



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, May 17, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Bob Hall (Vice Chair), Otis Perry, George Reagan, Nick Couturier (joined 7:15 p.m.) (Alternate), Rich Onufry (Alternate), Anthony Sillitta (Alternate)

Members Absent: Frank Landford

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 APRIL 19, 2018

Motion: Otis Perry moved to approve the meeting minutes of April 19, 2018 as written. Bob Hall seconded. Chris Prior asked for minor amendments to which Otis Perry and Bob Hall assented. Vote: 4-0-1 with George Reagan abstaining.

Otis Perry moved to reorder the agenda, hearing case Z18-10 first. Bob Hall seconded. Chair Chris Prior asked Anthony Sillitta to vote. Vote: U/A

3. HEARINGS

- A. Z18-10 Applicant Kirt Schuman and Owner Schuman Family Revocable Trust of 2013, 136 County Farm Road (Tax Map C, Lot 3-B1), located in the Rural Residential (R-40) Zoning District, requests a variance from Section 170-12.B to permit a side setback of 20 feet, where a minimum of 25 feet is required.

Kirt Schuman provided an overview of his request, the constraints present on his lot, and how the request meets the five variance criteria.

Public hearing opened.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated that the Planning Department supports the variance request as the impact is very minor at 96 square feet and the addition would be impeded by wetland buffer, well, and/or septic system infrastructure if placed elsewhere.

Public hearing closed.

Motion: Bob Hall moved to grant the variance, finding that all variance criteria had been met. George Reagan seconded. Chair Chris Prior asked Rich Onufry to vote on the case. Vote: U/A.

- 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



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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 explained the process used to review the case and invited the Applicant to present additional information.

Attorney Steve Grill represented the applicant. He stated that he wants to address three things: the drive test, the coverage plots, and responses to concerns raised at last hearing. He commented on the petition that abutters have submitted and noted that this type of response can happen wherever a tower is proposed. He argued against the submission from Andrew Nanaa and said that he believes it is “usurping the board’s function” because it is the Board’s job to weigh all concerns and rights and the submission is Mr. Nanaa’s opinion. He said state and federal reviews should not overlap with Zoning Board review. He stated that the new T-Mobile antenna placed on the Cocheco Mill smokestack improved over the 2016 drive test conditions but did not close the gap. He said that they have documented that alternative locations do not suffice and that it is not possible to close the gap without a variance. He said they submitted a real estate market study that shows there will not be an impact and that their appraiser also conferred with other professionals. He stated that the potential environmental effects of the radiofrequency are regulated by the FCC and cannot be regulated by local government. He said the Applicant would also like to set a date for a balloon test and site walk.

Rich Onufry noted that a petition from abutters and its relevance to variance criteria would not come into play if the proposal met zoning requirements, but a variance is required so the petition should not be dismissed.

Ryan Monte de Ramos, a radiofrequency engineer representing T-Mobile, said he has been in the industry for 18 years working for various carriers and provided an overview of the coverage plots submitted. He explained that green represents in-building, or ideal, coverage, while yellow shows in-vehicle coverage. He showed the existing coverage plot.

Vice Chair Bob Hall asked what counts as in-building coverage and Mr. Monte de Ramos said it is when coverage is available 95% of the time but it can depend on type of construction. Mr. Hall asked what acceptable coverage is. Mr. Monte de Ramos said it is a good signal-to-noise ratio, perhaps four to five signal bars, and that the user can get data. Mr. Hall asked for an explanation in layman’s terms and Mr. Monte de Ramos said that you could have a few bars and still be able to use data, but you could also have more bars but not be able to use data because too many people are using the service. Rich Onufry asked how inadequate coverage is determined and Mr. Monte de Ramos said the carrier performs a drive test, testing signal level and number of dropped calls, and takes into account the need stated by subscribers, which is not public information. He then verifies coverage with sample data to demonstrate need.

Anthony Sillitta noted that too many people using their phones during a drive test can represent a gap in coverage, and he wants to know if market share has increased or decreased since 2016. He thinks the drive test does not tell the whole story. Mr. Monte de Ramos said they have a type of study that determines the need for capacity and they make the decision based on the heavily congested sites, and that the criteria is that 60% of the users are having issues. He said they can have coverage but need more capacity. Mr. Sillitta asked if the time of day affects a drive test. Mr. Monte de Ramos said the drive test was focused on signal level, not capacity. Mr. Sillitta said he thinks the Board has to determine if the Applicant’s need is the same as the need for a variance. Mr. Monte de Ramos said there is a need for coverage to close the gap for signal level but capacity is secondary. He said that some people use their phones to



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replace other services. George Reagan asked whether analysis factors in the use of Wi-Fi at home. Mr. Monte de Ramos said it does not, and they look at macro-level coverage.

Bob Hall asked whether there are other technologies available to boost signal strength or repeat signals. Mr. Monte de Ramos said that there are other ways but in this area a macro site is best. He said that a distributed antenna system (DAS) is used for other needs like in big cities or stadiums but doesn't fit this geographical area as it has a small footprint, trees affect it, and it would lead to coverage gaps between DAS units.

Bob Hall noted that the application is for a 180-foot tower and asked what minimum tower height would provide coverage. Mr. Monte de Ramos said coverage was modeled at 177 feet and that they can probably provide coverage above tree line. He said they will have to change the model and they can consider a lower tower, maybe 10 feet lower would be adequate.

Rich Onufry asked whether existing sites were adequate in 2016. Mr. Monte de Ramos said that the smokestack site was built at 150 feet in 2016 and there is still a deficiency in coverage and he can look at the results of that project. Mr. Onufry asked for clarification and Mr. Monte de Ramos said coverage was still inadequate in 2016. Mr. Onufry asked if the proposed tower will be adequate in two years and Mr. Monte de Ramos said antennas are replaced year after year as equipment improves to meet demand. Mr. Onufry asked how the growth of 5G service will affect T-Mobile. Mr. Monte de Ramos said that is mostly the path forward, that some sites use 5G and that networks are becoming self-optimizing networks with AI coming into play. Bob Hall asked if any studies were done on alternate sites where T-Mobile is not already located and Mr. Monte de Ramos said he did prediction plots for 15 sites that wouldn't work. George Reagan asked whether all other sites have been optimized and Mr. Monte de Ramos said they have been. Nick Couturier asked whether signal could be boosted at existing towers to fill the gap. Mr. Monte de Ramos said all improvements with the technology they have has been done, the demand for capacity is high, and that they can't boost the signal too high as it will interfere with other sites and could make the network worse.

Bob Hall asked if there are subscriber complaints. Attorney Steve Grill answered that there might be, they don't know how the corporation decided to look to fill this gap or why this is their priority in 2018. Rich Onufry asked for clarification that they do not have the reason for pursuing this site and Atty. Grill said that it is not available to the Applicant. Mr. Onufry asked if the data they have is the drive test and Atty. Grill said they also have the predictive models, but they don't have data such as number of dropped calls. Mr. Onufry wants to know what data there is. Mr. Monte de Ramos said that the drive test is a real time measurement and it shows disconnections. Bob Hall noted that something must have driven this site to be a high priority, not just driving around checking signal strengths, and Atty. Grill said that he doesn't know that it's a high priority compared to something else but the decision was made to close this gap because people who live or drive through or work in this area don't have adequate service. He said that they don't have granular data but can try to get more information. He said there is no doubt that signal strength is lacking.

Ryan Monte de Ramos reviewed each of his coverage plots for alternative, permitted sites to illustrate how they did not appear to close the gap. He explained the process by which potential sites are considered and preferred.

Public hearing re-opened.

Andrew Nanaa, 5 Industrial Park Drive, on behalf of 3 Mulligan Drive, referred to his written submission to the Board. He said that there are no standards for coverage and that it is based on opinion. He said that outdoor DAS is a practical solution and that even the proposed solution leaves some gaps. He said a DAS solution can target a specific spot, and that there are working outdoor DAS systems through the country and that T-Mobile uses them. He said the



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antennas are placed about one-quarter to one-half mile apart and provide seamless coverage. He said technology has changed and triangulation is no longer necessary. He stated his opinion is that the application should be denied, that the Applicant should be allowed to build a DAS system, with telephone and utility poles available everywhere, and that the Applicant could solve all its issues. He said it would be a viable alternative and the Board would not be dismissing their need out of hand.

Tom Hackett, 43 Samuel Hanson Avenue, referred to the drop zone and asked whether there is written correspondence from the utility that it's okay for the drop zone to overlap the power line easement. He said he now has 55 people on a petition opposing the tower, and only one person thought their service might improve. He believes this demonstrates that granting the variance is not in the public interest. He asked whether the property is conservation land or in current use. He asked about provisions for avoiding conflict with species of concern such as the bald eagles in the area. He said in regards to property values, he has read that a tower can be used to negotiate a lower purchase price in a buyer's market. He asked for a balloon test to be a minimum of eight hours long and that this is more important than a site walk and ample time should be provided to view it from anywhere in the City. He asked whether the antenna on the smokestack was added after the 2016 drive test and if so that there should be updated data. He said he believes that the spirit of the ordinance is not upheld by the proposal and the variance should be denied.

Doug Easton, 2 Penny Lane, disputed the claim that property values will not be negatively affected and discussed the difference between an appraiser and a competitive market analysis. He said value should be based on comparable properties with and without towers. He said that the National Association of Realtors has said that towers do have a detrimental impact on value up to 20%.

Eric Borrin, 117 Back Road, said that the Applicant has not addressed adverse impacts. He is concerned about the meaning of "adequate service" and whether the site is a high priority. He noted that the Applicant needs to demonstrate need but that abutters don't see a need. He said that the Engineer said he didn't look at any sites that weren't given to him but the Board identified sites he did not look at. He noted that the engineer already gave up five percent of the proposed height. He said all evidence was limited to 177-foot-high antennas and allowable height difference for existing towers were not considered. He said that the FCC has not said the facility will be safe but that the Applicant says they will be to a safe standard.

Norm Fracassa, 1 Penny Lane, said he does not see many more facts than at the previous meeting, and instead there are opinions and repetitive graphics. He thought the first graphic was telling in that there is not 100 percent coverage where towers exist. He does not understand how the proposed tower meets the Applicant's objective. He stated that he was aware of what is allowed and prohibited in the neighborhood when he purchased his home. He said he surveyed people with T-Mobile service, asked them to do their own drive tests, and no one complained. He wants to see more facts than graphics. He wants to see proof of what is and isn't financially feasible. He noted that only one example in the real estate market study was from Dover. He believes granting the variance will set a precedent. He thinks the proposal will not solve the problem or meet the objective but will create new leasable space.

Donna Capern, 1 Mulligan Drive, said that she is a T-Mobile customer and a heavy user, but does not have any problem with service at home. She said that T-Mobile is a business and she believes this is more of an economic decision than a technical decision. She said there may be other options to fill the coverage gap, but they may be less economically convenient. She doesn't want to set a precedent with a variance. She objects to the statement that the neighborhood's opinions don't matter.



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Vice Chair Bob Hall asked the Applicant to address the concerns expressed during the public hearing. Atty. Grill explained that even with a 205-foot tower at Middle Road the coverage problem is not solved. He explained that Industrial Tower and Wireless will own the tower and T-Mobile will be the first tenant, but T-Mobile will not benefit from co-locators. He said there is a clear gap between the smoke stack and the site to the south east and he is confident it will be closed adequately with the proposed tower. He said it is illogical that this site would be pursued if there were not some urgency to do so. He stated that the facts are that there is a gap and it can't be closed without the variance for the proposed tower. He said the market study was done by an appraiser and speaks for itself. He stated that the AM radio tower landlord wanted a lease cancellable at will with short notice.

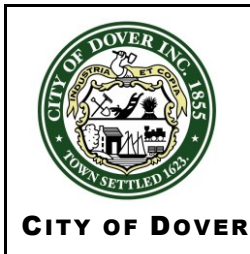
STAFF RECOMMENDATION.

Vice Chair Bob Hall asked Assistant City Planner Elena Piekut to provide the staff recommendation and address the effort to set a site walk and hire a consultant. She explained why a site walk was not scheduled outside of the public meeting and recommended the date for the walk and balloon test be set that evening. She said quotes were requested from three radiofrequency professionals but the scope of work has been better defined and they will be asked for revised quotes. She explained that the Heritage Commission was separately asked by the state to comment on the proposal, but that the state law enabling the creation of heritage commissions also allows the Zoning Board of Adjustment to request their comment on matters affecting or potentially affecting cultural and historic resources. She said if the Board feels those comments might have bearing on any of the variance criteria then they can make that request. She explained that after the staff memo was prepared the Board met with its legal counsel, which provided suggestions of additional information to request and that those should be read into the record if desired by the Board. She said the public hearing should be recessed to be reopened on June 21st and the case should be continued to June 21st.

Motion: George Reagan made a motion to request that the Heritage Commission advise the Zoning Board on this matter. Rich Onufry seconded. Vote: 4-0-1 with Otis Perry abstaining.

Vice Chair Bob Hall noted that the Board is proceeding in hiring a third party review and requested additional information:

- Cost of permitting and construction of the proposed telecommunication facility (relevant under Section 170-22(D)(2)(d)(v)).
- Communications concerning the negotiation(s) referenced in the Application for placing a T-Mobile antenna on the existing towers owned, operated, or used by WTSN and WOKQ (relevant under Section 170-22(D)(2)(d)(v) and 170-22(B)(4)).
- Radio frequency analysis expressing expected frequency propagation and strength from the towers currently servicing WTSN and WOKQ.
- Propagation analysis of existing Sprint 4G coverage within the subject area.
- An explanation, including radio frequency propagation studies where appropriate, of why existing facilities may not be used if expanded pursuant to RSA 12-K, *et seq* and/or the Federal Middle Class Tax Relief and Job Creation Act of 2012, Section 6409.
- Balloon test, with reasonable notice to the public, sufficient to support photo simulation survey.
- Engage a competent photosimulation expert (Caron & Associates Designs) to furnish reasonable photosimulations of proposed tower at nearby locations:
 - Which experience reasonable pedestrian and vehicular traffic,
 - With residential housing developments,
 - Considered in connection with the Historical Architectural Survey and Effects Assessment, and



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- The nearest New Hampshire municipal border, from an unobstructed vantage point.

Vice Chair Bob Hall also noted the importance of an independent appraiser in evaluating effect on real estate values.

The Board discussed scheduling a site walk. Kevin Delaney, Industrial Tower and Wireless, proposed Saturday, June 9th at 8:00 a.m. with Saturday, June 16th at 8:00 a.m. as a rain date. He said four hours should be sufficient and the earlier in the day the better. Discussion ensued regarding the balloon test.

Vice Chair Bob Hall reminded the Board and public that the site walk is an information gathering effort, a public meeting but not a public hearing, at which no deliberations will occur.

George Reagan asked for more information on distributed antenna systems.

Motion: Otis Perry moved to table the application and recess the public hearing to the June 21, 2018 meeting. Anthony Sillitta seconded. Vote: U/A

Public hearing recessed.

4. OTHER BUSINESS

None.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Anthony Sillitta seconded. Vote: U/A. Adjourned: 9:00 p.m.