

Planning Board Meeting
April 18, 2022 via Zoom

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Attendees

John Gould, chair/co-chair
Michael Hoberman, co-chair
Jon Wyman, member
Andrea Donlon, member
Francis Parisi, Esq, applicant representative, Vertex Towers LLC
Marti Ferguson, Martin Rd., public
Christopher Lenaerts, 49 Upper St., public
Kathryn Davenport, 26 Upper St., public
John Holden, 27 Orcutt Hill Rd., public
S. Doherty, public
Lindsay Allen, 43 Upper St., public
Jonathan Mirin, 224 Avery Brook Rd., Charlemont, public

Co-chair Hoberman called the meeting to order at 6:39

Awaiting the arrival of Mr. Fred Goldstein, consultant, the Board addressed the proposed changes to **Draft Form A - Application for Endorsement Plan Believed not to Require Approval** (Note: PB member Andrea Donlon made the changes identified by the PB members in this discussion directly on the draft document in real time)

- Parcel, map, block and lot info has been added
- Submission materials have been identified, including number and format of plans
- Note that the Approval Not Required (ANR) endorsement should also go on the plans, including the language "ANR endorsement is not a determination of conformance with the town zoning regulations"
- # 2 - section 8-1 is incorrect; should be section 5-2 as the 200' requirement is only for some zones
- # 3 new dimensions passed in 11/2021 included
- Change septic/water to municipal water and sewer, or two (2) acres septic system and private drinking water source

PB Questions and Responses:

Q: When will this go into effect?

A: As soon as it is available to the Town Clerk

Q: Any legal process needed?

A: No - forms can be generated by the PB

Q: Should this be made as a fillable PDF?

A: Yes - even though applicants will still have to submit payment with the form, so contact with the Town Clerk is still required, it offers more options for filling out the form.

Q: Are we voting on the edits?

A: No, voting to adopt the form in its entirety

Co-chair Gould made a motion to adopt Form A as revised; John Wyman seconded; roll call vote: J. Gould, yes; J. Wyman, yes; M. Hoberman, yes; A. Donlon, yes.

Andrea Donlon will send the completed, and adopted form to the Town Clerk.

(Note: Mr. Goldstein was not present for the following discussion of the Vertex Tower LLC application for site plan approval)

Co-chair Gould explained that when the Vertex Tower LLC application was received, the PB (which has special permit granting authority for cell tower applications) approached Town Administrator Heather Butler, proposing to hire an impartial consultant to bring expertise, and respond to questions generated by the PB and the ZBA. Mr. Goldstein's work is also to corroborate information submitted in the application, including what the applicant states is "necessary," (e.g., no existing facility can accommodate the need, minimum height required, etc.) It was the intention of this meeting to go through the application, step-by-step, in order to ask those questions, followed by public comment. There are also questions that have been referred to the town's counsel for input.

The PB proceeded to pose their questions without Mr. Goldstein's attendance.

Questions for counsel:

- The application proposes a special condition re: the filing requirement of having a service carrier be either an applicant or co-applicant (see 10-3 b and 10-15 c). The applicant has stated that no building would be done without a carrier in place. In the absence of clarity of the carrier issue, moving to the balloon test - which informs creation of photo representation of the site and proposed structure - is premature
- Requested setbacks for wetlands, which are the Conservation Commission's purview - PB needs clarification of the sequence of who weighs in when, and if an environmental assessment statement, triggered by the presence of wetlands, will be required
- Another procedural question re: the applicant's request for the ZBA to grant a variance for the tower's height prior to the PB being able to address requests for waivers
- Another sequencing question re: the applicant's proposal to provide photo-representations showing the tower in the landscape to take place post-balloon test - both are required, but at what point will the public get the best possible information?

PB conversation turned to information missing, or not adequately addressed, in the application:

- 10-5 Dimensional Requirements a) Height. "The applicant shall demonstrate that the proposed on page 15 personal wireless service facility is the minimum necessary to accommodate the transmitter receiver." This has not been demonstrated. (see Ashfield color-coded scatter maps showing coverage at different heights)
- 10-6 Design Standards. Has this proposal been designed to minimize visual impact, preserve the maximum amount of natural vegetation, and such that the view from other areas of town is as minimal as possible? Case not yet made.

- 10-11 Scenic Roads and Vistas. The application erroneously states on page 15 "The proposed Facility will not be located within 300 ft of a scenic vista, scenic landscape, or scenic road as designated by the Town." It will be in a designated scenic vista - see Buckland Town's Open Space and Recreation Plan, updated summer 2021, which lists the following scenic roads: Depot Rd., Purinton Rd., Charlemont Rd., Ashfield Rd./Rt. 112 (which is also a scenic byway), Clesson Brook Rd., Upper Rd., Buckland, as well as two listed historic properties. Because of the scenic bylaw and the location of the historic sites, the height of the tower above the tree canopy is a significant issue.
- 10-12 Environmental Standards. Re: clearing of vegetation; the application does not provide information about how much vegetation will be cleared - how many trees are coming down? What does "minimal amount" constitute?
- 10-15.2 Filing Requirements b) 6. A survey of "any and all sites" that are feasible is required; there is a list of 6 sites, but are those any and all? More information about alternative sites should be noted on the overview map so the PB better understands why these sites were selected, and why were they passed over? (If the answer has to do with coverage, Mr. Goldstein should be able to corroborate; if the answer has to do with accessibility, that's not something Mr. Goldstein would consult on)
- 10-15.3 Site Filing Requirements, 9. and 10. Site plans do not show which trees are being removed, what species they are, and/or the height of the trees. #9 requires that they are measured by a verifiable source.
- 10-15.4 Design Filing Requirements a), b), c). This requires equipment brochures, color boards, etc.; d) Dimensions in all three directions should be provided; height is provided, but no other details; e), f) Supposed to show existing trees and shrubs; there is generic but not specific information; g) Is there no lighting proposed at all, even along the roadway and at the fence?
- 10-15.5. Noise Filing Requirements. Existing ambient noise is meant to be measured, and a statement by an acoustical engineer is required. On page 24 of the application, a WAIVER from these two requirements is requested. Is this done by the ZBA (variance) or PB (waiver)?
- There is no mention of providing camouflage on the pole - will it be painted? More discussion is needed. There is an affidavit of an engineer stating the design will be a monopine. Is this accurate to the Buckland application (as there are other places in the application that appear not to refer to the specifics of the locality of the Town of Buckland)?

There is a procedural question - what is the process for determining if the application is complete or not, and how that affects the calendar count-down for action?

Proposal to continue this meeting to Wednesday, April 20th at 6:30 pm via Zoom, with a hope that Mr. Goldstein will be able to attend that meeting.

Comments from the Applicant represented by Mr. Francis Parisi:

- Appropriate for procedural questions to be addressed by town counsel

- Appreciating the questions posed by members of the PB, question is "Is the application complete enough to schedule the public hearing?" according to Mr. Parisi, "You don't need to have all the answers to schedule the public hearing" as part of the process of the hearing is to learn more information, and that some of the answers to the questions being raised by the planning board - such as the minimum height required and scenic impact are subjective. Mr. Parisi maintains that the application is "complete enough" for the public hearing
- Re: the balloon test - Mr. Parisi doesn't disagree about the test's importance, but believes that having the test gives "everyone the opportunity to take their own pictures" and then have a conversation

PB members respond:

- The minimum height required may be a practical question, but it is not a subjective question
- The bylaws are clear about what is needed for a complete application, and a complete application allows the PB to conduct a meaningful public hearing and evaluate the proposal
- Resist the sense that acceleration of the application is being imposed

Public Comments

Co-chair Hoberman reminded the public that this is not a public hearing, and that questions - not statements - should be addressed to the PB that speak to this point in the process.

- Will the PB ask for a site visit which would help inform the PB about the wetlands issue?
- Letters have been submitted to the PB - will these be posed to the public?
- If a variance is granted to a non-carrier to build a tower, which is a deviation from the bylaw, does that mean other landowners (including the speaker) could do the same? If that's an accurate interpretation of the bylaw, should this be voted on at Town Meeting?
- How can the PB accept an application requesting waivers which is so filled with errors and has so much missing information? Particularly concerned about proposed barbed wire.
- Is there a mechanism, or a possibility, to bring this back to Town Meeting, given so much is being asked deviating from the bylaws?
- How do we think about the value of the historic landscape - and weigh that against other considerations?
- What legal obligations does the town come under once the public hearing is scheduled vs. now when it appears the applicant does not have standing?

The PB responds:

- Decision on the proposal isn't being made by "just 4 people" - the public hearing will be for all to participate
- The "shot-clock" starts when the application is complete - a 65 day window for action - this is another issue for counsel.

Follow-up items:

- Heather Butler to be consulted re: feasibility of continuing this meeting, or alternatively scheduling a new meeting, for this week with Mr. Fred Goldstein attending
- Andrea Donlon to share her notes re: the Vertex Towers LLC application with other PB members and Board Clerk

Jon Wyman moved to adjourn meeting; Andrea Donlon seconded; roll call vote: J. Wyman, yes; A. Donlon, yes, J. Gould, yes, M. Hoberman, yes. Meeting ended 8:22 pm

Documents Referenced:

Draft Form A - Application for Endorsement Plan Believed not to Require Approval

Application for Special Permit and Site Plan Approval (Planning Board) and Variances (Zoning Board) for Personal Wireless Service Facility, Vertex Towers LLC, VT-MA-0019F at 26 Martin Road, Buckland MA 01338