

TOWN OF MILFORD

Office of Community Development

Planning • Zoning • Building Safety • Code Enforcement • Health
Economic Development • Active Projects



Administrative Review

Date: May 11, 2020
To: Jason Plourde, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2020-10: Marmon Utility, LLC., 53 Old Wilton Road, Milford Tax Map 14, Lots 8 and 9 – Variance Application.**

The applicant is before the Board of Adjustment seeking a VARIANCE from the Milford Zoning Ordinance, Article V, Section 5.06.6 to reduce the existing total lot area open space from the minimum required 30% to 27% for the purpose of constructing a 32,924 square foot concrete storage area within the Industrial 'I' Zoning District. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
 - a. Map 14, Lot 8 consists of approximately 13.29 acres with more than 800 linear feet of frontage on the Old Wilton Road. The property is primarily developed and contains the Hendrix Wire Industrial facility storage areas and parking facilities. Access to the property is from two curb cuts on Old Wilton Road. It is bounded to the north by the Boston and Maine Railroad, Elm Street, and a mixture of residential homes and commercial uses. Residential homes and an undeveloped parcel extend to the south. To the west, lies MD Trash and Hitchner Manufacturing and while residential uses extend to the corner/intersection of Elm Street and Old Wilton Road.
 - b. Map 14, Lot 9 consists of 2.43 acres with 345 linear feet of frontage on Old Wilton Road. The property is partially developed and contains a storage area for the company's spools and materials and a single-family house/corporate office located on the eastern portion of the property. Access to the property is by way of two curb cuts on Old Wilton Road.
2. The applicant proposes to construct a 32,924 square foot concrete storage area adjacent to the front of the main manufacturing facility on Map 14, Lot 8 in close proximity to Old Wilton Road. The resulting impact to the properties would be a reduction of the total open space from 31% to 27% where 30% is required or 4.67 acres to 4.2 acres.
3. Pursuant to Section 5.06.6, open space shall be provided for all uses in the Industrial Zoning District an amount equal to not less than thirty (30) percent of the total lot area. For purposes of this application, the applicant will be treating both owned properties as one for compliance. This was done previously for the properties for a site plan application to expand the facility onto Map 14, Lot 9. By taking this step, however, future actions/changes will apply to the both properties and the applicant can no longer sell either property on an individual basis.
4. The project will also require site plan approval from the Planning Board.

Aerial Photos of Subject Property:





ZBA Application

MILFORD ZONING BOARD OF ADJUSTMENT

GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS

TOWN OF MILFORD
RECEIVED
APR 23 2020
PB ZBA Office

Date Received: 4-23-2020
Case Number: 2020-10
Application Number: 20200672
Hearing Date: 5-21-20
Decision Date: _____
Decision: _____

PROPERTY INFORMATION

Street Address: 53 Old Wilton Road
Tax Map / Parcel #: M14, Lots 8 & 9 Lot Size: 15.570 acres

PROPERTY CURRENTLY USED AS

Manufacture of electrical distribution cables, cable systems and accessories for aerial and underground utility applications

If the application involves multiple lots with different owners, attach additional copies of this page.


PROPERTY OWNER

Name: **Marmon Utility LLC**
Address: 53 Old Wilton Road
City/State/Zip: Milford, NH 03055
Phone: (603) 249-1202
Email: kboette@marmonutility.com
Kevin Boette, Plant Engineer

The applicant is the person who is making this proposal on behalf of themselves, the owner or a third party. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, an engineer or lawyer, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

APPLICANT/REPRESENTATIVE

SAME AS OWNER
Name: _____
Address: _____
City/State/Zip: _____
Email: _____
Phone: () Cell: ()

The undersigned property owner(s) hereby authorize(s) the filing of this application and agree to comply with all code requirements applicable to this application.
Marmon Utility LLC
By:  April 22, 2020
Property Owner's signature Kevin Boette, Plant Engineer Date:

Zoning District (check one):

- Residence A
- Residence B Residence R
- Commercial
- Limited Commercial
- Industrial
- Integrated Commercial-Industrial
- Integrated Commercial-Industrial-2

Overlay District (check any that apply):

- West Elm Street Overlay
- Nashua/Elm Street Overlay
- Commerce & Community Overlay
- Open Space & Conservation
- Wetlands Conservation
- Groundwater Protection
- Floodplain Management

APPLICATION FEES

Application Fee: \$75.00
Abutters Fee: \$4 x 56 \$ 224-
Amount received: \$ 299-
Date Received: _____
Check Cash _____

THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.



ZBA Application – Variance
MILFORD ZONING BOARD OF ADJUSTMENT

Date Received: _____
 Case Number: _____
 Application #: _____
 Date Complete: _____
 Hearing Date: _____
 Decision Date: _____
 Decision: _____

PROPERTY INFORMATION
Street Address: 53 Old Wilton Road
Tax Map / Parcel #: Map 14, Lots 8 and 9
<i>A Variance is a use which is not permitted by the Zoning Ordinance. Approval from the Zoning Board of Adjustment is required to allow any use or deviation from the Zoning Ordinance. Please work with the Zoning Administrator to make sure your application is complete and you know what will be required of you at the hearing.</i>
What section of the Zoning Ordinance are you asking to be varied? Article <u>V</u> Section <u>5.06.6</u>
Describe the variance you are requesting under the above section of the Ordinance. The applicant proposes to construct a concrete storage area, having an area of 32,924 square feet, adjacent to the front of the building on Old Wilton Road. The area will be used to store the large cable spools. The ordinance requires 30% open space. This construction will reduce the existing open space from 31% to 27%.

General Criteria Section 10.01
<i>Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I</i>
1. Granting the Variance would not be contrary to the public interest because: See attached
2. If the Variance were granted, the spirit of the ordinance would be observed because: See attached
3. Granting the Variance would do substantial justice because: See attached
4. Granting the Variance would not diminish the value of surrounding properties because: See attached
5. Unnecessary Hardship: See attached <i>This section is the central portion of your argument and is the critical factor that the Zoning Board of Adjustment will need to determine what is unique to your property and not generally applicable to other properties in the area or in town.</i>



ZBA Application – Variance

MILFORD ZONING BOARD OF ADJUSTMENT

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:
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 :
See attached
AND
ii. The proposed use is a reasonable one because:
See attached
(B) Explain how, if the criteria in paragraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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:
See attached
(C) Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:
See attached
1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:
See attached
In addition, Variances may have extra criteria that must be met. This includes, but is not limited to: 6.03.5 Floodplain Management: The criteria for evaluation is listed in 6.03.5:B General Conditions and the applicable conditions are listed in 6.03.5:C. If your project is covered by this regulation, include your answers to the required criteria as specified in the referenced Section of the Milford Zoning Ordinance as an attachment under Section 3 C. of this application.
ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition. A. A plan of the property and all buildings, drawn to scale, is required. B. A Building Permit Application as needed (to be determined by the building official.) C. Additional explanations, justification, abutters’ statements, letters, etc.

Zoning Board of Adjustment
Case # _____
Application for Variance
Marmon Utility LLC

Applicant’s Application Material

A. The Applicant proposes to construct a concrete storage area, having an area of 32,924 square feet, adjacent to the front of the building on Old Wilton Road. The area will be used to store the large cable spools. The ordinance requires 30% of open space. This construction will reduce the existing open space from 31% to 27%.

VARIANCE CRITERIA

1. AND 2.

THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST AND WILL BE CONSISTENT WITH THE SPIRIT OF THE ORDINANCE.

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance and the two have for years been treated together by the State Supreme Court. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102 (2007). Because the provisions of a zoning ordinance represent a declaration of public interest, any variance would be contrary thereto to some degree. Consequently, the Supreme Court has instructed that to determine whether a requested variance is not contrary to the public interest and is consistent with the spirit of the Ordinance, the Zoning Board of Adjustment (“ZBA”) must determine whether granting the variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives”.

The Court has recognized two tests for determining whether granting a variance would violate an Ordinance’s basic zoning objectives. One is to determine whether the variance would “alter the essential character of the neighborhood”. The second is to determine whether granting the variance would “threaten the public health, safety or welfare.”

Granting the variance will not alter the essential character of the neighborhood The property is located in the Industrial District. The property has been used as a manufacturing facility for at least forty years. The site has existed in its current developed configuration since at least 2008, when a small addition was added to the southwest corner of the building. The neighborhood is

characterized by industrial and commercial uses. The proposed storage area is completely consistent with the use and development of the property and the neighborhood.

Nor would granting the variance threaten the public health, safety or welfare. Construction of the proposed storage area is a small addition to this property and will have no impact to the public. On the other hand, storing spools in the proposed location reduces the distance the spools have to be moved through the building, and will be a benefit to the safety of the workers.

And though the open space component of the property will not meet the required 30%, the site will still contain 27% of open space which is significant and meets the spirit of the ordinance.

3. GRANTING THE VARIANCE WOULD DO SUBSTANTIAL JUSTICE.

“Perhaps the only guiding rule in this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assoc., Ibid. As stated previously, the property is situated in the Industrial District.

As stated previously, the proposal is for the construction of an additional storage area for cable spools. This will have the benefit of accommodating the growth of the business, increasing efficiency and increasing the safety of the company’s employees. The proposal does reduce the open space below the required 30% but still leaves the open space at 27%, only 3% short. The burden to the Applicant by losing the additional storage outweighs the benefit to the public of maintaining the additional 3% open space.

4. GRANTING THE VARIANCE WILL NOT DIMINISH THE VALUE OF SURROUNDING PROPERTIES.

The property is located in the Industrial District and is located between the railroad right-of-way and Elm Street to the north and Old Wilton Road to the south. The surrounding properties are industrial or commercial uses. The property consists of over 15.5 acres. The building is approximately 5.8 acres in size. The building has existed in its present configuration since 2008. The property as developed is consistent with the area. The addition of an area of concrete adjacent to this building will not change the use, development or character of the property as currently developed and will have no negative impact or value of surrounding properties.

5. OWING TO SPECIAL CONDITIONS OF THE PREMISES THAT DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA, DENIAL OF THE VARIANCE WOULD RESULT IN UNNECESSARY HARDSHIP BECAUSE 1) NO FAIR AND SUBSTANTIAL RELATIONSHIP EXISTS BETWEEN THE GENERAL PUBLIC PURPOSE OF THE ORDINANCE PROVISION AND THE SPECIFIC APPLICATION OF THAT PROVISION TO THE PREMISES, AND 2) THE PROPOSED USE IS REASONABLE.

The Premises consists of approximately 15.570 acres of land and is improved by a building consisting of approximately 5.8 acres of floor area. The Applicant's manufacturing process requires a large number of square feet. The open space currently constitutes 31% of the property.

Recently, the Applicant commissioned a safety study of the Applicant's manufacturing processes at the plant. One recommendation was to construct a storage area for the storage of the large spools in the proposed location. This was for the purpose of improving the safety and efficiency of moving the spools from the existing storage location to the specific location within the building where the spools are needed within the building. This will shorten the length of many of the forklift routes and allow the routes to be shorter, and more direct, thereby reducing the exposure of employees to risk of injury from encounters with the forklifts. In addition, the continued growth of the company and changing requirements of the Applicant's customers, require additional storage area for spools.

Due to the weight of the spools, the spools have to be stored on a base of heavy concrete. A pervious surface just will not suffice to support the weight of the spools. The surface has to be impervious.

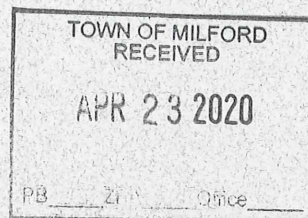
Given the manner in which the site is developed, it is not possible to construct the additional storage area in accord with requirements of the Zoning Ordinance. But the site would be in substantial compliance with the requirements of the Zoning Ordinance if the variance is granted. Instead of having 30% open space, the site would have 27% open space. There would be 4.2 acres of open space rather than 4.67 acres of open space.

And the proposed use is reasonable. The property is situated in the Industrial Zone, the current use of the property is permitted. The additional storage area is required for both safety and growth considerations, and the proposed location for the additional storage area is due to safety issues.

LAW OFFICE OF
THOMAS F. QUINN
PROF. CORP.

62 Elm Street
Milford, NH 03055

E-MAIL: tquinn@tfqtitle.com



PH: 603-554-1662
FAX: 603-554-1495

April 23, 2020

Lincoln Daley, Director of
Community Development
Town of Milford, NH
One Union Square
Milford, NH 03055

Re: Marmon Utility LLC
Tax Map 14, Lots 8 and 9, 53 Old Wilton Road, Milford, NH

Dear Lincoln:

Please find enclosed herewith an Application for Variance, together with supporting material
Also, enclosed please find a check for the filing and notice fees.

Please review these submissions and let me know if there is any additional information that you
need. I look forward to seeing you at the hearing.

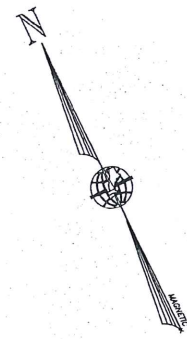
Thank you for your assistance in these matters.

Sincerely,



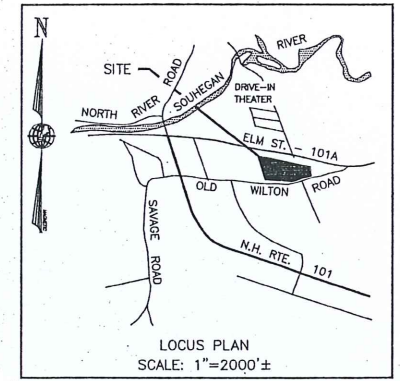
Thomas F. Quinn

TFQ/djl
Enclosure
#20-0052



NOTES:

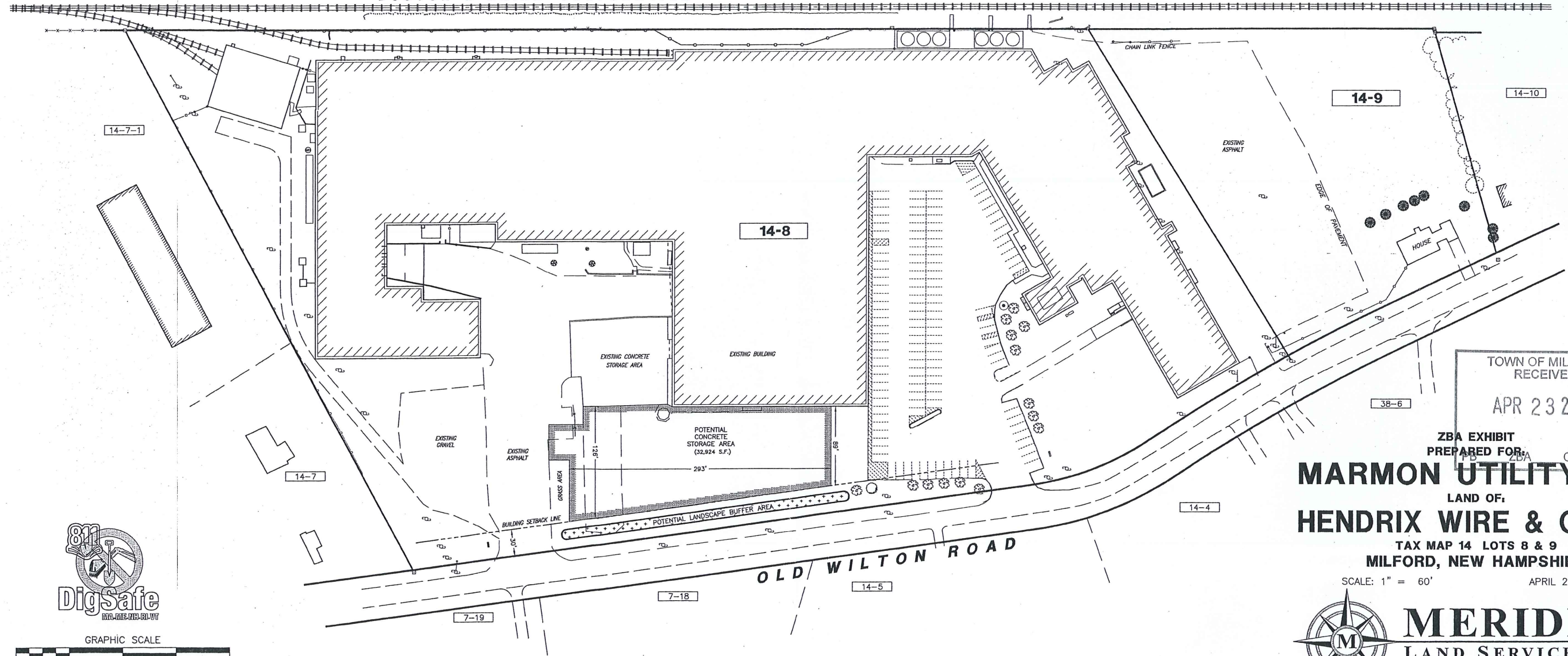
1. THE PURPOSE OF THIS PLAN IS TO SHOW THE POTENTIAL CONCRETE STORAGE AREA LOCATION AND DEPICT THE RESULTING IMPERVIOUS AREA OF LOTS 14-8 AND 14-9.
2. THE CURRENT OWNER OF LOTS 14-8 AND 14-9 IS HENDRIX WIRE & CABLE, 53 OLD WILTON ROAD, MILFORD NH 03055.
3. THIS PLAN IS BASED ON A FIELD SURVEY PERFORMED BY THIS OFFICE DURING MARCH, 2008 UPDATED WITH A FIELD SURVEY PERFORMED DURING SEPTEMBER, 2019 AND A FIELD INSPECTION PERFORMED APRIL, 2020.
4. TOTAL AREA OF LOTS 14-8 & 14-9 COMBINED IS 15.570 ACRES.
5. EXISTING OPEN SPACE: LOTS 14-8 & 14-9 = 31%
PROPOSED OPEN SPACE: LOTS 14-8 & 14-9 = 27%



14-1 14-2 7-3 14-3 7-3 7-4

NH ROUTE 101A - ELM STREET

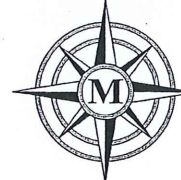
BOSTON & MAINE CORPORATION



TOWN OF MILFORD
RECEIVED
APR 23 2020

ZBA EXHIBIT
PREPARED FOR: **MARMON UTILITY LLC**
LAND OF:
HENDRIX WIRE & CABLE
TAX MAP 14 LOTS 8 & 9
MILFORD, NEW HAMPSHIRE

SCALE: 1" = 60' APRIL 21, 2020



MERIDIAN
LAND SERVICES, INC.
ENGINEERING | SURVEYING | PERMITTING
SOIL & WETLAND MAPPING | SEPTIC DESIGN
31 OLD NASHUA ROAD, AMHERST, NH 03031 TEL. 603-673-1441
MERIDIANLANDSERVICES.COM FAX 603-673-1584



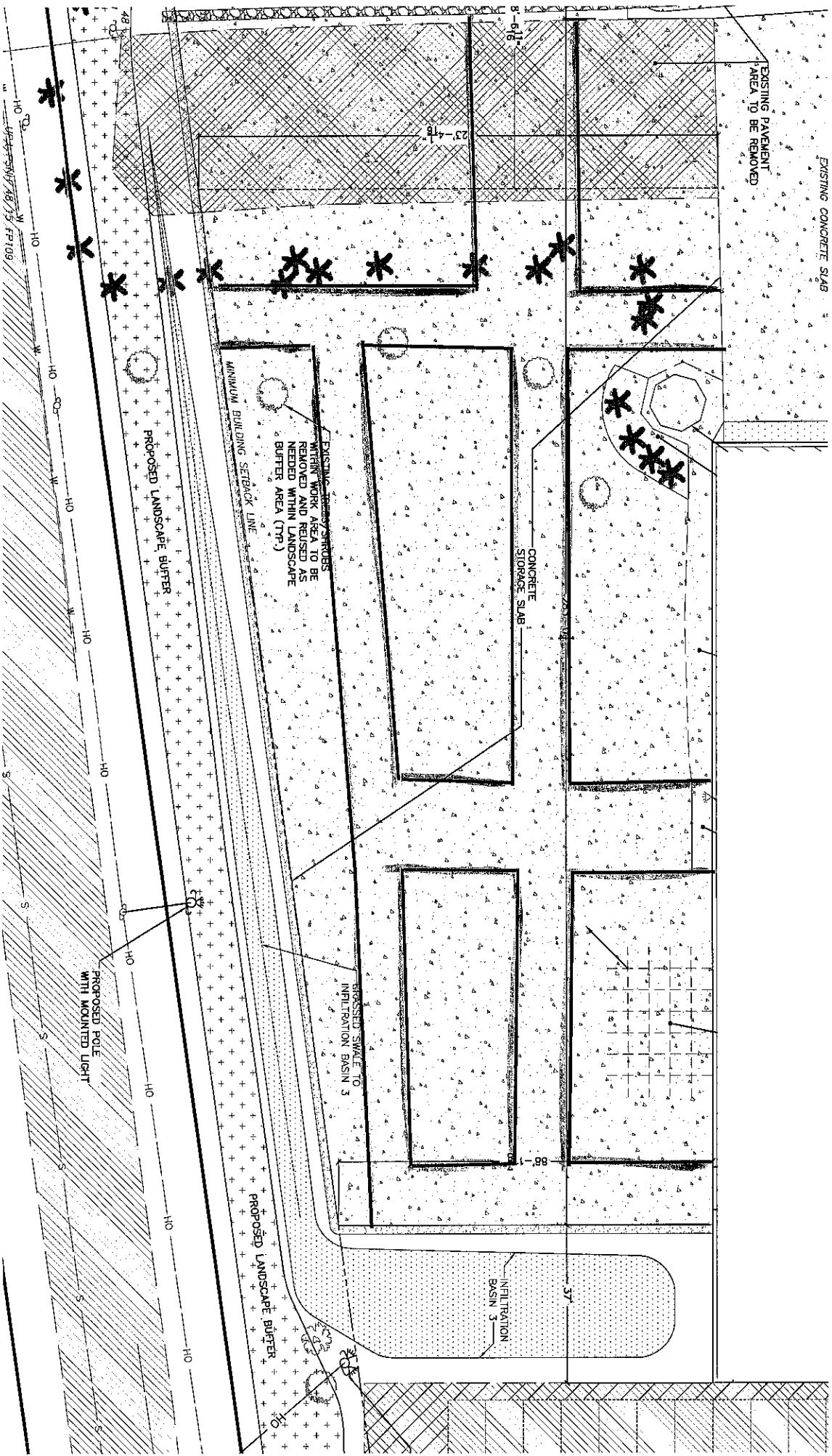
GRAPHIC SCALE



REV.	DATE	DESCRIPTION	C/O	DR	CK
D	---	---	---	---	---
C	---	---	---	---	---
B	---	---	---	---	---
A	---	---	---	---	---

PLOT# 4-21-2020 10:25 AM By: SD
 H:\MIS\00736\736.dwg 7/26/2020 9:58 AM

Possible Isle Locations





HALL HOME GROUP

5/19/20

Marmon Utility LLC and Hendrix Wire and Cable

RE: Variance Application

To whom it may concern,

My name is David Hall. I am the Broker/Owner of Hall Home Group LLC, a Southern NH real estate firm. I am a local resident and native of NH, and have been in the real estate business for over 23 years. I have reviewed the variance application being put forth by the applicant and find that the improvements proposed would not adversely affect the value of the surrounding properties. In my opinion, the intended improvements are consistent with the location's current town zoning. With this in mind, it is my opinion that the "highest and best use" of the surrounding properties would continue to be Commercial and Industrial development.

Regards,

David Hall

Broker/Owner
Hall Home Group LLC