



# ZBA Application

## MILFORD ZONING BOARD OF ADJUSTMENT

### GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS

#### PROPERTY INFORMATION

Street Address: 53 Old Wilton Road, Milford, NH 03055

Tax Map / Parcel #: Tax Map 14, Lots 8 & 9 | Lot Size: 15.57 acres

#### PROPERTY CURRENTLY USED AS

Manufacturing of electrical transmission and 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

*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: Thomas F. Quinn, Esquire

Address: Law Office of Thomas F. Quinn, Prof. Corp., 62 Elm Street

City/State/Zip: Milford, NH 03055

Email: tquinn@tfqtitle.com

Phone: ( 603 ) 554-1662

Cell: ( 603 ) 801-6585

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:   
Michael O'Shea, Vice President of Finance

February 22, 2024

Date:

Date Received:	TOWN OF MILFORD RECEIVED
Case Number:	
Application Number:	FEB 22 2024
Hearing Date:	
Decision Date:	ZBA Office
Decision:	2024 0416

#### 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:	\$100.00
Abutters Fee: <u>55</u> x <u>5.75</u>	316.25
Notice Fee	75.00
Amount received:	
Date Received:	\$491.25

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**

TC  
 RECEIVED

Date Received: FEB 22 2024  
 Case Number: \_\_\_\_\_  
 Application #: ZBA Office: \_\_\_\_\_  
 Date Complete: \_\_\_\_\_  
 Hearing Date: \_\_\_\_\_  
 Decision Date: \_\_\_\_\_  
 Decision: \_\_\_\_\_

PROPERTY INFORMATION
Street Address: 53 Old Wilton Road, Milford, NH 03055
Tax Map / Parcel #: Tax Map 14, Parcels #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 is proposing the construction of an addition of approximately 10,360 square feet to an existing building on the site, another addition of approximately 12,570 square feet to another building on the site and an addition of approximately 51,500 square feet to another building. Also, there will be related improvements. The required open space under the Zoning Ordinance is 30% of the total lot area or 4.67 acres. A variance granted in 2020 permitted a reduction of the open space from 30% to 27%, or 4.2 acres. The proposed additions and related improvements will reduce the open space to below 5%, or less than one acre.

General Criteria Section 10.01
<b><i>Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I</i></b>
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: <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. See attached.</i>



**ZBA Application - Variance**  
**MILFORD ZONING BOARD OF ADJUSTMENT**

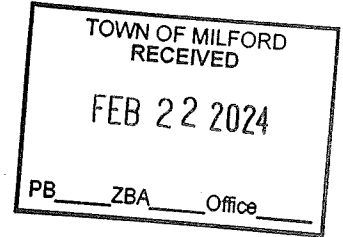
A. Owing to special conditions of the property that distinguish it from other properties in the area; denial of the Variance would result in unnecessary hardship because:
i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application 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 <b>physical disability</b> 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: <b>6.03.5 Floodplain Management:</b> 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.
<b>ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition.</b> 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**

**BACKGROUND.**

The Applicant's property ("the Property") is located at 53 Old Wilton Road, Milford, New Hampshire. The Property is shown on Tax Map 14, Lots 8 and 9. The Applicant also owns the lot located across the street on the south side of Old Wilton Road. This lot ("the South Lot") is shown on Tax Map 38, Lot 6 and Tax Map 7, Lot 16-1. The Property is located in the Industrial District.

The Property contains approximately 15.57 acres of land. The Property is improved by several buildings that have been constructed over a period of forty years or more, together with related outside storage areas, parking areas, driveways and related improvements. Generally, the buildings themselves, most of which are connected to one another, cover almost six acres.

In 2020, the Applicant obtained a variance permitting the construction of an outdoor storage space for spools that reduced the open space from 31% to 27%.

The Applicant is a leader in the manufacture of electrical, distribution cables, cable systems, and accessories for aerial and underground utility applications. Its business continues to grow and demand for its products and services continues to expand. The Applicant has developed a new product line for which demand is strong. In order to introduce the new product line, while simultaneously meeting demand for existing products, the Applicant requires a substantial amount of additional space. And that space must be integrally connected to its existing space. Consequently, the Applicant must construct the building additions and related improvements as proposed.

**THE PROPOSAL.**

The Applicant proposes the construction of three additions to the existing buildings:

1. A 12,570 +/- square foot addition to the building on the west end of the Property;
2. A 10,360 +/- square foot addition to the center of the building; and
3. A 51,500 +/- square foot addition on the east end of the building;

as well as related improvements such as outdoor storage space, all as shown on a plan of land entitled, "Zoning Board Exhibit Plan, Tax Map Parcels 14-8 & 14-9 (53 Old Wilton Road) Milford, New Hampshire, Prepared for Marmon Utility, LLC, 53 Old Wilton Road, Milford, NH 03055, Land Of: Hendrix Wire & Cable, 53 Old Wilton Road, Milford, NH 03055", dated February 19, 2024, prepared by Fieldstone Land Consultants, Inc., and on other plans to be submitted.

The proposed construction will reduce the open space to approximately five percent (5%), or less.

Because the resulting open space will be less than the twenty-seven percent (27%) currently permitted, a variance is required.



## **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 ordinance’s 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. In 2020, pursuant to a variance, the Applicant added an outdoor pool storage area. The neighborhood is characterized by industrial and commercial uses. The proposed additions are 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 additions and improvements will be completed in accord with applicable health and safety regulations and will be consistent with the neighborhood.

### **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. The Applicant is a leading manufacturer of cable products nationally and throughout the world. It has been operating at the Property for over forty (40) years. Its business continues to grow. The development of a new product line has created the need for a substantial expansion of its facilities. The manufacture and production of its new product line simply cannot be accommodated in the existing facilities. Because the existing product lines and the new product are similar in nature, the new facilities must be integrally related to the existing facilities. Construction of its proposed building additions and related improvements is essential to the Applicant’s business.

The burden upon the Applicant arising from denial of the variance is very substantial. The benefit to the public from requiring the current open space is not substantial and does not outweigh the burden upon the Applicant.

### **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 existing 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. Granting the variance will not significantly change the use, development or character of the Property as currently developed in the neighborhood and will have no negative impact on value on 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.**

As recited above, the Applicant is a leader in the manufacture of electrical, distribution cables, cable systems, and accessories for aerial and underground utility applications. Its business continues to grow and demand for its products and services continues to expand. The Applicant has developed a new product line for which demand is strong. In order to introduce the new product line, while simultaneously meeting demand for existing products, the Applicant requires a substantial amount of additional space. And that space must be integrally connected to its existing space. Consequently, the Applicant must construct the building additions and related improvements as proposed.

Given the size of the Property, the unusual configuration of the existing buildings and the manner in which the Property is developed currently, it is not possible to construct the building additions and related improvements without reducing the open space as proposed.

And the proposed use of the Property is reasonable. The Property is located in the Industrial District, where manufacturing is a permitted use. The proposed construction of the building additions and related improvements are both necessary to the Applicant's business and a reasonable use of the Property.



LAW OFFICE OF  
**THOMAS F. QUINN**  
PROF. CORP.

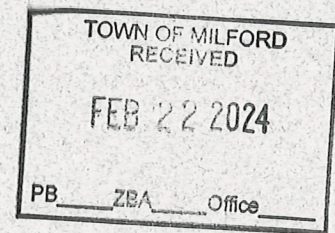
62 Elm Street  
Milford, NH 03055

E-MAIL: [tquinn@tfqttitle.com](mailto:tquinn@tfqttitle.com)

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

February 22, 2024

Terrence Dolan, 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 Terrey:

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

Please review this submission 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 this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom", with a horizontal line above it.

Thomas F. Quinn

TFQ/djl  
Enclosures  
#24-0011



# TOWN OF MILFORD

## Zoning Board of Adjustment



**DATE:** June 8, 2020

**TO:** Marmon Utility, LLC.  
53 Old Wilton Road  
Milford, NH 03055

**RE:** ZBA Case #2020-10  
53 Old Wilton Road  
Tax Map 14, Lots 8 & 9

### NOTICE OF DECISION

You are hereby notified that on June 4, 2020, the Zoning Board of Adjustment **GRANTED** the request for 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.

Please note that this does not constitute Planning Board, Building Department or any other state and/or local approvals that may be required for your project.

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**Lincoln Daley**

*Community Development Director & Zoning Administrator*

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**Date**

In accordance with NH RSA 677:2, any person directly affected by this decision may make an application for a rehearing in this matter. ***Any application for rehearing must be received by the Board of Adjustment prior to close of business (4:30 p.m.) on July 6, 2020.***

*In accordance with Article X, Section 10.060, this Variance is subject to expiration, if within two (2) years after the granting of a variance or special exception by the Board of Adjustment, none of the work required by a building permit covered by the variance or special exception has been executed, then such variance or special exception shall become null and void except in any case where legal proceedings relative to the variance or special exception shall have caused an undue delay in the execution of the required building permit. Only one, six-month extension may be granted for any variance or special exception. The applicant may apply for the extension at a regularly scheduled Zoning Board meeting.*

CC: Building Department  
Assessor

Planning Department  
File