

Planning Board Approved 9/14/2022

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July 26 Joint Public Hearing Minutes-DRAFT

Date: July 26, 2022

Place: Town Hall and Zoom

Vertex Towers, LLC, as represented by Parisi Law Associates, P.C., has applied to the ZBA for **Variances** (ZBA 2022-02) under Section 11-2 (c) of the Buckland Zoning Bylaws and to the Planning Board for a **Special Permit** (PB 2022-02) under **Section 10, Bylaw for Personal Wireless Service Facilities in Buckland, MA.** Proposal is to construct a 150' monopole wireless communication tower, at 28 Martin Rd., Buckland, Map 8, Lot 60 and 61, owned by Amos and Christopher Franceschelli.

Meeting Agenda

1. Continue the ZBA and Planning Board hearings
2. Re-introductions and ground rules
3. Balloon flight conducted on July 16 and visual representations
4. Determine order of next phase of hearing
5. One board will proceed as determined in #4.
6. Schedule next hearing
7. Adjourn meeting

Attendees

JA

JAIR

JA

DC MH

JCR

ZBA approved
9/12/2022

Buckland, MA Zoning Board of Appeals and Planning Board
Joint Public Hearing Minutes

Attendees

Town Hall:

John Gould, Co-chair, Zoning Board of Appeals and Planning Board
Jeff Rose, Co-chair, Zoning Board of Appeals
Jon Wyman, member, Planning Board
Francis Parisi, applicant's representative, Vertex
Andrea Donlon, member, Planning Board
Tom Johnson, engineer, applicant
Janet Sinclair, Buckland, public
Jonathan Mirin, Charlemont, public
Justin Lively, member, Zoning Board of Appeals
Randall Heminger, member, Zoning Board of Appeals
Dennis Clark, member, Zoning Board of Appeals
Christopher Lenaerts, Buckland, public
John Holden, Buckland, public
Laura Cunningham, Buckland, public
Kay Cafasso, Buckland, public
Bella Levavi, press, Greenfield Recorder

On Zoom

Justin Perotta, Town Counsel
Jim Rae, member, Zoning Board of Appeals
Fred Goldstein, consultant
Michael Hoberman, Co-chair, Planning Board
Horace and Marti Taft-Ferguson, Buckland
Christopher Franceschelli, property owner
Linda Shippee, Buckland, public
Rick Leskowitz, Buckland, public
Herb Guyette, Fire Chief, Buckland

1. Co-chair John Gould opened the public hearing at 6:31 pm on behalf of the Planning Board. Co-chair Jeff Rose opened the public hearing at 6:32 pm on behalf of the Zoning Board of Appeals.
2. Co-chair Gould noted a letter dated July 13th, 2022 that extends the time frame for the ZBA to consider the application to July 26, 2022.
3. Co-chair Gould re-introduced members of the ZBA and PB; Town Counsel Mr. Perotta; and consultant Mr. Goldstein. Co-chair Gould reminded those attending the hearing via Zoom that the chat function is to be used only for issues of technology (trouble hearing or seeing), and not editorial comments.
4. Balloon test. An additional balloon flight took place on July 16, 2022. PB members Andrea Donlon and John Gould met the vision consultants on site, and

confirmed the intervals and overall height of the tethered balloon. The results, including 2 pictures, are included in Supplement 4 of the application. Mr. Parisi commented that he had reviewed the process as agreed; reviewed the pictures relative to the previous flights; confirmed internally the pictures were the same; and believes that Vertex has complied fully with the requirements of the bylaw.

Co-chair Gould commented that he is still concerned about the question of the tower being visible or not visible from certain locations. Mr. Parisi replied that judgment needs to be made by each individual.

5. Next steps.

A. Co-chair Rose stated that the ZBA is prepared to move forward in considering the requested variances: relief from the height, slopes and wetlands requirements of the bylaw for the particular location reflected in the application: 10-5 DIMENSIONAL REQUIREMENTS a) Height 2, Ground mounted Facilities and b) setbacks, Setback from designated wetlands; and 10-15 APPLICATION FILING REQUIREMENTS 1 GENERAL FILING REQUIREMENTS, c) A licensed carrier ...

B. Co-chair Rose noted that the abutters to the property have been duly notified of this hearing.

C. Co-chair Rose then reviewed the authority and tasks of the ZBA for this application:

- In its consideration of the requested variances, to enable and empower the PB to be the Special Permit Granting Authority; and
- In its consideration of the requested variances, to apply two standards: state (of Massachusetts) standards for variances as found in Section 11-2 of the local (Town of Buckland) bylaws; and, if those are not met; to consider the same requests under the Federal Telecommunications Act.

D. Co-chair Rose then reviewed the criteria for variances, found in SECTION XI: ADMINISTRATION of the Town of Buckland Zoning Bylaws:

The ZBA shall hear and decide appeals or petitions for dimensional variances from the terms of this bylaw, with respect to particular land or structures pursuant to MGL Chapter 40A, Section 10, as may be amended from time to time, only in cases where the Board finds all (all emphasized) of the following:

1. a literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or applicant;
2. the hardship is owing to circumstances relating to the soil

- conditions, shape, or topography of such land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
3. desirable relief may be granted without either:
 4. substantial detriment to the public good; or
 5. nullifying or substantially derogating from the intent or purpose of this Bylaw.
 6. the ZBA does not have authority to grant use variances in any district in Town.

E. Co-chair Rose reviewed the process the ZBA will now embark upon:

1. Determine whether the application can meet the standards as set forth in the bylaw; if so, the ZBA will act to grant the variance; if not, the ZBA will produce a finding stating the reasons the standards were not met.
2. If the finding reasons the standards were not met, the ZBA will consider the same request under the Federal law.
3. Each variance request will be taken in turn.

F. Bylaw 10-5 a) 2 - height, that the tower height be no more than 10' above the average tree canopy. The applicant has addressed the issue on page 9 of the supplement narrative of the application, and seeks relief. ZBA member Lively noted that the applicant has stated that the tower will not perform as well at a lower height. Co-chair Gould stated that he does not see proof of hardship due to "circumstances relating to the soil conditions, shape, or topography of such land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located." In other words, there is no hardship which particularly affects the applicant's property but not the surrounding areas.

Co-chair Gould made a motion, with regard to variance requirements 1) literal enforcement would create a hardship; 2) hardship is physical/topographical, which especially affects the property in question but NOT the surrounding area, 3:4) Relief can be granted without detriment to public good, 3:5) or without nullifying or derogating from Purpose of Bylaw: the Zoning Board finds that the variance request can be supported for requirements 1, 3:4 and 3:5. However, the proposal cannot meet requirement 2) for the following reasons: in review of site visit and maps and statements of applicant, topography hardship exists in the surrounding area and does not uniquely affect the lot in question. Therefore, as all requirements must be answered, the Board finds the request as presented does not meet local standards for a variance. Member Lively seconded the motion; all voted in favor.

G. Bylaw 10-5 b) 5, regarding the 150' setback from slopes >5%. The applicant has addressed the issue on page 11 of the supplement narrative

of the application, and seeks relief. Co-chair Rose noted that he has the same view of this request as the previous request: there is no hardship which particularly affects the applicant's property but not the surrounding area.

Co-chair Gould made a motion, with regard to variance requirements 1) literal enforcement would create a hardship, 2) hardship is physical/topographical, which especially affects the property in question but NOT the surrounding area, 3:4) relief can be granted without detriment to public good, 3:5) or without nullifying or derogating from Purpose of Bylaw, the Zoning Board finds that the variance request can be supported for requirements 1, 3:4 and 3:5. However, the proposal cannot meet requirement 2) for the following reasons: in review of site visit and maps and statements of applicant, topography hardship exists in the surrounding area and does not uniquely affect the lot in question. Similar topography and wetlands exist in other nearby locations. Therefore as all requirements must be answered the Board finds the request as presented does not meet local standards for a variance. Co-chair Rose seconded the motion; all voted in favor.

H. Bylaw 10-5 b) 5, regarding the 150' setback from wetlands. The applicant has addressed the issue on page 11 of the supplement narrative of the application, as above, and seeks relief. Co-chair Rose noted that these two requests were bundled together in the application, but need to be considered separately, and that the same determination - there is no hardship which particularly affects the applicant's property but not the surrounding area - applies.

Co-chair Gould made a motion: with regard to variance requirements 1) literal enforcement would create a hardship, 2) hardship is physical/topographical, which especially affects the property in question but NOT the surrounding area, 3:4) relief can be granted without detriment to public good, 3:5) or without nullifying or derogating from Purpose of Bylaw, the Zoning Board finds that the variance request can be supported for requirements 1, 3:4 and 3:5. However, the proposal cannot meet requirement 2) for the following reasons: in review of site visit and maps and statements of applicant, topography hardship exists in the surrounding area and does not uniquely affect the lot in question. Similar topography and wetlands exist in other nearby locations. Therefore as all requirements must be answered the Board finds the request as presented does not meet local standards for a variance. Co-chair Rose seconded the motion; all voted in favor.

I. Co-chair Rose stated that the previous discussion and findings were related to requests for variances. In this matter, as stated previously, a second, Federal standard applies, stemming from the Telecommunications

Act of 1996 (47 U.S.C. 332 (c) (7) (B) (i), (iii)). That standard provides as follows:

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

J. In regard to Bylaw 10-5 a) 2 - height, Co-chair Rose noted that the ZBA had heard affidavits from the site engineer and RF engineer, and reviewed the report of consultant Fred Goldstein, establishing that the height requested greater than the bylaw requirement of 10' above average tree canopy height is necessary for the purpose of the facility, and further noted the ZBA must consider whether it is also appropriate for the purpose of the bylaw. Co-chair Rose read the following from Mr. Goldstein's report:

"The existing bylaw's rule about not going more than 10' above the tree Canopy does not, frankly, seem reasonable, for two reasons. One is that the minimum height is usually taken to be 15', both to let the antennas adequately clear the trees and to allow for a few years' tree growth. The other is to allow for collocators."

Co-chair Gould reminded the board and the public that the ZBA, in its considerations, is "unlocking" restrictions, but is not the Special Permit Granting Authority.

Co-chair Gould moved that the ZBA, in consideration of the applicant's representation, and corroboration by the town's consultant, finds that the request to exceed the bylaw height requirement of 10' above average tree canopy height, is appropriate and necessary to fulfill the multiple carrier requirements of the bylaw, and to reduce the necessity for additional towers, and further finds that strict compliance will create conflict with the Telecommunications Act, and therefore votes to grant the variance request for a height greater than 10' above average tree canopy height, up to and not to exceed the bylaw maximum of 150'. Co-chair Rose seconded the motion. In discussion, it was emphasized that passage of this motion would allow the PB to act. All voted in favor of the motion.

Buckland, MA Zoning Board of Appeals and Planning Board
Joint Public Hearing Minutes

K. Bylaw 10-5 b) 5, regarding the 150' setback from slopes >5%. Co-chair Gould noted that the ZBA must take into account what, in these circumstances, would be workable and effective, and what might be an unreasonable and impractical requirement. Noting that Buckland is a hilltown, and because a cell tower would most practically be located on a slope, and because it is in the interest of the town to minimize the number of cell towers needed, the best choice would be the one that best serves the purposes of the bylaw, to minimize the number of towers needed.

Co-chair Gould moved that the ZBA find that, given the nature of the project being regulated, this provision of the bylaw may create the effect of a prohibition, such that strict compliance will create a conflict with the Telecommunications Act, and therefore votes to grant the request for a variance to the requirement of 150' setback from slopes greater than 5%. Member Lively seconded the motion; all voted in favor.

L. Bylaw 10-5 b) 5, regarding the 150' setback from wetlands. Co-chair Gould noted that the applicant will place a Notice of Intent (NOI) with the Conservation Commission and the Massachusetts DEP to allow for this placement. Member Lively noted that he was satisfied with the applicant's explanation at the site visit. Co-chair Gould noted that, through the site visit, submitted materials, and other evidence, the ZBA has not observed evidence of a negative effect to the portions of the 150' setback requirement which lie outside the jurisdiction of the Conservation Commission.

Co-chair Gould moved that, given protection of wetlands generally lies within the jurisdiction of the Conservation Commission, in considering a request to vary the 150' requirement as to wetlands, and per recommendation, the ZBA grant the request for a variance to the 150' setback to the wetlands requirement, conditional upon the Conservation Commission approval of the project as it falls within their jurisdiction, and further, that the board find that strict compliance will cause a conflict with the Telecommunications Act, and vote to grant the variance request. Co-chair Rose seconded the motion; all voted in favor.

M. In regard to 10-15-1, Co-chair Rose noted the ZBA does not need to take action as the appropriate waiver has been granted. Mr. Parisi, representing the applicant, withdrew the request for a variance.

N. Co-chair John Gould moved to close the ZBA Public Hearing. Co-chair Rose seconded the motion; all voted in favor.

6. Public Comment

John Holden, 27 Orcutt Hill Rd., Buckland

Buckland, MA Zoning Board of Appeals and Planning Board
Joint Public Hearing Minutes

- Voiced appreciation for the additional balloon test
- In regard to the style of tower - if 120', then "tree" style makes sense; if 150', it doesn't
- Believes a shorter tower would not present a hardship, as there would still be room for 2 - 3 carriers
- Requests the Planning Board grant a height of no more than 120' and also the most camouflaged style - this would be a good compromise

Christopher Lenaerts, 49 Upper St., Buckland

- Request there be a public comment period at the next meeting
- If the boards aren't requiring the applicant to adhere to the letter of the bylaw - 10' above the tree canopy - then can the PB adhere to the spirit
- In this area, some towers have only one carrier, none more than two
- [Mr. Lenaerts walked the boards through the drawing he had presented previously, showing comparative heights of the tower, the Mary Lyon Church steeple, and the tree canopy]
- Noted the applicant has had "many years" to assemble the application, while the public has had a limited time to review it

Janet Sinclair, 71 Ashfield St., Buckland

- Request that more time be allowed for public comment so all may fully understand the implications of the ZBA's actions this evening
- If not spoken comments, is it possible the period for written comments can be extended?

Kay Caffasso, 6 Orcutt Hill Rd., Buckland

- Requests that the height of the tower be balanced with the public's need to be safe and preserve the town's rural character
- Finds the proposed height of 150' "mind boggling"
- Asked if the town had additional consultants besides Mr. Goldstein (no)

Laura Cunningham, 27 Orcutt Hill Rd., Buckland

- Echoes the sentiments expressed by others
- Also understands there is no such thing as an "invisible tower"
- Hasn't heard clear justification for a 150' tower to serve the town - more a case for Vertex's purposes
- Suggested requiring the **Cor-Ten** finish for the tower

Jonathan Mirin, 224 Avery Brook Rd., Charlemont

- Thanked the boards for their work
- Requested the PB to reject the application, believes that everyone will soon have cell phone coverage via satellite (Mr. Parisi noted that satellite coverage is likely limited to text, not voice)
- Emphasized the rural character of Buckland

7. Co-chair Gould moved to close the public hearing for spoken comment, with the allowance for written comments to be submitted until 5:00 pm, Friday, August 4th. Co-chair Hoberman seconded the motion. In discussion, Horace Taft-Ferguson (on Zoom) said that closing the public discussion was not in the interest of the town. Mr. Lenaerts said that useful information might still come to light. PB member Wyman noted that although many of the same people are speaking,

Buckland, MA Zoning Board of Appeals and Planning Board
Joint Public Hearing Minutes

there was a notable shift in position, with more acceptance of a tower, though a shorter one than proposed. Co-chair Gould called for a vote; all voted in favor of the motion; Co-chair Hoberman noted that the PB has the ability to re-open public comments if so needed.

8. Member Wyman moved that consideration of the application be continued August 11, 2022 6:30 pm as a hybrid meeting; Co-chair Gould seconded; all voted in favor. Meeting concluded at 8:45 pm.

Respectfully submitted, Alison Cornish , Boards Clerk
Minutes approved at ZBA meeting 9/12/2022
Minutes approved at Planning Board meeting 9/14/2022