

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 21, 2016

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Teresa Hampton

Members Absent

Stephen Coppolo

Alternates Present

Donald Burgess
Randall Kelley

Alternates Absent

Dana Nauerz

Code Enforcement

Robert Mackey

Mr. Perkins called the meeting to order at 7:04 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

The Board introduced themselves for the record.

It was noted for the record that Mr. Burges would sit on the following case.

16-108 Varsity Wireless, LLC
Owner: Sara Baggar

The applicant is requesting a variance to the terms of Article III, Section 165-28.B.1 and Article VI, Section 165-32.1.A of the Town of Derry Zoning Ordinance to allow the construction of a wireless communications facility consisting of a 130 foot monopole tower and associated antennas and equipment, ground based cabinets and shelters within a 65' x 65' fenced-in compound at 69 By-Pass 28, Parcel ID 08102-001, Zoned GC II

Attorney Francis D. Parisi, representing applicant, said that he was here to request a variance for a 130' monopole tower and also has other representatives here in the event any technical questions need to be answered. Attorney Parisi read the request and criteria for the record. He also provided a power point presentation for the record.

Board Questions:

Mrs. Hampton asked if other sites were considered that would not have required a variance. Attorney Parisi said yes there were other sites considered and reviewed submission item #12 for the record. He said that industrial zones would not have required a variance but they had very dramatic elevation differences and did not meet the FCC requirements.

Mr. Perkins asked if this was the same applicant that had a previous request on the abutting Town property. Attorney Parisi said that request was started with AT&T who have now since partnered with Varsity.

Mrs. Hampton asked what fears might abutters harbor could be addressed to ease their minds. Attorney Parisi said that there were currently 7 facilities currently located in the Town of Derry and that it was the same technology as a cordless phone. He said that we live in a world with radio frequency. He said that the antennas are similar as seen on roof tops of hospitals and church steeples etc. The facility is only listed as a 1,000 watt facility as to where WBZ broadcasts over a 50,000 watt facility.

Mr. Virr asked what was the strongest wind that the proposed monopole could sustain. Attorney Parisi said that the tower was site specific and that they were not quite there yet as their engineers need to design for soils and wind load have not been done yet. He said that during hurricane Sandy not one tower had any impact in New Jersey where the wind was 150 mph.

Mr. Perkins asked if wind loads fall into the Code Enforcement department. Mr. Mackey said that plans submitted need to meet appropriate ice & wind loads which plans are engineer certified.

Mrs. Evans said that it was stated that property values would not be diminished if there was any documentation to be provided. Attorney Parisi said that he would let Andrew Lemay speak to that question.

Andrew Lemay, Real Estate Consultant, Concord, NH, said that he has studied real estate appraisal for 10 years from Maine to Cape Code. He said that most of his work has been in NH and Central MA. Mr. Lemay said that sales seen and compared to others have not shown measurable differences and he has reviewed approximately 2 years of sales in town and near towers in which he has found no significant changes in value.

Mrs. Hampton asked if he was a licensed appraiser and asked if any CMA's were available regarding this issue. Mr. Lemay said he was a licensed appraiser #8 and he did not do individual appraisals just performs market research. He said that he has been an appraiser for 35 years. He said that he did research as if doing an individual appraisal but not written as only did a market analysis. Mr. Lemay said that he went into the Towns of Newbury, Manchester and several other Towns and asked if any loss of home value had been reported due to the presence of a cell tower. He said that assessors all responded said that no noted changes have been seen or reported. He said that people who own property near towers have not filed abatements and no assessor knowledge of value changes.

Mr. Lemay said that there are two types of buyers such as those who do not mind and others that do not want in view. He said that there is no consistent pattern and has seen more of an impact of sales with regard to failed septic's.

Mr. Kelley asked if it was possible that negative attributes have not been received. Mr. Lemay said that was a possibility that Real Estate was not noting in data. He said that he only researched sale price and market data in which he found no changes.

Mr. Kelley asked what was the proposed tower worth. Attorney Parisi said assessed for \$500,000.

There was some discussion with regard to who possible tenants would be and noise emittance.

Code Enforcement

Mr. Mackey provided the Board with the following reference for the Board:

- The applicant is requesting a variance to install a 130 foot monopole tower and associated equipment and antennas on a parcel located in the General Commercial II Zoning District.
- Article III, Section 165-28 of the Town of Derry Zoning Ordinance specifies the regulations for wireless communication facilities within the Town of Derry including the areas in which they are permitted to be located. These zones include the Industrial I-IV Districts, Office Medical Business Districts (OMB), Office, Research & Development District (ORD) as well as the Telecommunication Overlay Zone which includes parcels located adjacent to Route 93. They are not permitted in the General Commercial Zoning Districts including the GCII, therefore, a variance is required.
- The installation of wireless communication facilities is governed by the Town's Zoning Ordinance as well as the Federal Telecommunications Act of 1996.
- If the variance is granted, Planning Board site plan review will be required.
- There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor of the request.

Opposed

Tony Traver, 1 London Road, said that he used to be a line man and has resided in Derry for 41 years. He said that when he originally purchased his home Public Service has an easement through the property where he used to have wooded structures and now have since been change to now seeing large metal poles. He said that he did not want to look out his front window and see a tower.

Michael Zompanti, 2 Olde Coach, said that he has lived here 2 years and that the power company strips trees and has now installed new 90' metal poles in the back yard. He said that he did not see a picture showing from his window what a 130' tower would look like but he did see the large balloon and it looked horrible and would not like to see a tower there.

Kellie Zompanti, 2 Olde Coach, asked if there would be a chain link fence or something surrounding it so not seeing the full ugliness of it.

Patrick Harrington, 65 By-Pass 28, said his question was referring to the picture with the water tower on it as remembers when the owner of the property went to subdivide the property there was wetlands on it and now does not show wetlands. He said that he was also concerned with regard to his well as if any drilling into the bedrock as water has changed since they put in the new utility poles.

Rebuttal

Attorney Parisi said that he had viewed the property and it is in a residential area however technology is everywhere. He said that the powerlines have been cleared of trees so the area does have some visibility but the trees will grow back and fill in some of the visibility. He said that the proposed location was the only viable area to fill in the gap of service.

Mr. Perkins asked if the tower could be decorated like a tree. Attorney Parisi said yes but not sure if that would be the right answer as if do the poles are painted brown and as such tend to look more like giant pipe cleaners so he did not feel it would be the appropriated design for the location.

Mr. Perkins said the proposed site was to be approximately 312 feet off the road. Attorney Parisi said yes and that there was a person there holding the balloon for the test but with the growth there he could not see the person from the street.

Mr. Perkins asked if Mr. Mackey could explain if there were any wetlands in the area. Mr. Mackey said a site plan review will show any wetlands on the property and if greater than an acre will require a 75' setback. He said as represented here show no wetlands are within 100' of the proposal.

Mr. Perkins said that with regard to the footings of the tower he said that plans show footings of 48" and 4' deep if he understood the plan correctly. He said that appears to be a wider diameter so did not believe there would be any effect with water. Attorney Parisi said that the footings were wide but not deep but would refer that question to Brian.

Brian , engineer, said that the proposal was 18' x 18' x 5' depth maximum and have not run into impact of bedrock.

Mr. Burgess asked if there would be any blasting as explosives could have an impact on wells. Brian said that he did not expect to have to blast unless find anything different when start project.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Virr said that he did not see any conflict in criteria and felt well documented and well presented. Feel that the applicant has done their homework and that a condition be made to be subject to Planning Board approval.

Mr. Perkins said that some valid points were discussed but no input from carriers was provided just tower installers and would like to have seen some actual data presented. He said that he would have liked to have seen a market analysis study in the information provided.

Mrs. Hampton said she was concerned with need as also do not have good cellular service where she resides and has many times lost calls.

Mrs. Evans said she agrees with Mr. Perkins as would like to have seen some data research that no decrease in property value was provided and felt was a significant point.

Mrs. Hampton said Mr. Lamey's testimony clearly explained that there was no significant value changes. She said that she felt it was the same aspect as if a property had a pool that if someone wished to purchase a property that had a pool and that they didn't wish to have a pool they might have it filled in. She said that she understands that also see powerlines and that the proposal shows view would be somewhat obstructed by growth on property.

Mr. Virr said that he did not feel the applicant would be here to develop the property if colocation was not an option. He said that he did not feel that the Board was able to request a market analysis test. He said that the overlay study was conducted over 20 years ago and possibly needs to be reviewed and changed.

Mr. Burgess said he has also lost calls in his own kitchen and understands the need in the area. He said that radio frequency is line of site and difference of wattage relates to distance.

Mr. Perkins said he wished to poll the Board to see if the Board wished to have a condition made to request a market analysis to be submitted or if Mr. Virr is right and the

age of the overlay of 20 years needs review. He asked if the Board wished to table or move forward.

Mrs. Evans said she felt it was a reasonable request to ask for more information.

Mr. Virr said that the Board can request an engineering study but did not feel it was up to the Board to request the applicant to go into such an expense at this time as only here requesting a variance and this is the first step in order for them to go forward with proposal to the Planning Board.

There was some discussion with regard to requesting additional information.

Mr. Perkins asked if someone would motion to come out of deliberative session so the Board could obtain more information from Attorney Parisi.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mr. Burgess, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Attorney Parisi said that Mr. Virr was correct that this was the first step in order to proceed to the Planning Board. He said that the Planning Board has extensive by-laws and here asking for zoning approval so can move onto the Planning Board and would not object to having a condition made of prior to obtaining a building permit have a tenant lease agreement. He said that he felt that the Planning Board will ask the same question.

Mr. Virr said that Attorney Parisi was here today seeking a variance for a cell tower that was probably not thought of 20 years ago and did not feel it was up to the Board to determine need.

Mr. Perkins said that it was within the merits of the Board to ask for more information and did not feel a map showing study was unreasonable. He said that Congress gave wireless providers to have a map to per sue areas for need and also see reverse side for local jurisdiction requirements.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Perkins asked for vote to approve or request more information.

Mr. Virr said that he felt that the pole would get lost in the powerlines. He felt that asking applicant to go through a considerable expense for something that the Planning Board may require as part of their approval. Mr. Virr said that he was not sure the Board was qualified to request the applicant to establish the need of providers as only here to review the five points and if any of the criteria has not been met. Mr. Virr said that a \$500,000 taxable structure on a parcel with no children attending the schools was a win win as far as he was concerned.

Mr. Burgess said that there was still the debate of showing actual need felt that the applicant has shown a need for a tower in this area. He said that the Board should vote on what was presented. He said he would not object to making a recommendation as part of the condition to establishment of need.

Mr. Perkins said that they should structure the motion on the request and that the following conditions be should be made:

1. Subject to State, Federal and Local permits and inspections.
2. Subject to Planning Board approval.
3. Recommend establishment of true need from 4 wireless providers.

Mr. Perkins said that the former Town Council members voting on the previous project on the abutting parcel was no longer on the Board. He said that the Board can make a recommendation of applicant to provide establishment need as a condition.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mr. Burgess, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Mrs. Evans motioned on case #16-108, Varsity Wireless, LLC, Owner: Sara Baggar to Grant a variance to the terms of Article III, Section 165-28.B.1 and Article VI, Section 165-32.1.A of the Town of Derry Zoning Ordinance to allow the construction of a wireless communications facility consisting of a 130 foot monopole tower and associated antennas and equipment, ground based cabinets and shelters within a 65' x 65' fenced-in compound at 69 By-Pass 28, Parcel ID 08102-001, Zoned GC II as presented with the following conditions:

- 1. Subject to obtaining all State, Federal & Town permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Recommend establishment of true need from 4 wireless providers.**

Seconded by Mr. Virr.

Vote:

Mrs. Evans: Yes.

Mrs. Hampton: Yes.

Mr. Virr: Yes.

Mr. Burgess: Yes.

Mr. Perkins: No. Feel criteria #4 with regard to property value will be diminished.

The application was Granted by vote of 4-1-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Election of Officers

Mr. Perkins informed the Board that the Election of Officers will be held at the next meeting as missing a primary member.

Other Business

Mr. Perkins said the annual Spring Planning & Zoning Conference was scheduled for June 4th in Concord and online registration is now open.

Approval of Minutes

Mr. Virr said that he would like to make a change on page 3 of the March 17, 2016 minutes to change the statement saying he was a Real Estate Appraiser to he studied real estate appraising.

Mrs. Hampton motioned to approve the minutes of April 7, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Adjourn

Mrs. Hampton motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 9:22 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes May 5, 2016

Mr. Burgess said that there needed to be a change to page 8 as the vote should read 4-1-0.

Mr. Virr motioned to accept the minutes of April 21, 2016 as amended.

Seconded by Mr. Mr. Burgess.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins