



TOWN OF WAKEFIELD, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
HELD IN PERSON AND ON ZOOM
January 19, 2022
Approved

George Frothingham, Chairman	✓	Doug Stewart	Victor Vinagro, Land Use Clerk & Code Enforcement Officer	
Don Stewart Vice Chairman	✓	Robert Baxter	Rick Sager, Town Counsel	
John Crowell	✓	Jen Czysz, SRPC	✓ Site Walk	
Judi DesRoches	✓		Public Hearing	
Annie Robbins	✓			

Others present for the ZBA meeting

ZBA Alternate Doug Stewart, Planning Board Chairman Tom Dube, John Kenney, Francis Parisi and Max Gehring and from Clearview Community TV.

Pledge of Allegiance and call the meeting to order

Chairman Frothingham called the meeting to order at 7:00 and led those present in the flag salute.

Seat Alternates as necessary

Full Board present

Board Business

Vertex Tower Assets LLC- Petition for a Rehearing/Application for Appeal of Administration Decision, re: Savannahwood LLC Map 92, Lot 034, Province Lake Road. Application for Variance for Personal Wireless Service Facility;

Mr. Frothingham said if the Board votes to have a rehearing that will take place on February 14th. Speaking for himself, Mr. Frothingham said he was dissatisfied with the previous hearing. Numerous times he said during the hearing that the hearing was getting off subject and objected

to that as he does now. He feels there should be a rehearing. Mr. Stewart felt that the Board members who heard and voted on the original matter should be seated replacing Mrs. DesRoches with Mr. Doug Stewart. Mr. Frothingham has done some research and found that when the matter has been settled that rule terminates. At that time, a vote was taken and the application was denied. Ms. Czysz concurred. Mr. Frothingham then ruled we will continue with those who are now seated. Mr. Stewart objected to the way Vertex filed the petition. It was presented not as a motion for reconsideration but it's titled as a petition that was supplemented with an application for a review of an administrative decision. He feels that the submitted document is defective because it did not follow 677- 2&3, a very simple motion for reconsideration. He went on to say the Board may waive any requirement of a matter before us and accept what was filed although in his mind it is defective.

Mr. Frothingham made a motion, seconded by Mrs. Robbins, to accept the application as presented. Mrs. Robbins asked if they would have to fill out a different form and was told by Mr. Stewart there is no form but he doesn't believe this submittal applies to a ZBA matter. **(Vote 4-1).**

Mr. Frothingham said what's in front of us tonight is whether or not we will grant a rehearing. Mr. Stewart asked, if we were to rehear this would we hear anything different? He does not believe there will be additional information. His position is to not grant the rehearing.

Mrs. Robbins asked what the applicants next step would be if the rehearing isn't granted? Going to Superior Court would be an option and it would cost the Town money. She is not willing to take that risk. She feels the rehearing should be granted.

Mrs. DesRoches also feels the rehearing should be granted. She said they did ask for further data on the differences between the 90 feet and the 120 feet tower height. She hopes they will get more data.

Mr. Stewart said members had received correspondence from Town Council. They all read the opinion. Mr. Stewart asked if the Board wished to go into non public to discuss the letter.

Mrs. Robbins made a motion, seconded by Mr. Stewart to enter nonpublic session under RSA 91-A:3 II (1)

This was changed into:

Mrs. Robbins made a motion, seconded by Mr. Stewart to go into a non meeting to discuss councils opinion. (Vote 2-3)

Mrs. DesRoches made a motion, seconded by Mr. Crowell to grant the rehearing. (Vote 5-0)

The Date for the rehearing will be February 14th at 7:00. Mrs. Colbath will get hold of the Chair of the Conservation Commission who has a scheduled meeting that night. She told the Chair that it should be no problem for them to change their meeting time. Mrs. Robbins asked that the ZBA meet with council prior to the rehearing. This would be a non-meeting so it is not subject to

notice. Mr. Frothingham said he has the right to set meetings and he will discuss this with council and let the members know what he advises.

Mr. Frothingham made a motion, seconded by Mrs. Robbins to schedule the rehearing for February 14, 2022 (Vote 5-0)

Approval of Minutes

Mr. Stewart made a motion, seconded by Mrs. Robbins, to approve the corrected minutes of November 19, 2021. (Vote 4-0-1)

Workshop ZBA Rules of Procedure-Review and Update

Mr. Frothingham passed out a proposal which said:

The ZBA Mission Statement

The ZBA provides a valuable service as a safety valve that prevents our important zoning regulations from being considered unconstitutional. Occasionally an otherwise good restriction will, in that specific situation, create a hardship by preventing a reasonable use but not make any significant advancement to the good purpose to that restriction. In that case the ZBA should strive to provide relief to that applicant while preserving the overall good purpose of that regulation.

He recommended that the ZBA accept that provision and suggested it be placed on the first page of the ZBA Rules and Regulations. Mrs. Robbins said it doesn't say anything about applicants having to meet certain standards to receive relief. Mr. Frothingham said this doesn't say that the ZBA WILL grant. It says strive to grant. Mrs. Robbins feels their Rules of Procedure shouldn't be philosophical. Mr. Frothingham said he'd seen in a state publication a similar description. He mentioned the words safety valve.

Mr. Frothingham and Mrs. Robbins had a discussion about the proposed Mission Statement presented. Mrs. Robbins stated that she though we were here tonight to go over the Rules of Procedure. She said she was uncomfortable with the discussion. Mr. Stewart asked that Mr. Doug Stewart, alternate, be allowed to participate in the discussion. Ms. Czysz said that alternates can sit at the table and participate in the discussion. They just can't participate in the deliberation or vote.

Mr. Doug Stewart suggested having a mission statement separate from the Rules of Procedure. He has no problem with what Mrs. Frothingham has written, it's a reminder of what we do. Ms. Czysz said the mission statement focuses on granting a variance and that's not your only role. You don't want to exclude your other responsibilities like special exceptions and hearing administrative appeals. She suggested looking at the ZBA statutes to make sure the mission statement covers it all.

Mrs. DesRoches said the mission statement says we will grant variances and she said we look at the criteria so that isn't always the case. She feels this is prejudicial to a blanket approval. Mr. Stewart suggested everyone respond to the chair with additions and modifications and discuss

the mission statement at the next meeting.

Mr. Stewart made a motion, seconded by Mrs. Robbins, that each member and alternate take Mr. Frothingham's submittal of a proposal for a mission statement and provide back to Mr. Frothingham before the fourteenth of February with their additions, modifications and deletions and such so that we can discuss a revised mission statement on the fourteenth of February. (Vote 5-0)

Mr. Stewart said in the Zoning Ordinance under the topic of Special Exceptions talks about the role of the ZBA regarding Special Exceptions procedure. He would like to imbed that topic into the ZBA rules. He also suggests the Board expand on is rehearing's supplying the applicant with the proper forms and procedures which Mr. Stewart offered to write and bring forward. Ms. Czysz suggested where Mr. Stewart might locate information. If there is not a form for a Special Exception Mr. Stewart will also draft one for that. Ms. Czysz found one. Mr. Frothingham said we can discuss changes tonight but it won't be done in one night.

Mr. Doug Stewart asked if a Letter of Decision should be filed at the Registry of Deeds for a piece of property. Ms. Czysz agreed that it should. She said the only thing is variances can expire. Mrs. Robbins said in the OSI Handbook it says the applicant should use the town forms. She said lately when attorneys get involved they have received pages of explanations but the town form has not been submitted. She feels that even when they get lengthy explanations, they should also be required to fill out the forms. She also feels there should be something to explain what each criteria means, instructions to help them fill out the form. Ms. Czysz said many towns have handbooks with instructions.

Mr. Frothingham asked Ms. Czysz to volunteer to look at our forms for clarity. She agreed to do so. Mrs. Robbins said there are also some housekeeping items like references to the Town Planner. Mrs. Robbins asked if the procedure for postings up to date? Mrs. Colbath said hearings are posted in the post office, website and Town Hall. Ms. Czysz said also in the newspaper. Mrs. Robbins asked if that is still required? She said the minutes section might have to be updated also.

Mr. Frothingham said he takes up the five criteria separately and then a final vote to determine if the ZBA should grant the variance or not. That final vote makes it clear to the applicant what the decision is. Ms. Czysz said each town comes up with their way of granting a variance. This should be documented in your bylaws and be consistent and if there is going to be a change it needs to be debated, posted and changed after careful deliberation. Mr. Frothingham said if it's already been determined that a variance has been denied he will not be taking that final vote anymore. Mr. Frothingham asked Ms. Czysz if she would write up clarifying language concerning the motions.

Mr. Frothingham said if any member or alternate has any thoughts on the regulations and procedures to write them down and bring them to the next meeting for consideration. Ms. Czysz offered to compile a list of the homework assigned to each member and send it out to them. Mr.

Frothingham said yes. Mr. Stewart asked for discussion at the next meeting for a request to the Selectmen for appointments changes in positions on the Board. This will be on the next agenda.

Correspondence

Letter of Resignation -ZBA alternate Natalie Kelley

Set Next Meeting Date

February 14, 2022

Adjournment

**Mr. Stewart made a motion, seconded by Mrs. DesRoches, to adjourn the meeting at 8:35.
(Vote 5-0)**

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary