

**Town of Milford
Zoning Board of Adjustment
January 20, 2022
Public Hearings**

**CASE #2021-27 The Dubay Group, Inc./Doug McGuire - Special Exception
CASE #2021-28 The Dubay Group, Inc./Doug McGuire - Variance**

Present: Jason Plourde, Chair
Rob Costantino, Vice Chair
Michael Thornton, Member
Karin Lagro, Member
Tracy Steele, Member
Lincoln Daley, Director of Community Development

Not Present: Joan Dargie, Alternate
Jane Hesketh, Recording Clerk

Meeting Agenda

1. Call to Order

2. Public Hearing(s):

a. Case #2021-27 The Dubay Group, Inc./Doug McGuire for the property located at 586 Nashua Street, Tax Map 44, Lot 6. Special Exception Application seeking relief from the 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. (Continuance from December 16, 2021)

b. Case #2021-28 The Dubay Group, Inc./Doug McGuire for the property located at 586 Nashua Street, Tax Map 44, Lot 6. Variance Application seeking relief are seeking a Variance from the 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. (Continuance from December 16, 2021)

3. Meeting Minutes - December 16, 2021

4. Other Business: TBD

5. Next Meeting:

a. February 3, 2022

b. February 17, 2022

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

1. CALL TO ORDER

Chair Plourde opened the meeting by welcoming everyone and introducing himself. He welcomed those attending in person and electronically since this meeting is being conducted in a unique manner.

He stated you may also attend this meeting in person at the Milford Town Hall, Board of Selectmen’s Meeting Room with all Covid protocols in place.

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 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 also be live streaming the meeting on Granite Town Media, Government Channel 21: <http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>

He then went on to inform everyone about the procedures of the Board.

Chair Plourde stated all votes taken during the meeting must be done by Roll Call vote. He started the meeting with a roll call attendance by asking each member to state their name (all members were at Town Hall); this is required under the Right-to-Know Law. Roll Call Attendance: K. Lagro present; R. Costantino present; M. Thornton present; T. Steele present; J. Plourde present. He stated there is a full board present.

He explained the process of the case hearings for the applicant and the public. He said a full agenda may not allow all cases to be heard and that at 10:00 p.m. the meeting will end. He explained how the meeting would proceed for the cases that may not be heard in that they would be continued to the next meeting or another agreed upon meeting. He also explained the notification process for continued cases.

J. Plourde then explained the cases are continuances and even though there is a full board present, T. Steele was not present at the initial meeting and J. Dargie (not present at this meeting) was present at the initial meeting. He stated this means that if they move forward to hearing these cases, the applicant will only have 4 voting members. In order for the case to pass, there needs to be a 3 to 1 vote in favor; a 2 to 2 vote and the case will not pass. He then asked the applicant if they wanted to move forward or continue to the next meeting with the idea that J. Dargie could be present then.

Doug McGuire from the Dubay Group, via Zoom, responded that he had no problem moving forward with a 4 member board. Chair Plourde explained how the hearing would proceed in that T. Steele can be part of the hearing and ask questions, but cannot be part of the deliberations and the voting. The Chair then stated the board has more questions about the second than the first case. He asked D. McGuire if he wanted to hear Case #2021-28 first and D. McGuire agreed with this.

J. Plourde asked for a motion to change the order of the agenda by moving Case #2021-28 to be the first case and then Case #2021-27 second. R. Costantino made a motion and T. Steele seconded. All were in favor.

J. Plourde then moved ahead to the cases to be heard.

1 **2. PUBLIC HEARINGS**

2
3 a. **Case #2021-27 The Dubai Group, Inc./Doug McGuire for the property located at 586 Nashua Street,**
4 **Tax Map 44, Lot 6.** Special Exception Application seeking relief from the Milford Zoning Ordinance,
5 Article V, Section 5.05.5 to allow a zero side dimensional setback and permit a proposed subdivision line
6 delineated through an existing plaza building where 15 feet is required in the Commercial ‘C’ Zoning
7 District. Continuance from December 16, 2021)

8
9 J. Plourde turned the meeting over to D. McGuire of the Dubai Group.

10
11 D. McGuire (again via Zoom) reviewed the percentages of the lots in question and the green space. This is a
12 subdivision with no changes to the exterior of the buildings. The previous questions concerned the
13 possibility of redoing the percentages of the green space by addressing the parking spaces. He displayed an
14 outline of the parking lot to explain his findings. He feels there is a genuine hardship regarding the green
15 space because it is a situation that already existed and his findings regarding the parking would not change
16 this situation.

17
18 J. Plourde stated he wanted to ask questions first before moving ahead with the criteria.

19
20 Chair Plourde asked if any of the parking spaces are shared spaces. D. McGuire explained how they came
21 up with the numbers he presented. He also stated shared parking would be used. He feels the parking
22 requirements are being met. The main reason for the parking calculations is to show the ZBA there is not a
23 surplus of space in regards to the green space requirements. L. Daley had additional questions about shared
24 spaces for the other sub-divisions (Starbucks and St. Mary’s).

25 All the parcels are subject to the easement agreements. D. McGuire went on to explain shared spaces and
26 the possibility of reducing spaces to increase the green space. Further discussion continued about the
27 parking spaces.

28
29 R. Costantino did some calculations of his own and stated approximately 90 spaces would need to be
30 eliminated. This is not realistic.

31
32 Chair Plourde went over the proposed percentages with the sub divisions vs. the current percentages, and
33 stated it really is the same percentage of green space. Nothing is being decreased; the plaza remains the
34 existing plaza and no changes will be made to the exteriors.

35
36 Discussion continued about parking, the drainage, and snow removal.

37
38 J. Pourde asked D. McGuire to go over the 5 criteria.

- 39
40 1. This will not be contrary to the public interest.
41 It will remain unchanged from the existing site and no alteration to the public space.
42
43 2. The spirit of the Ordinance is observed.
44 No new proposed building; drainage is functioning as is and this is simply a sub-division for
45 ownership/tenant purposes.
46
47 3. Substantial Justice is done
48 It will allow for separate ownerships of buildings and the land use.
49
50 4. The Values of Surrounding Properties will not be diminished.
51 The buildings will remain unchanged in that the features will stay the same as well as the open space.
52

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

1 5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
2 Again, it is a minor sub-division for ownership purposes and no changes to the exterior will be made; all
3 space will remain the same. Ordinance enforcement would present a hardship for ownership.
4

5 J. Plourde then opened the meeting to the public.
6

7 Ken Wiggins of 14 Dearborn St. Milford stepped forward to the microphone in Milford Town Hall.
8

9 K. Wiggins asked about the concerns the ZBA has because it seems this is placing a hardship on the owners
10 of the property. He stated his question about whether these concerns warrant the literal enforcement of the
11 ordinance of 30% green space.
12

13 J. Plourde responded that the ZBA has a responsibility to look at all aspects of the request to ensure all
14 options have been investigated; to make sure the legal aspect has been addressed in case of possible future
15 repercussions.
16

17 K. Wiggins was satisfied with this response.
18

19 R. Costantino followed up by stating the board uses the 5 Criteria to determine if the request is warranted
20 based on the criteria the applicant submitted i.e. should the board allow less than the required 30% of green
21 space or not allow the variance from this ordinance.
22

23 J. Plourde asked D. McGuire is he had anything else to add.
24

25 D. McGuire reiterated the case for hardship. It is a fully developed site with less than 30% of green space
26 already. The proposed changes will not make any alterations to the site. The change for parking will not
27 solve the problem of the green space percentage.
28

29 J. Plourde closed the public portion of the meeting. T. Steele excused herself from the next part of the
30 meeting.
31

32 **Deliberations:**
33

34 1. This will not be contrary to the public interest.
35

36 2. The spirit of the Ordinance is observed.
37

38 K. Lagro: already a developed parcel with no change to the location

39 M. Thornton: no physical changes

40 R. Costantino: no change to the neighborhood and no threat to public health or safety

41 J. Plourde: nothing is changing; just an imaginary line separating the property with no affect to customers.
42

43 L. Daley interjected. He recalled the initial concerns expressed regarding how maintenance would be
44 administered between the different businesses in the subdivision. He asked about the easement contained
45 in the request package and if this addressed the issue. There will be some managerial and maintenance
46 changes.
47

48 J. Plourde: all boards received a document addressing this issue. The easement touched on all aspects for
49 the administration of the properties. The ZBA wanted to ensure the town would not have to be involved
50 and this easement will make sure the town will not have to be involved.
51

52 L. Daley: the document will be reviewed in detail by Town Council.

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

1 All board members are in agreement the easement answered the concerns the board had.

2
3 3. Substantial Justice is done.

4 R. Costantino: yes

5 K. Lagro: agrees

6 M. Thornton: open space will remain unchanged

7 J. Plourde: agrees

8
9 4. The Values of Surrounding Properties will not be diminished.

10 K. Lagro: no changes

11 M. Thornton: agrees

12 R. Costantino: agrees

13 J. Plourde: agrees

14
15 5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

16 M. Thornton: the current location already has less than 30% of open space; this request will not change
17 this. Discussions continued among the board regarding this issue in view of the parking analysis that
18 was presented and requested by the ZBA.

19
20 K. Lagro pointed out that at the last meeting the ZBA asked if an analysis could be done in order to
21 investigate possible alternatives to the problem of the less than 30% open space. She stated this analysis
22 has been done and the facts presented show it would require a substantial decrease in the amount of
23 parking and this would present a hardship.

24 Everyone agreed that if this were an undeveloped parcel, the situation would be very different. The fact
25 is this is an established parcel already not in compliance with the existing ordinance.

26 Further discussions continued.

27
28 J. Plourde: he pointed out that whatever financial implications there are to the owners, does not come
29 into play with the decision of the ZBA.

30
31 R. Costantino: the required number of parking spaces does not allow for a change to the green space;
32 also does not impact wet lands; this location is not a high impact to open space and he feels it is a
33 reasonable request. This does not set a precedent, however.

34
35 J. Plourde: he asked the board if they were ready to vote, and all were in agreement.

36
37 **Voting:**

38
39 1. This will not be contrary to the public interest.

40 K. Lagro yes; M. Thornton yes; R. Costantino yes; Chair votes yes.

41
42 2. The spirit of the Ordinance is observed by creating affordable housing in keeping with the area.

43 M. Thornton yes; R. Costantino yes; K. Lagro yes; Chair votes yes.

44
45 3. Substantial Justice is done.

46 R. Costantino yes; K. Lagro yes; M. Thornton yes; Chair votes yes.

47
48 4. The Values of Surrounding Properties will not be diminished.

49 K. Lagro yes; M. Thornton yes; R. Costantino yes; Chair votes yes.

50
51 5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

52 K. Lagro yes; M. Thornton yes; R. Costantino yes; Chair votes yes.

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

1
2 Chair Plourde asked if there is a motion to approve Case #2021-28 The Dubay Group, Inc./Doug
3 McGuire for the property located at 586 Nashua Street, Tax Map 44, Lot 6 are seeking a VARIANCE
4 from the Milford Zoning Ordinance, Article V, Section 5.05.6 Open Space to permit a three lot
5 subdivision with two of the proposed lots resulting in less than the required 30 percent open space in the
6 Commercial 'C' Zoning District.

7
8 R. Costantino made a motion to approve Case #2021-28 and K. Lagro seconded the motion.

9
10 J. Plourde: A motion has been made to approve Case #2021-28. Those in favor: K. Lagro yes; M.
11 Thornton yes; R. Costantino yes; chair votes yes.

12
13 Chair Plourde stated the criteria for the Variance request had been satisfied by a unanimous vote and the
14 application approved. There is a 30 day appeal period that can be filed with the Zoning Board.

- 15
16 **b. Case #2021-28 The Dubay Group, Inc./Doug McGuire for the property located at 586 Nashua Street,**
17 **Tax Map 44, Lot 6.** Variance Application seeking relief are seeking a Variance from the Milford Zoning
18 Ordinance, Article V, Section 5.05.6 Open Space to permit a three lot subdivision with two of the proposed
19 lots resulting in less than the required 30 percent open space in the Commercial 'C' Zoning District.
20 (Continuance from December 16, 2021)

21
22 D. McGuire stated he needed to turn the presentation over to Attorney Patrick McHugh who is very familiar
23 with this property. Attorney McHugh was present via Zoom.

24
25 Chair Plourde stated there were a number of questions at the initial meeting on December 2, 2021. One of
26 the questions was about a fire wall between the subdivisions.

27
28 P. McHugh stated he and D. McGuire were not sure about this but do know the buildings were built to code
29 when they were first constructed. He went on to say the Town of Milford should not be held responsible for
30 any issues regarding these properties. There is a Declaration of Covenants and Reciprocal Easements that all
31 owners are subjected to as well as insurance requirements.

32
33 J. Plourde cited a memo to D. McGuire from P. McHugh dated January 14, 2022 that addresses the
34 responsibilities of the owners for this location, i.e. administration for maintenance, up keep of the exterior,
35 drainage, insurance, etc. He continued to read from the memo that is in the packet for the Special Exception
36 request. He stated this certainly addressed all the issues he had. He went on to say that at the initial meeting
37 on December 2, 2021, this case was discussed at length and the only concern was regarding how ownership
38 responsibilities would be administered. Again, he feels the Declaration of Covenants and Reciprocal
39 Easements, as outlined in the memo he read, clears up the confusion the board had about this issue.

40
41 Chair Plourde then asked the board if they had any questions or concerns they would like to address. K.
42 Lagro stated she felt the only problem the board had was in regards to administration of ownership
43 responsibilities and agrees the declaration covers this, R. Costantino agrees, M. Thornton discussed the
44 subject of insurance. A brief discussion continued and the consensus was, again, the declaration answers
45 questions the ZBA had at the initial meeting.

46
47 J. Plourde then presented the reasoning behind the ordinance for the 15' setback. He cited the reasons given
48 would not be affected due to the fact there will be no change to the building and the Easement Agreement
49 covers administration of the properties by the owners. R. Costantino pointed out that none of the reasons
50 will be violated.

51
52 J. Plourde opened the meeting to the public.

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

1
2 Paul Dargie, Selectman, stepped forward to the microphone in Town Hall. He said he wanted to follow up
3 on a comment that was just made about the idea of condominium style ownership. He talked about utility
4 lines; cable, fuel, electric. He stated he is in favor of this proposal as presented.
5

6 J. Plourde asked Attorney McHugh if he had anything further. He asked if there anymore questions and
7 there were none. He closed the public portion of the meeting and moved forward to deliberations.
8

9 **Deliberations:**

10
11 J. Plourde then moved to deliberations for the 5 Special Exception criteria under 10.02.1:

- 12
13 a. Criteria: proposed use is similar to those permitted in the district
14 K. Lagro: there are other buildings in that area that have zero setbacks
15 M. Thornton: the only change will be the change in ownership
16 R. Costantino: agrees; nothing to add
17 J. Plourde: not changing anything because of the Reciprocal Easement Agreement; he is wondering if the
18 Planning Board is not in favor of this agreement what happens in regards to the ZBA, . He is asking this
19 because the ZBA's voting is based on the Easement Agreement. He is concerned it may change.
20 K. Lagro pointed out the Reciprocal Agreement has already been filed with the Hillsborough Registry of
21 Deeds and there is wording that establishes changes cannot happen. Therefore, the ZBA will be covered.
22 Attorney McHugh confirmed this and stated the Planning Board will be not be able to make changes.
23
24 b. Criteria: specific site is in an appropriate location for the proposed use
25 M. Thornton: physically unchanged and a legal document already filed covers the possibility of any
26 contention that would involve the town
27 R. Costantino: feels the setback location is appropriate for what they are doing
28 K. Lagro: agrees; not affecting the perimeter; just a lot line in the middle of the existing building.
29 J. Plourde: the zero side set back is appropriate for this particular case
30
31 c. Criteria: the use as developed will not adversely affect the adjacent area
32 R. Costantino: it will not affect it because the change will not be visible
33 K. Lagro: agrees; just a name change for the ownership
34 M. Thornton: agrees
35 J. Plourde: agrees; not affecting the overall size of the existing shopping plaza
36
37 d. Criteria: no nuisance or serious hazard to vehicles or pedestrians
38 K. Lagro: already existing building and accommodations for vehicles and pedestrians in this location are
39 already in place
40 M. Thornton: no change to existing location
41 R. Costantino: agrees
42 J. Plourde: agrees
43
44 e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use
45 M. Thornton: no changes
46 R. Costantino: the Reciprocal Agreement covers this
47 K. Lagro: agrees; seeing the document ensures proper administration will be taken care of
48 J. Plourde: agrees
49

50 J. Plourde asked if there was anything that needed to be added before moving into voting. Nothing was
51 added.
52

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

Voting:

Special Exception

The ZBA voted on the 5 criteria under Special Exception 10.2.1.

- a. R. Costantino yes; K. Lagro yes; M. Thornton yes; chair votes yes
- b. K. Lagro yes; M. Thornton yes; R. Costantino yes; chair votes yes.
- c. M. Thornton yes; R. Costantino yes; K. Lagro yes; chair votes yes.
- d. R. Costantino yes; K. Lagro yes; M. Thornton yes; chair votes yes.
- e. K. Lagro yes; M. Thornton yes; R. Costantino yes; chair votes yes.

Is the Special Exception allowed by the Ordinance? M. Thornton yes; R. Costantino yes; K. Lagro yes; chair votes yes.

Are all the specified conditions present under which the Special Exception may be granted? R. Costantino yes; K. Lagro yes; M. Thornton yes; chair votes yes.

Chair Plourde asked if there is a motion to approve **Case #2021-27** The Dubay Group, Inc./Doug McGuire for the property located at 586 Nashua Street, Tax Map 44, Lot 6 are seeking a SPECIAL EXCEPTION from the 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.

M. Thornton made a motion to approve **Case #2021-27** and R. Costantino seconded the motion.

J. Plourde: A motion has been made to approve **Case #2021-27**. Those in favor: M. Thornton yes; R. Costantino yes; K. Lagro yes; chair votes yes.

Chair Plourde stated the criteria for the Special Exception request had been satisfied and the application approved. There is a 30 day appeal period that can be filed with the Zoning Board.

3. MEETING MINUTES – 12/16/21

In attendance: M. Thornton, K. Lagro, R. Costantino, T. Steele, J. Plourde
R. Costantino made a motion to approve minutes from December 16, 2021 and T. Steele seconded.
All were in agreement.

4. OTHER BUSINESS

L. Daley stated there is a person in attendance who is interested in becoming a Zoning Board member.

Ken Wiggins stepped forward to state he is interested but feels he has a great deal to learn.

J. Plourde went over the process and explained time before the meetings is needed. Members receive information before each meeting and review the information before the meetings.

M. Thornton told his experience when he first started 20 years ago.
All members stated they keep learning but always prepare before. Each member contributed their opinions and views about being a member of the Zoning Board as well as how the board operates with complete transparency.

MINUTES OF THE ZBA MEETING JANUARY 20, 2022

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L. Daley stated there is a training period as an alternate.

M. Thornton pointed out the state has training available.

L. Daley provided additional insight.

Discussion continued about the two types of requests; variance or special exception.
Each member emphasized how they rely on each other to ask questions and provide their own opinions.

L. Daley said K. Wiggins can attend meetings either in person or via Zoom in order to get a feel for how things are run.

He went on to say if he is interested in moving forward, the board will take a vote on his membership as an alternate.

M. Thornton explained he would need to visit with the Selectman (P. Dargie) as well as taking an oath.

Motion to Adjourn

Chair Plourde asked if there was anything else. M. Thornton made a motion to adjourn and T. Steele seconded. All Board Members were in agreement. Meeting adjourned.

Motion to Approve: _____

Seconded: _____

Signe: _____

Date: _____