

**Town of Milford  
Zoning Board of Adjustment Minutes  
June 4, 2015  
Case #2015-07  
TMC New England, LLC,  
Along with Platinum Holding Company, LLC  
Special Exception**

Present: Zach Tripp, Chairman  
Fletcher Seagroves, Vice-chair  
Michael Thornton  
Joan Dargie  
Kevin Johnson

Excused: Len Harten, Alternate  
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, TMC New England, LLC, along with Platinum Holding Company, LLC owner of Map 30 Lot 58, 321 Nashua St., in the Commercial district, is requesting a special exception from Article II, Section 2.03.1.C:1 to alter the non-conforming use (open space) to allow for subdivision and combination of properties to create a new commercial lot.

## Minutes Approved July 2, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board and read the notice of hearing into the record. The list of abutters was read. The following abutters were present:

Scott Hasu, 12 Clinton St. Milford

Susan Jones, 33 Putnam Hill Rd, Lyndeborough

Platinum Holding Company, LLC, 11 Joe English Rd, Mont Vernon

Raymond Hayes, 18 Tonella Rd #2, Milford

Aaron Jowders, 7 Clinton St, Milford

Janet Chapman, 322 Nashua #10, Milford

Lyn Coakley, 322 Nashua St. Unit #9, Milford

K. Johnson informed the applicant that while he had no personal interest in the case, his sister-in-law was a property owner who would be affected. He felt he could make a fair and impartial judgment. If the applicant felt uncomfortable, he would recuse himself from the case. In response to questions from the applicant he stated his sister-in-law lives at 8 Clinton St, and she and her husband were not present at the meeting. Applicant was willing to take KJ's word on fair and impartial decision.

Z. Tripp said the application talked about two parcels of property, the CVS property and the other referred to as County Store. The CVS property is made up of two residential lots combined and a portion of the County Store parcel.

Applicant said two or three residential lots.

Z. Tripp said the CVS parcel is a conforming parcel and is not what they were there to discuss. This case dealt with County stores parcel which is a reduction of open space.

Applicant agreed they were not there to talk about CVS. They have been to Planning Bd once for preliminary conceptual discussion. That, if the subdivision goes through, will require full site plan and review to come. He was there to talk about a specific issue raised by drawing subdivision line which affects County Stores property.

Z. Tripp said for the smaller County Store they have to recalculate the open space. He just wanted to clarify they were there to discuss the County Store parcel.

Applicant said they would be mentioning the CVS parcel because they were there to try to subdivide the lot.

Z. Tripp asked him to present the case.

Applicant stated he was Attorney John Sokul, with Hinkley, Allen in Concord, NH, representing the applicant, T.M. Crowley which is a preferred developer for CVS in New England. David Finstermacker from VHB, engineer, was also there. He handed out copies of plans to the Board. Existing parcel is a shopping center, Lot 58 on Nashua St. Proposal is to let it be subdivided to convey a portion to CVS which also intends to acquire three existing residential properties on Clinton St. The first plan he gave to the members was the same as the plan on the board with the blue subdivision line. The other plan is the same without showing the subdivision line showing the existing condition and showed the other three lots to be consolidated with this property. Existing shopping center parcel is 4.798 acres. After subdivision piece that has County Stores would be 3.57 acres. CVS will be about 2 acres. CVS store will comply with all zoning re lot sizes and frontage. County Stores parcel will comply with frontage and size requirements. Reason they were before the Board was the existing shopping center is currently nonconforming with open space. Ordinance requires 30 percent. Existing shopping center is about 7 percent. When you draw line, because of how open space is distributed in the existing parcel, the remaining County Store, or 3.5, will be left with about 2 percent open space. If the CVS proposal is approved and developed as proposed, that will have about 31 percent open space and the whole center will have about 12 percent. So, a little better going to 12 from 7. Ordinance Sec, 2.03.0 states "Alterations, expansion or change of a non-conforming use or structure shall only be permitted by Special Exception by the Zoning Board of Adjustment if it finds that: 1. The proposed alteration, expansion or change shall not change the nature of the original use or structure and the proposed alteration, expansion, or change shall involve no substantially different effect on the neighborhood." Bill Parker, Zoning Administrator, interpreted that drawing a subdivision line constituted a change in the open space on County Stores buildings and drive aisles. As that 2.5 acre piece sits it has 2 percent open space and will have that after subdivision plan is drawn.

K. Johnson asked where the 2 percent was.

D. Finstermacker, engineer from VHB, put up a colored plan.

J. Sokul said the point is, if it is one, two, or three percent, it will not change.

D. Finstermacker said it was an end cap island at the entrances, scattered landscaped islands, which is the 2 percent in the interior lot and the remaining on the perimeter.

Z. Tripp to clarify said, they were going from 7 to 2 percent because they were losing green on the right of the map to the new parcel.

D. Finstermacker said under the proposal the green in that same area is increasing, so increasing the overall.

K. Johnson stated that for purposes of this decision, that was irrelevant since they were only considering what is on the left side of that cutoff line.

D. Finstermacker said under the proposal there will be some additional green space.

F. Seagroves asked him to explain what open space is.

J. Sokul said non impervious area. Non paved area with either natural condition or some plantings. Ordinance requires the Board to find that the proposed alteration, expansion or change will not change the nature of the original use or structure and the proposed alteration, expansion, or change shall involve no substantially different effect on the neighborhood.”

By drawing the subdivision line to allow a conveyance of a portion of the shopping center, nothing will change on County Store side. No improvements, addition or subtraction of open space. Line will be invisible with no effect. Stores will continue to operate as currently. May be changes to entrances to improve traffic. Believed it met that requirement under zoning. Under general special exception criteria, which he wanted to run through.

Z. Tripp said he would have to read them as part of reading the application into the record.

J. Sokul said he would do that and touch on criteria as he reads it into the record.

K. Johnson asked that the board showing existing conditions be shown. He clarified that they were considering a special exception to decrease the amount of open space on the left side of that property to allow it to be subdivided into two parcels.

J. Sokul said there would not be a decrease in open space. By drawing the subdivision line where proposed, the parcel (on the left) when recalculated after the subdivision goes through will have 2 percent open space and the rest (on the right) will have 23 percent. Overall it will have 12 percent where 7 percent exists today. By drawing the subdivision line, although there is no change in the total amount of open space, this piece (on the left) will have 2 percent.

K. Johnson asked to see the existing condition photo again. He was asking for the benefit of the audience to understand what the case actually affects. It is just the one current portion, and they want to draw a line down the middle and the board is only considering what happens to that piece.

J. Sokul said the only thing that triggers the zoning ordinance requirement was what happens to that piece (on the left) after the subdivision.

Z. Tripp asked for any other questions. There were none. He read the definition of open space into the record. *“Permeable surface on a lot that is unoccupied by buildings, unobstructed to the sky, not devoted to service driveways or off-street parking that is available to all occupants of the premises.”* He then opened the meeting for public comment regarding the open space on the County Stores parcel.

Lynn Coakley of 322 Nashua St Unit 9 in the Stone House condos stated she was in favor of open space in general and specifically in this congested area. When trying to drive through there on a Saturday morning, it could use more open space or less traffic. Found it curious that is was only the County Stores portion under consideration but County Stores people weren't there. Why not?

It was determined that the owner of County Stores was present in the audience.

Z. Tripp asked J. Sokul to respond.

J. Sokul said the County Store property owner was co-applicant and reviewed the application and cosigned it with TMC. Under the purchase & sale agreement the developer agreed to take care of all permitting issues, pertaining to that parcel or the parcel being acquired, or both. So it fell upon his firm under contract to be there tonight.

A member of the audience asked who the owner of the County Stores was.

J. Sokul said Platinum Holdings.

Z. Tripp asked for any other comments. There were none. He closed the public portion of the meeting and asked J. Sokul to read the application into the record, starting with Paragraph H.

J. Sokul read into the record:

H. Therefore, the Applicant hereby requests a special exception under Section 2.03.0 and Section 10.02 of the Zoning Ordinance in order to maintain and continue to use any nonconforming improvements and conditions at the Remaining County Store Plaza Parcel and to allow the proposed reduction in open space of Map 30/Lot 58 (currently 7%) down to 2% on the Remaining County Store Plaza Parcel.

**1. The proposed alteration, expansion or change shall not change the nature of the original use or structure and the proposed alteration, expansion or change shall involve no substantially different effect on the neighborhood.**

The continuation of the Shopping Center on the Property after the subdivision with less than 30% open space will not change the nature of the original use. The existing primary building and parking will remain unchanged. The westerly lot line will be adjusted to create a the CVS parcel on the corner of Nashua Street and Clinton Street, but the new lot line will not result in any different impact on the neighborhood caused by the existing shopping center. Indeed, most of the area being removed from the Property as a result of the subdivision is currently impervious, occupied by a secondary building and related parking. Thus, the removal of this area from the Property will have a minimal impact on the amount of open space.

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

The proposed use is the same as has historically existed on the Property. The existing shopping center is an allowed use in the Commercial Zoning District, and will continue as such after the subdivision. The proposed use is similar to those in the district and is allowed by right.

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

The Remaining County Store Plaza Parcel is an appropriate location for the proposed use because the use has existed there since the 1960s. Although the Property will be somewhat smaller after the subdivision is complete, the difference in open space will be negligible. The uses at the Remaining County Store Plaza Parcel will continue after the development of the CVS Parcel. They have been and remain permitted uses (by right) under the Zoning Ordinance. The proposed use of the CVS Parcel is also a use permitted by right. With the improved access from Nashua Street, the new access off Clinton Street, the related cross easements to be established between the parcels and other measures established for traffic management and stormwater management, the specific site (the Remaining County Store Plaza Parcel) is and remains an appropriate site for its present and continuing uses, those historically undertaken at the County Store Plaza. Thus, the proposed use is appropriate.

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

For the reasons discussed above, the adjacent area will not be adversely affected as a result of the subdivision. The portion of the Property that will be subdivided off currently has an existing building and parking areas on it. As such, removal of this area from the Property through the subdivision will not have any substantial impact on the amount of open space remaining. Access to the remaining County Store Plaza Parcel is being improved by the relocation of the entrance off Nashua Street. The County Store Plaza uses have a long track record of not adversely affecting the adjacent area; consequently a continuation of such use will not adversely affect the adjacent area. In particular, the

immediate adjacent use will be the new CVS which will have cross easement and access arrangements with the Remaining County Store Plaza Parcel. Therefore, in light of the overall development of the CVS Parcel as described and for the aforementioned reasons, the Remaining County Store Plaza Parcel will not have an adverse effect on the adjacent area.

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

The proposed subdivision will not cause a nuisance or any serious hazards to vehicles or pedestrians, given that the amount of open space will not demonstrably change as a result of the subdivision. The existing use has historically had less than 30% open space and there have not been any known nuisances or serious hazards. It is noteworthy that the proposed CVS development on the subdivided lot is designed to enhance vehicle and pedestrian safety, and will be an improvement over the existing conditions.

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

The existing facilities will continue to serve the Shopping Center. These facilities have been, and will continue to be, adequate.

K. Johnson asked for the square footage of open space for the 7% of the full property vs. actual square footage of open space for the 2% of the reduced property.

M. Thornton asked how many sq. ft. they were losing.

K. Johnson wanted actual sq. ft., not percentage.

J. Sokul said it was going from 4.798 acres to 3.571 acres.

D. Finstermacker said the total area is 205,000 SF. Will go to 155,49. Parcel on left will have 11,544 SF and other will have 3,111. The 3,111 over the 155 gives the 2%.

K. Johnson asked how much open space was currently in the entire parcel.

D. Finstermacker said 14,655 on Lot 30-58.

K. Johnson asked what portion of that square footage was currently on the County Store.

D. Finstermacker said 3,111.

J. Sokul said that 3,111 would not change.

Z. Tripp moved to discuss of the case – the nonconforming continuance, discontinuance or change, and then the special exception criteria. He read Sec. 2.03.2.C:1 of the Ordinance: *“Alteration, Expansion, or Change: Alterations, expansion or change of a non-conforming use or structure shall only be permitted by Special Exception by the Zoning Board of Adjustment if it finds that: 1. The proposed alteration, expansion or change shall not change the nature of the original use or structure and the proposed alteration, expansion, or change shall involve no substantially different effect on the neighborhood.”*

F. Seagroves didn't think alteration was going to make a drastic change. Basically they're subdivided property so what was there on the County Store property is going to be the same although the line is changing. Looks like most of the open space was where CVS is going to go. As far as change to the County Store portion he didn't see any change.

K. Johnson said, addressing it from the 2.03 section, the applicant wasn't requesting anything that would change either the use or structure. They are requesting a special exception to allow them to subdivide the property. If granted, after the subdivision the County Store property will be 3,111 SF of open space. Prior to the subdivision it had the same. In effect, no change to that portion of the property. In this application viewing that the exception is granted, simply to subdivide two parcels and, for consideration sake they ignore whatever is going to happen to the other parcel. That being the case, there is no change. Conditions of 2.03 have been met.

F. Seagroves pointed out that the subdivision still has to get Planning Bd. approval. Approving this special exception doesn't grant the subdivision.

J. Dargie said they have had similar requests before for subdivisions and never totally excluded what was going to happen with the land. Reason to subdivide is they want that parcel available. She would say it would impact the neighborhood. They have done it before and said what they were going to do over there will not affect anything. Open space will be different open space. Right now it is a lot of trees. It will change. With open space you look at the entire lot. Fact is that County Stores had a nonconforming lot that had a large portion of open space within that lot. Going from 7 to 2 makes it different type of open space. She said no on this question. Looking at whether it is an “expansion or change shall involve no substantially different effect on the neighborhood.” Her interpretation is that this expansion or change will change the nature of the use of the entire lot and unduly affect the neighborhood.

Z. Tripp wanted to clarify, reading from the ordinance “should only be permitted by special exception if it finds the following” He didn’t think she found the following?

J. Dargie said correct.

M. Thornton he was more in line with Fletcher and Kevin. Didn’t see any change in the open space in the area they were discussing. The total space and therefore the open space percentage went down. If they are to be nitpicky enough to say that historically you were at 7% it would be a case of moving from parking spaces in a permeable area. He thought that is what Joan’s concern was - actual open space percentage in that area that is permeable. Since nothing has changed except total size of the parcel, no change has taken place and exception should be granted.

Z. Tripp, re whether or not the proposed alteration changes the nature of the original use or structure, when he looked at it he looked at just the original County Store lot which didn’t include residence on Lincoln St and the other building. Looking at that original lot before it is combined and the new smaller lot, he didn’t see a change in original use because they are mostly retail buildings and a parking lot. Re no substantial effect on the neighborhood, looking at that lot before and after the subdivision, he didn’t think the smaller portion would have different effect on the neighborhood. Proposed plan met requirements in order to be considered for special exception.

Z. Tripp moved on to discussion of the criteria.

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

M. Thornton – yes

J. Dargie – proposed use of the subdivided lot? Z. Tripp said yes, the new smaller County Store lot with less open space. J. Dargie said it is similar

K. Johnson – hesitated because having reviewed the ordinance he didn’t think 10.02.1 applied to nonconforming changes. That is totally governed by 2.03.1 Since the applicant filled out all the conditions, he will give his opinion. Yes it is similar to those permitted in the district. It is a continuation of existing use. Shopping centers are allowed.

F. Seagroves – yes. County Stores was built in the 60s when open space was probably much less and it met criteria at the time. Would say it is similar.

Z. Tripp agreed with K. Johnson going through the somewhat generic questions for special exception seemed odd for this application. They are intended to be generic to cover a list of possible special exceptions. Reading it, it is only permitted by special exception if it meets the criteria which are somewhat generic. Property use is similar.

Property use is retail and associated parking. That is allowed in Commercial C district. Yes.

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

F. Seagroves didn’t know how to answer regarding open space. It was like that in the 60s and is nonconforming now. Yes.

K. Johnson agreed. Specific site was appropriate for the existing use and proposed use doesn't change.

M. Thornton said this is a change which is no change.

J. Dargie said it is appropriate location for the proposed use.

Z. Tripp agreed with the board. Currently use is unchanged. Question is whether new smaller lot with less open space is still appropriate for the proposed use. He thought it was.

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

M. Thornton said there was no change at all. Adjacent area is not going to be affected for the reason that there is no change except in that they have moved open space from one lot to another.

J. Dargie – no, the reduction of open space on this smaller and another smaller lot. If that lot was not conforming to large open space and now it will be nonconforming with smaller amount of open space. It adversely affects it.

K. Johnson said use as proposed will not adversely affect. It adversely affects the adjacent area. If the special exception is granted the amount of open space on the old proposed site if reduced by percentage but actual remains the same. The adjacent small lot which contains the existing building where Giorgio's used to be is actually improved because its percentage of open space is increased.

F. Seagroves – yes. He didn't see it will affect adjacent area.

Z. Tripp - this is similar to the previous question. He looked at the County Store lot not including Fuzzie's and adjacent residential area. Open area losses would be to the northwest corner. That lot would be losing mostly the open space in that northwest corner. Question is whether the new smaller lot would affect the adjacent area. The portion of the lot that is remaining is the same, so it can't affect adjacent area. To Joan's point that losing that northwest corner of open space will affect the adjacent area, he didn't think so because it will be replaced. It doesn't affect adjacent area.

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

K. Johnson – this is a similar question to one about use. In granting this special exception there will be no change in nature of vehicles or pedestrian traffic. Cars are going in and out at the same place; people are walking in the same places. No nuisance or hazard.

F. Seagroves – No. If they deny and made them go to 30%, they would have to tear up parking area. He can imagine trying to get in there on Sunday. Cars would have to be in the street. No hazard.

J. Dargie – taking into consideration subdivided and could be a serious hazard because subdivided lot will increase traffic making it more difficult to get in and out of existing lot.

M. Thornton – saw no reason there will be more or less hazard unless there is an affect that if the CVS goes in, people will park in one area and walk to the other. Doesn't make sense there would be no change except moving a line which doesn't impart more or fewer parking specific to the County Store parcel that there being no change, would be no nuisance.

Z. Tripp – re nuisance or serious hazard this case is evaluating special exception for reduced open space and since open space not changing in new parcel or taking away open space in that area didn't think there would be impact, serious hazard to vehicles or pedestrians.

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

J. Dargie – yes, seems to have adequate appropriate facilities for proper operation.

M. Thornton – if their business is more successful than anticipated; however, parking will not be changed. Facilities in all aspects will not change. Saw no reason to say everything would not be appropriate.

F. Seagroves – didn't see any change. As the attorney said, they will be continuing on.

K. Johnson – concerning special exception for reduction in open space in existing nonconforming property. If the facilities are adequate now, they will be after the subdivision.

Z. Tripp agreed with Kevin. New small lot will still have appropriate facilities to serve County Store Plaza once subdivision is completed.

Vote on criteria:

After reviewing the petition and after hearing all the evidence and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment member has determined the following findings of fact:

**Is the special exception allowed by the ordinance?**

F. Seagroves - yes; K. Johnson– yes; M. Thornton – yes; J. Dargie – no; Z. Tripp - yes

**Are the specific conditions present under which a special exception may be granted?**

K. Johnson – yes; M. Thornton – yes; J. Dargie – no; F. Seagroves – yes; Z. Tripp - yes

Z. Tripp asked if there was a motion to approve the application.

M. Thornton moved to grant the petition as presented.

K. Johnson seconded.

**Final Vote:**

**M. Thornton – yes; K. Johnson – yes; J. Dargie – no; F. Seagroves – yes; Z. Tripp - yes**

Case #2015-07 was approved by 4 to 1 vote.

Z. Tripp reminded the applicant of the 30 day appeal period.