



## Milford Zoning Board of Adjustment

---

### **Administrative Review**

**Date:** April 23, 2024

**To:** Zoning Board of Adjustment

**From:** Terrence S. Dolan, Town Planner

**Subject: Case #2024-03: Staff Summary of Town Counsel Opinion E-Mail for Marmon Utilities, LLC for the property located at 53 Old Wilton Road, Tax Map 14, Lots 8 & 9. Variance Application from the Milford Zoning Ordinance, Article V, Section 5.06.6. (Open Space) to allow the utilization of adjacent Marmon/Hendrix-owned properties (Map 38-6 & Map 7, Lot 16-1) for providing required Open Space for the proposed site facilities expansion to their existing physical manufacturing plant on Map 14, Lots 8 & 9**

---

### **SUMMARY**

The following is the Staff Summary of the (requested) Town Counsel's Legal Opinion regarding the utilization of adjacent (applicant-owned) lands (i.e. lots) to suffice for fulfilling Open Space Requirements on the existing manufacturing plant two lots.

The applicant has two adjoining lots that lie directly across Old Wilton Road, (to the immediate south side of the Right of Way, from their existing manufacturing plant) only separated from Marmon's northern two lots by the road right of way - where their proposed 74,430 square foot manufacturing plant facility expansion is proposed to be added to the existing facility building, on the north side of Old Wilton Road.

As requested, Town Counsel offers the following legal opinion for the use of the (applicant-owned) two adjoining southern lots for the purpose of satisfying Open Space % requirements for the existing Industrial-zoned manufacturing plant property on the northern side of Old Wilton Road:

1. Within their two adjoining (vacant) southerly lots that equal a total of 41.97 acres, a five (5) acre portion of land comprised from a portion of each southerly lot, shall be permanently set-aside to serve as dedicated open space acreage. This property shall solely act as required compensation as the *required Industrial-Zoned 30% Open Space* for the two northern existing manufacturing lots.

The designated five (5) acres will serve as the fully-required and dedicated Open Space for

the two northern lots, when adding the proposed new expansion (74,430 square feet) building area to the existing Marmon manufacturing plant facility, located on the northern side of Old Wilton Road.

Previously, as staff has already noted in the *March 27<sup>th</sup> Staff Variance Memo*, the ZBA had previously approved a Variance to allow for *only* 27% Open Space within the two northerly adjoining lots along Old Wilton Road to serve as the approved Open Space % for the continued development of these two Marmon-owned northern lots (**Case ZBA Case #2020-10, approved 6/4/2020**).

In addition, the requested Variance Approval would also fully return the overall Open Space (for the two northern plant lots) to an allocated set-aside of slightly more than the required 30%, if approved through the utilization of these five (5) acres dedicated from their two southern adjoining lots.

1. Town Counsel notes it is clear that the newly offered five (5) acre *Open Space Area* is proposed to be solely allocated to serve as the required Open Space for the further development of the adjacent two northern lots.

This set-aside as *preservation*, is only pertaining to the further development on the two northern lots (under Marmon ownership). These five acres shall not be permitted for any future development uses (nor for meeting any other required Open Space considerations) within the remaining +/-37 acres of lands of the two adjoining, applicant-owned *southern lots*.

2. Town Counsel has further opined that it is not unusual in New Hampshire for a single property lot (only divided by a public or private road) to be utilized to serve for the function of required open space, even if the property is divided by the Right of Way; thus, it is within reason to achieve the required Open Space, from dedicated Open Space on adjacent lots.
3. In addition, the applicant has offered to provide a 15-foot-wide pedestrian trail within these designated five acres for the use by the general public, and the trail shall connect to other town-owned lands.