

Town of Milford
ZONING BOARD OF ADJUSTMENT
Milford Police Training Room
SEPTEMBER 5, 2024
Public Hearings

Case 2024-09: Cellco Partnership, 476 NH Route 13 South, VARIANCE
Case #2024-15: Kevin Scott, 70 Comstock Drive, SPECIAL EXCEPTION

Members

Present: Andrea Kokko Chappell, Chair
Joan Dargie, Vice Chair
Rich Elliott, Member
Dan Sadkowski, Member
Michael Thornton, Alternate
Kevin Overby, Alternate

Not Present: Tracy Steel, Member

Non-Members

Present: Terrey Dolan, Town Planner, Community Development

Not Present: Jane Hesketh, Recording Secretary, Community Development

MEETING AGENDA

1. Call to Order

2. Mtg. Minutes Approval: 7/11/2024 & 7/25/2024

3. Public Meetings:

a. Continuance of Case #2024-09-Variance Requests for New Cell Tower for Cellco Partnership (dba Verizon Wireless & Tarpon Towers III, LLC) The applicant, Cellco Partnership, proposes a new 135-foot high (above ground level) cell tower mono-pole (w/ attached 10' whip antennae) to be located at 476 NH Route 13 South, Map 48 Lot 11. The newly proposed cell tower requires relief in the form of a Variance Request from three requirements contained within the Milford Zoning Ordinance, Section 7.09.4.A.3 (cell tower clearance above avg. tree canopy) & Section 7.09.4.A(4 & 5) seeking relief from the cell tower fall zone requirements encroaching onto off-site properties, & requirements for a fall zone easement. Case Continuance from the August 15, 2024 ZBA Mtg.

b. Case #2024-15, Special Exception Request for an "After the Fact" Accessory Dwelling Unit (ADU) for Kevin Scott The applicant, located at 70 Comstock Drive, Map 52 Lot 70, has requested a required Special Exception pursuant to Section 5.04.2.A.14 & Section 10.02.6 to approve an already-built ("After the Fact") 584 sq. foot ADU, with one bedroom, along with living area, kitchen & laundry areas. The ADU is located on the basement level of the existing single-family residence, with separate walk-out.

4. Other Business: TBD

5. Next Meeting(s): September 19, 2024 & October 3, 2024

MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

1. CALL TO ORDER

Chair Andrea Kokko Chappell opened the meeting by welcoming everyone and introducing herself.

The Chair stated you may attend this meeting in person at the Milford Police Training Room.

If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and enter the Meeting ID: 851 6407 7601 and Password: 269952 or log in via www.zoom.com using the Meeting ID and Password previously stated.

A digital copy of the meeting materials can be found on the Town website at:

<https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda>. We will be live streaming this meeting on Granite Town Media, Government Channel 21, but will be on Zoom.

<http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>.

Roll call attendance with all present at Milford Town Hall: Mike Thornton, Kevin Overby, Dan Sadkowski, Rich Elliott, Joan Dargie, Andrea Kokko Chappell. Chair stated there two Alternates in attendance: Mike Thornton and Kevin Overby. Chair stated there are 2 cases to be heard.

Chair explained the process for the case hearings. The Chair said a full agenda may not allow all cases to be heard and that at 10:00 p.m. the meeting will end. The Chair explained how the meeting would proceed for the cases that may not be heard in that they would be continued or tabled to another agreed upon meeting; also explained was the process for public notification.

Chair moved to the Public Hearings and stated Meeting Minutes will be reviewed at the end of the Public Hearings.

2. MEETING MINUTES

7/11/2024

In Attendance: M. Thornton, D. Sadkowski, R. Elliot, J. Dargie, A. Kokko Chappell

Chair asked for a motion to approve minutes from July 11, 2024 as amended.

J. Dargie made a motion to approve minutes from July 11, 2024 as amended and M. Thornton seconded.

A vote was taken and all were in favor.

7/25/2024

In Attendance: M. Thornton, D. Sadkowski, R. Elliot, T. Steel, A. Kokko Chappell

Chair asked for a motion to approve minutes from July 25, 2024 as amended.

R. Elliott made a motion to approve minutes from July 25, 2024 as amended and J. Dargie seconded.

A vote was taken and all were in favor.

3. PUBLIC HEARINGS

Chair asked for a motion to move Case #2024-15 ahead of Case #2024-09. Joan Dargie made a motion to move Case #2024-15 as the first case to be heard and it was seconded by Mike. Thornton. A vote was taken and all were in favor.

1 MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

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4 **3. PUBLIC HEARINGS**

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6 **b. Case #2024-15, Special Exception Request for an “After the Fact” Accessory Dwelling Unit (ADU) for**
7 **Kevin Scott The applicant, located at 70 Comstock Drive, Map 52 Lot 70,** has requested a required Special
8 Exception pursuant to Section 5.04.2.A.14 & Section 10.02.6 to approve an already-built (“After the Fact”) 584
9 sq. foot ADU, with one bedroom, along with living area, kitchen & laundry areas. The ADU is located on the
10 basement level of the existing single-family residence, with separate walk-out.
11

12 Chair indicated Mike Thornton would be designated a full voting member for this case.
13

14 Kevin Scott came forward to make a presentation. This was an ADU built for his father and a contractor was
15 hired. The applicant thought the permits were being acquired by the contractor but later learned they had not
16 been. Since then, K. Scott has gone through the process of gaining authorizations and is now at the Zoning
17 Board for approval. The ADU is 584 sq. ft. with a living room, kitchen, laundry, bath, and a walk out. It is not
18 visible from the road and there is extra parking in the driveway.
19

20 **Special Exception Criteria under 10.02.1:**

21 **a. Criteria: proposed use is similar to those permitted in the district**

22 It is in a residential area.

23 **b. Criteria: specific site is in an appropriate location for the proposed use because**

24 Residential area.

25 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

26 The ADU is not visible from the road; the entrance is in the backyard; there is plenty of parking.

27 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

28 ADU is hidden.

29 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
30 **proposed use**

31 Shared with main structure.

32 **Accessory Dwelling Units Criteria under 10.02.6:**

33 **1. Is the property going to be Owner Occupied?**

34 Yes

35 **2. Has a Building Permit application been made?**

36 Yes; in process.

37 **3. Is the ADU developed in a manner which does not alter the character/appearance of the**
38 **principal use as a single-family residence?**

39 Yes

40 **4. Is the ADU intended to be secondary and accessory to a principal single-family dwelling unit?**

41 Yes

42 **5. Does the ADU impair the residential character of the premises or the reasonable use, enjoyment**
43 **and value of the neighborhood?**

44 No

45 **6. Is there adequate off-street parking?**

46 Yes; 6 spots.

47 **7. Are any additional curb cuts being proposed?**

48 No

49 **8. Are all necessary additional entrances or exits located to the side or rear of the building to the**
50 **maximum extent possible?**

51 In the rear.
52

1 MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

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4 **3. PUBLIC HEARINGS**

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6 **b. Case #2024-15**

7
8 **Accessory Dwelling Units Criteria under 10.02.6(continued):**

9 **1. Is there adequate sewer/septic and water for the additional inhabitants?**

10 Yes; approval for the septic.

11 **2. Is there only one ADU on the property?**

12 Yes

13 **3. Is the ADU no more than 750 sq. ft. gross floor area? How many sq. ft. is the ADU?**

14 No; 540 sq. ft.

15 **4. Does the ADU have no more than two (2) bedrooms?**

16 Yes

17 **5. If inside the existing dwelling, is there at least one common wall with a door between the two spaces at least 32 inches wide?**

18 Yes

19 **6. If a connecting hall is proposed, is the hallway at least 36 inches wide?**

20 N/A

21 **7. Has a Code Compliance inspection been conducted by the Building Inspector?**

22 In process.

23
24 **Questions:**

25 The board felt it was fairly straight forward and had no questions.

26 Chair opened the meeting to the Public.

27 Ray Kaplan, 79 Comstock Drive stepped up to the microphone; he lives across the street from the applicant.

28 Mr. Kaplan expressed his concern that this ADU will turn into a rental which will increase traffic, and what
29 would prevent the garage being converted to another ADU.

30 Chair stated: Milford does allow an ADU up to 750 sq. ft. as long as one of the units is occupied by the
31 homeowner. If the applicant wanted to convert the garage into another ADU, an application would need to be
32 submitted to the Zoning Board for a variance.

33 Kathy Sloan, 50 Comstock Drive stepped forward to express the same concern as Mr. Kaplan. J. Dargie stated it
34 is a home with an in-law apartment that can be rented but must be owner occupied in the home.

35 Chair closed the Public portion and moved to deliberations.

36
37 **Deliberations:**

38 **Special Exception Criteria under 10.02.1:**

39 **a. Criteria: proposed use is similar to those permitted in the district**

40 D. Sadkowski: an ADU in the basement with a walk out; meets the special exception

41 M. Thornton: straightforward ADU with one point of access

42 R. Elliott: there are other ADU's in this district; it is a residential district and allowed with special
43 exception

44 J. Dargie: other homes in the neighborhood would be allowed an ADU

45 A. Kokko Chappell: agrees with what has been said.

46 **b. Criteria: specific site is in an appropriate location for the proposed use because**

47 R. Elliott: yes; looks like a wooded lot in the back and the basement is the best location.

48 M. Thornton: it is appropriate; it is internal and does not alter the appearance; the egress door is in the
49 back so it preserves the appearance of a single family home

50 D. Sadkowski: already in a residential area

51 J. Dargie: agrees with what has been said

52 A. Kokko Chappell: agrees; there is nothing being changed about the home; the ADU is in the structure

1 MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

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3 **3. PUBLIC HEARINGS**

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5 **b. Case #2024-15**

6
7 **Deliberations:**

8 **Special Exception Criteria under 10.02.1:**

9 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

10 J. Dargie: does not look any different than it did; it is in the basement and cannot be seen.

11 D. Sadkowski: not visible and the door is in the back yare

12 R. Elliott: agrees; the wooded lot hides the entrance

13 M. Thornton: agrees and there is adequate parking

14 A. Kokko Chappell: this was already developed with someone living there and it has not adversely
15 affected the area.

16 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

17 M. Thornton: private property; no legal access from the public

18 D. Sadkowski: agrees

19 R. Elliott: agrees

20 J. Dargie: agrees

21 A. Kokko Chappell: agrees; adequate parking.

22 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**
23 **proposed use**

24 R. Elliott: agrees; everything there and inspections have been done and passed

25 D. Sadkowski: already shared with main structure

26 M. Thornton: sounds like the ADU has been developed well

27 J. Dargie: septic has been approved

28 A. Kokko Chappell: agrees and the septic had to go back through the state and has been approved
29

30 Chair Kokko Chappell then read the ADU Checklist.

31 **Accessory Dwelling Units Criteria under 10.02.6**

32 **1. Is there only one (1) ADU on the property?**

33 yes

34 **2. Is the property going to be Owner Occupied?**

35 yes

36 **3. Is the ADU no more than 750 sq. ft. gross floor area?**

37 yes

38 **4. Does the ADU have no more than two (2) bedrooms?**

39 yes

40 **5. No additional curb cuts being proposed?**

41 yes

42 **6. If inside the existing dwelling, is there at least one common wall with a door between the two**
43 **spaces at least 32 inches wide?**

44 yes

45 **7. The ADU shall be located in an existing building as an attached ADU or as a standalone.**

46 yes

47 **8. An existing non-conforming single family residential structure or its detached ADU shall not be**
48 **made more non-conforming.**

49 yes

50 **9. An ADU shall meet all applicable Local and State building, fire, health and safety codes.**

51 yes

52 **10. Is there adequate sewer/septic and water for the additional inhabitants?**

Yes

MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

3. PUBLIC HEARINGS

b. Case #2024-15

Deliberations

57:27

Accessory Dwelling Units Criteria under 10.02.6

11. Is the ADU developed in a manner which does not alter the character/appearance of the principal use as a single-family residence?

yes

12. Is the ADU intended to be secondary and accessory to a principal single-family dwelling unit?

yes

13. Does the ADU impair the residential character of the premises or the reasonable use, enjoyment and value of the neighborhood?

yes

14. Is there adequate off-street parking?

yes

15. Are all necessary additional entrances or exits located to the side or rear of the building to the maximum extent possible?

yes

Voting:

Special Exception Criteria under 10.02.1:

a. Criteria: proposed use is similar to those permitted in the district

J. Dargie yes; D. Sadkowski yes; R. Elliott yes; M. Thornton yes; Chair votes yes.

b. Criteria: specific site is in an appropriate location for the proposed use because

D. Sadkowski yes; R. Elliott yes; M. Thornton yes; J. Dargie yes; Chair votes yes.

c. Criteria: the use as developed will not adversely affect the adjacent area because

R. Elliott yes; M. Thornton yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes

d. Criteria: no nuisance or serious hazard to vehicles or pedestrians

R. Elliott yes; M. Thornton yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes

e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use

M. Thornton yes; J. Dargie yes; D. Sadkowski yes; R. Elliott yes; Chair votes yes.

Is the Special Exception allowed by the Ordinance?

J. Dargie yes; D. Sadkowski yes; R. Elliott yes; M. Thornton yes; Chair votes yes.

Are all the specified conditions present under which the Special Exception may be granted?

D. Sadkowski yes; R. Elliott yes; M. Thornton yes; J. Dargie yes; Chair votes yes.

Chair Kokko Chappell stated all criteria for the Special Exception has been met. Chair asked for a **motion to approve Case #2024-15**. M. Thornton made a motion **approve Case #2024-15** and it was seconded by J. Dargie. Chair took a vote and all were in favor. There is a 30 day appeal period that can be filed with the Zoning Board.

MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

3. PUBLIC HEARINGS

a. Continuance of Case #2024-09-Variance Requests for New Cell Tower for Cellco Partnership (dba Verizon Wireless & Tarpon Towers III, LLC) The applicant, Cellco Partnership, proposes a new 135-foot high (above ground level) cell tower mono-pole (w/ attached 10' whip antennae) to be located at 476 NH Route 13 South, Map 48 Lot 11. The newly proposed cell tower requires relief in the form of a Variance Request from three requirements contained within the Milford Zoning Ordinance, Section 7.09.4.A.3 (cell tower clearance above avg. tree canopy) & Section 7.09.4.A(4 & 5) seeking relief from the cell tower fall zone requirements encroaching onto off-site properties, & requirements for a fall zone easement. **Case Continuance from the August 15, 2024 ZBA Mtg.**

Chair Kokko Chappell recused herself from this case as she did at the July 11 and August 15 meetings; Joan Dargie was seated as Chair for this case.

Chair Dargie noted there is only a 4 member board which means 3 members must be in favor for an approval.

Attorney Mark Beaudoin from firm Nixon Peabody came forward as a representative for Tarpon Towers and Verizon Wireless (co-applicants). Also seated at the table were Project Manager Amy White and Executive Vice President of Tarpon Towers Ken Curley.

Questions:

J. Dargie began by asking about the location analysis and selection process. Amy White stated that information is in the May 17, 2024 package and is covered under Exhibit H. In addition, the first supplement dated June 20, 2024 provides further information on towers within the boundaries of Milford as well as 2 miles outside the boundaries of Milford (Exhibit S); this explains the reasons other sites were not acceptable. It was noted the Citronics site was looked at and they were spoken to numerous times but were not interested.

Rich Elliott asked to confirm previous information regarding space on the tower for other cell companies.

Amy White: Shown on the Plans for the 131 ft. pole: Town of Milford at the top of the tower; Verizon at 131 ft.; Additional spots at 121 ft. and 111 ft.; and additional spot for the Town of Milford at 81 ft.

Rich Elliott asked what would happen to the coverage if the pole were built within the height guidelines per the ordinance which would not require a variance.

Amy White stated there was extensive analysis done with the Engineers because preferably they would not want to apply for a variance; however, the engineers determined 131 ft. is the lowest height that would work. Going lower would impact the connectivity to other sites and change the coverage footprint. Changing the coverage footprint could then require additional towers in the future.

Mike Thornton asked about overlap with other sites. Amy White explained there is no overlap with this particular site and reviewed the coverage from the original application of May 17, 2024 explaining the goal is for seamless connection to neighboring sites.

Rich Elliott asked what would happen in the distant future if the tower was no longer viable and needed to be removed; who would responsible for that removal? Amy White: Tarpon would be responsible.

Joan Dargie asked about the indemnification agreement discussed at the last meeting and what the wording will be.

Attorney Beaudoin: An Indemnification Agreement was submitted to Terrey Dolan, Town Planner and it was agreed upon. Joan Dargie stated this would then be designated as a condition for approval.

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4 **3. PUBLIC HEARINGS**

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6 **a. Continuance of Case #2024-09**

7
8 **Questions:**

9 Mike Thornton asked about the chaining as a safeguard should the tower fall. The confidence it would not fall
10 was very high and a performance bond was suggested to guarantee this.

11 Amy White stated what was agreed to was the Indemnification Agreement.

12 There was discussion about the fall zone and inspections for the tower.

13 Amy White then pointed out the letter dated July 22, 2024 from Engineer Michael Planovinsak that addressed
14 the suggestion for tethering (chaining). The letter stated it would not be advisable given the design of the pole.

15 Amy White outlined the numerous State and Local standards/qualifications and inspections that will be required
16 when submitting for a permit and all will be certified by engineers.

17
18 Mike Thornton asked about the 131 ft. vs the stated 135 ft. Amy White explained Verizon will go to the 131 ft.
19 mark (center line of the Verizon antennas). Attorney Beaudoin confirmed the height from the ground will be
20 135 ft. with a 10 ft. whip antenna.

21
22 Joan Dargie asked about the elevation difference from the road to where the tower will start. Amy White
23 explained from the Topographical information, the road is at 340 ft. and the tower location is at 342 ft. but the
24 driveway toes up and there is an embankment that goes down so it will be lower.

25
26 Joan Dargie asked for further questions since this is the time for this because the Variance Criteria was
27 presented at the last meeting.

28
29 Mike Thornton asked about the antenna pattern. Amy Whit addressed this by referring to the Emissions
30 Transmissions Report.

31
32 Mike Thornton wanted to confirm the height of the fence. Amy White: The fence will be the standard fence
33 height of 6 ft. with 12" of barbed wire at the top.

34
35 Joan Dargie: Where do you address the impact on values to surrounding properties?

36 Amy White: This is addressed with #4 of the Variance Criteria and this site is commercial/industrial.

37 Joan Dargie pointed out this is a limited industrial area with many residential homes in the area and explained
38 the height is what affects the surrounding values.

39 Rich Elliott referred to the Balloon Test in regards to residential homes in the surrounding area.

40 Amy White referred to the pictures and results from the Balloon Test, and Brookline Road will not be affected
41 since these homes are setback. Further explanation was given and discussed.

42 More discussion continued about surrounding property values.

43 Attorney Beaudoin reiterated what had been said about home owners coming into the town usually ask about
44 cell coverage first.

45 Joan Dargie acknowledged this but her point is not about new residents but about existing residents who may be
46 looking at a cell tower that was not previously there.

47 Mike Thornton noted statistics he found on the internet that stated homes within less than $\frac{3}{4}$ of a mile had their
48 property decrease in value by 2.65%.

49 Joan Dargie continued to express her concerns regarding the effect on property values.

50 Attorney Beaudoin stated the site is in the Integrated Commercial and Industrial Zoning District where
51 businesses require reliable wireless and it is permitted in this zone. The point is the height of the pole which
52 exceeds the designated height in the ordinance but the height requested is needed for proper function.

The point regarding values continued to be debated with Attorney Beaudoin noting that under the TCA it can be built. Discussion continued about the site location and the extensive research that was done to make the decision.

MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

3. PUBLIC HEARINGS

a. Continuance of Case #2024-09

Chair Dargie asked if the committee had any more questions and there were none. Chair opened the meeting to the Public and seeing/hearing none this part of the meeting was closed.

Joan Dargie noted the variances that will be deliberated on:

1. The tower will be above the designated 20 ft.
2. The fall zone goes over the boundary line which would require a Fall Zone Easement from the abutter; this Easement is being waived by the abutter

Deliberations:

1. The tower will be above the designated 20 ft.

Variance Criteria per New Hampshire RSA 674:33.I:

1. This will not be contrary to the public interest.

R. Elliott: the town in general will be happier with better cell coverage; police department coverage will be enhanced

M. Thornton: a redundancy for police coverage in case primary coverage is not available; public expects seamless coverage in cell service

K. Overby: agrees nothing to add

D. Sadkowski: promotes public welfare, and enhanced public safety

J. Dargie: the public interest is there for the coverage; problem with size of lot and closeness to the road; look and feel do not go along with the town; at one of the exits and entrances into Milford

2. The spirit of the Ordinance is observed.

M. Thornton: spirit of the ordinance will be "bruised" because of the view; but people demand cellular service and if denied there would be more heard from the public on this than having the tower.

J. Dargie: reason for the ordinance is to restrict the height to preserve the view

D. Sadkowski: essential services and public safety and a good location

K. Overby: the research has been done and the tower is at the lowest it can go to provide the best coverage which will reduce the need for future towers

3. Substantial Justice is done.

R. Elliott: having the height requested will maximize the benefits to the town and the benefits will not be just for Verizon but for the community

D. Sadkowski: police and fire will benefit for communications

M. Thornton: the public gain is there and the public safety aspect

J. Dargie: concerned about the look and feel at the entrance and exit to the town

4. The Values of Surrounding Properties will not be diminished.

M. Thornton: on one hand it could diminish the view but it is an industrial area; properties have lost 2.5% of values; more home workers that need through put; safety needs

J. Dargie: feels it is more retail than industrial; said she has never driven by a tower so close to the road; no picture taken directly across from where it will be and it will be at ground level

R. Elliott: noted need for safety; it is in a rural commercial area with businesses but a tower will not be a problem also many people have gotten used to seeing towers

D. Sadkowski: good area and will not create excessive noise

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4 **3. PUBLIC HEARINGS**

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6 **a. Continuance of Case #2024-09**

7
8 **Deliberations:**

9 **1. The tower will be above the designated 20 ft.**

10 **Variance Criteria per New Hampshire RSA 674:33.I:**

11 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

12 **A. Owing to special conditions of the property that distinguish it from other properties in the area;**
13 **denial of the Variance would result in unnecessary hardship because:**

14
15 **i. No fair and substantial relationship exists between the general public purposes of the ordinance**
16 **provision and the specific application of that provision to the property because:**

17 J. Dargie: the ordinance is there to create a look and feel; generally a variance concerns a property an
18 applicant has and not one they have selected

19 R. Elliott: the hardship is the length of time it took to find a location (this is the only location found) and
20 hardship established with the number of approvals that were needed

21 M. Thornton: as shown in the variance criteria by the applicant, it would deny them the rights granted by
22 the FCC and part of the hardship is the restrictions created by the physics.

23
24 **ii. The proposed use is a reasonable one because:**

25 **B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to**
26 **exist if, and only if, owing to special conditions of the property that distinguish it from other**
27 **properties in the area, the property cannot be reasonably used in strict conformance with the**
28 **ordinance, and a variance is therefore necessary to enable a reasonable use of it**

29 M. Thornton: does not see this as being applicable; more land is not available
30

31 **Voting:**

32 **1. The tower will be above the designated 20 ft.**

33 **Variance Criteria per New Hampshire RSA 674:33.I:**

34 **1. This will not be contrary to the public interest.**

35 M. Thornton yes; D. Sadkowski yes; R. Elliott yes; Chair votes no.

36 **2. The spirit of the Ordinance is observed.**

37 R. Elliott yes; D. Sadkowski yes; M. Thornton yes; Chair votes no.

38 **3. Substantial Justice is done.**

39 D. Sadkowski yes; M. Thornton yes; R. Elliott yes; Chair votes no.

40 **4. The Values of Surrounding Properties will not be diminished.**

41 R. Elliott yes; D. Sadkowski yes; M. Thornton yes; Chair votes no.

42 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

43 M. Thornton yes; D. Sadkowski yes; R. Elliott yes; Chair votes no.
44
45

46 **Deliberations:**

47 **2. The fall zone goes over the boundary line which would require a Fall Zone Easement from the abutter; this**
48 **Easement is being waived by the abutter**

49 **Variance Criteria per New Hampshire RSA 674:33.I:**

50 **1. This will not be contrary to the public interest.**

51 J. Dargie: Indemnification Agreement was received and has been approved which will protect the town

52 R. Elliott: tax payers will not be affected since the Town will not be held liable if tower should fall

53 M. Thornton: due to weather changes becoming more extreme a wind gust could take the tower down but it
54 is being built to the required specifications to deal with a fall

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6 **3. PUBLIC HEARINGS**
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8 **a. Continuance of Case #2024-09**
9

10 **Deliberations:**

11 **2. The fall zone goes over the boundary line which would require a Fall Zone Easement from the abutter; this**
12 **Easement is being waived by the abutter**

13 **Variance Criteria per New Hampshire RSA 674:33.I:**

14 **2. The spirit of the Ordinance is observed.**

15 R. Elliott: yes spirit will be observed because it has been engineered to break correctly at 80 ft. to minimize
16 the fall zone

17 J. Dargie: easement is being waved, therefore a variance is needed; also have the Indemnification
18 Agreement

19 **3. Substantial Justice is done.**

20 D. Sadkowski: enhances public services

21 M. Thornton: benefit outweighs any negative

22 **4. The Values of Surrounding Properties will not be diminished.**

23 J. Dargie: abutter did not give the easement so it puts no restrictions on the property and the Indemnification
24 Agreement relieves the town from legal action if the tower falls.

25 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

26 **A. Owing to special conditions of the property that distinguish it from other properties in the area;**
27 **denial of the Variance would result in unnecessary hardship because:**

28 **i. No fair and substantial relationship exists between the general public purposes of the ordinance**
29 **provision and the specific application of that provision to the property because:**

30 J. Dargie: the only small piece of land available makes this a hardship

31 **ii. The proposed use is a reasonable one because:**

32 R. Elliott: yes, it is a cell tower; the most reasonable structure to put in this zone
33

34 **Condition for Approval:** Require the applicant to provide full indemnification from the Town.

35 Chair asked for a motion to approve. Mike Thornton made a motion for approval and it was seconded by Rich
36 Elliott. A vote was taken and all were in favor.
37

38 **Voting:**

39 **2. The fall zone goes over the boundary line which would require a Fall Zone Easement from the abutter; this**
40 **Easement is being waived by the abutter**

41 **Variance Criteria per New Hampshire RSA 674:33.I:**

42 **1. This will not be contrary to the public interest.**

43 M. Thornton yes; R. Elliott yes; D. Sadkowski yes; Chair votes yes.

44 **2. The spirit of the Ordinance is observed.**

45 R. Elliott yes; D. Sadkowski yes; M. Thornton yes; Chair votes yes.

46 **3. Substantial Justice is done.**

47 D. Sadkowski yes; M. Thornton yes; R. Elliott yes; Chair votes yes.

48 **4. The Values of Surrounding Properties will not be diminished.**

49 M. Thornton yes; R. Elliott yes; D. Sadkowski yes; Chair votes yes.

50 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

51 D. Sadkowski yes; M. Thornton yes; R. Elliott yes; Chair votes yes.
52
53

Chair Dargie stated **Case #2024-09 has been approved.** There is a 30 day appeal period that can be filed with the Zoning Board.

MINUTES OF THE ZBA MEETING SEPTEMBER 5, 2024

Motion to Adjourn

Chair asked for a motion to adjourn. R. Elliott made a motion to adjourn and it was seconded by M. Thornton. A vote was taken and all were in favor. Meeting adjourned.

Motion to Approve:

Seconded:

Signed

Date:
