

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF August 25, 2009**

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

**Absent:**

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

**Approval of Minutes**

I. Byrd **motioned** to accept the minutes of July 28, 2009 as presented. R. Howe 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 than 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.**

Applicant Douglas Wilkins, Anderson & Krieger LLP and Jacqui Swenson, K.J. Wireless were present. Abutters, Mr. & Mrs. Kevin Deslongchamps 608 North Road, Mr. & Mrs. Daniel A Deslongchamps 584 North Road, Dennis Orzechowski 55 Halls Mill Road, Mr. & Mrs. Mike Davis 59 Halls Mill Road and Ron Severino were present.

Chair Chivers said the Board did a site walk on August 11<sup>th</sup> at 608 North Road. He said after the site walk he sent a letter dated August 12, 2009 to the Mr. & Mrs. Kevin Deslongchamps saying if they wanted to submit their own real estate impact study to be considered, they had to submit before today. The Deslongchamps said they did not have enough time to complete a study.

Chair Chivers asked if the applicant wanted to present their summary first.

D. Wilkins presented his summary saying it was a 2 part application for a special exception and a variance. He started with the special exception under Section 5.02 d-1 Essential Services. He said the applicant had studies done that included noise, electromagnet transmissions, generators, property values and said the studies met all the criteria. He said he had no additional information to present. He felt that they have met all the criteria for the special exception.

D. Wilkins said under the Part Two for the variance he felt they also met the criteria under Section 12.02c. He explained each criterion, citing reports done. He explained how they initially applied for a 180’ tower and then offered alternates of 150’, 115’ and 100’. A 100’ tower would make the 150% fall requirement but commented it did impact the service but not enough not to go forward. He urged the Board to consider the 150’ or 180’ tower as they have the benefit to hold more carriers which would mean less towers would be needed in Candia.

D. Wilkins urged the Board to grant the variance and the special exception based on the facts and evidence provided.

Chair Chivers asked if there were any questions. The following abutters had comments: Mr. Orzechowski said he would not have sufficient natural buffer and reiterated that the tower is within 150’ of his property line. Mr. & Mrs. Kevin Deslongchamps said they were also within the fall zone set back. They agreed the natural buffer is not sufficient and could be removed by the owner at any time. D. Wilkins suggested adding this into the language as a condition.

J. Szot said that from the plans shown, Mr. Orzechowski would have approximately a 50’ buffer and the Deslongchamps maybe 100’ buffer. The 75’ x 75’ compound and the cleared area around it at

approximately 60' would not leave a sufficient buffer because the lot is only 300' wide. J. Szot cited the site plan for Danais that included a 100' vegetation buffer from the closest neighbor. This abutter is still visible now in the summer.

Mr. Orzechowski read into record from the July 28, 2009 ZBA minutes, "*D. Wilkins did not refute that alternatives were not ruled out because of radio frequency. It was reiterated that other sites meet their objectives that would less affect another neighborhood where fall zones do not fall on other properties.*"

R. Severino said he has not seen the Fremeau Appraisal Report that concluded there would be no diminution of property value. He said the appraisal people talked to him at length and he doesn't know how they came up with their conclusion he is hearing tonight. He said unless all the properties in the area are sold before and after a cell tower it would be hard to conclude what they say. He said a cell tower would substantially reduce his chances of selling his property.

Mrs. Kevin Deslongchamps said that a cell tower would affect anyone trying to get a FHA loan or a reverse FHA loan. They do not allow loans on properties adjacent to cell towers. She feels that this would diminish the value of surrounding homes and properties.

A. Soares said she found it hard to believe they could claim hardship if there was never a tower in the first place. Mrs. Kevin Deslongchamps currently has AT & T coverage at 608 North Road.

M. Davis said the ordinance of 150% fall zone is in place and should be followed. He talked about the additional potential carriers that were not part of the applicant's noise study etc. He felt it was not advisable to go from a residential use to commercial because of the impact on the neighborhood. He said from previous ZBA meetings other applicants were denied variances because of ordinances in place and that this is no different.

R. Severino asked the Board when they deliberate that they take into account the planning for Town. He feels this is not a good solution for Candia. He said recently a cell tower was approved close to this area and suggested the applicant could co-locate which would help keep the number of towers down. A. Soares agreed with R. Severino and asked the applicant if they would consider co-locating to this tower which would be better solution for the Town of Candia.

I. Byrd said a tower is being considered in Hooksett that is approximately 4 miles from the proposed tower. D. Wilkins said he was not involved with the cell tower in Hooksett but said the 2 towers would work together.

Chair Chivers asked what the distance from the base of the tower to Mr. Orzechowski's property line was. Tax maps and plans were reviewed. D. Wilkins said it was 205' to the Deslongchamps property line and approximately 170' to Mr. Orzechowski's property line.

Chair Chivers asked D. Wilkins if he had any further information. D. Wilkins said he had comments to issues that were brought up tonight. He said time on the market is not a criteria and noise study included two carriers and any additional carriers that want to co-locate would have to submit a plan and their noise studies.

Public Hearing Closed 8:00pm

Chair Chivers said seeing there were no more public comments closed the public hearing to deliberate the case. He said they would discuss the variance first then the special exception. Once this was done he explained, the Board would appoint 2 members to draft the NOD which would be given to Town Counsel for review then the final draft of the NOD would be formally voted on at the September 22, 2009 ZBA meeting.

Chair Chivers started the discussion with the analysis of the Fremeau Appraisal Study. He said the study focused on properties around 5 towers. Information from the study was compiled and it showed that the properties sold for 87.40% of their equalized valuation with only one property over its valuation. It also took an area aggregate of an additional 520 days to sell the properties as opposed to average days. The report also stated that 9 out of 10 potential buyers did not want to even look at a property near a cell tower. He disagreed with the conclusion that Fremeau Appraisal reached based on information offered as evidence in the report they provided. He felt their conclusion was not supported by the data they offered. Chair Chivers said the report did not take into account properties that are still

on the market and have not sold due to their proximity to a cell tower. Chair Chivers appreciates the amount of work in the report but disagree with conclusion and that the applicant failed this criteria.

Chair Chivers wanted in record that the counsel continues to refer to the antenna at 606 North road as a cell tower and it is not. NOD dated 4/25/1990 allowed residential accessory personal use of the antenna only. Chair Chivers said the Master Plan that D. Wilkins refers to shows the antenna as a cell tower which is either a typo or put in by error and it is not a cell tower per NOD dated 4/25/1990.

Variance under Section 6.01G. Tower Setbacks.

Chair Chivers said the Board would read the Variance criteria under Section 12.02 C one at time to discuss and comment on.

J. Szot read: *“Section 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.”*

R. Howe said the diminution of the value of surrounding property would be suffered and that if given a choice, buyers would purchase without a view. B. Chivers, I. Byrd, F. Albert, J. Szot agreed that property value would be suffered. J. Szot said she agreed with B. Chivers that the results of the study and conclusion do not agree.

I. Byrd read criteria #2: *“2. Granting of the variance would be of benefit to the public interest.”* J. Szot agreed that it would be a benefit. F. Albert agreed with J. Szot. I. Byrd did not agree. She felt only some of the public would benefit and that there were other areas that would benefit the public more. R. Howe and B. Chivers agreed with I. Byrd.

R. Howe read criteria #3: *“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.”* F. Albert said there is no unnecessary hardship. I. Byrd and R. Howe were in agreement.

F. Albert read criteria #4: *“4. Granting the variance would result in substantial justice.”* F. Albert said that there would not be substantial justice. J. Szot, I. Byrd, R. Howe and B. Chivers agreed with F. Albert.

B. Chivers read criteria #5: *“5. The use will not be contrary to the spirit of the Ordinance.”* B. Chivers said it was contrary to the spirit of the ordinance, regarding orderly growth of the town citing Section 1.02. J. Szot said it could be dangerous to be within the fall zones citing the tower would be over the height limit and possible ice build up. F. Albert said a 180’ tower would be contrary to the spirit. R. Howe and I. Byrd agreed it was contrary. R. Howe said the ordinances were written by the Town prior to the FCC regulations.

It was the consensus of the Board that the variance for 180’ cell tower should be denied.

Special Exception 5.02 D Communications and Utilities d-1 Essential Services

Chair Chivers explained the Board would read the Special Exception Standards Section 13.02 criteria one at time to discuss and comment on.

I. Byrd read #1: *“Section 13.02: Special Exception Standards shall meet the following standards: 1. Standards provided by this Ordinance for the particular use permitted by Special Exception;”* B. Chivers said they met the Performance Standards under Section 5.01c Performance Requirements for Industrial Uses and Utilities. R. Howe, I. Byrd and F. Albert were in agreement with B. Chivers the applicant met criteria for Section 5.01c.

I. Byrd read #2: *“2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;”* F. Albert said the applicant had met the criteria. R. Howe, J. Szot, B. Chivers and I. Byrd agreed the applicant met the criteria.

B. Chivers read #3: *“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;”* B. Chivers said the applicant fails this criteria. The scale is inconsistent with the residential neighborhood. He said there is no comparing the

replacement of an 18' antenna with a 12' x 12' tripod. He said this is clearly a detrimental change to the neighborhood. R. Howe and I. Byrd were in agreement. F. Albert disagreed as you would not see a 100' tower. J. Szot agreed with B. Chivers that there would be changes in the neighborhood. She also said the applicant would fail with the new noise statutes. F. Albert disagreed saying you wouldn't see a 100' tower. It was the consensus of the Board the applicant failed the criteria.

R. Howe read #4: "*No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity;*" R. Howe, B. Chivers, J. Szot and F. Albert agreed the applicant met the criteria. I. Byrd disagreed as everything would increase when additional tenants are added. The consensus of the Board is the applicant met the criteria.

B. Chivers read #5: "*5. No Excessive demand on municipal services, including, but not limited to water, Sewer, waste disposal, police and fire protection, and schools;*" The Board was in consensus that the applicant met this criteria. There would be no excessive demands on municipal services.

B. Chivers read #6: "*6. No significant increase of storm water runoff onto adjacent properties or streets.*" J. Szot said from plans submitted there is potential run off to adjacent properties. She said the contour lines showed a steep incline. She also noted that a pond is within 60' of the area to be disturbed.

Chair Chivers asked for the Board's consensus on the special exception. R. Howe, I. Byrd, B. Chivers and J. Szot were in agreement to deny the special exception. F. Albert said he would approve the special exception. The concluding consensus was the applicant failed the special exception 5.02d.

#### Conclusion

It was the consensus of the Board that the applicant failed both the application for the variance and the special exception. Chair Chivers said that the Board will draft the NOD and have it reviewed by counsel and will present the final draft NOD at the September 22, 2009 ZBA meeting. The Board will then formally vote on the Notice of Decision.

J. Szot and I. Byrd volunteered and were appointed to draft the NOD to be sent to Town Counsel & the Board for review. Abutter Mrs. Kevin Deslongchamps asked if they could receive a copy. A final draft of the NOD will be mailed to abutters that request a copy.

Mrs. Kevin Deslongchamps asked what the procedure would be if the applicant was granted the variance and special exception. Chair Chivers explained that they could request a re-hearing and be granted a re-hearing if they presented new information. After the re-hearing the aggrieved party could then go to the Superior Court.

Chair Chivers thanked the Board for their patience and calm order as they concluded this matter. Boyd Chivers was commended for the way he handled the meeting.

#### Other Business

##### Municipal Law Lectures & Planning & Zoning Conference, Loon Mountain, October 2009

Upcoming Law Lectures series in October were discussed as well as the Planning & Zoning Conference in October at Loon Mountain. Chair Chivers asked the Board members to contact the secretary to sign up for classes they want to take.

September 22, 2009 is the next scheduled Zoning Board of Adjustment meeting.

F. Albert **motioned** to adjourn at 8:40 p.m. R. Howe **seconded**. **All were in favor.**

Respectfully submitted  
Sharon Carrier  
Recording Secretary