



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Bob Hall (Vice Chair), Frank Landford, Otis Perry, Rich Onufry (Alternate), Anthony Sillitta (Alternate)

Members Absent: George Reagan, Nicholas Couturier (Alternate)

Staff Present: Elena Piekut (Assistant City Planner, Zoning Administrator)

The Chair called the meeting to order at 7:03 p.m. He introduced the Board and staff present to the audience and explained the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF MARCH 15, 2018

Motion: Otis Perry moved to approve the meeting minutes of March 15, 2018 as written. Frank Landford seconded. Vote: 5-0-1 with Bob Hall abstaining.

3. HEARINGS

- A. Z18-07 Applicant Industrial Tower and Wireless, LLC and Owners Peter and Susan Rousseau, 200 Henry Law Avenue (Tax Map K, Lot 1), located in the Rural Residential (R-40) Zoning District, request a variance from Section 170-22.C(1) of the Zoning Ordinance to permit the construction of a new, 180-foot tall 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.

Chair Chris Prior recused himself from hearing the case and left the table.

Vice Chair Bob Hall recognized Otis Perry, who explained that the Applicant is also subject to federal review, and as part of that review the Dover Heritage Commission, of which he is chair, has been asked to comment on the project. He said there was no requirement to notify abutters but public notice will be provided.

Vice Chair Bob Hall stated that he felt the Board has been inundated with information, some being received as recently as today, and that the information is complex and will take time to digest. He wants to be prepared to ask appropriate questions and feels it is in everyone's best interest to continue the case to the next meeting.

Otis Perry disagreed and stated his opinion that out of respect to the public in attendance, the public hearing should be opened.

Frank Landford agreed that thought there is information lacking, he wants the opportunity to ask questions tonight.

Anthony Sillitta agreed that a public hearing should be held.

Rich Onufry agreed and wants to proceed.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

The Applicant was represented by Attorney Steve Grill, Kevin Delaney of Industrial Tower and Wireless, LLC, Jerry Squires representing T-Mobile, and Kevin Fadden of Industrial Tower and Wireless, LLC. He said that the T-Mobile radiofrequency engineer was unable to attend due to illness.

Attorney Grill provided an overview of the applicants and application, the need to improve coverage in an area lacking service, described how wireless service works, explained that none of the 15 parcels where towers are permitted would work and that existing towers don't suffice, and explained that the owner of WTSN radio station wouldn't enter into a long term lease that was commercially reasonable. He explained that the proposed tower location is in the 29-acre portion of the applicant's lot which also contains powerlines. He told the Board that no matter where the tower is located someone will oppose it but that is not a reason to deny the request.

Frank Landford noted that the site plan provided does not show the house or farm buildings in relation to the tower and its drop zone, as well as that the drop zone include the area of high tension lines. Attorney Grill said tower collapses are very unlikely, that they are designed for a category five hurricane, for ice loading, and to fall inward on themselves when they do collapse. Frank Landford would also like to see a statement from the easement hold for the power lines and distances from the tower to other structures.

Otis Perry said he had no questions.

Anthony Sillitta asked about the location of the existing 205-foot tower on Middle Road and whether it may be closer to the service area in question than the proposed location, especially when height is considered. Attorney Grill said that T-Mobile is a tenant of that tower, but does not own it.

Rich Onufry asked what the Applicant would do if they could use this lot, but the particular area proposed was not a possibility. Attorney Grill said he was not sure but it can be discussed further.

Bob Hall said he was concerned about the height of the tower given the limited area lacking service and asked about how tower height relates to coverage limitations. Attorney Grill said this is based on complicated computer modeling but he does not know the engineering specifics. Bob Hall asked for clarification about why the nearby towers that were evaluated were rejected, and whether it was because they couldn't provide coverage. Attorney Grill said that at some height that property would work but that the site is not available because the owner wants a lease terminable at will and that they tried to negotiate for a year. Bob Hall noted that T-Mobile has some coverage in the area and asked whether those antennas could be improved to provide coverage. Attorney Grill said he has been told "no" but that that is an engineering question. Bob Hall noted that though there may not an easy solution, there may be a solution.

Rich Onufry asked whether the tower would be available to other carriers. Attorney Grill said the tower would be owned and operated by Industrial Tower and Wireless, LLC and since colocation is generally preferred and required he would hope and expect other carriers to locate on the tower.

Frank Landford asked for confirmation that the intent is for a long term lease of the land, not a purchase and Attorney Grill confirmed that is the case.

Kevin Delaney, Regulatory Compliance Manager for Industrial Tower and Wireless provided additional details about the tower proposal, such as: it would be accessed from McKone Lane using an existing driveway in the power line easement that would be widened to 12 feet and would be approximately 670 feet long, that it would be served by underground utilities, that the lease area would be 100 feet by 100 feet, that the tower compound area would be 80



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

feet by 80 feet surrounded by an 8-foot fence, containing up to five shelters and equipment cabinets for each carrier, with a base of 6 inches of 3/4-inch crushed stone. Frank Landford asked for confirmation that it is a self-supporting, tripod tower and Mr. Delaney said that it is. He said no tower beacon or lighting is required, that they have received FAA approval, and that the fall zone does not include any buildings but does intersect with the location of PSNH utility easement. They have an access and utility easement from PSNH.

Bob Hall referred to the drive test study and asked for explanation of how that is conducted. Attorney Grill explained that a vehicle is equipped with external antennas and measuring equipment, and a separate evaluation is also done through modeling. Bob Hall asked whether this is all internal work, without a third party involved. Attorney Grill confirmed that T-Mobile does the evaluation. Rich Onufry asked whether anything else initiated this need for a new tower or if it is standard to evaluate for gaps in coverage. Attorney Grill said it may result from customer complaints but he is not sure and that sometimes it comes from public safety making requests to the carrier.

Jerry Squires, consultant for T-Mobile, said that the company would prefer existing sites, and he was given a two-mile search ring to look for a new location. He said they first consider colocation, new towers. He said they considered the existing silo at 200 Henry Law Avenue but that trees are in the way. At 101 Back Road, they could not come to an agreement with the property owner. He noted that there are also federal requirements for carriers to provide sufficient coverage for 911 in every area to maintain their license.

Bob Hall asked whether they know if there is a lack of emergency coverage. Jerry Squires said he doesn't know of any on record but that information may be available. Anthony Sillitta asked whether such a problem is a T-Mobile issue or one suffered by multiple carriers, and whether the current situation is jeopardizing T-Mobile's license. Mr. Squires said he would look into that.

Bob Hall asked if there are any plans to camouflage the tower. Kevin Delaney said they do not plan to camouflage the tower and do not like to do so as that can draw more attention. Mr. Hall asked whether a balloon has been floated yet. Mr. Delaney says it has not.

Attorney Grill said that if the Board would like a balloon test, he would like to schedule it sooner rather than later although after trees leaf out the visibility changes.

Public hearing opened.

Andrew Nanaa, of 5 Industrial Park Drive, representing Dianne Chalifour of 3 Mulligan Drive, explained that he worked for tower developers and in the tower industry for seven years and has reviewed the file and associated materials in person for three days in a row, with new documents being added each day. He told the Board that he had submitted a letter by email. Mr. Nanaa said that the Applicant seems to put a lot of faith in the drive test, but that results can differ depending on time of day and weather as well as the type of signal, such as 3G or 4G. He noted that the drive test is two years old. He said there is no demonstration that 180-foot tower height is needed, nor is there demonstration that upgrades aren't possible. He said some companies are upgrading from 4G to 5G to improve service. He stated that the Board does not have enough information to make a decision or to demonstrate a need. He said there is a vast difference between computer simulations and a drive test and that service is based on pure physics. He stated his belief that a rendering from a distance and a balloon test are needed. Mr. Nanaa believes that the wildlife assessment lacks detail, and that eagles and hawks love to nest in towers, but can also damage them. He believes that the NEPA short form, and possibly a full phase one assessment, will be required. He said that the federal government will also review and approve or deny the project. He wants to see empirical data and that T-Mobile has committed to



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

locating on the tower through a lease document. He explained that public safety operates in the 800 MHz zone and T-Mobile operates in the 1900-2000 MHz zone, with the high number representing lesser coverage. He said Verizon is at 750 MHz and police at 150 MHz. He said that by operating at the highest frequency T-Mobile covers the shortest distance, and other carriers may not need coverage using the proposed tower.

Tom Hackett, 43 Samuel Hanson Avenue, noted that the top of the tower will be 100 feet above the trees. He has looked into the effects of living near cell phone towers and there are health concerns including headaches, insomnia, ringing in the ears, and that RF radiation has been found to cause infertility, damage DNA, and accelerate the growth of cancer cells. He said that although studies are controversial and more research is needed, if people believe them they won't want to live there. He has found reports that indicate homes near towers are difficult to sell and thus property values will decrease. He said that the intent of the ordinance is to prevent towers everywhere and that dozens of homes will be impacted.

Eric Borrin, 117 Back Road, explained that he directly abuts the radio station, and upon choosing to live there investigated the effects of AM broadcasting. He asked the Board not to grant the variance, stating that some statements are suspect. He feels there is an illusion around federal requirements. He said that a 180-foot tower at 150 feet elevation, the fifth highest area of Dover, would create an eyesore. He believes the high radiofrequency output makes the project undesirable. He urged the Board not to close the public hearing at this meeting. He said it is clear that the volume of information provided is not available to all residents as it is changing on a daily basis.

Steven McCusker, Jenkins Road in Madbury, representing family living on Back Road, valued the process and gave an example of existing nonconforming industrial buildings in residential neighborhoods and spoke to the necessity of zoning. He said isolating 15 sites for new towers is forethought. He discussed the variance process and reasons for granting variances. He is concerned that granting this variance will set precedent and could encourage other requests anywhere in the City. Mr. McCusker described the Dover High School light towers visible near Exit 7, which are 90 feet tall. He addressed the likelihood of tower collapse with an example of a fatal tower collapse in Missouri that day. He asked the Board not to open the floodgates.

Melissa Clough, 41 Samuel Hanson Avenue, stated that hers is the second closest home to the site and that she can see the tower site through her back door. She is concerned both as a mother and a licensed real estate agent and asked whether it will be higher than Garrison Hill tower and if it will be visible everywhere.

Ann Marie Hackett, 43 Samuel Hanson Avenue, wants to know whether Dover Police and Fire Departments have any concerns about service in the area, and what data is available. She said that she sees bald eagles in the area regularly and they are still in danger. She is very against the project.

Tom Harris, 4 Mulligan Drive, asked whether federal law regarding emergency services requires T-Mobile to provide adequate coverage when it doesn't currently exist.

Donna Capern, 1 Mulligan Drive, asked that the public hearing remain open until the next meeting.

Carl Winn, 39 Samuel Hanson Avenue, noted that the site is at an elevation of approximately 145 feet, and the top of a 180-foot tower will be at 325 feet, where Garrison Hill is 291 feet and the Statue of Liberty is 305 feet tall.

Norm Fracassa, 1 Penny Lane, spoke against the variance request as neither he nor the Board have been able to digest the information yet. He believes the tower is out of character with the neighborhood. He believes that he and many



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

others are impacted. He asked the applicant to prove that property values won't be adversely impacted. He said that comparing values of homes on Falcon Drive is irrelevant. He stated that the lot is not zoned for this and the neighborhood is not industrial and commercial. He said he has a very clear view of the site and that a 180-foot tower is a 15-story structure. He asked for clarification whether there is a gap in coverage or a weak signal. He asked whether a new tower is worth it to fix a small problem or if the applicant is profiting. He believes granting the variance would be to the applicant's benefit and his loss and that is why we have a zoning ordinance.

Tom Hackett, 43 Samuel Hanson Avenue, noted that he submitted a list of neighbors' signatures in opposition to the request.

Doug Eaton, 2 Penny Lane, described the rural nature of the neighborhood and expressed his concerns about visual impact of 180, similar to the Northern Pass. He has concerns about the health effects and young families and children. He is concerned about property values as a realtor and said the Association of Realtors website contains articles about how buyers are sensitive to cell towers and up to 20 percent of values can be diminished.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut said that for the same reason that the Board is not prepared to make a decision she does not want to address staff opinion on each variance criteria but recommends that the Board keep the public hearing open, table the case to the date certain of May 17, and discuss scheduling a site walk, and that she is willing to answer questions.

Motion: Otis Perry moved to recess the public hearing. Anthony Sillitta seconded. Vote: U/A.

Public hearing recessed.

Otis Perry said that he wants to schedule a site walk and a balloon test, as well as require a third party review of the radiofrequency analysis. Discussion ensued regarding scheduling a site walk and Attorney Grill said the applicant will be available after May 7.

Motion: Otis Perry moved to recess to the next meeting. Anthony Sillitta seconded. Vote: U/A.

- A. Z18-08 Applicant and Owner Scott Coughlin, 19 Piscataqua Road (Tax Map I, Lot 94-B), located in the Rural Residential (R-40) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-40 Table of Uses and Dimensional Regulations to permit the use of an existing barn for the shelter of horses, where the barn is located 40 feet from the side lot line and the shelter of farm animals is only permitted where the shelter is located no closer than 100 feet to any property boundary.

Attorney FX Bruton represented the applicant. He explained that the only affected abutter supports the request. He said that previous to subdivision the barn was located 55.7 feet from the side lot line and now is located 36.6 feet from the side lot line. He said that the barn has been a horse barn in the past and that a buffer exists between it and the neighboring property. He provided a letter from the purchaser of the property. He described the area as having many horses as well as Green Acres Stables.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2018**
Meeting Time: **7:00 pm**

Chris Prior asked if the sale of the property would be affected if the variance is not granted. Attorney Bruton said that at the time of subdivision, keeping horses was not planned and the request has been made due to the purchaser. Attorney Bruton addressed case law regarding the concept of a self-created hardship and that the Board must consider conditions as they are.

Chair Chris Prior asked Anthony Sillitta to vote on the case.

Bob Hall noted that a new structure could be screened as well as an existing barn.

Discussion ensued regarding the nonconforming use of keeping horses.

Public hearing opened.

STAFF RECOMMENDATION:

Assistant City Planner Piekut explained that the Planning Department opposes the request, primarily because the applicant created and worsened the condition through a recent subdivision and the condition could be cured through a lot line adjustment or lot merger.

Public hearing closed.

Motion: Otis Perry made a motion to grant the variance because the criteria have been satisfied and he does not agree with the idea of creating one's own hardship. Bob Hall seconded. Vote: U/A

- A. Z18-09 Applicant Thomas Strange and Owner Hambone, LLC, 44-46 Ham Street (Tax Map 27, Lot 88), located in the Urban Density Residential (RM-U) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to permit the conversion of a two-family dwelling into a four-family dwelling, where three-to-four dwellings are permitted only by special exception and the Applicant cannot meet the special exception criterion regarding setbacks with the legally nonconforming, existing structure.

Chris Berry, Berry Surveying and Engineering, represented the applicant. He described how the property meets all criteria for the granting of a special exception for the proposed use except for one.

Rich Onufry asked for confirmation that the footprint is not altered on any side and Chris Berry confirmed that is true.

Frank Landford asked about the size of the proposed units and Chris Berry said they are planned to be one- and two-bedroom units.

Public hearing opened.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut explained that the Planning Department supports the variance request as all but one special exception criterion cannot be met. She said that the criterion for setbacks may be changed to exempt existing structures such as this one.

 CITY OF DOVER	ZONING BOARD OF ADJUSTMENT - MINUTES Meeting Type: Regular Meeting Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820 Meeting Date: Thursday, April 19, 2018 Meeting Time: 7:00 pm
---	---

Public hearing closed

Motion: Bob Hall moved to grant the variance. Frank Landford seconded. Vote: U/A

4. OTHER BUSINESS

Otis Perry said he would like to schedule a meeting with legal counsel regarding case Z18-07 and reiterated the need for a third-party radiofrequency analysis review.

Chair Prior noted that the Office of Strategic Initiatives annual Planning & Zoning Conference will be held April 28th, 2018 at the Grappone Center in Concord.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Frank Landford seconded. Vote: U/A. Adjourned: 9:25 p.m.