

July 12, 2022

To: Buckland Zoning Board  
17 State St.  
Shelburne Falls, MA 01370

Re: Applicant: Vertex Towers, LLC  
Site Id: VT-MA-0019F

Property Address: 26 Martin Road, Buckland, MA 01338 Tax Assessors: 8-0-60 (facility) 8-0-60.1 (access)

Dear Buckland Zoning Board,

Please accept my comments on the Vertex Towers, LLC monopole tower proposed for Martin Road.

My thoughts are about the standards for granting a variance of the tower height and wetlands setback that are requested by the developer.

The standards for giving a variance are described on page 45 of the application:

*“COMPLIANCE WITH CRITERIA FOR VARIANCES c) VARIANCES: The Zoning Board of Appeals 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 M.G.L. Chapter 40A, Section 10, as may be amended from time to time, only in cases where the **Board finds all 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.”*

The reasons given by the developer for the variance requests include:

*In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, § 704; 110 Stat. 56 (1996) (the “TCA”). The intent of the TCA enacted by the U.S. Congress was to institute a framework to promote competition and innovation within this telecommunications industry. Under their respective licenses from the FCC, wireless telecommunications providers are obligated to provide a reliable “product” [i.e. wireless communications service] to the population in the metropolitan Boston region, which includes the Town. Likewise, consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure. A carrier’s failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. The proposed Facility and corresponding relief requested are necessary to remedy a gap in reliable service coverage within the various wireless carriers’ existing network infrastructure. ( page 46)*

1- Buckland is not Boston, so it is unlikely there is a legal mandate to be *obligated to provide a reliable “product” [i.e. wireless communications service] to the population here.*

2- Was a survey done in the coverage area to assert that there are “*consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure.*” in the coverage area? And if conducted, would the survey come up with as the desired remedy?

3- Is it the obligation of the Town of Buckland to ensure that “*A carrier’s failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers.*”

4- Would a denial of the variance requests in fact lead to “*the inability to effectively compete for subscribers with FCC licensed competitors in the market*”, assuming all cell tower companies were required to meet the standards of the Bylaw?

5- Is it “*contrary to the intent of the Bylaw*” to refrain from giving a variance. The purpose of the bylaw is to only give a variance for a hardship, not a barrier to a business plan.

6- The developer has not clearly and simply stated who exactly will gain coverage from this tower who is not already covered, including those who will be covered by the impending new Conway tower. For this reason, it is impossible for the developer to claim a hardship, or conversely to claim some great necessity for the existing plan, when it is not known what the gap is that is being closed. In fact the “gap” will not fully be closed leaving the question open to where the “hardship” might lie.

7- A denial of a variance should not be interpreted as *an effective prohibition of wireless services.*” The project can be smaller or placed elsewhere, or not built at all, as there is no law saying that these properties in question have a state or federal constitution right for wireless service.

8- For these reasons, it cannot be said that this particular project “*constitutes another unique circumstance when a zoning variance is*” required.

I do not believe that the applicant’s explanation of the need for variances achieve the standard of giving these variances. Granting the variances would “nullify and substantially derogating from the intent or purpose of this Bylaw” allowing activities in the rural residential area that the town explicitly voted to prohibit.

Furthermore, I am concerned that a precedent would be created in Buckland were these variances to be granted. How many cell towers will we have, covering a few homes in the “gaps”? Should residents in Buckland expect and demand variances if their businesses or personal preferences for property use not fit the criterion of the Bylaw? --To be treated with less consideration than a developer who just appears in the Town?

Or should Buckland residents have the opportunity to discuss and vote on Bylaw changes.

Janet Sinclair  
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