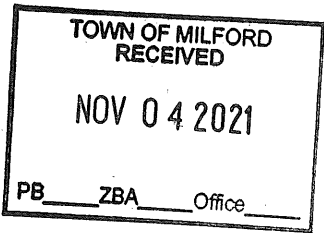
THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.



ZBA Application - Variance
MILFORD ZONING BOARD OF ADJUSTMENT

PROPERTY INFORMATION
Street Address: 586 Nashua Road
Tax Map / Parcel #: Map 44/Lot 6
<i>A Variance is a use which is not permitted by the Zoning Ordinance. Approval from the Zoning Board of Adjustment is required to allow any use or deviation from the Zoning Ordinance. Please work with the Zoning Administrator to make sure your application is complete and you know what will be required of you at the hearing.</i>
What section of the Zoning Ordinance are you asking to be varied? Article <u>5</u> Section <u>5.05.6 Open Space</u> Describe the variance you are requesting under the above section of the Ordinance. See Attached

Date Received: <u>11-4-21</u>
Case Number: <u>2021-28</u>
Application #:
Date Complete:
Hearing Date: <u>12-2-21</u>
Decision Date:
Decision:



General Criteria Section 10.01
<i>Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I</i>
1. Granting the Variance would not be contrary to the public interest because: See Attached
2. If the Variance were granted, the spirit of the ordinance would be observed because: See Attached
3. Granting the Variance would do substantial justice because: See Attached
4. Granting the Variance would not diminish the value of surrounding properties because: See Attached
5. Unnecessary Hardship: <i>This section is the central portion of your argument and is the critical factor that the Zoning Board of Adjustment will need to determine what is unique to your property and not generally applicable to other properties in the area or in town.</i>



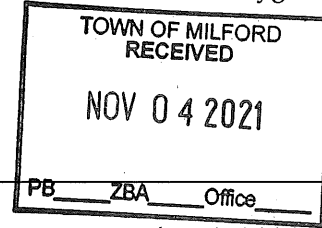
ZBA Application – Variance
MILFORD ZONING BOARD OF ADJUSTMENT

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:
i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because :
See Attached
AND
ii. The proposed use is a reasonable one because:
See Attached
(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:
(C) Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:
1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:
In addition, Variances may have extra criteria that must be met. This includes, but is not limited to: 6.03.5 Floodplain Management: The criteria for evaluation is listed in 6.03.5:B General Conditions and the applicable conditions are listed in 6.03.5:C. If your project is covered by this regulation, include your answers to the required criteria as specified in the referenced Section of the Milford Zoning Ordinance as an attachment under Section 3 C. of this application.
ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition. A. A plan of the property and all buildings, drawn to scale, is required. B. A Building Permit Application as needed (to be determined by the building official.) C. Additional explanations, justification, abutters' statements, letters, etc.



The Dubai Group, Inc.
136 Harvey Road Bldg B101
Londonderry, NH 03053
603-458-6462 thedubaygroup.com

MEMORANDUM



To: Milford Zoning Board

Date: November 4, 2021

From: The Dubai Group, Inc
Doug MacGuire, PE

Re: Variance Request
Open Space Requirement

The applicant is respectfully requesting the Zoning Board of Adjustment consider a variance from **Article V, Section 5.05.6 Open Space** to permit a three-lot minor subdivision with two of the respective lots resulting in an open space coverage of less than 30 percent. 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. The parent lot does not meet the open space requirement in its current configuration. The proposed subdivision creates one lot which would now meet the open space requirement and two additional lots which have open space comparable to the existing parent lot. Criteria for the variance are detailed below.

1. The Variance will not be contrary to the public interest because:

The variance will not be contrary to the public interest because the use of the site shall remain unchanged following the proposed subdivision. There shall be no alteration of open space on-site. Essentially, the proposed three-lot minor subdivision will provide a more efficient way to differentiate between the existing tenants on-site, but the functionality of the two-building development shall remain unchanged. The circulation of the plaza development will remain the same as well, with all islands and open space areas remaining as existing.

2. The spirit of the Ordinance is observed because:

The spirit of the Ordinance is observed because there is no proposed development or revisions to the two buildings and their open space areas on-site. Instead, the minor subdivision shall provide the ability for ownership to differentiate between tenants. All operations shall remain consistent to the existing functions of the site at this time.

3. Substantial justice is done because:

Substantial justice is done through the granting of this variance because the variance will allow for separate ownership of different buildings and land uses on site. The site open space shall remain unchanged.



4. The values of surrounding properties are not diminished because:

The values of surrounding properties are not diminished because the site will remain unchanged. The proposed minor subdivision shall not change any features on-site, including open space. Therefore, the value of the surrounding properties will also remain unchanged based upon the parcel in question.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Literal enforcement of the provisions of the ordinance would provide the hardship of ownership allocation for the overall development. Without the proposed minor subdivision, the ownership shall remain as one over the entirety of the uses on-site; where the three proposed lots would allow for a distinction of ownership among the tenants.

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

- i. No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*

The general public purposes of the Ordinance are maintained because the site as a whole shall remain unchanged, including the open space of the site. The specific application of the provision in question relates solely to the minor subdivision providing different ownership between the three lots.

- ii. The proposed use is a reasonable one because:*

The proposed use is reasonable because the use is consistent with the existing use on-site. The uses shall remain the same, along with the layout of the site, but the delineation of the three lots will allow the potential of separate ownership of the various onsite uses.

43-52
N/F HERITAGE ESTATES APT LLC
C/O BILL MORIN
504 NASHUA ST UNIT 206
MILFORD, NH 03055

44-4
N/F SKA PROPERTIES, LLC
1346 BALD HILL RD
WARWICK, RI 02886

44-2
N/F TOWN OF MILFORD
1 UNION SQ
MILFORD, NH 03055

44-4-1
N/F CARLOS & MARIA
ANDRADE
7 META LN
BEDFORD, NH 03110-5936

44-5
N/F TOWN OF MILFORD
1 UNION SQ
MILFORD, NH 03055

44-13
N/F BURGER KING CORP.
#8602 RYAN
PO BOX 460189
HOUSTON, TX 77056

44-13-1
N/F WALGREEN EASTERN
CO., INC.; REAL ESTATE
TAX DEPT.
PO BOX 1159
DEERFIELD, IL
60015-1159

44-2
N/F TOWN OF MILFORD
1 UNION SQ
MILFORD, NH 03055

LOT 44-6
EXISTING=
670,210 SQ. FT.
15,386 AC.±
PROPOSED =
279,666 SQ. FT.
6.420 AC.±

PROPOSED
LOT 44-6-3
277,946 SQ.FT.
6.381 AC.±

PROPOSED
LOT 44-6-4
112,597 SQ.FT.
2.593 AC. ±

44-6-1
N/F ST. MARY'S BANK
200 MCREGOR STREET
MANCHESTER, NH 03102
BOOK 9447, PAGE 2531

44-6-2
N/F B33 LORDENS PLAZA LLC
9330 W. SAHARA AVE
LAS VEGAS, NV 89117
(PER PLAN REFERENCE #2)

44-10
N/F OSJ OF MILFORD, LLC
375 COMMERCE PARK RD
NORTH KINGSTON, RI 02852

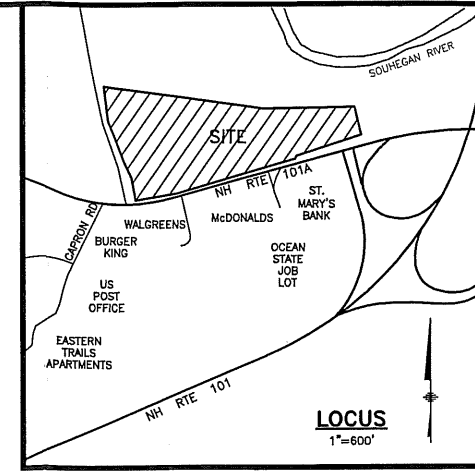
44-11
N/F ASRT, LLC CUMBERLAND FARMS, INC.
165 FLANDERS RD
WESTBOROUGH, MA 01581

44-9
N/F STATE OF NH
DEPT. OF TRANSPORTATION
RIGHT OF WAY BUREAU
29 HAZEN DR
CONCORD, NH 03301

NOTES:

1. THE OWNER OF RECORD (TAX MAP 44 LOT 6):
B33 LORDENS PLAZA, LLC
9330 W. SAHARA AVE SUITE 270
LAS VEGAS, NV 89117
DEED REF: BK 9185 PG 0803
2. THE PURPOSE OF THIS PLAN IS TO DEPICT THE THREE LOT SUBDIVISION OF PARCEL 44-6 FOR THE EXISTING DEVELOPMENT.
3. THE BOUNDARY INFORMATION SHOWN HEREON IS BASED ON A PLAN ENTITLED "ALTA/NSPS LAND TITLE SURVEY FOR: LORDENS PLAZA; NV5 PROJECT NO. 201902877-001, 586 NASHUA STREET, MILFORD, NH"; SCALE: 1"=50'; DATED JUNE 25, 2019; SURVEYED AND PREPARED BY HOLDEN ENGINEERING & SURVEYING, INC.
4. BEARINGS SHOWN ARE REFERENCED TO NHSPC-NAD83; VERTICAL DATUM REFERENCED TO NAVD88 VIA GNSS OBSERVATIONS TAKEN AUGUST 2020.
5. SUBJECT PARCEL IS ZONED COMMERCIAL (C) DISTRICT PER TOWN OF MILFORD ZONING MAP.

MIN. LOT SIZE: 20,000 SF
MIN. LOT FRONTAGE: 150FT
MIN. FRONT YARD: 30FT
MIN. SIDE YARD: 15FT
MIN. REAR YARD: 15FT
6. TOTAL ACREAGE OF 44-6: 752,704 SF ±, 17.28 AC. ± PER ALTA SURVEY PERFORMED BY HOLDEN, 2019.
7. PROPERTY SUBJECT TO DECLARATION OF COVENANTS AND RECIPROCAL EASEMENTS PER HILLSBOROUGH COUNTY REGISTRY OF DEEDS BOOK 9447 PAGE 2534



PLAN REFERENCES:

1. HILLSBOROUGH COUNTY REGISTER OF DEEDS BOOK 9447 PAGE 2534
2. H.C.R.D. # 14000

TOWN OF MILFORD RECEIVED

NOV 04 2021

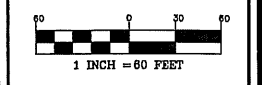
PB ZBA Office

N/F TOWN OF MILFORD
1 UNION SQ
MILFORD, NH 03055

The Dubai Group, Inc.
136 Harvey Rd. Bldg B101
Londonderry, NH 03053
603-458-6462

Engineers
Planners
Surveyors

TheDubayGroup.com



REVISIONS:

REV.	DATE	COMMENT	BY:

DRAWN BY: NIG/JAC
CHECKED BY: JAC
DATE: NOVEMBER 3, 2021
SCALE: 1"=60'
FILE: Subdiv-Lordens Plaza
DEED REF: -

PROJECT:

586 NASHUA ST
MAP 44 LOT 6
586 NASHUA STREET
MILFORD, NH 03055

PREPARED FOR/OWNER

B33 LORDENS PLAZA, LLC
9330 W. SAHARA AVE.
SUITE 270
LAS VEGAS, NV 89117

SHEET TITLE:

SUBDIVISION PLAN

OPEN SPACE AREA CHART

LOT	TOTAL LOT AREA	OPEN SPACE	% OPEN SPACE
EXISTING LOT 44-6	670,210 SQ.FT.	138,096 SQ.FT.	20.6%
PROPOSED LOT 44-6	279,666 SQ.FT.	53,254 SQ.FT.	18.0%
PROPOSED LOT 44-6-3	277,946 SQ.FT.	49,995 SQ.FT.	18.0%
PROPOSED LOT 44-6-4	112,597 SQ.FT.	34,847 SQ.FT.	30.9%

OWNER/APPLICANT: TAX MAP 44 LOT 6 DATE

CHAIRMAN DATE
PLANNING BOARD, TOWN OF MILFORD, NH

COPY



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
West Side of Lordens Plaza Subtotal				515	516
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
East Side of Lordens Plaza Subtotal				83	95
Total for Plaza				598	611

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

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.