

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF April 28, 2009

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

Absent: Amanda Soares, Alternate

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

Approval of Minutes

R. Howe **motioned** to accept the minutes of February 24, 2009 as presented. F. Albert **seconded**. **All were in favor.**

Case #09-568 Applicant: James Pafford 44 Tower Hill Road, Candia NH 03034; Owner: same, Map 411 Lot 79-2; For a Special Exception under Section XIII 13.04 (E) and Variance under Section XIII 13.04 (E3). To permit construction of an accessory dwelling unit above existing garage larger then 600 sq feet. Applicant James Pafford was present. He presented plans to the Board. Chair Chivers summarized that the applicant wants to construct an accessory dwelling above an existing 34' x 24' garage. J. Pafford said he could not put a false wall in. Heated living space would be 768 sq ft. If the garage were smaller it would meet the requirement but it is not. J. Pafford said in November 2008 Planning Board proposed elderly housing at 800sq ft was not enough living space and he is applying under that justification. He also said that surrounding town accessory dwelling ordinances were substantially larger and none were less then 800 sq ft. He summarized a warrant article would be needed to amend Candia's Zoning Ordinances.

J. Pafford said he would have to prove 5 criteria to be granted the variance. First criteria, was no diminution of property value and he said the addition would add value. Second granting of the variance would be of benefit to the public interest. J. Pafford said there was no indication that any abutters were against or objected and he said taxes would go up with increased value of the property. Third, denial of the variance would result in unnecessary hardship. By imposing him to build 200 sq feet of storage that is not needed constituted hardship. Granting the variance would be substantial justice and he based this on what the Planning Board said in November 2008 that 800' sq ft was not enough living space for elderly. Lastly he said it was not contrary to spirit of ordinance because it is proposed for in-law living space as defined accessory dwelling and for no other use.

Abutter Dino Minuti of 404 Chester Turnpike was present and he said after hearing the case has no objections.

Chair Chivers said the applicant is entitled to have a 600 sq ft accessory dwelling on his property. He suggested using the rest of the space for storage. Szot said the Planning Board meeting talking about 800 sq ft was referring to elderly housing not accessory dwellings or apartments. It was the consensus of the Board that increasing the size is not in the spirit of the ordinances and it is considerably larger then the maximum allowed. R. Howe suggested making the bedroom unheated storage and to use the kitchen area as the bedroom.

J. Szot asked what was unique about this property that makes it different from any other property to constitute hardship. J. Pafford said that his garage is 34' x 24' and he was not aware of any uniqueness law. J. Szot said statutory requirements require something unique in order to

find hardship there must be something different about the property. B. Chivers felt the applicant had an alternative to meet the ordinances.

It was the consensus of the board to close the hearing and deliberate the case.

12.02 C. Variances: The Board of Adjustment shall hear and decide requests for variances from the terms of this Ordinance. No variance may be granted unless ALL of the following criteria are met:

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

The Board affirms there would be no diminution

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

The Board finds in the negative.

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.

The Board finds in the negative. The applicant can reduce the living space to comply with the ordinances.

4. Granting the variance would result in substantial justice.

The Board finds in the negative.

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

The Board finds in the negative. It was noted the public voted the 600 sq ft maximum.

Chair Chivers said the application fails on 4 out of 5 criteria. F. Albert **motioned** to deny the variance. A. Richter **seconded. All in favor.**

Chair Chivers told the applicant that their variance has been denied and that they will receive the Notice of Decision in the mail in a couple of days.

J. Pafford asked how he met 4 out of 5 criteria earlier and now fails 4 criteria out of 5. Chair Chivers said that was his estimation not the Board's.

Continuance 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.

Abutters, Mr. & Mrs. Kevin Deslongchamps 608 North Road, Mr. & Mrs. Daniel A Deslongchamps, Dennis Orzechowski 55 Halls Mill Road, Mr. & Mrs. David Gould of DKAM LLC 81 Halls Mill Road, Mr. & Mrs. Michael and Kristen Davis 59 Halls Mill Road, Ron Severino 49 Thresher Road were present.

Doug Wilkins from Anderson & Kreiger LLP was present for the applicant. Chair Chivers summarized the case. The case was first heard on January 27, 2009 and then continued to February 24, 2009 for the applicant to consider alternative sites. The Board received a letter dated February 17, 2009 requesting a continuance until April 2009. Then the Board received a letter dated April 9, 2009 discussing a list of alternative sites that AT & T identified. On April 9, 2009 the Board received a letter discussing alternative sites that Mr. & Mrs. Deslongchamps submitted. D. Wilkins said he had also sent an engineering report and Geotec report.

D. Wilkins said that a balloon test showing alternative site changes of 150', 125' and 100' was done. A 115' foot tower was proposed that fell in the fall zone of the setbacks on abutting properties. A 100' tower was proposed that would meet the 150% fall zone required by the Town

of Candia's ordinances in the event the variance is denied. D. Wilkins said that effectiveness of the tower would be reduced at 100' but not enough for the applicant not to proceed. Chair Chivers said that the Board did not ask for onsite alternatives. D. Wilkins said he wanted to be thorough.

Chair Chivers confirmed the tower location would be used to correct deficiencies in conjunction with AT & T's network throughout the country. He asked if this was the only place to build a tower. D. Wilkins said the search ring was defined by AT & T engineers to bridge the deficiency. Chair Chivers asked how they decided that 606 North Road with the antenna was the center of the search ring. R. Howe asked why Podunk Road was not considered as it has considerably more height located just outside the circle. D. Wilkins said problems identified with other sites were access issues; constructability issues not radio frequency issues.

J. Szot said the applicant had originally stated in November, 2008 they chose this site because there is an existing tower on it. She clarified it is not a tower but a private residential antenna.

Discussion ensued on how the applicant & their engineers chose 606 North Road site as the center of their search ring saying it appears coincidental. The possibility was discussed of having the tower located close to this area with no need for a variance for the fall zone and in a less densely populated area.

Chair Chivers asked if there was serious effort made to look at other sites. In Mr. & Mrs. Deslongchamp's letter dated 4/13/09, site 616 North Road had a lot with a 345' access tote road to an area that does not need a variance for the fall zone and further away from residences, while 606 North Road access is at approximately 700' per D. Wilkins. He said that they did the research for other potential sites because the Board asked them to, not because it was in the ordinances.

Chair Chivers said the application rests on two premises; one being it is absolutely necessary to build at this location to achieve the desired objective. He asked if there should be a finding to show the need for this service at this location. Secondly, that there is no reduction in property values. Halls Mill development was built with all utilities underground to make the properties more desirable. D. Wilkins said per the appraiser's report submitted there is no reduction in property values. Chair Chivers said information presented for research on the sites in letter dated 4/24/09 were just copies of Google maps and tax maps and was not sufficient. It was the Board's consensus that due diligence was not done.

D. Wilkins said they went by the ordinances first then the FCC regulations. Chair Chivers said per the FCC they need to show a finding for need for this service. Chair Chivers said he concluded the applicant's position is this site and they are willing to reduce the tower height to 100'. The lower height would impact coverage. Chair Chivers asked about additional information that was to be presented tonight noted in the letter dated 4/28/09. A letter was submitted by D. Wilkins to the board from KJK Site Specialist because they could not make the meeting.

Chair Chivers brought up that Candia has 9 Towers and the abutters do not have issues with their placement. They are placed in larger lots not in densely populated areas. Chair Chivers said these towers can be seen but are not in anyone's backyard.

J. Szot suggested having an engineer go over information provided by the applicant to verify their findings to verify that there is no other area to put the tower up. She said the Board has the right to ask for due diligence in placing a tower in the best spot to meet their requirements and for future carriers.

I. Byrd said there were no elevation maps submitted to tell if another location is higher. She said that the Planning Board requires submission on elevations. She felt this was important information that may have shown better locations. D. Wilkins said they are irrelevant.

It was discussed why AT & T would want to give cell coverage to Hall Mountain and Bear Brook State Park that has very few customers when more coverage is need down near Route 27 where more people live, work and drive.

Chair Chivers opened the floor to the abutters. It was the consensus of the abutters that due diligence was not done. Properties were not fully investigated as alternative sites. Not all parcels were looked at in the search ring. There are larger lots with less impact on abutters. The all agree on a larger tower to hold more carriers then multiple shorter towers.

R. Severino said he was never approached which leads him to believe that due diligence was not done. He has 100 acres within the search ring that do not require a variance for the fall zone. R. Severino suggested gathering different carrier's information and over lay the circles and find a common search ring to help reduce the number of towers. The Board was in agreement. He said Candia is sparsely populated and a tower does not need to be near a subdivision.

Dennis Orzechowski, 55 Halls Mill Road said that he bought the lot at Halls Mill subdivision with the underground utilities to build his house. Had he known that a large commercial tower would be going in, he would have bought elsewhere. He said the balloon study was not complete and did not show that it can be seen from all the lots in the subdivision clearly and up-close. He agreed coverage is needed on Route 27. He questioned if there was an equivalent site available to provide coverage.

Mr. Deslongchamps was very concerned with the tower 200' from his property and agreed that alternative sites need to be further investigated. Mr. Deslongchamps said that one alternative site submitted has a 365' tote road and wetlands are not an issue and has enough acreage and would not be in anyone's backyard. Mrs. Deslongchamps said she did not receive any information regarding the balloon test done on her property. She presented pictures to the Board. The existing antenna is significantly taller then any of the 3 balloons. She was told by the people doing the study they put the balloons up 16' further back then the actual site but at the same elevation. J. Szot said there was a large disparity of height in pictures.

Chair Chivers asked the applicant if there is anything that they can do to satisfy the concerns that the abutters and the Board have. D. Wilkins said they have investigated and found 606 North Road as the superior site. He said the applicant has already gone above and beyond what the ordinances require and should be granted a special exception at the alternative 100' tower height. It was discussed that if a 100' tower was approved that would open the door for other 100' towers. F. Albert said voting on 100' tower would not be doing the Town justice and that due diligence is required on the Town's part. He suggested a continuance and to ask the applicant to investigate other sites more thoroughly. Chair Chivers said the ordinances also contemplate the rights of the abutters.

Chair Chivers said that before a special exception can be granted the application must meet all criteria in Section 13.02. D. Wilkins said they have provided reports etc. saying they meet all of the criteria. Chair Chivers asked the applicant if they are willing to do more investigation. D. Wilkins was clear that their position stands on this site and additional effort will not provide anything.

Chair Chivers suggesting corroborate every assertion the applicant has made including no reduction in value of surrounding properties. D. Wilkins said they supplied the report and met the burden. Chair Chivers said they have the authority to independently test assertions made by the applicant.

D. Wilkins asked what part of the ordinances allows the Board to do this. J. Szot said that Town Council has advised Candia that they have the right to do this.

It was the consensus of the Board to continue the meeting to consult with Town Council and verify assertions and possibly hire appraisers to assess property value with tower views. Next scheduled Zoning Board meeting is 5/26/09.

Chair Chivers asked the applicant to go back and look at these other sites with greater scrutiny and come back with reasons why they are not feasible. D. Wilkins said he will bring all this information back to AT & T and asserts he feels the applicant has gone beyond what the ordinances require. He said that the applicant will send the Board a letter on their position in advance of the May meeting.

There was a discussion of having a study done to corroborate the applicant's information and studies. R. Howe said that the Board may need more time. R. Severino said a study of the applicant's assertions is subjective could escalate in costs and will be longer than 30 days. He suggested bringing back AT & T radio frequency people. D. Wilkins said he would come to the May meeting. The Board will let him know if the Town needs more time.

J. Szot **motioned** to continue case 09-567 until May 26, 2009, after consulting with our attorney, appoint outside consultants to corroborate information received from applicant including appraisers at applicant's cost. D. Wilkins went on record the applicant reserves his rights. F. Albert **seconded**. Discussion ensued. J. Szot **aye**, R. Howe, F. Albert, B. Chivers, A. Richter **nay**. **Motion failed 4-1**.

F. Albert **motioned** to deliberate case 09-567 at the 100' tower height for a special exception. **Motion fails** on lack of a second.

A. Richter **motioned** to continue case 09-567 until 5/26/09 for the applicant to come back with further investigation on alternative off sites locations. R. Howe **seconded**. **All were in favor**.

Other Business

Nomination of replacement of Arlene Richter

Chair Chivers commended Arlene Richter for her service of 32 years on the Board. Thank you for a job well done. Ingrid Byrd alternate to the ZBA has expressed interest in filling the vacancy.

J. Szot **motioned** Chair Chivers to write a letter to Board of Selectmen to approve and recommend Ingrid Byrd to fill "Sis" Arlene Richter's vacancy. A. Richter **seconded**. **All were in favor**.

Election of the Board Officers

A. Richter **motioned** to nominate B. Chivers as Chairman for term 2009-2010. R. Howe **seconded**. **All were in favor**.

J. Szot **motioned** to nominate R. Howe as Vice Chairman for term 2009-2010. R. Howe declined the nomination.

B. Chivers **motioned** to nominate Frank Albert as Vice Chairman for term 2009-2010. A. Richter **seconded**. **All were in favor**.

May 26, 2009 is the next scheduled Zoning Board of Adjustment meeting.

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

The meeting was adjourned at 9:30 p.m.

Respectfully submitted
Sharon Carrier
Recording Secretary