

Planning Board Meeting October 1, 2013

Present were: Chair Ernie Allain, Members David Morin, Aline Boucher, Mark Evans (6:40), Sue Tremblay, alternate members: Richard Cassidy, Lori Langlois, and John White. Excused were Greg Estrella and Martha Creegan. Tom McCue, and Lucie Remillard were absent.

Chair Allain opened the meeting at 6:30 p.m., and appointed Mr. White, Ms. Langlois and Mr. Cassidy voting members for this meeting.

Others present: Naomi Levesque; Cimbria Badenhausen; representing the Verizon project: Attorney Thomas Hildreth of McLane, Graf, Raulerson & Middleton; Todd White, Construction Manager, George Evsuk; Keith Vellante, Radio Frequency Engineer. Representing Jericho Wind LLC: Lindsay Deane, Attorney Bob Backus, Rich Tabaczynski and Sumul Shah. Pam Laflamme, Community Development Director and Barbara Tetreault, *Berlin Daily Sun*

Public Comments - none

Approval of September Minutes

Mr. Morin moved to approve the minutes of the previous meeting; Mrs. Boucher seconded and the motion carried unanimously.

Site Plan Review - Verizon Wireless

Mr. Cassidy moved to accept the application as complete; Mrs. Boucher seconded and the motion carried.

Ms. Laflamme explained that a review of Sec. 17-186 of the zoning ordinance has a provision for an antenna array and the downtown zone could have a telecommunication facility in it. The Planning Board has the authority to grant a Special Use Permit in all zones. The height limitations of the antennae array on an existing structure is current height of the building plus 20 feet for a total of 180 feet. Mark Evans entered the meeting at this time.

Attorney Hildreth gave an overview of the project saying the proposed antenna array on the Albert Theatre will increase Verizon's capacity and coverage specifically in the downtown area. In an evaluation of cell service it was found that the compact area of the city was not covered to capacity. This array will establish coverage signal where there is none and will handle the volume created by multiple people using a 4g network.

A typical installation would have the antenna array on a sled attached to the roof; however the Albert Theatre has a rubber membrane roof and it was found to be in the best interest of the building not to disturb the roof. The three elements of the antennas will be together on one pole at the back of building and the ground level equipment will be in the basement.

The antennas will extend the height of the building by 20 feet. Cables from the array will be painted the same as the brick.

The percentage of power emission from the array is less than 4% of what the FCC has determined to be a safe level. At 80 feet, this facility will join others to offer additional service.

Keith Vellante of C Squared Systems, LLC reported that this additional antenna will increase service in the downtown area affecting an additional 2300 customers. Attorney Hildreth added that the facility is unmanned and needs to be connected to utilities with power, a battery backup and a backup power generator.

Mr. Morin asked about the Certificate of noninterference. Mr. Vellante stated that Verizon will operate within their FCC license this would be operating on frequencies separate from those of Verizon.

Public Hearing

Mr. Allain opened the public hearing at 7:06 p.m.

Cimbria Badenhausen asked about the ability to put up an antenna out to reach rural areas. Attorney Hildreth replied that he is familiar with the initiatives; however this project will service a localized need. Ms. Badenhausen then asked if any renewable energy such as solar energy would be used to power the equipment. Attorney Hildreth stated that this project uses standard electricity, battery backup and a fuel powered backup generator.

Mr. Allain closed the public hearing at 7:10 p.m.

Board Discussion

Ms. Laflamme stated that this is a hybrid of US Cellular application as this application is not a tower and the Board is asked to go through the checklist of site plan plus consider a special use permit.

Ms. Laflamme went through the items needed for a special use permit:

1. A complete application – **The application is complete.**
2. A scaled plan. **Mr. Morin moved to waive as this is an antenna array for cell service rather than a building; Mr. Evans seconded and the motion carried.**
3. Written proof that facility complies with FCC regulations, and FAA regulations on tower lighting requirements. **The portion regarding RF is underway and with regard to lighting, there is no lighting.**
4. Written proof that an evaluation has taken place satisfying the requirements of the National Environmental Policy Act (NEPA); **This is still underway and the Board can make receipt of the NEPA Study a condition of approval.**
5. An inventory of existing towers that are within the jurisdiction of the City of Berlin - **The information is not applicable; however it is in the application.**

6. For applications for a new tower, the applicant shall submit written evidence demonstrating that no existing tower or structure can accommodate the applicant's proposed antenna. **Not applicable.**
7. Maximum allowance of co-location upon the new structure - **Not applicable.**
8. The applicant shall submit engineering information detailing the size and coverage required for the telecommunication facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with NH RSA 676:4(g). **Ms. Laflamme explained that the Board may have any information presented reviewed by a third party at the applicant's expense. There were no requests for additional information by the board.**
9. Design certified by a competent engineer that the structure has been engineered to accommodate the maximum number and type of all compatible telecommunication media antennae. **Engineered plans will come when applying for a building permit; co-location is not applicable for this project.**

Design Standards

- a. Height Requirements – The maximum height is 180 feet and that complies with the standard as this will only be approximately 85 feet or 20 feet higher than the building.
- b. Setbacks are not applicable
- c. Security fencing is not applicable
- d. Landscaping is not applicable
- e. Aesthetics and Lighting – there is no lighting and there is no tower. Visually, the antenna array will be as unobtrusive as possible. There are no signs.

Annual Certification of Compliance

It shall be placed on file with the Zoning Officer yearly prior to January 31 of each year.

Performance Standards

****Abandoned towers.** This item can be waived as they meet or exceed the FAA and/or FCC standards; The Owner is insuring that the project conforms to city regulations. If the facility were not operated for 12 months, it would be considered abandoned. There would be a hearing, then a declaration, then an order to remove or the city would remove at the owner's expense.

Mr. Morin commented that performance standards are asking for some surety that the array will be constructed in a structurally safe fashion so that it is not blown or bantered about. The Board wants to be assured that there is no endangerment of life or limb. Attorney Hildreth assured the Board that a structural analysis and construction drawings are being done and will be filed with the City upon application for a building permit.

Mr. Morin moved to approve the site plan with conditions that the City receive the NEPA study and structurally engineered, stamped plans; Mrs. Boucher seconded and the motion carried unanimously.

Ms. Laflamme added that all abutters were notified and regional communities within 20 miles of Berlin as well as North Country Council were notified and no comments were received.

Site Plan for Jericho Power LLC Amendment Request

Ms. Laflamme explained that, in a suit brought against the City, the court order remanded some of the Planning Board and Zoning Board's decision regarding Jericho Power LLC. In 2009, the Planning Board approval was granted with the following 6 conditions:

1. Applicant must receive approval from the Zoning Board of Adjustment;
2. Approval is for four towers, the towers are not to exceed 400 feet in height, all parts stationary or moving included;
3. Letter of approval/consent from the FAA must be filed with the Planning Department;
4. The entire perimeter setback is 100 feet, which is greater than the current setbacks for the Rural Residential Zone;
5. Any access issues over St. Laurent Lane must be worked out with the Berlin Water Works and a letter must be placed on file with the Planning Department;
6. A decommissioning plan will be executed that will include the removal of towers, foundations, and utilities. It will also include returning the site to pre-existing conditions should the project cease. The form of the plan (either by bond, letter of credit, insurance, etc.) shall be agreed upon by the City through its attorney.

The City has practiced measuring setbacks from the base of the building, not the roofline. The judge's order of 2013 found that wind towers should be measured from the tip of the blade to the property line; therefore the Jericho Wind approval from 2009 will no longer get the job done. Jericho Power will now keep within the 25 foot setback that is allowed by the zoning ordinance. There will be no overhang over the property line.

Lindsay Deane of Palmer Capital gave an overview of the project and shared a PowerPoint presentation with the board which is attached.

The ownership has changed its name over the course of the project and it is now under the name Jericho Power LLC. It is a 8.55 MW wind energy facility with 3 wind turbines.

Financing and permitting are well underway. A term sheet has been received from the lender and all required permits at the State and Federal are in hand. At this time, Jericho Power LLC is still waiting for the interconnection studies from PSNH & ISO-NE.

She went on to say to address concerns that have been presented at prior meetings. Concerns included the effect of the project on property values, noise, glare, shadow flicker, fire, vibration, ice throw, and possible effects on birds. All of the concerns have been addressed with studies or conclusions that show no adverse effect on the community.

If approval is received this evening, the geotechnical and foundation design work will begin in the next week and turbines will be ordered from GE.

The current request the Planning Board is to:

1. Amend Condition 2, to decrease the number of turbines from 4 to 3 and increase the maximum height from 400' to 500', all parts moving and stationary.
2. Update the language in Condition 4, to clarify that the setback shall mean to the tip of the blade as opposed to the base of the tower as in the original approval and that the zoning setback in a rural residential zone (25') shall apply to the wind turbines.
3. Amend the language in Condition 5, to reflect that while the project will gain long term access as stipulated in Condition 5, that access does not necessarily have to be through an easement with Berlin Water Works but will be via any legal access which will be submitted to the Planning Department and placed on file.

Bob Backus on behalf of Jericho Power LLC commented that everything has been addressed as needed in the City's Zoning Ordinance. An agreement has been reached with Mr. Bouthillier as well (he distributed a letter of agreement signed by Gordon Deane & Mr. Bouthillier, see attached).

The project will seek a long term easement for road access with DRED and it will provide space for additional ATV trails. At the site, the lines will be underground.

Public Hearing

Chair Allain opened the public hearing at 8:03 p.m.

Cimbria Badenhausen, asked about ambient light. Mr. Backus replied that there is no up lighting, only lighting on the monopole as required by the FAA.

Chair Allain closed the public hearing at 8:04 p.m.

Ms. Laflamme explained that this project received its original approval in 2009 and subsequently received an amendment in January of 2013. In order to make the process clear, she asked if the Board would revoke the approval given January 8, 2013.

Mr. Morin moved to revoke the amendment to Jericho Wind Power's site plan approved January 8, 2013; Mr. Evans seconded and the motion carried.

Ms. Laflamme indicated that the board has been provided with studies and responses to a variety of questions and told the board if anything is unclear or uncomfortable, the Board can hire a consultant at Jericho Power's expense.

Mr. Morin asked about ice throw and how warnings would be conveyed. Mr. Backus indicated that signs would be posted at a distance one times the tip of the blade.

Mr. Allain asked if anyone will see the shadow flicker and Ms. Deane stated that it can be seen from the trail system and it will fall on wooded areas.

Mr. White asked if the flashing light is visible and whether all would flash at the same time. Ms. Deane indicated that the light is on the pole and they are not synchronized.

Mr. Morin moved to approve an amendment to the Planning Board's Approval to Jericho Wind dated June 2, 2009; amended to Jericho Power LLC – June 5, 2012 and further amended to Jericho Power LLC by:

AMENDMENT #2 – October 1, 2013, amended approval amends previously approved conditions # 2, # 4 and # 5 now worded as follows:

2. Approval is for three towers, the towers are not to exceed 500 feet in height, all parts stationary or moving included.

4. Condition is no longer required & void as the applicant will be in compliance with the setbacks for the zone as listed in the Zoning Ordinance.

5. Any legal access issues must be worked out and the details of how legal access will be gained to the property will be submitted to the Planning Department and placed on file.

Lot Mergers

Lorette Theberge of 107 Gauthier Street applied to merge lots on Gauthier and Hutchins Street Map 133/Lots 005 & 010. There are no issues with the merger. Mr. Morin moved to merge Map 133; Lots 005 & 010; Mr. Evans seconded and the motion carried

Ryan Metivier of 40 Old Milton Road, Rochester applied to merge lots on Burgess and Champlain Streets Map 130/Lots 278 & 346. These lots were recently sold by the city with the condition that they be merged. Mrs. Boucher moved to merge Map 130; Lots 278 & 346; Mr. White seconded and the motion carried

Other

Ms. Laflamme reported that Fleury-Patry Funeral Home has asked about having a crematorium at their business on High Street. She has researched the legality and found that the zoning ordinance does not address the subject and the City's ordinance is a permissive ordinance, meaning is that if it is not in the ordinance it is not allowed.

RSA 325-A governs cremation. In reviewing other communities, the Town of Wilton just approved a crematorium and Manchester has one in a dense residential area. There seems to be no reason not to amend the ordinance. Ms. Laflamme stated that a representative from Fleury's is willing to come and meet with the board. Mr. Morin said that he would like time to do more research. Board members agreed and asked that the information be forwarded to them for review.

Once the board is comfortable, the City Council will need to approve a zoning ordinance amendment to allow.

Public Comments - None

Member Comments - None

Planner Comments

Smith & Town is looking to put an addition on their building. When they applied for a building permit, the size of the addition puts the project just over the threshold of what kicks in site plan review. They will come in next month.

PSNH will also come for Site Plan Review next month.

The next meeting will be Thursday November 7th at 6:30 p.m. due to the municipal election. There are handouts from all three law lectures available if anyone wants to review.

There being no further business, Mr. Morin moved to adjourn; Mrs. Boucher seconded and the motion carried. The meeting ended at 8:37 p.m.