

**TOWN OF EPSOM  
ZONING BOARD OF ADJUSTMENT MEETING  
Epsom Central School, 282 Black Hall Road, Epsom, New Hampshire  
September 20, 2023, 7:00 PM**

**PRESENT**

Glenn Horner, Chair  
Ryan Kehoe, Vice Chair  
Alan Quimby, Member  
Lisa Thorne, Member  
Gary Kitson, Member  
Andrew Ramsdell, Alternate Member  
Jason Johnson, Alternate Member

**ALSO PRESENT**

Jennifer Riel, Recording Secretary  
Virginia Drew, Board of Selectman Representative  
Justin Guth, Zoning Compliance Officer  
Stewart Yeaton, Fire Chief  
Meadow Wysocki, resident  
Doug MacGuire, PE, The Dubay Group Inc.  
Mike Gagnon, applicant  
Bob McKechnie, resident  
James Osborne, abutter  
Alida Brown, abutter  
Chad Frazier, abutter  
Jeff Olkovikas, abutter  
Christine Drapeau, abutter  
Belinda Allen, abutter  
Mike Allen, abutter  
Bob Tanguay  
Kevin Gagne  
Mike Poulin  
Tiffany Olkovikas  
Jason Judd  
Julian Ward  
Dana Gilbert  
Lena Drapeau, abutter  
Eric Orff, resident  
Jane St. Pierre, abutter  
Rob Topik, resident

**CALL TO ORDER**

Chair Horner called the meeting to order at 7:00 PM.

Introductions were made of the Board members present.

### **APPROVAL OF MINUTES**

Meeting of September 6, 2023 – No edits were made.

**MOTION: To approve the minutes as presented. Motion by Mr. Kehoe. Second by Mr. Quimby. Motion passed, 4-0-1. Mr. Kitson abstained.**

**Case 2023-11 (The Dubay Group, Inc. – Var. & SE) - *The Dubay Group, Inc., represented by Doug MacGuire PE, has applied for a Special Exception, as required by Article II, Section C, Table of Uses #19a (Multi-Family (three units or more) 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. The applicant has also applied for a Variance to Article III, Sec. G, Paragraph 3c (Minimum Lot Size and Overall density) to allow for 36 townhomes on 16.3 acres (12 townhomes allowed). The townhomes will be included in a cluster development containing 24 single-family house lots with 74 acres of open space. 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.***

Chair Horner read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices and the Post Office; certified letters were sent to abutters; receipts were not received back from Alida Brown, Chad Frazier, RK Moreau, Michael Yeaton, Phillip Goodacre, Megan O'Neil, Sara and Scott Carbonneau.

Chair Horner explained the purpose of this meeting is for the Board to look at the workforce housing portion of the plans, noting the cluster development falls under the purview of the Planning Board. He noted the townhomes are all beyond the 500' distance limit from the road and are located within the rural agricultural zone.

Chair Horner opened the public hearing at 7:10 PM.

Doug MacGuire, PE, Dubay Group Inc., representing Mike Gagnon, property owner, gave an overview of the property; he stated it is 142 acres located on Suncook Valley Highway; there was an existing farmhouse which was subdivided off the property as a standard frontage lot with the remaining as a contiguous lot. He stated there are still several feet of frontage on Suncook Valley Highway and there are several parcels that make up the 142 acres. Mr. MacGuire stated they want to work with the Town to get plans that will work well for both the property owner and the area. He stated they have had a conceptual consultation with the Planning Board and a concern raised at that point was the need for affordable housing. He explained the definition of affordable housing, which is deed restricted to a set sale value, which is based on information provided by the State based on median income values. Mr. MacGuire stated the rates for 2022 had a median purchase price of \$292,000. He explained they are proposing a mixed development with townhomes and single-family homes as well as mandated workforce housing. He stated the same concept was presented to the Planning Board and it was met with positive reviews as it accomplishes the goal of mixed housing with affordable housing included. Mr. MacGuire stated

the property allows for significant buffering from the road; he presented plans depicting the cluster subdivision area with single-family homes, townhomes and the area with workforce housing. He stated there would be 24 single-family homes on 50+ acres. The workforce housing would be on a lot off a newly created right of way on a 16-acre parcel, set apart from the cluster development and surrounded by green space. Mr. McGurie stated the wooded, natural green space was to be protected in the deed in perpetuity. He stated nearly 75 acres of the parcel would remain greenspace, which is more than the required 30% of open space. Mr. MacGuire stated the additional greenspace provides further buffering for the density of the workforce housing. He stated the 16 acres are more than enough for the 36 workforce housing units, which will be a condominium form of ownership. Mr. MacGuire explained the townhomes are not being designed with the intention of housing families but rather working professionals; he stated they would be 1200 square feet, 2 bedrooms, and 2 bathrooms. He confirmed the road designs and cul-de-sacs meet all the Town ordinances. Mr. MacGuire stated they believe the best way to develop workforce housing is to have it part of the master plan of the development. He stated it would be difficult to propose such a high density in a rural and residential area, but this is going to be separated by 1000 feet of woods from abutting properties. He stated there is a need for housing statewide and this is an opportunity to provide affordable housing. He stated the reason a variance is needed is because there is no provision in the ordinance for workforce housing and the higher level of density of development. Mr. MacGuire stated some communities are giving large bonuses when development includes workforce housing; he noted the townhouses will also be affordable housing. He reiterated the large buffers for the development as well as the direct access to a main road.

Chair Horner opened the hearing to questions from the Board.

Vice Chair Kehoe asked if the open spaces have been surveyed and whether it is buildable. Mr. MacGuire stated the entire property has been surveyed and there are wetlands; of the 75 acres of greenspace, 58 acres is dry upland.

Ms. Thorne asked what the size of the townhouse would be. Mr. MacGuire stated it would be 1200 square feet with two bedrooms and two baths. Ms. Thorne asked what there would be for a water supply. Mr. MacGuire stated there would be a community well system to provide a water supply to the workforce housing. He stated the water system would be collectively owned by the association; the system would also supply the sprinkler system.

Chair Horner outlined the applicable ordinance requirements and purpose of cluster development. He stated one purpose is to preserve open spaces, which this proposal does achieve. Mr. MacGuire explained the Copperline Development, which abuts this land to the south, also has open space and it will meet up with the open and green spaces in this development.

Chair Horner stated a cluster development has to be at least 15 acres; individual lots may be reduced by ½ which would allow the lots to be one acre. Mr. MacGuire stated there will be 24 single-family lots on 54 acres so that is on average larger than 2 acres.

Chair Horner stated the frontage of the development will be on a Class V Road. Mr. MacGuire clarified the lot was fully surveyed so the plans are engineered; he stated all the lots meet the ordinance requirements.

Chair Horner stated the ordinance requires 30% be maintained for common land in just the cluster development, which the plans appear to meet.

Chair Horner outlined the purposes of the multifamily ordinance, noting it is also to preserve open space. He noted the minimum lot size is 6 acres; the maximum number of lots cannot be more than 1 ½ times the lots which would have a limit of 12 units. He stated this proposal is for 36 units which necessitates the variance. It was confirmed the road frontage is adequate; the buildings will be set back adequately as its surrounded by the greenspaces. It was confirmed the proposed square footage of 1200 is greater than the 500 square foot minimum. Chair Horner noted the open space ratio would require 23 acres instead of 16. Mr. MacGuire stated they don't have an issue with expanding the area surrounding the workforce housing, which would effectively be part of the greenspace.

Mr. Johnson asked for details on the timeline of the phases. Mr. MacGuire stated phasing would be difficult because the town regulations have cul-de-sac minimums; they could not build all of the roads first, but they would likely start with the entirety of the loop road to have two access points on Route 28 and it would also provide access and frontage to start development of the townhouses. Mr. Johnson stated his concern is easing the burden on the school system. Mr. MacGuire stated he would expect this to be a two to three-year project as there are significant infrastructure requirements.

Mr. Quimby noted there is a wide wetland by lot 24 and asked if it is seasonal or if a bridge would be needed. Mr. MacGuire stated there would be a wetland impact, but it would only be a pipe crossing. Mr. Quimby asked about the proposed width of road going into the affordable housing. Mr. MacGuire stated it would be the standard 24-foot width and completed with asphalt.

Chair Horner asked if utilities would be underground. Mr. MacGuire confirmed they would. Chair Horner asked if the Road Agent, Fire Department or Police Departments have reviewed the plans. Mr. MacGuire stated they have not met with these departments in the conceptual process yet however, reviews will be required with the Planning Board process. Chair Horner suggested they consult with the departments to ensure any concerns are addressed; he stated this is a large project and wants to ensure the Board can know those departments have been consulted. Mr. MacGuire stated much of the proposal is still conceptual so it could be difficult for the departments to make suggestions. He stated he knows he can meet any requirements by the departments but it would be costly to do so before approval from the Board. Mr. MacGuire explained there are going to be multiple permits at the planning level; he stated their goal is to determine if the Zoning Board is favorable to the density of the development.

Chair Horner asked how the green space would be owned. Mr. MacGuire stated the property owner is open to discussing options, including ownership by the Town, conservation entity, ownership by the collective owners with deed restricted, etc.

Chair Horner opened the hearing to input from abutters.

James Osborne, abutter, stated he is not in favor or opposed to the project, but he is concerned about the protection of Marden Brook which runs through the property; he stated his property which abuts the parcel, isn't even shown on the plans. He stated he also wants to be sure he can access his land. Mr. MacGuire explained there is access to the green spaces from the roadways so access will be preserved to Mr. Osborne's property.

Alida Brown, abutter, asked if there is open space between the single family lots. Mr. MacGuire stated there will be open space along the property lines and between their property and the development. Ms. Brown asked if there is going to be trash removal and space for storage of trash. Mr. MacGuire stated they have not gone into the details of that yet, but it will likely be private trash removal. Ms. Brown stated per the variance checklist, the variance cannot contribute to the diminution of values of surrounding properties, however she believes that with the low prices of the townhouses, the lower rates will certainly diminish the values of surrounding lots, including hers. Mr. MacGuire stated the design of the development and master plan will help avoid any adverse effects on the area, and there will be minimum effects to the area.

Christine Drapeau, abutter, asked if there have been consultations with NH DOT. She stated there will effectively be 120 cars brought to the area; she asked if there has been any consideration for kids living in the area running across the road to the park. Ms. Drapeau stated a year ago they purchased the property under the assumption that there would only be 16 houses on the 142 acres. Mr. MacGuire explained the purposes of the details of the plans as presented to match up with the overall master plan; he explained they intentionally off-set the roadways to match up with the senior housing across the road as well as Short Falls Road; he stated they will have to do a traffic study as well as obtain curb cuts from NH DOT. He stated they have not done those studies at this point but it will certainly be done when moving to the Planning Board level.

Jeff Olkovikas, abutter, stated he has concerns about the addition of kids and students into local schools and childcare. He stated there is already a shortage in these areas as well as with police and fire services which are already shorthanded. Mr. Olkovikas stated he can't say if he is in support or opposition to the proposal as there is still so much unknown. He stated the area is already very congested with traffic and this will add another four-way intersection; he stated there certainly needs to be more studies on the impact; he noted workforce housing is also required to be near employment, but he isn't sure where that employment is in this area.

Mr. MacGuire explained the NH DOT traffic evaluation process, as well as the estimates used to determine values and the impact on opposing volumes of traffic.

Belinda Allen, abutter, stated she is opposed to the proposal and wants to know what is going to be done to protect the wildlife. She stated she doesn't like the fact that 60-plus people are going to be brought to the area and won't be respectful of abutting property. Mr. MacGuire stated he thinks this is the highest amount of open space on any project he has worked on; he stated often

times with a lot of 140 acres, is going to be developed at 50%. He stated this project has a large amount of conserved open spaces; he stated he doesn't expect the wildlife to leave these large areas. He stated the property owner does have the right to develop the entirety of the lot but they have worked hard to maintain a large amount of conserved green space and put the majority of the development in the center of the parcel to keep it as far from all abutters as possible.

Lena Drapeau, abutter, stated there are animal corridors through this area and asked if these were considered in the design of the development. Mr. MacGuire stated there are a lot of areas between the lots and buffers around the brook which provided vegetative, undisturbed corridors throughout the development. He reiterated a lot of the land is going to be preserved.

Justin Guth, Zoning Compliance Officer, asked how the workforce homes would be designed. Mr. MacGuire stated all the units will be built exactly the same; in all likelihood, the workforce units will be spread out throughout buildings; there won't be a difference between the workforce units and the market rate units. Mr. Guth asked for clarification if the workforce units are the same as HUD. Mr. MacGuire stated workforce housing criteria are based on income limits. Mr. Guth asked if the homes in the future would be built to order or be spec homes. Mr. MacGuire stated they can't say or be sure at this point, but it is possible there will be building to suit. He stated it is not going to be modular homes.

Mr. Ramsdell asked if these types of proposals typically have square footage limits by Planning Boards based on the lot sizes, wetlands, etc. Mr. MacGuire stated that has never seen a requirement in any community he has worked with; he explained there are already setbacks and buffers being met which govern the square footage.

Ms. Drapeau asked if all the units would be owner-occupied. Mr. MacGuire stated that is the intent; once so many units are filled, management is turned over to the association and any restrictions on rentals or short-term rentals would be at the discretion of the association.

Bob McKechnie, Vice Chair of the Planning Board, clarified at no time did the Planning Board tell the applicants that there had to be workforce housing in this proposal. Mr. MacGuire confirmed the Planning Board did not make it a requirement, but it was clear the board was favorable to plans with a workforce housing component. He stated it was a nonbinding conceptual discussion with the Planning Board where feedback was given by the Planning Board, and they tried to address the concerns. Mr. McKechnie stated the state is pushing mandates for workforce housing and if a town doesn't have a workforce ordinance, it falls under the senior housing guidelines.

Rob Topik, resident, stated this isn't a simple proposal; he stated there will be a cluster development as well as a homeowners' association and asked how abutters would be determined. Mr. MacGuire stated all abutters within 200 feet of the parcel have to be notified, regardless of the size of the development.

Eric Orf, resident, stated he is a wildlife biologist and is very familiar with the property; he stated there is a robust trout population in the Marden Brook in the area that they need to consider for preservation; he stated it is also a well-documented wildlife corridor area.

Chair Horner asked Fire Chief Stewart Yeaton to weigh in on the plans. Fire Chief Yeaton stated it's premature to give support on a project like this, but he is following the process. He stated there is nothing specific for him to look at, but they are willing to work with the developers through this process.

Jane St. Pierre, abutter, asked how high the townhouses would be. Mr. MacGuire stated the townhouse will be the standard two stories; there is a potential for garages underneath, but the specifics haven't been decided.

Mr. MacGuire went through the variance criteria and summarized why the variance should be approved.

Chair Horner outlined suggested conditions.

Chair Horner closed the public hearing at 10:07 PM.

The Board went through the Variance Discussion worksheet.

***Discussion - Variance to Article III, Sec. G, Paragraph 3c***

*A: The variance will not be contrary to the public interest. YES*

*B. The variance is consistent with the spirit of the ordinance. YES*

*C. By granting the variance, substantial justice is done. YES*

*D. The proposed use will not diminish the value of surrounding properties. YES*

*E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, "unnecessary hardship" means that, either: YES*

*Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and • The proposed use is a reasonable one. YES*

*Or: F.(2) Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. YES*

The Board went through the Special Exception Discussion worksheet.

***Special Exception Discussion Article II, C.19.a***

*After reviewing the petition, hearing all of the evidence and taking into consideration the personal knowledge of the property in question, the general conditions of a special exception are evaluated as follows:*

- 1. A complete plan for the proposed development shall be submitted showing location of all buildings, parking areas, access, open space, landscaping and any other pertinent information. Such plan has been submitted to the satisfaction of the board. **YES***
- 2. The requested use is essential or desirable to the public convenience or general welfare. **YES***
- 3. The requested use will not impair the integrity or character of the immediate or adjoining areas. **YES***
- 4. The specific site is an appropriate location for the proposed use and will not be detrimental to the health, morals, or general welfare of the immediate or adjoining areas. **YES***
- 5. No factual evidence is found that property values in the area will be adversely effected by such use. **YES***
- 6. No undue traffic, nuisance or unreasonable hazard will result because of the requested use. **YES***
- 7. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. **YES***
- 8. All valid objections presented at the public hearing are given full consideration. **YES***
- 9. The proposed use has an adequate water supply and sewerage system, and meets all applicable requirements of the State. **YES***

***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.

**MOTION:** To grant the request for a Variance for Case 2023-11, The Dubay Group, Inc., represented by Doug MacGuire PE, as required by Article III, Sec. G, Paragraph 3c (Minimum Lot Size and Overall density) to allow for 36 townhomes on 16.3 acres (12 townhomes allowed). The townhomes will be included in a cluster development containing 24 single family house lots with 74 acres of open space and to grant the request for a Special Exception required by Article II, Section C, Table of Uses #19a (Multi-Family (three units or more) 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. 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 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 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.*

**Motion by Mr. Quimby. Second by Ms. Thorne. Motion passed 5-0-0.**

***Zaboudil Application for Variance to Build on Berry Lane, a Private Road***

The Board reviewed and discussed whether the application is material different from a case previously submitted.

**MOTION: To accept the application as being materially different. Motion by Vice Chair Kehoe. Second by Ms. Thorne. Motion passed 5-0-0.**

Mr. Topik asked a question that was addressed by Vice Chair Kehoe.

**ADJOURN: Motion by Mr. Johnson. Second by Mr. Quimby. Motion passed, 5-0-0.**

The meeting was adjourned at 10:33 PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary