

## DRAFT—NO LEGAL VALUE

### Zoning Board of Adjustment Meeting

January 8, 2020

Members present: Susan Arnold, Acting Chair, Charles Burnham, Jean Chartrand Ewen, and Scott Hodgdon and Ashley Rowe, Alternate members.

The Acting Chair called the meeting to order at 7:10 PM and advised that she was sitting in for Rick Ferreira who cannot attend this evening. She introduced the Board members present and designated both Alternate members as voting members for this meeting due to absences. Notice for Cases Number #418 and 419 was published in Foster's Daily Democrat on or before January 2, 2020. Notices for tonight's meeting were posted at the Strafford Post Office and the Strafford Town Hall. There were a number of abutters and interested parties present for both cases. It is noted that this meeting will only address two new applications before the Board; further discussion of Case Number #416, Philip Auger, Petitioner, regarding an Appeal of an Administrative Decision will take place at a different meeting date to be determined.

#### Case Number #419

Petitioner: Rebecca Whitcher, Michael Whitcher, Agent, is requesting a Special Exception under Article 1.7.1 of the Zoning and Land Use Ordinances in order to allow the expansion of use of an existing non-conforming structure. The applicant proposes to reconstruct the existing cottage and construct a garage addition, adding an approximately 24 foot by 26 foot garage and entryway addition on the southeasterly end of the existing structure. The existing structure comes within 10.8 feet of the northwesterly side boundary, which is up to 14.2 feet closer to the side boundary than current ordinances require. The proposed addition to the southeasterly end of the home will meet all required setbacks. (8 Whitcher Way, to the rear of 84 Water Street, Tax Map 31, Lot 22)

Michael Whitcher, petitioner, was present. There were no abutters present.

Mr. Whitcher presented an existing features plan of the Whitcher property. The proposal is to extensively renovate Cottage One, which is only 10.8 feet off the rear boundary. They will be adding a garage and entryway to the other side of the structure. The addition will be conforming. There will be no additional bedrooms, and the entryway area will be the only additional living space. Jean Ewen asked if there would be a second floor for the garage area, and Mr. Whitcher indicated that there would not. They are making no changes to the cottage but remodeling, and there is no loft, no space being created above the garage. The cottage will actually be changing from a 2 bedroom to a one-bedroom structure as they are expanding the bathroom area. Ashley Rowe noted that 2 bedroom septic systems are the smallest allowed. Mr. Whitcher noted that the property has been transferred to him and that Becky Whitcher will be relocating to this cottage, which is why they are remodeling.

Mr. Whitcher then addressed the criteria for Special Exception. First, the addition will be conforming, so the structure will be no less conforming than the existing. Secondly, the addition will have no impact on views, and there are no abutters present. The project will increase the taxable value of the property and will cause no harm and is in keeping with the character of the other cottages. Thirdly, the continued residential use of the cottage conforms to all other regulations for residential use. And finally, there is a well system and state approved 2-bedroom septic system for the cottage. Mr. Whitcher said that although he could not find the plans, the septic system was replaced 10 to 15 years ago by Lance Benson.

Susan Arnold asked about the well system. Mr. Whitcher said that the cottage shares a well with the main house and that the well system has been reapproved as part of the Shoreland Permit application for the new home that will replace the main house. Ashley Rowe asked about the Shoreland Permit; Michael Whitcher said that this project was included in the Shoreland application for construction of the new house, and he said that they have certified the foundations to meet Shoreland criteria. Susan Arnold noted that this project

will add impervious surface to the lot. Mr. Whitcher noted that this project was included in the Shoreland Permit application, so the additional impervious surface has been addressed. He said that the only requirement from the Shoreland review was drip-line drainage on the new house, and he said that he does not believe that the projects really create a runoff problem. Susan Arnold asked about putting in rain gardens around the remodeled cottage; Mr. Whitcher said that they are not planning to disturb the soil in the direction of the lake or to change runoff patterns in that area.

There were no comments from the audience and there was no further discussion among Board members. Jean Ewen then made a motion, seconded by Charles Burnham as follows:

To approve the request for Special Exception to allow the expansion of use of an existing non-conforming structure by the renovation and construction of a new 24 foot by 26 foot garage and entryway addition to the southeasterly side of the existing non-conforming cottage located closer to the rear boundary than current ordinances allow, because the criteria for approving the Special Exception have been met. The additional space will meet all setback requirements and will not increase the non-conformity of the existing structure, and there is no proposed change in use.

There was no further discussion and the Acting Chair called the vote. The motion carried by unanimous vote in the affirmative with all members and alternates voting in favor of the motion. There were no nay votes. The Acting Chair advised Mr. Whitcher that the Special Exception has been granted and that there is a 30-day appeal period for Board decisions.

#### Case Number #418

Petitioner: Vertex Tower Assets, LLC have applied for Variances for a telecommunications facility in which they seek approval to place a 140-foot monopole telecommunications tower (146' to top of highest appurtenance) on the property of Bertha L. Huckins, Trustee for the Bertha L. Huckins Revocable Trust, 22 Hillside Drive (Tax Map 11, Lot 4) in Strafford. The applicants are requesting Variances to Article 1.4.2, Section C, Paragraph (b) of the Zoning and Land Use Ordinances which allows new ground mounts if disguised facilities are utilized and the facilities are no higher than 20 feet above the average tree canopy height. The proposed tower would be up to approximately 60 feet higher than the calculated average tree canopy and would not be disguised. Authorized agent representing this case is Francis D. Parisi, Esq.

Francis Parisi, Agent, was present for the meeting. Lester Huckins, accompanied by Cindy and Joe Cushing, was present representing the landowner.

Mr. Parisi addressed the Board and presented the Vertex Tower Assets project. Vertex is a wireless infrastructure developer. Cell companies partner with them. As they are real estate developers, they can be more thoughtful with the structure, design and in meeting local ordinances, he said. They have been active in the northern and western, more rural, areas of the state. They have an approval in Barrington for a tower that has not yet been built, and have built towers in Brentwood and Stratham. He advised that the original application package, a combined Site Plan and Variance application, has been supplemented with additional information for the Planning Board in response to some of their questions. A full copy of the supplemental material has been submitted for the Zoning Board files. They are requesting variances to the zoning ordinance regarding height. He said that many towns require a visibility analysis, and so they did a balloon test and have photos and photo simulations from the balloon test to share. He said that he does not feel that he needs to sell the concept of cell phone coverage. It is a matter of safety, noting the high percentage of 9-1-1 calls made from cell phones and the need to pinpoint the location of an emergency caller. He said that there is a definite gap in coverage in Strafford and noted that the nearby Lakes Region Regional Planning Commission has identified lack of cell phone coverage as a safety concern for communities in their area. He said that there is not a commercial need here but that due to safety, the First Net program, etc. there is a need to develop the infrastructure to support cell phone coverage. He spoke a bit about the First Net program which partners AT&T with the federal government to supply a certain bandwidth for public safety communications.

Mr. Parisi said that they have done an extensive analysis of Strafford, working for a year to find a site. He said that this is the most appropriate site except for the top of Parker Mountain, but he understands that the town does not want a tower on the top of Parker Mountain so they have found a site at the base of the mountain. Topography is a challenge, he said; they are looking to provide service to the town center. They have engaged a radio frequency engineer, and his report is provided as part of the package.

The proposal is for a monopole style tower and a fenced compound at the base with small cabinets to support the antenna arrays. The facility will be set back substantially off Huckins Road. The area that they have chosen is cleared of trees as it served as the staging area for a logging operation. There is a substantial natural vegetative buffer. Mr. Parisi said that it is about 700 feet to the closest property line and 1700 feet to the closest private property line, as the closest abutting property is town-owned conservation land. The tower would be 140 feet plus the lightning rod, which would bring it up to 146 feet. They conducted a balloon test on December 7<sup>th</sup> and 8<sup>th</sup>; the balloon was on a measured string. The balloon test shows that the tower will not be visible from Huckins Road because of the trees, and he said that the photos from the balloon test show that the tower would not impact views toward Parker Mountain. He said that the photos also show that the tower is below the trees looking from the top of Parker Mountain. Again, he said that they want a facility that provides ample coverage without a visual impact. He noted that the application materials show that the proposed facility would meet the zoning requirements with the exception of two items. He said that you have to get a variance with almost every tower, and he said that trees are a structural impediment. He said that the requirement that towers be no more than 20 feet above the tree canopy is arbitrary because the terrain varies and you need to get above the topography in all directions. In this case they would be getting above about three-quarters of the topography with the exception of the northeast and west. Mr. Parisi went on to say that he would argue that the tower is disguised because it is not visible except from the landowner's property and is disguised by topography and terrain. He is proposing a monopole rather than a lattice design, even though lattice is preferred for flexibility and stability but given the sensitivity to visibility, the monopole design is more sleek. He said that they could build a pine-tree type disguised tower, he is not averse, but you cannot get them to look like a tree and they end up looking like a pipe-cleaner, he argued. He noted that the tower would not be lit due to the height, so that is also a disguise. So, looking at the ordinance, the proposed tower would not be visible and meets the needs for cell coverage.

Mr. Parisi summarized his position by saying that it is easy to satisfy the variance criteria, and he then summarized the applicant's responses to the criteria for variance as established by the courts. 1) The tower would be in the public interest because it would improve telecommunications, 2) the spirit and intent of the ordinances would be met because the tower would be designed so it is not visible and accommodates the needs, 3) substantial justice would be done as they could not comply with zoning as it is technically impossible to comply so it would be unjust if the tower was denied due to the benefits it would provide. 4) He noted that it is rare that there is no telecom tower in a community, but he said that people need the cell signal so it would not affect proposer values—there is no data that a taller tower leads to diminution of value of surrounding properties, he noted, while the lack of telecom signal has a negative impact on property values he said. 5) As regards hardship, he said that to meet all the mandates would be a hardship and he noted that the federal government gets involved and has a comprehensive law to encourage the development of telecommunications. The hardship is to be required to provide a signal, and he said that the federal government says that the town cannot say no; you must have substantial evidence to do so. He also said that the federal government says that telecommunications are safe, and that towns cannot take health and safety into account to deny an application. You can just request that you demonstrate that the tower meets FCC guidelines, he said.

Board members then discussed the presentation. Jean Ewen asked how many people would be covered. Mr. Parisi showed the propagation maps and said that he does not know the answer. They are not focused on people he said, but on the area. They can get numbers but that is not what they are trying to do. Ashley Rowe noted that the proposed tower is sited in one of the most sparsely populated parts of town. He said that it might be filling a gap but that there is not much demand in that gap. Mr. Parisi said that it is a combination of population and geography—you will not get one tower for all of town, he said. We are doing the best we can to do the best possible, he said, and he said that some parts of Strafford likely get coverage from Rochester, Barrington, and Northwood. Parker Mountain is a recreational area, he said, and

people want coverage. They are trying to cover a defined area. These towers are low power and so closer to where the phones are. Mr. Parisi then asked the Board to address the question of disguise, saying again that he thinks they have a great location with low visibility and providing coverage. Ashley Rowe asked how decreasing the height would affect coverage. He said that the applicants have not shown the Board the benefit of the increase in height above the requirements. Mr. Parisi said that they want to build the tower so it can accommodate different companies. The platforms are about 10 feet in height, so if the tower was only 20 feet above the trees, the arrays would be below the trees and would not work. He said that there are four to five companies in the market now, so they have planned for four arrays. You do not want to be building without being cognizant of the future, he said. Ashley Rowe said that they have put a lot of time into models and that he would like to see how the coverage changes with height. Susan Arnold said that she thinks that the Board has heard the answer; if the tower is lower, few platforms, but she noted that the platforms are also a revenue source for Vertex. Scott Hodgdon said that he could see the balloon test quite clearly from Parker Mountain Road, and Kevin Hinrichsen said that it was visible from his yard. Scott Whitehouse, the Fire Chief, agreed that it was visible from Parker Mountain Road near Third Baptist Church. Susan Arnold asked about the visual analysis. Ashley Rowe noted that Mr. Parisi asked what the Board meant by disguise but had talked about disguises such as the pine tree style towers, so, he asked, why not paint the towers in a camouflage color rather than silver. Mr. Parisi said that in their experience, painting the towers anything other than silver makes them more visible. The sky is gray statistically more often, he said. Ashley Rowe noted that most of the photos show the tower against a background of trees, so perhaps painting it brown and green would camouflage it more. Discussion of various styles of disguise continued. Jean Ewen then asked Mr. Parisi how many towers he thought would be needed to provide service to the whole town. He said that he did not know; he is looking at a very specific need, not for all of Strafford. Scott Hodgdon asked if they had considered siting the tower at Austin Cate Academy/NHARNG Training Center. Mr. Parisi said that a tower there would be more visible. He repeated that he thinks that they have picked a spot that is the least visible. They engaged a real estate analysis. Ashley Rowe said that the applicants are saying that alternative sites are prohibited under zoning, but zoning prohibits this tower as proposed as well.

Susan Arnold, the Acting Chair, advised that no decisions would be made tonight as the Board would be waiting to hear the results of the consultants retained by the Planning Board to review the application. She then opened the public hearing to audience comments. Kevin Hinrichsen, 33 Goodstein Road, advised that he would be able to see the tower and said that he would at least like to see it disguised, and said that if 20 feet above the trees is not enough, how about 40 feet. He said that hopefully there is somewhere in town where they could follow the regulations. He also noted concern about 5G coverage and the future. Finally he asked about decommissioning. Fran Parisi said that the applicants are proposing a bond for decommissioning and will get an estimate from their engineer for dismantling the tower.

Joe Cushing said that he is both an abutter and a family member of the property owners, and said that farms are going away in New Hampshire. He said that this is a way to create a source of revenue to keep the farm together, and makes an option for the family because they hope that the farm can stay in trust and stay together. Ashley Rowe noted that they will need to be careful about the wording of any agreements with the tower companies. Scott Whitehouse, the Fire Chief, noted that there are a lot of cell phone emergency calls in Strafford and that there are dropped calls as well. He said that the Fire Department needs the cell coverage to improve, talked about the First Net program, and said that he thinks that the Fire Department will need to show cell phone coverage to apply for certain grants. Board members noted that Vertex is a real estate developer, not a cell phone company. Mr. Parisi said that he does not understand the concern because he has picked the least visible spot. Ashley Rowe said that nobody has said that they do not want cell coverage, but that the people of town have voted for the ordinances and it is the responsibility of the Board to uphold them. He said that he wants to be able to say that the applicants have made a convincing argument in order to grant a variance, but there is no data presented as to why they need to exceed the ordinance in height; they are not giving a comparative analysis of why they need to double the allowed height. Lester Huckins said that the ordinance was adopted years ago when technology was different. Charlie Burnham asked Mr. Parisi how Vertex is going to sell the tower to cell phone companies if the town needs two or three towers. Fran Parisi said that the towers are a vertical strip mall. They get out ahead of the telecom companies, so they want to build their towers taller so more accommodating to more companies. If you pick a site that is not visible, you want the tower as tall as you can so you do not have to

build more, he said. Discussion followed, with Mr. Parisi again noting federal communications laws. Finally, Mr. Parisi said that he did not mean to threaten, and agreed that the Planning Board wants the same information about signal strength and height. He agreed that it would make sense to defer to the consultants. Ashley Rowe again noted that the Board of Adjustment is responsible to the voters. Susan Arnold agreed that both Boards want the same information and would like to work together. Board members then consulted their calendars, and all Board members present agreed that they could attend the February 6<sup>th</sup> Planning Board meeting and thus hold a joint Board meeting at that time. Fran Parisi asked the Acting Chair to continue the public hearing on this case to a date certain. Ms. Arnold announced that further discussion of Case Number #418 is continued to a joint Board meeting on February 6, 2020.

Board members then briefly reviewed two new applications to the Board and consulted their calendars. It was agreed to schedule a Board meeting for Wednesday, February 19<sup>th</sup> to address regular business before the Board other than the Vertex Tower application. There being no further business before the Board, a motion to adjourn was made by Charles Burnham and seconded by Scott Hodgdon. There was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 9:15 PM.

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