

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, April 11, 2018

Members Present

Glenn Saba, Chair
Bob Connors
Will Stewart
Shane Keating
Vice Chair Sam Zannini
Bill Friel, Selectman Liaison (not voting)

Others Present

Chris Swinarski, McCain Law Firm
Carter Souza, Prince Lobel Tye LLC
Victorian Ndunu, Verizon Wireless

Work Shop 7:00 PM

Call to Order: Chair Glenn Saba called the meeting to order at 7:10 PM.

Other Business:

Correspondence:

- Letter from Christine Cornelius
- Letter from Town Engineer dated April 11, 2018 regarding Cell Tower application

Approval of Minutes: March 14, 2018

March 14, 2018

The Atkinson Zoning Board of Adjustment members at the March 14, 2018 meeting reviewed the minutes of the March 14, 2018 meeting.

Member Stewart made a motion to approve the minutes of the March 14, 2018 meeting as written. The motion was seconded by Chair Saba. Members Davie Farris, Will Stewart and Chair Glenn Saba of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 3/0/0.

Public Hearing – 7:30 P.M. - Chair Saba opened the public hearing at 7:30 PM April 11, 2018. Bob Connors, Will Stewart, Shane Keating, Vice Chair Zannini, Selectman Liaison William Friel and Chair Saba were present.

- 1. Prince Lobel Tye LLP for SBA Communication Corporation, Verizon Wireless, and T-Mobile with application for Special Exception under Article 700e to allow a modification of a preexisting nonconforming use. Applicant proposes to modify the existing telecommunications tower by replacing the existing 161-foot Trussed Tower supported by three guyed wires with a new 160-foot Monopole Self-Supporting Tower at property located at 10A High Hill Rd, Map 18 Lot 14 in the RR2 Zone.**

Abutters: Brian A. Donnelly, Patricia Chamer, Patricia Chamer Revocable Trust, Feuer Realty Revocable Trust, Tower Engineering, Sanford Carter, 10 Woodside Way (present), Robert Cantola (present), Richard Broderick, Jr. (present), Melody Haven, SFC Engineering, SBA Network Servicing (present), Carter Souza, Prince Lobel Tye (present), Chris Swiniarski (present), Victorian Ndunu, Verizon Engineer for the applicants.

Chair Saba read a letter regarding the application from Keach Nordstrom, Town Engineer, dated April 11, 2018 into the record. The letter offers comments and recommendations for the applicant and the Town. The letter is summarized below.

Keach Nordstrom completed a technical review of the project plans at the request of the Planning and Zoning Administrator. They are in receipt of the application and plans and offer several comments.

The purpose of the application is to replace the existing 161-foot guyed tower with a modern 160-foot monopole tower at the subject address. The current tower cannot accommodate any additional equipment. T Mobile and Verizon would like to install communications equipment.

The current tower is encumbered by a lawsuit regarding a stipulation between the prior owner and the Town, there is also another stipulation stating that any future changes have to be approved by the Board of Selectmen.

The applicant obtained the consent of the Board of Selectmen for the project.

Carter Souza, Prince Lobel Tye, on behalf of SBA Communications, Verizon Wireless and T Mobil, Chris Swiniarski, McLain Law Firm, outside counsel for Verizon Wireless, and Victorian Ndunu, Radio Frequency Engineer, Verizon came before the Zoning Board of Adjustment to explain the application. Tab 8 of the application shows the radio frequency report.

As stated in the letter of Keach Nordstrom, the purpose of the application is to replace the existing 161-foot guyed tower with a modern, 160-foot monopole tower at the subject address. The current tower is not structurally sound and cannot accommodate any additional equipment. Coverage for Verizon Mobile in Atkinson is not good. T Mobile and Verizon would like to install communications equipment and cannot because of the structural aspects of the current tower. The tower is encumbered by a law suit from around 1985 and there is a stipulation between the previous owner of the tower and the Town allowing the existing tower to be built.

There is also a second, amended stipulation entered into on September 27, 2005 allowing T Mobile to install its antennas. That stipulation required that any future modifications to the tower would require the consent of the Board of Selectmen. The applicant has been working with the Board of Selectmen for the past year and a half to obtain their approval. One element of the process was a structural report by a Town consultant stating that the existing tower cannot accommodate the additional equipment by T Mobile and Verizon. It is in the record of the Board of Selectmen. The applicant obtained the consent of the Board of Selectmen at the end of last year so that they can accommodate T Mobile, Verizon and other carriers needing coverage in Atkinson.

Mr. Swiniarski showed the Board the radio frequency report and a map of current coverage for Verizon in Atkinson. It is not good. Then, he showed the Board a map of coverage with the proposed tower and it would be much better. The applicant stated that there would be a benefit by improved cellular communication.

Mr. Swiniarski stated that the improved coverage would satisfy the public interest component as well as the substantial justice component. Substantial justice is weighed by the benefit of increased coverage balanced by any inconvenience to abutters. The applicant also stated that there are no detriments. The current tower will be one foot shorter. Chair Saba asked about radiation, and health issues and radio frequency. The applicant explained that they are 1/100 of 1 percent of the allowable frequencies by the FCC. Level of radio frequency is in the jurisdiction of the Federal Government. Also, the Tower will not make any noise.

Chair Saba asked about interference. The applicant explained that each carrier has licenses for different frequencies. Unless the frequencies are bleeding into each other, there is no interference. The carrier monitors frequencies very carefully. It is in the interest of the carriers to make sure they operate within their spectrum. First, in order for them to operate properly and also to avoid fines from the FCC. The applicant has also reviewed possible interference with the Selectmen.

Mr. Souza requested the Board look at the map of coverage for T Mobile and Verizon. The new installation would improve coverage. There are six times more data transmittals than voice calls. The applicant wants to upgrade signal from 4G to 5G and it cannot be done on the existing tower. Member Connors asked about generators. Mr. Swiniarski explained that there is a battery bank and when the batteries run down, the generator would replenish the batteries. Mr. Swiniarski explained they only run when the power is out and he does not think they can be heard by abutters. It is incredibly important that the communications equipment continue to operate even when the power is out, especially for the public safety communications equipment. Vice Chair Zannini asked how many generators would be installed. Mr. Souza explained that he has seen both configurations, one generator for each carrier and one generator for all the carriers.

Mr. Connors asked about the length of disruption during construction. Mr. Souza explained that the new tower would be built approximately 30 feet from the old tower, but still in the compound, and then take down the old tower so there would be no disruption in service.

Mr. Souza explained that the location of the new tower is shown on Sheet C-1 of the plans. One benefit of changing from a guyed tower to a monopole is getting rid of the guys. The new tower would be adjacent to the location of the old tower and within the compound. Mr. Souza showed the planned location of the new tower to the abutters.

Chair Saba asked how much tree clearing would be done and what would happen to the anchors. Mr. Souza replied that the top of the anchors would be removed and he does not know if they would be removed below ground. The applicant is also not aware of any tree clearing. The new tower is going within the fenced compound and will be in an area that is already cleared.

Member Keating asked about the setback from the abutters. Mr. Souza explained that there is a 55-foot setback to the front of the lot and another 120-foot setback. Chair Saba explained that the tower is an existing, nonconforming use. The new tower would be closer to the access road and a little more nonconforming.

Mr. Sanford Carter, 10 Woodside Way requested to speak. He has just learned that the monopole as proposed would be moving 30 feet closer to Mr. Donnelly's property, or 55 feet from the lot and 85 feet from his house. Mr. Donnelly could not be present and asked Mr. Carter to speak. There is a right of way up the hill that comes up a stone wall. Mr. Donnelly's

property ends at the stone wall. This would result in a 160-foot tower closer to Mr. Donnelly's house. There are issues with ice fall from haloes, guy wires and other problems.

Chair Saba requested Selectman Friel speak to the ZBA regarding the application. Selectman Friel explained that the applicant came before the Board of Selectmen over a year ago and they have had many discussions.

The applicant explained that page C-3 of the plans shows the carriers on the present tower. There is already a police antenna and central alarm on the tower. There is no room on the tower until location 120, where Verizon plans to put their equipment. One of the conditions for consent by the Board of Selectmen was that the applicant move all the current carriers on the present tower to the new tower at their expense.

Member Keating asked about frequency and where other carriers could operate. The applicant replied that another carrier could possibly operate at location 110 or 100 but frequency would be hindered by the location. The applicant also explained that they are low energy emissions and well below FCC requirements.

Chair Saba requested comments from the audience. Richard Broderick spoke. He stated that when he moved to Atkinson, the tower was much smaller and he has no idea how the current antenna was built. Several years ago, American Tower wanted to expand but was not permitted. He has a two-story glass roof on his sunroom. He is concerned about debris. The proposed tower will not be closer to his house. Chair Saba asked if the guy wires concern him and Mr. Broderick explained that the guy wires can be heard in the wind.

Chair Saba stated he believes that the new tower would be much safer than the present one. Mr. Broderick agrees, but still does not understand how the current tower was allowed. He is concerned about flying debris and noise from the generators.

Member Connors asked the applicant about damage from flying debris. The applicant replied that he has had no reports, this is a much safer design and it is surrounded by trees.

Selectman Friel explained that the current tower grew without permission while suits were filed and now is covered by stipulations of the New Hampshire Superior Court. The applicant explained that he is not aware of American Tower. The applicant purchased the current tower from Signal Tower. The Court allowed a stipulation between the Town of Atkinson and the previous owners allowing the construction of the current tower in 1985. There was a further modification allowing T Mobile communications in September 27, 2005 and the stipulation was amended to allow T Mobile to allow its antennas. The existing tower was permitted by Court action.

Mr. Carter requested to speak. The first tower was built by a Mr. Hoyt and was to communicate with trucks. The Town took action against him. At that point, the Town entered into a stipulation and settlement of this controversy at the State level stating that cell towers must be permitted. The stipulation was that nothing happens without the agreement of the Selectmen. The Selectmen have had the power to regulate the antennas.

The existing tower is 18 inches on the side, it is latticed and guyed. It has no haloes, there are no monopoles. There are tower designs that hide the antennae. Mr. Carter asked where other companies are operating a tower in a residential area and 55 feet from a property line. The applicant stated that the stipulation between Mr. Hoyt and the Town, which was by Court order, states that the tower can be as high as 170 feet. The proposed tower will be 160 feet.

The Board discussed a disguised tower. The applicant explained that the diameter cannot accommodate today's technology. The applicant explained that the monopole is a more streamlined design. Mr. Swiniarski explained that in order to put in all the technology required, a brown tower would have to be six feet in diameter at the top and more space is needed vertically so a brown tower would have to be taller. He also explained that in his experience, most municipalities prefer monopole towers.

Chair Saba asked about ice falling off. Mr. Swiniarski stated that he is not aware of ice falling off the tower and through a forest. Mr. Carter stated that he should Google ice fall recommendations for cell towers.

Chair Saba asked if there were more questions from the public.

Member Connors asked about placement of the new tower and if there are still 50-foot setbacks. Article 5 requires a minimum setback of 50 feet. Mr. Swiniarski explained that it is an existing nonconforming use so a variance is not needed, which is explained in the letter from Keach Nordstrom. The old tower has to remain in operation until the new tower is operating, then it will be removed.

Mr. Broderick requested to speak. He stated that the tower keeps getting taller and is used by more carriers.

Chair Saba closed the public hearing and requested the Zoning Board of Adjustment go through the application.

There are four criteria for the special exception. The Board must review the four criteria. If the application complies with the four criteria, and it has to be unanimous, then it will be allowed, if not then it will be denied.

Member Keating asked about power. Mr. Swiniarski stated that the power is currently in place. Member Keating asked about setbacks. Mr. Swiniarski stated the letter from Keach Nordstrom states that the setbacks are already non-conforming. Chair Saba requested the Board read comment three of the letter from Keach Nordstrom.

Mr. Swiniarski asked for a copy of the letter from Keach Nordstrom. Chair Saba asked the Board if there were more questions. There were none.

Section 700:1e, nonconforming uses, states that a special exception shall be granted by the Board of Adjustment provided the following conditions are met for the non-conforming use:

1) There is no diminution of value of surrounding properties;

Mr. Souza explained that the use has not been changed since 1985 and is authorized by Court order. The applicant is not changing the use, it is modifying the type of tower.

Discussion: Chair Saba stated that understands the concerns of the abutters. The guy lines that extend way beyond the tree line will be gone. The issue of the anchors can be addressed by the applicant.

Mr. Swiniarski stated that it would not be a problem for them to remove the anchors if the Planning Board would require it.

Chair Saba stated that there is a tower there, but now they have become part of the landscape and are relied on for communication. The new tower will be an improvement. Mr. Stewart agreed that if he were a homebuyer, he would prefer the new tower.

All members of the Atkinson Zoning Board of Adjustment present agreed. Vote: 5/0/0. The vote is unanimous.

2) It would be of benefit to the public interest;

Mr. Souza explained that there is a significant gap in coverage for Verizon and T Mobile. It would be to the public benefit to fill the gap. The applicant has agreed to make improvements to the road. Also, the rent the town pays to use the tower would be reduced.

Discussion: Member Connors stated that it would be a benefit. People moving to Atkinson are frustrated by lack of coverage. Chair Saba stated that the improvement to the street is a benefit and the tower is a public safety benefit to the Town.

All members of the Atkinson Zoning Board of Adjustment present agreed. Vote: 5/0/0. The vote is unanimous.

3) It would result in substantial justice being done; and

Mr. Souza explained that there is already a tower, it's been there since 1985, improving the road and installing the old equipment on the new tower would be substantial justice.

Discussion: Chair Saba stated that substantial justice is that technology is changing rapidly and has become a lifeline for everyone. The existing tower could not handle the new technology. Vice Chair Zannini stated that there will be no gain to the general public by denying the application. Chair Saba stated that the concerns for the structure brought up by the abutters would be addressed by the Planning Board.

All members of the Atkinson Zoning Board of Adjustment present agreed. Vote: 5/0/0. The vote is unanimous.

4) It would comply with Section WS 300 of the Atkinson Water Supply and Sewage Disposal regulations.

Discussion: There is no septic and no water so criteria four does not apply.

All members of the Atkinson Zoning Board of Adjustment present agreed. Vote: 5/0/0. The vote is unanimous.

Chair Saba requested a motion.

Vice Chair Zannini made a motion to approve the application of SBA Communication Corporation, Verizon Wireless, and T-Mobile for Special Exception under Article 700e to allow a modification of a preexisting nonconforming use. Applicant proposes to modify the existing telecommunications tower by replacing the existing 161-foot Trussed Tower with a new 160-foot Self-Supporting Monopole at property located at 10A High Hill Rd, Map 18 Lot 14 in the RR2 Zone with several conditions: as stated in Section 5, Paragraph 5 of correspondence of Keach Nordstrom dated April 11, 2018 to the Atkinson Planning Board; that any such approval be conditional upon subsequent receipt of Non-residential Site Plan Approval from the Atkinson Planning Board as well

as posting of a performance bond, in an amount and form acceptable to the Planning Board, to serve as a financial surety for proper removal of the facility in the event of abandonment and whatever reason they see fit. Member Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0.

Chair Saba requested a motion to adjourn.

Member Connors made a motion to adjourn the April 11, 2018 meeting of the Town of Atkinson Zoning Board of Adjustment at 8:45 PM. The motion was seconded by Vice Chair Zannini. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0.