

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF November 25, 2008

Present: Boyd Chivers, Chair; Frank Albert, Vice-Chair; Ron Howe, Judith Szot, Arlene Richter, Amanda Soares; Alternate.

Absent: Ingrid Byrd; Alternate

Chair Chivers called the meeting to order at 7:00 p.m.

Approval of Minutes

F. Albert **motioned** to accept the minutes of October 28, 2008 as presented. R. Howe **seconded**. **All were in favor.**

Case #08-553 Candia Congregational Church, 183 High Street

Chair Chivers said that they have satisfied their conditions on the Notice of Decision dated 5/27/08. The Fire Chief has sent a letter saying they have complied with his requirements for the office space.

Case #08-564 Applicant: Mr. & Mrs. Paul Reis; Owner: Same; Location: 357 Chester Road, Map 414 Lot 038: For a variance under Section 10.06: Buffer Provisions to permit the construction of a new two car attached garage with living area above within set back.

Mr. & Mrs. Paul Reis were present. Abutters Mr. & Mrs. Arthur & Eliza Sandborn of 312 Chester Road and Mr. & Mrs. Brynn & Susan Rugg of 496 Brown Road were present. Chair Chivers said the applicant was denied a building permit because the location was within the setbacks of poorly drained soils. Chair Chivers said the applicant's letter raised another issue concerning the living area above the garage. P. Reis said the area is to be used for a game room with a wet bar only and is not going to be an In-Law apartment. The applicant presented a full size plan that showed the abutters, their house placement and proposed attached garage. The proposed site for the garage is within 16' of poorly drained soils. It was noted the house is also within the 50' setback. The leach field is located to the left of the house so the garage cannot be located there. Other buildable areas were located approximately 300' from the house.

The abutters were in favor of the garage. The back lot line abuts land that Mr. & Mrs. Arthur & Eliza Sandborn have put in conservation and will not be built on.

R. Howe felt the garage would add to the violation already in place from the house being within the setbacks. The Board was in agreement. There was discussion of possibly placing the garage in different locations. F. Albert recommended coming forward for a waiver of equitable dimension for the house at the same time the applicants can come forward with different plans for the location of the garage. Chair Chivers said that some lots have limitations of growth due to poorly drained soils and other limitations and this may be one of them.

Chair Chivers hearing no more questions closed the hearing and noted the case would be deliberated later in the meeting.

Case #08-565 Applicant: New Cingular Wireless PCS, LLC ("At & T") c/o Stephen D Anderson, Anderson & Kreiger, LLP One Canal Park, Suite 200, Cambridge, MA 02141; Owner: Paul Hunter 606 North Road, Candia NH 03034, Map 402 Lot 10: For appeal under Section XII 12.02(A), Special exception under Section V 5.02(D, d-1), Section XII 12.01(B) & Section 13.02 and Variances under Section V 5.02(D, d-2), Section XII 12.02C and Section VI 6.01(G) to permit construction of a

new tower replacing existing tower and relocating an existing equipment shelter with diesel generator in a residential district.

Doug Wilkins from Anderson & Kreiger, Kevin Breuer Engineer & Jacqui Swenson were present for the applicant. Public notice was given. Abutters Kevin Deslongchamps, 608 North Road and Dennis Orzechowski, 55 Halls Mill Road were present. Chair Chivers said presently there is a 170' private tower onsite that was legalized in 1990. There were two cases in 1996 & 1999 where the Board denied requests for a commercial tower on the property. Since then, Chair Chivers explained that Congress passed a telecommunication act in 1996 which limits local land use authority over towers and the NH Supreme Court in the cases of Simplex and Boccia ruled in their favor stating the concept of unnecessary hardship.

Chair Chivers said the Building Inspector confirmed cell service is an essential service which is a special exception in a residential area. It was the consensus of the Board that it is an essential service. The special exception for tower setbacks 150% height was also requested.

D. Wilkins said they chose this site to minimize impact and that this site would bridge gaps of coverage. He said the radio frequency analysis needs to be corrected and asked for a continuance. He presented all the rest of the information. The tower would be built to house 4 major carriers with the potential for more equipment including additional generators. There would be a 12' gravel access road. The full size plot plan was presented to the Board and the abutters and the location of the abutters were clarified. The nearest house is 319'. Halls Mills was not on plans but located near the stone wall shown on plan.

Normal maintenance for the generator is once a week for ½ hour during the day. Noise level for the generator is 57 decibels. There is a maximum of 55 decibels recently put in place with the Wind Energy systems laws for residential areas. R. Howe said the newer machines are quiet compared to older generators.

Chair Chivers asked if the applicant had to build a lattice pole or if they could build a mono pole, or pole that looks like a tree. D. Wilkins said they can put up another style. They chose the lattice pole for ease in adding future equipment for the Fire Department. The applicant said that they will come forward at the next meeting with these other style poles.

D. Wilkins passed out a Visibility Study Balloon Test with 3 locations simulating what the pole would look like when completed. View one was North Road, view two was Halls Mills, view three was Highland Street. Chair Chivers asked to have the applicant update the Balloon study to show a mono pole and tree style pole and bring to the continuance.

Halls Mountain was noted at 920' and the tower height at 755'. There were questions of what coverage would be added with the proposed tower with the mountain blocking transmission. The applicant showed the area of coverage.

D. Wilkins appraisal study found no difference in property value. The homes used in the study were Candia properties.

K. Deslongchamps was concerned with the tower being too close to his home and possibility of them having to blast and disturbing his ledge which is 30' from the property line. The Tower is 100' from the property line. He was also concerned because the tower has the capacity to expand to hold 4 carriers each having a back up generator making this site large and more commercial than anticipated. He felt that it would make a large environmental impact disturbing current wildlife.

D. Orzechowski said he is currently an AT & T customer and he gets service. When he bought his property the tower in place was small not anything like the proposed large commercial tower which would be close and his home would have a complete view of

the tower. He asked if there was a more green solution. The applicant said FCC mandates 8 to 10 minute battery back up.

Radio Frequency Analysis was explained by K. Breuer. The charts showed a plan of current coverage by color and target area for future service. These are the charts that need to be updated for the continuance.

It was the consensus of the board to have more time to read and review. A. Richter **motioned** to continue Case 08-565 until December 23, 2008 at 7:00pm. F. Albert **seconded**. **All were in favor.**

Deliberation Case #08-564

The Board was in consensus that the location of the proposed garage was too close to the poorly drained soils and the house is in violation. The house is within the setbacks and requires a waiver of equitable dimension to make the house legal. The Board suggested if applicant comes forward with new plans that they should also come forward to legalize the house at the same time. The Board was in agreement to waive the \$25.00 application fee but not the required public notification fees and abutter's fees.

Chair Chivers said to grant a variance all of the criteria must be met. Chair Chivers read Section 12.02 C on Variances answered by the Board:

1. *No diminution in value of surrounding property would be suffered.*

No.

2. *Granting of the variance would be of benefit to the public interest.*

No.

3. *Denial of the variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and /or buildings that distinguish the property from other similarly restricted property in the area.*

Yes. There are other areas that could be built on.

4. *Granting the variance would result in substantial justice.*

No.

5. *The use will not be contrary to the spirit of the Ordinance.*

No. It is contrary to the spirit of the Ordinance because it is too close to the poorly drained soil.

A. Richter **motioned** to deny the variance on the basis it does not meet all the criteria in Section 12.02 C. R. Howe **seconded**. **All were in favor.**

Other Business

Chair Chivers asked the Board if there were any other business to discuss and hearing none asked for a motion to adjourn.

F. Albert **motioned** to adjourn. R. Howe **seconded**. **All were in favor.**

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,
Sharon Carrier
Recording Secretary