

Town of Milford
Zoning Board of Adjustment-APPROVED
NOVEMBER 16, 2023
Public Hearings

Case #2023-02 689 North Main Street, LLC and Salt Creek Properties, LLC, VARIANCE

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
Nicole Crawford, Town Engineer

Recording Clerk: Jane Hesketh, Community Development

Meeting Agenda

1. Call to Order
2. Public Hearing(s):
 - a. **Case #2023-02** (Continued from June 20 & August 17, 2023 Meetings) Continuation of the Variance Request for property located at 689 North Main Street, LLC and Salt Creek Properties, LLC, for the property located at Tax Map 43, Lot 20-2, seeking a required Variance from Milford Zoning Ordinance, Article VI, Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a property located in the Commercial and Limited Commercial Zoning Districts. (Note: Prior hearing request by applicant was approved by the ZBA on Aug. 17, 2023 to postpone the scheduled Continuance for the case, to the September 7, 2023 ZBA Meeting., then to October 4, 2023, then to be heard on October 19, 2023 due to illness, then approved to November 2nd, with a new Request for the Continued Hearing to now be held on November 16, 2023)
3. Approval of Meeting Minutes: 10/19/23
4. Other Business:
5. Next Meeting(s): 12/7/23

1 **MINUTES OF THE ZBA MEETING NOVEMBER 16, 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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1 **MINUTES OF THE ZBA MEETING NOVEMBER 16, 2023**

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02** (Continued from June 20 & August 17, 2023 Meetings) Continuation of the Variance Request
7 for property located at **689 North Main Street, LLC and Salt Creek Properties, LLC, for the property**
8 **located at Tax Map 43, Lot 20-2**, seeking a required Variance from Milford Zoning Ordinance, Article VI,
9 Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a
10 property located in the Commercial and Limited Commercial Zoning Districts. (Note: Prior hearing request by
11 applicant was approved by the ZBA on Aug. 17, 2023 to postpone the scheduled Continuance for the case, to the
12 September 7, 2023 ZBA Meeting., then to October 4, 2023, then to be heard on October 19, 2023 due to illness,
13 then approved to November 2nd, with a new Request for the Continued Hearing to now be held on November
14 16, 2023)

15
16 Chair Kokko Chappell stated staff, Terrence Dolan, would make a presentation first.

17
18 Terrey Dolan stated he sent to the board the most critical documentation as links and in the packets presented at
19 the meeting. Mr. Dolan proceeded to update the board with a review of the prior hearing documents. The
20 document he emphasized was a memo from then Director, Lincoln Daley to Jason Plourde, previous Zoning
21 Board Chairperson.

22
23 T. Dolan highlighted the parts of the memo pertaining to the sale of petroleum products which is the variance
24 request being presented. Mr. Dolan wanted to ensure this information is entered into the record. Mr. Dolan
25 explained the applicant will review the last page of this memorandum that addresses the performance standards
26 under Section 6.01.2 for the ground water protection overlay district; the applicant will explain how the criteria
27 listed on the last page fits into the project request.

28
29 T. Dolan continued by saying Nicole Crawford, Town Engineer provided a memorandum dated September 28,
30 2023 that explains the complex mapping of the ground water overlay district. T. Dolan noted Nicole Crawford
31 was present at the meeting to address any technical questions the board may have. T. Dolan presented an email
32 just received on November 16, 2023 which outlines a meeting between the applicant and the Red Arrow
33 Daycare; Mr. Tom Quinn, Attorney will go over this with the board. Mr. Dolan then directed the board to a
34 document from Water Utilities Director, Jim Pouliot. Mr. Pouliot confirmed there is a 2" water line connecting
35 to the town water supply that can be utilized by the Red Arrow Daycare. Mr. Dolan finished his presentation.

36
37 Chair Kokko Chappell invited the applicant to make their presentation. At that time, Member Rich Elliott
38 recused himself from the meeting.

39
40 The applicants came forward to the meeting table; Matt Peterson and Attorney Tom Quinn from Milford, NH.

41
42 Chair Kokko Chappell to the applicants: this case was already presented, the board has received the new
43 information and has reviewed the new documentation; Chair feels it is not necessary to go back over the
44 information already presented but to move forward with the current information and anything else the applicant
45 would like to add.

46
47 Attorney Quinn began the presentation on behalf of the applicant. In preparation for this meeting, he reviewed
48 minutes, videos and materials for the Special Exception as well as the Variance. Mr. Quinn feels a great deal of
49 time was spent on the wetlands for the Special Exception. Mr. Quinn continued by saying he felt the hearing for
50 the Variance was rushed and some of the points for the Variance were confused with the Special Exception
51 request. In light of this, and the passage of time, Attorney Quinn stated he will be as brief as possible but wants
52 to methodically review the Variance criteria.

1 **MINUTES OF THE ZBA MEETING NOVEMBER 16, 2023**

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

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9 Attorney Quinn noted the support he had at the meeting to assist with technical input: Matt Peterson, Project
10 Engineer Keach Nordstrom Associates; Bob Carbone, Gas Station Development Expert; Rashid Ahman,
11 Applicant.

12
13 T. Quinn continued his presentation by stating the location of the property, the zone being commercial where
14 gas stations are a permitted use and a description of the property. The lot is just over 2 acres with 325 ft. of
15 frontage on South Street and 273 ft. of frontage on Nathaniel Drive. There is just over 30% of open space and
16 meets all the dimensional requirements as outlined in Article V of the Zoning Ordinance. The property is located
17 in the Ground Water Protection District Level 1 pursuant to Section 6.01. That Section prohibits filling stations,
18 therefore, a variance is required. Having said all that, Mr. Quinn proceeded to review the criteria for a variance.

19
20 **Variance Criteria per New Hampshire RSA 674:33.I:**

- 21
22 **1. This will not be contrary to the public interest.**
23 **2. The spirit of the Ordinance is observed.**

24
25 Attorney Quinn cited a significant case from 2007;
26 “MALACHY GLEN ASSOCIATES, INC. v. TOWN OF CHICHESTER”.

27
28 T. Quinn: the court stated “because the provisions of a zoning ordinance represent a declaration of public
29 interest, any variance would be contrary to the ordinance to some degree”. Consequently the court
30 instructed: “To determine whether a variance request is contrary to the public interest and is consistent with
31 the spirit of the ordinance, we must determine whether granting a variance would unduly and to a marked
32 degree conflict with the ordinance such that it violates the basic zoning agendas.” T. Quinn continued with
33 additional court instructions: “In determining whether a variance violates the basic zoning objectives, we
34 need to determine whether the requested variance would alter the essential character of the neighborhood, or
35 would it threaten the public health, safety and welfare.”

36
37 Attorney Quinn concluded quoting what the court said. He stated these are the two tests that need to be met;
38 the court has always treated these two tests as one. Attorney Quinn continued by saying their position is that
39 this variance will not alter the character of the neighborhood; from South Street to the Oval is all
40 commercial or limited commercial and the street is developed in a commercial manner.

41
42 As he began to proceed, Member Joan Dargie interjected: she feels the material is something that has
43 already been presented. The committee already had this discussion. To Mr. Quinn: you are presenting from
44 the minutes and are simply countering what was discussed previously. She continued by saying no decision
45 has been made yet. J. Dargie explained the committee had reached a point in the first case hearing and the
46 final issue was about the well district and if it was a water protection district or not. J. Dargie felt this is
47 where the discussion should be at this point. Mr. Quinn stated he understands but he is just trying to protect
48 the record.

49
50 J. Dargie: we have heard all of this before and the committee asked for the applicant to return with
51 information about the well; the meeting tonight is a continuance and that is where we ended. Discussions
52 continued between Member Dargie and Attorney Quinn. J. Dargie stated she is most interested in hearing
53 about the water protection district. Attorney Quinn stated there is information he wants to contribute for the
54 record and he will be getting to the information on the water protection district.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

7
8 **Variance Criteria per New Hampshire RSA 674:33.I:**

- 9
10 **1. This will not be contrary to the public interest.**
11 **2. The spirit of the Ordinance is observed.**

12
13 Mr. Quinn proceeded with his presentation. Again, it is a commercially developed area on both ends of
14 South Street. Therefore, the use is consistent with the quality of the neighborhood. Granting the variance
15 will not threaten the public health, safety or welfare. The proposed station is being designed in accordance
16 with the best management practices; it will meet all federal and state requirements; underground storage
17 tanks will be highly regulated by the DES; ZBA was provided a copy of the State regulations for the
18 underground tanks; the tanks are double walled which would contain any leaks; tanks have a monitoring
19 system that will activate an alarm if any liquid is found between the two walls; the state mandates a
20 monitoring system that measures purchases and sales so discrepancies can be detected; the State mandates
21 that a third party vendor is involved to review the records maintained by the station; State measures the
22 pumps to confirm records are consistent and accurate; there will be a concrete spill containment pad to
23 handle any superficial spills at the pumps where it will be held to evaporate or disposed of in accordance
24 with regulations; if spill containments are full the design calls for the run off to go into catch basins to
25 separate gas from water and properly treat the water (all of this is on the site plan provided to the
26 committee).

27
28 **3. Substantial Justice is done.**

29
30 Mr. Quinn again cited the case from 2007. The guiding rule factor from that case: “any loss to the individual
31 that is not outweighed by a gain to the general public is an injustice”. As stated before, this a proposed
32 commercial use in a commercially zoned district. The ZBA previously agreed the site is in an appropriate
33 location. The only issue was the location is in a Level 1 Water Protection Area where gas stations are
34 prohibited. Mr. Quinn stated the gas station can be designed and operated in a way that meets the purpose
35 of the ordinance which would allow for substantial justice being done; the objectives of the ordinance is
36 being met and the owner is allowed use of their property.

37
38 **4. The Values of Surrounding Properties will not be diminished.**

39
40 Mr. Quinn stated: this was discussed at the prior hearing and there were no objections based on that.

41
42 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

43
44 **A. Owing to special conditions of the property that distinguish it from other properties in the area;
45 denial of the Variance would result in unnecessary hardship because:**

46
47 **i. No fair and substantial relationship exists between the general public purposes of the ordinance
48 provision and the specific application of that provision to the property because:**

49
50 The property is located in a commercial district where its use is allowed. It is in an appropriate location, on a
51 heavily trafficked road which is appropriate place for a gas station. The objective of the Level 1 Water
52 Protection District can be met. The reason this property is in the Level 1 Water Protection District is because
53 of the wells at Little Arrow Day Care and the Children’s Choice Day Care (no longer there).
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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

7
8 **Variance Criteria per New Hampshire RSA 674:33.I:**

9
10 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

11
12 **A. Owing to special conditions of the property that distinguish it from other properties in the area; denial of the Variance would result in unnecessary hardship because:**

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14
15 **i. 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 because:**

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17
18 Mr. Quinn went on to explain why this is considered a Level 1. The fact is it does not produce the 20,000
19 gallons of water per day which is a guideline for Level 1 Districts. Even so, Mr. Quinn, continued by saying
20 an agreement has been reached with the owners of Little Arrow Day Care. The applicant will take the 2”
21 water main and extend it to hook up to town water lines and the well will no longer be used. This well is the
22 only reason this property is in a Level 1 Water District. Mr. Quinn feels since this problem has been
23 alleviated, it is then consistent with the ordinance to allow the service station to be placed on this property.

24
25 Mike Thornton then pointed out the additional cost in the form of a water bill for the Little Arrow Day Care.
26 Attorney Quinn noted there is a cost to maintain the well and conform to state regulations. Matt Peterson
27 noted the owners of Little Arrow Day Care had already researched doing this and this change is not being
28 forced on them.

29
30 Dan Sadkowski asked if a 2” water line was sufficient. Chair noted the board has a letter from the Water
31 Utilities Director, Jim Pouliot stating this size is sufficient.

32
33 J. Dargie asked if there is a written agreement with Little Arrow Day Care in regards to the work that will be
34 done for them to hook up to Town Water. Attorney Quinn noted there has been an email exchange and they
35 are present at the meeting. In addition, Terrey Dolan has been consulted. Mr. Quinn then stated if the
36 variance is granted, they would like to add a condition to the approval that no certificate of occupancy
37 would be given until the hookup is completed. Terrey Dolan confirmed what Attorney Quinn stated is
38 correct. In addition, T. Dolan informed the committee there will need to be a formal abandonment of the
39 well; there is a process to go through with the state. There was more discussion about this point in regards to
40 DES regulations. Mr. Quinn asked if it could be agreed the well will be abandoned according to state
41 regulations, but it will not be used for drinking water. T. Dolan stated he has no problem with that. It was
42 confirmed the well will eventually be buried.

43
44 J. Dargie asked how long it will be to take the property out of the Level 1 Water District. A. Kokko
45 Chappell said that cannot happen until the well is abandoned. T. Dolan noted the Town Overlay Maps are
46 20 years old and need to be researched and updated with a consultant; also a town vote may be required to
47 change these maps.

48
49 Chair stated given all of that, even so, for this meeting we have to consider 2 wells; one which has been
50 decommissioned and another that will be decommissioned should the hookup to town water and sewer be
51 provided for Little Arrow Day Care.

1 **MINUTES OF THE ZBA MEETING NOVEMBER 16, 2023**

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

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9 Chair Kokko Chappell asked Matt Peterson, Project Manager from Keach Nordstrom Associates to review the
10 site map.

11
12 Mr. Peterson pointed out the 2 catch basins and topography used to assist with the drainage into the catch basins.
13 He explained the safety measures to ensure proper drainage. He pointed out the 4 Bio Retention Systems; the
14 design and use of these systems was explained. Mike Thornton asked how drainage to the front by the street will
15 be handled. M. Peterson explained there will be proper grading to ensure the run off goes to the catch basins.
16 Mr. Peterson continued his explanation of the drainage system by showing how there is a 3rd protection area
17 with an underground containment area for drainage from the Retention Systems and showed the final process for
18 elimination from the underground containment area. M. Peterson reminded the board all of what he has
19 explained will require NHDES AOT approval. In addition, he feels every effort has been made in the design to
20 ensure there will not be an impact to the wetlands. Mr. Peterson continued by saying he feels the criteria for
21 storm water management has been met. M. Peterson reviewed criteria for the ordinance in order to explain how
22 the design will be in compliance with the ordinance.

23
24 J. Dargie to M. Peterson: referring to the daily check; who is responsible for doing the daily check? M. Peterson:
25 the daily check is the responsibility of the management/owner and the state reviews the logs monthly. There was
26 additional discussion regarding proper training of personnel who will be doing the daily checks.

27
28 The applicant, Rashid Ahman stepped forward to explain the reporting process. He informed the committee
29 every month the records will be sent to DES online; in addition to a monthly review onsite. M. Thornton to the
30 applicant: if there is a discrepancy on a given day, will you be required to report that on the day of the
31 discrepancy? R. Ahman: yes

32
33 The Chair then asked a representative from Little Arrow Day Care to come forward.

34
35 Gary Daniels, President of Little Arrows Board of Directors stepped to the microphone. Mr. Daniels stated he
36 has met with all the parties involved and as a result an agreement was reached. For the record, Mr. Daniels read
37 the agreement: "The client is willing to install a 2" water service from Nathaniel Drive to Little Arrows Day
38 Care and hookup to the building and water and this would be done during the permit building phase of the gas
39 station project and the final certificate of occupancy". Mr. Daniels acknowledged the Little Arrows Board of
40 Directors is in agreement with this.

41
42 Chair asked if there were any more questions before opening the meeting to the public. There were none and the
43 meeting was open for public discussion.

44
45 Chris Costantino was present via Zoom and speaking on behalf of the Milford Conservation Commission. She
46 proceeded by saying: MCC is not in support of this project; they have learned a great deal over the past 10 years
47 about gas stations, the installation and the contaminants. MCC is interested in making sure natural resources are
48 protected and this is over a drinking water supply. It is not a well now but it is over the aquifer. According to the
49 stratified aquifer mapping that does not extend to the extent of this parcel, however, the testing on the site
50 indicates that the soils are just as trans missive as the aquifer soils are. C. Costantino noted that in the past 5
51 years the fire department has responded to 11 gas leaks in gas stations in town so there is no guarantee that this
52 system will not leak into the drinking water supply. The town has lost wells due to contaminants and as far as
53 C. Costantino knows, the town is down to one well and the town has to purchase water to make up the
54 difference so everybody in town has enough water to drink. C. Costantino would like that the ZBA not approve
55 this project; she feels there are other uses.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

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8 In addition, C. Costantino does not understand the use of a test case; “MALACHY GLEN ASSOCIATES, INC.
9 v. TOWN OF CHICHESTER” to justify a hardship. C. Costantino cited Milford Zoning Ordinance criteria:

- 10
11 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**
12 **A. Owing to special conditions of the property that distinguish it from other properties in the area;**
13 **denial of the Variance would result in unnecessary hardship because:**
14 **i. No fair and substantial relationship exists between the general public purposes of the ordinance**
15 **provision and the specific application of that provision to the property because:**

16
17 C. Costantino noted the initial response from the application only listed the location of the parcel as a hardship
18 which she feels is not the purpose of this ordinance. C. Costantino feels the purpose of this ordinance in the
19 interest of public health, safety and general welfare is to preserve, maintain and protect from contamination
20 existing and potential ground water supply areas; this is a ground water supply area. In the research done by
21 MCC, the well head is one piece of it but they also look at natural resources that can be affected. In the research,
22 MCC uses the stratified aquifer mapping. In looking at mapping that is what has triggered the MCC to be
23 concerned; the tanks are within only 200 ft. of the aquifer. The applicant has said they are willing to install a 3rd
24 means for containment. MCC would like to see if there something to keep this from getting into the soil. She
25 feels there is too much of a risk; the town is losing its access to drinking water.

26
27 Going back to the hardship, Chris Costantino noted the application refers to the location in terms of the highway
28 but the purpose of the zoning ordinance is to protect the ground water, and there is a distinct relationship
29 between a gas station that will leak (not a question of if but when) and that is what the ground water protection
30 ordinance is for.

31
32 Mike Thornton to Chris Costantino: what is the 3rd containment system you referred to? C. Costantino: it could
33 be a barrier of clay around the tanks. Chris Costantino noted the tanks will be about 8-12 ft. down which means
34 at times they will be in standing water. Therefore, a clay barrier or a material to add to the existing soil which
35 would harden to protect the tanks in light of the fact there probably will be a leak and this would then prevent
36 leakage into the soil until a cleanup can be done.

37
38 Joan Dargie to Chris Costantino: you mentioned there have been a number of gas station leaks are they newer or
39 older stations; do you have a list of the stations? C. Costantino: does have a list and on the list are 2 of the newer
40 stations; Irving and Cumberland Farms. Chris noted there is a discrepancy on the type of tanks that are being
41 installed; the material is listed as fiberglass but it has been her understanding the tanks will be steel. Attorney
42 Quinn addressed this by saying it will be state of the art fiberglass because that is the preferred material over
43 steel. Attorney Quinn noted that the list C. Costantino has referred to do not state exactly what type of spills and
44 it appears to be more of an incident report. Even so, he continued by saying the town may want to investigate
45 this further because there does appear to be repeat station spills.

46
47 BOS Representative David Freel questioned the hardship; his point: if you do not own a property and are
48 planning to develop it, but the property already has numerous rules and regulations against it, how do you justify
49 a hardship? If you don't own the property, how is that a hardship? D. Freel was directed that the property is
50 owned. He asked by whom and it was noted Salt Creek Properties.

51
52 Attorney Quinn addressed this: the hardship does not pertain to the individual owner but pertains to the land in
53 general; the hardship is not personal to the owner but the land itself. It is the law that a variance can be
54 requested.

1 **MINUTES OF THE ZBA MEETING NOVEMBER 16, 2023**

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

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8 Mr. Freel pointed out that his current residence is probably in that aquifer. There are a number of residences that
9 would be affected if the aquifer sustains a leak from the tanks; there are wells around the entire area. He pointed
10 out the town voted to protect the ground water in those areas back then. His opinion is to first remove this
11 location from the Ground Water Protection area and then build the station. If the town voted on it before he feels
12 the town should vote again to remove this location from the Ground Water Protection area.

13
14 Attorney Quinn's rebuttal was that is why he referenced the case from 2007 because it is stated very distinctly in
15 that case "it's not an argument in opposition to the granting of a variance that an ordinance prohibits the very
16 thing the variance is seeking". Therefore, it is not a reason to deny the variance simply because the ordinance
17 states it is not allowed. This point was discussed further until the Chair interjected by asking if there was
18 anything further.

19
20 Joan Dargie brought up Chris Costantino's point about clay surrounding the tanks. Mike Thornton noted there is
21 a material used in this type of construction. Matt Peterson noted it will be taken care of. There was more
22 discussion about the actual material to be used.

23
24 Chair asked for the correct wording for what the 3rd containment will be. Attorney Quinn: if we can agree, a clay
25 barrier with the details to be worked out with the Planning Board when more time can be devoted for discussion
26 and research can be done to determine the right material to be used. Joan Dargie added to this to include the
27 MCC with the Planning Board.

28
29 Chair asked if there was anyone else from the public. Hearing none and seeing none Chair closed the public
30 portion of the meeting. There were no further questions from the board and the meeting moved ahead.

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33
34 **Deliberations:**

35
36 **1. This will not be contrary to the public interest.**

37 M. Thornton: not contrary to the public interest with the conditions

38 D. Sadkowski: agrees with M. Thornton

39 T. Steel: agrees

40 J. Dargie: the well issues are being addressed; MCC concerns are being met

41 A. Kokko Chappell: the protected wells will be decommissioned and the map will be updated

42
43 **2. The spirit of the Ordinance is observed.**

44 M. Thornton: the spirit is to protect the drinking water and since there will be a 3rd containment as
45 recommended by MCC the spirit is being observed

46 T. Steel: agrees

47 J. Dargie: the variance allows the change; other commercial business in the area

48 D. Sadkowski: no comments

49 A. Kokko Chappell: concurs with the statements stated; in addition, measures are being taken to protect
50 the ground water and the well will be decommissioned.

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4 **2. PUBLIC HEARINGS**

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6 **a. Case #2023-02**

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8 **Deliberations:**

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11 **3. Substantial Justice is done.**

12 T. Steel: with the conditions discussed and agreed upon justice will be done; the wells will be
13 decommissioned.

14 J. Dargie: alleviates traffic through the oval; may take the burden off the older gas stations; public water
15 access for the day care

16 D. Sadkowski: alleviates traffic

17 M. Thornton: providing water for Little Arrows; the additional containment recommended by MCC

18 A. Kokko Chappell: if it was not for this well protection area, this is allowed in this district; by
19 removing the well and having it decommissioned removes the reason for the variance; therefore this
20 allows for why the variance is there. She feels that really gives substantial justice.

21
22 **4. The Values of Surrounding Properties will not be diminished.**

23 D. Sadkowski: no abutters and no one has come forward to disagree with it

24 J. Dargie: agrees; also similar to other uses in the area

25 T. Steel: the majority is commercial use; well for Little Arrows is being taken care of; wells are being
26 decommissioned.

27 M. Thornton: cannot see how an abutter would be negatively financially affected

28 A. Kokko Chappell: agrees

29
30 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

31
32 **A. Owing to special conditions of the property that distinguish it from other properties in the**
33 **area; denial of the Variance would result in unnecessary hardship because:**

34
35 **i. No fair and substantial relationship exists between the general public purposes of the ordinance**
36 **provision and the specific application of that provision to the property because:**

37 M. Thornton: the hardship in this is the fact it is in the water protection area; everything is being done to
38 alleviate the risk; feels the hardship has been removed

39 J. Dargie: Ground water protection is there, but that is being removed.

40 D. Sadkowski: agrees

41 T. Steel: ground water protection area is the hardship

42 A. Kokko Chappell: the ground water protection is because of the well; gas stations are not allowed in
43 this ground water protection area Level 1; the well will be decommissioned and removed but the map
44 will still show this area as a Level 1 until it is voted on to remove it.

45
46 **ii. The proposed use is a reasonable one because:**

47 J. Dargie: it is allowed if not for the ground water protection area

48 M. Thornton: commercially viable and a benefit to have a station that is more protective of the area.

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2. PUBLIC HEARINGS

a. Case #2023-02

Voting:

1. This will not be contrary to the public interest.

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

2. The spirit of the Ordinance is observed by creating affordable housing in keeping with the area.

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

3. Substantial Justice is done.

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

4. The Values of Surrounding Properties will not be diminished.

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

5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

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

Chair stated the criteria for the Variance has been satisfied and the case has been **approved with the following three conditions:**

1. Prior to the issuance of the occupancy permit, the site known as Little Arrows will be hooked up to municipal water.
2. The well at Little Arrows will be decommissioned for drinking water and abandoned if required by the state.
3. A third containment plan to be determined with Planning Board and Conservation Commission input.

Chair asked for a motion to approve **Case #2023-02** (Continued from June 20 & August 17, 2023 Meetings) Continuation of the Variance Request for property located at **689 North Main Street, LLC and Salt Creek Properties, LLC, for the property located at Tax Map 43, Lot 20-2**, seeking a required Variance from Milford Zoning Ordinance, Article VI, Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a property located in the Commercial and Limited Commercial Zoning Districts.

J. Dargie made a motion to approve **Case #2023-02 with the three conditions noted** and it was seconded by T. Steel. Chair Kokko Chappell stated a motion was made to approve **Case #2023-02**. Chair Kokko Chappell asked for a vote; all were in favor. Chair stated the application has been approved. There is a 30 day appeal period that can be filed with the Zoning Board.

Member Rich Elliott rejoined the meeting.

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3. MEETING MINUTES

10/19/2023
In Attendance: J. Dargie, M. Thornton, D. Sadkowski, R. Elliott, T. Steel, A. Kokko Chappell
Chair asked for a motion to approve minutes of October 19, 2023.
T. Steel made a motion to approve and J. Dargie seconded.
All were in favor.

4. OTHER BUSINESS

T. Dolan asked about upcoming meetings. The next scheduled meeting is 12/7/23 and the one after is 12/21/23. He asked the committee about the 12/21/23 meeting and it was agreed this meeting will be cancelled. As for the 1/4/24 meeting, Chair stated it would be best to see what cases are coming up before cancelling this meeting.

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.

THE MINUTES OF 11/16/2023 WERE APPROVED 03/21/2024

Motion to Approve:

Seconded:

Signed

Date:
