

**Town of Milford  
Zoning Board of Adjustment  
October 6, 2016  
Case #2016-21  
Justin DeMontigny  
Special Exception**

Present: Michael Thornton, Vice Chair  
Joan Dargie  
Jason Plourde  
Rob Costantino  
Steven Bonczar  
Robin Lunn, Zoning Administrator

Absent: Kevin Johnson, Chairman  
Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Justin DeMontigny, for property located at 61 Tonella Road, Milford, NH, Tax Map 43, Lot 25, in Residential B district, is seeking a Special Exception per the Milford Zoning Ordinances Article V, Section 5.03.2.A.11 to allow a reduced front yard setback for an existing historic stone structure in the open space conservation area of the proposed development called Milford Quarry Townhomes.

**APPROVED MINUTES 12/15/16**

M. Thornton, Acting Chair, 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 then introduced the Board. He informed all of the procedures of the Board and read the notice of hearing into the record. Doug MacGuire, P.E. of The Dubai Group, Inc., represented the applicant. Gave a quick refresher. Last month they made presentation re existing stone structure. Bd. was looking to have Heritage Commission and Building Inspector weigh in. In the last month they have done that. Heritage Commission reviewed application. That should be in the packet. Building Inspector performed cursory review of the structure and deemed it to be, in his opinion, sound. He isn’t structural engineer. At last meeting Bd, not looking for full structural review but just a check by Building Inspector. Hoping that information satisfied previous concerns.

J. Dargie had two questions. Comment from the Heritage Commission re that is was on state’s list of possible pollution of the property. Any comment from the representative?

D. MacGuire was not aware of any contamination. Included picture not the actual site. That was building in the quarry. This building was outside limits of that. Will look into that with the Planning Bd as part of Planning Bd. process.

R. Costantino asked if those buildings were not the building on the lot.

D. MacGuire said it was representative, but not the project structure.

J. Dargie thought it was one of the remnants.

D. MacGuire said he had thought so, but knowing what the existing structure looked like, you could tell that wasn't it. It was representative of the Babine quarry operation.

R. Lunn said on back of her report she pointed out from 1941 aerials, two pieces of it, the cemetery and quarry in one location and a quarry in another location. She circled the three buildings in the quarry. Above the photo you can see the foundation of the subject building. She mentioned an old postcard that showed that to the right of the train tracks when looking down the tracks. Heritage Commission picture not representative of this.

J. Plourde said he went out there that day. If you came in off Nashua St. you go further down, right past the Ledgewood Dr. and it is on the left? Before you get to the gate?

M. Thornton said yes. Right there on the road.

J. Plourde asked if proposal was to move the road away from that structure?

D. MacGuire said yes. They are proposing to significantly move it away. Not meeting full frontage, but right now it is as close as 4 ft. and they are making it 14 ft. in the worst case. Up to over 16 ft. on the other corner.

J. Plourde said the road curves.

R. Costantino ask if any other reasons for moving the road beside getting it further away from this?

D. MacGuire said no. Actually it was suggested by Lincoln (Daley) in his review. It made sense. If they don't end up keeping the structure, will keep existing alignment of the road as it existed because they don't have setback issue.

M. Thornton said future roadway path depended on what the Bd decided that evening.

J. Dargie asked if the lot was being split into two lots and asked sizes of the lots.

D. MacGuire said yes, details were on the plan. 60,000 SF on right side of roadway and 40,000 SF, so slightly over an acre.

J. Dargie asked how many units allowed per acre.

D. MacGuire said 12 per acre.

R. Lunn said it met our density regulations for open space.

R. Costantino if they were doing subdivision so they could build more units.

D. MacGuire said no. It was technically two properties. They were doing lot line adjustment so they could have it not be part of existing quarry property. If they combined them they could have over 70 units. Applicants want to maintain existing home on quarry property. To get some value they were looking to do a 12-unit development to begin at end of Tonella Rd.

J. Dargie said breaking off that 40,000 SF lot the reason was not having it be all one?

D. MacGuire said they need to have it separate. He pointed out on plan the existing Tonella Rd. Currently maintained and plowed by the town. Substandard gravel turnaround at end of property. Proposing to upgrade to Class V roadway and have turnaround for large fire vehicles. Creating a right of way within the property that separates into two parcels. Creation of right of way creates the two parcels, and the whole quarry, the larger property, never had legal frontage. Other had substandard frontage. Bringing it into conformance in a lot of ways. Putting in right of way to provide legal frontage to proposed development and legal frontage to the rear of the property.

J. Dargie said the frontage they would have frontage in the blue area. Where the stone structure is, why is that a separate lot?

D. MacGuire said it was separate lot because they were creating frontage and they can't connect one lot to the other. Can't go through right of way.

J. Dargie asked if it would be part of that development.

D. MacGuire said they did this all the time. It will be part of the association; be the same entity. One would be for recreation space of the other. The association would own both and would be for the benefit of both. Upon subdivision, this would be a deed restricted lot.

J. Plourde said the reason they were there was for the setback for the stone structure. If they decided to get rid of it they would not be requesting any exception. Regardless of layout of road because that was out of their jurisdiction and regardless of where building will sit because that was for Planning Bd, all they were looking at was whether they wanted the stone structure kept or not. If ZBA doesn't grant, they will tear it down.

R. Costantino said they preferred not to tear it down.

J. Plourde asked why they wanted to keep it.

D. MacGuire said there was a lot of personal connection. The family still lives there. It was not a flagged historical structure. But the quarry was used for excavation of granite for the Treasury Building in DC. It was a pretty neat structure. The thought was that if you were going to be putting in a development and this was just going to be a mowed lawn, it would be a benefit. Thought was to incorporate it into the recreation space of the development.

Applicant came forward and said it is the Granite Town in the Granite State. He lived there all his life. It was a nice structure that let you look back at what it was in the day. It had setback issue. Would hate to see it torn down. It was a core piece of Milford.

J. Plourde asked if they were planning to use the area inside of it.

D. MacGuire said yes, maybe put picnic table.

J. Plourde said a function, rather than aesthetics, just people driving by to look at it.

D. MacGuire said yes. Just recreation use. Nothing major.

J. Plourde asked if there had been any discussion with DPW.

D. MacGuire said no.

J. Plourde said it may be outside of ZBA purview but if DPW said they should put curbing out there.

R. Lunn said that was for Planning Bd.

J. Plourde said they were just looking at setback.

Applicant said they would be talking to Rick.

M. Thornton asked for any further questions from the public. None. He closed the public comment portion of the meeting. Bd. proceeded to deliberation of the case.

J. Dargie expressed concern that if the road ends, accessing the driveway. R. Lunn said they could reopen the hearing.

J. Dargie declined.

J. Plourde had question for the Bd. It was presented that today it was at 4 ft and the minimum they were looking for would be 14 ft. He did see it on the Dubay Group letter that they talk about proposing to realign the section of Tonella Rd to provide over 14 ft. of separation. It wasn't necessarily in the application itself. Can they have it as a condition?

R. Lunn said they could.

S. Bonczar said the vote should be on the original.

R. Lunn said the application requested reduced front yard setback. If they wanted to set conditions for 8 or 12 ft they could do that as part of their motion.

J. Dargie said if they said as per discussion, 14 ft. setback they could state that as a condition or as part of the motion.

R. Lunn said as a condition of the motion. Of the decision.

M. Thornton opened the discussion.

J. Plourde said he went out there and it was really tight.

J. Dargie said it was a private road, a private driveway. That was why it was allowed as it was. Once you add units, there will be more traffic.

J. Plourde agreed. There will definitely be more activity out there.

M. Thornton said there was likely to be an understanding of what each others' hours will be and not everybody will be coming and going at the same time.

J. Plourde commented he lives in a 90-unit development. All the cars have to go by his house. Nobody leaves at the same time. People jog, kids get off the school bus. No problem.

R. Lunn said that was allowed by right. So question is

J. Plourde said that distance and that setback.

M. Thornton proceeded to the criteria.

**Is the proposed use similar to those permitted in the district?**

R. Costantino said it was no change in use. All they were doing was moving the road.

J. Dargie agreed.

J. Plourde agreed.

M. Thornton agreed.

**Is the specific site an appropriate location for the proposed use?**

M. Thornton said they weren't going to move the house. It was easier to move the road.

R. Costantino said they were moving the road away from the house. In his mind that was an improvement. Others did not disagree.

**Will the use as developed not adversely affect the adjacent area?**

M. Thornton asked if anyone saw any way it could negatively affect anything.

R. Costantino said no.

J. Plourde said this was where it was a little confusing because the way these questions were written were based on the use. R. Costantino said it was the same. J. Plourde agreed; it was what it was zoned for.

S. Bonczar said there was room for interpretation on setbacks like this. You can't match it word for word so you have to do some interpretation. Would allowing the setback, or not allowing it, cause nuisance or serious hazard. That kind of thing. By moving the setback, they were not changing the use in this case. Have to read between the lines because of the way they written; they are not for setback.

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

M. Thornton didn't imagine a pedestrian would have a problem with 14 ft.

R. Costantino said there would be more of a problem with four ft.

J. Dargie agreed.

S. Bonczar said it was a dead end road. As Mike had said it might be if it were on Nashua Street or Elm St. No disagreement from other members.

**Will adequate and appropriate facilities be provided for the proper operation of the proposed use?**

R. Lunn said this may not apply.

J. Plourde thought in this case they were looking for the town to accept the road. Looking to move the roadway. That satisfied the criteria. All agreed.

**Vote on findings of fact:**

**Is the Special Exception allowed by the ordinance?**

R. Costantino – yes; J. Plourde – yes; J. Dargie – yes; M. Thornton – yes

**Are the specific conditions present under which the Special Exception may be granted?**

J. Dargie - yes; J. Plourde – yes; R. Costantino – yes; M. Thornton – yes

J. Dargie made a motion to approve applicant's request for a Special Exception per Sec. 5.03.2.A.11 of the Zoning Ordinance to allow reduced front yard setback for an existing historic stone structure in the open space conservation area of the proposed development called Milford Quarry Townhomes at the property shown on Tax Map 43, Lot 25, when in accordance with plan entitled "Conceptual Layout Plan" as drawn by the Dubay Group, Inc. of Windham, NH dated August 4, 2016 and submitted by the applicant as part of this hearing.

J. Dargie asked, with that being said, in addition to that, were they going to put in 14ft.

J. Plourde felt they should have that condition in there.

J. Dargie continued “with the condition considering the condition proposed by Jason for 14 ft. setback.

J. Plourde said a minimum 14 ft.

This condition was written on the motion sheet.

R. Costantino seconded the above motion.

**Final vote:**

**J. Plourde – yes**

**R. Costantino – yes**

**J. Dargie – yes**

**M. Thornton – yes**

**Special Exception approved by 4 to 0 vote.**

M. Thornton informed applicant of approval and of the 30 day appeal period.