

## Joint Meeting ZBA and Planning Board April 16

A joint meeting was held at the library to a packed room of residents opposed to the cell tower proposal for 120 Brackett Road. The special joint meeting was held to hear the application from Verizon /Cellco to place a 133 foot tall cell tower structure and antennae, equipment compound, driveway and parking lot on property owned by Dolores Lintz.

Verizon has submitted multiple application amendments and requested multiple variances from the Zoning board these include:

203.1 Property is zoned for Single residency

305. Property is outside the established Wireless Overlay District

505.3 Property is outside the established Wireless Overlay District

505.6.A (3) A home is located less than 120% of the tower height away

505.6 A (4) Tower/compound location is less than 100 ft. From Wetlands

301.8.B (1) Proposed 100+ ft. driveway crosses Wetlands and buffer.

Surface alteration by fill, driving & excavating is not permitted.

301.8 B (7) Proposed 100+ ft. driveway

Special Exception for the driveway across the wetlands if variances are not granted.

Later in the meeting it was pointed out that Verizon had **not requested a variance but should** for:

301.8 B (5) b Cutting g down trees over 4.5 ins is not allowed in wetlands buffer.

Verizon plans on cutting down 28 trees over 6 inches.

Verizon has submitted requests to the Planning Board for the following:

Special Use Permit for a wireless telecommunications facility

Major Site Plan Development Approval

Waivers: 505.6.A (3) Home is located less than 120% of the tower height away

Waivers: 505.6 A (4) Tower/compound location less than 100 ft. from Wetlands

Waivers: 403.1E Land use regulation requiring topographic and surface mapping

Waivers: 403.1F Land use regulation requiring surface water drainage plans

### Request for Continuance

A request for continuance was presented by Kathleen McCabe, 135 Brackett Road. Ms. McCabe had written to the ZBA the previous week stating that the applicant had not posted the sign noticing the public hearing on the property within the correct time frame. She pointed out the requirement is clearly stated on the application in large bold capital letters **Rye public hearing sign must be posted on the property 7 days prior to the hearing. Failure to post shall result in the application not being heard.** Ms. McCabe's notice to the ZBA administrator

was 5 days prior to the April 16<sup>th</sup> meeting date and therefore had presumed the hearing for this application would be canceled in accordance with the requirements stated above.

The ZBA administrator forwarded Ms. McCabe's request for continuance to Verizon's Attorney Victor Manougian who responded in writing stating:

1. Verizon had given notice for the original meeting scheduled back on January 3<sup>rd</sup> and had posted a sign 7 days prior to that meeting on December 26<sup>th</sup> 2017. Consequently it had met its notice requirements for this application as the meeting on April 16<sup>th</sup> was simply a continuance of the January 3<sup>rd</sup> meeting
2. Verizon also stated that the zoning board has no authority to impose that requirement because it is only a procedural requirement on the application, and as such it can be waived.

Ms. McCabe responded to the first point by saying that Verizon's attorney had knowingly asked for the January 3<sup>rd</sup> meeting to be canceled on December 21<sup>st</sup>. That was 5 days prior to their placement of a sign for the January 3<sup>rd</sup> meeting. She argued that clearly shows a bad faith effort on Verizon's part to be posting a sign for a meeting that they knew would not be held and therefore they could not rely on that argument to hold this meeting. At the meeting Verizon's attorney Mr. Manougian did not agree that Verizon had requested the January meeting be moved prior to the sign being placed. Ms. McCabe then read from an email from Mr. Manougian to Kim Reed on December 21 requesting the meeting be continued as they were not prepared.

MS. McCabe also noted that 2 ZBA board chairs had cited local neighborhood signage as being important, and especially for major site developments. Impacted people find out after the initial meeting and often it is too late to affect the outcome. She noted a working session of the ZBA was formed in 2014 resulting in the bold lettered requirement for signage being placed prominently on the signature page of the application.

MS. McCabe stated that a continuance would provide additional time for the neighbors to prepare and that collectively they were spending hundreds of hours researching this subject. Also it would demonstrate Verizon was held to the same standard as all Rye residents. After much discussion Mr. Dibble made a motion to deny the request and review the application. The vote was 4 to 1.

#### Planning Board Determination of completeness of the application.

Mr. Donovan noted the following requirements for the Special Use Permit had not been provided by Verizon:

1. 505.5 A No colocation certification
2. 505.7 C (5) No colocation agreement
3. 505.5A(1) Engineering Certification for structural integrity of the tower
4. 505.7 B(1) Scaled elevation view
5. 505.7 B (5) setbacks to adjacent uses of 250 ft.
6. 505.7C(1) FCC certification
7. NEPA review and approval.

The Planning Board (PB) accepted the application as complete notwithstanding the 7 missing requirements.

The PB voted to deny the waiver for 403.1F regarding surface water drainage as the proposal includes a long gravel driveway, parking area and concrete slabs.

The PB voted to grant the waiver for 403.1 E for a topographic plan.

A site walk and balloon test was discussed. It was requested a crane be used instead of a balloon to simulate the height of the tower. Mr. Fredette from Verizon said no. After long discussion the balloon will be raised to the full height of the installation 133 feet.

**Balloon test will be done May 5, 2018 at 8:00 with a rain date of May 6.**

Verizon will take photos of the balloon from locations along Brackett road. Mr Dibble requested photos from every roadway wherever the tower can be viewed. Mr. Epperson commented that “where the balloon can be seen, the Board wants a picture.

Mr. Fredette agreed.

It was requested Verizon photoshop images of the view with the tower and compound for those homes on Brackett Road

**A site walk will be held May 2, 2018 at 5:30 pm. The public is welcome.**

The PB established an escrow account of \$10,000 to hire experts to review Verizon’s submission. These include technical engineers, a telecommunications consultant and for Attorney Donovan.

Verizon attorney Manougian provided an overview of the federal telecommunications law. He stated that if there was a gap in coverage the town must cure that gap regardless of zoning laws. Mr. Epperson clarified the Telecommunications Act does not require town boards and regulations to accept every proposal.

Verizon’s Radio-frequency engineer reviewed maps of signal strength and coverage proposed by the tower.

Several board members noticed that the area that Verizon shows as having a gap in coverage is very large relative to the small circumference of coverage that would be provided by the tower. They also questioned why it wouldn’t be more prudent to place the tower in the middle of their gapped zone as opposed to putting it in the northeast corner of that zone. The engineer stated that the goal is to cover route 1 as it is heavily traveled. Admitting height increases coverage, it was asked if placing a taller tower more in the center of the gapped area could provide coverage to more residents if Rye. The engineer stated there were 1100 residents in the proposed 2mile radius of improved coverage. Noting that was ¼ of the population of Rye and much of the area covered is Marsh, park or beaches, the board questioned this number. Verizon stated they were census numbers but would provide more detail at the next meeting.

Verizon’s Mr. Fredette responded there is a large area of unreliable coverage that can’t be solved with only 1 tower. At some point another tower will need replaced near the center of town.

Mr. Epperson stated that the citizens of Rye should have every opportunity to weigh in where the service should be, not Verizon. Mr. Fredette stated he would go back to Verizon engineers to develop **another** cell tower but it doesn’t deter him from wanting this tower placed on Brackett.

Mr. Durkin asked whose interests Verizon is serving? Several board members noted they have coverage in the areas Verizon noted as having gaps. It was clarified that Verizon’s maps only reflect Verizon’s coverage not all carriers. Verizon’s attorney Manougian reminded the boards Verizon is not a public utility it is a wireless provider. What has been shown are verizon’s needs, and that is why they want the Brackett road site.

Verizon’s engineers also noted that placement of the tower at the Brackett site would support their Portsmouth Tower when it is overloaded.

Mr. Fredette described the installation between 40-50 feet from Brackett road: this includes

- 133ft. Bottle brush monopole.
- 100+ ft. gravel driveway,
- 10x20 ft. Gravel Parking area
- 500 gallon propane tank
- Generator
- 30x40ft. Equipment compound
- Heating and cooling units
- Concrete pads
- Transformers
- New taller utility pole
- Stockade fence

Verizon's real estate consultant presented and concluded a tower did not influence the sale price of properties near the examples he cited. He presented pictures and comments on the Grove Rd. tower. Mr. Epperson pointed out the nearest home to the Grove Rd. tower is 1600 feet away. Several board members pointed out that other examples the consultant presented showed homes well over 1000 feet away from a tower with forested land in between. They contrasted this to the scenario on Brackett with several houses only hundreds of feet away or less without any forested blockage and so close to the road.

Verizon's Environmental consultant stated the tower and compound was 100% within the Wetlands buffer. There would be some impact to wildlife habitat. There was discussion surrounding the driveway and parking area as to its size and composition and the impact to the wetlands. The consultant also noted at this time that 26 trees would be cut down and all trees within the compound area. The zoning ordinance violation was raised at this time (301.8 B 5 2)

Mr. Fredette commented that a generator as well as heating and cooling equipment would raise noise levels and noted Verizon would adhere to any noise ordinances in Rye.

The meeting was open to public comments noting they would continue the public comments at the next meeting.

John McDonough an abutter spoke in opposition due to single residency, aesthetic impact and blight on the community and devaluation of his property.

Kendra Gemmet an abutter cited similar opposition and reiterated that placing an industrial compound virtually in their front yard was a violation of the public trust.

Mel Low provided history as to why the town created the wireless overlay district. He stated it was carefully planned with the strategic inclusion of town properties to address and contemplated future needs for the town's coverage. He reiterated Rye is residential town. This would be setting a precedent to put the tower on private land in a residential district outside of the Overlay district. He suggested a committee to look at town owned property as alternate sites.

Alden McDonough an abutter cited from the Master Plan " land use policies should be fair by supporting balances of choice convenience safety conservation and a sense of community. He stated the only sense of

community is from all the people in this room and those who signed the petition who have banded together to fight for our laws to be enforced and protect us as residents.

Steven, Borne stated it is incomprehensible to place a commercial endeavor in a residential district. He noted Berry Brook signs ¼ mile from the tower site now warn that fishing must be catch and release due to pollution. Parsons creek is polluted. Adding the tower to this environment is unacceptable. He added there is little clarity and poor communication regarding the full breadth of variances and waivers being requested.

Sally King, Conservation Commission stated this tower and compound, driveway etc. is fully within the buffer. She noted the buffer and wildlife habitat will be adversely impacted. The Rye conservation commission is not in favor of this proposal.