



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Zoning Articles 6.3.1, 6.4.1, 7.8 & 6.6.2

Special Exception 6.3.1

GMR Holdings of NH, LLC Owner of Record MYVY, LLC

Tax Map 150, Lots 5 & 6

December 18, 2024

Applicant: GMR Holdings of NH, LLC
C/O Owner of Record MYVY, LLC
702 Riverwood Drive
Pembroke, NH 03275

Location: Governor Wentworth Highway (Tax Map 150, Lots 5&6)

On December 18, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of GMR Holdings of NH, LLC (hereinafter referred to as the “Applicant” and/or “Owner”) for an application for a Variance from Moultonborough Zoning Articles 6.3.1, 6.4.1, 7.8, and 6.6.2 for a parcel located on Governor Wentworth Highway, Tax Map 150 Lots 5 & 6. The applicant proposes the construction of a wireless telecommunication facility, also known as a cell tower site, that includes a self-supporting monopole tower, with the top of the monopole 120’ above ground level on lot 6. Part of the access to the facility will be over Lot 5, located in the Residential /Agricultural Zoning District.

Based on the application, testimony given at the hearing, and supporting documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located on Governor Wentworth Highway (Tax Map 150, Lots 5 & 6).
- 2) MYVY, LLC is the owner of record for the lots.
- 3) The lot is in the Residential Agricultural (R/A) Zoning District.
- 4) Attorney Jonathan Springer of Springer Law Office, PLLC represented the Applicant.
- 5) Prior to public input on September 18, 2024, the Zoning Board of Adjustment determined by a vote of three (3) (McDonough, Jakobsen, DeMeo) to two (2) (Mills, Stephens) that the proposal for GMR Holdings of NH, LLC, owner of record MYVY, LLC did present a potential for Regional Impact.

- 6) The proposal is to permit the construction of a wireless telecommunication facility, also known as a cell tower site, that includes a self-supporting monopole tower, with the top of the monopole 120' above ground level. Part of the access to the facility will be over Lot 5.
- 7) On September 18, 2024, the Board continued the public hearing to October 16, 2024 to allow for notification regarding regional impact, and to schedule a balloon test for Saturday, October 5, 2024, between the hours of 8:00 AM and 1 PM at the height of 120 feet. In the event of poor visibility, adverse weather, or inability to keep the balloon aloft, the test would be conducted on Tuesday, October 8, 2024, between the hours of 8:00 AM and 1 PM.
- 8) The Public Hearing was re-opened on October 16, 2024.
- 9) A report prepared by A & D Klumb Environmental, LLC, dated October 10, 2024 was provided to board members as part of the record at the October 16, 2024 meeting. Atty Springer then went over the results of the "Balloon Test", also known as a Viewshed Survey, in great detail. Audra Klumb, the photographer who took the photos for the balloon test report, clarified that some photos, most notably photo #4 in the report, showed the more conventional, head-on view at certain viewpoints, where the tower was visible, but not in the direction people would generally be facing. There was also concern about lights, however, Atty Springer replied there would be no lighting except some small cabinet lights servicemen may turn on to see panels in the dark, but these will not be left on, there will be no lights on driveway. He noted that the gate will be locked but the Fire Department can have a key in case of emergencies.
- 10) The Board was in receipt of a letter submitted by the Lakes Region Planning Commission (LRPC) which included concerns about what happens to the tower when it is no longer being used.
- 11) Granting the Variance will not be contrary to the public interest as the essential character would not be altered as the tree canopy would obscure the tower, with it having very little visual impact as evidenced by the balloon test. The Board noted that allowing that extra height would likely result in less total towers needed in town.
- 12) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #11 above.
- 13) By granting the Variance, substantial justice would be done as there is no public benefit to be gained by requiring the Applicant to place the proposed telecommunications tower in a conforming location. There is a clear loss to the Applicant that is not outweighed by any gain to the general public from a denial of the application, and the public benefits from the opportunity of carrier co-location cutting back on the total number of towers needed if this Variance were denied.
- 14) Granting the Variance does not diminish surrounding property values as the tower's height would not diminish surrounding property values, citing again the general lack of nuisance factors.
- 15) The Board discussed the hardship and considered the NH Supreme Court's "Daniels Case" from 2008, where the court held that a lot may be uniquely suitable for a telecom tower for the purposes of determining "unnecessary hardship" if it is centrally located within a gap of coverage and is projected to effectively eliminate that gap, as this tower was projected to do. The Board agreed that, in consideration of existing precedent, the hardship criterion is satisfied.

On October 16, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Jakobsen, DeMeo, Mills, McDonough, Stephens), and none (0) opposed to grant the request for variance from Article 7.8 for GMR Holdings of NH, LLC, on property owned by MYVY, LLC (150-006) (Gov. Wentworth Hwy) for a telecom tower subject to the following conditions:

- a) Project shall obtain necessary federal, state, and local permits, to include approval of a town building permit. All conditions of such permits shall be perpetually complied with, and all necessary inspections shall be successfully completed prior to use.
 - b) Project shall comply with all federal, state, and local laws, ordinances, rules, & regulations shoreland, timber and wetlands requirements, including, without limitation, all federal, state, and local shoreland, timber, and wetlands requirements, setbacks, buffers, planting requirements, vegetation removal restrictions, and impervious surface limitations.
 - c) Approval of a special exception under section 6.3.1 for a cell tower to be located within the residential/agricultural zone
 - d) The applicant shall receive a side setback variance, if necessary, or other related relief from the side setback requirements of the Moultonborough Zoning Ordinance.
 - e) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
 - f) The applicant and owner are solely responsible for complying with all conditions of approval.
 - g) Per RSA 674:33, approval expires on 10/16/2026 if use is not substantially acted upon.
 - h) The applicant shall provide documentation satisfactorily to the Moultonborough Land Use Office so that the tower has been engineered to have a 60-foot local buckling.
 - i) Lot # 6 was intentionally omitted as that was not where the tower is to be located, and thus not relevant to the height variance.
- 16) The Board motioned to continue the remainder of the cases regarding the applications for GMR Holdings of NH, LLC to the next meeting on November 6, 2024.
- 17) At the November 6, 2024 meeting, the Board was in receipt of a letter from the applicant, requesting the withdrawal of their application for the special exception, and the variance from Section 6.5.2.1.2, and requested a continuance of the hearing for the variance from Section 6.6.2, to December 4, 2024 allowing time for them to submit a new variance application in place of the withdrawn Special Exception application.
- 18) The Board granted the request for the withdrawal of the application for special exception for the height variance, variance with a 50' vegetative buffer and variance from 50' setback Variance from Section 6.5.2.1.2.
- 19) The Board granted the continuance for section 6.6.2 to December 4, 2024.
- 20) The December 4, 2024 ZBA meeting was cancelled and the hearings were rescheduled for December 18, 2024.
- On December 18, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of GMR Holdings of NH, LLC (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a Variance from Moultonborough Zoning Articles 6.3.1, ~~6.4.1~~, and 6.6.2.
- 21) Victor Drouin, President of Green Mountain Communications, was present to provide the Board with a more in-depth technical description of the antenna.
- 22) The Project has received a New Hampshire DOT Driveway Permit.

- 23) Revised plans dated 9-23-2024 were presented and viewed by the Board.
- 24) Granting the Variance will not be contrary to the public interest as the essential character of the neighborhood would not be altered as there will be little visual impact as a result of the tower, the areas topography will shield a view of the tower from some areas, and the existing tree cover will also help shield visual impact from neighboring properties and surrounding roadways. This variance will not threaten the public health, safety or welfare. The tower itself will not be lit, and the Facility will not generate excessive traffic, or noise, smoke, dust or other nuisance factors. The public will benefit by having improved telecommunication service in this area.
- 25) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #24 above.
- 26) By granting the Variance, substantial justice would be done as there is a substantial public benefit to be gained by allowing the Applicant to construct the proposed telecommunications tower. The public benefits from the opportunity of carrier co-location cutting back on the total number of towers needed if this Variance were denied. Simply, there is no gain to the public.
- 27) Granting the Variance does not diminish surrounding property values as there will be no impact on surrounding properties due to traffic, light, noise or other nuisance factors.
- 28) Special conditions of the property that distinguish it from other properties in the area, include the location is centrally located filling a gap, has the correct topography, or in of adequate size to effectively eliminate a significant gap in coverage. There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property (given that the height variance has been granted, the limited visual impact this project will have, and the lack of the other “nuisance” impacts.) Further, without the use variance, there will not be the necessary RF coverage to the significant gap in coverage. In addition, the proposed use is a reasonable one. As shown by the RF report, this proposed location is well situated in order to fill a significant gap in coverage. The property has the correct elevation and topography. The Property has the adequate size to host the Facility. For all these reasons, the Property has required suitability under Daniels so as to be considered “unique”; if the use variance is not granted an unnecessary hardship would result. Therefore, this variance criteria is met under the Daniels v. Town of Londonderry, 157 N.H. 519 (2008) case.
- 29) The Board determined that relief from Article 6.4.1 was not necessary as the special exception was withdrawn.
- 30) The Board addressed the criteria for the granting of the variance for section 6.6.2, noting the justification for the five criteria were the same as stated in items 24-28 (see above).

On December 18, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Mills, McDonough, DeMeo, Merrill, Stephens) and none (0) opposed to grant the request for the Variance from Sections 6.3.1 and 6.6.2 for GMR Holdings of NH, LLC for property located on Governor Wentworth HWY, Tax Map 150, Lots 5 & 6 for the construction of a wireless telecommunication facility, also known as a cell tower site, that includes a self-supporting monopole tower, with the top of the monopole 120' above ground level. Part of the access to the facility will be over Lot 5, located in the Residential /Agricultural Zoning District, subject to the following conditions:

- a) Project shall obtain necessary state, federal and local permits, to include approval of a town building permit, NH DES Shoreland approval and septic approval. All conditions of such permits shall be

perpetually complied with, and all necessary inspections shall be successfully completed prior to use.

- b) Project shall comply with all state and local shoreland, timber and wetlands requirements, including setbacks, buffers, planting requirements, federal, state and local laws, ordinances, rules and regulations, vegetation removal restrictions and impervious surface limitations.
- c) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
- d) The applicant and owner are solely responsible for complying with the conditions of approval.
- e) Per RSA 674:33, approval expires on 12/18/2026 if use is not substantially acted upon.
- f) The Applicant shall allow one space at the top of the tower rent free for use by the Town's Police and emergency services (assuming the whip antennas are used) or lower on the tower (if panel antenna are used); in the former situation, it should be noted that any whip antenna would extend above the top of the tower.
- g) The language in the Applicant's narrative and referred to in condition above shall be amended to change "Towns emergency responders" to "Towns police and fire emergency"
- h) The project shall comply with such bond requirements as may be approved by the Planning Board.

Further, the Board voted to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting.

The Board of Adjustment, on January 15, 2025, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision, send to the applicant and place same in the case file by a vote of Four (4) in favor (McDonough, DeMeo, Stephens, Merrill), one (1) abstention(s) (Jakobsen) and zero (0) opposed.

The decision made to grant the variance on December 18, 2024, shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens
Chairman

cc. Jeff Blackwell – Building Inspector (by email only at jblackwell@moultonboroughnh.gov)
Jonathan Springer, Esq (by email only at jspringer@jspringerlaw.com)
Map Lot Document File