

## Zoning Board of Adjustment Meeting

May 14, 2020

As Chair of the Board of Adjustment of the Town of Strafford, Rick Ferreira opened by stating that he finds that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

The Chair then made the following announcements: Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I (the Chair) am confirming that we (the Planning Board) are:

a) providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means. We are using the Zoom platform for this public meeting. All members of the Planning Board are able to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing and using the assigned meeting code or by clicking on the website address:

<https://us04web.zoom.us/j/74011760254?pwd=WEEzZnZnNHhNZXdDb042Tk9RemNIQT09>.

b) providing public notice of the necessary information for accessing this meeting. We previously gave notice to the public of the necessary information for accessing this meeting, including how to access the meeting via Zoom or telephonically. Instructions have also been posted on the website of the Town of Strafford at [www.strafford.nh.gov](http://www.strafford.nh.gov).

c) providing a mechanism for the public to alert the public body during the meeting if there are problems with public access through email or phone call, the public can telephone or email [eevans.strafford.nh@gmail.com](mailto:eevans.strafford.nh@gmail.com).

d) adjourning the meeting if the public is unable to access the meeting: In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

The Chairman then began the meeting by taking roll call attendance and having Board members introduce themselves. Members of the Board of Adjustment in attendance were Rick Ferreira, Chairman, Charles Burnham, Jean Ewen., Ashley Rowe, and Scott Hodgdon and Lynn Sweet, Alternate members. The Chairman then called the meeting to order at 7:10 PM. Notice for the Rehearing on Case Number #418 were published in Foster's Daily Democrat and the Concord Monitor on or before May 6, 2020. Notices for tonight's meeting were posted at the Strafford Post Office and the Strafford Town Hall on May 5, 2020. The original decision on Case #418 was made at the March 6, 2020 meeting of the Board. Alternate member Lynn Sweet recused herself. The Chairman designed Scott Hodgdon as a voting member this evening in order to sit a full five-member Board. Also in attendance were Francis Parisi, T. Johnson and Stephen Kelleher were present representing Vertex Tower Assets. Joe and Cindy Cushing were present representing the Huckins family. Scott Whitehouse, Fire Chief, was also present. Several abutters and community members were also present.

The only item of business before the Board was the Rehearing regarding Case Number #418.

### Case Number #418

Petitioner: Vertex Tower Assets, LLC have applied for a Variance 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 a Variance 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. A variance to the requirement that the tower be disguised was approved at the March 6, 2020

meeting, with the condition that the tower and appurtenances be painted COR-TEN rust brown. Authorized agent representing this case is Francis D. Parisi, Esq.

Atty. Francis Parisi, Agent for the applicants, was present accompanied by T. Johnson and Stephen Kelleher of Vertex Tower Assets LLC. Joe and Cindy Cushing were present representing the landowner. Atty. Keriann Roman was present as a consultant to the Board on this case. Scott Schroeder and several other abutters and community members were also present.

Atty. Parisi began by thanking the Board for convening this electronic meeting. He noted that the application has a long history and that the Variance requested tonight has been denied once. He said that Vertex Tower Assets is a telecom infrastructure developer that builds facilities that are collocatable. Cell carriers are focused on networks, and work with cell tower developers such as Vertex for infrastructure development. Atty. Parisi noted that they have submitted a large application package that has been reviewed by the Planning Board for Site Plan approval, including a photo simulation package, which is probably some of the most relevant material for the ZBA because of the height question. Atty. Parisi noted that the Planning Board and ZBA had brought in a consultant who for the most part agreed with Vertex that a taller tower does facilitate collocation, would reduce the overall number of towers that would be needed and would allow them to build an economically viable site. Fran Parisi noted that many more materials were submitted to the Planning Board and that the Planning Board has now finished their review. Along with the Petition for Rehearing, Vertex has submitted an affidavit talking about the viability of the site. Atty. Parisi said that he does not believe that he needs to sell the importance of telecommunications, especially with the number of people who are now telecommuting and tele-educating. Atty. Parisi noted that he has also submitted coverage maps showing that there is a gap in Strafford and that the proposed tower is designed to serve the main thoroughfare through town. He noted that there is a public safety benefit to improved coverage, given the percentage of 9-1-1 calls made from cell phones. He noted that the local public safety officials have said that they use their cell phones as back-up for their radios, and rely on their own phones. He also noted the First Responder network. Finally, he noted that the challenge in Strafford is the topography; Parker Mountain is a large topographic impediment to signals from the north and west, while there are ridges in Rochester and Barrington that restrict coverage from that direction. He said that Strafford does enjoy coverage from other towns, but they are trying to provide coverage to the downtown area—police station, school, town hall, etc. The project is not designed to cover the Bow Lake area. He noted that they have submitted affidavits to show that given all the restrictions, this is the only available alternative to them for building the tower. While perhaps not best from a telecommunications perspective, given the zoning of the town, this is a better location he believes, because locations behind the town hall or at the National Guard Training Site would be very visible. He noted that there are towers in development in surrounding towns, as well. In summary, they are proposing a 140 foot tower because they are trying to be cognizant of the town's concerns.

Atty. Parisi noted that they also submitted an analysis by height, noting that it showed no incremental benefit over 95 feet, but he said, Vertex looks at 95 feet as the bottom, so if they were only allowed to go 20 feet over the tree canopy, they would be restricted from serving multiple carriers. The state wants collocation he said, and he thinks that Strafford does too, because the town would want to limit additional towers. 95 feet is the minimum he said; anything lower you lose signal in the canopy. He noted again that the site is set 2000 feet off Huckins Road and 1400 feet off the property line, tucked back in the trees, which will mitigate visibility. They talked about putting it closer to the road but that makes it more visible. They have been able to reduce the visibility by choosing this location, but at the substantial cost of the lengthy access driveway. These costs would be prohibitive if they cannot collocate. They have chosen a monopole design, which is more aesthetically acceptable, but you need separate to mitigate interference. The midpoints between antenna arrays would fall at 105, 115, 125, and 135 feet. The tower is also designed to provide space for public safety antennas above the arrays. Public safety antennas are omnidirectional whips above the structure and are visually unobtrusive, he said. If the tower was shorter than 140 feet, they could not make space available to the town. Finally, he noted that radio frequency emissions are regulated by the FCC for safety.

In summary, the tower will be built far back from other properties, which creates a safety buffer. When built at 135, the tower will provide signal to Parker Mountain Road. They have worked for 2 years or so on

this project and are quite a ways out from proposing an additional tower to serve other parts of town. They are now seeking the variance on height, noting that the variance to the requirement for disguise has already been granted and Vertex has agreed to the COR-TEN coloring. Atty. Parisi then quickly reviewed how the application meets the criteria for variance.

a) Public interest; Mr. Parisi said that he believes that the Board has already found that the tower would be in the public interest because of public safety.

b) Spirit of the ordinance; the applicants feel that they meet the spirit of the ordinance because there would not be a big visual impact, no lighting, it will be located on a large parcel, and given the land use in the area, they assume no diminution of property values. The added height is in the public interest because improved telecommunications are needed and height equals competition because height allows multiple carriers, so the community will not be beholden to one carrier. Other towns have taller towers, he noted.

c) Substantial justice; It would be an injustice to restrict the height by denying the variance because there would be no benefit to the town. Public safety people want the tower, he noted. To consider substantial justice, you look at the benefit vs. the burden, in this case public safety vs. a de minimis affect on visibility. With the Rehearing, the applicants are advising the Board about the cost of the access road, the cost of the COR-TEN color treatment, and the need to build a collocatable tower. Building a shorter tower would limit their ability to provide space for public safety antennas. Strafford's ordinance incorporate RSA 12-K by reference, and state law expresses a preference for collocation; more coverage but no more towers.

d) Hardship they feel is created by the topography which is an impediment and creates limits for telecom signals. Any other location would be more visible and less attractive, he said. To build a shorter tower is not viable, and is also a hardship. The focus of the definition of hardship is the specific property. The town has tried to limit height to mitigate visibility, but this tower is not really visible at 140 feet, he argued. In addition, the proposed use is a reasonable one, he said, and he suggested that the Board has already agreed that the use is reasonable by the Planning Board's Site Plan approval and by the variance already granted to the requirement for disguise. He also noted that the federal government is trying to prevent towns from saying no to towers through the provisions of the TCA. The applicants maintain that literal enforcement of the zoning would prevent Vertex from mitigating the gap in cell coverage, which is contrary to the TCA because it would have the effect of denying telecommunication coverage to the community. Mr. Parisi then returned to the balloon tests and the photo simulations, noting the limited visibility of the proposed tower at the requested height. In summary, the applicants believe that a denial would be an unnecessary hardship.

The Chairman then called on Joe and Cindy Cushing, who were present representing the Huckins family. Joe Cushing said that the family feels that this is an opportunity for the family so that the property stays together as a historic farm. They want to keep the land together in trust and the tower rental will help. If they do not have the income, they are afraid that they will have to subdivide. They are trying to keep the farm and field together. The Chairman then asked if the Board members had any questions for the applicants. Jean Ewen asked about the antenna dimensions. Atty. Parisi said that the platforms are triangles, twelve feet per face/side, and the antennas attached are panels between four and eight feet high. There were no other questions.

The Chairman then opened the hearing to public comment. The first to speak was Scott Whitehouse, who said that he serves as Fire Chief and Emergency Management director. He said that they do have radio problems and are getting more calls with cell phones. He said whether First Net or Verizon, first responder signals will end up using towers. He said that he feels getting a tower is a necessity, because people are going away from land lines. The next to speak was Scott Schroeder. He said that he appreciates what the Huckins family is trying to do for the farm, but that he feels that the Board also needs to look at the benefit for every resident. We want the best plan for the communication needs for all of Strafford, he said, and he said that he thinks that the Vertex plan falls short. He asked if Vertex had approached the town to develop a site cooperatively. The Vertex team said that they had not. Mr. Schroeder asked Atty. Parisi why a 120 foot tower would not also offer what they need. Mr. Parisi said that 120 feet would limit their ability to offer space to the town as the only additional space available for expansion would be above the tower. He said that you can design towers that are extendable, but it is expensive; also, if you design for 100 or 120

feet with the idea of extending the tower upwards later, you could only offer public safety antenna space below the antenna arrays, which would be below the trees. So, Mr. Schroeder said, to sum, if they do not receive the variance for 140 feet, the town will not get emergency antenna space. Mr. Parisi said that this is correct.

Ashley Rowe then asked Fran Parisi if he was stating that this tower (at 140 feet) is not specifically designed to be extendable, and Atty. Parisi said yes. Mr. Schroeder resumed, noting that the ideal site for a tower for a community will improve coverage, and he said he respectfully would ask that they look at the coverage maps to see what they will get with this location. He noted that the gain from 120 feet to 140 feet is negligible and said that it is hard to understand that this is hardship. Addressing Vertex, he said that they knew the rules from the beginning. Atty. Parisi said that the 90% of the time that are asking for height variances for projects as there is never a perfect site. He said that he understands that the Bow Lake area of town will require another tower site, which is a project for another day. Keeping this tower to 100 feet would be the hardship he noted. Mr. Schroeder said that Vertex is saying that Vertex knows that one tower will not do, yet Vertex is also stating that the state does not want more towers. He asked if it would not make more sense to back up the process and work to find a better site, as Strafford may not have another chance for years because Strafford will be checked off as complete. Atty. Parisi said that he thinks that the radio frequency engineers will not check off Strafford as complete based on this tower, and he said that once built he thinks having this tower will attract other towers so that the coverage is more seamless. Vertex has been successful in planning for other counties and thoroughfares he said. Stephen Kelleher said that they have chosen this site in part because the trend now is to go for sites where people congregate like the school, town hall, or National Guard, because people are using wifi at home so cell coverage in homes is less of an issue. Mr. Schroeder again argued for a more global approach. The Chairman agreed then asked for final comment. Scott Whitehouse asked Atty. Parisi if the proposed tower in Barnstead would help coverage for Strafford. Mr. Kelleher noted that the signal will be blocked by Parker Mountain but would help maintain coverage through Strafford. The public comment period closed at 8:30 PM.

Board members agreed to work through each of the criteria for variance and to vote on each of the criteria in turn.

Variance—Article 1.4.2, paragraph H(1)(b) to locate a wireless services facility monopole tower where extending 60 feet above the height of average tree canopy where the Zoning Ordinance limits the height to “no higher than 20 feet above the average tree canopy.”

I. The Variance will not be contrary to the public interest and the spirit of the ordinance is observed if the variance is granted.

Board members deliberated. Rick Ferreira said that there will be a benefit to the town with a public safety antenna on the top of the tower, and it will be tucked back. Ashley Rowe agreed. Charles Burnham noted that they are still leaving a gap in coverage and Jean Ewen expressed concern that the signal will be blocked by Parker Mountain, saying that she would like more efficiency. Atty. Roman advised Board members to consider whether granting a Variance would be contrary to the public interest or contrary to the spirit of the ordinance, based upon the purposes of the Town’s zoning ordinance such as public safety, property values, etc.

The Chair then turned to Board members who agreed that a Variance will not be contrary to the public interest because:

- a. The Strafford Fire Chief/public safety personnel said the tower would help public safety by adding to some coverage/covering a gap in wireless service.
- b. The tower is tucked away on a large parcel and would not alter the essential character of the current neighborhood.

- c. Granting the variance satisfies most of the basic zoning objectives of the Zoning Ordinance including protecting public safety and protecting property values. Zoning Ordinance, Article 1.1, Preamble.

Vote (public interest): 5 yes; 0 no

Board members agreed that the same analysis applies to the question of the spirit of the ordinance. Rick Ferreira suggested that the spirit of the ordinance is observed for the same reasons as above.

- a. There is a gain to the public if the variance for an additional 40 feet above what is allowed by the Zoning Ordinance is granted because construction of the tower and tower rental income will help the landowners try to keep the historic farm intact.
- b. The applicant has indicated that it is not financially feasible for them to construct the tower unless they are allowed to build the additional height in order to accommodate co-locations.

Vote: 5 yes; 0 no

III. The applicant suggests that the values of surrounding properties will not be diminished if the variance is granted.

Board members noted that there is one person/taxpayer who shared his concerns, but that this is challenging issue because there is nothing in the Master Plan regarding telecommunications tower locations, so Board members agreed that they feel somewhat stuck. Scott Hodgdon noted that there are locations from where the balloon test could be seen, and asked if that would cause a diminution of value. It was noted that no abutters are attending in opposition and that the Board received one letter in support.

The Chair then turned to Board members who agreed that the value of surrounding properties would not diminish because:

- a. The affected properties include the landowner and the Town Forest. No abutters have objected.
- b. The Master Plan does not specify locations for cell towers.

Vote: 5 yes; 0 no

IV. Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship which owing to the special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision of the property and the proposed use is a reasonable one?

Atty. Roman has advised that the TCA shifts the understanding and that the Board cannot compare with other properties, but should rather consider how suitable the height is for this location. It was noted that the feasibility affidavit from Stephen Kelleher adds to the discussion, and that the topography of Strafford is challenging. There may be better suited locations but there is nothing certain about where the taxpayers of Strafford think that site may be because there is nothing in the Master Plan. The coverage maps do show a gap in Strafford. And although Strafford does not have a collocation requirement, state law prefers collocation. Jean Ewen then asked whether Vertex has agreed, in answer to Ashley Rowe's question, that they will not extend the tower upwards. Mr. Rowe said that they have said that the tower is not engineered to be extendable, and that he feels that is the best that the Board can get. Atty. Roman asked the Board to consider whether they find that the application has established hardship under state law. Rick Ferreira suggested that the Board has agreed that hardship has been established. Ashley Rowe said that one needs to consider the TCA.

The Chair then turned to the Board who agreed that they find that the applicant has shown hardship under state law and the TCA because:

- a. The applicant presented an affidavit that stated that construction of the cell tower would not be feasible without the added height to allow co-locations/multiple carriers.
- b. The applicant stated that the topography is challenging.
- c. The Zoning Ordinance has no co-location requirement or preference but New Hampshire law does state a preference for co-locations.
- d. The applicant has shown hardship under state law.

Vote: 5 yes; 0 no

#### CONDITIONS OF APPROVAL:

Board members then turned to the question of conditions of approval. It was noted that earlier in the meeting, Vertex had agreed to allow for emergency response antennas to be put on the tower, and that this should be included as a condition of approval. Atty. Parisi noted that the request to add public safety equipment to the tower needs to be clarified and suggested that it be subject to a municipal co-location agreement and not left open-ended.

Atty. Roman then noted that she had promised the Planning Board that she would bring one of their proposed conditions of approval to the Zoning Board because she felt that it was more appropriate to consider it in connection with the height of the tower. The Planning Board had suggested that tree-cutting be restricted to no more than 25% of the basal area within 250 feet of the tower, leaving a well-distributed stand, in order to maintain a tree canopy around the tower as one component of reducing visibility. At first ZBA members suggested that a larger area would be more appropriate. Atty. Parisi noted that the existing hay fields lie within the proposed area, and asked that they be excluded and it was noted that there will be a 75 to 85 square foot cleared area around the tower base. He agreed that limiting tree-cutting is a common condition of approval and some communities also ask for signage. Ashley Rowe then suggested that he was not sure it matters, as tree cover would only matter from a distance, not for abutters who would probably still see the tower above the trees. Board members ultimately followed Mr. Rowe and agreed to eliminate the proposal from consideration.

Board members agreed that the applicants have agreed to allow for the placement of an emergency public safety antenna above the telecommunications antenna arrays subject to entering into an agreement between the Town and Vertex Tower Assets LLC and proposed the following Condition of Approval:

- a. The applicant shall allow for the placement of emergency public safety equipment subject to entering into an agreement between the Town and Vertex Tower Assets LLC.

Vote: 5 yes; 0 no

#### VOTE:

For all of the reasons set forth above, a motion was read by Richard Ferreira, seconded by Ashley Rowe to **approve** the Variance requested by Vertex Tower Assets, LLC, regarding property located at 22 Hillside Drive, Tax Map 11, Lot 4, from Article 1.4.2, Paragraph H (1) (b) of the Zoning and Land Use Ordinances where the applicant requests 60 feet above the average tree canopy height where the Zoning Ordinance limits tower height to “no higher than 20 feet above the average tree canopy” for the reasons stated previously for each variance criteria and for the reasons discussed as reflected in the minutes of the May 14, 2020 hearing, with the following conditions of approval:

- a. The applicant shall allow for the placement of emergency public safety equipment subject to entering into an agreement between the Town and Vertex Tower Assets LLC.

Vote: 5 yes; 0 no

Scott Hodgdon advised that he wished to vote in favor of approving the Variance and therefore wished the record to show that he had voted aye on the previous variance elements.

All voted in favor of the Motion approving the variance.

The Chairman advised that there is another 30 day appeal period and closed the public hearing on the Vertex case.

Board members briefly discussed Board memberships; it was agreed to postpone further discussion on the nomination of officers. There being no further business before the Board, a motion to adjourn was made by Jean Ewen and seconded by Lynn Sweet. There was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 9:27 PM.