

EPSOM BOARD OF ADJUSTMENT

1598 Dover Road, Epsom

RECORD OF DECISION

Zoning Appeal: Case 2023-11 (The Dubai Group, Inc. – Var. & SE)

Applicant The Dubai Group, Inc.

Owner: Michael Gagnon

Tax Map: U15 , **Lots:** 19, 20 & 21 and **Tax Map:** R6, **Lot:** 5

Zoning Districts: Residential/Agricultural & Residential/Light Commercial

Notice is hereby given that the appeal submitted by The Dubai Group, Inc., represented by Doug McGuire PE, for a Special Exception, as required by Article II, Section C, Table of Uses #19a (Multi-Family (three units or more) and Variance to Article III, Sec. G, Paragraph 3c (Minimum Lot Size and Overall density) to construct a development consisting of 36 townhomes (four 9-unit buildings) of which 16 will be workforce and 20 will be market rate housing was **approved** by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, September 20, 2023. The property is located on the Suncook Valley Highway (Route 28S) within the Residential/Agricultural and Residential/Light Commercial Zoning Districts and is identified on Epsom Tax Map U15 as Lots 19, 20 & 21 and Tax Map R6 as Lot 5.

Approval was based on the following findings of fact:

1. Establishing a new residential area with affordable housing is considered beneficial to the public as a whole and therefore not contrary the public interest and consistent with the Zoning Ordinance.
2. The project provides substantial justice by allowing the applicant to construct the desired development while providing the town with needed residential housing including affordable housing. In addition, the project sets aside a significant 70 acres of common space land area to offset exceeding the maximum allowed density of town homes in the designated acreage.
3. The ordinance creates an unnecessary hardship by restricting density of the town homes on a large lot where significant additional acreage will be set aside as open space. In addition, the Board agrees with the applicant that, in order to provide viable workforce housing, the density limit is an unnecessary hardship.
4. The property is located in the middle of a 140 acre parcel with much surrounding open space and should have no impact on the surrounding property values.
5. The ordinance which stipulates the maximum density of multifamily homes presents an unnecessary hardship as it makes inclusion of affordable housing economically unviable to developers. It also fails to recognize the creation of large tracts of open space destined to be so in perpetuity which offsets the density concern of the ordinance.

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The Variance and Special Exception were approved with the following conditions:

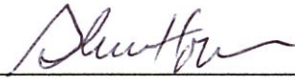
1. Existing Lots 19, 20, & 21 referenced on Tax Map U15 and Lot 5 referenced on Tax Map R6 shall be merged and reconfigured as necessary to establish the lot configuration shown on the Cluster Subdivision w/Affordable Housing Plan submitted with Zoning application for Variance and Special Exception approval dated August 7, 2023, or as modified and approved, by the Epsom Planning Board. A notice of merger/reconfiguration document shall be recorded in the Merrimack County of Registry of Deeds. A copy of the document shall be provided with application for zoning compliance (building) permit;
2. A public road shall be constructed to provide access from the Suncook Valley Highway to the Townhouse driveway meeting or exceeding all Town Road specifications. Construction shall receive engineering oversight to ensure the new public road meets or exceeds all Town Road specifications;
3. The maximum number of dwelling units within the multi-family development of town houses shall be restricted to 36 units (16 workforce and 20 market), or less as determined by the Epsom Planning Board, attempting to maintain the 74 acres of open space shown on the plan specified in Condition 1;
4. All requirements contained in Epsom Town Zoning Ordinance Article III, Section G (Residential Single and Multi-Family Residence Requirements), Subsection 3 (Multi-Family Residences with Three or More Units) shall be met with the exception of Subsection 3.c (Minimum Lot Size and Overall density) which is being appealed in this case;
5. A reserved subsurface disposal site or sites shall be located on the property. The Epsom Planning Board shall approve the location of the reserved field(s) based upon suitable engineering data provided by the applicant;
6. Water supply (capacity and quality) for the townhouses shall meet or exceed the requirements of NH Department of Environmental Services. The well shall have a wellhead protection radius of not less than one hundred and fifty (150) feet. A reserve well site shall also be designated on the property. State approval of water supply shall be provided to the Epsom Zoning Compliance Officer prior to the issuance of the Zoning Certificate of Compliance (Occupancy). Water quality testing shall be completed at a minimum once each calendar year and results provided to the Epsom Health Officer;
7. A traffic study shall be completed by the applicant for this proposal and shall be reviewed and evaluated by the Epsom Planning Board. If deemed necessary, a separate study as permitted under RSA 676:4, I(g) shall be conducted. Should either study find improvements along The Suncook Valley Highway are warranted and the improvements receive NH

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- Department of Transportation approval, the improvements shall be completed prior to or at the time of application for Zoning Certificate of Compliance (Occupancy);
8. Emergency (i.e. fire, police, and ambulance) personnel access to each residential unit in the townhouses shall be designed to minimize their response time and optimize their capabilities. The design shall include a fire lane and fire truck turn as deemed necessary by the Fire Department. Emergency personnel access shall be incorporated, reviewed and approved by the Epsom Planning Board;
 9. A financial capital reserve account shall be established by the condominium owners to cover the cost of annual maintenance and replacement of the fire protection, water and septic systems and other items that may be deemed necessary by the Epsom Planning Board. A copy of the legal documents establishing the means for financial security shall be approved by Town Counsel prior to issuance of Zoning Certificate of Compliance (Occupancy);
 10. All service utilities shall be constructed underground. In addition, the exterior lighting within the site shall be designed for “downward” illumination and designed to have minimal intrusion into the neighboring parcels;
 11. The protection of and public access through the open space, specified on the plan specified in Condition 1, shall be formalized and approved by the Epsom Planning Board;
 12. The developer shall work with the Fire Department to determine the needs for town house fire suppression including fire walls, sprinkler systems and cistern(s). Details of the incorporation of these needs shall be reviewed and approved by the Epsom Planning Board as a part of the Residential Site Plan review;
 13. The developer shall work with the Epsom Conservation Commission to minimize the impacts to Marden Brook, which runs through the property, and the brooks immediate adjacent area;
 14. All necessary State and Federal permits shall be obtained prior to commencing town house project construction. Copies of these permits shall be provided to the Zoning Compliance Officer prior to or at the time of application for Zoning Compliance (building) Permit;
 15. The applicant shall proceed to the Epsom Planning Board for Residential Site Plan Review;
 16. This Variance and Special Exception shall expire two (2) years from the date of this “Record of Decision” should no substantial development occur. The extent of substantial development shall include, as a minimum, the completion of the binder coat on the new public road for access to the town houses, approval of the septic design through New Hampshire Department of Environmental Services and the construction of the first townhouse building foundation. However, the Variance and Special Exception shall not expire within six (6) months after the resolution of a

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planning application filed on reliance of this Variance and Special Exception. An extension of these time limits may be appealed back to the Zoning Board of Adjustment as necessary.



Glenn A. Horner, Chairman
Zoning Board of Adjustment
Date: September 21, 2023

Note: Any person affected has the right to appeal this decision and/or conditions of the approval. If you wish to appeal the decision, or any conditions contained herein, you must act within a thirty (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made. The first step in the appeal process is to apply to the board of adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal.

cc: Michael & Corinne Gagnon, 27 Park Lane, Hooksett, NH 03106
Doug MacGuire, PE, The Dubay Group Inc., 136 Harvey Rd Bldg 101,
Londonderry, NH 03053
Epsom Board of Selectmen
Epsom Planning Board Chair
Epsom Zoning Compliance Officer
Epsom Town Clerk
File Case 2023-11 (The Dubay Group, Inc. – Var. & SE)