

*Town of Milford*  
**ZONING BOARD OF ADJUSTMENT**  
**JULY 11, 2024**  
**Public Hearings**  
**Board of Selectmen Meeting Room**

**Case #2024-02: Marmon Utilities, LLC, SPECIAL EXCEPTION**  
**Case #2024-03: Marmon Utilities, LLC, VARIANCE**  
**Case #2024-10: Steven Rafter, SPECIAL EXCEPTION**  
**Case 2024-09: Cellco Partnership, VARIANCE**

**Members**

**Present:** Andrea Kokko Chappell, Chair  
Joan Dargie, Vice Chair  
Rich Elliot, Member  
Dan Sadkowski, Member  
Michael Thornton, Alternate  
**Not Present:** Tracy Steel, Member

**Non-Members**

**Present:** Camille Pattison, Director of Community Development  
David Freel, Select Board  
**Not Present:** Jane Hesketh, Recording Secretary, Community Development

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**MEETING AGENDA**

1. Call to Order
2. Mtg. Minutes Approval: 6/06/2024 Mtg. & 6/20/2024 Mtg.
3. Public Meetings:

a. Case #2024-03-Variance Request for Use of Offsite Open Space The applicant, Marmon Utility, LLC, is seeking approval of a Variance in regards to the Milford Zoning Ordinance, Article V, Sections 5.06.6 (Open Space Requirements), for their existing manufacturing plant property located @ 53 Old Wilton Road, Milford Tax Map 14, Lot 8 & 9 (both zoned Industrial "I"). The Variance request is to allow for the utilization of the applicant's two adjoining vacant lots located on the south side of Old Wilton Road, (Map 38-6 and Map 7, Lot 16-1) for meeting open space requirements. Both lots are zoned "ICI-2" and directly across from the existing Marmon plant lot that are located on the north side of Old Wilton Road. Portions of both identified South Lots are being proposed for providing the required open space needs for the developed northern lot's proposed expansion needs. The proposed portion of the two adjoining Marmon-owned South Lots (41.97 total acres) is to be 5.0 acres. This acreage is proposed to be permanently set-aside in preservation. The proposed preservation acreage along the Tucker Brook portion of the two South Lots is to be dedicated for serving as the necessary allocated acreage, providing to serve as the existing manufacturing plant's (north lot) required Minimum 30% Open Space. As well, a fifteen (15) foot wide general public accessible pedestrian public trail within this set-aside preservation area is proposed.

**MINUTES OF THE ZBA MEETING JULY 11, 2024**

**MEETING AGENDA**

b. Case #2024-02-Special Exception Request for Front Lot Setback Encroachment of Proposed Building Expansion The applicant, Marmon Utility, LLC, is seeking a Special Exception in regards to the Milford Zoning Ordinance, Article V, Sections 5.06.5 (Set-Backs-Yard Requirements), for their property located @ 53 Old Wilton Road, Milford Tax Map 14, Lot 8 & 9 (both Lots are zoned Industrial "I"-Section 5.06.0). The applicant's request is for a reduction of the required front setback buffer in order to construct a 51,000 square foot addition onto the southern side of the existing facility structure on their manufacturing plant site. This proposed building expansion shall create a building encroachment into their existing req'd thirty (30) foot front set-back buffer area, along Old Wilton Road, consisting of approximately 7,000 square feet.

c. Case #2024-10-Special Exception Request for Rear Lot Setback Encroachment for Deck Expansion The applicant, Steven Rafter, at 45 Highland Avenue, Map 22 Lot 92 (Residence "A" Zoning District, pursuant to Section 5.01 of Milford Zoning Ordinance) is requesting a Special Exception to construct a 8' x 9' rear deck extension to be attached along the existing exterior staircase and rear wall of the home to support a new hot tub. The Special Exception is required due to the existing rear staircase & the proposed attached hot tub deck area being located within the minimum 15-foot Rear Lot Setback, pursuant to Section 5.02.2 A.8 (Special Exception Criteria).

d. Case 2024-09-Variance Requests for New Cell Tower for Celco Partnership (dba Verizon Wireless & Tarpon Towers III, LLC) The applicant, Celco Partnership, proposes a new 135-foot high (above ground level) cell tower mono-pole (w/ attached 10' whip antennae) to be located at 476 NH Route 13 South, Map 48 Lot 11. The newly proposed cell tower requires relief in the form of a Variance Request from three requirements contained within the Milford Zoning Ordinance, Section 7.09.4.A.3 (cell tower clearance above avg. tree canopy) & Section 7.09.4.A(4 & 5) seeking relief from the cell tower fall zone requirements encroaching onto off-site properties, & requirements for a fall zone easement. 4. Other Business: TBD 5. Next Meeting(s): July 25, 2024 & August 1, 2024

4. Other Business: TBD

5. Next Meeting(s): July 25, 2024 & August 1, 2024

# MINUTES OF THE ZBA MEETING JULY 11, 2024

## 1. CALL TO ORDER

Chair Andrea Kokko Chappell opened the meeting by welcoming everyone and introducing herself. The Chair stated you may attend this meeting in person at the Milford Town Hall, Board of Selectmen's Meeting Room. If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and enter the Meeting ID: 851 6407 7601 and Password: 269952 or log in via [www.zoom.com](http://www.zoom.com) using the Meeting ID and Password previously stated.

A digital copy of the meeting materials can be found on the Town website at: <https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda>. We will be live streaming this meeting on Granite Town Media, Government Channel 21, but will be on Zoom. <http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>.

Roll call attendance with all present at Milford Town Hall: Mike Thornton, Dan Sadkowski, Rich Elliot, Joan Dargie, Andrea Kokko Chappell. Chair stated Alternate Mike Thornton would be acting as a full member to bring the board to 5 members.

Chair explained the process for the case hearings. The Chair said a full agenda may not allow all cases to be heard and that at 10:00 p.m. the meeting will end. The Chair explained how the meeting would proceed for the cases that may not be heard in that they would be continued or tabled to another agreed upon meeting; also explained was the process for public notification.

Chair moved to the next item on the agenda.

## 2. MEETING MINUTES

### 6/6/2024

In Attendance: M. Thornton, D. Sadkowski, R. Elliot, T. Steel, J. Dargie

Chair asked for a motion to approve minutes from June 6, 2024 as amended.

J. Dargie made a motion to approve minutes from June 6, 2024 and D. Sadkowski seconded.

All were in favor; Chair abstained since she was not in attendance at this meeting.

### 6/20/2024

In Attendance: M. Thornton, D. Sadkowski, R. Elliot, T. Steel, J. Dargie, A. Kokko Chappell

Chair asked for a motion to approve minutes from June 20, 2024.

J. Dargie made a motion to approve minutes from June 20, 2024 and R. Elliot seconded.

All were in favor.

Chair moved to the Public Hearings with 4 cases to be heard and requested a motion for Case #2024-10 to be heard first. Mike Thornton made a motion and it was seconded by Joan Dargie.

## 3. PUBLIC HEARINGS

**c. Case #2024-10-Special Exception** Request for Rear Lot Setback Encroachment for Deck Expansion The applicant, **Steven Rafter, at 45 Highland Avenue, Map 22 Lot 92** (Residence "A" Zoning District, pursuant to Section 5.01 of Milford Zoning Ordinance) is requesting a Special Exception to construct a 8' x 9' rear deck extension to be attached along the existing exterior staircase and rear wall of the home to support a new hot tub. The Special Exception is required due to the existing rear staircase & the proposed attached hot tub deck area being located within the minimum 15-foot Rear Lot Setback, pursuant to Section 5.02.2 A.8 (Special Exception Criteria).

2  
3 **3. PUBLIC HEARINGS**

4  
5 **c. Case #2024-10-Special Exception**

6  
7 The applicant Steven Rafter came forward to the meeting table to present his case. Mr. Rafter explained the project  
8 is to attach a small deck within the setback from 42 Summer Street for the placement of a hot tub.

9  
10 **Special Exception Criteria under 10.02.1:**

11 **a. Criteria: proposed use is similar to those permitted in the district**

12 “The placement of the deck and tub is not near public roadways and will not be a distraction or  
13 annoyance to neighbors and passersby.”

14  
15 **b. Criteria: specific site is in an appropriate location for the proposed use because**

16 “It is centered equally (approx. 90”) from both Highland Ave and Summer St. The adjacent area is  
17 generally considered shared lawn space with 42 Summer St. It is also the best placement for ease of  
18 entry to the tub.”

19  
20 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

21 “It is a very small space that is otherwise unused.”

22  
23 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

24 “It is approximately 90 ft. from all roadways; Highland, Summer and Adams.”

25  
26 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
27 **proposed use**

28 “The required deck is engineered to support the weight of facilities and all occupants. The specific height  
29 of the deck facilitates safe, easy entry and exit from the spa.”

30  
31 Mr. Rafter then referred to the drawing of the deck plans as well as maps of the property showing where the deck  
32 would be placed in terms of the surrounding properties. Mr. Rafter then explained the placement is necessary to  
33 accommodate ease of entry and exit for the residents of the home; it is the best location for the needs of the  
34 homeowners.

35  
36 Chair asked for questions and hearing none moved to the public portion of the meeting. Hearing no questions or  
37 comments from the public that portion of the meeting was closed.

38  
39 **Deliberations:**

40  
41 **Special Exception Criteria under 10.02.1:**

42 **a. Criteria: proposed use is similar to those permitted in the district**

43 R. Elliot: there are probably a number of decks and hot tubs in the Residential A district.

44 J. Dargie: the district has lots of setbacks that have exceptions; proposed use is very similar

45 D. Sadkowski: the placement is not near roadways and there are no distractions; abutters have no issue

46 M. Thornton: residential use in a residential area so it seems to be in keeping with use in the district.

47 A. Kokko Chappell: allowed by special exception in this district; there are a number of setback  
48 exceptions in this area due to the age of the homes in the area.

49 **b. Criteria: specific site is in an appropriate location for the proposed use because**

50 M. Thornton: seems to be the most appropriate location for the use, it is tight to the structure and does  
51 not go any closer to the property line than the existing structures.

52 D. Sadkowski: agrees

53 J. Dargie: it is the most appropriate location; does not protrude any more than the existing stairs.

54 R. Elliot: already stairs that are simply being extended

55 A. Kokko Chappell: agrees; also noted is that it is in the backyard which allows for privacy

1 MINUTES OF THE ZBA MEETING JULY 11, 2024

2  
3 **3. PUBLIC HEARINGS**

4  
5 **c. Case #2024-10**

6 **Deliberations:**

7  
8 **Special Exception Criteria under 10.02.1:**

9 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

10 D. Sadkowski: this is a small space that is unused.

11 J. Dargie: it will be located in the back yard and is pretty well hidden.

12 M. Thornton: the use will not adversely affect the other areas because it does not get any closer to the  
13 property line and it may increase value and not decrease it.

14 R. Elliot: agrees

15 A. Kokko Chappell: there are three letters of support from the neighbors.

16 M. Thornton added that in terms of safety, just like a pool, the applicant should consider a gate to close  
17 the spa off.

18 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

19 M. Thornton: no cars belong there and pedestrians do not have the right to walk in people's back yards.

20 D. Sadkowski: away from roadways.

21 R. Elliot: there seems to be no objection to the project from neighbors.

22 J. Dargie: agrees.

23 A. Kokko Chappell: agrees.

24 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
25 **proposed use**

26 J. Dargie: will be reviewed by building inspectors for permit

27 D. Sadkowski: agrees

28 M. Thornton: if it meets code it will serve the purpose

29 R. Elliot: agrees.

30 A. Kokko Chappell: agrees.

31  
32 **Voting:**

33  
34 **Special Exception Criteria under 10.02.1:**

35 **a. Criteria: proposed use is similar to those permitted in the district**

36 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; R. Elliot yes; Chair votes yes.

37 **b. Criteria: specific site is in an appropriate location for the proposed use because**

38 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

39 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

40 M. Thornton yes; R. Elliot yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

41 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

42 R. Elliot yes; J. Dargie yes; D. Sadkowski yes; M. Thornton yes; Chair votes yes.

43 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
44 **proposed use**

45 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; R. Elliot yes; Chair votes yes.

46  
47 **Is the Special Exception allowed by the Ordinance?**

48 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

49  
50 **Are all the specified conditions present under which the Special Exception may be granted?**

51 M. Thornton yes; R. Elliot yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

52  
53 A. Kokko Chappell stated the criteria for the Special Exception has been satisfied and **Case #2024-10** has been  
54 **approved**. There is a 30 day appeal period that can be filed with the Zoning Board.

2  
3 **3. PUBLIC HEARINGS**  
4

5 **a. Case #2024-03-Variance** Request for Use of Offsite Open Space The applicant, **Marmon Utility, LLC**, is  
6 seeking approval of a Variance in regards to the Milford Zoning Ordinance, Article V, Sections 5.06.6 (Open  
7 Space Requirements), for their existing manufacturing plant property located @ **53 Old Wilton Road, Milford**  
8 **Tax Map 14, Lot 8 & 9** (both zoned Industrial “I”). The Variance request is to allow for the utilization of the  
9 applicant’s two adjoining vacant lots located on the south side of Old Wilton Road, (Map 38-6 and Map 7, Lot  
10 16-1) for meeting open space requirements. Both lots are zoned “ICI-2” and directly across from the existing  
11 Marmon plant lot that are located on the north side of Old Wilton Road. Portions of both identified South Lots  
12 are being proposed for providing the required open space needs for the developed northern lot’s proposed  
13 expansion needs. The proposed portion of the two adjoining Marmon-owned South Lots (41.97 total acres) is to  
14 be 5.0 acres. This acreage is proposed to be permanently set-aside in preservation. The proposed preservation  
15 acreage along the Tucker Brook portion of the two South Lots is to be dedicated for serving as the necessary  
16 allocated acreage, providing to serve as the existing manufacturing plant’s (north lot) required Minimum 30%  
17 Open Space. As well, a fifteen (15) foot wide general public accessible pedestrian public trail within this set-  
18 aside preservation area is proposed.

19  
20 Attorney Thomas Quinn came forward as the representative for Marmon Utility LLC along with Kevin Body,  
21 Senior Project and Plant Engineering Manager of Marmon Utility and Chad Branon, Principal Engineer of  
22 Fieldstone Land Consultants.

23  
24 T. Quinn began by stating there are 2 cases to present for Marmon Utility; Variance and Special Exception.  
25 Attorney Quinn requested that the 2 cases be presented together in terms of the project request and background  
26 information be stated once then the criteria for each case would be presented separately along with deliberations  
27 and voting; this would allow for a more timely presentation.

28  
29 Chair Kokko Chappell noted the presentation of the information can be combined.  
30

31 Attorney Quinn began his presentation:

32 The applicant plans a substantial expansion of the current facility. The plan is to add a building totaling about  
33 75,000 sq. ft. in order to do that a variance and special exception are needed.

34 The property on north side lots 8 and 9 is the developed part located in the Industrial Zone; on south side lot 6 is  
35 in the ICI2 District. The property is heavily developed; 15.5 acres of which 6 acres are occupied. The ordinance  
36 requires 30 % open space but in 2020 the applicant obtained a variance permitting the construction of an outdoor  
37 storage space for spools that reduced the open space from 31% to 27%.  
38

39 Attorney Quinn: The Company has continued to grow and succeed and now have a new product line. The new  
40 product line is critical to the operation of Marmon which requires additional space to meet demands for existing  
41 products and make the new line an integral part of the existing space. In the past, with the introduction of new  
42 products, the company has expanded production to a different location (Amherst) to accommodate the need for  
43 increased space. This time, however, it is not feasible to do that.  
44

45 Attorney Quinn presented a video to depict the project. Kevin Body began the presentation for the video. K.  
46 Body showed the existing building then showed where 3 additions would be made to the existing structure and  
47 what would be contained in the structures for operations. Kevin Body then explained the largest building will  
48 be for the new line that will allow them to create a new product allowing utilities to use their current rights of  
49 way out to where the power needs to go without creating a new right of way. There is a greater demand for  
50 electricity and this is an answer to that. Marmon has been in the community since 1957. This change will  
51 decrease the amount of time needed to provide lines to outlying areas. Mr. Body explained in detail the exact  
52 process for the conduits; it will be labor saving for utilities. This change will create 20-22 new jobs in Milford.  
53  
54  
55  
56



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2  
3 **3. PUBLIC HEARINGS**

4  
5 **a. Case #2024-03-Variance**

6  
7 Mr. Quinn continued with the presentation:

8 The building sizes will be +/-: 12,570 sq. ft. (west side); 10,360 sq. ft. (middle); 51,500 sq. ft. (east side).

9 That reduces the open space on the lot to about zero. To rectify the open space, Marmon has suggested  
10 dedicating 5 acres of open up space across the street. This way the open space will be contiguous and it will be  
11 shown on plans with the Registry of Deeds as well as set forth in a declaration of open space. Case has been to  
12 the Planning Board with a conceptual design and they were in favor of this, and the Conservation Commission  
13 who is also is in support of this.

14 Attorney Quinn then noted and emphasized this is not conservation land but simply dedicated open space  
15 because the ordinance requires open space; it is just undeveloped land that has no greater purpose than that. If it  
16 were to be designated as conservation land it would then need to be made part of the public charitable trust. It is  
17 a permanent transfer but to clarify T. Quinn stated it is not a transfer of property; it is part of the property on the  
18 south side being set aside as open space to mitigate the lack of open space on the north side. Should the south  
19 side property be developed in the future, the 5 acres would remain as open space for the north side.

20  
21 A. Kokko Chappell: the south lot to clarify, how is the 30% calculated? T. Quinn: the 5 acres is 30% of the 40  
22 acre lot on the south side; the open space is still considered as part of the 40 acres.

23  
24 T. Quinn continued: The Conservation Commission was interested in developing a trail along Tucker Brook.  
25 That is something the applicant will develop on the south side as a trail easement for recreation on the south  
26 side. The land will be set aside and when this can be developed it will be in place when that time comes. The  
27 trail easement will be shown on a plan and registered. In terms of mitigation, this is what the applicant is  
28 offering: trail easement and open space on the south side which could be made a condition of approval for the  
29 variance.

30  
31 There is little feedback from the abutters, but Mr. and Mrs. Racicot did come forward with concerns in April.  
32 Following that, the applicant has been meeting with them to discuss the concerns and accommodations have  
33 been made. This has alleviated the concerns and they are now in agreement.

34  
35 Attorney Quinn then moved onto addressing the Variance Criteria

36  
37 **Variance Criteria per New Hampshire RSA 674:33.I:**

38 **1. This will not be contrary to the public interest.**

39 **2. The spirit of the Ordinance is observed.**

40 "Cited State Supreme Court case:

41 ***Malachy Glen Associates, Inc. vs Town of Chichester 155 NH 102 (2007).***

42 The Court recognized two tests for determining whether granting a variance would violate an ordinance's  
43 basic zoning objectives:

44 1) Determine if the variance would ***alter the essential character of the neighborhood.***

45 2) Determine whether granting the variance would ***threaten the public health, safety or welfare.***

46  
47 The area where the property is located is a unique area of town that is a small island of industrial land lined  
48 by the railroad and been a manufacturing facility for 50-60 years. There is very little residential use in the  
49 area and are only allowed with special exception; there is no other area that is this developed for industrial  
50 use. It may likely improve the look of the building and not alter the neighborhood. It will be closely  
51 monitored with the development.

**3. PUBLIC HEARINGS**

**a. Case #2024-03-Variance**

**Variance Criteria per New Hampshire RSA 674:33.I:**

**1. This will not be contrary to the public interest.**

**2. The spirit of the Ordinance is observed.**

“Granting the variance will not alter the essential character of the neighborhood. The Property is located in the Industrial District. The Property has been used as a manufacturing facility for at least forty years. The site has existed in its current developed configuration since at least 2008, when a small addition was added to the southwest corner of the building. In 2020, pursuant to a variance, the applicant added an outdoor pool storage area. The neighborhood is characterized by industrial and commercial uses. The proposed additions are completely consistent with the use and development of the property and the neighborhood. Nor would granting the variance threaten the public health, safety or welfare. Construction of the proposed additions and improvements will be completed in accordance with applicable health and safety regulations and will be consistent with the neighborhood.”

**3. Substantial Justice is done.**

Again citing *Malachy GlenAssoc.*, “the only guiding rule in this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.”

“The Property is situated in the Industrial District. The applicant is a leading manufacturer of cable products nationally and throughout the world. It has been operating at the Property for over 40 years. Its business continues to grow. The development of a new product line has created the need for a substantial expansion of its facilities. The manufacture and production of its new product line simply cannot be accommodated in the existing facilities. Because the existing product lines and the new product are similar in nature, the new facilities must be integrally related to the existing facilities. Construction of its proposed building additions and related improvements is essential to the applicant’s business. The burden upon the applicant arising from denial of the variance is very substantial. The benefit to the public from requiring the current open space is not substantial and does not outweigh the burden upon the applicant.”

The existing open space is not contiguous on the north side; therefore the open space suggested on the south side will enhance the property.

**4. The Values of Surrounding Properties will not be diminished.**

“The Property is located in the Industrial District and is located between the railroad right-of-way and Elm Street to the north and Old Wilton Road to the south. The surrounding properties are industrial or commercial uses. The Property consists of over 15.5 acres. The existing building is approximately 5.8 acres in size. The building has existed in its present configuration since 2008. The Property as developed is consistent with the area. Granting the variance will not significantly change the use, development or character of the Property as currently developed in the neighborhood and will have no negative impact on value on surrounding properties.” Realtors in the area have reviewed the plans for the area and given their opinions on this which is that it will not diminish values of surrounding properties.

**5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

**A. 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:**

**i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

**ii. The proposed use is reasonable:**

Attorney Quinn noted hardship was once only viewed in terms of the land. The law has since changed and now it is viewed in terms of the land and the property as it is developed. Attorney Quinn cited various cases that were ruled on by the Court which considered both the land and the building.



2  
3 **3. PUBLIC HEARINGS**

4  
5 **a. Case #2024-03-Variance**

6  
7 **Variance Criteria per New Hampshire RSA 674:33.I:**

8 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

9 “The applicant is a leader in the manufacture of electrical, distribution cables, cable systems, and  
10 accessories for aerial and underground utility applications. Its business continues to grow and demand for its  
11 products and services continue to expand. The applicant has developed a new product line for which  
12 demand is strong. In order to introduce the new product line, while simultaneously meeting demand for  
13 existing products, the applicant requires a substantial amount of additional space, and that space must be  
14 integrally connected to its existing space. Consequently the applicant must construct the building additions  
15 and related improvements as proposed. Given the size of the Property, the unusual configuration of the  
16 existing buildings and the manner in which the Property is developed currently, it is not possible to  
17 construct the building additions and related improvements without reducing the open space as proposed.  
18 And the proposed use of the Property is reasonable. The Property is located in the Industrial District, where  
19 manufacturing is a permitted use. The proposed construction of the building additions and related  
20 improvements are both necessary to the applicant’s business and a reasonable use of the Property.”

21  
22 Attorney Quinn ended his presentation for the Variance and asked if he should move to the Special Exception or  
23 answer questions on the Variance.

24  
25 Chair indicated questions would be for the Variance.

26  
27 Variance Questions:

28  
29 D. Sadkowski: What will the 5 acre buffer be used for?

30 T. Quinn: Using the Tax Map from Fieldstone Land Consultants, the 5 acres of open space was pointed out  
31 (Dark Green) and the Conservation Trail (Purple).

32  
33 J. Dargie: Noted a letter received regarding the calculation of open space and agrees with those calculations.  
34 Example: if there is a 20 acre site then 30% would be 6 acres for open space, but say there is a 20 acre site and  
35 another noncontiguous 6 acre lot you should add the acreage to be 26 acres to determine the 30% of open space.  
36 Using the exact numbers: 15.5 acres on the North side plus 5 acres on the South side then 30% should be  
37 calculated using the 20.5 acres and not the 15.5.

38 Attorney Quinn: The South side is not becoming part of the entire property, it is separate; there are 2 separate  
39 lots. Therefore, it is still 30% of 15.5 acres which is actually 4.6 acres (it was rounded to 5 acres for open space).  
40 It was noted that right now the open space is less than the 30%; it is 27%. It is felt the 5 acres is fair based on  
41 the fact the 5 acres is not becoming part of the North side 15.5. If this were done, then Marmon would be taxed  
42 twice on the 5 acres on the South side.

43 M. Thornton: Understands the logic that is being applied. The logic being presented by the board considers the  
44 total acreage of the land owned at 30% which is said to be 6.64 acres (math to be checked). How would you  
45 respond to 6.64 acres vs. 5 acres which is well below the 30% total?

46 Attorney Quinn: Does not agree with this since it is only 15.5 acres.

47 A. Kokko Chappell noted it is actually 15.72 acres.

48 Kevin Brody: the required percentage is actually 27% which equates to 4.24 acres of the 15.72 acres.

49 Attorney Quinn: 15.72 acres at 30% is 4.71 acres which is less than the 5 acres proposed.

50 Kevin Body responded by saying he feels the logic is flawed since the proposed open space of 5 acres on the  
51 south side is not being added to the 15.72 acres on the north side.

52 A. Kokko Chappell: The logic applied here is that the 15.72 parcel be added to the 4.7 and then give 30% of this  
53 total. What is being proposed by the applicant is that the 15.72 is not added. The 5 acres of open space is being  
54 set aside and will remain as acreage on the south side. Therefore, if open space is needed on the 40 acre south  
55 side the requirement would be to provide an additional 5 acres of open space on that parcel on the south side to  
56 maintain the agreement made with this variance.

1 MINUTES OF THE ZBA MEETING JULY 11, 2024

2  
3 **3. PUBLIC HEARINGS**

4  
5 **a. Case #2024-03-Variance**

6  
7 Variance Questions:

8 Kevin Brody noted that if the acreage from both sides were combined, then a variance would not be needed  
9 since open space does not need to be contiguous.

10 A. Kokko Chappell: We are talking about more open space on the South side parcel because of what is being  
11 proposed by the applicant.

12 J. Dargie: then more open space on the South side but next to nothing on the North side.

13 K. Brody noted the open space being set aside is more valuable than the small amount of open space currently  
14 available on the North side; green space vs. parking islands.

15  
16 J. Dargie: Are there any future plans for the South side parcel? The parcel being set aside is located on the back  
17 of the parcel because of Tucker Brook.

18 K. Brody: no plans but cannot say right now.

19 J. Dargie: No condition is needed for the approval because it is part of the application.

20 T. Quinn: agrees with this; application is to reduce North side open space to zero and then to mitigate this  
21 propose 5 acres of open space and the trail on the South side.

22 M. Thornton: Therefore the application as written becomes an enforceable stipulation.

23 Attorney Quinn noted the plans are exhibits and not looking for approval of a particular plan which are being  
24 used as exhibits.

25 J. Dargie: the location of the open space could shift

26 R. Elliot: What happens in 20 years if the South side is needed, would it be difficult to undo this arrangement?

27 T. Quinn: It would be difficult to do; there would be a need to go back to the various boards for the change.

28 If it were to become a Conservation easement (the trail) it would be difficult. Certain representations have been  
29 made making it difficult.

30 M. Thornton: Concern is the enforceability of the agreement so it cannot be renegotiated at a later date.

31 A. Kokko Chappell: if this is approved, the board can reiterate the 5 acres of open space become part of the 40  
32 acres should the parcel be developed and this would be the most the ZBA can do.

33 M. Thornton: Hearing that what can happen in the future is unknown, then will this agreement be negotiable in  
34 the future to reduce the open space more or is it enforceable?

35 T. Quinn: It can be both; enforceable by recording it and registering in with the Registry of Deeds, however the  
36 Town will be responsible for making a decision (though there are no plans to develop that parcel). The growth  
37 of this company was noted since its conception in the 1950's prior to zoning and open space was readily  
38 available.

39  
40 Camille Pattison: Assurance is needed that those 5 acres cannot be used in the calculation for future  
41 development. It would allow for flexibility in the future if the site plan changes and whoever is responsible then  
42 can re-evaluate it.

43 T. Quinn: If this were to be called Conservation Land and not Open Space we could not move the designated 5  
44 acres; in the future it is an unknown. There is a need now for the 5 acres to support the North side. Later on  
45 however, the 30% of open space will be calculated using the entire 40 acres and the 5 acres of open space will  
46 remain.

47 A. Kokko Chappell reiterated that for now the 5 acres of open space is enforceable; agrees there is no way to  
48 know what will happen in the future.

49  
50 Chair asked if there any more questions for the Variance and there were none. Chair moved to the presentation  
51 of the Special Exception before moving to the Public Session and Deliberations for both cases.

2  
3 **3. PUBLIC HEARINGS**  
4

5 **b. Case #2024-02-Special Exception** Request for Front Lot Setback Encroachment of Proposed Building  
6 Expansion The applicant, **Marmon Utility, LLC**, is seeking a Special Exception in regards to the Milford  
7 Zoning Ordinance, Article V, Sections 5.06.5 (Set-Backs-Yard Requirements), for their property located @ 53  
8 **Old Wilton Road, Milford Tax Map 14, Lot 8 & 9** (both Lots are zoned Industrial "I"-Section 5.06.0). The  
9 applicant's request is for a reduction of the required front setback buffer in order to construct a 51,000 square  
10 foot addition onto the southern side of the existing facility structure on their manufacturing plant site. This  
11 proposed building expansion shall create a building encroachment into their existing req'd thirty (30) foot front  
12 set-back buffer area, along Old Wilton Road, consisting of approximately 7,000 square feet.  
13

14 Chad Branon of Fieldstone displayed the maps in the packet to show where the encroachment into the setback  
15 will be. Attorney Quinn added the building is lineal (in a straight line) and the road is not so the distance from  
16 the road will vary; the setback will not always be impacted because of this. T. Quinn noted the southwest corner  
17 is the closest to the road at 14 feet.

18 Chad Branon the existing building already extends into the setback and the proposed new building will follow  
19 the line of the current building with the southwest corner extension being the impact area.  
20

21 Attorney Quinn began:

22 **Special Exception Criteria under 10.02.1:**

23 **a. Criteria: proposed use is similar to those permitted in the district**

24 "The proposed used of the building addition is for the purpose of manufacturing which is the current use  
25 of the Property , is a permitted use in the District and is consistent with other uses in the District."

26 **b. Criteria: specific site is in an appropriate location for the proposed use because**

27 "The Applicant has been using the Property for the purpose of manufacturing electrical cables for over  
28 forty years."

29 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

30 "The neighborhood is isolated, and characterized by industrial and commercial uses."

31 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

32 "The proposed addition will be consistent with existing uses. The reduced setback will not interfere with  
33 site distance or visibility generally or interfere with what limited pedestrian traffic exists. The facility is  
34 well maintained and does not constitute a nuisance."

35 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
36 **proposed use**

37 "The proposed addition will be integrally connected with the existing buildings and facility. The  
38 amended site plan will require approval of the Planning Board."  
39

40 A rendering of the property was displayed to show the new building will be aesthetically pleasing and well  
41 landscaped. Landscaping and signage will be determined with the final plans to ensure it does not impact site  
42 distance or visibility.  
43

44 A. Kokko Chappell noted the application states encroachment will be 14 ft. more or less from Old Wilton Road;  
45 what is the exact number of feet?

46 Chad Branon: 13 foot setback.  
47

48 R. Elliot asked about the spool storage and if this will be addressed. K. Brody noted it will be looked at.  
49

50 J. Dargie noted the abutters have been contacted and were told a fence with shrubbery will be installed. In the  
51 past, this type of agreement was made a condition to ensure implementation of the agreement.

52 Attorney Quinn: The Planning Board will be reviewing and will be open to these agreements. Feels a condition  
53 will be too specific.

54 Chair asked about a general type of condition such as a buffer will be created between the two parties as agreed.  
55 Attorney Quinn feels the Planning Board should be the final decision maker on this and is concerned about  
56 having to come back to the ZBA. Chair stated that would not happen.

1 **MINUTES OF THE ZBA MEETING JULY 11, 2024**

2  
3 **3. PUBLIC HEARINGS**

4  
5 **b. Case #2024-02-Special Exception**

6 Having no further questions from the committee, Chair moved to the **Public portion** of the meeting.

7  
8 Scott Campbell, Wilton Road, Milford stepped forward and asked if the South Side parcel of land is deeded to  
9 Milford. Chair and J. Dargie: No.

10 S. Campbell asked about moving the location of the proposed trail closer to the road.

11 Attorney Quinn: The area adjacent to the road is not open space there are poles and cables located there.

12 S. Campbell: the trail will be in back and not readily available or viewable from the road.

13 Attorney Quinn: the original plan submitted noted it was a recreation site, but this has since changed. The open  
14 space is not public space or recreation space.

15 A. Kokko Chappell to S. Campbell: The 5 acres of land are still owned by Marmon and not land being given to  
16 the town. The proposal is to provide the required open space on the South Side and give a 15 ft. trail easement  
17 that happens to be next to the open space. The open space is not for the community.

18  
19 Chair asked if there any more questions from the public and hearing none closed the Public portion.

20 Chair moved to deliberations first for the Variance.

21  
22 **Deliberations Case #2024-03:**

23  
24 **Variance Criteria per New Hampshire RSA 674:33.I:**

25 **1. This will not be contrary to the public interest.**

26 M. Thornton: open space that was on the existing side was not very useable; no access because it is  
27 private property.

28 R. Elliot: the open space being provided will be good for the environment

29 D. Sadkowski: agrees

30 J. Dargie: this would not be contrary because of the 5 acres being provided across the street

31 A. Kokko Chappell: agrees with all the comments; also, the 15 ft. trail easement adds to the 5 acres  
32 being proposed to meet the requirements.

33 **2. The spirit of the Ordinance is observed.**

34 R. Elliot: this is actual a restoration of the spirit since they are restoring open space.

35 D. Sadkowski: it is a manufacturing zone that will improve the appearance of the property.

36 M. Thornton: it is open space that can be used for the habitat vs the other side of open space was simply  
37 parking areas and asphalt. The proposal observes the spirit of the ordinance better than the existing.

38 J. Dargie: The ordinance is there to require more open space; it going to be green open space vs paved  
39 open space.

40 A. Kokko Chappell: this is true open space vs what was there before for open space.

41 **3. Substantial Justice is done.**

42 D. Sadkowski: They are invested in this industrial area and if not approved it would be a burden; does  
43 substantial justice.

44 J. Dargie: Variance is needed to produce a new product line this requires more space; granting this  
45 would allow them to do that and will create new jobs in the area.

46 R. Elliot: any land that can be conserved is a positive especially near the Tucker Brook area which will  
47 protect it over the long term and allows a business to expand.

48 M. Thornton: more jobs, essential new product line, less clutter, more open space.

49 A. Kokko Chappell: agrees; allows the business to continue to grow as well as gain true open space.

1 **MINUTES OF THE ZBA MEETING JULY 11, 2024**

2  
3 **3. PUBLIC HEARINGS**

4  
5 **Deliberations Case #2024-03:**

6  
7 **Variance Criteria per New Hampshire RSA 674:33.I:**

8 **4. The Values of Surrounding Properties will not be diminished.**

9 J. Dargie: 2 submissions from the realtors; also the abutters have reached an agreement to separate the  
10 properties; a cleaner look to the property

11 M. Thornton: better appearance, 2 expert opinions, and no complaints from the abutters.

12 D. Sadkowski: a business in an industrial district.

13 R. Elliot: already zoned as an industrial district where the concern for property values is not a major  
14 concern.

15 A. Kokko Chappell: agrees with what has been said especially about what the new building will look  
16 like; it will enhance the industrial district with the appearance of the new building; and the 2  
17 neighboring abutters have submitted letters of approval.

18 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

19 J. Dargie: the denial would result in unnecessary hardship because the new building would not be allowed  
20 on the existing parcel if the open space could not be transferred to the parcel across the street. They have  
21 run out of areas to provide open space on the existing lot.

22 R. Elliot: it would hamper the future growth of the company

23 D. Sadkowski: agrees

24 M. Thornton: addressing the business needs you cannot do that with the open space on the current lot so  
25 the only way to mitigate that is to go across the street for open space.

26 A. Kokko Chappell: agrees with all the statements; in addition the overall look of the new building will  
27 enhance this district and will provide new jobs for the community. Not granting would hamper the  
28 business substantially.

29  
30 **Voting Case #2024-03:**

31  
32 **1. This will not be contrary to the public interest.**

33 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; R. Elliot yes; Chair votes yes.

34 **2. The spirit of the Ordinance is observed.**

35 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

36 **3. Substantial Justice is done.**

37 M. Thornton yes; R. Elliot yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.

38 **4. The Values of Surrounding Properties will not be diminished.**

39 R. Elliot yes; D. Sadkowski yes; J. Dargie yes; M. Thornton yes; Chair votes yes.

40 **5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

41 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

42  
43 A. Kokko Chappell stated the criteria for the Variance has been satisfied. **Case #2024-03** has been **approved**.

44 There is a 30 day appeal period that can be filed with the Zoning Board.

45  
46 The following **conditions are attached to the approval of Case #2024-03:**

47 **1.** Open space on lots 6 and 16-1 cannot be considered for future open space calculations for the development on  
48 lots 6 or 16-1.

49 **2.** A buffer shall be provided between lots 14-10 and 14-9 as agreed upon between the parties or as determined  
50 by the Planning Board.

51  
52 Joan Dargie made a motion to accept these conditions and it was seconded by Mike Thornton. All were in favor.

2  
3 **3. PUBLIC HEARINGS**

4  
5 **Deliberations Case #2024-02:**

6  
7 **Special Exception Criteria under 10.02.1:**

8 **a. Criteria: proposed use is similar to those permitted in the district**

9 R. Elliot: there are other manufacturing businesses in that zone.

10 M. Thornton: it is an industrial area and they are building to full capacity.

11 D. Sadkowski: agrees; industrial area

12 J. Dargie: agrees

13 A. Kokko Chappell: it is permitted by special exception

14 **b. Criteria: specific site is in an appropriate location for the proposed use because**

15 D. Sadkowski: it is a manufacturing operation in an appropriate location with a special exception

16 R. Elliot: best place since it is the only place it can be put.

17 M. Thornton: contiguous to the industrial process and the building will be made to look better.

18 J. Dargie: needs to be that length so it is located in the best place on the property

19 A. Kokko Chappell: agrees with all comments; applicant has provided substantial evidence to show this  
20 is the best place.

21 **c. Criteria: the use as developed will not adversely affect the adjacent area because**

22 R. Elliot: will not affect the area; abutters are accustomed to living next to the industry.

23 M. Thornton: 2 realtors stated it will not and the abutters agree.

24 J. Dargie: will not adversely affect the area as shown by the renderings; the buffer will be at most 13 ft.  
25 from the property line.

26 D. Sadkowski: will not affect the property values.

27 A. Kokko Chappell: it is already into the buffer in some spots; if anything it will improve the area  
28 because it will hide some of the eye sores.

29 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

30 M. Thornton: private property with no lawful access.

31 D. Sadkowski: no nuisance

32 R. Elliot: does not see it will be a nuisance; will cover all the driveway access points

33 J. Dargie: building will be less distracting.

34 A. Kokko Chappell: the line of site was addressed.

35 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
36 **proposed use**

37 J. Dargie: there will be adequate facilities and will need to go through Planning Board

38 D. Sadkowski: the proposed addition will make the facility adequate for the proposed use.

39 M. Thornton: with the stipulation indicated by the applicant, 13 feet will be the maximum amount into  
40 the setback. Also, it's a factory that will change over time with production.

41 R. Elliot: things will be done safely

42 A. Kokko Chappell: agrees; everything needs to be adequate to run the facility.



1 MINUTES OF THE ZBA MEETING JULY 11, 2024

2  
3 **3. PUBLIC HEARINGS**

4  
5 **Voting Case #2024-02:**

6  
7 **Special Exception Criteria under 10.02.1:**

8 **a. Criteria: proposed use is similar to those permitted in the district**

9 R. Elliot yes; D. Sadkowski yes; J. Dargie yes; M. Thornton yes; Chair votes yes.

10 **b. Criteria: specific site is in an appropriate location for the proposed use**

11 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

12 **c. Criteria: the use as developed will not adversely affect the adjacent area**

13 M. Thornton yes; R. Elliot yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

14 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

15 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; R. Elliot yes; Chair votes yes.

16 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the**  
17 **proposed use**

18 M. Thornton yes; R. Elliot yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.

19  
20 **Is the Special Exception allowed by the Ordinance?**

21 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; R. Elliot yes; Chair votes yes.

22  
23 **Are all the specified conditions present under which the Special Exception may be granted?**

24 D. Sadkowski yes; M. Thornton yes; R. Elliot yes; J. Dargie yes; Chair votes yes.

25  
26 **Condition for approval:**

27 The encroachment into the buffer will be no more than 17 feet.

28 Rich Elliot made a motion to accept the condition and it was seconded by Joan Dargie. All were in favor.

29  
30 A. Kokko Chappell stated the criteria for the Special Exception has been satisfied and **Case #2024-02** has been  
31 **approved**. There is a 30 day appeal period that can be filed with the Zoning Board.

32  
33  
34 **d. Case 2024-09-Variance** Requests for New Cell Tower for **Cellco Partnership (dba Verizon Wireless &**  
35 **Tarpon Towers III, LLC)** The applicant, Cellco Partnership, proposes a new 135-foot high (above ground  
36 level) cell tower mono-pole (w/ attached 10' whip antennae) to be located at **476 NH Route 13 South, Map 48**  
37 **Lot 11**. The newly proposed cell tower requires relief in the form of a Variance Request from three  
38 requirements contained within the Milford Zoning Ordinance, Section 7.09.4.A.3 (cell tower clearance above  
39 avg. tree canopy) & Section 7.09.4.A(4 & 5) seeking relief from the cell tower fall zone requirements  
40 encroaching onto off-site properties, & requirements for a fall zone easement.

41  
42 Chair Kokko Chappell recused herself from the meeting since she is an abutter and Joan Dargie stepped in as  
43 Chair. Chair noted at 9:20 pm the meeting end time of 10:00 pm.

44 Chair informed the applicant there are only 4 voting members. Chair Dargie explained this means that to be  
45 approved there needs to be at least 3 votes in favor; the applicant opted to move ahead stating voting may not  
46 even happen at this meeting. Joan Dargie told the applicant that even if they come back to continue the case, the  
47 same members will be present; a 4 member board.

48  
49 Attorney Mark Beaudoin from firm Nixon Peabody came forward as a representative for Tarpon Towers and  
50 Verizon Wireless (co-applicants). Also seated at the table was Project Manager Amy White. Attorney Beaudoin  
51 introduced other attendees working on the project.

52  
53 Attorney Beaudoin began the presentation by stating the application is almost 150 pages and very complex.  
54 He hopes to simplify this in his presentation.

# MINUTES OF THE ZBA MEETING JULY 11, 2024

## 3. PUBLIC HEARINGS

### **d. Case 2024-09-Variance**

Attorney Beaudoin: The project calls for a new ground mounted communication facility of 135 ft. with a 10 ft. whip antenna on the top that will be operated by the Milford Police. This will be located in a 50 x 50 ft. leasehold area with a diesel generator housed in a couple of cabinets with electrical equipment. After the construction, this site will be visited on 1-2 times per month or as needed. The site is located in the Integrated Commercial Industrial District. There are **three variances**:

1. The tower will be above the tree canopy (in New Hampshire the average tree height is 62 ft.) therefore, a variance is needed since it is well above the designated 20 ft.
2. The setback must be at least as far away as the height (135 ft.); the setback from the North is 58 ft. and from the East 125 ft.
3. The fall zone goes over the boundary line which would require a Fall Zone Easement from the abutter; this Easement is being waived by the abutter (Attorney Beaudoin explained what would occur should the tower collapse; it would be contained in the project site).

Attorney Beaudoin referenced a letter to the Zoning Board from abutter Kent Chappell acknowledging the fall zone and providing his support. In addition, another letter of support was received from Captain Fry of the Milford Police acknowledging their support. The 10 ft. whip antenna will provide enhanced emergency communication for the Town of Milford and it is being offered free of charge.

Martin Lamon, Radio Frequency Engineer then made a presentation. A coverage map was displayed that shows the current wireless service areas and the areas without service. The proposed tower will remedy the service problems around Routes 101 and 13. In addition, it will relieve stress on other towers which will enhance coverage; additional capacity is needed to increase service and this tower will enable that.

J. Dargie asked about the noise level of the diesel generator.

Attorney Beaudoin: The cabinet it will be housed in has 3 insulated walls, the running times can be controlled, and it is there only for an emergency.

M. Thornton asked the DB Sound Rating.

Attorney Beaudoin: This rating can be provided.

Amy White, Project Manager provided a general DB Rating of 75 decibels at 23 ft. It was noted the closest resident is much further away from that, but the exact number will be provided.

Attorney Beaudoin: From meeting with the Planning Board, a balloon test was requested. Based on the balloon test, photos will be taken within a mile radius of the site and the Zoning Board can request what pictures the board would like. Attorney Beaudoin then explained what the pictures will show in the way of the tower and the location.

Mike Thornton informed everyone about the last balloon test done and how the Heritage Commission was involved with spotters placed in various locations around town.

Attorney Beaudoin explained the process; the public will be notified, balloon will remain up for a day, pictures will be taken from various vantage points to simulate how the tower will look in the specified location.

Joan Dargie requested there be a site walk scheduled for the ZBA at the time of the balloon test.

The meeting then turned to Amy White, Project Manager to explain the site plan and how the planning for this site was determined.

2  
3 **3. PUBLIC HEARINGS**

4  
5 **d. Case 2024-09-Variance**

6  
7 Amy White: The Site Selection Process:

- 8
  - Radio Frequency Engineer designs the site and are responsible for propagation and coverage
  - 9 • Identify area where wireless service is needed due to significant gaps in coverage; capacity issue.
  - 10 • Radio Frequency Engineer determined there was a significant gap along Routes 101 and 13
  - 11 (Based on the coverage map that was displayed).
  - 12 • Research done regarding Zoning Laws when an area is identified (Milford allows towers in all
  - 13 zones).
  - 14 • Properties are looked at that meet the criteria.
  - 15 • Existing structures are looked for in the area (no structures found in the proposed area).
  - 16 • Extensive search done to find an area suitable for tower that meets criteria in Zoning Ordinance
  - 17 (alternate site plan analysis was submitted with 26-27 locations viewed).
  - 18 • This site has an interested landlord.
  - 19 • Location is an appropriate use.
  - 20 • Neighboring commercial properties.
  - 21 • Very little residential homes in the way of direct abutters.
  - 22 • Meets coverage objective for the Radio Frequency Engineer.

23  
24  
25 The proposed location has space for the tower that abuts businesses and commercial property therefore; it made  
26 sense to choose the proposed location.

27  
28 Joan Dargie: All three variances explained by Attorney Beaudoin are being considered together. A concern is  
29 about the waiver of the Fall Zone Easement; would the town be responsible should it collapse on to the abutter's  
30 property?

31 Attorney Beaudoin: Explained what would need to happen in the case of a tower collapse with the final piece  
32 being the tower would go beyond the 58 ft. setback; the property owner could sue the Town. However, there is a  
33 doctrine called "***Discretionary Immunity***". This doctrine provides immunity to Towns from tort land owners for  
34 judicial acts like granting a variance in the event damages are caused.

35 Joan Dargie: The ZBA would actually be granting a waiver for the requirement to have an Easement; since the  
36 Easement requirement is being waived does this mean the town could be potentially liable?

37 Attorney Beaudoin: Granting relief from the requirement is just like any other judicial act the ZBA granted  
38 which does not make the Town liable. Municipalities cannot be sued for those events; that is why New  
39 Hampshire has the doctrine.

40  
41 Amy White: Kent Chappell has been spoken to a number of times about the Fall Zone and is aware of this. His  
42 Letter shows this as well as giving support for the tower. Mr. Chappell felt he did not want to encumber his  
43 property with an easement; once you have an easement it's an encumbrance in perpetuity. Waiving the  
44 Easement does not mean they are not in support.

45 Amy White: Tarpon Towers has gone beyond the normal limits and regulations for tower design. The Design  
46 calls for extra reinforcement at the base. Cited excerpt from notarized letter from Tarpon Towers:

47 "***the lower portion of the pole will be designed with an extra 10% minimum capacity***".

48 The reinforcement will be above and beyond structural standards which will cause it to collapse on itself and not  
49 like a tree.

50 Mike Thornton asked about tethering the towering.

51 Amy White said she has not seen this before but will do research into this.

52 Mike Thornton noted the abutter should acknowledge the location of the tower being within the Fall Zone and  
53 also accept the potential risk.

1 **MINUTES OF THE ZBA MEETING JULY 11, 2024**

2  
3 **3. PUBLIC HEARINGS**

4  
5 **d. Case 2024-09-Variance**

6  
7 Joan Dargie noted the 10:00 pm end time was approaching and said the remainder of the case can be presented  
8 at a continued meeting.

9  
10 Captain Frye came forward to note the balloon test should be at 135 ft. and the site is very remote for viewing.

11  
12 Discussions began about the balloon test and where to view.

13  
14 Rich Elliot asked about the size of other towers.

15 Amy White: Most towers are 150 ft. The proposed tower was reduced to minimum height to avoid any  
16 unnecessary impact to the Town.

17  
18 Attorney Beaudoin listed follow up items to address before the next meeting:

- 19 - Sound Specs study for the generator  
20 - Dates/times for the balloon tests  
21 - Schedule ZBA site walk  
22 - Research the tethering question  
23

24 Rich Elliot asked about the potential life span of the towers.

25 Amy White: No specific time span has been established; towers are designed to engineering specs that are  
26 highly regulated; some towers are 50 years old

27  
28 There was discussion about when to have the next meeting in view of items to be scheduled and researched.

29 A date of August 15, 2024 was tentatively scheduled.

30  
31 Chair Dargie asked for a motion to **continue Case #2024-09**. Rich Elliot made a motion and it was seconded by  
32 Joan Dargie. All members were in favor.  
33

34 **4. OTHER BUSINESS**

35  
36 No other business.

37  
38 **Motion to Adjourn**

39  
40 Chair asked for a motion to adjourn. M. Thornton made a motion to adjourn and it was seconded by  
41 R. Elliot. All Board Members were in favor. Meeting adjourned.  
42  
43  
44  
45

46 **Motion to Approve:**

47 \_\_\_\_\_

48  
49 **Seconded:**

50 \_\_\_\_\_

51  
52 **Signed**

53 \_\_\_\_\_

54  
55 **Date:**

56 \_\_\_\_\_