

1. Not contrary to public interest = the pitch of the roof will match the roof on the main house and will be aesthetically appealing.
2. Spirit of the Ordinance = Architecturally, the proportions will be similar to the main house.
3. Substantial Justice = The building will be fully functional with the additional height. He does have a permit for a 1-story garage which shall need to be amended.
4. Value of Surrounding Properties will not be Diminished = The roof lines will be pleasing to the eye and will not decrease the value of the surrounding properties. He has a 2-family house. He is looking to

-2-
ZBA Minutes
7/2/19

PRENDERGAST-VARIANCE continued:

have the dormer for better light. Mr. Denton asked why he can't attach it to the house and was told that there is a slope and a septic tank that prohibits this.

5A1. No fair and substantial relationship exists between the general public purposes of the ordinance provision = If this garage were attached to the house, it would not be a problem but the slope of the land does not make this feasible.

5A2. The proposed use is reasonable = The applicant needs height to store his travel trailers and a room above for his tools.

5B. Unnecessary hardship = To build a 26' wide garage to house his pickup and travel trailer, he would need oversized doors. This would add to the ceiling height, therefore the roof pitch would be too shallow to match the house and houses in the neighborhood.

With no other questions from the Board, Mr. DeStefano asked for public speakers in favor of the application. Gilbert Murphy, abutter, stated that, when the leaves drop, he looks over the top of the Prendergast house. He has no problem with the plan. Katherine Murphy, abutter, added that it will improve the value of their house.

There was no-one to speak in opposition. Mr. DeStefano closed the public portion of the hearing and the Board went into deliberation.

#1: L. Denton made a MOTION, second by R. LaFlamme, that Criteria #1 has been met. The motion CARRIED.

#2: M. Mansur made a MOTION, second by L. Denton, that Criteria #2 has been met. The motion CARRIED.

#3: R. LaFlamme made a MOTION, second by M. Mansur, that Criteria #3 has been met. The motion CARRIED.

#4: M. Mansur made a MOTION, second by A. Dolloff, that Criteria #4 has been met. The motion CARRIED.

#5A1 & 2: L. Denton made a MOTION, second by A. Dolloff, that Criteria #5A has been met based on the condition that there can never be a residence in the garage. Mr. Denton wasn't certain that they need that much height and Mr. DeStefano said that he needs it for all of the tools, Mr. Denton mentioned that there are slope issues on the property. Ms. Mansur mentioned that it should be limited to strictly storage. Mr. Denton added that there is to be no plumbing or additional septic for it. Mr. DeStefano reminded all that the slope does not give the opportunity for the pitch of the roof and that there is also a septic tank there. The motion CARRIED.

#5B: R. LaFlamme made a MOTION, second by L. Denton, that Criteria #5B has been met. Mr. DeStefano felt that they met this. The motion CARRIED.

L. Denton made a MOTION, second by R. LaFlamme, to GRANT THE VARIANCE FOR ROBERT PRENDERGAST FOR A 28' GARAGE AS LONG AS THERE IS NEVER A RESIDENCE IN IT. The motion CARRIED and the Notice of Decision was signed.

Mr. DeStefano explained the 30-day Appeal period.

-3-
ZBA Minutes
7/2/19

19VAR05, VARIANCE: VERTEX TOWER ASSETS LLC/Francis Parisi (attorney) and Tom Johnson (civil engineer)

Ms. Laferriere read the application, the abutters notified, where the hearing was advertised and stated that there were no telephone calls or Dept. Head comments and there were 2 written responses.

M. Mansur made a MOTION, second by R. LaFlamme, that THE APPLICATION WAS COMPLETE. The motion CARRIED.

Atty. Parisi stated that they are still in front of the Planning Board for a Conditional Use and for a Site Plan. They have already met with the Selectmen, the Planning Board, and Conservation Commission. Atty. Parisi went on to say he will cover the criteria which is in his narrative. They are addressing the steep slopes for the driveway design. Need of a cell tower creates the hardship. AT&T has many more sites and Vertex designs these sites for them. They build for multiple outfits. A couple of years ago, the Federal Government designed a national network for first responders.

The Planning Board had received 50-year drainage calculations but the Conservation Commission requested more extensive calculations so 100-year drainage calculations have been done. There is truly a gap in coverage for the town so our town officials have asked them to come. This lack is a public safety issue. The terrain is challenging in that the main part of town is a bowl with mountains all around. It has to be on a peak. Our Ordinance says that it needs to be farther from any residences. This is a 54 acre landlocked parcel. They have an agreement to purchase the next lot. The tower height is set back from the boundaries and is in the middle of the property. It is 379' from the nearest property line; 380' from the other side. There is to be a 44' x 74' compound and a 20' x 20' impervious surface. This is the smallest thing with minimal impact. Included in the application is a long memo on the criteria. They are to build an access with minimal traffic which is common to other remote accesses.

Mr. Denton mentioned the gap coverage and that there is a telecommunication Act that was adopted in 1996. Atty. Serge stated that it is the 1996 Federal Act which is an umbrella for these. The government wants to encourage them. Because of this, the Board cannot just say "no". Their recommendations are that there is a gap in coverage and there is no alternative location. This is very needed in Bristol.

Atty. Parisi stated that they have been working on this for 10 years. It is very challenging. The Zoning Ordinance deals with size and being away from wetlands. The Town Hall is not tall enough. Mr. Denton asked how many locations they have looked at and Atty. Parisi answered that they have looked at dozens. They feel that this is the one and only location and it has been costly.

It was determined to address the criteria all at once.

1. Public interest = the project has no real impact. There has been substantial Federal review as well. It requires environmental issues.
2. Spirit of the Ordinance = The project has been designed to prevent drainage and slope issues. A maintenance plan will be required by the Planning Board.
3. Substantial Justice = They have worked with the town for 10 years. They will not be taking down trees except for the main area and there will be no facilities there.
4. Diminishing of values to surrounding properties = It will have no impact.

VERTEX CRITERIA continued:

5. Hardship = The topography (steep slopes) and wetlands are difficult. They have found no alternative to this location. Erosion and drainage will not affect the abutters. The use is reasonable as it is a 54 acre lot and this is a small development on this large lot. The trees will provide a buffer screen. They are asking for the Variance so that they can go back to the Planning Board for a Conditional Use Permit and Site Plan Review.

Mr. Denton asked what the grade is now. He was told that it varies from 5 to 33% with a medium of 15%; Mr. Denton then asked how high it will be above the ridgeline. Atty. Parisi answered that this is hard to determine as it varies. The tower is to be 150' with a small lightning rod on top for a total of 156'. The facility is 160'; ground elevation 873'. Mr. Denton asked the grade for the site and Mr. Simonds referred him to page A3 of the plan. Mr. Denton asked if they own the driveway and was told they have an access agreement.

At this time, Mr. DeStefano read the letters from Howard Deuso and Nigel Croxon. He then explained that the Zoning Board is strictly to talk about slopes and Atty. Serge added that these do not comply with the Zoning Ordinance and is the reason why the applicant is here.

Mr. DeStefano asked for comments from the public that are for the plan and there were none. He then asked for any against.

Nigel Croxon, abutter, was concerned about the road, the drainage and hydrology. He requested Thomas Balasaro from UNH as an impartial professional. He is also concerned about safety should a fire start as the Fire Dept. cannot access that steep a road and this would threaten the neighbors. As to no alternative, the TTCC belfry is to do Verizon.

Beth Croxon, abutter, is concerned about wildlife habitation, vegetation, steep slopes and drainage. She asked how we know they have done all of this. She would also like an unbiased survey. She feels they are closer than 300' of the ridgeline. She took 30 measurements and the average slope is 26.7%. If a fire starts in the trees, a Fire truck cannot get to it. The town does not maintain Chestnut St. as it is a class VI road. She also feels that 94% of folks will not buy property that is nearby. In a U.S. Court of Appeals, they said that a tower reduces the value of property by an average of 15%.

Mr. Croxon mentioned that a distributed antenna system can go on telephone poles. Mrs. Croxon added that they now use WiFi.

Kent Gustafson, abutter, stated that he is the only abutter with a residence on his lot. He owns lot #225-002 and has lived there for 25 years. His driveway is 2/10ths of a mile and is below the proposed property. The road will allow for drainage but all of it is to be directed toward the wetland. An 8" culvert was put in to go under his driveway. His concern is that his drive will be impassible with all the water coming down to a restricted area. He was not aware that we could ask for an independent hydrologist.

-5-
ZBA Minutes
7/2/19

VERTEX VARIANCE, PUBLIC COMMENTS continued:

Jim Nuberg, Vice Chairman of Slim Baker which is abutting, feels that this project will have a big effect on Inspiration Point (above the Lodge). He has lived here for 57 years and gives lots of money for its use. It has a big effect on the town and feels the applicant has not looked enough for another location. Vertex came to them and they decided not to have the tower there. The last time a tower was proposed, most folks were using Verizon not AT&T. He is asking that they pick up their application and leave.

Steve Moore, abutter, was not sure that they are 400' from the upper and lower boundaries. He also feels that there are impacts as rain in the Spring and run-off from Round Top already cause a lot of drainage below. There is expected to be a 100-year storm every 5 to 10 years. The closeness to the ridgeline violates the Zoning Ordinance. He has heard tonight that there are other alternatives such as Hemphill and the top of the TTCC. There are different technologies that are not all located in one place. An independent review is a good idea.

Dave3 Gallagher, resident, stated that there is a culvert between 2 acres and there is a lot of run-off already. We have the same people here as before when it was turned down. He does not want to see the tower.

Sue Putnam, resident, stated that this culvert is by her house. She questioned the road access. Atty. Parisi explained that it is private property by Chestnut St. and the owner has given them an easement. Ms. Putnam stated that there were 2 pieces of land put up for public auction and they purchased the lower one so as to allow it to stay as is. Michael Sharp asked to buy it from them. They agreed with the stipulation of no cell tower. There is a sharp corner and a possible wash out. She then asked if they will be allowed to put up a tower with that stipulation. Mr. DeStefano answered that the stipulation would be for her land only.

Mr. Nyberg asked if the road is part of the cell tower and Mr. DeStefano answered that this is not a question for the Zoning Board. Mr. Nyberg then stated that he has been on both the Planning Board and ZBA in the past. He remembers that BHOP got a variance for garages on their property which reduced the parking for the restaurant. Now they rent the apartments who do not use the garages making parking even shorter.

Mr. DeStefano stated that the ZBA is like a grand jury and must determine 5 criteria only. A lot of the comments here are for the Planning Board. He then asked for rebuttal from Atty. Parisi who agreed that 90% of what was brought up belong to the Planning Board. This variance deals with drainage calculations. The Conservation Commission is asking the Planning Board to get more information. At this point, Atty. Parisi asked the Engineer, Tom Johnson to explain.

Mr. Johnson stated that he has done the drainage calculations and presented a 100-year plan today. He has a history of working with steep slopes and knows that 15% is reasonable. This driveway will have limited access. They do not intend to plow it. A maintenance plan will be in place. It will have a significant sub-base with a 12' gravel driveway. A swale along the driveway will direct water under it with energy dissipaters to spread it out. They have anticipated water problems and the swale is

-6-
ZBA Minutes
7/2/19

VERTEX VARIANCE continued.

designed to handle a 100-year plan. There are a couple of wetland areas. Instead of a straight road, they have curved it to ease the amount of run-off.

Mr. Denton asked how many of these have they done in NH. Mr. Johnson and Atty. Parisi both answered about a dozen. Mr. Denton asked if any are like this and work and was told that Jefferson has 2. Mr. Denton asked if a 100-year plan is standard and was told that it is more than.

Ms. Croson mentioned that they will not plow in the winter and wondered if the Planning Board could force this. Mr. Johnson stated that this would require maintenance. He added that the lot uphill becomes ledge quickly so water is significant. The 100-year plan shows catching areas above.

A gentleman asked a point of order: can the ZBA make an informed decision on what has been presented tonight.

Mr. Denton asked about Hemphill availability to fill in the gap. Atty. Parisi stated that more people have cell phones now and the Town Administrator has looked into this. Hemphill is not viable. They are aware of previous areas and took them into consideration. They talked to the folks at Round Top. The present area is much more expensive than what they would prefer. Other locations do not cover. Sugar Hill cuts off some, the Downtown and the Lake areas fall short. Those areas were designed for older types of phones. Hemphill would have been faster and easier if it worked.

At this time, the public portion of the hearing was closed and deliberations began.

1. Public Interest = L. Denton made a motion, second by M. Mansur, that Criteria #1 has been met. Mr. Denton stated that the public interest of the town in general meets this. The motion carried.
2. Spirit of the Ordinance = L. Denton made a motion, second by R. LaFlamme, that Criteria #2 has been met. Mr. Denton felt that the land is much greater and the facility smaller than any project that might come along. The motion carried.
3. Substantial Justice = R. LaFlamme made a motion, second by M. Mansur, that Criteria #3 has been met as it creates substantial communication. Mr. Denton added that there is a certain Federal requirement for cell towers for safety. Ms. Mansur added that she was stuck on a road where she couldn't reach 911. Mr. DeStefano added that they had seen a drunk driver who needed to be reported and the cell coverage dropped. The motion carried.
4. No diminution of property = L. Denton made a motion, second by R. LaFlamme, that Criteria #4 has been met. Mr. Denton stated that it is a large piece of land with hundreds of feet of land from any abutter. The motion carried.
- 5A. Special Conditions = R. LaFlamme made a motion, second by M. Mansur, that Criteria 5A has been met. Mr. Denton was not sure that they know all of the areas have been looked at but the applicant maintains that they have and this is the most desirable lot. Mr. DeStefano added that it is where they can build high enough. Mr. Denton asked if the Planning Board will look at this and Mr. DeStefano was not sure. Ms. Goodwin stated that Burden of Proof is part of the Wireless Zoning Ordinance that they look at. The motion carried.

-7-
ZBA Minutes
7/2/19

VERTEX VARIANCE continued:

5B. Unnecessary Hardship = L. Denton made a motion, second by R. LaFlamme, that Criteria 5B has been met. Mr. Denton stated that this is probably the only use for this property. Mr. DeStefano knows a builder who would not consider it due to the road construction costs. The motion carried.

R. LaFlamme made a MOTION, second by L. Denton, that THE APPLICANT HAS MET ALL CRITERIA AND THE VARIANCE IS APPROVED. The motion CARRIED and the Notice of Decision was signed.

As they were leaving, Mr. Croxon accused Mr. DeStefano of not knowing his job and was asked to leave. Others were also mumbling as they left.

As it was late and there was no other business before the Board, R. LaFlamme made a motion, second by M. Mansur, to adjourn at 8:55pm.

Respectfully submitted,
Jan Laferriere,
Land Use Admin. Assistant