

**Town of Milford
Zoning Board of Adjustment
May 21, 2020**

Case 2020-08

Milford Spartan Solar LLC / Not Too Dusty LLC
Variance

Present: Jason Plourde, Chairman

Rob Costantino, Vice Chair

Wade Campbell

Michael Thornton

Karin Lagro (Alternate)

Joan Dargie (Alternate)

Paul Dargie, BOS Representative

Lincoln Daley, Director of Community Development

Darlene Bouffard, Recording Secretary

Absent: Tracy Steel

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. Jason Plourde at Town Hall alone in the room; Rob Costantino at home alone; Wade Campbell at home alone, Karin Lagro at home alone, Mike Thornton at home alone, Joan Dargie at Town Hall in her office alone.

Let us begin by seating our alternates who will hear tonight's cases. Jason Plourde asked that Karin Lagro-Alternate, be seated on the ZBA in the absence of Tracy Steel.

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.

Tom Hildreth, consultant, Dom LeBel, Ben Chamberlain and Andrew ____ were in attendance on Zoom. Tonight we will have an abbreviated version of the presentation done on May 19 at the joint ZBA and Planning Board meeting. D. LeBel explained that this is a 16 Megawatt solar farm on a mix of private and town land, this will be constructed on 83 acres (36 acres of town owned land and 46 acres of privately owned land). This solar farm will serve 8800 people; these farms are being developed across New England, and we are looking for a service date in

**MINUTES OF THE ZBA MEETING MAY 21, 2020 VARIANCE CASE #2020-08
MILFORD SPARTAN SOLAR / NOT TOO DUSTY – VIA ZOOM**

2022. New infrastructure is not required for this project, rent will be paid to the town for all of the land but not all of the land will be used for this project.

D. LeBel described the plan and the different sections of acreage for town and private land. There are some wetland delineations being done that should be completed by the end of May. J. Plourde asked if any Board members have any questions? R. Costantino said at the Tuesday May 19 meeting, he mentioned there is a road that connects (Perry Road) to a gravel pit, will that remain open? D. LeBel understands the town wants to maintain the road access to the gravel pit, what it looks like will be determined when civil engineering work is completed, it is the intention that the access road will be continued. R. Costantino also pointed out the trails that are used and understood the solar panels will not be on the trails at all. R. Costantino asked how many panels are estimated for the project. Ben Chamberlain expects approximately 50,000 modules to be used. R. Costantino asked how far off the ground are the panels? B. Chamberlain responded the panels are about 3 feet off the ground. R. Costantino asked how many hours of sunshine are estimated for this project? D. LeBel responded we have done solar models for that data. B. Chamberlain did not have the exact number but we have run robust simulations for the area that shows us how much power can be generated. We are hoping to use bi-facial panels that will pick up reflective sun light off the ground.

M. Thornton asked how does the snow get removed from the panels? D. LeBel responded the panels are tilted upward so the snow will slide off naturally but there are times that it will require snow removal at which time people will go out to do that. R. Costantino said asked about the several areas of panels that are connected to transmitters. D. LeBel said no transmission panels will be seen from the roadside. There will be some form of buried lines connecting the panels. R. Costantino said 11 Megawatt panels are allowed, but you want to go with 16 Megawatt, why do you want that extra 5 Megawatts? D. LeBel said 16 Megawatts has been the plan for some time now due to the capacity and being sensitive to the area, we are seeking the variance because the private residence portion will put it above the 11 Megawatts, but this is a good site for a project of this scale. The closest home is 700' from the panels. There are no primary residences that are direct abutters.

J. Plourde asked if there were questions from the Board. Wade, no questions; Karin no questions; Paul Dargie no questions; Mike Thornton no questions. Rob no questions. Tom Hildreth said there are unique features including the private lot, the Not Too Dusty parcel is on the edge of the zoning border. If the private parcel was not used, the use would be permitted by right. The spirit of the ordinance is being upheld, the town has been supportive, there will be substantial benefits to the public, this will not diminish the neighboring properties. The total acreage is 220 including the private parcel, but the percentage to be used is 37.6%, the ordinance allows up to 70%.

J. Plourde said the residential lot (total) is 101 acres and if it was subdivided into two lots, you could put in 50 acres of solar on one of the lots. Tom Hildreth agreed that would be a large commercial solar farm requiring a Conditional Use Permit in the Residential zone. J. Plourde asked if the panels can be seen from Route 101? T. Hildreth said it is possible. T. Hildreth stated this ZBA hearing is the first stop in the permitting process, if we get the variance tonight, we can then go to the Planning Board for a Conditional Use Permit (CUP). The standards for the CUP requires an analysis including a security fence. Ben Chamberlain said there is 150' of forested land between the first panel and the highway, we will look at any possible visibility.

L. Daley said this is a conceptual layout on the private property, this concept is subject to change, asking could there be changes required as it applies to the visibility impact to Route 101? D. LeBel said yes there is a slight possibility of panels being moved but they will still be 100-150' from Route 101 with very little visibility. J. Plourde said if there were changes to this plan, could there be other town land that could be utilized? D. LeBel said it will be the amount of acreage as presented tonight. There were no further questions from the Board.

J. Plourde invited abutters and members of the public to ask questions by calling in and pressing *9 if you wish to speak. There were no people waiting to speak. L. Daley confirmed there were no people waiting to speak. J. Plourde asked if there were any further questions from the Board then took a poll of members. W. Campbell no; R. Costantino no, M. Thornton no, K. Lagro no, J. Dargie no. J. Plourde asked for a motion. R. Costantino moved to close the public meeting. M. Thornton seconded. R. Costantino yes; M. Thornton yes; K. Lagro yes; J. Dargie yes; W. Campbell yes.

The ZBA deliberated the application.

**MINUTES OF THE ZBA MEETING MAY 21, 2020 VARIANCE CASE #2020-08
MILFORD SPARTAN SOLAR / NOT TOO DUSTY – VIA ZOOM**

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

R. Costantino said this is still in violation of the ordinance, no matter what is done to the land it cannot go above five megawatts. J. Dargie interprets the ordinance differently than Rob. M. Thornton agrees with Rob. He is not sure of how the hardship should be interpreted. J. Dargie said that is one of the hardships, it were reallocated it would be allowed. It is the way the ordinance is enforced. M. Thornton said he finds a quandry in the way the courts handle these types of situations. M. Thornton feels this goes against what the State teaches ZBAs. M. Thornton does not believe this is a characteristic of the land, what is the hardship? How does that apply to this instance?

K. Lagro looked at the State interpretation of the questions and it seems that it is a hardship of the land in which case the variance can be applied. M. Thornton disagreed and said if it was a use that complied with the regulations he does not think we can make an argument and is trying to apply the question to apartment buildings. J. Plourde reminded everyone that solar systems are allowed and this variance is because they are asking for more wattage than what is in the ordinance. If this property was subdivided this would not even be in front of the ZBA because it would meet the ordinance but because it is not subdivided it does not meet the hardship.

R. Costantino asked if this should be tabled and the ZBA could talk with the Planning Board to get it re-zoned or maybe Tom Lorden would want to subdivide his land to solve this or we could vote and see where it lands? M. Thornton agrees with Rob, he would like to table this request and get interpretation from the Town Attorney and then come back to the ZBA. J. Plourde checked in the 2019 zoning handbook for unnecessary hardship. M. Thornton feels that Attorney Drescher should be consulted before going to a vote. All members agreed. The application was continued to the June 4 or 18 meeting. J. Plourde asked L. Daley when he feels an answer can be gotten from the town attorney? L. Daley said to continue to June 18. M. Thornton moved to continue this discussion to June 18 after seeking advice from the Town Attorney to find what is the definition of hardship pursuant to the application 2020-08. R. Costantino seconded. The Board was polled: R. Costantino yes; J. Plourde yes; M. Thornton yes; K. Lagro yes; J. Dargie yes.

J. Plourde thanked the applicant's team and summarized that the ZBA wants to go through these applications as thoroughly as it can. Dom LeBel thanked the ZBA for their time.

J. Pourde moved to the next application.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

THE MINUTES OF 5/21/2020 CASE #2020-08 WERE APPROVED 7/2/2020