

Enfield Zoning Board Minutes, Tuesday, April 13th, 2021

# **Enfield Zoning Board – Meeting Minutes**

## **ZOOM ONLINE MEETING PLATFORM**

### **April 13<sup>th</sup>, 2021**

**BOARD MEMBERS PRESENT:** Ed McLaughlin, Susan Brown, Madeleine Johnson, Celie Aufiero, Brian Degnan

**BOARD MEMBERS ABSENT:** None

**STAFF PRESENT:** Rob Taylor- Land Use and Community Development Administrator

**GUESTS:** Mike Diehn, Sandy V., Linda Jones, Brian Donnelly, Robert Woodward, Jeff Parker, Erik Russell-Abutter, Andrew Steele, Charlie Koburger, Brendan Vancos, Ausha Zimmerman, Scott Heffernan -Vortex Towers, Bill Mann-Land Owner, Kevin Albert, Susannah Kimball, Talas Diehn, Tom Johnson-Vortex Towers, Gabby Black, David Fracht

#### **I. CALL MEETING TO ORDER**

Mr. Rob Taylor called the virtual ZOOM meeting to order at 7:00 p.m. He took a “roll call” of members present for attendance.

#### **II. ORGANIZATION OF THE NEW BOARD**

Mr. Taylor explained that this was the first Zoning Board meeting since the elections so a new Chair and Vice Chair will need to be voted on.

Ms. Johnson nominated Mr. Ed McLaughlin for Chair. Mr. Degnan seconded the nomination.

#### **Roll Call Vote:**

**Susan Brown, Madeleine Johnson, Celie Aufiero, and Brian Degnan all voting Yea.**

**Ed McLaughlin abstained.**

**None voted Nay**

**\* *The Vote on the MOTION passed. (4-1-0).***

Chair McLaughlin moved on with nominations for the Vice Chair position. Chair McLaughlin nominated Madeleine Johnson for Vice Chair. Ms. Aufiero seconded the nomination.

**Roll Call Vote:**

**Susan Brown, Madeleine Johnson, Ed McLaughlin, Celie Aufiero, and Brian Degnan all voting Yea.**

**None voted Nay**

**\* *The Vote on the MOTION passed. (5-0).***

Chair McLaughlin nominated Mr. Mike Diehn as an alternate to the Zoning Board. Ms. Aufiero seconded then nomination.

**Roll Call Vote:**

**Susan Brown, Madeleine Johnson, Ed McLaughlin, Celie Aufiero, and Brian Degnan all voting Yea.**

**None voted Nay**

**\* *The Vote on the MOTION passed. (5-0).***

### **III. PUBLIC HEARING**

Chair McLaughlin asked for clarification on voting for requested variances. Mr. Diehn explained the background of the New Hampshire Zoning RSAs and how voting had been done in the past on the criteria for variances.

**Land Use Case #Z21-04-01, Vertex Towers, LLC**, will request a special exception to Enfield's Zoning Ordinance per Article IV, Section 403, sub-section 1, paragraph M (a) in the "R1" zoning district to allow for the construction of a wireless tower on property owned by the John E. Mann Trust (John E. Mann, Trustee). Subject property is located off US Route 4 and Morhouse Lane on Town Tax Map 14, Lot 11A. The applicant is also requesting a variance to Enfield's Zoning Ordinance article VIII, Section 803.3 to allow the tower to be higher than the prescribed 10 ft. above average tree canopy limitation. The applicant also requests a variance to Enfield's Zoning Ordinance article VIII, Section 803.7 (c) that limits a telecommunications tower or antenna over 70 feet in height from being located within two miles of an existing tower or antenna over 70 feet in height, whether or not such an existing tower is located within the Town of Enfield.

Mr. Francis Parisi representing the applicant Vertex Towers, LLC introduced Mr. Tom Johnson, Civil Engineer and Mr. Scott Heffernan, Radio Frequency Engineer and explained that after the presentation, if there were any technical questions, those gentlemen were there to help answer them.

Mr. Parisi gave his presentation for Vortex Towers, LLC. He outlined a proposal to build a 190-foot tower on land owned by the John Mann Trust. The site will be accessed off Morhouse Lane. There is already a "roughed in" road going up to the site. Vortex Towers, LLC wishes to upgrade the road and install electric utilities as well as other associated

infrastructure required for a cellular system. Vertex is a tower development company. Their goal is to lease space on the tower to cellular carriers such as Verizon, AT&T, and others.

The facility will have a 50 foot by 70 foot fenced in enclosure around it which will contain ground-based telecommunication equipment in weather-proof cabinets and backup power batteries. The fence will be 6 feet high and made from barbed wire. There will be ample parking for maintenance vehicles to use when needed. They have also added some drainage features to contain any run-off that may happen. Impervious surface will be approximately 20 foot by 20 foot. The tower will be 190 feet high, 197 feet with lightning rod on top. Mr. Parisi went on to explain that the project met all the criteria for a special exception.

Chair McLaughlin opened public discussion. Ms. Sandy Lea said that the right of way to the entrance of the tower went across her land and she said that in the winter they needed to park down there. She said that Morhouse Lane was an extremely steep driveway and was dangerous in the winter. She said that they would be blocking the entrance. Chair McLaughlin said that they could not block a right of way. Ms. Lea said it had never been used before in the wintertime. Mr. Diehn said the Zoning Board was considering a special exception and they have very specific criteria and the design of the site outside the discussion of the criteria and its effect on anyone's property is not relevant.

Mr. Taylor read questions off the chat. The first question from Brendan Vancos was, "How much of the tower would be above the tree line and how much of the tower would be visible from the lake/Shaker Village area?" Chair McLaughlin said that was more a question for the variance part of the hearing and not the special exception part.

The next request was to "please show the map of the coverage areas". Mr. Parisi said the green on the coverage map showed the new coverage from the new facility overlapping with the existing coverage which is in yellow from other towers within Enfield and the surrounding area. Mr. Parisi said one of the requirements for the zoning ordinance is that they fly a balloon. They plan to fly the balloon on Saturday, April 24<sup>th</sup>, 2021 and it will fly at 197 feet in the air.

Ms. Linda Jones wanted to know how far the tower would be from the County Road? She said she was probably the closest abutter to the tower; she owns property along the County Road. Mr. Parisi said the tower would be 220 feet from the County Road.

Mr. Brian Donnelly, 28 Morhouse Lane, wanted to know if he would see the tower while he was standing in his backyard over towering the tops of trees? Mr. Parisi said they would be putting a balloon up in the air on Saturday, April 24<sup>th</sup>, 2021 and then they could see how much of the tower they could see, or not see. Mr. Parisi said the balloon would fly from 8:00AM to 11:00AM with hope that the wind is not too strong. If the weather does not cooperate then they will try for April 25<sup>th</sup>, 2021 at the same time. If that does not work than they would try to send the balloon up the following weekend.

Ms. Lea asked if the tower would eventually be 5G? Mr. Parisi said that they just build the infrastructure and then the cell phone company would come along and put a patch on it. He said they did not know what the companies were going to put on it yet. He said 5G was technology that was still being developed. He thought it would be a very long time before 5G came to the rural areas.

Mr. Diehn asked if there was going to be a public information meeting where the questions about technology and height and visibility of the tower could be asked? He pointed out that this was a Zoning Board hearing and not an information session. Ms. Lea asked if her driveway that they would be using be considered a zoning issue? Chair McLaughlin said it was a right of way which was already established, and it would be the Planning Board who would take that into consideration.

Chair McLaughlin closed the public hearing. Mr. Degnan pointed out that the macro for the RF Engineer did not work on the application and needed to be addressed. He felt that the plan was in good shape. He did not see any reason to deny the special exception.

Chair McLaughlin said that the Zoning Board would be discussing the special exception part of the application now. Mr. Degnan said that in the telecommunications acts, Section 332 C 7, the Zoning Board was not left with many choices except to say yes. He said he was glad to see that the location of the tower would serve areas that were traditionally underserved. He reiterated that he did not see any issues at all with the application.

Ms. Aufiero questioned whether that site was the most appropriate site due to the steepness of the land. She was concerned with how far away the tower might land from County Road if it fell over. She was also concerned about the drainage system and said that it would need to be taken care of to work. She was not sure if the "R1" zoning was an appropriate site.

Ms. Johnson agreed with Mr. Degnan and was aware of the lack of reception on Route 4 and believed it was a priority for the Town of Enfield to have decent telecommunications. She believed it would be a great service to the community.

Ms. Brown said it looked like a good site and would not infringe on anyone's view or access. She said she supported the special exception.

Chair McLaughlin said after looking over the application and the plans and the amount of work they were planning to do mitigate the drainage he agreed with Ms. Aufiero that it was a very steep area in there. He said he would be very interested to see the balloon test and what coverage there would be.

Mr. Diehn said the four findings of fact that had to be made were that the proposed site was found to be an appropriate location for such a use, and he said he thought they needed a cell

tower there, so it was an appropriate location. The next was that the project would not adversely effect property values or improvements in the adjacent area. He did not think it would adversely affect property values. Under the appropriate and adequate facilities, he said that these people build towers all the time so he was not concerned that they would build a tower that would fall over. The last criteria, the proposed use would comply with the regulations in the district. Mr. Diehn said that in their application there was a detailed addressing of every single regulation in the Town of Enfield's zoning ordinance, so he was satisfied with all four criteria.

***Ms. Brown MOVED that they grant the Section 403, Sub-Section 1, special exception requested by the Vortex Towers to allow for a cell tower on property owned by John E. Mann Trust as per the presentation of Vortex Towers, LLC.***

***Seconded by Ms. Johnson.***

**Roll Call Vote:**

**Ed McLaughlin, Susan Brown, Madeleine Johnson, Celie Aufiero and Brian Degnan all voting Yea.**

**None voted Nay**

***\* The Vote on the MOTION passed. (5-0).***

Chair McLaughlin said he wanted to have a discussion on what Mr. Parisi's approach would be on wanting to withdraw the request for the two variances. Chair McLaughlin said he hoped that Mr. Fracht, Ms. Jones, and Mr., Russell were still in the Zoom meeting. Mr. Fracht responded and said he was there and wanted to make clear to the members of the public as well as to the Zoning Board that drainage was one of the things that Planning Board looked at during a site plan review and they would address all concerns then.

Discussion was had on the withdrawal of the requests for the two variances. Chair McLaughlin thought that the Planning Board could give waivers for the project instead of the Zoning Board going through variances. He thought the waiver could take precedence over the variance and asked if anyone on the Zoning Board disagreed with that.

Mr. Diehn said that when he read Section 805, what he saw was that somehow the Town of Enfield gave to the Planning Board a right reserved for the Zoning Board of Appeal in granting variances. He believed they needed to operate under the ordinance as it existed, but the Zoning Board should probably look further into it in another session. He wondered if it would stand up under a court challenge.

Mr. Fracht said if there was a challenge to the Planning Board's decision it would go to the Zoning Board of Appeals. Mr. Diehn agreed with that.

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Mr. Parisi said that they would like to respectfully request to be permitted to withdraw, without prejudice, the two variance requests. He said he would submit a letter, in writing, to the Town Planner the next day.

Chair McLaughlin said that the Zoning Board was accepting, without prejudice the withdrawal of the two variances. Chair McLaughlin asked the Board if they approved of the granting of the withdrawal of the variances.

**Roll Call Vote:**

**Ed McLaughlin, Mike Diehn, Madeleine Johnson, Susan Brown, Celie Aufiero, and Brian Degnan all agreed to the withdrawal if the variances.**

**IV. ADJOURNMENT:**

*A MOTION was made by Ms. Brown to adjourn the meeting at 8:30 PM.*

**All were in favor of the Motion.**

Respectfully submitted,  
Barbara Higgins  
Recording Secretary