

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF January 27, 2009

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

Absent:

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

Approval of Minutes

F. Albert **motioned** to accept the minutes of December 23, 2008 as presented. R. Howe **seconded**. **All were in favor.**

Case 09-566 Applicant: Robert & Carol Despathy, 82 Patten Hill Road, Candia, NH 03034 Map 409 Lot 225. For a special exception under Section XIII 13.04E for an accessory dwelling unit in existing barn structure.

Abutters have been notified. Abutters Gracia Benoit 84 Patten Hill Road and Gladys Baker 30 Patten Hill Road were present. Mr. & Mrs. Robert & Carol Despathy were present.

Mr. Despathy came forward and presented his case to the Board. Chair Chivers said the Building Inspector has reviewed the plans and has found are no violation of the Candia Zoning Ordinances and all that is needed is a special exception.

Chair Chivers said is only one bedroom. The septic system remains the same. Mr. Despathy said he must provide a written replacement design for the septic system that would handle the addition of the unit in case the septic system fails which is part of the building permit.

The accessory unit does not exceed the maximum 600 square feet. There is onsite parking for one vehicle and Mr. Despathy said it is dedicated parking.

The Setback requirements are met. Mr. Despathy said the building has not changed since the property was subdivided. The accessory unit is attached to the main dwelling unit and existed before March 15, 2003.

The residential character of the area will be retained. The only outward appearance change will be the window in front will be turned into a door. The accessory or main dwelling unit will be occupied by the owner.

Chair Chivers concluded the applicant meets all the requirements of Section 13.04E for an accessory dwelling unit.

R. Howe asked if this was an in-law apartment and Mr. Despathy replied he wanted this approved as a rental but the unit may well be become an in-law apartment. J. Szot asked about another entrance to the unit. Mr. Despathy said this was discussed with the Building Inspector and appears this is no longer required and not in the regulations.

Chair Chivers seeing no other questions closed the hearing on case 09-566. The Board decided to deliberate the case before the next case was heard. Chair Chivers asked if the Board had any concerns or questions. R. Howe said his questions were answered. Hearing no other questions, Chair Chivers asked for a motion.

F. Albert **motion** to grant special exception as requested. R. Howe **seconded**. **All were in favor. Special Exception was granted.**

Case 09-567 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 a Special Exception under Section V 5.02 (D, d-1), Section XII 12.01(B) and Section 13.02 and Variances under Section VI 6.01(G) and Section XII 12.02C. To permit a wireless communication facility in a Residential ® District consisting of a 180+/- lattice tower with side yard “fall zones” of less then 150% of the tower’s height within a 75’ x 75’ fenced equipment shelter will be located. The compound will include an equipment shelter and diesel generator. A gravel access drive is also proposed and utilities will be brought in from existing sources on the property.

Public notice was given. Abutters Dennis Orzechowski 55 Halls Mill Road, Megan Colby & Melissa Burrows 616 North Road, Mr. & Mrs. Kevin Deslongchamps 608 North Road, Mr. & Mrs. Michael & Kristen Davis 59 Halls Mill Road, David Gould DKAM LLC 81 Halls Mill Road, Mr. & Mrs. Daniel Deslongchamps 584 North Road, Mr. & Mrs. Chris Chiesa 37 Halls Mill Road were present.

Doug Wilkins from Anderson & Kreiger LLP, Kevin Breuer AT & T Engineer & Jacqui Swenson were present for the applicant.

Chair Chivers gave an overview of the application. He noted that cell towers are controversial and a delicate issue for the Town. Chair Chivers said the Federal Telecommunications Act of 1996 preempts some of the authority of the Town’s Zoning Ordinances on cell towers but the Zoning Board authority still exists but not as flexible.

D. Wilkins presented and explained the plans that were submitted regarding the new cell tower. 1st map presented showed the location of the cell tower in relation to the neighborhood within a ½ mile radius. Abutters were given a set of plans to view and follow along with. It was clarified that the new tower is not in the same location as the existing tower. Next sheet showed 319’ to the house, 170’ to the west property boundary, 134’ to the east property boundary line and 756’ southern property boundary. There is an existing dirt path 10’ wide that would be widened and extended to a proposed 75’ x 75’ compound.

D. Wilkins continued with the rest of the plans showing different views, topography, each plan showing more in depth information on the proposed tower with 75’ x 75’ compound. They do not anticipate any blasting. The utilities proposed would be underground to the compound. A culvert will be added. The road will be widened to 12’ with a 30’ wide easement that is required to have the road.

The applicant submitted a structural engineer report where the tower could be collapsible at 80’ and then they could over build the bottom specifications. Specifications for a mono pole have not been submitted at this time. The foundation on a lattice tower would require three cement pads for the legs approximately 12 to 15 feet. A monopole would have a larger slab which could require blasting.

D. Wilkins continued his discussion on the material submitted and various reports including site assessment, property appraisals, structural analysis, visibility study, FCC radiation regulations, and noise analysis. The tower would not require lighting as it is less then 200’. The property appraisal concluded there is no diminution of property value. The visibility study was from three locations. Per FCC radiation regulations the proposed tower is well below the guidelines. The noise analysis concluded that the second generator adds 3 decibels which means you can barely tell the difference with one generator.

Kevin Breuer, AT & T Radio Frequency expert gave a presentation of proposed coverage with the new tower compared to coverage that is in place now. He showed by colors on the plans where the coverage exists and where proposed coverage would be.

R. Howe confirmed that cell towers are in line of site and asked if Hall Mountain at 941' would cut out a lot of the potential range of the tower. R. Howe confirmed with K. Breuer that the tower's range would go towards Allenstown and Bear Brook State park where no one lives. R. Howe asked if another location may give adequate coverage for example near the Alpaca Farm on High Street. K. Breuer said that did not run that analysis. A. Richter noted that coverage was needed on High Street and K. Breuer said it would give some coverage. J. Szot asked about 4 other towers located in Candia if the applicant could transmit off any of these. J. Szot clarified that the maps from the old package and new package are inaccurate.

Chair Chivers opened the floor to discussion. Mrs. Keiser said the new tower is closer to her home. D. Wilkins said they located the tower in the best location with regards to all the abutters. A. Soares asked how long AT & T had this gap in service and the applicant said this gap has always existed. The applicant said a network is built out over time.

M. Colby asked if the applicant looked at any other locations. They replied they sent a team out and chose the site with the existing tower. J. Szot said the applicant did not answer the abutter's question. J. Szot asked if the applicant looked at existing towers on High Street or High Street area to stay in a more commercial area and away from residential area.

M. Colby asked about the increase of travel and upkeep if there are 4 carriers on the tower. Mrs. Christine Davis asked how much is going to be cleared. D. Wilkins said the compound area is 75' x 75' plus the access road from 606 North Road. It was noted that conservation land and a beaver pond is close to the tower location.

K. Deslongchamps pointed out that a stone wall would have to be removed to access the proposed tower site. F. Albert said he believed that stone walls on boundaries were protected not interior stone walls. K. Deslongchamps stated that migratory geese are in this area and are federally protected and cottontail rabbits are in this area and they are protected by the State of NH. D. Wilkins said an environmental site assessment was done. He presented a photo showing a sign from the FCC regarding emissions from the existing site and the applicant said their study shows they are well below the guidelines. F. Albert said that a tower will have less impact on wildlife then if houses are built.

Mr. Davis asked if the applicant could keep adding from what is shown and Chair Chivers said the applicant is limited to their proposal for size and number of carriers and would have to come forward for any additions. F. Albert said a stipulation could be put on the land that there is no subdivision.

M. Burrows asked how much larger the new tower would be and the applicant said the existing tower is approximately 18" at the base and the new lattice tower has a 12' to 15' triangular base. Mrs. Deslongchamps said this new tower is much closer to her property and would like the balloon visibility test done from her back porch where she will have full view of the new tower. She was concerned with more vehicles and men working and on the tower.

D. Orzechowski was concerned if he would be able to build his house which is approximately 159' from the tower and asked if he would need a variance to build on his lot. J. Szot said a lot on High Street had to get a variance to build on their property because of a tower fall zone. D. Orzechowski said he carefully chose this site with underground utilities. He also pointed out that several other lots have not been developed

that may require variances. He disagreed with the property value study and felt the value would be diminished. He said he can send and receive cell phone calls from his land.

J. Szot clarified that the fall zone is 270'. She said it is 140' from the abutter's land going east and 180' going west and that a garage is 231'. She also said that the fall zone includes the ordinance's setbacks of the property the tower is on. J. Szot said she was at the proceedings involving the variance for the existing tower and it was to be used only for personal private use with a stipulation it could not become commercial. J. Szot said ice and wind was taken into account in NH to figure tower heights fall zones and that is why there is a 150% fall zone in the ordinances.

C. Chiesa said his house has a complete view and when he bought his home the existing tower was smaller, residential and further away and the new tower will be larger and closer and commercial. They said they were not notified. RSA 672:3 definition of an abutter was read by the applicant and by definition Mr. & Mrs. Chiesa are not abutters even though they have a complete view of the tower. Chair Chivers said all concerns will be heard.

Mr. Davis asked if the applicant exhausted all possibilities of other locations that would correct coverage deficiency.

I. Byrd as a private citizen very concerned that one Board member argued the applicant's case for them and said the Board must remain neutral and listen to concerns.

M. Colby researched NH Office of Energy and Planning and requested information involving cell phone placements. She said they can put a cell tower in if there is no other place to put the tower that doesn't require a variance or special exceptions. She said Technical Bulletin 14 gives guidance to communities to help create cell phone policies. She cited the Federal Court upheld USCOC NH RSA #2 US Cellular vs. City of Franklin in 2006. It was determined they could not re-place the cell tower because of the esthetics the tower would have on the residential neighborhood and the Town was able to do this because that had proper written back up on the proceedings. M. Colby said she believes the abutters will agree that the tower is not visually pleasing and that the abutters are looking to the Board to exhaust all options on their behalf.

Chair Chivers said that all of the abutters concerns, comments, input and recommendations are incorporated into any decision that Board makes.

Other locations were discussed such as using land the Town owns. R. Howe said it would be a reasonable assumption that AT & T did look at other properties but the applicant has not demonstrated that they have done this. He suggests having AT & T do an exhaustive study. J. Szot was in consensus with R. Howe that the applicant has not shown any evidence or demonstrated they have tried to co-locate or investigated any other properties. J. Szot said the applicant specifically said they picked the site because it had a tower. D. Wilkins said there is nothing in ordinances saying they have to do an exhaustive study. The abutters were in consensus they want this study done.

The Board was in consensus that the applicant should do a further analysis and demonstrates that there are no other locations or cannot co-locate in any other locations that would not require a variance for setbacks for the fall zone. D. Wilkins said that they are willing to do an alternative analysis to look for parcels that would not require area variances and will certify they cannot co-locate.

J. Szot **motion** to continue Case 09-567 until February 24, 2009 so the applicant is given time to exhaust all possibilities of an alternative location. F. Albert **seconded**. **All were in favor**.

Request for re-hearing 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.

The applicant presented information for rehearing. Discussion followed and the Board concluded that the applicant failed to provide additional information that would materially influence the basis for the original decision and failed to demonstrate that all the abutters were given adequate notice. F. Albert felt it was difficult to separate this case from the second case presented.

J. Szot **motion** to deny re-hearing on case 08-565. A. Richter **seconded**. B. Chivers, R. Howe, J. Szot, A. Richter **were in favor**. F. Albert **abstained**.

Other Business

Chair Chivers clarified that elections are held in April. He asked the Board if there were any other business to discuss and hearing none asked for a motion to adjourn.

J. Szot **motioned** to adjourn. R. Howe **seconded**. **All were in favor**.
The meeting was adjourned at 9:30 p.m.

Respectfully submitted,
Sharon Carrier
Recording Secretary