



TOWN OF WAKEFIELD, NEW HAMPSHIRE

LAND USE DEPARTMENT

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Notice of Decision ZBA Appeals of Administrative Decisions

Applicant: Whittier Communications, Inc. ("Whittier")

Date: November 14, 2023

Property Locations: Tax Maps 9-113, 4870 Province Lake Road & Tax Map 92-34 Province Lake Road

Subject: Whittier Communications, Inc. submitted a Motion for Rehearing, of the Town of Wakefield Zoning Board of Adjustment's decision dated September 14, 2023 in which it denied Whittier's appeals of the Planning Board's decisions of October 6, 2022 approving Vertex Tower Assets, LLC's ("Vertex") site plan application seeking to construct and operate cell towers on the subject property.

Findings:

1. Whittier Communications, Inc. has submitted a motion for rehearing of the Wakefield Zoning Board of Adjustment's ("ZBA") decisions, dated September 14, 2023, denying Whittier's appeals of the Planning Board's October 6, 2022 decisions to grant major site plan applications for Vertex Tower Assets, LLC.
2. Whittier, in its appeal to the Zoning Board, alleged that the applicant failed to meet the standards outlined by the Town Ordinance Article 24, and as such, the Planning Board's decision was unlawful or unreasonable.
3. Whittier timely filed motions for rehearing of the ZBA's September 14, 2023 decision that reasserted the original appeals' allegations.
4. The ZBA held a meeting on November 9, 2023 to consider Whittier's motions for rehearing.
5. Mr. Stewart articulated that the question before the ZBA is whether to grant the motions for rehearing, and if the motions are granted, schedule a hearing.

Decision:

Before the Zoning Board of Adjustment ("ZBA") are two Motions for Rehearing of the Town of Wakefield Zoning Board of Adjustment's decision of September 14, 2023 in which it denied Whittier's appeals of the Planning Board's decisions of October 6, 2022 approving Vertex Tower Assets, LLC's ("Vertex") site plan applications to construct personal wireless cell towers at both properties, subject to certain conditions. See the ZBA decision dated September 19, 2023 and Planning Board October 6, 2022 decision.

The first appeal involves property located at 4870 Province Lake Road ("Province Lake Tower"). The Second appeal involves property located at Tax Map 92-34 on Province Lake Road identified as Savannahwood ("Savannahwood Tower"). Whittier owns a cell tower which is 2.25 miles and 1.9 miles away from the Vertex towers. On April 22, 2022, the Planning Board reviewed the Vertex applications. At that time the Planning Board voted to deny the applications, finding that the Whittier Tower was "in existence" for the purpose of the ordinance. See April 21, 2022, Planning Board decision. Vertex appealed that decision to the ZBA, and on June 23, 2022, the ZBA found that Whittier's tower was not in existence and remanded the matter back to the Planning Board. See ZBA Decision June 23, 2022. Sometime after the June Decision, and Before October 6, 2022, while the Vertex application was still pending, Whittier completed construction of its Tower. On October 6, 2022, the Planning Board held another hearing on the Vertex applications and voted to approve both applications.

Whittier timely appealed both decisions of the Planning Board to the ZBA on November 4, 2022. Due to procedural issues, the ZBA did not hold a substantive hearing on the merits of Whittier's appeal until September 14, 2023. The ZBA voted to deny the appeals. See ZBA Decision dated September 19, 2023.

Whitter timely filed a Motion for Rehearing of the ZBA's September 2023 decision to deny the Appeals of Administrative Decisions.

The ZBA met on November 9, 2023, to consider whether to Rehear the Appeals of Administration Decisions Applications. As there were only 4 ZBA members present, Mr. Stewart confirmed with the applicant, Mr. Kenney that he consented to proceed without a full 5-member board present. Additionally, Mr. Stewart requested Mr. Kenney consented to consider the two applications jointly as the arguments were identical.

During the November 9, 2023, meeting Mr. Stewart outlined Whitter's primary argument is that the Planning Board acted unreasonably and unlawfully when it granted Vertex's site plan approvals in October 2022.

Whittier argues that Vertex did not provide sufficient evidence to prove a demonstrated need for additional cell tower locations within four miles of an existing tower as is required by Article 24, Section E.5 of the Wakefield Zoning Ordinance. To this end, Whittier asserts that the Vertex Radio frequency data was inaccurate, that the Planning Board's consultant testified that the Vertex towers would only create a slight increase in coverage area, and it is unlikely for wireless carriers to locate on three separate cell towers within a four-mile radius. Whitter argues that Vertex failed to satisfy its burden of proof pursuant to Article 24, Section F of Wakefield's Zoning Ordinance requiring evidence of no other existing structures available and suitable to locate a tower. Whittier argues the Planning Board failed to consider whether Vertex's applications would be compatible with the rural setting and character of Wakefield (Zoning Ordinance, Article 24, Section A.4).

During the November 9, 2023 ZBA meeting, the board members discussed that a rehearing would allow for clarification on the coverage areas to be provided by the Whittier and Vertex towers. Mrs. DesRoches expressed that the zoning board did not receive adequate information as part of the hearing decided on October 6, 2023. Mr. Stewart expressed frustration with the lack of testimony by the Planning Board in defense of their decision.

The ZBA voted 3-0-1 to consider the Motion for Rehearing Applications.

The ZBA voted 3-0-1 to grant the Motion to Rehear the Savannahwood case.

The ZBA voted 3-0-1 to grant the Motion to Rehear the Province Line case.

The ZBA set a date to Rehear the cases; December 14, 2023 at 7:00 PM. The ZBA moved that the chair will draft a letter to the Planning Board requesting he, or his designee, attend the December 14 rehearing.



Judi DesRoches, Acting Chair
Zoning Board of Adjustment