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6 **Stratham Zoning Board of Adjustment**
7 **Meeting Minutes**
8 **November 24, 2015**
9 **Municipal Center, Selectmen's Meeting Room**
10 **10 Bunker Hill Avenue**
11 **Time: 7:00 PM**
12

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14 **Members Present:** **Arol Charbonneau, Chairman**
15 **Chris Brett, Full Time Member**
16 **Garrett Dolan, Full Time Member**
17 **Deidre Lawrence, Alternate**
18 **Phil Caparso, Alternate**
19

20 **Members Absent:** **Bruno Federico, Board of Selectman Representative**
21 **Jim Elliott, Secretary**
22 **Chris Cavarretta, Full Time Member**
23

24 **Staff Present:** **Audrey Cline, Code Enforcement Officer**
25

26 **1) Call to Order/Roll Call**

27 The Chairman took roll call and explained this is a public meeting which will not be open to
28 the public, the board will weigh the testimony submitted by both parties.

29 **2) Approval of Minutes**

30 **a. November 3, 2015**

31 Mr. Brett motioned to accept the minutes of November 3, 2015 as written. Mr. Dolan
32 seconded the motion. Motion carried unanimously.

33 **3) Public Hearing(s)**

34 **a. Case #625: Verizon Wireless, 118 Flanders Road, Westboro, MA 01581, for property**
35 **located at 28 Bunker Hill Avenue, Stratham, NH, Tax Map 9 Lot 51.** Request for
36 Rehearing regarding a Special Exception from Article XIX, Section 19.4.2 of the
37 Stratham Zoning Ordinance to allow the construction of a new wireless service facility
38 and monopole structure in the Residential/Agricultural Zoning District.
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40 Mr. Charbonneau stated the ZBA received testimony from the petitioners requesting the
41 rehearing, as well as a rebuttal from Verizon Wireless (applicant for Case #625). The

1 Zoning Board of Adjustment members read and discussed the original submission by the
2 petitioners to determine if there are grounds for a rehearing due to technical error or if
3 information submitted was not available at the time of the original hearing. Mr.
4 Charbonneau stated a number of the concerns raised are the jurisdiction of the planning
5 board and the ZBA cannot address those issues, ex. potential impacts of hazardous
6 materials, the fall zone, etc. Discussion regarding each fact was discussed.
7

- 8 1) Based on the FCC ruling, Middle Class Tax Relief and Job Creation Act of 2012,
9 Section 6409(a), an extension of 20 feet to the proposed 90 feet tower is
10 automatically granted. Application must be considered with the extension.
11

12 Ms. Lawrence stated she does not see any new evidence submitted and the
13 petitioners' argument that the ZBA was not aware of the FCC ruling during the
14 decision process is an assumption to what the ZBA was or was not aware of and does
15 not constitute a new fact that would provide a basis to grant a rehearing. There are
16 several laws that can apply, at any given time, to decisions the ZBA makes. These
17 issues could have been raised during the original hearing and were not. The argument
18 is based on assumption, which are speculative to what may or may not occur in the
19 future. The petition states if the tower is built all, or some, of the hazards will
20 happen, which cannot be predicted. Therefore, the board is not required to grant the
21 extension under federal law. Ms. Lawrence does not see this as providing a basis for
22 rehearing.
23

24 Mr. Caparso agreed that there are no new facts and there were no technical errors in
25 the ZBA ruling brought forth by the petitioners. Mr. Brett stated his interpretation of
26 Section 6409 is not automatic, there are certain criteria that must be met. Mr. Dolan
27 agreed there is no new evidence presented to warrant a rehearing.
28

- 29 2) The tower will result in hazards to adjacent property due to high risk of fire and
30 collapse and hazardous materials. There is a house in the fall zone of a 90 feet tower.
31

32 Mr. Charbonneau stated this was covered by the applicant during the original
33 submission and there is no new information provided by the petitioners to warrant a
34 rehearing. Ms. Lawrence agreed this information was considered by the planning
35 board and ZBA, in detail, during the joint hearings. Mr. Caparso agreed with Ms.
36 Lawrence and Mr. Charbonneau. Mr. Brett does not agree there is a high risk of fire
37 and collapse for the cell tower and stated there is no new evidence to warrant a
38 rehearing.
39

- 40 3) The application does not meet the standards provided by the Zoning Ordinance:
41 a. 19.6.4 - Setback requirements are not met; as explained in the petitioners'
42 submittal.
43 b. 19.7.2.c - Surrounding tree coverage and foliage has not been considered; given
44 the FCC ruling that an existing tower can be extended up to 20 ft. without any
45 further approval from the town, the decisions regarding the permit must be based

1 on the analysis of an extended tower. ZBA was not aware of it during the
2 decision process. All analyses are based on 90 ft. cell tower.

- 3 c. 19.7.3.c - Each applicant for an antenna and/or tower shall provide to the planning
4 board an inventory of its existing towers. Verizon has only showed the towers that
5 belong to Verizon. Detailed existing tower inventory has not been submitted.
6 Furthermore there are significant discrepancies in terms of coverage in Verizon's
7 national website and the information they provided to the board.
8

9 Mr. Charbonneau stated Verizon provided this information and this is a planning
10 board issue. Mr. Caparso stated this information was brought forth during the initial
11 hearing and evidence from both sides was submitted, to which the ruling was made
12 based on that information. The board unanimously agreed there is no new evidence to
13 warrant a rehearing.
14

- 15 4) Potential decrease in property values and thus tax revenue of the Town of Stratham.
16

17 Mr. Dolan stated the ZBA discussed information from both positions during the
18 initial hearings and made a determination there would be no detrimental effect on
19 property values. There is no new evidence presented today to warrant a rehearing.
20 Mr. Charbonneau stated the evidence submitted for this rehearing could have been
21 provided during the initial hearings. The board unanimously agreed there is no new
22 evidence to warrant a rehearing.
23

- 24 5) Increased risk of fire and collapse in a residential neighborhood will increase the
25 demand for municipal services.
26

27 Mr. Charbonneau and Mr. Dolan agreed that the risk of fire and collapse of the cell
28 tower isn't any greater than that of a tree that size. Mr. Caparso stated the petitioners
29 had two opportunities to present evidence and litigate these issues and there is no new
30 evidence to support the rehearing. The board unanimously agreed there is no new
31 evidence to warrant a rehearing.
32

- 33 6) The new access driveway will increase the over flow of storm water and sediments to
34 adjacent lots and the streets.
35

36 Mr. Charbonneau stated this item is a planning board issue and the ZBA makes
37 rulings based on site plan approval. The board unanimously agreed this is a planning
38 board discussion.
39

40 The Board discussed the zoning regulations brought forth by the petitioners:
41

- 42 3) Zoning Regulations (19.6.4, 19.7.2.c, 19.7.3.c):
43

44 Mr. Charbonneau stated a number of these issues are planning board related to
45 setbacks and site plan review. Mr. Charbonneau explained one of the issues is the
46 residential property that is onsite rather than offsite. Mr. Brett stated the home is

1 town owned and does not apply to this regulation. Mr. Dolan would like clarification
2 that the town is exempt from the zoning ordinance. Ms. Lawrence confirmed the
3 setback requirements are for the tower and not the house, there is a 125% distance
4 requirement to an offsite residential structure and this structure is onsite so it does not
5 apply. Mr. Brett stated there is nothing in the zoning regulations to reopen the case.
6 Mr. Caparso explained there is no new evidence and there were two hearings to bring
7 this information forward, also, 19.7.3.c is a planning board issue. Ms. Lawrence
8 stated the property values issue was discussed extensively at the joint hearings, both
9 sides presented evidence at that time, and it was considered. The board unanimously
10 agreed there is no new evidence to warrant a rehearing.

11
12 Pages 4, 5, 6 and 7 are studies specific to the impact of residential property values
13 which the ZBA agreed is not new evidence or could have been provided at the initial
14 hearing. Ms. Lawrence stated the demand on municipal services has already been
15 discussed. The board unanimously agreed there is no new evidence to warrant a
16 rehearing.

17
18 Mr. Charbonneau explained the bottom of Page 7 (storm water runoff, driveway
19 plowing, allowing access to the tower, etc.) is a planning board issue. Mr. Caparso
20 spoke to a concern stated on Page 7 regarding the planning board not having a plan to
21 plow or to deal with heavy rains, although it is concerning the presentation and the
22 way it's presented is hearsay and no minutes were provided to point back to. Mr.
23 Charbonneau explained in the original testimony it was indicated that there would be
24 service crews going to the site a couple times a month and believes it will be plowed.
25 Ms. Lawrence stated there is no evidence on record that the risk of fire and collapse
26 on cell phone towers is significant. Mr. Caparso would like the evidence from the
27 October 7, 2015 planning board minutes that this is not hearsay information. Ms.
28 Lawrence reiterated this is a planning board issue.

29
30 Page 9 is the same information provided on Page 1 and has been discussed and agreed
31 there is no new information to warrant a rehearing.

32
33 The Board agreed it is not necessary to discuss Verizon's objection because a decision
34 can be made without the input.

35
36 Mr. Charbonneau explained the ZBA has to give consideration to two issues:

- 37 1. Is there any new information that has been submitted that could not have been
- 38 submitted during the previous hearings?
- 39 2. Were there technical errors in the decision making process?

40
41 Mr. Deschaine explained to the Board that whether they grant a rehearing or not is
42 typically not a litigated issue and is just one step in the process.

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44 The Board unanimously agreed the information provided is old information which was
45 discussed or could have been brought forth in the previous hearings, and there is no new
46 information that rises to the level of technical error or omission to warrant a rehearing.

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Mr. Caparso made a motion to DENY the Request for Rehearing regarding Case #625: Verizon Wireless, 118 Flanders Road, Westboro, MA 01581, for property located at 28 Bunker Hill Avenue, Stratham, NH, Tax Map 9 Lot 51. Special Exception from Article XIX, Section 19.4.2 of the Stratham Zoning Ordinance to allow the construction of a new wireless service facility and monopole structure in the Residential/Agricultural Zoning District. Mr. Brett seconded the motion. Motion carried unanimously.

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Mr. Brett made a motion to adjourn at 7:45 pm. Mr. Dolan seconded the motion. Motion carried unanimously.