

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
October 24, 2016**

Members Present: Dana Hoyt, Richard Tremaine, Henry Boucher

Members Excused: Nathan Morin, Greg Estrella, Greg Marrer

Others Present: Michel Salek, Building Inspector/Zoning Officer; Pamela Laflamme, Community Development Director; Jen Myers, Code Enforcement/Housing Clerk

Approval of August 2016 Minutes: Mr. Tremaine noted that on page 3, the variance was not approved, but denied as shown in the roll call vote. Mr. Tremaine made a motion to approve the minutes as amended, seconded by Mr. Boucher. All in favor, the motion passed.

Approval of September 2016 Minutes: Mr. Tremaine made a motion to approve the September 2016 minutes, seconded by Mr. Boucher. All in favor, the motion passed.

Before calling any cases for the evening, Chair Hoyt informed the applicant that there was not a full board in attendance and that it was the applicant's right to reschedule or to proceed with the quorum present this evening. Mr. Cooper stated he would like to continue this evening, however if the Special Exception was denied, that they be allowed to have a re-hearing with the full board present.

Case 09-16: New Hampshire Public Radio, Map 131 Lot 8, Special Exception

Request: A Special Exception that would allow a radio transmission tower in the Rural Residential Zone. The request comes under Article V, Section 17.52.17a – Permitted Uses by Special Exception

Discussion: Randall Cooper, attorney representing NHPR, 110 Pleasant Street, Berlin, NH, was sworn in by Chair Hoyt

NHPR is seeking a special exception to replace their existing radio tower. The existing radio tower was built in 1984 at this particular site by WXLQ and WMOU, and it was not allowed by zoning at that time. When NHPR acquired the tower on January 13, 2000, it was discovered that the tower was not "legal". The attorney for the city at that time issued a no action letter which made the use lawful as a non-conforming use. On July 7, 2005, the City amended its Zoning Ordinance to allow a radio tower by special exception in the Rural Residential Zone. The ordinance also mandated that if you had a non-conforming use that is permitted by Special Exception and are making changes to the structure then you have to apply for a Special Exception. Mr. Cooper does not believe NHPR even needs a special exception as the tower was allowed as a non-conforming structure and use and will

continue to be. The new tower will be identical in height and ten feet (10') closer to the building on site.

Scott McPherson, NHPR, 2 Pillsbury Street, Concord, NH – A new two hundred fifty foot (250') tower will replace the existing tower and will be ten (10') feet closer than the current tower to the building on site.

Mr. Cooper showed the Site Plan Review map, pointing out the location of the tower relative to abutters. There is a driveway that is maintained to allow access for maintenance on the tower. There is also a propane storage tank on site. The lot size is non-conforming.

Mr. Boucher inquired if there would be an expansion to the building. No, just the tower is being replaced.

Mr. Cooper again specified that the reason they are here this evening is because of the requirements of the ordinance and they seek to replace the tower. He read allowed the submitted memorandum (attached to application) and gave evidence supporting the criteria examined when a Special Exception is proposed.

Characteristics of the lot were discussed when reviewing the SPR map. There is only one residential abutter, the others are owned by AVRRDD. The scale of the map is 1"=60'. The lot is land locked, with no street frontage. Safety concerns were noted regarding where the tower could fall in relation to abutters. All immediate abutters are vacant land, the proposed tower is two hundred fifty feet (250') tall and the nearest residential lot is four hundred fifty feet (450') away. When asked whether or not the tower was designed to break apart or collapse in on itself if it did fall Mr. McPherson replied that he believed that is the case, but he is not the design expert and couldn't say for sure.

The Public Hearing Opened at 6:55 pm

Support: No public was in attendance to speak

Opposition: No public was in attendance to speak

Final Word: Mr. Cooper stated that he appreciated the ZBA's help.

Chair Hoyt gave a summary of the case – A Special Exception that would allow a radio transmission tower in the Rural Residential Zone. This request comes under Article V, Section 17.52.17a – Permitted Uses by Special Exception.

Public Hearing Closed at 6:57 pm

Chair Hoyt let the applicant know that a decision would be made this evening and a letter of decision would be sent to them or they may wait to hear the board's decision.

Board Deliberations: Case 09-16: New Hampshire Public Radio, Map 131 Lot 8, Special Exception

The board discussed that by making the use “legal”, they aren’t really changing anything. Chair Hoyt stated that the tower is starting to deteriorate, so I don’t see a problem with granting it. It is permitted by special exception.

The board reviewed the special exception criteria.

- Specific site is appropriate, the board agreed the use has been in existence for a number of years
- Property value will not be devalued, because there will not be a change in appearance
- No nuisance of unreasonable hazard shall result, the only issue could be the tower falling
- No adverse traffic will result from such a use
- Adequate and appropriate facilities will be provided for the proper operation and maintenance of the use, including sewer and parking, the board agreed water and sewer were not needed and parking had been addressed
- No material impact on view, light and air of any abutter will result. This will not change

The board discussed the appropriate screening criteria and whether they should impose conditions. The Special Exception would be granted pending approval of the Planning Board Site Plan Review.

Mr. Tremaine made a motion to grant the Special Exception pending approval of the Site Plan Review by the Planning Board; seconded by Mr. Boucher. All in favor, the motion carried.

Case 09-16A: New Hampshire Public Radio, Appeal from An Administrative Decision

Mr. Cooper formally withdrew the Appeal from An Administrative Decision from tonight’s agenda

Member Comments: No one spoke

Other: No one spoke

There being no further business to come before the board, **Mr. Tremaine made a motion to adjourn, seconded by Mr. Boucher. All members voted in the affirmative, meeting adjourned at 7:05 pm.**