



TOWN OF WAKEFIELD NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

SEPTEMBER 14, 2023

Approved

Don Stewart Chairman via Zoom	✓	Annie Robbins Alternate			
George Frothingham, Vice Chairman	✓	Graham Baker Alternate		Town Counsel Tim Sullivan	✓
John Crowell	✓	Tristen Plummer Alternate		Site Walk	
Judi DesRoches	✓			Public Hearing	✓
Robert Baxter	✓				

Others present: Fran Parisi, John Springer, Doug Stewart, John Kenney, Biron Bedard, Madelyn Ness, Roert Ness, Priscilla Kamon, Barbara Novac Christopher Albers and Michelle Keating from Clearview TV.

Pledge of Allegiance & Call the meeting to order

Mr. Stewart called the meeting to order at 7:00

Seat Alternates as necessary

None.

Public Hearing

1. 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.

2. 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. Stewart asked Mr. Kenney's attorney if both discussions are going to be similar. Mr. Bedard said they will be the same. Mr. Stewart asked if the ZBA could hear both at the same time. Mr. Bedard responded yes. Mr. Bedard said Mr. Kenney's tower had been permitted over three years ago. He continued by saying that in August of 2021 Vertex submitted two applications within four miles of the Whittier tower. In April of 2022 there was a joint session with the Planning Board and ZBA in which the applications were denied. The towers were denied on the basis under Article 24. There was a need for coverage and the Planning Board said that the Whittier Tower was existing. It went back to the Planning Board and Vertex refused to supply any additional information. It was continued until October 2022. This set off appeals.

On June 24th the ZBA said the tower was not existing. It was remanded back to the Planning Board. The Superior Court denied an appeal to dismiss and remanded it back to the ZBA. Whittier filed an appeal on November 22nd. By the time it came back to the Planning Board the tower was done in July. Nothing changed as far as a need for coverage and didn't show how they met the criteria under section F. The finding the Planning Board made in regard to section F should stand. The Planning Board had their own RF engineer. Gaps didn't seem to be the case. Until a tower is up that really can't be determined. There is no reason to grant the Vertex towers in such a small vicinity. This would ruin the rural character with no demonstrated need. He asked the ZBA to grant the appeal and remand it back to the Planning Board. He said there is no reason to deny the appeal.

Mr. Baxter is concerned about coverage for Province Lake. He said he sees pros and cons of Whittier. How will this alleviate potential emergency coverage? Mr. Bedard answered it complies with the ordinance and he feels the Whittier Tower will cover that area. He said we are talking estimate of coverage and not to have towers within four miles unless you can show additional coverage need according to the ordinance. We are not opposed to another tower until additional coverage need is shown. The Planning Board found overlap was not persuasive in their determination. All we're asking is for us to get it up and running to see what additional coverage may be needed.

Mr. Frothingham asked why there is a requirement that says it must be more than four miles? What is the reason for that rule? If we enforce that rule is it a disadvantage to the applicant? He thinks the reason may be visual, the rural character of the town. We considered the variance to make the tower taller and we granted that variance. He feels this is a very important point. As far as the coverage, it did show gaps in the Whittier Tower coverage maps but were estimates. Mr. Bedard said he would agree if Vertex had asked for a variance for the four miles. We're not here for a variance. What is being challenged is how the Planning Board applied the ordinance. Did the Planning Board apply it correctly? We believe they did. Nothing changed but the vote. Mr. Bedard said Vertex didn't go back and fix what the Planning Board decided. Remand it back to the Planning Board.

Mr. Stewart made a motion, seconded by Mr. Baxter, to accept both applications as noted. (Vote 5-0)

Mr. Bedard continued saying two years ago, the Planning Board and the ZBA meeting took the situation as they existed at the time. The ZBA said the tower didn't exist. The tower didn't exist in 2022. The Planning Board made a separate decision without hearing additional evidence. The

Planning Board made a decision to grant both towers. The tower is now in existence. Do we look back two years ago?

Mr. Bedard said that since Covid things have changed. The pandemic kept the tower from being built quickly. Materials were difficult to get. By July of 2022 the tower was up and ready to go. Mr. Kenney explained how difficult it was to get the foundation pins. Mrs. DesRoches asked what date the Whittier Tower was permitted. Mr. Bedard said it received a variance in 2012 and in November 2020 the tower was approved. Mr. Stewart opened the Public Hearing at 7:35.

Mr. Parisi said the facts are glassed over. The Whittier Tower was originally permitted by the ZBA in 2012. While our application was being scrutinized Mr. Kenney went to the Planning Board in 2020 to get his approved. There was no prohibition of the four miles. We needed to show need. There has been no new data provided because the record spoke for itself. We didn't avoid the Whittier Tower. That tower is not on air yet. There is no attempt to camouflage it. We showed a minimal visibility impact. Our provided data is three inches thick. We believe there is a need for our towers and the four miles is an arbitrary number. It's not a law. Whittier does not provide coverage for the north and south. We have done everything that's required by the zoning ordinance. We've worked with the Town and I'm not here to rehash all the data. Mr. Stewart asked if there was any opposition to the appeal. Seeing none he closed the Public Hearing at 7:40.

The Board had a discussion about granting the appeal. Mr. Frothingham feels the Board made the right decision. We heard all the arguments and voted in favor of Vertex. He said we did a thorough job and there's no reason the Vertex Towers can't be built. Mrs. DesRoches said she is still concerned with the questions that haven't been answered about coverage. Mr. Baxter sees the need for coverage. He said communication is important.

Mr. Stewart accepted questions from the public. Mrs. Kamon asked if the tower would be built in the campground. Mr. Stewart answered, one will be built on Perkins Hill Road and the other near Province Lake. Mr. Parisi provided the locations. Mrs. Novak asked if there were any health issues with cell towers. Mr. Parisi said there have been a great number of studies with favorable results.

Mr. Stewart asked the Board, is there anything the Planning Board did that was improper? Did the Planning Board act unreasonably or illegally? By consensus of the Board the answer was no.

Mr. Frothingham made a motion, seconded by Mr. Crowell, to not grant the appeals of the Planning Board's decisions. (Vote 5-0)

Mr. Stewart stated the Planning Board's decision was reasonable and this Board is not in favor of overruling the Planning Board for both Vertex towers.

Board Business

Mr. Baxter asked if the minutes could be out in a timely fashion. Mrs. Colbath responded that she has them out within five business days as the law states. Mr. Stewart will ask Mrs. Mulkern to send them out to Mr. Baxter separately.

Correspondence

None

Approval of Minutes

Mr. Frothingham made a motion, seconded by Mr. Stewart, to approve the minutes of July 13, 2023. (Vote 3-0-2)

Set Next Meeting Date

Second Thursday in October, if there is an application.

Adjournment

Mr. Frothingham made a motion, seconded by Mrs. DesRoches, to adjourn the meeting at 8:00. (Vote 3-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary