

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF November 23, 2010**

**Present:** Boyd Chivers, Chairman; Judith Szot, Vice Chairman; Frank Albert, Ron Howe; Ingrid Byrd; Amanda Soares, Alt; Carlton Robie, Board of Selectmen; Dick Snow, Board of Selectmen

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

**Approval of September 28, 2010 Minutes**

**J. Szot motioned** to accept the minutes of September 28, 2010 as amended. I. Byrd **seconded. All were in favor.** The following amendments were made:

- Page 3, 1<sup>st</sup> paragraph, 2<sup>nd</sup> line change “like” to “liked”, 2<sup>nd</sup> paragraph last line change “sill” to “still”.

Chair Chivers explained following re-hearings are being heard in a public meeting where no input from abutters or the applicant is allowed.

**Case 09-567 Request for Rehearing & 30 Day Extension Application:** against NOD dated 9/28/2010 from abutter Kevin D. Deslongchamps 608 North Road, Candia, NH 03034. **Original 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 V 5.02(D, d-2), Section XII 12.02C and Section VI 6.01(G) To permit a wireless communication facility in a Residential ® District.

Abutters, Mr. & Mrs. Kevin Deslongchamps, 608 North Road Candia NH 03034 and Dennis Orzechowski, 37 Arthur Ave, Manchester NH 03104 were present. Chair Chivers said Kevin Deslongchamps had sent a letter dated October 27, 2010. All the Board members were given a copy in their folder. Chair Chivers passed out the response the Board had just received from Town Attorney and asked the Board to review the paperwork.

Chair Chivers said the purpose of a rehearing is for the Board to correct any mistakes they may have made and to hear any new evidence that was not previously considered or may not have been available at the time of the hearing or evidence that the applicant or abutters weren’t aware was relevant at the time of the hearing.

Chair Chivers asked if the Board had made a legal error as it affects Kevin Deslongchamps and secondly has Kevin Deslongchamps presented any new information that has not been previously considered by the Board. J. Szot said she did not see any new information. She said what Kevin Deslongchamps had presented refers to the existing antenna that has a legal variance from the ZBA and therefore protected. R. Howe agrees there was no new information submitted and continued the letter does not effect the decision he made. F. Albert agrees. Chair Chivers said Kevin Deslongchamps has failed to provide any new information relevant to the case and the Board has identified no error that has been made. He asked for a motion to deny Mr. Kevin Deslongchamps a rehearing.

I. Byrd **motioned** to deny the re-hearing application based on lack of new information provided, information provided pertained to the existing 100’ antenna. F. Albert **seconded. All were in favor.** By unanimous vote by the Board Mr. Kevin Deslongchamps motion for rehearing has been denied.

**Case 09-567 Request for Protective Rehearing RSA 677:2 Application:** against NOD dated 9/28/2010 from 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 **Original 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 V 5.02(D, d-2), Section XII 12.02C and Section VI 6.01(G) To permit a wireless communication facility in a Residential ® District.

Ann Robbins from Anderson & Kreiger LLP was present for the applicant and she asked the Board if she could record the portion of the meeting pertaining to AT & T. She placed a recorder on the table when the Board heard the request for rehearing for AT & T.

Chair Chivers explained the Board had approved a tower not to exceed 100’ in height subject to certain conditions. One of the conditions was the use of batteries as a back up power source instead of a standby generator. The Board came to that through representations made to the court in June 2010 wherein counsel for AT & T indicated that there was no need for back up power because they had batteries for back up power. Turns out either the Board misinterpreted that or it was misrepresented not deliberately, but technically because it is not feasible according to AT & T to have a cell tower that relies only on batteries as a back up power supply. AT & T said they have to have a generator because if you have a power failure the batteries will eventually wear down and they need a source to charge them.

Chair Chivers said after the Board approved the 100’ cell tower with conditions, AT & T went back to Federal Court saying the Town of Candia was unreasonable, apposing conditions that they cannot live with and they asked the Federal Court for a 150’ cell tower instead of 100’ cell tower and to be able to use a generator. Chair Chivers said Town Counsel asked if there was any room for negotiations. Chair Chivers said it was reasonable to consider a back up generator and he recommends to the Board to look at this request to use a back up generator. He said we do not want to appear inflexible or unyielding to the court and wants the decision to be reasonable. Chair Chivers said he did not believe the Board would be flexible with respect to request for 150’ tower.

Chair Chivers said in AT & T’s motion for rehearing they cite reasons why we denied it and they want to revisit the use of the back up generator and the tower height. He said the Board has the ability to split their request and grant a rehearing on each issue. Chair Chivers said if the Board is amendable, to modify the conditions originally attached to the tower and allow them a back up generator it would be appropriate to grant a rehearing with respect to the generator issue alone. He said the rehearing could then be scheduled next month where they can come back and present their case. Then the Board can vote to modify the conditions.

R. Howe said good diesel generators that are in an enclosure are not that noisy in fact they create less noise than an eight horse power Briggs Stratton generator and if the Board stays with a 100’ cell tower where no one else could collocate therefore there would be no need for additional generators. He was agreeable to reconsider the generator request. He said AT & T clearly said they could live with a 100’ cell tower and the Board granted it so he would not reconsider a rehearing on the height of the tower.

I. Byrd said to modify the decision to include a generator makes sense. She supports the rehearing on the generator issue. She said she had not heard any reason why the Board should reopen the height issue.

F. Albert is in agreement and reasonable to reconsider the generator issue. He said several times AT & T said they could live with a 100’ cell tower so he is not willing at this time to reconsider the height.

J. Szot agrees with the Board that the generator makes sense. In order for the Board to reconsider the height AT & T would have to show hardship and no hardship has been shown and by their own statements they could have put the cell tower somewhere else. In order to change the height AT & T would have to have a hardship. She sees no reason to reconsider a 150’ cell

tower and said the Board would have to grant a variance for a 150' cell tower and there is no hardship.

Chair Chivers said he was in concurrence with what was said by the Board and feels it is not unreasonable to request a back up generator. Most people have them in their houses. To expect a cell tower cite to exist without a back up generator is unreasonable. He said in regards to the tower height AT & T has said previously proposed and said they could live with a 100' cell tower which was granted and should be sufficient.

R. Howe suggested when they discuss generators they put conditions for a generator with the lowest decibels which he feels is reasonable. Chair Chivers said this could be a condition if the rehearing is granted. Chair Chivers asked for a motion with respect to AT & T's protective request for rehearing under RSA 677.

J. Szot **motioned** to grant a re-hearing on the use of the generator and deny the re-hearing on the height issue. R. Howe **seconded. All were in favor.** Let the record show the decision is unanimous to grant a rehearing to look at the generator issue but not the height of the tower. Chair Chivers said the rehearing will be scheduled for December 28, 2010. AT & T will pay the cost of re-noticing and public noticing in the Hooksett Banner for the rehearing.

J. Szot **motioned** to close public meeting 7:20pm and open the public hearing. I. Byrd **seconded. All were in favor.**

**Case 10-583** Applicant: Craig B. St. Peter, Wildcat Land Development Services LLC, 43 Lawson Farm Road, Londonderry NH 03053; Owner: CCS Realty Trust LLC, 424 Old Candia Road, Candia NH 03034; Map 413 Lot 111; For a Special exception under Section 8.02 Signs Not Advertising Use Of Lot On Which Located, and a Special Exception under Section 8.06 Size Restrictions – Commercial, Light Industrial: to permit construction of a commercial sign measuring 20'X30' (600 sf) mounted on a frame not exceeding 50' in height from ground level, off site in the Light Industrial 2 Zone. Applicant Craig St. Peter and Joe Sobol were present. Abutter Lawrence Stacy, 91 Deerfield Road Candia NH 03034 was present and Carman Sarno owner of CCS Realty Trust LLC 424 Old Candia Road Candia NH 03034 was present. Business owners Fletcher Perkins of Ace Hardware 79 Old Candia Road Candia NH 03034, Jeff Kanter of Car World 134 Raymond Road Candia NH 03034 and Steve Cavanaugh of Country Woods Furniture 311 Route 27 Raymond NH 03077 were also present.

Chair Chivers asked if the applicant had a permit from the state for the sign and if the abutters had been notified and the abutters were notified. Chair Chivers asked the applicant to present their case. C. St. Peter and J. Sobol presented plans on an easel and handed out packets of information to the Board. The applicant said the packet passed out is a summary of what was submitted.

Craig St. Peter introduced himself and his partner Joe Sobol and thanked the Board for allowing to make the presentation. He said they have requested two special exceptions for the construction of a sign off site, 50' height from final grade and 600 sq ft in area. The proposed sign is located on Map 413 Lot 111, 424 Old Candia Road and he showed the location on the map presented. The lot abuts the Route 101, the State right of way and Old Candia Road. He said the primary purpose is to provide the traveling public information pertaining to area businesses located in Candia and proximity area of exit 3. He said they have received approval from the State of NH DOT for the construction of the sign. The sign has 4 other slots that other area businesses have expressed interest to advertise on. The sign from ground to top is 50'. Engineering was done for the foundation. The foundation is 13 ft deep. The sign is 30' x 20'.

C. St. Peter said they are seeking at special exception under Section 8.02 construction of off site sign and special exception under Section 8.06 Size Restrictions – Commercial, Light Industrial.

J. Sobol addressed the special exception standards under Section 14.02 one at a time. He said he feels they met the first standard as the sign is allowed by special exception under Section

8.02 & 8.02. He said his response for the second standard was allowing the construction of an offsite sign exceeding 40 sq ft will not create a hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. The sign is in remote commercial area away from other land parcels with the exception of the state land near Route 101. He said their response for the third standard is they are not creating a detriment to property value and agree they are adding value by promoting area business. He pointed out the sign will be in a business district. He said the sign adds value by giving direction to the traveling public on Route 101 welcoming them to Candia and area businesses.

J. Sobol said they are not creating any odor, smoke, gas, dust etc. The sign will be consistent in size height and appearance to other commercial signs visible on Route 101. In the packet presented he said there are pictures at exit 7 that show signs comparable to the sign proposed. The sign proposed has room for other businesses similar to the Market Basket sign. He said they met standard number four and said the sign is only visible to traffic on Route 101 and has been permitted by the NH DOT abides by their safety and design criteria. The NH DOT has jurisdiction involving traffic safety on Route 101. He said under standard number 5 they are not creating any excessive demand on municipal services etc. He said the sign is located on private property abutting Route 101 and privately owned and maintained and therefore will not have excessive demand on municipal services. J. Sobol said under standard number 6 there is no significant increase of storm water runoff onto adjacent property or streets. He said the sign has a limited size foundation and fill that will cover the footing is a permeable fill which is consistent with the existing conditions which will not create any runoff to adjacent property.

J. Sobol said they believe that they have met all the standards for both an offsite sign and a sign exceeding 40 sq ft in a commercial zone. The sign is located in a commercial zone only visible to Route 101. He said there is space on the sign for other area business who have expressed interest in being on the sign. He said the sign is a benefit to the community businesses. 40,000 to 50,000 cars go by every day. A sign giving direction to the traveling public where the businesses are will result in increased job opportunities. He said he recalls Candia tried to attract a supermarket a few years past perhaps if they had exposure on the sign a supermarket may come to Candia.

Chair Chivers asked if the Board had any questions. F. Albert asked about the proposed lighting and closest proximity of an abutter. J. Sobol said the sign is back lit on both sides and will be shut off at 10pm. He said the sign is perpendicular to the highway and any abutting properties would see the side of sign. J. Sobol said he believes there is a residence on Map 410 Lot 149 that is zoned commercial. I. Byrd asked why it would be a two sided sign because west bound traffic would have already passed the exit and going east appears to be too close to Exit 3 and people would drive right by the exit. She said it appears to be a safety issue as people would have to step on their brakes to make the exit. J. Sobol said there is excellent visibility for traffic going east and that traffic would see the sign in plenty of time to be able to read the sign before they get off on Exit 3. J. Sobol said the sign meets the NH DOT safety standards. The permit issued by the State of NH DOT is temporary until the town issues a permit.

Craig St. Peter explained if you are going 70 miles an hour you need 12 feet to switch lanes which is a 70 to 1 ration.  $70 \times 12$  is 840' and you can view the sign in an excess of 1000'. NH DOT said it was a safe transition to cross lanes and make the exit. The applicant said they looked at all places available and they did balloon studies. There were found tree limitations and it was impossible to build anything in the right of way and found no other viable option. He said going westbound a double sided sign is for memory to inform the public so next time they are in the area they will remember.

J. Szot confirmed the sign is facing east and west. She asked if houses on South Road, Brown Road and Fieldstone Lane will see the sign lit up. She said regulations say the light cannot be seen in any residential areas. J. Sobol said they would abide by the regulations

regarding turning off the lights. R. Howe asked if the applicant had inquired of the typical signs the state puts up that advertise gas, hotels and restaurants at each exit. J. Sobol said the State allows signs stating specific gas stations, hotels, restaurants on Route 93 but not on Route 101. The only signs allowed on Route 101 are generic signs that say “gas” or “diesel” with no affiliation to any local business. R. Howe said the Town of Candia does not have a sign of this size and this would be the first of its kind. He said Candia has maintained the country setting and wonders if Candia would want a sign this large.

Chair Chivers asked if anyone in the audience wanted to speak in support of the sign. Steve Cavanaugh owner of Country Woods furniture just over the line of Candia into Raymond said he has been in business for 28 years and wants to stay that way. He said 101 used to go right by the store. Now they spend an upwards to 12% of gross sales to draw customers out to the store. He said the business is not growing as he would like to see to remain viable and he said he questions if long term the community supports having the business in the area. He said they have tried several times to put up signs in different locations.

Jeff Canter owner of Car World said he represented Pasquale as well. He said Pasquale has advertised for years saying he was before Country Wood Furniture. He said if there were a sign people who have heard about Pasquale would be able to find the restaurant easier. He said he has been around since 1978 and he remembers when the highway was closed and business went down.

Mr. Sarno owner of Page Street Leasing said there is a large steel building and trees that would hide the sign and felt the lighting would not be an issue. He said he knows how valuable advertising is to a business. He said having his business on the highway allows people to see his equipment and customers know they are there. He said if his business was not on the highway he wouldn't have the business. He said a sign would help the local businesses.

R. Lazott spoke in support of the sign. He felt it would open the door to businesses to come to Candia. He felt Candia has always had the anti business image and the sign would help by showing Candia is willing to work with businesses. He said if a grocery store came in they would want a large sign as well. He said he would like to see more business in Candia to help the tax base.

A. Soares asked about the blue signs the state puts up. J. Sobol said the State signs are generic and they are not allowed to advertise specifics and they restrict the number of these signs. Chair Chivers asked if they could advertise on the off ramp. C. St. Peter said the state signs on the off ramp say gas, restaurants, and hotels, with no specifics. Other business cannot advertise on the off ramp.

Chair Chivers asked if anyone in the audience wanted to speak in rebuttal of the sign. R. Howe asked if the applicant is going ask for another large sign at the gas station. Craig St. Peter said they have the on-site sign already approved and is per the regulations that will show gas prices. J. Sobol said the only sign on the building itself will say Candia 1<sup>st</sup> Stop Country Store and will be done in a country flair.

Mr. Cavanaugh suggested a directional sign when you get off the exit pointing right to businesses. He said customers getting off still need to know which way to go. I. Byrd asked if he had asked the State for a directional sign and Mr. Cavanaugh replied that he has tried but has been turned down. C. St. Peter said if all the signs point to the right for businesses logically most people will go to the right.

I. Byrd asked who owned the sign. Craig St. Peter said the sign is owned & maintained by Wildcat Land Development LLC and located on commercial property.

Chair Chivers asked if anyone else had any further comments and asked if the applicant had a closing statement. Craig St. Peter said in closing they are seeking approval on the two special exceptions and feel the sign is a benefit to the community. J. Sobol said they feel strongly they met all the criteria of the special exceptions.

Chair Chivers closed the public hearing for the Board to deliberate. The first issue to be decided by the Board is if 8.02 & 8.06 are exclusive of each other. He read into record Section 8.02: Signs not Advertising Use of Lot on Which Located and Section 8.06: Size Restrictions – Commercial, Light Industrial.

J. Szot asked if they need a variance and not a special exception. R. Howe felt they need both. Discussion ensued to consider the size issue under Section 8.06 the sign has to be on the property the business is located. It is an offsite sign which is limited to 2 sq feet. Chair Chivers said he asked the Building Inspector to check for other similar signs in town and there are none. Between 101 and Epping there are no signs this size. Chair Chivers said first part of 8.02 is specific ZBA can grant a special exception for an offsite sign but is limited to conditions. He said in Section 8.06 it refers to size of onsite signs only.

Chair Chivers said he sympathizes with every business owner in Candia and said there are 100 residents living in Candia to every business and the residents live in Candia because it is rural. He said there is hardly anything more inconsistent with rural image of Candia then a 600 sq ft sign. He said to put the sign in perspective it is the size of the Jumbo Tron in NY Times Square this sign measures 8 ft higher then the sign proposed with the same width at 28' x 30'. Chair Chivers felt said if a sign this size would be hard to define the sign to not be in violation of scale of what Candia wants. The applicant showed a picture of the Jumbo Tron.

J. Szot said Section 8.06 refers to onsite signs in commercial zones. R. Howe said when the sign regulations were put in place they did see a need for a sign this large. 101 went through Candia. J. Szot said to change ordinance a variance is required.

R. Howe said it would be appropriate to put a sign like this before the voters next March 2011. Chair Chivers said this would be fair in the event the Board rejects the application as the ordinance is written.

Chair Chivers said the Board has to interpret the ordinances as written. He said under Section 1:02 Purpose *“To provide architectural standards for development or renovation of commercial, industrial, and institutional structures that ensure an esthetically pleasing structure that compliment the traditional New England heritage of Candia.”* He said he cannot see where a 600 sq foot sign is keeping with the purpose of the ordinances.

F. Albert **motioned** to consider the application under Section 8.06. R. Howe **seconded** for discussion. J. Szot said the application cannot be considered under Section 8.06 because the sign is offsite. R. Albert and R. Howe **were in favor** J. Szot, Boyd Chivers, I. Byrd **opposed. Motion fails.**

J. Szot **motioned** to deny application under 8.06 because this section refers to onsite signs and this application is for a sign advertising an offsite business. B. Chives, J. Szot, I. Byrd and R. Howe **were in favor**. F. Albert **opposed. Motion carries.**

Chair Chivers said the application is to be heard under Section 8.02 and in order to be granted the special exception the applicant must meet all the standards.

Chair Chivers read the first standard into record: *“Section 14.02: Special Exception Standards. Special exceptions shall meet the following standards: 1. Standards provided by this Ordinance for the particular use permitted by Special Exception.”* J. Szot said the first standard under Section 8.02 states the sign shall not exceed 2 sq ft. and the word shall means must not exceed 2 sq ft. It was the consensus the applicant fails the first criteria. I. Byrd read; *“2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;”* It was the consensus of the Board that this was not applicable. R. Howe read; *“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;”* F. Albert said he sees no detriment. I. Byrd said glare is another way of voicing light and it is not clear if adjacent properties will see the light from the

sign after dark. R. Howe doesn't believe there will be glare as it is a backlit sign, not sure if any abutters may see the sign. The sign is perpendicular to the highway. Chair Chivers felt the scale was an issue. There was a discussion of the size of the sign proposed. It was the consensus of the Board the applicant fails this criteria. J. Szot read; "4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*" Boyd asked the Board if Mr. Cavanaugh raised a valid point that there may be a safety issue of increase of traffic getting off the highway with no further signs to direct them. I. Byrd said there has been discussion by Board of Selectmen about concerning the safety of the stop sign. J. Szot agrees and has seen traffic go through stop sign. I. Byrd said hopefully there will be an increase in traffic for business. S. Szot said congestion is negative but traffic is wanted for businesses. It was a consensus of the Board there will not be creation of a traffic safety hazard. I. Byrd read; "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 there would not be excessive demands. Chair Chivers read; "6. *No increase in storm water runoff onto adjacent property or streets.*" The Board was in consensus there is no increase in run off.

Chair Chivers said the applicant fails criteria under Section 14.02 -1 & 14.02 -3.

J. Szot **motioned** to deny the special exception under Section 8.02 because it does not meet Section 14.02 - 1 & 14.02 - 3 of the special exception criteria. I. Byrd **seconded**. J. Szot, I. Byrd, B. Chivers, R. Howe **were in favor**. F. Albert **was opposed**. **Motion carried**.

The applicants said they had asked for a variance in the beginning. The Board agreed to allow the applicant to come forward with the variance under Section 8.02 and they would not be charged.

**Other Business**

The next scheduled Zoning Board of Adjustment meeting is December 28, 2010.

R. Howe **motioned** to adjourn at 8:35pm. J. Szot **seconded**. **All were in favor**.

Respectfully submitted  
Sharon Robichaud  
Recording Secretary