

Town of Milford
ZONING BOARD OF ADJUSTMENT
DECEMBER 7, 2023
Public Hearings

Case #2023-20 and #2023-21 Wastewater Treatment Plant, 564 Nashua Street, SPECIAL EXCEPTION
Case #2023-12 Linda Ledger, 84 Prospect Street, SPECIAL EXCEPTION

Present: Andrea Kokko Chappell, Chair
Joan Dargie, Vice Chair
Michael Thornton, Member
Dan Sadkowski, Member
Tracy Steel, Member
Rich Elliott, Member
Terrey Dolan, Director of Community Development
David Freel, BOS Representative

Recording Clerk: Jane Hesketh, Community Development

Meeting Agenda

1. Call to Order

2. Public Hearing(s):

a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant Wetland Buffer Impact for Special Exception
The Town of Milford’s Wastewater Treatment Plan (WWTP) is providing for required facility upgrades on both parcels of land that comprise the WWTP Facility. These two abutting parcels are Tax Map 44 Lot 2 & Tax Map 43 Lot 54, located at 564 Nashua Street. Due to the proposed & necessary wetland (upland) buffer impacts to construct the EPA-required new treatment facilities, the WWTP is formally seeking a required Special Exception, pursuant to Article VI Overlay Districts, Section 6.02.6 (Wetland Conservation) to allow grading & construction of a new retaining wall, a storm water leaching basin, riprap slopes and an outfall pipe within the wetland buffer (upland) area, that has already been previously filled and graded on both lots. The area of the described work is currently maintained as open space for the overall WWTP facility. All work shall take place within the WWTP’s security fencing area.

b. Case #2023-12 (Continuation from August 17, 2023, September 21, 2023 & October 19, 2023 ZBA Hearings for Special Exception Request-Proposed Accessory Dwelling Unit (ADU)-Request for Further Continuance to the December 7th, 2023 ZBA Mtg. The applicant, Linda Ledger, is seeking a Special Exception for the creation of a detached one-bedroom Accessory Dwelling Unit (ADU); comprised of approximately 672 sq. feet (16’ x 42’), partially utilizing the existing footprint of the existing one car garage/shed on the lot. The existing single-family home is located at 84 Prospect Street, Map 30 Lot 84, in the Res “A” Zoning District. The proposal has been modified to convert the existing detached garage into a single-level ADU, comprised of a kitchen/living area and one bedroom. A Special Exception from the Milford Zoning Ordinance, pursuant to Article X, Section 10.02.6, is required for this request.

3. Other Business: TBD

4. Next Meeting(s): 1/4/24

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

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5 **1. CALL TO ORDER**

6
7 Chair Andrea Kokko Chappell opened the meeting by welcoming everyone and introducing herself. The Chair
8 welcomed those attending in person and electronically.

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10 The Chair stated you may also attend this meeting in person at the Milford Town Hall, Board of Selectmen's
11 Meeting Room.

12
13 If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and
14 enter the Meeting ID: 851 6407 7601 and Password: 269952 or log in via www.zoom.com using the Meeting ID
15 and Password previously stated.

16
17 A digital copy of the meeting materials can be found on the Town website at:
18 <https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda>.

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

21
22 Roll call attendance with all present at Milford Town Hall: D. Sadkowski present; R. Elliott present; J. Dargie
23 present; M. Thornton present; T. Steel present; A. Kokko Chappell present.

24
25 Chair explained the process for the case hearings. The Chair said a full agenda may not allow all cases to be heard
26 and that at 10:00 p.m. the meeting will end. The Chair explained how the meeting would proceed for the cases
27 that may not be heard in that they would be continued or tabled to another agreed upon meeting and the process
28 for public notification process.

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30 A. Kokko Chappell moved on to the cases to be heard.
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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant** Wetland Buffer Impact for Special
7 Exception The Town of Milford’s Wastewater Treatment Plan (WWTP) is providing for required facility
8 upgrades on both parcels of land that comprise the WWTP Facility. These two abutting parcels are **Tax Map 44**
9 **Lot 2 & Tax Map 43 Lot 54, located at 564 Nashua Street.** Due to the proposed & necessary wetland
10 (upland) buffer impacts to construct the EPA-required new treatment facilities, the WWTP is formally seeking a
11 required Special Exception, pursuant to Article VI Overlay Districts, Section 6.02.6 (Wetland Conservation) to
12 allow grading & construction of a new retaining wall, a storm water leaching basin, riprap slopes and an outfall
13 pipe within the wetland buffer (upland) area, that has already been previously filled and graded on both lots. The
14 area of the described work is currently maintained as open space for the overall WWTP facility. All work shall
15 take place within the WWTP’s security fencing area.

16
17 Marisa DiBiaso, Engineer from Hoyle, Tanner and Associates stepped up to the microphone as the
18 representative for these cases. She stated she has been working with the town in regards to these projects. M.
19 DiBiaso referred to the site plan in the committee’s packet and had that on display in order to explain it to the
20 committee. M. DiBiaso pointed out on the site map the entrance from Nashua Street and the proposed
21 Dewatering Building which will affect the wetland buffer area. The red line on the site plan is the existing
22 security fence enclosure and the green line is the 25 ft. wetland buffer area. It was further explained how the
23 water flows into a culvert and then under the WWTF. The wetland and wetland buffer areas in question are all
24 on town owned property.

25
26 Marisa DiBiaso then referred to the zoomed in site plan map showing the wetland buffer area. It was explained
27 Tax Map 43 Lot 54 impact to the 25 ft. wetland buffer will be for grading as shown on the site plan in order to
28 build the retaining wall. There will be no impact the wetlands; all of the work will be done on an existing fill
29 area currently maintained by the town. The actual wetland is outside of the security fence. For Tax Map 44 Lot
30 2, 30 ft. of the wall will be constructed within the 25 ft. wetland buffer and there will be small drainage pipe in
31 the buffer area along with grading as well general construction impact. When construction is completed on both
32 parcels, M. DiBiaso stated the areas surrounding the construction area will be restored.

33
34 M. DiBiaso met with the MCC in September and there was a site walk. There is a letter from MCC outlining
35 their findings. This letter is in the packet for the ZBA.

36
37 Marisa DiBiaso then asked if there were any questions so far. A. Kokko Chappell stated not yet but the criteria
38 for these projects needs to be reviewed for the record. Chair further explained the cases will be treated as one
39 since the work on both lots will be the same, but if here are any differences those should be addressed. After a
40 review of the criteria, questions can be answered.

41
42 M. DiBiaso, reading from the application, presented the criteria.

43
44 **Wetland and Wetland Buffer Criteria 6.02.6.B**

45
46 **1. Has the need for the project been addressed?**

47 Yes.

48 Map 43 Parcel 54: Disturbance of the wetland buffer is required to construct a new retaining wall allows room
49 for the new sludge dewatering building as part of a facility upgrade project that addresses new National
50 Pollution Discharge Permit requirements. The wetland buffer to be impacted is inside the existing wastewater
51 treatment facility fence line and located in a previously developed fill area. Buffer impacts will primarily be
52 limited to grading.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant**

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9 **Wetland and Wetland Buffer Criteria 6.02.6.B**

10
11 **1. Has the need for the project been addressed?**

12 **Map 44 Parcel 2:** Disturbance of the wetland buffer is required to allow for grading and construction of a new
13 retaining wall, storm water infrastructure including storm water leaching basin, small outlet pipe and headwall,
14 and a rip rap apron for improved storm water management for the proposed developed site. The wetland buffer
15 to be impacted is inside the existing wastewater treatment facility fence line and located in a previously
16 developed fill area.

17
18 **2. The plan is the least impact to the site.**

19 The wetland buffer subject to disturbance is located within a previously developed area that has been filled in
20 and is within the fence line of the existing wastewater treatment facility.

21
22 **3. The impact on plants, fish and wildlife.**

23 Wildlife habitat in this portion of the wetlands buffer is minimal. The stream is fragmented with a large culvert
24 downstream and a railroad crossing upstream with development on both sides and is separated from the
25 impacted area by a fence. The project will not impact the stream or wetlands directly. Hoyle Tanner has
26 coordinated with the NH Fish and Game and there are no documented records of endangered or threatened
27 species within the project area. The NHB DataCheck results letter has been attached to the application for
28 reference.

29
30 **4. The impact on the quantity and quality of surface and ground water.**

31 The project will result in a decrease in untreated storm water runoff using storm water management systems
32 designed by Hoyle Tanner. Disturbed areas will be stabilized upon completion of construction.

33
34 **5. The potential to cause or increase flooding, erosion or sedimentation.**

35 Temporary sediment and erosion controls will be installed prior to construction. Permanent slope stabilization
36 practices will be implemented on the steep slope to facilitate vegetation growth. Development will occur outside
37 of the 100-year flood plain. Storm water management systems will be designed by Hoyle Tanner to reduce
38 storm water runoff from the developed site.

39
40 **6. The cumulative impact if all parties abutting this wetland or buffer were permitted to make equivalent
41 alterations to the wetland and buffer proportional to the extent of their property rights.**

42 Impacts to the wetland buffer in existing developed areas by all parties owning or abutting the affected wetland
43 would not be expected to have a significant impact. More than 1200 linear feet of Medlyn-Woods Brook runs
44 through the two Town owned parcels which include the wastewater treatment facility. This portion of Medlyn-
45 Woods Brook is not accessible to abutters for wetland alterations. The majority of the proposed buffer impacts
46 are related to grading and construction activities that can be considered temporary construction impacts.

47
48 **7. The impact of the proposed project on the values and functions of the total wetland or wetland
49 complex.**

50 The proposed development will only impact previously developed wetland buffer area and will not result in
51 direct wetland impacts. An NHDES Wetland Function Assessment Worksheet has been completed by a certified
52 wetland scientist and is attached to the application for reference.

53
54 Chair Kokko Chappell asked that the special exception criteria then be presented.

2
3 **2. PUBLIC HEARINGS**

4
5 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant**

6
7 Reading from the application, M. DiBiaso presented the criteria.

8
9 **Special Exception Criteria under 10.02.1:**

10
11 **a. Criteria: proposed use is similar to those permitted in the district**

12 The proposed use as a wastewater treatment facility is the same as the existing use.

13
14 **b. Criteria: specific site is in an appropriate location for the proposed use because**

15 The new sludge dewatering building is proposed within the fence line of the existing wastewater
16 treatment facility in a previously developed area that does not impact future expansion for the
17 wastewater treatment facility on a site with limited available area.

18
19 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

20 The use as developed is consistent with the existing use and is located within the fence line of the
21 existing wastewater treatment facility on Town owned property. The new sludge dewatering building is
22 also located on Town property and is not near abutters.

23
24 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

25 Construction of the retaining wall will allow for improved truck circulation around the wastewater
26 treatment facility and will not create a nuisance or serious hazard to vehicles or pedestrians.

27
28 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
29 **proposed use**

30 The existing wastewater treatment facility will continue operation of the facility upon completion of the
31 upgrade project.

32
33 M. DiBiaso completed her presentation.

34
35 A. Kokko Chappell asked if the dewatering building will be attached to the other existing buildings or is it a
36 stand-alone building. M. DiBiaso explained it will be a stand-alone building connected by underground piping.

37
38 R. Elliott asked if other locations had been considered. M. DiBiaso: part of the planning in this tight area was to
39 consider and allow for future expansion. Therefore, this spot was available whereby other spots are being
40 reserved for future buildings due to the need and function of these future buildings.

41
42 R. Elliott: what was meant by the statement that after completion of the work the area will be stabilized?

43 M. DiBiaso: there will be a steep slope covered with matting to ensure the seeding does not wash away.

44
45 A. Kokko Chappell: what is the need for the retaining wall with the new dewatering building; the retaining wall
46 is not needed now? M. DiBiaso: the building cannot go too close to the existing Clarifying Buildings.

47 Therefore, in order to fit the new dewatering building in, the land needs to be graded to a flat lot which will
48 require a retaining wall.

49
50 Chair asked if there were any further questions. There were none and the meeting was opened to the public.

51 Hearing none and seeing none, Chair closed the public portion of the meeting.

52
53 Chair to Terrence Dolan: do you have anything to add? T. Dolan: to confirm the square footage of the two lots;
54 are they still 1300 and 1800 square feet? M. DiBiaso: those are approximate; 1800 sq. ft. for Tax Map 44 Lot 2
55 and 1300 sq. ft. for Tax Map 43 Lot 54.

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

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3 **2. PUBLIC HEARINGS**

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5 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant**

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7 Chair stated the meeting would move to deliberations.

8
9 **Deliberations:**

10
11 **Special Exception Criteria under 10.02.1:**

12
13 **a. Criteria: proposed use is similar to those permitted in the district**

14 T. Steel: it is permitted by special exception.

15 M. Thornton: it is not similar because it is a singular use in the town, but it is similar to other special
16 exceptions of this nature.

17 A. Kokko Chappell: in the immediate surrounding area there are other properties with similar special
18 exceptions.

19 R. Elliott: the site use is not changing from what it is being used for today it is just impacting the
20 wetland buffer area.

21 D. Sadkowski: agrees.

22
23 **b. Criteria: specific site is in an appropriate location for the proposed use because**

24 D. Sadkowski: the appropriate location will not affect future expansions.

25 J. Dargie: it is within an existing wastewater treatment facility and in an already impacted area.

26 M. Thornton: professional engineering has provided an assessment and MCC has agreed this is not a
27 harmful location.

28 T. Steel: other locations were considered and this is the best spot.

29 A. Kokko Chappell: there is a memo from MCC that states: the impact will be minimal and will not
30 stress the functionality of the landscape to support the existing wildlife and plants; this project is a small
31 expansion to an existing impact which is fully stabilized.

32
33 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

34 R. Elliott: this building will not be in the actual wet land, only the buffer and the NH Fish and Game
35 support this.

36 M. Thornton: the situation after the project is completed will be the same as it is now.

37 T. Steel: it will not affect anything that is already there.

38 A. Kokko Chappell: agreed.

39
40 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

41 M. Thornton: the general public does not belong there and the only pedestrian traffic will be
42 construction crews.

43 J. Dargie: the project will improve truck circulation in the facility.

44
45 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
46 **proposed use**

47 J. Dargie: it is what is there now and will be the same when completed.

48 A. Kokko Chappell: this is simply an expansion of what is already at the facility

49
50 This ended the special exception criteria deliberations that covered both lots.

51
52 Chair moved to voting and noted each lot will be voted on separately.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant**

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8
9 **Voting:**

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11 **Case #2023-21 Tax Map 44 Lot 2**

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13 **Special Exception criteria under 10.02.1:**

14
15 **a. Criteria: proposed use is similar to those permitted in the district**

16 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; T. Steel yes; Chair votes yes.

17
18 **b. Criteria: specific site is in an appropriate location for the proposed use**

19 D. Sadkowski yes; M. Thornton yes; T. Steel yes; J. Dargie yes; Chair votes yes.

20
21 **c. Criteria: the use as developed will not adversely affect the adjacent area**

22 M. Thornton yes; T. Steel yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

23
24 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

25 T. Steel yes; J. Dargie yes; D. Sadkowski yes; M. Thornton yes; Chair votes yes.

26
27 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
28 **proposed use**

29 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; T. Steel yes; Chair votes yes.

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31
32 **Is the Special Exception allowed by the Ordinance?**

33 D. Sadkowski yes; M. Thornton yes; T. Steel yes; J. Dargie yes; Chair votes yes.

34
35 **Are all the specified conditions present under which the Special Exception may be granted?**

36 M. Thornton yes; T. Steel yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

37
38 Chair asked for a motion to approve **Case #2023-21 Tax Map 44 Lot 2.**

39 M. Thornton made a motion to approve **Case#2023-21** and it was seconded by J. Dargie.

40 Chair Kokko Chappell stated a motion was made to approve **Case #2023-21**. Chair Kokko Chappell asked for a
41 vote; all were in favor. Chair stated the application has been approved. There is a 30 day appeal period that can
42 be filed with the Zoning Board.

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-20 & Case #2023-21 Wastewater Treatment Plant**

7
8
9 **Voting:**

10 **Special Exception criteria under 10.02.1:**

11 **Case #2023-20 Tax Map 43 Lot 54**

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13 **Special Exception criteria under 10.02.1:**

14
15
16 **a. Criteria: proposed use is similar to those permitted in the district**

17 T. Steel yes; J. Dargie yes; D. Sadkowski yes; M. Thornton yes; Chair votes yes.

18
19
20 **b. Criteria: specific site is in an appropriate location for the proposed use**

21 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; T. Steel yes; Chair votes yes.

22
23 **c. Criteria: the use as developed will not adversely affect the adjacent area**

24 D. Sadkowski yes; M. Thornton yes; T. Steel yes; J. Dargie yes; Chair votes yes.

25
26 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

27 M. Thornton yes; T. Steel yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

28
29 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use**

30 T. Steel yes; J. Dargie yes; D. Sadkowski yes; M. Thornton yes; Chair votes yes.

31
32
33 **Is the Special Exception allowed by the Ordinance?**

34 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; T. Steel yes; Chair votes yes.

35
36 **Are all the specified conditions present under which the Special Exception may be granted?**

37 D. Sadkowski yes; M. Thornton yes; T. Steel yes; J. Dargie yes; Chair votes yes.

38
39 Chair asked for a motion to approve **Case #2023-20 Tax Map 43 Lot 54.**

40 J. Dargie made a motion to approve **Case#2023-20** and it was seconded by T. Steel.

41 Chair Kokko Chappell stated a motion was made to approve **Case #2023-20**. Chair Kokko Chappell asked for a
42 vote; all were in favor. Chair stated the application has been approved. There is a 30 day appeal period that can
43 be filed with the Zoning Board.

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

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3 **2. PUBLIC HEARINGS**

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5 **b. Case #2023-12** (Continuation from August 17, 2023, September 21, 2023 & October 19, 2023 ZBA Hearings
6 for Special Exception Request-Proposed Accessory Dwelling Unit (ADU)-Request for Further Continuance to
7 the December 7th, 2023 ZBA Mtg. The applicant, **Linda Ledger**, is seeking a Special Exception for the creation
8 of a detached one-bedroom Accessory Dwelling Unit (ADU); comprised of approximately 672 sq. feet (16' x
9 42'), partially utilizing the existing footprint of the existing one car garage/shed on the lot. The existing single-
10 family home is located at **84 Prospect Street, Map 30 Lot 84**, in the Res "A" Zoning District. The proposal has
11 been modified to convert the existing detached garage into a single-level ADU, comprised of a kitchen/living
12 area and one bedroom. A Special Exception from the Milford Zoning Ordinance, pursuant to Article X, Section
13 10.02.6, is required for this request.

14
15 Chair Kokko Chappell then recused herself from the meeting and Vice Chair Joan Dargie stepped in as Chair.
16 Chair Dargie started by stating this is a continuance of the case and basically all the information has been heard.
17 The applicant was previously asked to move the structure away from the setbacks and further into the property
18 as well as discuss this with neighbors.

19
20 J. Dargie then asked the applicant to come forward.

21
22 Attorney Tom Quinn came forward as the representative for the applicant. Attorney Quinn introduced himself
23 along with Christopher Guida from Fieldstone Land Consultants who was present at the August meeting.

24
25 T. Quinn began by saying an updated plan was submitted. T. Quinn then deferred to C. Guida for a review of the
26 new plan.

27
28 Chris Guida came forward to the microphone to review the site plan. Mr. Guida began by pointing out the
29 structure in question and explained the change made from the initial plan; the structure will be moved 5 ft. closer
30 to Glenn Drive as requested by the ZBA to allow for easier access for parking. This will not change the square
31 footage of the ADU or the distance from the rear and side setbacks. C. Guida continued by stating that is the
32 only change from the first presentation where the criteria was presented and entered into the record. In addition,
33 it was noted there were other questions brought up by the ZBA which Attorney Quinn will address.

34
35 Joan Dargie stated at the previous meeting it was asked to have the structure moved forward so it was not in the
36 set back; she asked if there was a reason this could not be done. C. Guida: the structure is an existing structure
37 built at the same time as the primary residence. It is in the setback as are other structures in this neighborhood.
38 C. Guida continued by saying there were concerns about the look for the neighborhood and using the site map
39 pointed out the suggested parking area (next to the structure should it be moved forward) would not be
40 aesthetically pleasing for the neighbors. Pointing out on the site map he explained that moving the garage further
41 into the lot would infringe on the area around the pool and make the space smaller; also the garage is a structure
42 everyone is already use to in the existing space. Based on all of this, Mr. Guida stated the location of the ADU
43 on the site map was felt to be the more appropriate location. Attorney Quinn then pointed out that moving the
44 garage to the edge of the 15 ft. set back would not accomplish what the ZBA requested; in order to allow for
45 parking next to the structure without going into the setback would require the garage be moved even further into
46 the existing space on the property. This would then reduce the size of the parking space area and impact the
47 turnaround for vehicles.

48
49 J. Dargie then stated she was waiting to see if the structure was going to be pulled out of the setbacks. J. Dargie
50 cited and read into the record RSA 674:19.

51 **674:19 Applicability of Zoning Ordinance.** – *A zoning ordinance adopted under RSA 674:16 shall not apply to*
52 *existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for*
53 *a purpose or in a manner which is substantially different from the use to which it was put before alteration.*

54 **Source.** 1983, 447:1, eff. Jan. 1, 1984.

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3 **2. PUBLIC HEARINGS**

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5 **b. Case #2023-12**

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7 J. Dargie explained that as a garage it was grandfathered in to be in the setbacks. However, as an ADU it is a
8 substantially different use. Ms. Dargie cited Milford Zoning Ordinance 2.03.1 and read it into the record.

9 **2.03.1 INTENT:** *The intent of this section is to allow for the lawful continuance of non-conforming uses, and/or*
10 *structures and to allow a certain reasonable level of alteration, expansion or change that will not change the*
11 *nature of the use and unduly impact the neighborhood.*

12
13 J. Dargie stated her concern and reason to move the structure further into the lot because it will be only 7.5 ft.
14 from the neighbors; there will be windows and this could be intrusive and take away from the neighborhood.

15
16 Attorney Quinn interjected by saying the neighbors have been canvassed and are in support of this project
17 (documentation of the endorsements has been provided). J. Dargie added she has seen these endorsements and
18 they are from neighbors across the street. Attorney Quinn: Linda Ledger can testify to the fact she has spoken
19 with the neighbors directly abutting the structure and they would prefer the structure be where it is instead of
20 having parking there.

21
22 Attorney Quinn addressed the topic of non-conformity. T. Quinn stated there are two aspects to this and often
23 times they are combined but should be viewed separately; one aspect is “a non-conforming structure that relates
24 to the encroachment into the set back” and the other one “non-conforming use”. T. Quinn continued by saying it
25 is important to keep these topics separate because they address different issues. T. Quinn: “we do not have a
26 non-conforming use; we have a non-conforming structure that is in the setback. Certain alterations to that are
27 permitted by law as long as they are minor and do not change the substantial use of the building”. T. Quinn:
28 “while we are altering it by about 50 sq. ft. to move it over, we are maintaining the exact same square footage to
29 the building within the setback”. T. Quinn: “confirmed with Terrence Dolan and Lincoln Daley, historically this
30 is the town’s interpretation of this ordinance. We are not increasing the nature of the non-conformity of the
31 structure because it is not being made larger; it is the exact same square footage that is encroaching before and
32 after”. T. Quinn: “in reference to non-conforming use, there is no non-conforming use. The garage/shed is used
33 as an accessory structure that is allowed in a residential zoned district. The use is changing but not to a non-
34 conforming use because we do not have a non-conforming use to begin with. We are changing it to another
35 conforming permitted use. So the law regarding non-conforming use or alteration or expansion to non-
36 conforming use does not apply because we do not have a non-conforming use; we have an existing legal use and
37 we are posing another legal conforming use. I believe there have been discussions with the town that will back
38 him up on this”.

39
40 R. Elliott: referring to the structure outline on the site plan, there is a shaded part in purple with a size of 42x16
41 and there is another shaded outline underneath this one with a size of 41x12; what does this represent?

42
43 C. Guida: the 12x41 is the existing garage with the pink line it is still conforming; to comply with the ZBA
44 request to move it over by 5 ft. the 16x42 is the new structure slightly expanded in a conforming area just to
45 provide a more reasonable footprint to build on. C. Guida noted the initial plan was to build a 2 story structure
46 that would have been in the exact same foot print. It was felt that a 2 story unit would be more imposing than a 1
47 story unit. Therefore, it is more in keeping with the garage that is there; 13 ft. high, single story and more
48 preferable to the owner and probably the neighbors as well so this would essentially look like the existing
49 garage. There has been a slight expansion in size. C. Guida pointed out the expanded portion that will be in the
50 setback. T. Quinn also pointed out the additional area that will go into the setback along with the existing
51 structure size that is currently in the setback.

52
53 J. Dargie again cited RSA 674:19 and added this is not non-conforming use but a non-conforming structure.

54 J. Dargie and T. Quinn debated this issue; both viewing it differently.
55

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

2
3 **2. PUBLIC HEARINGS**

4
5 **b. Case #2023-12**

6
7 D. Sadkowski asked if the existing garage will be demolished. It was noted that it will be.

8
9 T. Quinn: since he has not been involved since the beginning of this, he has reviewed the meeting minutes and
10 the GTM video. From that review T. Quinn stated he identified four issues: 1. Setback which has been
11 discussed. 2. Use which has been discussed 3. The residency; the statute/regulation does not require the
12 applicant be the occupant of the primary residence at the time of the application. At the time the CO is issued the
13 owner must occupy one of the two units, therefore it does not matter where she lives now but she must live in
14 one of the two by the time the ADU is ready for occupancy.

15
16 M. Thornton to staff: subsequent to the issuance of a CO (Certificate of Occupancy), if the occupancy changes
17 then that comes back before the board?

18 T. Dolan: the regulations are for the ADU to be compliant the applicant must live in the primary residence or the
19 ADU. M. Thornton: so it has to come back to the board T. Dolan: I believe that would be the case. J. Dargie: the
20 CO could not be issued if the applicant were not living in one of the units. T. Dolan: a subsequent owner would
21 also have to comply by living in one of the 2 units. J. Dargie: a subsequent owner would not have to come to the
22 board, however, because this would go with the property not with the person.

23
24 T. Quinn: there is a provision in the ordinance that permits a compliance review at the time the property/ADU
25 changes hands

26
27 M. Thornton: if this was subsequently purchased as an income property that would not be allowed. It must be
28 owner occupied in one of the 2 structures. This topic was discussed.

29
30 T. Quinn: the fourth issue is the driveway. There has been a lot of discussion about this. He believes it is a non-
31 issue. The zoning ordinance does not prohibit a property with 2 driveways from obtaining an ADU. If that were
32 the case, it would say that any property containing more than 1 driveway cannot have an ADU and this is not
33 what the ordinance says. The ordinance states this board cannot grant an additional driveway but they can
34 approve a plan that requires an additional driveway; it does not say properties with more than one driveway are
35 disqualified. He cited the DPW can issue permission for a second driveway under certain conditions. The
36 driveway was approved with no conditions and the board is not being asked for an additional driveway. The
37 application does not request another driveway. We have 2 legal non-conditional driveways.

38
39 J. Dargie: the issue she had initially with the driveway, which was read into the record from a previous meeting,
40 is that the driveway request was made because of the occupant being elderly, widowed and living alone. That is
41 how the DPW Director granted this driveway request; J. Dargie stated she knows this has nothing to do with the
42 case at hand, however, that was read into the record and it was questioned because she believes none of this is
43 true and that was how the driveway permit was obtained.

44
45 T. Quinn to J. Dargie: I understand you have been concerned about that from watching the videos. The fact is
46 the Planning Board is the party that is responsible for the drafting of the regulations, the DPW is the Department
47 that is responsible for implementing the regulations, and the BOS is the responsible party for enforcing those
48 regulations. He has spoken the Mr. Lessard and he will say there are no conditions on that (it was noted Mr.
49 Lessard was present). T. Quinn stated Mr. Lessard had a reason for issuing the driveway permit; the reason is
50 not a limitation and it is not binding in that the reason for the use can change. There was a legal application for a
51 driveway permit; it was built and now it is available for all uses on that property.

52
53 J. Dargie: the ZBA does look at the driveway in terms of parking availability and for safety. At the time this
54 case was first submitted, there was no additional curb cut and that is why it was questioned.

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

2
3
4 **2. PUBLIC HEARINGS**

5
6 **b. Case #2023-12**

7
8 M. Thornton: my concern was what I read as transmitted to the board; the understanding was that the applicant
9 lived at this residence and required the additional driveway until it was learned that might not be the case and
10 that was confusing.

11 T. Quinn: responded to this by pointing out the need for parking as discussed by the ZBA. He ended by saying
12 these are the 4 issues he wanted to bring up and that all the other criteria has been met as discussed at previous
13 meetings.

14
15 D. Sadkowski: how many people are planning on living in the ADU? T. Quinn: given there will be only one
16 bedroom it is limited to perhaps 2 people.

17
18 J. Dargie asked if there were any further questions. Hearing none the meeting was opened to the *public*.

19
20 Dan Burke, Glen Drive, stepped up to the microphone. He questioned the additional driveway and noted it was
21 stated there is nothing to prohibit 2 driveways, but he questioned about there being 2 driveways on different
22 streets. J. Dargie: at the last meeting and what she has learned from the Town, there can only be one address per
23 residence and only one driveway cut per residence, and usually for a 2nd cut it is for a large vehicle, i.e. RV,
24 tractor. T. Dolan: a 2nd driveway cut is allowed for residential lots but it is at the discretion of the DPW Director
25 to issue those driveway cut permits. They are not an assumed thing that can be obtained, you have to follow a
26 rationale and provide evidence to the DPW that it is warranted. It is all on a case by case basis.

27 Dan Burke: so I need to talk to the DPW to find out how that was obtained?

28 J. Dargie: at the meeting that this was discussed, the letter was read into the record and it was obtained for an
29 elderly, widow living by themselves and they couldn't handle the steep driveway off Prospect Street. We could
30 ask Mr. Lessard if he would like to speak to that.

31 Leo Lessard stepped up to the microphone: the DPW can issue a driveway cut at its discretion. The driveway cut
32 on Glen Drive had good site distance, it was on a dead end, wasn't obstructing anything; what was discussed
33 was irrelevant to where the driveway was and he agreed to the driveway which was under his discretion to give
34 it.

35 J. Dargie to L. Lessard: did you know they were going to use it for the ADU? L. Lessard: no, and it would not
36 have mattered.

37 Dan Burke: so it can be approved for anybody? J. Dargie: you can bring it to the Traffic Safety Committee and
38 bring it up with them.

39 Dan Burke asked about the occupancy and how it is regulated. J. Dargie explained this as it was discussed
40 previously; complaints can be issued to the Office of Community Development.

41
42 Another residence of Glen Drive stepped forward to say she feels this has been very sneaky. This was initially a
43 cut through; first they cut down trees, and then took down a stone wall with no regard for anyone on Glen Drive.
44 Nobody on Glen Drive was spoken to. Where her house is she will be looking directly at the ADU from her
45 front yard. It will not be discreet at all. For the record she emphasized this was done in a very sneaky way.

46
47 Mr. Weinstein of 79 Prospect Street came to the microphone; lives across the street from 84 Prospect Street.
48 Linda Ledger approached him to ask about the plans. He has never seen anyone use the garage and he is pleased
49 the property will now have sensible parking and access. In his opinion, it is an appropriate use and there are
50 other properties in the area with ADU's. In addition, he feels with the construction it will be a better looking
51 building than the current structure.

52
53 Seeing no further questions of comments, the public portion of the meeting was closed.

2
3 **2. PUBLIC HEARINGS**

4
5 **b. Case #2023-12**

6
7 **Deliberations:**

8
9 **Special Exception criteria under 10.02.1:**

10
11 **a. Criteria: proposed use is similar to those permitted in the district**

12 T. Steel: it is similar in that ADU's are permitted with a special exception, and there are similar
13 properties that have ADU's in the area.

14 R. Elliott: agrees; ADU's are allowed in this district with a special exception.

15 D. Sadkowski: residential area that allows ADU's with a special exception.

16 M. Thornton: agrees with all statements

17 J. Dargie: agrees

18
19 **b. Criteria: specific site is in an appropriate location for the proposed use**

20 J. Dargie: according to RSA 674:19 feels it is not in the appropriate location and it should be outside the
21 setbacks

22 M. Thornton: it would be ideal within the setbacks but as a pre-existing structure if it were to sit right
23 where it started (strictly grandfathered) and there are no qualms with abutters, what would the town or
24 abutters gain by being stringent with its decision

25 J. Dargie: feels it is not grandfathered due to the fact it will be substantially altered which means a
26 variance is needed

27 T. Dolan: Attorney Radigan, Town Counsel, has said a special exception is the correct process and not a
28 two-step approach of variance and then special exception.

29
30 **c. Criteria: the use as developed will not adversely affect the adjacent area**

31 J. Dargie: feels having a structure only 7.5 feet from another residence with windows facing in that
32 direction is not ideal

33 M. Thornton: he noted no abutters have been heard from in regards to this; they had an opportunity and
34 there have been no objections.

35 D. Sadkowski: noted the abutter on Glen Drive that is present and is not in favor

36 M. Thornton: none of the direct abutters that would be affected by the issue noted by J. Dargie have
37 commented

38 J. Dargie: her point is why that particular neighbor was not asked; the applicant was supposed to get
39 comments from all abutters and not just those across the street.

40 R. Elliott: understands but there have been at least 2 opportunities for abutters to come forward; also he
41 feels the comments from the abutters have been mainly from the residents on Glen Drive because of the
42 driveway which unfortunately the board cannot address.

43
44 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

45 M. Thornton: it is private property; has not heard about the 2nd driveway being a hazard

46 T. Steel: private property with adequate parking; no parking unless they are given permission

47 J. Dargie: asked if the 2nd driveway has had a safety review; she would be more comfortable having
48 Traffic Safety take a look at it. There was further discussion on this subject.

49
50 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
51 **proposed use**

52 R. Elliott: feels there will be and all agreed

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

2
3 **2. PUBLIC HEARINGS**

4
5 **b. Case #2023-12**

6
7 **Deliberations:**

8
9 **Special Exception criteria under 10.02.1:**

10
11
12 **Is the Special Exception allowed by the Ordinance?**

13 J. Dargie feels it is not allowed according to 674:19 and it is no longer grandfathered; therefore a variance
14 should be submitted. In her opinion this is the proper procedural way to go for this project.

15
16 T. Dolan: noted again the recommendation of the Town Counsel.

17
18 M. Thornton to staff: asking for an interpretation on what Member Dargie has asked; is that significantly
19 different from Town Counsel's opinion to make the board question whether a variance would be necessary?

20
21 T. Dolan noted the recommendation of the Town Counsel to be the best approach and the board can apply
22 conditions to the approval of the special exception.

23
24 M. Thornton: therefore, this could cover both options for all of the procedures needed to authorize this requested
25 use? J. Dargie: if they were to go with a variance the biggest difference is they would be required to provide the
26 hardship on it. She noted cases similar to this one especially a case where a structure was being substantially
27 altered and it was not grandfathered.

28
29 M. Thornton: hard pressed to find a benefit to the town for denying or requiring additional processing. J. Dargie:
30 feels there is a point to make about the quality of life for the neighbors. M. Thornton: if that were a situation,
31 then we should have heard from them. J. Dargie noted the case was about a garage being turned into a livable
32 space and it eventually went to court on appeal; the case was denied in the end.

33
34 Member Dargie said she would move to voting if the committee was in agreement; she feels her point has been
35 made and her opinion noted. The meeting moved to voting.

36
37 **Voting:**

38
39 **Special Exception Criteria under 10.02.1:**

40
41 **a. Criteria: proposed use is similar to those permitted in the district**

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

43
44 **b. Criteria: specific site is in an appropriate location for the proposed use**

45 R. Elliott yes; T. Steel yes; M. Thornton yes; D. Sadkowski yes; Vice Chair votes no.

46
47 **c. Criteria: the use as developed will not adversely affect the adjacent area**

48 D. Sadkowski yes; R. Elliott yes; T. Steel yes; M. Thornton yes; Vice Chair votes no.

49
50 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

51 M. Thornton yes; D. Sadkowski yes; T. Steel yes; R. Elliott yes; Vice Chair votes no.

52
53 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
54 **proposed use**

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

1 **MINUTES OF THE ZBA MEETING DECEMBER 7, 2023**

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4 **2. PUBLIC HEARINGS**

5
6 **b. Case #2023-12**

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9
10 **Voting:**

11
12 **Is the Special Exception allowed by the Ordinance?**

13 D. Sadkowski yes; M. Thornton yes; T. Steel yes; R. Elliott yes; Vice Chair votes no.

14
15 **Are all the specified conditions present under which the Special Exception may be granted?**

16 R. Elliott yes; T. Steel yes; M. Thornton yes; D. Sadkowski yes; Vice Chair votes no.

17
18 T. Dolan to Vice Chair: are there any special conditions the board would like to consider?

19
20 J. Dargie: one condition could be to have no windows on the ADU facing the abutting neighbor to the north or
21 some type of shrubbery as a privacy screen. This topic was discussed. J. Dargie pointed out the ZBA recognizes
22 those things others may not and it is the responsibility of the board to watch out for the quality of life; that is
23 why there are regulations.

24
25 The condition could be the neighbors work together to determine what type of privacy screen would be the best.
26 The discussion continued with J. Dargie asking for a motion.

27
28 Member Elliott made a motion to add a **condition** be applied to **Case #2023-12**; there be some type of privacy
29 barrier between the structure and the neighbors lot line by working with the neighbor the motion was seconded
30 by T. Steel. Vice Chair asked for a vote: T. Steel yes; D. Sadkowski yes; R. Elliott yes; J. Dargie yes; M.
31 Thornton no.

32
33 Vice Chair asked for a motion to approve **Case #2023-12 with condition**. R. Elliott made a motion to approve
34 **Case #2023-12 with condition** and it was seconded by T. Steel.

35
36 Vice Chair Dargie stated a motion was made to approve **Case #2023-12**. Vice Chair asked for a vote; all were in
37 favor. Vice Chair stated the application has been approved. There is a 30 day appeal period that can be filed with
38 the Zoning Board.

39
40 Chair Kokko Chappell returned to the meeting.

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3. OTHER BUSINESS

T. Dolan stated there will be no cases for the next scheduled meeting on January 4, 2024; therefore this meeting will be cancelled. The next scheduled meeting will be held on January 18, 2024.

M. Thornton asked if the meeting on January 18, 2024 could be a training session; this was agreed to and discussed.

Motion to Adjourn

Chair Andrea Kokko Chappell asked for a motion to adjourn. J. Dargie made a motion to adjourn and it was seconded by T. Steel. All Board Members were in favor. Meeting adjourned.

Motion to Approve:

Seconded:

Signed

Date:
