

## Appeals Board Meeting Minutes September 5, 2023

**Members present:** Chairman Peter Leavitt, Patrick Hanna, Gemma Baldinelli, Maryjo Hanna, Jon Bartlett.

**Meeting minutes:** Heather Shaffer

**Attendees:** Patti McKenna, Code Enforcement Officer, Thomas Lanucha, Avery Pierce, Nathan Schools, Fire Chief, Tracey Lang, Robert Lang, Bob Carr, Keith Emery, Mark Blier, Frank Pulsoni, Tom Peters, David Field, Chad Poitras, Matthew Poitras, Cliff Thomas, and Henry Huntley.

**Public Hearing:** Application for variance request from the Town of Buxton to reduce the requirement from 20 acres to 3 acres on Mary Jane Road to Bunting Hill Road for the purpose of installing a communications tower. The property is in a Residential Zone, Map 4, Lot 18.

Peter Leavitt, Chairman, motioned to open the Public Hearing seconded by Patrick Hanna. All were in favor.

Chairman Leavitt asked the applicant to address the board and speak to the reasoning of their request.

Mark Blier, Chairman of the Town of Buxton Selectmen, spoke as to why the Town has applied for this variance. He explained that a communications tower is needed for the community as the Town's current communication system is spotty with dead zones that create a hazard for police and fire response as well as for those in our community. The selectmen hired RCN Engineering to perform a study which resulted in finding this location to be the best area for the best coverage for a communications tower. The Town does not own 20 acres in a location suitable for a tower, so they have entered into a purchase and sale agreement with the current owner of the land who is willing to sell a three-acre portion of the lot for the tower. Selectman Blier asks that this variance be granted so that communications for the Town can be improved.

Chairman Leavitt asked if anyone from the Public would like to speak on the matter – no one in attendance wished to speak at that time. Chairman Leavitt motioned to close the Public Hearing and Patrick Hanna seconded. All were in favor. Public Hearing was closed at 7:04 pm.

Chairman Leavitt then explained that to receive a variance, the applicant must meet all four of the hardships noting that if the property was the applicant's primary residence the first hardship could be skipped but as this is not the case, the Town must prove all four hardships. Then Chairman Leavitt went through the 4 following hardships:

Chairman Leavitt then read the town's answers explaining that the hardship in this case is that the zoning ordinance requires 20 acres of municipal owned land, and they need the variance to build the tower on just three acres noting that the board will be voting on each question individually after this review.

**Question 1:**

The land in Question cannot yield a reasonable return unless a variance is granted.

**Applicant's Answer:**

The land is practically useless without significant development costs because of steep grades and ledge. Most People would define reasonable return in financial terms, but the courts have identified reasonable return as more than financial. We are defining it by the cost of a human life. If the variance is not granted and we lose a life, did the lot produce a reasonable return. Our plan is to build a tower which will improve our emergency communications coverage for our community. If the variance is not given and the tower is not built the town may suffer significant human loss which is not reasonable.

**Question 2:**

The need for the variance is due to unique circumstances of the property and not to the general conditions in the neighborhood.

**Applicant's Answer:**

This location is the highest point in town, where a radio tower will give the best coverage for our emergency radio communication systems. This makes it unique to the neighborhood.

**Question 3:**

The granting of a variance will not alter the essential character of the locality.

**Applicant's Answer:**

We are buying three acres in a three-acre zone which is in keeping with the essential character of the locality.

**Question 4:**

The hardship is not the result of action taken by the applicant or a prior owner.

**Applicant's Answer:**

The need for this radio communications tower is to assist in relaying radio communications throughout the town for emergency services radios. This being the highest elevation in town provides the best location for a radio relay tower. The radio communication problem is not created by any action taken by the police or fire departments or the Town. The communications problem exists because of the terrain,

having low spots or high spots blocking the radio waves. This relay tower will improve emergency communications.

Chairman Leavitt, after reading through the questions and answers, asked if anyone had any discussions or questions.

Gemma Baldinelli asked how we know this location will reach the low spots.

Chairman Leavitt asked why the ordinance states that it must be 20 acres.

Maryjo Hanna asked how for question number one, how are they determining that there is a communication issue.

Chairman Leavitt reopened the public hearing portion for further discussion at 7:20pm

Mark Blier addressed the Board again to respond to the questions posed. He confirmed that there are documented incidents of trouble with emergency communications that have been going on for a while to include recordings from actual emergency responses. As these issues are increasing and the town is growing, they feel it is becoming a crisis to address this problem and make sure officers and first responders can communicate effectively. For these reasons the Town hired RCN to conduct an engineering study which resulted in determining this location as the best spot to put a tower within the town to improve emergency communications. And we need to upgrade these things for public safety.

Chairman Leavitt asked if Selectman Blier knew why the ordinance requires 20 acres. Selectman Blier indicated that this ordinance has been for the long time. He has been serving the town for 10 years and this ordinance has been there longer than that. Selectman Blier believes it could have been set at 20 acres having cell phone towers in mind, but he was not sure. The current landowner is only willing to sell the bare minimum of acreage for the tower has caused them to need this variance.

Patrick Hanna asked how tall the tower would be. Selectman Blier confirmed that 120 feet is the projected height. Patrick Hanna asked for confirmation that the tower was only for Town use and would not be leased to cell phone companies. Selectman Blier confirmed that this is only for emergency responders and town use.

Maryjo Hanna asked the applicant if putting the location of the proposed tower would affect the property owner from further developing his land in the future and if there would be a fence around it. The applicant stated that it would not as the tower is being proposed to be built in the corner of the lot. The details of the fence would be requirements set by ordinances and planning board which will be the next step if the variance is granted. Maryjo Hanna also wondered if this was being done to make changes to how Buxton's 911 system is currently set up, but Selectman Blier stated that part of the emergency communications system is not being changed.

Patrick Hanna asked if any abutters opposed this request. No one present responded.

Chairman Leavitt asked if anyone else wanted to speak on the matter.

Attendee Tracey Lang addressed the board to ask if the tower would negatively affect or interfere with regular cell phone communications or internet making their quality worse than it already is. The applicant stated that the tower is on a different frequency and would not interfere with cell phone and internet receptions.

Attendee Avery Pierce addressed the board to ask who would be responsible for maintaining the access to the tower/road. She and her husband have lived there 30 plus years and have been the ones maintaining the access on the currently private way. Selectman Blier stated that the particulars to the access road would be determined by the Planning Board in the next steps if the variance is granted. He did say that the Public Works Director had been to the site location to review the area and should be able to maintain the access to the tower.

Chairman Leavitt asked if anyone had any further comments on the matter. No one in attendance wished to discuss it further. Chairman asked the board if there was a need for any further discussion.

Patrick Hanna wished to express the need for leniency, recognizing that while the answers provided may not garner a yes vote without some leniency shown, the wellbeing of the Town must be considered.

Chairman Leavitt closed the Public Hearing again at 7:20 pm and made a motion to vote.

Chairman Leavitt read the questions again and the Board voted on each question individually as follows:

**Question 1:**

The land in Question cannot yield a reasonable return unless a variance is granted.

**Voting results: Three in favor and two opposed. Question one passes.**

**Question 2:**

The need for the variance is due to unique circumstances of the property and not to the general conditions in the neighborhood.

**Voting results: All in Favor. Question two passes.**

**Question 3:**

The granting of a variance will not alter the essential character of the locality.

**Voting results: Four in favor and one opposed. Question three passes.**

**Question 4:**

The hardship is not the result of action taken by the applicant or a prior owner.

**Voting results: Four in favor and one opposed. Question four passes.**

Approval of minutes: None

Approval of Bills: None

Correspondence: None

Other Business: None

Peter Leavitt made a motion to adjourn the meeting, and the meeting was adjourned at 7:24pm.

Signed By Pete Leavitt, Chairman Date 9-14-23