



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820
Meeting Date: Thursday, July 20, 2023
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), George Reagan (Alternate), Nicholas Couturier, Rich Onufry

Members Absent (Excused): Otis Perry, Anthony Sillitta, Sarah Tatarczuk

Members Absent (Unexcused): None

Staff Present: Natasha Kypfer (Zoning Administrator/Assistant City Planner)

The Chair called the meeting to order at 7 PM.

2. APPROVAL OF MEETING MINUTES OF JUNE 15, 2023

Motion: Onufry moved to approve the minutes of June 15, 2023. Seconded by Reagan. Vote: 2-0-2 with Reagan and Couturier abstaining.

The Chair explained the ZBA hearing process.

3. HEARINGS

A. ~~*ZONE-2023-0030~~ Owners: Edgar R. & Anne S. Crothers, Applicants: Justine Fallon and Karl Kumli, Cote Drive and Dover Point Road. (Tax Map I, Lot 55-B), located in the Low-Density Residential (R-20) Zoning District requests Variances from ~~Section 170-12.B of the Zoning Ordinance~~, to allow for a rear setback of 20' whereas 30' is required and a front build-to-line of 10' whereas 20' to 35' is required. **CONTINUED FROM JUNE 15, 2023 MEETING- WITHDRAWN**

B. ***ZONE-2023-0035** Owners: Lionel R. Paradis Jr. & Kristina L. Paradis, Applicant: Jared Lusk, 180 Tolend Road. (Tax Map F, Lot 2), located in the Innovative Technology (IT) and Rural Residential (R-40) Zoning Districts request a Variance from **Section 170-22.C.(1).**, to permit the construction of a new, 100' telecommunications tower on the above referenced property, where the construction of new telecommunications towers is only permitted on 15 parcels specified by the Zoning Ordinance.

Attorney Jared Lusk of Nixon Peabody LLP, representing Verizon Wireless, Chip Fredette, Verizon Wireless Site Acquisition Consultant, and Martin Laven, Verizon Wireless Engineering Consultant presented the case, and reviewed their need for the Variance request. The applicant's explain that none of the existing 15 parcels, locations which are permitted within the ordinance for towers, towers allowed will work to deliver reliable wireless telecommunications to the Dover West cell.

Chip Fredette reviewed the existing Verizon Wireless coverage in the region. There are six existing towers that serve Dover. He described and showed their locations and coverage on maps within their PowerPoint presentation. There is a large portion of the area without coverage and Chip works to locate a site where a tower can be added. First, he looks at existing towers, smokestacks, etc. where a co-location is plausible, but there are none available in the location. Next, he looks to local zoning regulations for guidance and in this instance, there is not an allowable parcel available where needed.

Mr. Fredette continues, sharing that the proposed telecommunications tower height is 104'. He described the proposed site location and leased area for the proposed tower; providing details on fencing, landscaping, and access from Tolend Road. The structure is proposed 815' from Tolend Road.

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Chair Prior asks that during the presentation of the criteria the applicant's address the *Telecommunications Act of 1996 (TCA)*, specifically what the ZBA is legally permitted and not permitted to do under the law.

Attorney Lusk addresses the applicable legal standards, noting that the *Telecommunications Act of 1996* limits a municipality from outright denying coverage. He then segues and addresses the five criteria of the Variance request noting: "It is in the best interest of the people of New Hampshire to encourage rapid deployment of the broadest range of quality telecommunications services to the public." He continues, the site was selected to add coverage to a specific area where there is not any. Denying the Variance would in effect deny coverage to those in the Dover West Cell. The site would support current and future customers.

Attorney Lusk continues stating, it will not adversely impact the health and safety of the surrounding area or alter the essential character of the locality. The community relies on this system to operate their lives every day. There will be no increase in traffic, and it will not be noticeable to those in the area. Furthermore, it is not contrary to the public interest, rather, it is the opposite – it is essential.

Attorney Lusk explains the request is not contrary to the spirit of the ordinance. The ordinance states: "...to serve adequate provision of transportation, water, sewer, schools and *other public requirements*..." which applies here. The proposal is modest in its impacts. Furthermore, granting the Variance will do substantial justice, as the significant gap in coverage for this area will be eliminated. The proposed use would not diminish the surrounding properties. Most homes are moving to wireless-only, in fact, he states that when potential buyers do not have reliable service, it impacts the sale, sharing statistics on this topic.

In closing, Attorney Lusk states that the NH Supreme Court ruled the termination of property special conditions are different for a cell tower than routine cases. The court declared when an application to construct a tower is proposed in order to fill a significant gap (as seen here), the suitability of a specific parcel of land should be considered for determining the hardship.

Chip Fredette displayed a map and described and showed where the permitted parcels are located in relation to where the gap in coverage exists. He further explained calculations that were run at various other locations. He explained the various other maps that are in the application packet for the Board.

Reagan asked about bandwidth, stress, and number of users. In response, Engineer Martin Laven explained that the number of users and how far they are from the site are factors in determining the demand for power and speed of the network.

Public Hearing opened.

Public Comment:

Adam Henker, 144 Tolend Road, abutter noted he had Verizon Wireless at that location for 10 years and had great service. He left Verizon due to the high cost, not any issues with service. His view from his property will be affected by this proposal, and he is concerned about health and safety. The coverage in that area seems fine and if there are other options for location that would be preferred as he has young children.

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Eileen Nadeau, 160 Tolend Road, abutter is opposed to the proposal due to the negative health affects which she previously documented in an email to the Board. She is not on Verizon, but has other phone and wireless service at the location.

In response, Attorney Lusk addresses the public comment noting the government has set standards relating to health and safety for these facilities. With all of the antennas on this proposed tower, it would be just over 15% of the federal maximum limit. Once they can prove they are below the standard, the Board, by law, is prohibited from considering health affects in their decision. He notes an article which he will provide, via Zoning Administrator Kypfer, that explains a court case concluded property values are not adversely impacted by towers.

Adam Henker, 144 Tolend Road, spoke again and recommended the Board not approve the tower in such a residential location, but rather use two other sites discussed earlier in the applicant's presentation.

Planning Department recommendation: Zoning Administrator Kypfer noted staff does not support or oppose the granting of the Variance request. For past similar applications, the Board indicated a desire to schedule a site walk, balloon test, and to obtain a third-party review of the submitted radiofrequency analysis; the Board may want to consider these options again. Of note: If the Variance to permit this use is granted, Planning Board review and approval will also be required per §170-22.

If the Board grants the Variance, staff recommends the following subsequent condition:

- 1) The applicant shall go before the Planning Board for Site Plan review.

Zoning Administrator Kypfer addressed some clarifying questions asked by the Board, relating to the process of reviewing/updating the permitted locations noted within the Zoning Ordinance, and what the ZBA is allowed to do in relation to the requirements of the law for these towers.

Onufry noted the applicant has done their due diligence.

Prior and Reagan noted the application was very well presented and laid out, and that questions were well-addressed and explained by the applicant.

Public Hearing was closed.

Motion: Onufry moved to GRANT the Variance of a 104' telecommunications tower with the staff recommended condition acknowledging all criteria has been met, and state and federal law is upheld. Prior seconded. Vote: U/A, 4-0.

- C. ~~*ZONE-2023-0037~~ Owners: Dover Development, LLC, 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Commercial (C) Zoning District requests a Variance from **Section 170-11. of the Zoning Ordinance**, to allow for the removal of all existing structures and to construct sixty-four (64) residential units, with two (2), four-story buildings, and to exceed the residential ratio required under Footnote 3 where 2/3rd is the maximum and 13%/87% is proposed. **WITHDRAWN**

Chair Prior noted [Onufry left, as he recused himself from item 3.D.] and there are only three members sitting; the applicant has agreed to proceed.

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- D. *ZONE-2023-0038** Owners: Jewett Commercial Park, LLC Applicant: Jeremiah Comeford, 30 Crosby Road Unit 9 (Tax Map G, Lot 31-3), located in the Commercial Manufacturing (CM) Zoning District requests a Special Exception from **Sections 170-12.A. and 170-52.C.(3). of the Zoning Ordinance**, to install an auto service.

The general Special Exception Requirements set forth in §170-52(C)(3):

- (a) *The requested use is essential or desirable to the public convenience or welfare.*
- (b) *The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.*
- (c) *The requested use will not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.*

The specific Special Exception Requirements set forth:

- A. *The use of land for vehicle refueling/ recharging station may only be permitted upon the determination that the property values of adjacent land will not be compromised. Any vehicle refueling/ recharging station which discontinues operations for a period in excess of one hundred eighty (180) days shall be required to file a new application for a special exception with the Zoning Board of Adjustment. Such conditions may include, but need not be limited to, the provision of adequate and properly maintained screening around land so used.*
- B. *If petroleum based, the minimum lot size shall be eighty thousand (80,000) square feet, the minimum lot width shall be one hundred fifty (150) feet. Thirty-three percent (33%) of the subject parcel shall be open/ green space.*
- C. *The total permitted sign area shall not exceed one hundred (100) square feet, inclusive of the canopy and fueling equipment, and any signage for retail or eating or drinking uses.*
- D. *No fuel storage tanks may be constructed or enlarged closer than one-hundred (100) feet to any Conservation District, and two hundred (200) feet to a secondary groundwater protection zone.*
- E. *Year-round consistent screening no less than 5 feet in height, shall be provided from the street, or any abutting residential structure to the pumps. The building may act as the screening.*
- F. *Hours of operation shall be limited to 6 am to 9 pm.*
- G. *If a drive-in thru service is proposed, said facility shall be setback either fifty (50) feet from a residential abutting lot or one-hundred (100) feet from the abutting residential structure, whichever is greater, and shall also be screened consistent with Section E above.*

Applicant Jeremiah Comeford, 62 Quaker Lane, presented the case and reviewed the need for the Special Exception request.

The applicant handed out packets of photos to the Board, which show the existing building which is a 1250 sq ft unit with an office, bathroom, and garage space. The proposal is to start an auto garage business within the unit. Added equipment will include a car lift and air compressor for tools. An oil to water separator will be installed to protect the drain from contamination. The location is commercial, and the neighboring businesses include a tree service, landscaping company, and propeller repair shop – all of which have bays in use.

The applicant addresses the Special Exception general and specific criteria, noting the use would be desirable to the public as a service-oriented business. Traffic congestion and pedestrian safety is not an issue as it is an industrial complex with similar uses. Furthermore, no overload to public water drainage or sewer will occur as there is only a one-stall bathroom and slop sink. No refueling will be done on site, but oil changes and coolant

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changes will occur on site. Waste will be taken away by a contracted company. Finally, the proposed hours of operations are 6 or 7am to 5-8pm, depending on demand. (The restrictions are 6am-9pm per the ordinance.)

Reagan asked if the petroleum aspect is triggering any other requirement.

Zoning Administrator Kypfer noted the restrictions (Special Exception criteria) listed on the CM zoning table, which also apply to the use of Vehicle Refueling and Recharging Station, explain that the criteria items A-G are slanted a bit towards that use.

The applicant clarified they will not have a gas station, but may need to add fuel to a vehicle. They are not currently planning on working on any electric vehicles.

Public Hearing opened.

Public Comment:
None

Planning Department recommendation: Zoning Administrator Kypfer noted staff does not support or oppose the granting of the Special Exception request, but that under RSA 674:33, 4(a). the Board may grant a Special Exception if all Special Exception criteria are met. Staff has reviewed the materials submitted and is of the opinion that the above specific criteria, as well as the general criteria per §170-52(C)(3), are in alignment with the requirements. However, the paper submission was lacking detail, and Staff suggested the applicant provide more specifics in their verbal testimony at the public meeting, which he did this evening, along with providing the photographs.

Public Hearing was closed.

Motion: Couturier moved to GRANT the Special Exception as presented based upon the representations made by the applicant and the testimony provided. Reagan seconded as it meets the special exception requirements. Vote: U/A, 3-0.

4. OTHER BUSINESS

None

5. ADJOURN

Motion: Couturier moved to adjourn at 8:14 pm. Reagan seconded. Vote: U/A, 3-0.