

MEETING MINUTES  
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING  
**MEETING LOCATION—EARLY CHILDHOOD LEARNING  
CENTER  
77 RAMSDELL LANE**

Barrington, NH

May 15, 2019

7:00PM

Members Present

Karyn Forbes, Chair

Meri Schmalz

Cheryl Huckins

Raymond Desmarais

Dawn Hatch

Alternate Members Present

George Bailey

1. Vote for Chair and Vice Chair.

*A motion was made by C. Huckins to nominate K. Forbes to serve as Chair. D. Hatch seconded the nomination. The motion passed unanimously*

*A motion was made by M. Schmalz to nominate R. Desmarais to serve as Vice-Chair. C Huckins seconded the nomination. The motion passed unanimously*

**ACTION ITEMS**

2. **106-3-GR-19-ZBA Var (Marc & Cathie Lacasse & Patrick & Julie Lacasse)** Request by applicant for a variance from Article 4.1.1 (Table 2) minimum front setback 18.2' setback where 40' is required on a .18-acre lot at 106 Small Road (Map 106, Lot 3) in the General Residential (GR) Zoning District.

D. Hatch recused herself because her son was representing the applicant.

G. Bailey sat for D. Hatch

Doug Hatch represented the applicant. Mr. Hatch provided a copy of the Shoreland Permit. The septic plan included the location of the septic and well.

Doug Hatch read from the narrative.

We are proposing a 16' x 18'2" addition to a single-family residence located at 106 Small Road in Barrington, NH on Ayers Lake. The addition would be to the front side (street side of the home, away from the water side and at the same width and height as the existing structure. It would also maintain the existing setbacks on both neighbor sides of the home. The addition would not impact the back (lakeside) setback and would affect only the front setback. We have owned the home since April 2018. The reason for the proposed addition is I have a physical condition called Hereditary Neuropathy that affect my legs and makes it difficult to stand, walk and climb stairs. I do have a permanent handicapped certificate on file with the State of NH #607894. This addition would be ADA compliant allowing wheelchair access

and dual egress points. The bedroom and bathroom at 106 Small Road is located on the second floor and is difficult for me to access. Currently, there is no bathroom or bedroom on the first floor. The proposed addition would allow me access to a first-floor bedroom and bathroom. Should my condition continue to worsen it is likely I will not be able to get to the second-floor bedroom or bathroom. I appreciate the sensitive nature of building on any site especially lake property and the need to pay special attention to the other property owners impacted. The neighbor on my right just finished a large building project on his home and several of the other homes in our neighborhood have recently undergone building projects.

Doug Hatch read the five criteria.

**1.) *Special conditions exist that literal enforcement of the Ordinance would result in unnecessary hardship to the applicant as defined under applicable law.***

The existing hardship is one of a physical nature and currently does not allow me access to a bedroom or bathroom. However, I could have first floor access to both a bathroom and bedroom by allowing this variance. The impact would be very minimal and would be only to the front, (roadside) of my property. Both existing side setbacks (neighbors), the existing back setback (lakeside), would remain the same. Only the front setback (roadside) would be impacted and shortened from 34' to 18' from the road.

**2) *Granting the variance would be consistent with the spirit of the ordinance.***

The intent of the ordinance is to protect the owner and abutting land owners. There would be no change in the setback between my neighbor to the right or the neighbor to my left. The distance between what currently exists and what would be after the proposed addition is exactly the same. Many of the existing properties on Ayers Lake do not currently meet setback ordinance requirements. Where the setback would change is the front or road side of my home. That change would not impact snow plowing or access to any emergency vehicles as it is proposed between my shed and the existing house away from the road. I currently have a raised parking area between my house and the road and that would remain the exact same size. This addition would not pose any hazard to any vehicle on Small Road.

**3) *Granting the variance would not result in diminution of surrounding property values.***

Allowing the variance would not negatively impact the adjacent homeowners, if anything, the addition should add value to the neighboring properties. The new modern structure with a new roof, windows and siding should increase the property value of adjacent homeowners.

**4) *Granting the variance would do substantial justice.***

Allowing the variance would allow me, the homeowner, far better access to the property and the ability to use the property for the rest of my life. This should overcome a substantial hurdle that I currently face on a daily basis. Going forward, should my condition warrant a wheelchair, I would still have access to a bedroom and two points of egress in an emergency.

**5) *Granting of the variance would not be contrary to the public interest.***

The ordinances are in place to protect the other land owners and the Town. Where this existing home is on a private road and the added structure would not negatively impact any of the current existing setbacks, I believe the abutting land owners and the Town will have no impact from allowing this variance's approval.

Board members asked for distances from the owner's other lot and the location of the abutting parcel.

C. Huckins expressed the addition would be between the garage and the current house.

K. Forbes asked for anyone to speak in favor.

Ron St. Jean representing the Small Road Association stated they had no objection to the construction, but just hoped there would be great care given to prevent material from washing into the lake during

construction. They also hoped as much permeable materials as possible would be left after construction was complete.

K. Forbes asked if anyone to speak against.

No one spoke.

K. Forbes closed the public portion of the meeting.

K. Forbes asked what section of the ordinance they were asking relief from.

M. Gasses expressed 18.2 feet from the front setback where 40' was required and 3' from the side where 30' was required.

R. Desmarais stated 4.1.1 (Table 2) of the ordinance.

K. Forbes expressed that it was a small lot and a small house to begin with. Granting the variance would be consistent with the spirit of the ordinance. They are expanding on the other side of the lake which is an important thing. The lake association was not opposed to the application. There was no evidence there would be diminution of surrounding property values. Would do substantial justice as there are similar structures on small lots in this area.

*A motion was made by M. Schmalz and seconded by C. Huckins to approve the variance. The motion carried unanimously.*

3. [251-64-GR/SDAO-17-ZBA \(Owners: Steven & Pamela Lenzi TRS REV TR\)](#) On April 19, 2019 received a variance which expired on April 19, 2019 they would like an extension. SEE CASE BELOW:  
[251-64-GR/SDAO-17-ZBA \(Owners: Steven F. & Pamela M. Lenzi Revocable Trust\)](#) Request by applicant for a variance from Article 10 Wireless Communications 10.4 (3) and 10.4 (5) Dimensional Requirements to construct a 150' tall wireless communications facility that will be surrounded by a fence that will be located 60' from wetlands located on Bumford Road (Map 251, Lot 64) in the General Residential (GR), Verizon Wireless, LLC; 290 Congress Street, 7<sup>th</sup> Floor; Boston, Ma 02210.

The Variance was granted from 10.4(3) on April 19, 2017. The Variance request from 10.5(5) was withdrawn.

D. Hatch returned to the table.

K. Forbes explained the applicant was requesting an extension.

Earl Duval represented the applicant. Mr. Duval explained a variance was granted two years ago to Varsity Communication to allow a communication tower to project more than 20' above the tree canopy. The variance had been granted on April 27, 2019 (Actual Date 4/19/2017) Varsity Wireless was requesting a two-year extension of that approval.

K. Forbes asked why they needed an extension

Earl Duval expressed that Sprint and T-Mobile had put the project on hold as they worked on the merger. The companies were still discussing whether they would be deploying Sprint or T-Mobil Technology. There were conversations ongoing with AT&T which had been selected to deploy the First Net Program. There was a need in that area of Town, but they would not put up a tower without a carrier.

K. Forbes asked if there were any changes in the land that the variance was granted for.

Earl Duval stated, “not to his knowledge”.

K. Forbes asked M. Gasses to read the standard.

M. Gasses read from the RSA’s, “Variances authorized under paragraph I, shall be valid if exercised within a period of 2 years from the date of approval or as authorized by local ordinance or the Zoning Board of Adjustment for good cause”.

Earl Duval expressed the good cause was the financial merger and nothing had changed in the land or zoning that would affect the application.

K. Forbes asked for anyone to speak in favor.

Lisa Fortier from 83 Hayes Road adjacent to the site, expressed she had no issue with the tower. She had come to the meetings a couple of years ago and believed there were no problems with the tower.

Barbara Hayes, 53 Hayes Road expressed she was also an abutter had no problem with the tower.

K. Forbes asked if there was anyone to speak against the extension.

K. Forbes expressed an extension could be granted for good cause. The only bad cause she could think of was something had changed in the land or situation. She asked that speakers address the standard of “good cause”. The Board stood as a quasi-judicial board and had to find a legal standard. The Board was only looking at whether there was good cause for giving the extension.

Helene Traill of Province Road expressed she had not been notified two years ago about the tower going in and the notice two weeks ago was the first time they were notified. Ms. Traill expressed a couple of her neighbors had also been notified for the first time about the cell tower going up. They did not feel the ZBA was allowing the cell tower to take place in the spirit of the ordinance. Under 10.2 the use posed no unreasonable risk of harm to the public and they were the public, although not an abutter and were located within ½ mile of the tower.

There had been a lot of information of late regarding cell towers and technology Legislation had not kept up with technology. There were medical and health concerns. 5G was a huge concern and the European Union was deferring wide spread use of 5G until the technology is demonstrated to be safe.

R. Desmarais expressed that the only thing the ZBA had looked at was allowing the tower to be higher than it could have been. The tower was allowed under the ordinance and could have been built without ZBA approval at a lower height.

Helene Traill expressed that as abutters they were being told they had no right to be concerned for their health.

K. Forbes explained that they had not been notified because they were not abutters under the law. Much of what they had been talking about was out of the ZBA’s hands and pre-empted by Federal Law. The ZBA could not even hear evidence in regard to health and safety.

Helene Traill questioned whether the Zoning Ordinance mattered.

C. Huckins asked if there was evidence that the Federal Government had accepted the claims of danger by cell towers.

Helene Traill expressed they had not. Legislation had not kept up with technology. The other concern was 10.2.2 which states the use cannot diminish the value of surrounding property.

K. Forbes stated they cannot look at health concerns.

Helene Traill expressed that the National Institute for Science, Law and Public Policy in Washington, D.C. had conducted a study and found that 94% said that a nearby cell tower or group of antennas would negatively impact interest in a property or price that they would be willing to pay for it. She was quite concerned and questioned that the ZBA was supposed to take the concerns of Barrington Citizens first.

K. Forbes expressed the ZBA's charge was to apply the law based upon the facts provided to them. The ZBA was a quasi-judicial board. They could only consider whether good cause existed to extend the variance that was granted two years ago. They were not rehearing the variance, only whether to extend it.

Helene Traill questioned whether this was their government.

K. Forbes expressed they were there to act as a stop gap when someone is unfairly affected by the law. They also had equitable waivers and special exceptions. They were only there to consider extending a variance that was granted two years ago.

Helene Traill expressed the Town Administrator suggested proposing a change to the Zoning Ordinance for the Town of Barrington. They likely would not stay in Barrington, but maybe someone else would not have to go through this. The waves had no jurisdiction or boundaries. The waves did not apply just to the abutters.

K. Forbes expressed that she was not disagreeing, but that was the State government. The legislature had decided who needed to be notified for a variance. They could petition the legislature to require more people to be notified. They could petition the Federal Government which preempts the licensing of cell towers. They could petition the local government, but they had to apply the law as it was written now.

Helene Traill expressed that other towns had not allowed cell towers in.

K. Forbes expressed she did not know what other Town's ordinances said, but Barrington allowed towers in every district.

R. Desmarais expressed they could petition to change the zoning ordinance.

Helene Traill expressed that it would not help them.

K. Forbes read from the ordinance that, "cell towers shall be allowed in all districts and subject to 7.1 of the Zoning Ordinance" and that was decided two years ago.

Helene Traill expressed that then they had 10.2.

K. Forbes expressed that the Board had addressed that two years ago.

K. Forbes expressed there was even Federal Law that addresses how long they can spend on this type of case. It was very limited on what they could do, and it was Federal Law.

David Earl expressed 40 days for a co-location, 90 days for something a little more and 150 days for a new tower.

Shirley Lee asked if there was a limit on the number of carriers.

David Earl expressed the plan showed 5 carriers and they had to comply with Federal regulations.

K. Forbes asked the requirements regarding hearing health concerns.

David Earl cited the Telecommunications Act of 1996.

M. Gasses expressed that the Town follows State Law in regard to notification, but that does not mean the ordinance could not be amended in the case of some uses.

Helene Traill asked why they were notified this time, but not last.

M. Gasses explained that the first attorney had strictly followed the law and staff had double checked the abutter list. The current attorney had gone beyond the requirements under State law. A zoning amendment could address notifying a larger range of abutters for cell towers.

David Earl suggested that in some instances it was everyone within 500'.

M. Gasses expressed it was advertised in the newspaper and online. The applicant had also put it in the newspaper and had put up a giant balloon for several hours to show the location. There were a number of hearings before the Planning Board for site review.

K. Forbes stated there was a lot of input from many people.

Shirley Leek asked if there was any limit to the number of carriers on the tower, considering the waves that would be sent out.

David Earl expressed there were plans that showed 5 carriers, but every carrier would need to comply with the Federal requirements for radio frequency admissions in order to maintain their licenses.

An unidentified gentleman asked if there was a way to direct the waves away from their houses where there were already two towers within three miles of their home.

David Earl expressed the antennas are panel antennas 8-12" wide and 7-10' in height and mounted on a ray on the outside of the antenna and there is generally no down tilt to the antennas.

Marcia Wilde, Province Road expressed she was not happy about the positioning and she would be selling in a few years and concerned with the injurious nature of the tower.

Gary Huck, 200 Ham Road expressed there were new health concerns and asked if procrastination was good cause.

K. Forbes expressed she was not sure there was evidence of procrastination.

Gary Huck expressed the variance had been granted two years ago. He questioned whether companies changing was really good cause or should they come back and go through the variance process again, allowing people to bring up their concerns.

K. Forbes expressed that she felt good cause would have to be a change in the land for the ZBA not to grant it. They could not look at health concerns under Federal law. The applicant had the right to file suit in Federal Court if the ZBA did not act on the request in a certain time. The Federal Court would make the decision based upon Federal Law.

Gary Huck expressed that they were only looking at height.

K. Forbes expressed that they were looking at a tower 20' higher. The tower could be 130' without ZBA action. They were very limited. The waves go straight out, which would have less of an impact. They look at visuals. How much worse would it look.

Gary Huck expressed that 20' was of concern to neighbors. It could be more visible and affect home values.

K. Forbes expressed they had granted it two years ago.

Gary Huck expressed that nothing had happened.

K. Forbes expressed for good cause, mergers. The Board would vote, and everyone could disagree. Reasonable people disagree. She did not doubt their intent and did not believe they doubted the Boards. They were applying the law.

K. Forbes closed the public hearing portion of the meeting.

Helene Traill submitted the document she had read from.

K. Forbes read from the Ordinance that, "the maximum height of a tower shall not exceed 250'.

M. Gasses expressed the variance was to allow the tower to extend more than 20' above the tree canopy.

K. Forbes expressed that it hadn't been the height, that it was the height above the tree canopy.

R. Desmarais expressed he felt their hands were tied.

*A motion was made by R. Desmarais and seconded by M. Schmalz to grant the extension.*

K. Forbes expressed there had been mergers that played a factor. There would have had to be a physical change in the land that made this unreasonable. All that they had given them was to allow it 20' above the tree canopy, it was allowed to be 150'.

D. Hatch expressed they were only looking at the 20'.

*The motion carried unanimously. The extension was granted to April 27, 2021.*

4. [116-6-GR-19-ZBAVar \(Owners: Aubrey, Jr & Marie Mead\)](#) Request by applicant for a variance from Article 4.1.1 (Table 2) minimum front setback 5.4 setback where 40' is required and right side 4.1' and 7.3' setback where 30' is required on a .53-acre lot (Map 116, Lot 6) in the General Residential (GR) Zoning District. By: David W. Vincent, LLS, Land Surveying Services; PO Box 1622; Dover, NH 03821.

*Applicant requested a continuance.*



*A motion was made by D. Hatch and seconded by C. Huckins to continue the application to June 19, 2019. The motion carried unanimously.*

#### **MINUTES REVIEW AND APPROVAL**

**5.** Approval of April 17, 2019 meeting minutes.

*A motion was made by D. Hatch and seconded by R. Desmarais to approve the April 17, 2019 meeting minutes. The motion carried 4-0 with K. Forbes abstaining.*

#### **ADJOURNMENT**

*A motion was made by C. Huckins and seconded by M. Schmalz to adjourn at 8:10 p.m. The motion carried unanimously.*

Respectfully submitted,

Marcia J. Gasses  
Town Planner