



**TOWN OF WAKEFIELD NEW HAMPSHIRE**  
ZONING BOARD OF ADJUSTMENT  
HELD IN PERSON AND ON ZOOM  
February 14, 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 Alternates Doug Stewart and Robert Baxter, John Kenney, Francis Parisi. Michelle Keating and Max Gehring from Clearview Community TV.

Zoom: Bob Benson, Autumn Scott, Jack Hepburn, Consuelo O'Brien,

**Pledge of Allegiance and call the meeting to order**

Chairman Frothingham called the meeting to order at 7:04 and led those present in the flag salute.

**Seat Alternates as necessary**

Full Board present

**Board Business**

Mr. Frothingham said this is a rehearing regarding a denied variance from Vertex Tower Assets. This involves a proposed cell tower on property owned by Savannahwood LLC near Perkins Hill Road. Map 92, Lot 034, Province Lake Road. The applicant wishes to erect a cell tower that exceeds the height allowed by local regulations. This variance was denied at a hearing held on January 19, 2022.

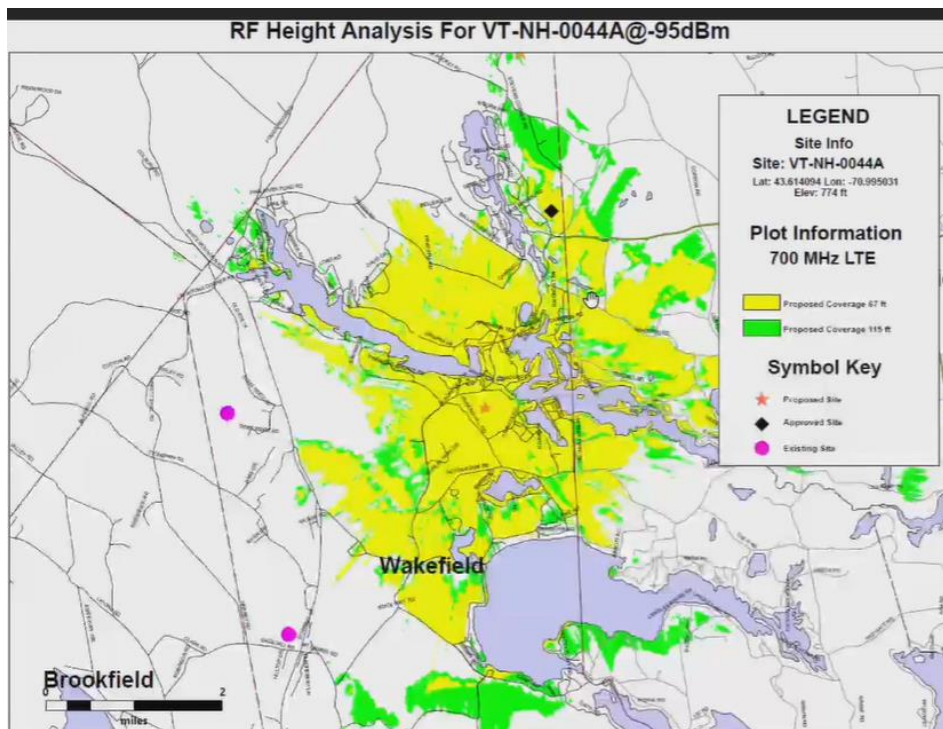
Francis Parisi will discuss this application. Mr. Parisi said he was here in early November for a public hearing for a variance. That meeting was continued to November 29<sup>th</sup> at which time the variance was denied. On January 19<sup>th</sup> the ZBA decided to accept the petition for rehearing for tonight. He said we find it curious as to why the variance we requested for the other tower was granted but this one was denied. He would like more clarification from the Board as to why they granted one and not the other. He said Wakefield has three other existing towers all taller than what they are proposing to build. He said there is precedence for granting variances for tower

heights. He said thirty feet above the average tree canopy is a difficult standard to meet. He passed out some height analysis sheets to the Board members.

**Mr. Stewart made a motion, seconded by Mrs. DesRoches, that the application is sufficient to proceed. (Vote 5-0).**

The Board introduced themselves.

Mr. Parisi gave some background for his company. The lot is a 136 acre parcel which will give a very large vegetative buffer. He said the balloon test was not visible even though there were people who said they saw it had nothing to substantiate that, no pictures were submitted. He said all the other town requirements have been met except the height. He said the average height of the tree canopy is 72 feet. He said the towers are vertical totem poles designed for different antenna heights to meet the demands of the individual companies to eliminate interference. He showed a PowerPoint with the originally submitted coverage maps. The green shows the additional coverage with a higher tower, The yellow is the un-variance approved coverage.



Mr. Parisi explained decibels to Mr. Stewart. Mr. Parisi said 5G does not yet exist in New Hampshire. Mr. Parisi explained that the true benefit of a higher tower is in the southern area of Balch Pond. He said the thing he wanted to focus on was the criteria.

- A. The variance would not be contrary to the public interest
- B. The spirit of the ordinance is observed.
- C. Substantial justice is done.
- D. The values of surrounding property are not diminished
- E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

He said the Board agreed to all these criteria for the other tower and assume that they also agreed for the three towers already built, one of which is 130' tall and two are 190' tall. Towers are in

the public interest. He said in the original decision the Board said the use would be contrary to public interest because there was some opposition although there was also public support for the tower. He said this is inconsistent with what the Board has already done. There have been court cases that said anecdotal evidence isn't sufficient to deny a variance. You need hard evidence. He said there is federal scrutiny in building towers and also federal mandates that encourage the building of these towers. Any denial must be based on substantial evidence. He maintains this is in the public interest.

Mr. Parisi said the purpose of the telecommunications ordinance in Wakefield is: 1. Permit carriers to locate personal wireless service facilities in Wakefield, in compliance with the Telecommunications Act of 1996 and RSA Chapter 12-K entitled "Deployment of Personal Wireless Service Facilities"; 2. Enable wireless services to become available to the citizens of Wakefield; 3. Ensure that personal wireless service facilities are consistent with the town's land use policies and goals; and 4. Ensure that personal wireless service facilities are compatible with the rural setting and character of Wakefield, including its aesthetics and visual features.

He said it is a setback so far that it has no impact on existing properties. He said he submitted photos showing almost no visibility from any roads in Wakefield. He said people are less upset with the visibility than the lack of coverage. The denial of this facility would be a substantial injustice as this one is the least visible of all. He said it has been proven that property values are not diminished in Londonderry, a suburban area. AT&T and the state supreme court did an immense amount of research to show property values were not diminished. He asked that the Zoning Board grant the variance request.

Mrs. Robbins asked if the erroneous information in a letter that was signed by Mr. Kelleher in the original packet would be amended. The tower height of 140 ft. and location are incorrect. Mr. Parisi said it would be done. Mr. Stewart asked for an explanation of the colors on the coverage map. Mr. Frothingham said that we are getting into matters that have nothing to do with height. Mr. Stewart disagreed and Mr. Frothingham ruled that the question is irrelevant and out of order. Mr. Frothingham said the question before us tonight is if this cell tower is approved by the Planning Board and gets built is it ok for it to be taller than the regulation by the specified amount. He said coverages are irrelevant. Mrs. DesRoches said that she didn't believe the question about the difference between the coverage of 120 foot tower and a 90 foot tower. She doesn't believe this was ever satisfactorily answered. Mr. Frothingham said he did answer the question tonight and brought documentary evidence. Mr. Frothingham said this would have been presented at the last meeting but he had car trouble and had to call in.

Mr. Frothingham opened the Public Hearing at 7:55 for anyone who would like to speak in favor of the application. Bob Benson. He owns the land where this tower would be located. He feels that tower should be approved for the benefit of the citizens. Mr. Frothingham asked if anyone would like to speak against the application. William Flynn said there would be no substantial justice because there are no carriers involved. It is purely speculative. Mr. Frothingham reiterated that tonight's hearing has to do with the height of the tower. He said that a tower is already being built so there is no need for this tower. Mr. Kenny said it doesn't look to him like the height gives much more coverage. Mr. Doug Stewart said there were a couple of points he wanted to make. He disagreed that this tower is the least visible. He said he provided with testimony that

the balloon was clearly visible from at least nine roads. He also disagrees that there was support for the towers from the people at the Public Hearing. The only support he heard was from people who had a vested interest in the towers going up. People did say they had cell coverage in areas where Mr. Parisi said there wasn't any. He said based on the makeup of the Board tonight that he will get his variance and he asked the Board to add a condition around screening the base of the tower. Mr. Frothingham asked Mr. Parisi if he had a problem with that request. Mr. Parisi said that would be a Planning Board issue. He doesn't oppose it but the Planning Board would need to put on that condition. Mr. Frothingham closed the Public Hearing at 8:08.

Next the Board took up the five Criteria.

1. The proposed use would not diminish surrounding property values.

**Mr. Frothingham made a motion, seconded by Mr. Crowell, that the additional height will not diminish surrounding property values. (Vote 3-2)**

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

**Mr. Frothingham made a motion, seconded by Mrs. DesRoches, that the additional height proposed for the cell tower will not be contrary to the public interest. (Vote 3-2)**

3. Granting the variance would do substantial justice

**Mr. Frothingham made a motion, seconded by Mrs. DesRoches, that granting the additional height will do substantial justice. (Vote 4-1)**

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

**Mr. Frothingham made a motion, seconded by Mr. Crowell, that granting the additional height is not contrary to the spirit of the ordinance. (Vote 3-2)**

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

**Mr. Frothingham made a motion, seconded by Mrs. DesRoches, that enforcement would result in an unnecessary hardship. (Vote 3-2)**

**Mr. Frothingham made a motion, seconded by Mrs. DesRoches, to grant the variance. (Vote 3-2)**

He stated that the variance has been granted and that within thirty days any interested party can appeal the decision. He closed the hearing at 8:15

### **Approval of Minutes**

**Mrs. Robbins made a motion, seconded by Mr. Stewart, to approve the minutes of 1-19-22. (Vote 5-0)**

### **Board Business**

Request to Selectmen for appointments changes in position on the board

**Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to submit a request to the Selectmen for the reappointment of Mr. Don Stewart to the ZBA for three years. (Vote 4-0-1)**

**Mr. Stewart made a motion, seconded by Mrs. Robbins, to submit a request to the Selectmen for the reappointment of Mr. George Frothingham to the ZBA for another three years. (Vote 4-0-1)**

#### Alternate Position

**Mrs. Robbins made a motion, seconded by Mr. Stewart, to submit an application to the Selectmen for an alternate position on the ZBA for Graham Baker. (Vote 5-0)**

Mr. Baker asked about training. Ms. Jen Czysz explained that there are recorded sessions available for training. She said access these by typing in NH OSI Handbook. Also, the Wakefield website has the zoning laws and Rules of Procedure.

#### Approval of Minutes

**Mr. Stewart made a motion, seconded by Mrs. Robbins, to approve the minutes of November 19, 2021. (Vote 5-0)**

#### Workshop: ZBA Rules of Procedure – Review & Update/ Mission Statement

Ms. Czysz said that Autumn Scott, from SRPC did the updates to the Wakefield Rules of Procedure. Everything in red Ms. Scott drafted and all everything in blue is Ms. Czysz's work. Mr. Frothingham said he appreciates all their work. Mr. Stewart submitted two application forms for review, Also Mrs. Robbins and Mrs. DesRoches submitted their work. Mrs. Robbins used something from Claremont that gives an explanation to the applicant explaining what each ZBA criteria means. Ms. Czysz noted that the ZBA already has some good instructions for filling out applications located online. She suggested comparing the two. Mrs. DesRoches submitted a Mission Statement. Mr. Stewart suggested that everyone review the materials and have this as a topic at the March meeting.

**Mr. Stewart made a motion, seconded by Mr. Frothingham, to Continue the matter of our workshop on ZBA Rules of Procedure, Mission Statement to March 21<sup>st</sup> and that item would be a scheduled line item on our agenda for that particular meeting. (Vote 5-0)**

Mr. Stewart suggested all members and alternates have any changes, additions or deletions in to Ms. Czysz by two weeks prior to March 21<sup>st</sup>.

#### Set Next Meeting Date

March 21, 2022

#### Adjournment

**Mr. Stewart made a motion, seconded by Mrs. Robbins, to adjourn the meeting at 8:42. (Vote 5-0)**

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary

