



TOWN OF WAKEFIELD, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
HELD IN PERSON AND ON ZOOM
November 29, 2021
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	✓	Natalie Kelley		Site Walk	
Judi DesRoches				Public Hearing Continuance	✓
Annie Robbins	✓				

Others present for the ZBA meeting

Planning Board Chairman Tom Dube, John Kenney, Gary Stevens and Max Gehring and from Clearview Community TV. Via Zoom: Francis Parisi, Bob Benson, Cheryl Moschella, Jordan Moschella, Tom Johnson, Stephen Kelleher, Justin Tomsuden. Mark Belanger

Pledge of Allegiance and call the meeting to order

Chairman Frothingham called the meeting to order at 7:00

Seat Alternates as necessary

Mr. Baxter was seated for Mrs. DesRoches and introductions were made.

Public Hearing

Mr. Frothingham said we have two continued variance applications tonight. Mr. Francis Parisi of Vertex Tower Assets LLC is here tonight via Zoom for the applicant for property owned by Savannahwood LLC off Perkins Hill Road and Province Line associates, Adam & Christiane Benzing co-trustees, located on 4870 Province Lake Road. They wish to construct a cell tower at each of these locations. The towers would be 126' to the top which is greater than allowed by our zoning regulations.

This is the only issue before this ZBA Hearing tonight. Mr. Frothingham asked Mr. Parisi if he had done the study to determine the difference in coverage between his proposed towers and the regulations requirement and did he come to the conclusion there was a significant difference in coverage between the two heights? Mr. Parisi apologized for not being there in person. He had

car trouble. He said he has that information and the maps are with him and asked to share the zoom screen to show them. He said there was a significant difference. They have to be significantly above the trees in order to accommodate the carriers and satisfy the technology. They have to build it so that the lowest person on the tower is above the tree canopy, topography and terrain. 120 feet is the minimum height necessary. Mr. Frothingham asked that the documents be turned over to become a permanent part of the record. Mr. Parisi will get the documents to the Town Hall.

Mr. Frothingham said there are five criteria that have to be met in order to grant a variance and he believes they have been covered several times previously. He said Criteria #5 is relevant to the issue in front of the Board. It asked the Board to take a look at the reason this variance is being requested and decide whether enforcing the regulation advances more than hinders the normal development of the property. He believes the reason for this regulation is visibility and not destroying the rural character of Wakefield. The question is, does enforcing this regulation advance the cause of preserving the rural character of New Hampshire? His view is, having looked at the balloon tests and environment, that the visual effect of these towers will be negligible. Mr. Frothingham showed pictures of the balloon by Province Lake from the golf course to show that the balloon can just barely be seen if you really look for it. Mr. Doug Stewart commented that the 4' balloon is nothing like you'd see if the tower were there.

Mr. Don Stewart pointed out that the Board actually has two separate matters and he suggests they are treated separate and distinct from one another. He said that there would be 12' arrays for each carrier on the tower that will be visible. His position is that the view is one element and when it is built it will be intrusive to the view. Mr. Frothingham said he just barely saw the balloon that was on Perkins Hill Road. He takes the position when both of the towers are built, they will be visible in a small negligible way and not to the point of destroying the rural character of the town.

Mr. Baxter said when you get closer to the route 153 tower, you're not going to see the tower except by the lake. He said communication is the point for emergency services such as fire and police. Mr. Crowell said he agreed with the importance of communication for emergencies. Mr. Frothingham said we have to make the choice of the positive effects of the tower which is a substantial improvement and the visual affect. Mrs. Robbins believes the towers would impede on the rural character. She said speaking about the Province Line application's hardship is that they need to fill a gap in service. She feels that they haven't proven that this tower will actually do that. She said Mr. Frothingham had sent a letter from a third party review on the Perkins Hill tower and they used the same formular which the reviewer felt was inadequate. She doesn't feel that their hardship test has been met.

Mr. Don Stewart said he doesn't have the data in front of him that was asked for concerning the coverage of the of the two heights and is reluctant to approve the Province Line tower without seeing that information Mr. Parisi says he has this in his possession. Mr. Don Stewart feels that's a deficiency that won't be overcome tonight. He's also reluctant to vote without seeing the independent engineers information that the Planning Board has requested on the Province Line tower. Mr. Parisi explained the that the tower will be 120' tall and a 6' lightning rod attached. The antennas are attached below the height of the tower. The radio frequencies are done at 115'

where the antennas are mounted. Mr. Frothingham pointed out that they were getting away from the question before them and getting into coverage. Mrs. Robbins said that coverage is the basis for their hardship and they are making the claim about coverage and that there will be no overlap from any other towers in existence. Mr. Frothingham said the question of coverage and overlap have to do with the Planning Boards discussion not ours. The question before us is, if this tower is going to be approved can we allow it to be 126' tall compared to the regulations? He takes the position that the difference in the height of the tower is going to make a negligible effect. We're not arguing whether the tower should be there. We are deciding whether adding a few feet will destroy the rural character of New Hampshire, sacrifice additional coverage to the community and will be a negligible difference. Mr. Don Stewart disagrees that the difference will be negligible. This will be a difference from 90' to 120'.

Mr. Frothingham opened the Public Hearing on the Province Line application at 7:40. Mr. Kelleher gave a brief overview of the coverage maps that Mr. Parisi was going to share with the Board. He said the permitted site creates an island. This is why two towers are necessary on 153 instead of one large site. He showed the existing coverage and what the coverage of the two towers and then including the approved site.

Mr. Kenny said his site isn't a proposed site. It has been approved and in construction. He built the first cell tower in Wakefield along with communication systems for fire and police. He said he has a pretty good idea about the coverage in town and East Wakefield is a problem that he's well aware of. He said that he had been looking at this since 2010 but no carriers wanted to commit. He's aware of the 5G but doesn't feel that will be up here for some time. He said he can't see three towers across the lakes region. He believes his tower will suffice very well and if it doesn't then allow other towers. Ossipee had three towers that were taken down because of no carriers. He's opposed to both towers. Mr. Stevens said the test should be done when leaves are off the trees to get a true picture.

He also asked about the ordinance that state no facility should be within four miles of another facility. He also said the townspeople wish to wait until Mrs. Kenney's tower is up and running. Mr. Kenney is concerned with the rural character of the town with so many towers. Mr. Kelleher said Mr. Kenney's balloon test was done in September and he'd like to be held to the same standard. He said Mr. Kenney's data is showing a gap on both sides. He said their intent is not to take tenants away from him. The intent is to build continuous coverage. He said it is unnecessary to build three tower if you were starting from scratch but Kenney's is an island and requires one on either side of it. He said these towers cost a half million dollars each.

Mr. Frothingham said he was concerned where this hearing is going. The question before us tonight, which he'd like to stick to, is if these towers are approved by the Planning Board to be built can we grant a variance to have them 126' at the tallest extremity or limit them to the regulated height? Cheryl Moschella asked about the five criteria and said they haven't been answered. Mr. Frothingham said all these items have been discussed throughout previous meetings. Bob Benson owns the land where one of the towers will be placed. He has kept his numerous properties rural.

Mr. Doug Stewart said other than the people who have a vested interest in the towers all have said they are against these towers going up until we see what the approved tower will provide for

coverage. Some have said they have coverage where they're saying there's no coverage. There wasn't one person that spoke in favor of the towers. Mr. Benson said the building department and the previous land owner had no record of Mr. Kenney's approval. Mr. Stewart said a variance was granted and the tower approved. He said the difference is the approved tower is in an area with no cell coverage. He said he would surmise that the permitted tower will provide a benefit both north and south. Mr. Baxter said the Planning Board will make the decision whether or not the tower will be built. Mr. Frothingham said it's not proper to discuss Planning Board issues.

Mr. Stewart said part of the reason that zoning exists for height is to try to protect the rural character. He feels the ZBA need to consider if these towers are necessary and what there might be for coverage from the approved tower. Mr. Baxter said we are here for height. Mr. Frothingham agrees. Mrs. Robbins said that the applicant has stated that's their hardship. They have brought that up. Mr. Frothingham said criteria #5 asks us to weigh the visual affect to the reasonable use of the applicants property. A lot of what has been discussed has nothing to do with why we're here. Mrs. Robbins said the applicant wrote their hardship would be; Without the requested relief there would remain a substantial gap in reliable service coverage.

Mr. Frothingham feels the ZBA is having a Planning Board meeting and wishes to get back to the question. Mrs. Moschella asked again what is the hardship? Mr. Frothingham explained what the ZBA is. He said the ZBA keeps local zoning laws from being unconstitutional. It's a safety valve for those who feel they have been aggrieved by a regulation where they can come for relief. In this case the applicant wishes to do something reasonable with his property and is seeking relief from the regulation. Mrs. Robbins said he could still build a tower.

Mr. Parisi said locating towers in Wakefield complies with the Telecommunications Act of 1996. They should be compatible with the rural setting. He said they will be minimally visible because of the large parcels they will be located on and the benefit is substantial. We have to show that literal enforcement of this ordinance would result in an unnecessary hardship. It would be unnecessary given the minimal visibility versus the substantial benefit we get by increased height. The federal government supports the granting of variances. It's not an absolute hardship but it is an unnecessary hardship. He believes they have met all the criteria for a variance.

Mr. Doug Stewart, referencing the ZBA Bylaws, Rules of Procedure questioned who should sit on a particular application. If an alternate sits on a case and that case is continued that alternate shall sit on all subsequent proceedings. After some discussion the Board decided to have Mr. Baxter sit for the Province Line vote as he was involved from the beginning of that hearing and Mr. Doug Stewart will sit for the Savannahwood vote as he was involved from the beginning of that hearing.

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, to address the Province Line application with the Board as it is currently constituted and subsequent to that we address the Perkins Hill matter and, in that situation, Doug Stewart replaces Robert Baxter and takes a position here at the Board. (Vote 4-0-1)

Mr. Frothingham closed the Public Hearing at 8:31.

Five criteria for Province Line

Criteria 1 The proposed use would not diminish surrounding property values

Mr. Crowell made a motion, seconded by Mr. Baxter, that the criteria has been met. (Vote 3-2)

Criteria 2 Granting the variance would not be contrary to the public interest

Mrs. Robbins made a motion, seconded by Mr. Don Stewart, to deny. (Vote 2-3)

Criteria 3 Granting the variance would do substantial justice

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to deny. (Vote 2-3)

Criteria 4 The use is not contrary to the spirit of the ordinance

Mrs. Robbins made a motion, seconded by Mr. Don Stewart, to deny (2-3)

Criteria 5 Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Mrs. Robbins made a motion, seconded by Mr. Don Stewart, to deny. (2-3)

Mr. Parisi asked a procedural question, whether there should be a vote taken on the five criteria to make a positive finding? Mr. Frothingham said we don't need to do that.

Mr. Don Stewart made a motion, seconded by Mr. Baxter, to grant the Variance (Vote 3-2)

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, that we close and conclude the Province Line matter and open the Perkins Hill matter (Vote 5-0)

At this point Mr. Baxter stepped down and Mr. Doug Stewart sat in his place for the Savannahwood (Perkins Hill) vote. Mr. Parisi was confused about the switch from Mr. Baxter to Mr. Doug Stewart and it was explained.

Mr. Frothingham re-opened the Public Hearing for the Perkins Hill matter at 8:50.

Mr. Frothingham closed the Public Hearing for the Perkins Hill matter at 8:50.

Five criteria for Perkins Hill

Criteria 1 The proposed use would not diminish surrounding property values

Mrs. Robbins made a motion, seconded by Mr. Don Stewart, to deny (Vote 3-2)

Mrs. Robbins said there was much testimony about people being able to see the tower from the lakes and our lakes are our income in our community. In her opinion and that of two realtors that could affect the value of lake front property if the towers were that high. Mr. Stewart said that the case in Londonderry NH was brought up and Wakefield is very different than Londonderry. What is accepted in a suburb of Manchester is not in rural Wakefield.

Criteria 2 Granting the variance would not be contrary to the public interest

Mr. Don Stewart made a motion, seconded by Mrs. Robbins to deny. (Vote 3-2)

Mr. Stewart said right now we do not know if this tower is necessary.

Criteria 3 Granting the variance would do substantial justice

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, to deny (Vote 3-2)

Criteria 4 The use is not contrary to the spirit of the ordinance

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, to deny, (Vote 3-2)

Mrs. Robbins said that people in Wakefield have voted that rural character is very important to them and they should all be weighed the same. And the value of the coverage was not clearly stated by the applicant.

Criteria 5 Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Mrs. Robbins made a motion, seconded by Mr. Don Stewart, to deny (Vote 3-2)

Mrs. Robbins said we are not taking away the use of the property and they are still allowed to build a tower. We are not denying a tower if approved by the Planning Board.

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to deny the granting of the variance. (Vote 3-2)

Mr. Frothingham stated that the variance has been denied and any interested person can appeal this decision within thirty days. Mr. Frothingham said this hearing is closed.

Correspondence

None

Approval of Minutes

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to approve the minutes of November 4, 2021. (Vote 5-0)

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

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to approve the site walk minutes of November 18, 2021. (Vote 4-0-1)

Board Business

Mrs. Robbins asked the Board to have a workshop to update the Rules of Procedure.

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to hold a ZBA workshop on January 17th to discuss the Rules of Procedure. (Vote 5-0)

Mr. Frothingham said he intended to resign as chairman and a member of the Board. He agreed to serve out his term. He feels the ZBA needs a lot of work.

Set Next Meeting Date

No Applications at this point

Adjournment

Mrs. Robbins made a motion, seconded by Mr. Don Stewart to adjourn the meeting at 9:10. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary

