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**Meeting Minutes**  
**Zoning Board of Adjustment (ZBA)**  
**March 15, 2023, at 7:00 P.M.**  
**(Approved at the April 19, 2023, meeting.)**

**1. CALL TO ORDER**

T. Hardekopf called the meeting to order at 7:05 p.m.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members Present:** Tracy Hardekopf, Cheryl Huckins, Andre Laprade, Alexandra Simocko

**Members Present Online:** Paul Thibodeau

**Staff Present:** Town Planner: Vanessa Price, Zoning Administrator: John Huckins

**4. ACTION ITEMS**

**A. APPOINT VICE CHAIR TO ZBA**

T. Hardekopf stated about a vice chair, this person would function in her absence. She addressed the board if they wanted to have a discussion about interest in this position.

Cheryl Huckins nominated Paul Thibodeau for Vice Chair.

P. Thibodeau nominated Cheryl Huckins for Vice Chair.

T. Hardekopf discussed possible scheduling conflicts with C. Huckins since she does community work on Wednesdays.

T. Hardekopf seconded the motion for the nomination of Paul Thibodeau for Vice Chair if P. Thibodeau would accept.

P. Thibodeau stated he would accept the nomination.

T. Hardekopf called for a roll call vote to accept the nomination of Paul Thibodeau for Vice Chair.

*Vote: 5/0*

**Roll Call:**

***P. Thibodeau -Yay***

*A. Laprade-Yay*  
*A. Simocko -Yay*  
*C. Huckins-Yay*  
*T. Hardekopf-Yay*

V. Price stated to the Board to welcome the new member Alexandra Simocko to the ZBA. V. Price also brought up the Andre Laprade and Cheryl Huckins submitted an application to the Select Board to renew their seat as a member on the ZBA.

T. Hardekopf asked A. Laprade if he would prefer to be a full member and not an alternate. She stated she would bring it to the Select Board meeting if he could be a full member and not an alternate.

A. Laprade stated he would accept.

## **B. REQUEST FOR EXTENSION**

On April 19, 2017, applicant received a variance that expired on April 19, 2019; granted a first extension to April 27, 2021; granted a second extension to April 27, 2023. Applicant is seeking a third extension to expire March 15, 2025.

### **251-64-GR/SDAO-17-ZBAExt3 (Owners: Steven F. & Pamela M. Lenzi Revocable Trust)**

Request by applicant for a variance from Article 10 Wireless Communications 10.4 (3) Dimensional Requirements to construct a 150' tall wireless communications facility that will be surrounded by a fence on Bumford Road (Map 251, Lot 64) in the General Residential (GR).

The Variance was Granted from 10.4(3) on April 19, 2017. The Variance from 10.4(5) was withdrawn on May 23, 2017.

T. Hardekopf gave a brief description of the application and clarified that the extension was from Article 10 Wireless Communications 10.4 (3) Dimensional Requirements to construct a 150' tall wireless communications facility that will be surrounded by a fence on Bumford Road (Map 251, Lot 64) in the General Residential (GR). T. Hardekopf asked Mr. Christopher Davis, the applicant, if that was correct.

Mr. Davis stated it was correct.

T. Hardekopf asked Mr. Davis if anything has changed since the submittal of his original application.

Mr. Davis stated nothing has changed.

T. Hardekopf asked Mr. Davis to read the five criteria for a variance into the record.

P. Thibodeau asked T. Hardekopf to please read the ordinance that he is that they are looking for a waiver for?

V.Price read from the Barrington Zoning Ordinance Article 10 Wireless Communications 10.4 (3) Dimensional Requirements. 10.4(3) Ground mounted Wireless Communication Facilities shall not project higher than twenty (20) feet above the top of the tree canopy and one hundred (100) foot perimeter of the mount shown on the accepted application in an effort to more effectively blend into the surrounding terrain by not projecting above the surrounding tree canopy. The measurement will begin from the cleared area of the accepted application plan.

P. Thibodeau asked Mr. Davis how high above the tree canopy are we now?

Mr. Davis answered 150 feet.

A. Laprade asked about the requested timeline for the extension. That the timeline would be two years.

J. Huckins answered that yes it would be two years. He stated the applicant already have their permit. We issued their permit and J. Huckins clarified that once they got that permit, they are vested. She thought that the applicant really wouldn't need the extension, but the applicant didn't want to get halfway through construction and then worry about the variance going away. J. Huckins stated that to make everything all clean, they wanted to get the variance now before they started building so they can be sure the tower is complete before the variance runs out.

A. Laprade replied he understood.

T. Hardekopf clarified the actual submitted application for the extension, it does read 2025. T. Hardekopf asked Mr. Davis to read the five criteria for a variance into the record.

Mr. Davis read the five criteria for a variance into the record:

The Zoning Board of Adjustment shall, when considering a request for a variance, make findings of fact that consider the following factors.

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

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one. (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of "unnecessary hardship" set forth in subparagraph (1) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance

**Given technical limitations with respect to:**

- (i) the location of the tower relative to Route 125, the surrounding neighborhoods and other existing telecommunication sites in and around the Town of Barrington;**
- (ii) the topography of the surrounding area;**
- (iii) the lack of viable alternatives in the area;**
- (iv) the height and setback restrictions of the tower imposed by the Ordinance;**
- (v) the Town's requirement to accommodate multiple wireless communications companies;**

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- (vi) the demand for robust and reliable telecommunications coverage; and
- (vii) the requirement to accommodate rapidly evolving technologies;

literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the Applicant.

As the Plans indicate, the proposed Facility has been designed to accommodate the antennas of least 4 wireless broadband co-locators. There are no existing or previously approved telecommunications facilities in the area of the proposed Facility, nor are there existing structures of sufficient height in the area of the proposed Facility, that will achieve the coverage objective of the proposed Facility. The Facility has been situated on the Property in such a way to achieve the objectives of the Ordinance by minimizing the visibility from abutting landowners as much as possible.

In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, § 704; 110 Stat. 56 (1996) (the "TCA" or the "Telecommunications Act"). The intent of the TCA enacted by the U.S. Congress was to institute a framework to promote competition and innovation within this telecommunications industry. Under their respective licenses from the FCC, wireless telecommunications providers are obligated to provide a reliable "product" [i.e. wireless communications service] to the population in the Seacoast region, which includes the Town of Barrington. Likewise, consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure. A carrier's failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. The proposed Facility and corresponding relief requested are necessary to remedy a gap in reliable service coverage within the various wireless carriers' existing network infrastructure.

The Applicant has investigated alternative sites in and around the defined geographic area within which engineers determined that a facility must be located to fill the gap in service coverage and to function effectively within the network of existing and planned facilities. No existing structure or property in or near the vicinity of the proposed Facility is feasible to accommodate the coverage network requirements.

Accordingly, a literal enforcement of the provisions of the Ordinance would prevent the Applicant from eliminating an existing gap in reliable service coverage, resulting

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in a potential loss of subscribers and the inability to effectively compete for subscribers with FCC licensed competitors in the market, contrary to the intent of the Ordinance and the U.S. Congress in enacting the TCA.

Moreover, this hardship is owing to the circumstances relating to topography of the surrounding area. The surrounding area provides no other feasible location in which to install and operate a wireless telecommunications facility. Existing structures and buildings in the area are insufficient in height to allow wireless carriers to operate thereon and provide adequate coverage to this significant gap in its network. The property provides a unique opportunity, given the location and area topography surrounding the Facility, to satisfy the coverage objective and minimize any adverse visual impacts to the surrounding area. The proposed design conforms to the existing characteristics of the Property, and utilizes the existing structures and vegetation on the property to screen the proposed Facility, thereby minimizing potential impacts.

The wireless communications systems being developed by the various telecommunications carriers operating in the Barrington area have been designed employing the most sophisticated radio frequency engineering methods available. Radio frequency engineers determine the placement of network points-of-presence using computer engineering models that simultaneously evaluate area topography and population patterns to identify specific geographic areas to be serviced by each antenna facility in the network. As a result of this modeling, combined with actual coverage data provided by existing "on air" facilities, the carriers' radio frequency engineers have identified a limited geographic area as a necessary location for a communications facility to remedy an existing gap in reliable service coverage in the general vicinity of the Property. Without the requested relief, there would remain a substantial "gap" in reliable service coverage in the carriers' respective networks. Radio frequency coverage maps confirm that a telecommunications facility located at the Property is required to remedy the existing gap in the wireless network coverage in the area. The requested height has been determined by engineers to be the minimum height necessary to connect coverage from the proposed Facility with coverage from adjacent cell sites in the carriers' respective networks (i.e. to remedy the existing "gap" in service and to effect reliable handoffs between adjacent cell sites as a subscriber travels through the area).

Additionally, the requested height will allow future carriers to co-locate on the Facility hereby minimizing the number of new facilities needed to provide coverage to the Town.

In the context of a utility service where the critical criteria in the development of each facility is its ability to integrate with a network of surrounding sites and subsequently, for each cluster of sites to function within a regional/national

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network, there is an underlying premise that each site chosen by the Applicant for a facility possesses a unique location and topographical characteristics.

Finally, as noted in Nextel Communications of the Mid-Atlantic, Inc. v. Town of Wayland, 231 F.Supp. 2d 396, 406-407 [D. Mass. 2002], the “need for closing a significant gap in coverage, in order to avoid an effective prohibition of wireless services, constitutes another unique circumstance when a zoning variance is required.” No existing structure or property in an allowed zoning district is technically suitable to resolve the existing gap in the wireless service coverage in the area. In addition, the existing structures located near the Property are not at a height sufficient to provide adequate coverage to this significant gap in its network. Consequently, the proposal to install the Facility is required. Given the non-residential nature and the size of the Property, as well as the proposed design of the Facility, the proposed installation will have a minimal visual impact to the surrounding neighborhood while achieving the carriers’ requisite coverage.

- The proposed Facility will reduce the number of new structures ultimately needed to provide wireless communication services in the surrounding area by providing co-location potential;
- The proposed location is reasonably adaptable to the proposed Facility;
- The proposed Facility is designed to be at the minimum height necessary to provide adequate coverage to the area and keep potential visual impacts to a minimum;
- The proposed Facility will be located on a lot already used for commercial purposes;
- The proposed Facility will comply in all respects with radio frequency emission standards established by the FCC;
- The proposed Facility will not have any adverse effect on the value of land and buildings in the neighborhood or on the amenities thereof. The proposed use is passive, requires no employees on the premises, and has no characteristics that are incompatible with the underlying zoning. Specifically, it will generate only about two vehicle trips per month by a service technician for routine maintenance, will be served by standard electrical and telephone service, and requires no water, septic or other town services;
- The proposed Facility will promote and conserve the convenience and general welfare of the inhabitants of the Town by enhancing telecommunications services within the town;

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- The proposed Facility will lessen the danger from fire and natural disasters by providing emergency communications in the event of such fires and natural disasters;
- The proposed Facility will involve no overcrowding of land or undue concentration of population because it is an unmanned Facility;
- The proposed Facility will preserve and increase the amenities of the Town by enhancing the telecommunications services;
- The proposed Facility will involve no adverse effects on public and private water supplies and indeed will utilize no water at all;
- The proposed Facility will facilitate the adequate provisions of transportation by improving mobile telecommunications for business, personal and emergency uses;
- The proposed Facility will involve no adverse effects on drainage, schools, parks, open space, or other public requirements;
- The proposed Facility will involve no excessive noise or pollution to the environment;
- The proposed Facility will have no adverse effect on historic sites; and
- The proposed Facility will be an appropriate use of land within the Town.

Due to the unique size, shape, location and elevation of the subject Property and the topography of the surrounding area as well as the existing commercial use of the property, unique circumstances exist to justify the granting of the requested Variances. Moreover, Applicant's proposed Facility will have no impact on adjoining properties and the surrounding neighborhood in that the proposed Facility will produce no objectionable noise, glare, dust, smoke, fumes, odors, or effluent, and will not have any impact of traffic or circulation.

Accordingly, a hardship exists which is inherent in the land in question; no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision of the property, and the proposed use is a reasonable one.

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

The proposed Facility has been designed to fulfill the stated goals of the Town of Barrington's Zoning Ordinance regulating Wireless Communications Facilities as much as possible. The location of the proposed Facility is a large commercially used parcel; however, the Facility will be located on a previously undisturbed portion of the property with an ample vegetative buffer. As a wireless infrastructure

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developer, Varsity encourages co-location and has relationships with all of the existing wireless telecommunications carriers licensed in this market, and intends to provide space on the proposed Facility at commercially reasonable rates, which will minimize the total number of towers in the community. Once constructed, the proposed Facility will facilitate the provision of telecommunications services throughout the municipality and enhance the ability of wireless carriers to provide telecommunications services to the community quickly, effectively and efficiently.

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

Numerous studies and market analysis have shown that an existing or proposed communications tower has no measurable impact on nearby property values. As noted earlier, there are already other located in the Town of Barrington and surrounding communities. Although many of these towers have been in existence for several years, the Town of Barrington does not appear to have granted lower assessments or abatement requests due to the proximity to or visibility of a communications tower.

Many other facts support a finding that the grant of the requested variance will not diminish the value of surrounding properties:

- The property is a large, 95 acre commercially used parcel; and the facility will be amply set back from the public street and all abutting properties and surrounded by a substantial vegetative buffer;
- The property is near Route 125 and several nearby properties are already used for commercial purposes;
- The use of a monopole design with a non-reflective galvanized finish and internal cabling and minimizes the visual impact of the facility;
- The proposed Facility will produce no objectionable noise, glare, dust, smoke, fumes, odors, or effluent, and will not have any impact of traffic or circulation; and
- The proposed Facility does not require FAA lighting or marking.

4) Granting of the variance would do substantial justice.

There are already other similar towers located in the Town of Barrington, all comparative in height to the proposed Facility. The proposed location meets all of the other requirements for a wireless communications facility. The location of the proposed Facility is a large commercially used parcel; however, the Facility will be located on a previously undisturbed portion of the property with an ample vegetative buffer. Moreover, the proposed Facility has been designed to mitigate the visual and other impact of the facility as much as possible. Given the great public

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**benefit and the minimal if any impact on the surrounding area, it would be a substantial injustice if the requested variances are denied.**

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

**The construction of the Applicant's Facility will enhance service coverage in the Town of Barrington and surrounding communities. The enhancement of service coverage in the Town of Barrington is desirable to the public convenience for personal use of wireless services and for community safety in times of public crisis and natural disaster. Wireless communications service also provides a convenience to residents and is an attractive feature and service to businesses. In addition, the requested use at this location will not result in a change in the appearance of the surrounding neighborhoods. The use is passive in nature and will not generate any traffic, smoke, dust, heat, glare, discharge of noxious substances, nor will it pollute waterways or groundwater. Once constructed, the facility will comply with all applicable local, state and federal safety regulations.**

**Moreover and most importantly:**

**The proposed Facility will promote and conserve the convenience and general welfare of the inhabitants of the Town of Barrington by enhancing telecommunications services within the Town.**

**The proposed Facility will lessen the danger from fire and natural disasters by providing emergency communications in the event of such fires and natural disasters.**

**The proposed Facility will preserve and increase the amenities of the Town by enhancing telecommunications services.**

**The proposed Facility will facilitate the adequate provision of transportation by improving mobile telecommunications for business, personal and emergency uses.**

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T. Hardekopf stated to Mr. Davis on the road for Bumpered Rd that currently exists does not extend to this parcel. She stated that the owner parcel 65 is the same owner parcel 64. T. Hardekopf asked Mr. Davis if there deeded access to cross 65 to gain access to this piece of property.

Mr. Davis asked to clarify that: As part of our agreement, do we have rights to that access?

T. Hardekopf stated yes.

Mr. Davis answered yes secured that with the with the owner.

A. Laprade asked if the Planning Board has approved the site plan.

V.Price stated that the Planning Board approved the application and has signed plans.

J. Huckins stated that planning board has approved this application so that it could be built, and they've already got the permit from me. But the the planning board approval will run long enough. But the variance wouldn't run long enough and to get the tower completely built in my mind, as a zoning administrator, once they start construction. They wanted to make sure that they weren't halfway through their project and something came up.

A. Laprade asked why has it taken the applicant so long to start?

J. Huckins answered A. Laprade the pandemic and then a merger between the two companies. He stated he should let the applicant answer.

Mr. Davis addressed to board he would explain it on two fronts, because it's important here and we'll ultimately go somewhat to the height and and address some of the requirements of the original variance that we were seeking. In 2018, they began and filed an application for a building permit originally to build the site around Sprint telecommunications. That's also right around the time that Everest Infrastructure and Varsity Wireless merged. so that that just to verify again this originally was filed under Varsity Wireless, but the company was acquired and merged into Everest. Mr. Davis was the President of Varsity at the time and now the Chief Development Officer of of Everest Infrastructure. Mr. Davis stated they originally began the application to build the site for Sprint. Sprint ended up placing the site on hold.

Mr. Davis further explained in conjunction with the merger of Sprint Telecommunications and T-Mobile; and what happens from time to time when companies merge it, they go back and re-evaluate existing budgets. At the time they look at the two networks, they look at coverage and that really does tend to think put things on pretty significant hold. They ultimately have had discussions with T-Mobile who ultimately acquired Sprint. This isn't in the current budget year. In fact, we spoke to this a little bit at the planning board when we did the extension of the original application of October.

Mr. Davis went on to explain having some additional discussions with those groups about what their timing would be for budget years. It didn't happen to be this this budget year, but since then, in the late stages of December and early part of January, we were contacted by a separate national wireless operator who we're in the final stages of finishing up an agreement for. Ultimately, they'll be filing an application with the town for their proposed use of the tower once completed, so that we should be expecting to see that. Mr. Davis stated speaking to the reason why it takes so long, pandemic does have a big part of it that the merger between Sprint, T-Mobile, certainly through some of their budgets into better disarray. They always anticipated over time, more carriers would come to that the site and that's what they're starting to see now. The carrier is nationally recognized. That timing is really just a function of budgets, and ultimately when they come to market to the question as to why we're looking to extend it, the Board

members explaining earlier, they've filed the application we have the building permit ready to pull and tend to at usually the guidance of most communities, not start building a tower until there is an executed anchor tenant to move forward with the site because nobody wants a tower up in the air without without a tenant to use it. As an abundance of precaution and Mr. Davis stated they are here tonight to seek the extension to give some additional time in case there's any bumps in the process. Ideally, they will be looking to commence installation. They have identified the contractor, and have requests for the steel price. Mr. Davis expects within the next 30 days move to forward. However, just in case that delays a little bit, they wanted to just give themselves some additional protections and weren't just pulling a building permit to extend the the approved zoning hearing variance.

T. Hardekopf asked for any other board comment. There were none.

T. Hardekopf opened public comment.

T. Hardekopf read public comment from an email received from the Land Use Department dated March 9, 2023 from Bill and Laura Carlsen. "We received notification regarding the variances requested by the Lenzi's regarding the building of a cell tower on their property where the gravel pit is. My wife and I have no objection to continuing the variance."

T. Hardekopf closed public comment.

*A motion was made by T. Hardekopf and seconded by A. Laprade to grant the variance from Article 10 Wireless Communications 10.4 (3) Dimensional Requirements. Granting the variance was in the spirit of the ordinance and does not diminish surrounding property values. Granting the variance would do substantial justice, and that granting the variance was not contrary to the public interest. The motion passed unanimously.*

*Vote: 5/0*

***Roll Call:***

***P. Thibodeau -Yay***

***A. Laprade-Yay***

***A. Simocko -Yay***

***C. Huckins-Yay***

***T. Hardekopf-Yay***

**5. REVIEW AND APPROVAL OF MINUTES**

**A. Review and approve minutes of the December 21, 2022, meeting.**

A. Simocko recused herself from the approval of meeting minutes.

*A motion was made by C. Huckins and seconded by A. Laprade to approve the minutes of December 21, 2022, as amended grammatical corrections to line 751, line 763, line 767, line 794, and line 796. The motion passed unanimously.*

*Vote: 4/0*

***Roll Call:***

***P. Thibodeau -Yay***

***A. Laprade-Yay***

***C. Huckins-Yay***

***T. Hardekopf-Yay***

**B. Review and approve minutes of the January 18, 2023, meeting.**

P. Thibodeau recused himself from the approval of meeting minutes.

A. Simocko recused herself from the approval of meeting minutes.

*A motion was made by C. Huckins and seconded by A. Laprade to approve the minutes of January 18, 2023, as amended grammatical corrections to line 389, line 401, line 443, line 474, and line 520. The motion passed unanimously.*

*Vote: 3/0*

***Roll Call:***

***A. Laprade-Yay***

***C. Huckins-Yay***

***T. Hardekopf-Yay***

**6. OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD**

**A. Town Planner Updates**

V. Price stated the Select Board Agenda of March 6, 2023 had voted to have Andre Laprade as an alternate appointment with the term expiring in 2026.

T. Hardekopf asked A. Laprade if she could have it at the next select board meeting to have Andre Laprade as a full member not an alternate.

A. Laprade was in agreement.

**7. ADJOURN**

Adjourn the Zoning Board of Adjustment (ZBA) Meeting. Next ZBA meeting date is April 19, 2023, at 7:00 P.M.

*A motion was made by C. Huckins and seconded by A. Laprade to adjourn the meeting at 7:52PM The motion passed unanimously.*

*Vote: 5/0*

***Roll Call:***

***P. Thibodeau -Yay***

***A. Laprade-Yay***

***A. Simocko -Yay***

***C. Huckins-Yay***

***T. Hardekopf-Yay***

**\*\* Please note that all votes that are taken during this meeting shall be done by Roll Call vote. \*\***

**Visitor Orientation to the Zoning Board of Adjustment Meeting**

Welcome to this evening's Zoning Board of Adjustment meeting.

Copies of agendas and a sign-in sheet are available for visitors.



### **Meeting Access**

#### **In-Person**

Town Hall (New ¼ mile from Old Town Hall)  
Main Meeting Room  
4 Signature Drive Barrington, NH 03825

#### **Remote Meeting Participation**

Video: [barrington.nh.gov/zbmeeting](https://barrington.nh.gov/zbmeeting)  
Call in via computer [+1 603-664-0240, 514518321#](tel:+16036640240)

### **Meeting Materials**

Additional details regarding each agenda item and all supporting documentation can be found online at <https://www.barrington.nh.gov/zoning-board-adjustment>. Please contact the Land Use department with any questions via phone at (603) 664-5798 or email at [planning@barrington.nh.gov](mailto:planning@barrington.nh.gov). Files on the applications and items, above, including the full text of any proposed ordinances, regulations, or other initiatives are available for inspection in the Land Use Department Office, Monday through Thursday from 8:00 a.m. to 3:00 p.m.

### **Special Accommodations**

The Town of Barrington requires 48 hours' notice if the meeting must be modified for your participation or if special communication aides are needed. Please submit requests to the Land Use Department office via phone at (603) 664-5798 or email at [planning@barrington.nh.gov](mailto:planning@barrington.nh.gov).