

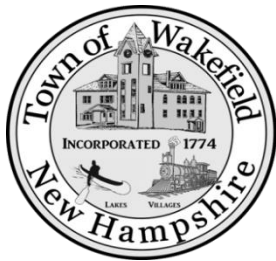
TOWN OF WAKEFIELD NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
DECEMBER 18, 2022
SITE WALK
Approved

Site Walk

Don Stewart Chairman	✓	Robert Baxter Alternate	Victor Vinagro, Land Use Clerk & Code Enforcement Officer	✓
George Frothingham, Vice Chairman	✓	Graham Baker Alternate	✓ Town Counsel Steven M. Whitley	
John Crowell		Tristin Plummer Alternate	✓ Site Walk	✓
Judi DesRoches	✓		Public Hearing	
Annie Robbins				

Others present: Doug Stewart, Tom Daniels,

The ZBA conducted a site walk at 10:00 a.m. on December 18th at the property, 500 Pinewood Shores Road.



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

Don Stewart Chairman	✓	Robert Baxter Alternate	✓ Victor Vinagro, Land Use Clerk & Code Enforcement Officer	✓
George Frothingham, Vice Chairman	✓	Graham Baker Alternate	✓ Town Counsel Steven M. Whitley	
John Crowell	✓		Site Walk	
Judi DesRoches	✓		Public Hearing	✓
Annie Robbins				

Others present: John Kenny, Doug Stewart, John Myers, Tom Daniels, Shelly Daniels, Guy Philbrick, Patty Philbrick, John and Lynn Shull, Philip Valent, Fran Parisi, John Springer and Michelle Keating from Clearview TV. Present on Zoom: Jack Hepburn and

Pledge of Allegiance and call the meeting to order

Chairman Stewart called the meeting to order at 7:05 and led those present in the flag salute.

Seat Alternates as necessary

Alternate Tristin Plummer was seated for Annie Robbins and introductions were made.

Mr. Stewart took the agenda out of order and began with the Whittier Applications.

Public Hearings

Application for Appeal of Administrative Decision

Submitted by Whittier Communications, Inc. for property owned by Province Line Associates, LLC located at Tax Map 9-113, 4870 Province Lake Road. The applicant is seeking that the ZBA overturn a Planning Board decision dated October 6, 2022, granting the Major Site Plan Application of Vertex Tower Assets, LLC to construct and operate a Cell Tower on the subject property. The Applicant alleges that the Planning Board erred when it interpreted Zoning Ordinance Article 24 Section E.5 and Section F.

Application for Appeal of Administrative Decision

Submitted by Whittier Communications, Inc. for property owned by Savannahwood LLC located at Tax Map 92-34 on Province Lake Road. The applicant is seeking that the ZBA overturn a Planning Board decision dated October 6, 2022, granting the Major Site Plan Application of Vertex Tower Assets, LLC to construct and operate a Cell Tower on the subject property. The Applicant alleges that the Planning Board erred when it interpreted Zoning Ordinance Article 24 Section E.5 and Section F.

Mr. Vinagro said the fees have been paid, the abutters have been notified and the notice has run for both locations.

Attorney Jack Hepburn, representing Whittier Communications, stated that he has submitted a request for a continuance because they were not prepared to go forward tonight and the next scheduled ZBA meeting would be on the third Monday of the month and the next two meeting dates are holidays so he requested March. He said if the ZBA can meet outside their regularly scheduled meeting in January they can be available. Mr. Stewart asked Mr. Hepburn about an order issued by the Superior Court that said any proceedings on this matter are stayed. Mr. Hepburn said that's his understanding. He said they can make themselves available as soon as the Superior gives the ok to hear us. Mr. Stewart suggested setting a date of January 23rd. That date is agreeable to Mr. Hepburn.

Attorney John Springer, representing Vertex Tower Assets, stated that Vertex objects to the continuation. He said the stay issued by the Superior Court does not reach this Board. The stay is only for what is going on in Superior Court. He said the statute clearly says that the ZBA acts on the appeal first. He went on to say that the main reason they object is that Whittier Communications do not have standing here. They are not aggrieved here. They would have to have injury to their real estate. He said they strongly object to the continuance. Mr. Stewart said

we received opinion from our council that's contrary to your opinion and feel we can move forward and continue this matter. We're looking to move this matter to approximately a month and hopefully get some clarity on the courts position. Mr. Stewart said based on the advice of council we will move this forward. Standing will not be discussed tonight.

Mr. Frothingham made a motion, seconded by Mrs. DesRoches to move both the Whittier matters to January 23, 2023, with the condition that we have permission from the court to hold this meeting.

Mr. Plummer asked Mr. Springer to provide the statute. Mr. Springer replied, RSA 677:15 1-a. Mr. Parisi suggested reading the RSA now. Mr. Stewart said there has been a motion and a second and called the vote. **Roll Call: DesRoches aye, Crowell aye, Frothingham aye, Stewart aye, Plummer nay. (Vote 4-1)**

Variance Application

Submitted by Thomas Daniels for Daniels Revocable Trust of 2022, 500 Pinewood Shores, TM 83-20, Pine River Pond Store. The applicant is seeking relief from Wakefield Zoning Ordinances, Article 3, Table 1-Permitted Uses; to allow a home business in a Residential II district which is not allowed and Article 23B-Home Enterprises, section E.-1; Minimum acreage Requirement: 3-acre, parcel is .58-acres.

Mr. Stewart recused himself from hearing this application as an opponent to this matter has question his ability to allegedly be bias as he is a member of the association and lives on Pine River Pond. He totally disagrees with these allegations but will step down to avoid a possible appeal. Vice Chair Frothingham appointed alternate Robert Baxter to sit in for Mr. Stewart for this matter.

Mr. Vinagro said that the fees have been paid, the abutters notified, the notice has run and the application is administratively correct.

Mrs. DesRoches made a motion, seconded by Mr. Crowell, to proceed with the matter. (Vote 5-0)

Mr. Daniels said he and his wife run a small parttime business in a shed at his home run 100% by volunteers. 100% of the profits goes to the care of the lake.

Mr. Daniels read the five criteria:

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

Limited time of operation: 12-13 weekends per year (Mid-June – Labor Day). Saturday's and Sundays from 10am-2pm for a total of 96-104 "open" hours/per year. Off-season sales are by appointment only.

Limited road traffic: 60-70% of customers would arrive by boat. Remainder split between walking and driving. Approximately 300-325 sales transactions per year, resulting in approximately 50-60 customer vehicle trips per year.

No additional truck delivery traffic, as all items sold in business are picked up at suppliers.

Limited road signage designed to prevent vehicles from driving past and disrupting remaining houses on dead-end road.

2. Granting the Variance would not be contrary to the public interest because:

The business functions as the fundraiser for the Pine River Pond Association, a 501-C-6 non-profit. The Applicants would make the argument that the public interest is enhanced, as 100% of the business proceeds are contributed to the Association.

The business also contributes to an enhanced sense of community and pride in Pine River Pond and is staffed 100% by volunteers and the Applicants.

3. Granting the variance would do substantial justice because:

There would be clear loss to the Applicants who would no longer be able to financially contribute proceeds from the business to the Pine River Pond Association which is outweighed by any gain to the general public if the Variance Application is denied.

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

This variance observes the spirit of the Ordinance because of reason stated in section #2.

Similarly, we would assert that granting the variances would not alter the essential character of the neighborhood or threaten the public health, safety or welfare.

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

The applicant asserts that the proposed use is a reasonable use with limited hours of operation. Volunteers using a standard 12' x 16' shed, located on the property, to store and sell Pine River Pond items in order to raise funds for a non-profit organization whose stated mission is:

“Protecting and Preserving, Pine River Pond, it’s shorelines, and its environs.”

The business is the major contributor of funds to the Pine River Pond Association. The Applicants would not be able to financially contribute as an individual to the Association without the business from the store. Lack of contributions from the Business would result in diminished activities of the Association to protect the quality and value of the Lake and lake properties.

The Daniels have been operating the store for seven years. It has it’s routes in the mid 80’s. They have had no complaints. Mr. Frothingham said one person has sent three letters of objection. We have 38 people who are asking us to grant this variance. All these letters will be part of the permanent record.

Mr. Frothingham opened the Public Hearing at 7:38.

Guy Philbrick, Patty Philbrick, John Myers and others along with Terri Tuttle and Brian Atwood on Zoom all spoke in favor of the store. If they didn’t get this money, they would have to find other sources and the workload and fees would increase.

Mr. Frothingham closed the Public Hearing at 7:51.

Mrs. DesRoches made a motion, seconded by Mr. Crowell, that the conditions of Criteria 1 have been met. (Vote 5-0)

Mr. Plummer made a motion, seconded by Mrs. DesRoches, that the conditions of Criteria 2 that Granting the Variance would not be contrary to the public interest. (Vote 5-0)

Mr. Crowell made a motion, seconded by Mr. Baxter, that the conditions of Criteria 3 have been met. (Vote 5-0)

Mrs. DesRoches made a motion, seconded by Mr. Plummer, that condition 4, the use is not contrary to the spirit of the ordinance. (Vote 5-0)

Mrs. Plummer made a motion, seconded by Mrs. DesRoches, that Criteria 5, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (Vote 5-0)

Mr. Plummer made a motion, seconded by Mrs. DesRoches, that the Board grant the variance. (Vote 5-0)

Mr. Frothingham said the variance has been granted and any interested person could object to this decision within thirty days.

Mr. Baxter stepped down from the table and Mr. Stewart returned to his seat and resumed as chair at 8:00.

Approval of Minutes

Mr. Frothingham made a motion, seconded by Mr. Crowell, to approve the minutes of November 21, 2022. (Vote 3-0-2)

Board Business

Approval of Rules of Procedure.

Mr. Stewart tabled this item. They will be on the January 23, 2023, agenda.

Correspondence

Set Next Meeting Date

January 23, 2023

Adjournment

Mr. Frothingham made a motion, seconded by Mrs. DesRoches, to adjourn the meeting at 8:05. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary

I've included the RSA that Attorney Springer mentioned.

CHAPTER 677
REHEARING AND APPEAL PROCEDURES
Appeal and Court Review of Planning Board Decisions

Section 677:15

1-(a) If an aggrieved party desires to appeal a decision of the planning board, and if any of the matters to be appealed are appealable to the board of adjustment under RSA 676:5, III, such matters shall be appealed to the board of adjustment before any appeal is taken to the superior court under this section. If any party appeals any part of the planning board's decision to the superior court before all matters appealed to the board of adjustment have been resolved, the court shall stay the appeal until resolution of such matters. After the final resolution of all such matters appealed to the board of adjustment, any aggrieved party may appeal to the superior court, by petition, any or all matters concerning the subdivision or site plan decided by the planning board or the board of adjustment. The petition shall be presented to the superior court within 30 days after the board of adjustment's denial of a motion for rehearing under RSA 677:3, subject to the provisions of paragraph I.