ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: **Thursday, October 18, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Bob Hall (Vice Chair), Frank Landford, Otis Perry, George Reagan, Anthony Sillitta (Alternate), Rich Onufry (Alternate)
Chris Prior (Chair) Recused himself
Members Absent: Nick Couturier (Alternate)

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

The Vice Chair called the meeting to order at 7:00 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 SEPTEMBER 20, 2018

Motion: Otis Perry moved to approve the meeting minutes of September 20, 2018 as written. Frank Landford seconded.
Vote: 5 in favor with George Reagan abstaining.

3. HEARINGS

A. Z18-13 Applicant Charles Robbins and Owner Fred E. & Ruth K. Riley Trust 1991, 64 Littleworth Road (Tax Map G, Lot 2), located in the Rural Restricted Industrial (I-2) Zoning District, request a special exception per Section 170-12.A of the Zoning Ordinance to permit a vehicle refueling and recharging station with an accessory retail store.

Motion: Otis Perry moved to table the case to November 15th. Frank Landford seconded. U/A

B. Z18-17 Applicant Mark G. Phillips and Owner TSB Properties, LLC, 447 Sixth Street (Tax Map D, Lot 12), located in the Assembly and Office (I-4) Zoning District, request a variance from **Section 170-12.A** to permit open storage, where it is not a permitted use.

This application was withdrawn by the applicant.

C. 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.

Motion: Otis Perry moved to remove the case from the table. George Reagan seconded. U/A

Steve Grill of Bedford, NH presented the case on behalf of the applicant. He addressed the two remaining issues:
1. The possibility of using 101 Back Road as an alternative
There were lengthy negotiations between T-Mobile and Mr. Binnie over a year's time and the parties were unable to come to terms. If they had come to terms, a variance still would have been required.

2. The height issue
The original proposal was for 180' with a 175' center line height. Below 140' center line the coverage breaks up. They can compromise to 155' center line height which will make the tower 160'. The board would be able to approve with the height restriction condition. At that height there is a possibility of one more carrier using the tower.

Mr. Grill mentioned he submitted a letter enumerating the variance criteria on July 12th which is in the record, but he could enumerate them orally if the board preferred.

The board members asked clarifying questions of Mr. Grill and Gerry Squires, T-Mobile agent which they addressed. Bob Hall wondered whether the shot clock has expired and if the applicant would be willing to extend another 60 days if needed. The applicant will agree to that.
After a brief recess for Mr. Grill to confer with his client, he returned and stated regarding the 20' additional height issue, his client is agreeable.
Regarding the second issue of fees, they are worried about setting a precedence paying attorney fees. One option to address the issue is to make it a condition of approval. The other option is for it to be billed as special consultant fees.

Bob Hall stated the board needs five voting members. There were four full members in attendance and two alternates. After reviewing the previous minutes, Rich Onufry was asked to vote since he had attended more meetings on the topic.

The board heard a report from the technical consultant, IDK. Ivan Pagacik spoke on behalf of IDK Communications. The board asked clarifying questions about gap vs coverage of Mr. Pagicik which he answered.

Motion: Otis Perry moved to reopen the public hearing. George Regan seconded. U/A
Ms. Piekut read into the record three emails from members of the public.

Public hearing opened.

Matt Walker, 45 Samuel Hanson Ave is opposed to the tower. If it had been there before, he would not have moved in there. This is for potential customers- he hasn't heard any current T-Mobile customers in favor of this tower.

Doug Eason, 2 Penny Ln is opposed due to potential negative health impacts, future real estate value impact and aesthetics. He also mentioned Mr. Binnie was not here to give his account of the negotiations.

Colleen Walker, 45 Samuel Hanson Ave wondered if the board agreed that the applicant has met the criteria and also how much of the attorney consultation fee is in question. She thought perhaps the board should review if there is a need for more parcels where this use is allowed, but not to put it at this location.

Mr. Grill addressed the public comments. Health impacts are regulated at the federal level.

Public hearing closed.

Motion: Otis Perry moved to deny the application. Rich Onufry seconded.
Discussion:
The board discussed whether the variance criteria were met.
Otis Perry: He was not convinced the hardship criteria were met. The basis of the hardship argument was a business decision because negotiations broke down between the original parties- though no proof of this was supplied.
Regarding the gap in coverage issue; the federal regulation stipulates 'adequate coverage' which is vague.
One hardship criterion is that the land cannot be used in accordance with the existing zoning, but the land is currently being used in accordance with the existing zoning for agricultural purposes.
As a licensed real estate broker, he believes the neighboring properties would experience diminution of value if the tower was put at this location.
Dover has a Tower Location Ordinance. It is not in the spirit of the ordinance to address inadequacies by variance. Rather, that Zoning ordinance would need to be addressed.
There's no evidence that public safety would be enhanced by the location.
Due to the application not meeting those four criteria, he would not support the application.

George Reagan: There was not enough information given to support the hardship criteria. The board has to look at the big picture and compare the hardship to the current zoning. He understands the economic challenge for the applicant regarding the one-year term, but the board has to look at the benefits to the City as a whole. In addition, the presentation didn't meet the public interest criteria. Due to these issues, he would not support the application.

Rich Onufry: He agreed with all that has been spoken. The hardship issue has not been demonstrated.

Frank Landford: He doesn't believe the hardship or public interest criteria have been met.

Bob Hall: He doesn't believe the application benefits the public interest. There has been a large outpouring of public in opposition to this application.
The application is not in the spirit of the ordinance. There is an ordinance in place directing where these towers are allowed.
He believes the property values in that area will be affected by the tower.
A hardship case does not exist in this instance- for the reasons already stated.

Vote: U/A to deny the application.

4. **OTHER BUSINESS**
   NONE

5. **ADJOURN**

Motion: Otis Perry moved to adjourn. Anthony Sillitta seconded. Vote: U/A. Adjourned: 8:45 p.m.