

**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 and asked if the applicant would like to proceed with only four members or would the applicant prefer to have five members? The applicant responded they would be comfortable moving forward tonight with five ZBA members so long as all members are knowledgeable about the case, testimony and discussions that have already taken place.

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T. Steel stated that she is up to speed with this case. J. Plourde therefore had 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.

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 developed as residential. J. Plourde corrected himself and said that the lot 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.

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Costantino yes; M. Thornton yes; K. Lagro yes, T. Steel yes, J. Plourde yes. The motion was in favor of moving to the voting.

Voting:

- 1) Would granting the variance not be contrary to the public interest? R. Costantino yes; T. Steel yes; M. Thornton yes; K. Lagro yes; J. Plourde yes
- 2) Could the variance be granted without violating the spirit of the ordinance? M. Thornton yes; T. Steel yes; R. Costantino yes; K. Lagro yes; J. Plourde yes
- 3) Would granting the variance do substantial justice? T. Steel yes; K. Lagro yes, M. Thornton yes, R. Costantino, yes, J. Plourde yes
- 4) Could the variance be granted without diminishing the value of abutting property? M. Thornton yes; R. Costantino yes, T. Steel yes, K. Lagro yes, J. Plourde yes
- 5) Would denial of the variance result in unnecessary hardship? K. Lagro yes, M. Thornton yes, R. Costantino yes, T. Steel yes, J. Plourde yes

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

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

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

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

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

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

The minutes of 2020-08 dated 7/2/2020 were approved 8/6/20