

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF May 26, 2009

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

Absent:

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

It was announced this was Arlene Richter's last meeting. Arlene "Sis" Richter has been with the ZBA for 33 year and has been a wonderful asset to the Board. At the same time she was school treasurer for 28 years and hot lunch worker for 16 years. She will be greatly missed. She was presented with a gift certificate to Pasquale's Ristorante and flowers in appreciation for all of her contribution. Thank you "Sis".

Approval of Minutes

R. Howe **motioned** to accept the minutes of April 28, 2009 as presented. A. Richter **seconded**. **All were in favor.**

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.

D. Wilkins from Anderson & Kreiger LLP was present for the applicant along with Kenneth J Kozyra and Jacqui Swenson from KJK Wireless. 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 case was continued at the request of the applicant until April 2009. At the April 28, 2009 meeting the case was continued and the applicant was asked to go back and exhaust the possibility of other sites.

D. Wilkins questioned the authority of the Board to have the applicant pay for the study at the April 28, 2009 meeting. The board at the time did not demand that applicant pay for the study and sought advice from counsel. Chair Chivers said the Town has the implicit right, obligation and duty to the citizens of Candia to verify information presented. D. Wilkins has been contacted by the Town Attorney and has agreed to pay for these studies.

Discussion ensued. The applicant said other sites were not ruled out due to radio frequency and that very few sites were rejected due to radio frequency issues. D. Wilkins said that a Radio frequency study is not necessary since they are not refuting that other sites would work. He said they found the site proposed to be superior and will continue with this site and basing it on the antenna that exists on the site.

Chivers said the Board questioned the search ring because it has a large impact on a subdivision and now hearing that the search ring covers a larger area, he questioned why they

could not choose another site. D. Wilkins said their position is that they want to continue with this site.

R. Howe asked if this location would work for other carriers. J. Szot said the applicant had originally stated in November, 2008 they chose the site because there is an existing tower on it. She clarified it is not a tower but a private residential antenna. She said she was present when this was legalized and this location was denied a commercial tower. J. Szot said this clouds the issue that this is an existing tower. She questioned exactly what height they wanted as they proposed 180', 150', 115' and if turned down for a variance would settle for a 100' tower so there would only be a special exception. D. Wilkins said Candia's Master Plan said the antenna was a tower. J. Szot said the antenna was misrepresented as a tower and the Master Plan will be updated.

Real estate value was discussed. It was discussed that a view of a tower is different than having a tower 150' from your house and there are no other properties in town to do comparables.

Kenneth Kozyra from KJK Wireless Site Acquisition Consultant said that they cannot tell the Board that this location is the end all. Towers are often built then others co-locate but there are no guarantees others will want to use the facility. He said that a 100' tower is less desirable and do not expect anyone would co-locate. It is conceivable that someone could come along put up another 100' tower but not certain that Candia wants this. It was discussed that a 180' tower located someplace else, with room for other carriers would be better.

Chair Chivers asked if the Board would like to hire a radio frequency engineer to verify and dismiss other locations as being unacceptable. He suggested two radio frequency engineers Ivan Pagcik or Mark Hutchins and then asked for a motion.

F. Albert **motioned** to hire Ivan Pagcik. R. Howe **seconded**. R. Howe asked what exactly is the Board asking the applicant to provide for information. Technical information is what will be provided not site information. J. Szot said maybe we need someone different who specializes in site location as well. D. Wilkins said there is no debate that other sites would meet their RF requirements. Chair Chivers said the applicant has conceded that their search ring is fluid and that there are other alternative sites available. It was the consensus of the Board to not request this study. **Motion withdrawn.**

Chair Chivers asked the Board if they would like to hire a real estate appraiser. There was discussion that there are no other properties in Candia for comparables and that the person they hire would have to look statewide even region wide. Chair Chivers asked if Mike Sherlock would be acceptable or Joe Fremo who was recommended by Mike Sherlock and is less expensive. The applicant disclosed that they have worked in the past with Joe Fremo. Mr. Kevin Deslongchamps, an abutter felt this was a conflict of interest.

F. Albert **Motioned** to have a real estate analysis done with real life examples in other communities in NH or neighboring states using Joe Fremo. R. Howe **seconded**. **All were in favor.**

D. Wilkins said for the record that in the spirit of cooperation they are agreeing to pay for the study and are in no way acknowledging any relevance to what the town is asking this person to do. Chair Chivers said they will contact the real estate appraiser and have them provide an estimate for the analysis.

Chair Chivers asked the applicant to mark out the compound so the Joe Fremo can have a visual. J. Szot feels the Town could find a better parcel that would be in the best interest of the Town of Candia.

It was the consensus of the Board to continue Case 09-567 until June 23, 2009.

Case 09-570 Applicant: Mr. Steven Abelson 177 South Road, Candia, NH 03034; Owner: same; Map 410-89; For a Variance under Section 6.02: To Construct a 14' x 20' shed within the minimum setbacks.

The applicant Steven Abelson was present. Abutters were notified and none were present. He explained he wanted to construct a shed to house his equipment and has no other place to put it. Dennis Ducharme, an abutter emailed the Town of Candia stating he had walked the property and was shown the proposed location of the shed and had no objection to the variance being granted. Chair Chivers read the email to the Board. There were no other issues on the lot. It was the consensus of the Board that he had no other alternative to place the shed. Where the shed is to be located is 100' from the neighbor's house and is obscured by trees.

It was the consensus of the board to close the hearing and deliberate case 09-570.

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 positive.

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 positive.

4. Granting the variance would result in substantial justice.

The Board finds in the positive.

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

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

J. Szot **motioned** to grant the approval to construct the 14' x 20' shed within the setbacks. F. Albert **seconded**. **All were in favor.**

Case 09-571 Applicant: Mr. Richard Fitts Sr. 23 Main Street, Candia NH 03034; Owner: Irene Dean 23 Main Street, Map 409-91; For a Variance under Section 6.02: To construct a 12 x 20 utility storage shed and to legitimize the location of an existing greenhouse both located within the front setbacks.

Richard Fitts was present. Abutter Stavros Soulios 3 Main Street was present. He said he had no issues with the shed location. Chair Chivers said the applicant would like him to present the case. He said that the applicant first wanted a variance to legitimize a greenhouse structure within the front setbacks. The greenhouse is located 68' from the center of the road. At the time he built the greenhouse he was told by a Town Official he had to be 50' from the center of the road. Later he was told the greenhouse had to be 75' from the center line.

Mr. Fitts continued and said he also wants to place a 12' x 20' shed where he originally had one. When he had constructed the shed originally he was told it had to be setback 50' from the centerline so he placed it at 59'. He was later told to remove the shed. He would like to reuse the gravel bank foundation. A. Richter asked what the dimensions were from the house to the road. Mr. Fitts was not sure. She said that the shed cannot be placed any closer to the road than the existing house. The house is in violation but is under a grandfather clause. A. Richter asked how much closer to the road is the proposed shed than the front porch. Mr. Fitts was not sure of the exact footage. He said he would like to have the shed in the same location near his driveway for convenience. There was discussion to place the shed 16' further back or reuse location where the other greenhouse is coming down. J. Szot said they have granted similar requests as long as the structure is no closer than the existing house.

F. Albert asked if green houses are considered a structure. R. Howe said they are considered a structure and according to the IRS a greenhouse is a depreciable piece of equipment and according to the State of NH and agriculture laws it is part of a working farm.

It was the consensus of the board to close the hearing and deliberate case 09-571.

J. Szot **motioned** to grant a variance to legitimize an existing greenhouse per the law of equitable waiver of dimension requirements in that errors were made when the original building was done. F. Albert **seconded. All were in favor.**

J. Szot **motioned** to deny the variance for construction of the 12' x 20' shed within setbacks as it can be placed to meet the ordinances requirements. Discussion ensued. Chair Chivers asked for a second on the motion and hearing none said the **motion fails** for lack of second.

F. Albert **motioned** to approve the construction of the 12' x 20' shed within the setbacks. B. Chivers **seconded** followed by discussion. J. Szot said this would set a precedent if approved. Chair Chivers said the applicant was originally told 50' from the center of the road. Mr. Fitts said that he was told by the Building Inspector that it is 75' from the center line of the road. J. Szot said that to be in compliance he needs to move the shed back 18'. J. Szot said she cannot make an honest interpretation without the setback dimensions of the house. F. Albert voted yes. J. Szot, B. Chivers and A. Richter voted no, R. Howe abstained. **Motion denied (1-3).**

Case 09-569 Applicant: Mr. Carleton A. Robie 459 High Street, Candia NH 03034; Owner: same, Map 405 Lot 70-2; For a Special Exception under Section 5.02d-1: To construct a 180 ft wireless communication tower.

Applicant Carleton Robie was present along with Francis D Parisi Esq. of Parisi Law Associates, P.C. representing Tower Resources Management Inc. Abutters were notified and none were present. Chair Chivers asked if the applicant would object to I. Byrd sitting on the board in the event the hearing is continued. She was asked to sit with the Board but cannot vote. The applicant said he did not object.

F. Parisi handed out drawings and gave a detailed presentation. Tower Resource Management is not a telecommunication company but a company that works with cities and towns and different telecommunication companies to find appropriate sites to site telecommunication facilities. Over the last year they have approached every town in NH and are working with 25 different towns to site telecommunication facilities. Due diligence is done to find the best location using a variety of different perspectives. They first look at what exists for towers in the town and surrounding towns and what coverage is missing. A gap on North Road and High Street toward Hooksett was found to exist. Next they look for sites with a willing landlord and for constructability with reasonable proximity to public road and utilities. The site must meet all setbacks per towns' ordinances and satisfy the needs of various telecommunication companies. Over past years F. Parisi said they have learned that towns do not want a lot of towers so his company finds what works best for both the town and telecommunication companies. The best site for radio communications might not be the best site from the Town's perspective so they look for a compromise.

F. Parisi said the Federal Telecommunication Act states that a town cannot say no to towers but this means they cannot say no to everything. A Town can say no even if it is the perfect RF location, if there may be a better spot from the town's perspectives and would work for the carrier.

F. Parisi said he feels they have found the best spot that would work for both the Town and telecommunication companies. The location fills the gap from North Road down to High Street into Hooksett and is centrally located for carriers with limited visibility at 1000' from High Street and meets all the objectives. The tower proposed is a 180' mono pole that is more attractive and capable of carrying 5 to 7 different carriers. There will be a 75' x 75' equipment

compound to house all equipment surrounded by fencing. He said they found this site by doing their analysis from the various perspectives.

He feels this site meets everyone's objectives. The tower meets the setbacks at 330' and 360' from side lines and 600' from the rear boundary.

F. Parisi said they are seeking a special exception. They will be utilizing an existing woods road with some grading to make it more passable for larger equipment. All of the details will be brought before the Planning Board when they submit their site plan. He said the search ring provided from AT & T falls in the back part of the property and they are going to put the tower as close as possible. He said they have relationships with all the telecommunication carriers and that carriers prefer locating on an existing site than build their own tower.

Chair Chivers said this puts the board in a difficult situation as there is a case before the board for another tower. Two towers within three quarters of a mile of each other. I. Byrd explained that the Board must treat this separate from other cases as they are different developers and should be treated separately and not be prejudiced. J. Szot said because the applicant is a selectman and should not be treated differently and the case should be heard on its merits. C. Robie said he wants to be treated separately and that he meets all criteria and there are no abutters in conflict.

There was a discussion on building a tower without any carriers aboard yet. F. Albert said that every other tower in Town had a carrier before they were built. I. Byrd said this is no different then a developer building a small mall and renting out when they are finished. F. Parisi said they are confident as a developer that carriers will locate as it is a good location and that when carriers come in to build towers will be asked to look to relocate first. There is no coverage up on High Street towards Hooksett and North Road area. They are proposing a tower that is better for the Town and telecommunication carriers. F. Parisi said AT & T was approached and they are on a path they want to carry until the end but he is confident that if this tower is built that they will relocate to our tower.

It was the consensus of the board to close the hearing and deliberate case 09-569.

Section 13.02: Special Exception Standards *Special exceptions shall meet the following standards:*

1. *Standards provided by this Ordinance for the particular use permitted by Special Exception;*
The Zoning Board of Adjustment concurs.

2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*

The Board finds that there is no hazard.

3. *No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas. Access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.*

The Board finds no detriment.

4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*

The Board finds no safety hazard.

5. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*

The Board finds no excessive demand.

6. *No significant increase of storm water runoff onto adjacent property or streets.*

The Board finds no increase.

Applicant has met all the special exception criteria. The Board has no further questions.

J. Szot **motioned** to approve special exception to construct a 180' monopole wireless communication tower at 459 High Street Map404 Lot 70-2 with the following conditions. 1. The tower shall be a monopole design no higher than 180' AGL. 2. The tower shall be no closer than 270' from any property boundary. 3. All supporting equipment and structures shall be located within a 75' x 75' fenced compound. A. Richter **seconded**. R. Howe, B. Chivers, A. Richter, J. Szot were in favor. F. Albert opposed. **Motion carries (4-1)**.

Other Business

June 23, 2009 is the next scheduled Zoning Board of Adjustment meeting.

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

Respectfully submitted
Sharon Carrier
Recording Secretary