

**Town of Milford**  
**Zoning Board of Adjustment**  
**July 2, 2020**  
Case 2020-01 (Continued)  
KGL Landscape  
Variance

- 9 **Present:** Jason Plourde, Chair  
10 Rob Costantino, Vice Chair  
11 Tracy Steel  
12 Michael Thornton  
13 Karin Lagro (Alternate)  
14 Lincoln Daley, Director of Community Development  
15 Paul Dargie, BOS Representative  
16 Darlene Bouffard, Recording Secretary
- 18 **Excused:** Wade Campbell  
19 Joan Dargie (Alternate)

22 Chairman Plourde welcomed everyone and declared a State of Emergency as a result of the COVID-19  
23 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order  
24 2020-04, the Board of Adjustment is authorized to meet electronically. This meeting is held in accord-  
25 ance with the applicable New Hampshire State statutes, Town of Milford ordinances, and the Zoning  
26 Board of Adjustment Rules of Procedure. He stated that there is no physical location to observe and listen  
27 contemporaneously to this meeting, which was authorized pursuant to the Governor’s Emergency Order.  
28 However, in accordance with the Emergency Order, he confirmed that the Board is:

- 29 a) Providing public access to the meeting by telephone, with additional access possibilities by video  
30 or other electronic means.  
31 b) Providing public notice of the necessary information for accessing the meeting.  
32 c) Providing a mechanism for the public to alert the public body during the meeting if there are  
33 problems with access.  
34 d) Adjourning the meeting if the public is unable to access the meeting.

36 Chairman Plourde stated that all votes that are taken during this meeting must be done by Roll Call vote.  
37 He started the meeting by taking roll call attendance. He asked each member to state their name and state  
38 whether there was anyone in the room with them during this meeting, which is required under the Right-  
39 to-Know law: Rob Costantino at home alone; Tracy Steel at home alone; Karin Lagro at home  
40 alone, Mike Thornton at home alone; Jason Plourde in the Community Development office at  
41 Town Hall in a room adjacent to Lincoln Daley’s office. J. Plourde asked that K. Lagro be seat-  
42 ed as a regular member tonight in the absence of W. Campbell. J. Plourde asked if all members  
43 would be in favor of hearing the applications and then review minutes. M. Thornton moved to  
44 review the minutes at the end of tonight’s meeting. R. Costantino seconded. A poll was taken:  
45 M. Thornton yes; R. Costantino yes; K. Lagro yes; T. Steel yes; J. Plourde yes.

47 **Case #2020-01**

48 KGL Landscape Construction, LLC., 211 Mont Vernon Road, Milford Tax Map 8 Lot 73 is  
49 seeking a VARIANCE from the Milford Zoning Ordinance, Article V, Section 5.02 to allow the  
50 conversion of a 3,672 square foot garage structure into a 3 unit multi-family residence consisting  
51 of 3 condominiums in the Residential ‘A’ district.

**MINUTES OF THE MILFORD ZBA JULY 2, 2020, VARIANCE CASE #2020-01  
KGL LANDSCAPE (CONTINUED)**

1 J. Plourde indicated that Lincoln Daley has received an e-mail dated July 2, 2020 from the appli-  
2 cant to withdraw the application without prejudice. R. Costantino moved to accept the with-  
3 drawal without prejudice. T. Steel seconded. A roll call was taken: M. Thornton yes; R. Cos-  
4 tantino yes; T. Steel yes; K. Lagro yes; J. Plourde yes. L. Daley indicated the ZBA voted on  
5 this, which will allow the applicant to re-apply at a later date; the applicant has expressed they  
6 are worried about COVID-19 and anticipate coming before the ZBA at a later date with a new  
7 application.

8  
9 The decision was to withdraw Case 2020-01 without prejudice.

10  
11 Motion to Approve: \_\_\_\_\_

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13 Seconded: \_\_\_\_\_

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15 Signed: \_\_\_\_\_

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17 Date: \_\_\_\_\_

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19 **THE MINUTES OF 2020-01 ON 7/2/2020 WERE APPROVED** \_\_\_\_\_

**Town of Milford**  
**Zoning Board of Adjustment**  
**July 2, 2020**

Case 2020-08

Milford Spartan Solar LLC / Not Too Dusty LLC (Continued from 6/18/2020)  
Variance

**Present:** Jason Plourde, Chairman  
Rob Costantino, Vice Chair  
Michael Thornton  
Tracy Steel  
Karin Lagro (Alternate)  
Paul Dargie, BOS Representative  
Lincoln Daley, Director of Community Development  
Darlene Bouffard, Recording Secretary

**Absent:** Wade Campbell  
Joan Dargie (Alternate) (arrived late)

Chairman Plourde welcomed everyone and declared a State of Emergency as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, the Board of Adjustment is authorized to meet electronically. This meeting is held in accordance with the applicable New Hampshire State statutes, Town of Milford ordinances, and the Zoning Board of Adjustment Rules of Procedure. He stated that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, he confirmed that the Board is:

- a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means.
- b) Providing public notice of the necessary information for accessing the meeting.
- c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access.
- d) Adjourning the meeting if the public is unable to access the meeting.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. Rob Costantino at home alone; Tracy Steel at home alone, Mike Thornton at home alone, Karin Lagro at home alone, Jason Plourde in the Community Development office at Town Hall in a room adjacent to Lincoln Daley's office. J. Plourde asked that K. Lagro be seated as a regular member tonight in the absence of W. Campbell. J. Plourde asked if all members would be in favor of hearing the applications and then review minutes. M. Thornton moved to review the minutes at the end of tonight's meeting. R. Costantino seconded. A poll was taken: M. Thornton yes; R. Costantino yes; K. Lagro yes; T. Steel yes; J. Plourde yes.

Case 2020-08

Milford Spartan Solar, LLC / Not Too Dusty, LLC, Milford Tax Map 39, Lot 74, is seeking a VARIANCE from the Milford Zoning Ordinance, Article VII, section 7.11.4 to permit a portion of the 16 Megawatt Utility scale solar collection system be constructed on a parcel located in the Residential "R" Zoning District. (Continued from 6/18/20).

J. Plourde indicated that this case was heard at the June 18, 2020 ZBA meeting and was continued to tonight in order for the Board to seek guidance related to hardship. Tonight the ZBA is going to continue the deliberations, noting that the criteria of 1,2,3 and 4 were discussed 6/18/20 and the ZBA left off at the hardship criteria and the uniqueness of the property. J. Plourde indicated there are four ZBA members that have been attending all meetings on this case asking if the applicant would like to proceed with only four members? Mike Kaplan responded they would be comfortable moving forward tonight. J. Plourde will have T. Steel, as a full voting member, sit on this case and vote and asked the applicant to re-visit any discussion held and then we will go into deliberations.

**MINUTES OF THE ZBA MEETING JUNE 18, 2020 VARIANCE CASE #2020-08  
MILFORD SPARTAN SOLAR LLC/NOT TO DUSTY LLC – VIA ZOOM (CONT'D)**

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Tom Hildreth, speaking for the applicant, said they worked on a statement as follows: “at the first meeting the ZBA voted on the application, meeting the first four tests and the hardship discussion was the hardest test; we believe the application meets the hardship test because of the uniqueness of the parcel, there is no fair and substantial assets and the proposed use is a reasonable one.” 1-One proposed use in the zoning addresses solar; that was not mentioned previously. RSA 674:17 Letter J encourages the use of solar. Milford has done that with its solar ordinance, the legislature called it out. 2-The relevant statute, unnecessary hardship, the language or statute – this would result in unnecessary hardship, and it is not necessary to read the ordinance literally. Special conditions of the property exist in the area, if we think about the purpose of the ordinance for this size of the solar on this lot; why is that size okay on some lots but not others? It could be that it was disproportionate to the size of the lot, this is a very large lot, it is an island surrounded by non-residential uses. There are no residential uses near this lot. The State statute encourages this use, the path has been cleared for this project; we have a list of characteristics for this property. This is a huge lot that has limits and no utilities, we think the uniqueness of the lot separates it from other lots and we think it needs this to be considered. J. Plourde thanked the applicant for that information. J. Plourde opened the hearing to the public, asking if there is someone in the public that would like to speak, to dial \*9 which will allow us to unmute that person to speak. L. Daley said he does not see anyone waiting to speak. J. Plourde asked again for anyone calling in if they would like to speak. There were no members of the public that dialed in to ask questions or make comments.

Deliberations: (continued)

J. Plourde indicated that the ZBA will now go back into deliberations; the Board has talked a lot about the detail and we provided a thorough discussion on the criteria requirements, now the Board must review the hardship criteria. J. Plourde asked members of the ZBA if there was anything specific to bring up for discussion? P. Dargie said that Joan is going down to Town Hall because she could not log into the meeting from home. P. Dargie noted that he is in the meeting and is alone in the room.

R. Costantino said that Attorney Hildreth explained what he was looking for, he wants to have something that stands up to an appeal and could go through the Supreme Court. R. Costantino said there needs to be a specific condition for the hardship. The hardship can be things other than the land, this is a Residence R zone, the ordinance allows a 5 MW solar system and they want to use a 9 MW solar system. That is the ordinance; the hardship is the zoning, the zoning is Res R but the parcel is next to ML 38-24 which is zoned ICI2, Integrated Commercial, Industrial II, there is no reason that this lot is not also that same zone. The zone could have been drawn in 2007 to extend to that other lot because there are no residences on that lot or any road abutting that lot, it is not a true full Res R district. The zone it is in is the hardship. The purpose of the ordinance says in Res R, you can only have a 5 MW solar system, not more, however, as Attorney Hildreth pointed out, in the ICI2 district you can only have that 30 MW if the lot is over 100 acres, which this lot is. RSA 672:17I talks about the purpose of the solar zoning, it is to encourage the use of solar and allow building heights and setbacks. Safety is not mentioned, since they do not mention safety, it is not their concern, so the only concern is the size of the lot and this size lot has the appropriate size to allow it. M. Thornton agreed with R. Costantino’s interpretation but added that as a residential lot, this is an atypical lot, therefore that, by definition, is due to the zoning and the land locked location of the lot and it is bound by the physical restrictions which make the typical use highly unlikely so a hardship does exist.

K. Lagro stated there are multiple reasons why this lot has hardship, lack of utilities, being zoned residential, location next to the bypass. T. Steel said this lot seems strange to be in a residential zone, pointing out that R. Costantino provided good input on that being a hardship. J. Plourde thinks this is a reasonable use, the property has been marketed for residential use but it has not been used in that way. The hardship is that it is not being used as residential. J. Dargie joined the meeting and is alone in her office. J. Dargie had nothing to add to what K. Lagro, T. Steel and R. Costantino have mentioned, she is in agreement. R. Costantino said we have not seen any evidence that this has been marketed as residential. J. Plourde added that it has not been developed as a residential use. M. Thornton asked if this has been listed with a real estate agent as a residential lot to build? He can understand how it can change hands as an investment but not for a residential lot. J. Plourde said the property changed hands in 2003 and 2013. R. Costantino asked if there is any residential structure on the lot? J. Plourde said it is not a residential use. R. Costantino has not seen any evidence of it being sold or marketed as residential. There were no other comments or questions from the Board, J. Plourde indicated the voting should begin. A poll was taken: R. Costantino yes; M. Thornton yes; K. Lagro yes, T. Steel yes, J. Plourde yes. The motion was in favor of moving to the voting.

**MINUTES OF THE ZBA MEETING JUNE 18, 2020 VARIANCE CASE #2020-08  
MILFORD SPARTAN SOLAR LLC/NOT TO DUSTY LLC - VIA ZOOM (CONT'D)**

113 Voting:

114

115 1) Would granting the variance not be contrary to the public interest? R. Costantino yes; T.  
116 Steel yes; M. Thornton yes; K. Lagro yes; J. Plourde yes

117 2) Could the variance be granted without violating the spirit of the ordinance? M. Thornton yes;  
118 T. Steel yes; R. Costantino yes; K. Lagro yes; J. Plourde yes

119 3) Would granting the variance do substantial justice? T. Steel yes; K. Lagro yes, M. Thornton  
120 yes, R. Costantino, yes, J. Plourde yes

121 4) Could the variance be granted without diminishing the value of abutting property? M.  
122 Thornton yes; R. Costantino yes, T. Steel yes, K. Lagro yes, J. Plourde yes

123 5) Would denial of the variance result in unnecessary hardship? K. Lagro yes, M. Thornton  
124 yes, R. Costantino yes, T. Steel yes, J. Plourde yes

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126 M. Thornton move to approve ZBA application 2020-08. R. Costantino seconded. A poll was taken: M. Thornton  
127 yes; R. Costantino yes; T. Steel yes; K. Lagro yes; J. Plourde yes. Motion passed unanimously. M. Thornton noted  
128 that this application decision was held up at the last meeting by him and R. Costantino on the basis of gathering addi-  
129 tional information on hardship and now after meeting with Town Counsel, they feel satisfied that all criteria have  
130 been met. J. Dargie clarified that the issue of hardship was discussed with Town Counsel but not this specific situa-  
131 tion, hardship itself was being explained to the ZBA, the case was not discussed at all.

132

133 J. Plourde announced the application 2020-08 has been granted; noting there is a 30-day appeal period. J. Plourde  
134 thanked the applicant's team and summarized that the ZBA wants to go through these applications as thoroughly as it  
135 can. D. Label thanked the Board for their time tonight, at the last meeting and over the last couple of years.

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137 Motion to Approve: \_\_\_\_\_

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139 Seconded: \_\_\_\_\_

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141 Signed: \_\_\_\_\_

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143 Date: \_\_\_\_\_

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145 The minutes of 2020-08 dated 7/2/2020 were approved \_\_\_\_\_

**Town of Milford**  
**Zoning Board of Adjustment**  
**July 2, 2020**  
Case 2020-13  
Glen & Patricia Wright  
Variance

- Present:** Jason Plourde, Chairman  
Rob Costantino, Vice Chair  
Michael Thornton  
Tracy Steel  
Karin Lagro (Alternate)  
Paul Dargie, BOS Representative  
Lincoln Daley, Director of Community Development  
Darlene Bouffard, Recording Secretary
- Absent:** Wade Campbell  
Joan Dargie (Alternate) (arrived late)

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Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. Rob Costantino at home alone; Tracy Steel at home alone, Mike Thornton at home alone, Karin Lagro at home alone, Jason Plourde in the Community Development office at Town Hall in a room adjacent to Lincoln Daley’s office. J. Plourde asked that K. Lagro be seated as a regular member tonight in the absence of W. Campbell. J. Plourde asked if all members would be in favor of hearing the applications and then review minutes. M. Thornton moved to review the minutes at the end of tonight’s meeting. R. Costantino seconded. A poll was taken: M. Thornton yes; R. Costantino yes; K. Lagro yes; T. Steel yes; J. Plourde yes.

Case 2020-13

Glen and Patricia Wright for the property located at Milford Tax Map 49, Lot 2 is seeking a VARIANCE from the Milford Zoning Ordinance, Article V, Section 5.04.4.A to permit the construction of a single-family residence on a lot of record with less than the minimum required frontage (200’) on a principle route of access on a Class V road or better in the Residential “R” district.

J. Plourde asked for the applicant or representative to proceed with the presentation. P. Wright indicated she and her husband want to build a retirement home on the 15 acre lot and would like to move back to Milford. We do know that it requires a zoning variance and we are here hoping to get the variance approved. J. Plourde understands that this was in front of the ZBA previously and asked for that history. Karl Zahn, 206 Center Road Lyndeborough (Realtor), indicated that he is in his home alone and is representing the seller. When the previous owner bought this property they received a variance; the lot is served by a 50’ easement for access; the variance was approved at that

**MINUTES OF THE ZBA MEETING JULY 02, 2020 VARIANCE CASE #2020-13  
GLEN & PATRICIA WRIGHT – VIA ZOOM**

56 time and this is pretty much a re-application for something that was previously granted and has expired. J. Plourde  
57 thanked Mr. Zahn for that history, noting that under RSA 674:41, prior to the Wright's being able to obtain a Build-  
58 ing Permit, a Planning Board review is needed and then Board of Selectman approval is also required prior to a  
59 Building Permit being obtained. L. Daley said that process is correct. J. Plourde asked if there were any questions  
60 from the Board.

61  
62 T. Steel remembers this situation from the last time. K. Lagro only had a question about the easement which was  
63 answered. J. Plourde also added that a driveway permit was applied for last time and test pits were conducted for  
64 state approval of septic. M. Thornton asked if there have been any changes to the site? K. Zahn said there have been  
65 no changes and no building has been done; the contract for this purchase was contingent on a suitable test pit. J.  
66 Plourde said this is a 15 acre undeveloped parcel with no frontage on a Class V or better road, access will be provid-  
67 ed through a dedicated easement. The easement does not qualify as frontage. The lot will be served by septic, the  
68 property use would conform to all requirements except frontage. In October 2012, a variance was granted (Case  
69 2012-21) and granted again in February 2014 (Case 2014-02). The approvals expired because no work was done  
70 within one year. That rule has since changed to two years from approval. If this Variance is approved, they have  
71 two years to conduct the work. M. Thornton asked if the easement they have connects to the roadway, has clearance  
72 and would not cause a hazard in any way? J. Plourde responded the easement goes through Map/Lot 49/4-9 through  
73 a cul-de-sac. The easement would be designed to have separation between driveways.

74  
75 L. Daley indicated this Variance is to create one single lot and not for subdivision, that driveway would need to be  
76 fully designed for one lot, this is for a single lot property only. J. Plourde stated they would not be able to subdivide  
77 this property. J. Dargie commented that is correct. M. Thornton asked should that be a contingency we need to put  
78 on the approval? L. Daley said the decision would state that the variance is for a single family lot only. J. Dargie  
79 said if they want to subdivide it, they would have to come to the ZBA. J. Plourde said if we vote on this we are ei-  
80 ther approving or denying a single family lot with no contingencies. L. Daley and J. Dargie agreed. L. Daley stated  
81 if the owner finds another access to the lot, they can create another access and then subdivide it. J. Plourde indicated  
82 if the applicant were to find other means of access would they have to come back to the town? L. Daley responded  
83 they would need to meet with the town. G. Wright stated they have no plans to have any further development on this  
84 lot and plan to build a nicely done farm house out there. J. Plourde opened the meeting to the public for questions or  
85 comments, noting if anyone wishes to comment or ask a question, to press \*9 so that we can unmute you. L. Daley  
86 did not see anyone waiting to speak. J. Plourde asked again for any public comments or questions. There were  
87 none, therefore J. Plourde indicated the Board would enter deliberations.

88  
89 Deliberations:

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91 1-R. Costantino said this would not be contrary to public interest, this is just for access to a private lot for one resi-  
92 dence; T. Steel agreed; M. Thornton said it would satisfy the density; K. Lagro agreed this is not contrary to the pub-  
93 lic interest and has minimal impact; J. Dargie agreed; J. Plourde said the easement is already established and con-  
94 forms to the criteria, he has no issues.

95 2-T. Steel this could be granted; M. Thornton does not see any changes that are negative from the last application; K.  
96 Lagro said it can be granted within the spirit of the ordinance; J. Dargie no comments; J. Plourde noted if a property  
97 has a unique character such as this, the only other way to get to it would be by helicopter; R. Costantino this would  
98 preserve the rural character of the area.

99 3-M. Thornton yes it has no negative changes and substantial justice is met; K. Lagro yes, it meets the criteria; R.  
100 Costantino yes; T. Steel yes it will be a gain to the public; J. Dargie yes; J. Plourde agreed.

101 4-K. Lagro yes this is a minimal impact to surrounding properties; J. Dargie this will cause no impact; R. Costantino  
102 yes; T. Steel yes; M. Thornton said this will be a positive impact with an improved road with a nice house; J. Plourde  
103 agreed, it is zoned for residential and meets the criteria.

104 5-R. Costantino yes, there is no frontage and this is a hardship and the access easement is sufficient and it is a rea-  
105 sonable use; J. Dargie yes; K. Lagro yes; T. Steel yes; M. Thornton yes it would be a hardship to deny this request; J.  
106 Plourde yes.

107  
108 There were no other comments or questions from the Board, J. Plourde indicated the voting should begin. A poll  
109 was taken: R. Costantino yes; M. Thornton yes; K. Lagro yes, T. Steel yes, J. Plourde yes. The motion was in favor  
110 of moving into voting.

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**MINUTES OF THE ZBA MEETING JULY 02, 2020 VARIANCE CASE #2020-13  
GLEN & PATRICIA WRIGHT - VIA ZOOM**

113 Voting:

114

115 1) Would granting the variance not be contrary to the public interest? R. Costantino yes; T.  
116 Steel yes; M. Thornton yes; K. Lagro yes; J. Plourde yes

117 2) Could the variance be granted without violating the spirit of the ordinance? M. Thornton yes;  
118 T. Steel yes; R. Costantino yes; K. Lagro yes; J. Plourde yes

119 3) Would granting the variance do substantial justice? T. Steel yes; K. Lagro yes, M. Thornton  
120 yes, R. Costantino, yes, J. Plourde yes

121 4) Could the variance be granted without diminishing the value of abutting property? M.  
122 Thornton yes; R. Costantino yes, T. Steel yes, K. Lagro yes, J. Plourde yes

123 5) Would denial of the variance result in unnecessary hardship? K. Lagro yes, M. Thornton  
124 yes, R. Costantino yes, T. Steel yes, J. Plourde yes

125

126 R. Costantino moved to approve ZBA application 2020-13. T. Steel seconded. A poll was taken: M. Thornton yes;  
127 R. Costantino yes; T. Steel yes; K. Lagro yes; J. Plourde yes. Motion passed unanimously.

128

129 J. Plourde announced the application 2020-13 has been granted; noting there is a 30-day appeal period. J. Plourde  
130 thanked the applicant's team and summarized that the ZBA wants to go through these applications as thoroughly as it  
131 can. The applicants thanked the Board for their time tonight.

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133 Motion to Approve: \_\_\_\_\_

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135 Seconded: \_\_\_\_\_

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137 Signed: \_\_\_\_\_

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139 Date: \_\_\_\_\_

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141 The minutes of 2020-13 dated 7/2/2020 were approved \_\_\_\_\_