



# ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, March 24, 2021  
Remotely by Zoom

Members Present: Chairman Peter Harris; Members Mark Mastenbrook, David Dunham and Sharon Ciampi.  
Members Absent: Vice Chair Norma Patten (E)  
Alternates Present: John Froumy  
Staff: Elaine Murphy and Dari Sassan.

The Chairman opened the meeting at 6pm and welcomed those in attendance.

He announced that as Chairman of the Belmont Zoning Board of Adjustment, he finds that due to the state of emergency declared by the governor, this public body is authorized to meet using electronic means. He said that the Board gave notice to the public of the necessary information for accessing the meeting using Zoom or telephone, and he announced that any party experiencing any difficulty in accessing the meeting at any point, should call 603-267-8300 x 113, and the meeting will be recessed until access can be restored for all parties.

The Chairman asked that the Board to start the meeting by taking a roll call attendance, with each attendee stating their name and that they report if anyone else is attending the meeting from that same location.

Chairman Peter Harris, office  
Mark Mastenbrook, office  
Sharon Ciampi, home with family  
John Froumy, home  
Town Planner, Dari Sassan stated he is at the Belmont Town Hall with Elaine Murphy  
Kevin & Shelly Fay, home  
LeeAnn & David Ellis, home  
David & Cassie Smith, home  
Carl Gehring, home  
Ego Evsuk, home  
Mark Correnti, home  
Don Haes, work  
Doug Sheadel, home  
Keith Vellante, home  
Glenn Welch, home

Elizabeth & John Christenson, home  
Sherry & William Pratt, home  
Sarah Mirski

D. Sassan said that, as always, Chairman Harris shall direct and control the meeting, but that as the administrator of the digital meeting platform, he himself would assist with calling on those who wish to speak. He explained that those that call in press \*9 star on the phone to raise their hand. Press \*6 to toggle in and out of mute.

The chairman appointed J. Froumy as a voting member for tonight's meeting.

**ABUTTERS HEARING – FAY FAMILY TRUST:** Continuation of a variance of Article 5 Table 2 of the Zoning Ordinance to add a second story closer (17.3') to the front property line than allowed (50'). Property is located at 113 Tucker Shore Road in the "RS" Zone, Tax Lot 107-018-000-000, ZBA #0121Z.

The chairman read the staff report current considerations.

- A. Does the application meet the criteria for granting a variance (see reverse, NH OEP ZBA Handbook pg II-8 and the Belmont Zoning Ordinance)?
- B. Property is within the aquifer protection district.
- C. Project does not require a NH DES Shoreland Permit.
- D. The Board voted in January that the proposal is not a Development of Potential Regional Impact.

He also recapped staff comments from the January meeting. During the January meeting, Board members expressed concern regarding placement of bedrooms and living space above an existing garage within the front setback. The Board generally expressed that the previous Variance approval, which allowed for the existing garage to be placed, should not and would not predetermine or necessitate that the Board should grant an approval for second-story living space within the same footprint. In response, the applicant has amended his request to specify that the second story space will be used for office, bathroom, storage and recreational space. Proposed bedroom uses were removed. Additionally, the applicant removed a proposed exterior staircase which would have resulted in an expanded building footprint.

He also stated that nonconforming uses are defined as uses that were in legal existence when the conflicting restriction went into effect. As such, just because a structure exists within a setback area does not make it nonconforming. In this case, for example, the garage was not constructed prior to the town implementing a 50' front setback. Rather, it was constructed after a variance was obtained providing relief from that setback. Therefore, the garage shall not be considered a nonconforming use and the provisions of Article 11 shall not apply.

He stated that the first application was missing crucial information.

Mr. Kevin Fay presented the application.

Mr. Fay stated that he listened to the Board's concerns in January and adjusted the use. He moved away from having bedrooms in the garage. The space will be used for an office instead. Due to Covid he works from home and needs an office. He also will use the upstairs for storage. He removed the exterior stairs and brought them inside the garage so he won't infringe on the setbacks.

M. Mastenbrook stated he is concerned that there is a full bathroom in the garage. If the area is used for an office why not have a lavatory with a toilet and sink. Why do they need a tub for an office? What happens after the Building Official does his final inspection? What prevents them from using that space as a bedroom? He asked Mr. Fay if he was willing to remove the tub. Mr. Fay stated he is not willing to eliminate the tub. He stated there will be no bedrooms or a kitchen, it is for a TV room and office. There is only one tub in the house now and the second one is important. M. Mastenbrook stated he doesn't understand why they need a tub for an office, the tub is a concern. They are opening a gateway to expand and put bedrooms over the garage. They already stated at the last meeting that people would be sleeping there. The kitchen is gone but the full bathroom opens the door for sleeping quarters. Mr. Fay stated the Board made it clear at the last meeting he was not allowed to have people sleeping up there. There is one tub for the entire property and the tub would be good for the grandchildren. He also does not want to have to leave the building to use the facilities. P. Harris wanted to know if creating a bathroom in the detached garage creates habitable space, what is the building criteria? D. Sassan stated it is not a direct violation of the building codes. J. Froumy wanted to clarify that M. Mastenbrook's concern is the full bathroom. M. Mastenbrook stated he has a problem with the tub/shower.

S. Ciampi wanted to know if the exterior staircase is going to be removed, is there appropriate egress from the second floor. D. Sassan stated that the Building Official and the Fire Department conduct Building and Life Safety inspections prior to issuing a Certificate of Occupancy.

P. Harris stated that Mr. Fay has owned the property for 14 years and his family has grown. The last application they wanted more bedrooms for a total of 5 bedrooms with parking for 5-7 cars. The parking is around the building and across the street. Mr. Fay is fortunate that his parents are alive but he stated at the last meeting that his kids and parents have to sleep on the floor and that is why he needs the extra bedrooms. Now he wants to convert that area into an office and eliminate the bedrooms. It is hard to trust the applicant that once he gets approval that he won't turn the office and storage into bedrooms. It would then become an enforcement issue. The hardship is a previous owner subdivided a large lot into 20 tiny lots. Buildouts affect the road that is not maintained by the homeowners. The lot buildouts and growth affect the road and requires more maintenance with the additional traffic on it. Safety is a concern, getting emergency vehicles to all the sites in that area with the roads deteriorating due to the increased traffic and the congested lots. P. Harris referred to the large fire in Alton a few years ago where the fire ravaged numerous buildings because the area was so congested that emergency personnel had a hard time containing the fire. He does not want that to happen here because the lots are too congested. This is a serious concern for Mr. Fay's family and other families in the area. The problem is that the Fay's family has outgrown the site.

Mr. Fay stated that they resolved the bedroom issue by putting bunkbeds in the existing bedrooms. With the sleeping arrangements solved he will use the garage for an office and a storage area.

J. Froumy stated that Mr. Fay is having difficulty meeting the criteria based on P. Harris's and M. Mastenbrook's concerns. He stated that the Board doesn't like to deny anyone the use of their property and we have helped out in the past with suggestions but not every site can accommodate what the owners want it to be used for. P. Harris stated the argument that my neighbors have it is not a reason to grant a variance. They have to park vehicles across the road because the lot is small. This is a dead-end road with a single unit on the lot but that is all the lot can accommodate. This lot was part of a subdivision that subdivided a larger parcel into numerous smaller lots. There are other properties in the area that are twice the size that would accommodate big families. The Board has to be concerned about the safety of the town and overcrowding.

J. Froumy wanted to know if Mr. Fay didn't put the bathroom in, would that improve his chances of getting a variance approved. P. Harris explained that the approval goes with the property. Different owners may convert the office space to something else once it becomes habitable space. Mr. Fay stated he is confused, the last time they said no bedrooms and suggested a function room and now they are saying no to everything because it is a detached garage.

M. Mastenbrook stated he has been on the Board since 2009 and they never allowed a bathroom above a garage because it turns the space into habitable space. He suggested one thing they may want to consider is attaching the garage to the house and build an Accessory Dwelling Unit (ADU) above it. Mr. Fay stated it is a log cabin and an addition would be ugly. M. Mastenbrook stated ADUs are allowed by the State and can be 750sf. M. Mastenbrook stated that making habitable space above a garage in a tight area isn't allowed. He doesn't see hardship in this case. The hardship has to be with the land and there is no hardship in the land. You have a garage to park cars in and a house to live in. Mr. Fay doesn't understand hardship, he can't use the garage for parking because it is used for storage. P. Harris stated it is a 3-bedroom house with a 2 car garage on a small lot. The house is beautiful and, on the lake, but because you can't put your extended family in it is not a Land Use issue, it is a personal issue. Hardship would be rocks, water, wetlands and steep slopes that are hard to overcome. The State has proposed tiny homes that can be put on tiny lots and putting one on another lot might be something to consider. Mr. Fay stated he has no more comments about the bathrooms. He may put an RV on the site. J. Froumy informed him that there are restrictions and regulations on RVs so he suggested that Mr. Fay review the ordinance to see if they are allowed on the site and how long they are allowed to be there.

The chairman opened the hearing to public comment. There being no further questions or comments the chairman closed the public hearing.

### **BOARD ACTION – FAY FAMILY TRUST:**

**MOTION:** J. Froumy moved to deny a variance of Article 5 Table 2 of the Zoning Ordinance to add a second story closer (17.3') to the front property line than allowed (50') as it does not meet all the criteria.

1. The variance will be contrary to the public interest because it conflicts with the health, safety and welfare of the general public. Approval could compromise the safety of those occupying the structure in an emergency situation.

2. The spirit of the ordinance is not observed because it conflicts with the health, safety and welfare of the general public. Approval could compromise the safety of those occupying the structure in an emergency situation.
3. Substantial justice will not be done because the applicant will gain but the public will lose by having their safety and welfare compromised.
4. It is uncertain if the variance would diminish the value of surrounding properties and it may remain neutral. The denial is not based upon this criterion.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would not result in unnecessary hardship because of the following:
  - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because there is no hardship present that relates to the land. The hardship is personal and can be overcome by having another house, adding onto the existing house or moving somewhere else.and
  - b. the proposed use is not a reasonable one because it would create habitable space in an area not typically used for habitable space.

The motion was seconded by M. Mastenbrook and carried (5-0) Roll call: Peter Harris yes, David Dunham yes, Mark Mastenbrook yes, John Froumy yes and Sharon Ciampi yes.

**ABUTTERS HEARING – DAVID & LEEANN ELLIS:** Request for a Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing manufactured home closer (17.1') to the front property line than allowed (50') but not closer than the existing unit. Property is located at 17 Holiday Lane in an "RM" Zone, Tax Lot 121-052-000-000, ZBA # 1221Z.

The chairman stated the following definition will be used to determine if the applications before the Board tonight have a regional impact. He explained that in order to provide timely notice, provide opportunities for input and consider the interests of other municipalities, the Board shall act to determine if the development has a potential regional impact as defined by RSA 36:55. Impacts may include, but are not limited to: relative size or number of dwelling units as compared with existing stock; proximity to the borders of a neighboring community; transportation networks; anticipated emissions such as light, noise, smoke, odors, or particles; proximity to aquifers or surface waters which transcend municipal boundaries; shared facilities such as schools and solid waste disposal facilities.

**MOTION:** P. Harris moved that the proposal does not have a potential regional impact.

The motion was seconded by M Mastenbrook and carried. (5-0) Roll call: Peter Harris yes, John Froumy yes, Mark Mastenbrook yes, David Dunham yes and Sharon Ciampi yes.

P. Harris read the history of the lot. The current owner purchased the property in January. In 2018 a building permit for an 8' X 12' expanded deck within the front setback was denied, so an 8' x 8' deck within the existing deck footprint was instead proposed and approved.

Mr. David and Ms. Leeann Ellis were present for this application. The members that viewed the site were: P. Harris, D. Dunham, M. Mastenbrook, J. Froumy and S. Ciampi.

Ms. Ellis explained that they want to remove the existing house they purchased in January. They had a contractor assess the unit and he determined that they had extensive rot and it would be better to replace the unit with a new one. They are replacing the existing unit maintaining the same setbacks from the road.

P. Harris stated this is a good opportunity to upgrade the lot. M. Mastenbrook agreed safety is an issue. The replacement will be a huge advantage to the owners and neighbors as well.

J. Froumy stated this would be an asset to the neighborhood. The unit needs to be upgraded.

The chairman opened the hearing to public comment. There being no further questions or comments the chairman closed the public hearing.

### **BOARD ACTION – DAVID & LEEANN ELLIS:**

**MOTION:** J. Froumy moved to grant a Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing manufactured home closer (17.1') to the front property line than allowed (50') but not closer than the existing unit as it meets all the criteria.

1. The proposal is specifically authorized as a special exception by the ordinance.
2. The proposal satisfies applicable Special Exception criteria set forth in Ordinance Article 13.F. does not apply.
3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting, smoke or other impacts because the property was used as a residence before and they are replacing the manufactured unit with another one, the use will remain the same. The property is in the "RM" zone and is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting or, smoke.
4. The proposed location is of adequate size because the property had a manufactured unit and they are replacing it with a new one that will meet the side setbacks. The lot is sufficient for the new unit.
5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety because the manufactured unit is in a residential area which was original designed for residential manufactured units.
6. The proposal does not overload any existing water, drainage, sewer or other system, nor will there be any significant increase in stormwater runoff onto adjacent property or street. The manufactured unit is the same footprint and the stormwater runoff will remain the same.

7. The proposal does not create excessive demand for municipal services and facilities. The manufactured unit is similar to what was there before. There will be no increase in services.
8. The proposal does not create hazards to the health, safety or general welfare of the public. This is an improvement over what was there. Safety issues will be resolved because they have to meet the manufactured industry standards.

Additional conditions:

1. All setbacks certified at the commencement of construction and as may otherwise be required.
2. Comply with Aquifer Protection Ordinance.
3. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
4. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
5. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
6. Approval expires on 3/24/2023 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by M. Mastenbrook and carried (5-0) Roll call: Peter Harris yes, David Dunham yes, Mark Mastenbrook yes, John Froumy yes and Sharon Ciampi yes.

**ABUTTERS HEARING – DAVID & CASSIE SMITH:** Request for:

- a. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a porch closer (34.45') to the front property line than allowed (50'). ZBA # 1312Z
  - b. A Special Exception of Article 11.A.3.c of the Zoning Ordinance to add a second story closer (39.83) to the front property line than allowed (50') ZBA # 1421Z
- Property is located at 360 Hurricane Road in the "R" Zone, Tax Lot 231-005-000-000.

P. Harris recused himself for this application as he is an abutter. He appointed M. Mastenbrook as acting chairman for this case.

The acting-chairman explained that there is not a full 5-member Board present. An affirmative vote of 3 members is necessary to approve any application. All applicants have the option to be heard by the short Board or to request to be tabled until the next regular meeting. If the applicant chooses to proceed, and their application is denied, the fact that the denial was by a short Board is not grounds for a rehearing.

Mr. David and Ms. Cassie Smith were present for this application and agreed to a short Board. The members that viewed the site were: M. Mastenbrook, J. Froumy, D. Dunham and S. Ciampi.

M. Mastenbrook stated the current owner purchased the property in December of 2019. He stated that the only comments from Department Heads was from the Code Enforcement Officer who stated that a special exception is required for any chickens being kept on site.

**MOTION:** J. Froumy moved that the proposal does not have a potential regional impact.

The motion was seconded by D. Dunham and carried. (4-0) Roll call: Mark Mastenbrook yes, David Dunham yes, John Froumy yes and Sharon Ciampi yes.

J. Froumy stated there are several criteria that they have to satisfy. The first is that the proposal is not contrary to public interest, the safety and the essential character of the neighborhood. This is closer to the road but we have done it before in the area if it sits far enough away from the road. He wanted to know if there is a porch there now. Ms. Smith stated that safety is an issue, there is just a concrete pad with stairs there now. They are making it 1' wider. J. Froumy stated they have to back up on the steps to open the door. With snow and ice, it becomes a safety issue. They are only enlarging the porch making it 1' wider to improve safety. Mrs. Smith agreed. J. Froumy stated the hardship in this case is there is no other reasonable way this can be done. You can't make it deeper any other way.

P. Harris stated that as an abutter he knows a previous owner built a 1600sf house that he outgrew when he had three children. This is a tiny house with limited egress because of the depth of the porch. It is no different than other houses on the Hurricane Road. M. Mastenbrook stated the porch is protected from the road by trees and a wall and won't impact Hurricane Road. The length of the porch is not an issue, only the depth.

The Board asked the applicant to describe what is being done on the second floor and how it will meet the criteria. Ms. Smith stated she loves the house but they need more space. They are not changing the existing footprint but going straight up. The upstairs will include a master bedroom, a master bath with a shower, toilet and sink. And a closet. There will be French doors that open to a deck that will also double as fire escape and a means of egress from the second floor in the event of a fire on the first floor or stairway. The only thing hanging off the rear of the house is the deck. J. Froumy wanted to clarify that the deck is off the second floor. Mrs. Smith stated the deck is off the second story and is not near any property lines. The drainage will remain the same. They are upgrading the roof from shingles to a metal roof at the same time as they are doing the second-floor addition. They will be repairing the chimney in the next year or two.

J. Froumy stated the house is a 30' x 32' one story 660sf house. Mrs. Smith stated this is a small house with the existing bedroom in what used to be the original garage. It is not very well insulated and is cold in the winter. Her daughter has a small 10' x 10' room and they want just a little more room for her. J. Froumy stated the garage has been converted to be part of the house. It is only 660sf which is remarkably small. The average house is around 2000sf, the request is reasonable.

The chairman opened the hearing to public comment. There being no further questions or comments the chairman closed the public hearing.



**BOARD ACTION – DAVID & CASSIE SMITH:**

**MOTION:** J. Froumy moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a porch closer (34.45') to the front property line than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest because it will not interfere with the public health, safety and welfare. It is a safer entry which allows the door to swing open in the winter. The public safety increases, the public being the occupants of the house.
2. The spirit of the ordinance is observed because it will not interfere with the public health, safety and welfare. It is a safer entry which allows the door to swing open in the winter. The public safety increases, the public being the occupants of the house.
3. Substantial justice will be done because the loss to the applicant is not outweighed by the gain to the public. There is no benefit to the public by denying the applicant the porch.
4. The variance would not diminish the value of surrounding properties because the porch is in the front of the house. Property values in the neighborhood will not be diminished but it is plausible they may increase.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
  - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because even though it is closer to the road there is no other way to safely enter the house through the front door. It is a reasonable use.and
  - b. the proposed use is a reasonable one because porches are standard on houses. The proposal doesn't vary much from what is already there. It is a minor increase.

Additional conditions:

1. All setbacks certified at the commencement of construction and as may otherwise be required.
2. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
3. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
4. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
5. Approval expires on 3/24/2023 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by S. Ciampi and carried (4-0) Roll call: Mark Mastenbrook yes, John Froumy yes, David Dunham yes and Sharon Ciampi yes.

**MOTION:** J. Froumy moved to grant a Special Exception of Article 11.A.3.c of the Zoning Ordinance to add a second story closer (39.83') to the front property line than allowed (50') as it meets all the criteria.

1. The proposal is specifically authorized as a special exception by the ordinance.
2. The proposal satisfies applicable Special Exception criteria set forth in Ordinance Article 13.F. is not applicable.
3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting, smoke or other impacts. They are not expanding the structure or use. The structure is small and this is a reasonable expansion.
4. The proposed location is of adequate size because they are using the same footprint on a small lot and not increasing the footprint. The building is extremely small and they deserve to be allowed to expand.
5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety. There is no change in the occupancy, the use is the same. The convenience is to expand the sleeping quarters and bathroom.
6. The proposal does not overload any existing water, drainage, sewer or other system, nor will there be any significant increase in stormwater runoff onto adjacent property or street. The use and occupancy remain the same. The expansion is vertical.
7. The proposal does not create excessive demand for municipal services and facilities. This is a second-floor expansion, the occupancy will not increase.
8. The proposal does not create hazards to the health, safety or general welfare of the public. The use will remain the same. It is plausible that safety will increase by allowing more room for the door to open making it safer for the occupants of the house.

Additional conditions.

1. All setbacks certified at the commencement of construction and as may otherwise be required.
2. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
3. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
4. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
5. Approval expires on 3/24/2023 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by D. Dunham and carried (4-0) Roll call: Mark Mastenbrook yes, John Froumy yes, David Dunham yes, and Sharon Ciampi yes.

P. Harris rejoined the Board.

**ABUTTERS HEARING – CELLCO PARTNERSHIP DBA VERIZON WIRELESS:** Request to construct a wireless communication facility with a monopole structure:

- a. A Variance of Article 5 Table 1 of the Zoning Ordinance to allow a wireless communication facility in the “RS” zone. ZBA # 0921Z

**and, if necessary:**

- b. A Special Exception of Article 9 and Article 13.c & f of the Zoning Ordinance to meet special exception criteria. ZBA # 1121Z

**or:**

- c. A Variance of Article 4.c of the Zoning Ordinance to allow a 150’ monopole tower that exceeds the height requirement (45’). ZBA # 1021Z

Property is located at 73 Bishop Road in an “RS” Zone, Tax Lot 205-009-000-000.

Mr. Carl Gehring - Gehring & Associates, Mr. Egor Evsuk - Verizon Wireless’s Real Estate Department, Mr. Mark Correnti - Real Estate Appraiser Valuation Expert, Mr. Don Haes - Certified Health Physicist, Mr. Doug Sheadel- Acoustical Expert, and Mr. Keith Vellante- Radio Frequency Engineer were present for this application. Mr. Carl Gehring stated it was a team effort to put the application together.

**MOTION:** P. Harris moved that the proposal does not have a potential regional impact.

The motion was seconded by M. Mastenbrook and carried. (5-0) Roll call: Peter Harris yes, Mark Mastenbrook yes, John Froumy yes, David Dunham yes, and Sharon Ciampi yes.

D. Sassan explained that in his administrative decision of February 22, 2021 he determined that a variance hearing, contemplating all aspects of Zoning Article 9 is the appropriate means through which the necessary relief for this proposal shall be granted or denied. He addressed this matter again March 11, 2021 in an email sent to Zoning Board members. The prevailing guidance literature establishes that a Zoning Board cannot grant special exception relief for a use which the ordinance does not identify as being permissible by a special exception. In this case, the ordinance identifies personal wireless service facilities as being prohibited in the RS zone, whereas it identifies them as being permissible by special exception in other zones.

It is the recommendation of the Land Use Office that, if a variance hearing is conducted addressing all aspects of Zoning Article 9—including those aspects that the ordinance associates with the special exception process (including height)—only the first relief application needs to be heard and the others may be dismissed as unnecessary.

He explained that in cell tower cases, it necessary for land use boards to be aware of the requirements set forth in the Federal Telecommunications Act. Five requirements of the Act, which may impact land use cases are summarized as follows:

- a. State and local governments shall not unreasonably discriminate among "providers of functionally equivalent services."

- b. Local governments and their land use boards shall not issue decisions that prohibit, or have the effect of prohibiting, the provision of personal wireless services in their communities.
- c. Local land use boards shall act on applications for cell towers within "a reasonable period after the request is duly filed."
- d. If a local land use board denies an application for a variance or for site plan approval of a wireless tower or antenna, the denial must be in writing and supported by "substantial evidence contained in a written record."
- e. Municipalities are prohibited from denying or regulating wireless antennae or wireless towers due to environmental concerns about the radio emissions, so long as the antennae comply with FCC rules on radio frequency emissions.

He explained the following are points of particular relevance regarding these requirements:

- a. Further context on item b above: In 2018, the US District Court decided the following in *T-Mobile Northeast v. Town of Bedford* (2018):  
*"The TCA provides for the preemption of local land use law when the decision of the board would effectively prohibit the provision of wireless services. 47 U.S.C.A. § 332(c)(7)(B)(i)(II). The First Circuit has determined that "a town's refusal to permit a tower that is needed to fill a `significant geographic gap' in service, where no service at all is offered in the gap, would violate the effective prohibition clause." Second Generation Props., 313 F.3d at 631 (brackets omitted). The First Circuit has indicated that such a violation would occur when the application "is the only feasible plan." Id. at 630.*

Earlier, in 2008, the State Supreme Court found the following in *Daniels v. Town of Londonderry*:

*To ensure compliance with the TCA, we believe that a broader, more inclusive view of hardship is required under these circumstances. When an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of a specific parcel of land for that purpose should be considered for purposes of determining hardship. The fact that a proposed location is centrally located within the gap, has the correct topography, or is of an adequate size to effectively eliminate the gap in coverage, are factors that may make it unique under the umbrella of the TCA. Similarly, that there are no feasible alternatives to the proposed site may also make it unique. Thus, although a parcel of land may be similar to the surrounding properties in terms of its general characteristics, it may still be "unique" for purposes of hardship when considered in light of the TCA."*

- b. Because the Federal Telecommunications Act prohibits municipalities from denying or regulating wireless antennae or wireless towers due to environmental concerns about the radio emissions, it can be expected that the applicant's agent will not be able to answer questions about such matters, so as not to inadvertently waive this requirement. However, the applicant's agent has provided information regarding radio emissions in his application.

3. It is anticipated that the Board may consider adding conditions to a potential approval to address concerns raised by board members, staff and members of the public (particularly because a neighbor has submitted comments indicating a preference that the tower be disguised as an evergreen tree). In cases like this, where the applicant will proceed to site plan review if necessary ZBA relief is obtained, the question often arises as to which Board should be responsible for placing various conditions. The NH Office of Strategic Initiatives offers that following guidance regarding the placement of conditions by a ZBA:

*A zoning board of adjustment has the ability to attach conditions to any relief that is within its jurisdiction in accordance with decisions of the New Hampshire Supreme Court. "While there is no express statutory provision permitting a zoning board to place conditions on the granting of a variance, we have previously held that a board's extensive powers include the authority to attach reasonable conditions where they are necessary to preserve the spirit of the ordinance." Michelle J. Robinson v. Town of Hudson, 149 N.H. 255 (2003). Note that the conditions must be reasonable, and relate to the spirit of the ordinance in question and the actual use of the land, and not to the person who is to be using the land. See Wentworth Hotel v. New Castle, 112 N. H. 21 (1972) and Peabody v. Windham, 142 N.H. 488 (1997).*

J. Froumy wanted to clarify that they are discussing the variance only. P. Harris stated there is no accommodation for granting a special exception as a cell tower is not allowed in the "RS" zone which would be an immediate denial without a variance. They need to set the stage for discussion of the tower under the umbrella of a variance. This will eliminate some duplicate questions, simplify the process by making it less confusing and keep the application moving forward.

**MOTION:** J. Froumy made a motion to consider the variance of Article 5 Table 1 of the Zoning Ordinance to allow a wireless communication facility in the "RS" zone. and to dismiss the need for a Special Exception of Article 9 and Article 13.c & f of the Zoning Ordinance to meet special exception criteria and a Variance of Article 4.c of the Zoning Ordinance to allow a 150' monopole tower that exceeds the height requirement (45') as these criteria will be addressed as part of variance discussion and criteria.

The motion was seconded by Mastenbrook and carried. (5-0) Roll call: Peter Harris yes, Mark Mastenbrook yes, John Froumy yes, David Dunham yes and Sharon Ciampi yes.

Mr. Carl Gehring stated that all the Board members have received a binder outlining the application. He will go through the binder outlining the process and addressing the criteria.

He explained that tab 1 is the town application forms and abutters list.

Tab 2 is the statements of support addressing all the criteria. He stated that the Board put the first applicant tonight through the ringer. He will address all the necessary criteria in tab 2 so he will not have to go through the same situation as the first applicant. All the criteria will be addressed.

Tab 3 is the landowner's authorization. They will be using the same driveway with no new curb cuts. The utilities will be coming in from Bishop Road.

Tab 4 contains the field card, the tax map and deed.

Tab 5 is FCC Licensing. Verizon has multiple FCC licenses. Years ago towers were constructed alongside highways but today they realize that coverage is needed in other areas besides the highway. Backyards and backroads also need coverage to benefit the community and everyone. They have more obligations than other developers to service the community.

Tab 6 contains the RF engineer's report and coverage plots. Page 6 shows the surrounding regional network providing services and coverage. The coverage and capacity objectives are outlined in this section. There is deficient coverage in the northern section of Belmont. Mr. Gehring explained that the coverage area shrinks with the number of users on the line at one time resulting in dropped calls. This new site in the northern part of Belmont is a crucial site.

Tab 7 contains Mr. Donald Haes' report under the Federal law put in affect in 1996. There are all kinds of licenses required to operate a cell tower and they have to operate within those guidelines. They hired an outside consultant to conclude the facility is in compliance with all regulatory guidelines. They have less than 1% of limit capacity, they could have 99% more capacity for this site and Mr. Haes' report provides proof they are in compliance with Federal law requirements.

Tab 8 deals with height requirements which is a non-issue with this application. The tower is not required to be illuminated because of its height.

Tab 9 is the acoustical compliance report. There will be little equipment on site. There will be the tower and an equipment shed at the base of the tower that will house a generator in the event of a black out. The noise from the generator will be similar to a little fan. If there is a blackout you will first hear all the generators in the neighborhood kicking on. First there is a battery backup and then a diesel generator will kick in. The generator will also support the 911 network. The acoustical compliance report is based on the worst-case scenario. This is a modern quiet generator. Most residences are 400' - 550' away so an increase of 1 decibel is a non-issue.

Tab 10 is the real estate valuation. Mr. Gehring stated there are folks that don't like towers but he respects that. It is not like they are never going sell their house. The market shows that there are folks that welcome towers because they get better service in the neighborhood, some don't like it and some don't notice it. Society has become dependent on wireless devices; you have to put towers somewhere and putting this tower somewhere else won't solve the problem in that area of Belmont. He explained that they did the comps and property values will not be diminished.

Tab 11 are photos of the site and the balloon test 150' in the air. They drove around the neighborhood and took pictures. A suggestion from a neighbor was they have a monopine instead of a monopole. They are offering that they will use either one to address the neighbor's concern. They have no problem with either one of them.

Tab 12 shows the plans and elevation drawing. The tower is less complicated than building a single-family home, there is less redevelopment of the site. The compound has cell tower and an equipment shed which takes up less footprint and has less impact than a house.

Mr. Gehring did a quick overview of the plans and subject property. The fall zone is 291' to the back of the property, 242' to the side property line and 210' to the other side property. The tower is in the middle of the property. The access to the property will remain the same. Once a month someone will check on the compound, equipment and tower.

Mr. Gehring addressed the criteria for the variance. There is no diminution in value to surrounding properties. There will be no activities at the site that will cause disturbance in the area. A single-family house can cause more disturbance by having parties, barking dogs, lights that shine onto abutting properties and just daily activities. The tower is just there, it is an inanimate object. The only activity on site will be someone checking the site once a month. He stated that they have gone back to neighborhoods after the towers have been there awhile and people didn't even notice they were there and were glad for the coverage. The tower is a modern version of a telephone pole.

Granting the variance would be a benefit to the public interest because it will cover the gaps in the area. Most 911 calls are through wireless devices, everything is mobile so having dependable wireless service will be a benefit to the public.

Denial of the variance would result in unnecessary hardship. It would not allow the applicant to provide coverage to the whole town. This is the best location for the tower, it is better on this site than on Rte. 106.

No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because there is no good reason not to allow wireless facilities in a residential area when their objective is to provide more coverage to residences and residential areas. They are proposing a facility to assist in and promote the health, safety and general welfare of the citizens. Wireless connectivity is good for the public safety and convenience. If the tower is built in a commercial zone it will be less effective and more visible and intrusive to the community than if they construct a monopine in the residential zone. The tower will look just like a tall tree. It is a reasonable use of the property.

It is noted that at this time additional public has joined the meeting.

Mr. Gehring addressed the hardship issue. He stated that with the first application tonight the Board took the hardship criteria very seriously and made the applicant prove that there was a hardship and would not grant him the variance without that proof. He stated that this application is different because they are not asking for dimensional relief. He reminded the Board that the applicant is a federally licensed wireless service provider who is afforded certain protection under the federal Telecommunications Act of 1996. He referred to "*Daniels v. Town of Londonderry*" 2008. "When an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of a specific parcel of land for that purpose should be considered for the purposes of determining hardship." He has met the hardship criteria. He stated that the proposed use is reasonable. Belmont's Zoning Ordinance was written a while back when

they could get away with zoning restrictions. Analog signals don't work anymore so prohibiting a tower in an entire zoning district is unreasonable.

Graphic imagines and vulgar language began to infiltrate the meeting.

Mr. Gehring tried to continue addressing the criteria. He stated that substantial justice will be done because they have a federal license regulated by the FCC to provide wireless service everywhere within its market area not just along commercial strips. The tower will only be constructed as tall as necessary to provide coverage. This site will do a better job providing coverage for the area and be less intrusive than other multiple locations.

The proposed use is not contrary to the spirit of the ordinance because if they needed a special exception those criteria are addressed under the variance. There is no demand on municipal services, no sewer or water are needed. They are promoting municipal services by enhancing 911 coverage.

At the request of Board members, the chairman called for a brief recess at 8:24 and to reconvene at 8:30.

During the recess those who infiltrated the meeting continued their antics.

The Board reconvened at 8:30. J. Froumy suggested tabling the meeting due to concerns about subjecting everyone to the offensive images and language. S. Ciampi agreed. D. Sassan stated that at the break he learned that the next meeting could be a live meeting which would eliminate this happening again. P. Harris stated that they would get more out of an in-person meeting. He apologized to all for the meeting being infiltrated with offensive audio and video interruptions. It is a public meeting and they cannot block people from attending.

**MOTION:** P. Harris moved to Table a Variance of Article 5 Table 1 of the Zoning Ordinance to allow a wireless communication facility in the "RS" zone to April 28, 2021 at 6PM due to the meeting being infiltrated with offensive audio and video interruptions.

The motion was seconded by J. Froumy and carried (5-0) Roll call: Peter Harris yes, David Dunham yes, Mark Mastenbrook yes, John Froumy yes and Sharon Ciampi yes.

### **OTHER BUSINESS:**

### **ADJOURNMENT:**

**MOTION:** On a motion by P. Harris, seconded by J. Froumy it was voted unanimously to adjourn at 8:38pm. (5-0)

Respectfully submitted,

Elaine M. Murphy  
Administrative Assistant