



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes March 23, 2010

Board Members

Mark Samsel – Chairman
Dianna Fallon – Vice-Chairman
Tom Murray – Member
Elizabeth Dunn – Member
Heath Partington – Member
Bruce Richardson – Alternate (Excused)

Staff:

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Lot #2-A-76 Case #6-2010 (Continued from February 23, 2010)

Applicant – Cellco Partnership d/b/a Verizon Wireless, John Weaver, Agent
Owner – John & Emilia MacDonnell
Location – 111 North Lowell Road
Zone – Rural

A variance is requested from Section(s) 602.1 of the Zoning Ordinance to permit the construction of a wireless telecommunication tower and support structures.

Mrs. Fallon read the case into the record.

Mrs. Dunn apologized for interrupting but said that the Chairman had mentioned there is a case on the agenda for which there had been a request for a continuance. Mrs. Dunn asked if that case could be opened, find out if there were any abutters in the audience and dispense of that case before getting into Case 6-2010 so that people are not waiting for Case 8-2010.

Mrs. Dunn motioned and Mr. Murray seconded the motion to continue Case #8-2010 to April 13, 2010 as requested by the applicant. **Motion passed 5-0.**

Attorney Thomas Hildreth of McLane Law Firm and a colleague of Attorney John Weaver who is assisting with the case, presented the case on behalf of Verizon Wireless. Attorney Hildreth asked for the recusal of Board Member Heath Partington. Under NH law this is entirely the decision of the member. Attorney Hildreth was requesting Mr. Partington's recusal because



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during Mr. Partington's campaign for a seat on the Zoning Board he voiced his opposition to variances in general and in particular information and belief from people who live in Windham, that there were internet postings attributed to Mr. Partington specifically opposing this project. Mr. Partington said he did not make any statements that would cause him to recuse himself. Mr. Partington went on to say that he is able to be indifferent to the outcome of the case. Mr. Murray asked for a few minutes to read the *motion for recusal* that was submitted by Attorney Hildreth. Mr. Partington said that there was nothing in his campaign regarding use variances in general and never did he try to group the entirety of use variances and never communicated with anyone by email regarding the application. He was clear with everyone that he could not discuss this case or any case. Mr. Murray said that he would like the Board to be polled regarding the recusal request and that he is concerned about a rehearing and legal expenses. Mrs. Fallon said that most of what was submitted is not documented. Mrs. Dunn said that the Board was given this information without any time to read or prepare and it is information based on belief. The Chairman said that he agrees with Mrs. Fallon and Mrs. Dunn and without being a party to those discussions his only concern are items in the paper that may be construed as a challenge. Mr. Murray removed his request to poll the Board.

Attorney Hildreth advised the Board that in addition to Attorney John Weaver, the team includes George Bramley Real Estate Acquisition Consultant, Don Haes Health Physicist and Kevin Mosher Radio Frequency Engineer. From 1995 to 2009 the amount of wireless subscribers in the United States has gone from 28 million to 280 million users. The percentage of the population who are subscribers has gone from 11% to 89% the number of cell tower sites has gone from just under 20,000 to 250,000. The proposed facility is designed to improve coverage in the northern area of Windham, around I-93 and North Lowell Road Verizon has selected the property because of its location and its clear line of site around northern Windham. Verizon is confident that the facility will be an important part of the enhancement of Verizon's existing wireless service in the Windham area, providing improved coverage along I-93 and the surrounding town roads and neighborhoods, as illustrated on the displayed maps. Verizon proposed to construct the 150' monopole in a 75' X 75' area of the 13 acre parcel, roughly in the center of the site. The property is in the Rural District and contains a residence. The site will be surrounded by a 6' high stockade fence. The facility will support 12 panel antennas at the 146' level and a microwave dish at a height that will be determined later. A 12' X 30' equipment shelter will also be installed in the site to support the facility. No water, sewer or other municipal services are required. The equipment will comply with all applicable FCC standards and regulations pertaining to RF (radio frequency) emissions. Verizon has an obligation to provide a certain level of service and remedy the coverage gap. The facility will improve public safety by improving emergency communications in the northern area of Windham. It will enhance emergency communications that are critical during times of crisis such as severe wind, ice or snow storms that can cause communities to lose electrical and telephone service for extended periods. A NH DOT Traffic Study was submitted showing traffic counts on Route 93 in 2009 between exits 3 & 4 carried 70,000 cars per day. Coverage can change because cells breathe so coverage can shrink or grow



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depending on atmospheric conditions, times of year (leaves off or on) demands being made of the system.

When looking for a facility the search was done in the order of the following preference.

1. Existing towers
2. Existing structures
3. Raw Land

Existing towers were plotted on the displayed Windham Zoning map.

Tower #1 is 460' built in 1966 and replaced in 1996.

Tower #2 is 150' mono pine style and received a variance in 1999.

Tower #3 is 150' flag pole type.

The next displayed map showed the location in Windham where there is a gap in service.

On February 23, 2010 Verizon invited the neighbors to a meeting to talk about their concerns, alternative sites, alternative designs. Verizon received a letter politely declining the invitation. On March 18, 2010 at the Windham High School a resident asked about looking at a site that is town owned conservation land. In fact a letter was written on March 24, 2010 to the Town Administrator to open up discussions about this site. A tower at that site would need to be 300'. Mrs. Dunn asked the name or address of that site. The response was Foster's Pond.

Attorney Justin Richardson, representing Joel Dube, said he is hearing all of this testimony for the first time and as a procedural matter asked if he was to consider what is in the application or pretty much any information. Attorney Richardson said that he is at a real disadvantage and does not have the opportunity to investigate what is alleged to be available and asked what is the Board's procedure. The Chairman said the applicant is allowed his presentation but it does need to be kept on point. Attorney Hildreth said this information is directly germane to this application. As Attorney Richardson knows the federal law requires that if Verizon shows the existence of a gap they also have to show there are no feasible alternatives.

Mrs. Dunn said in response to Mr. Richardson that this was the first time she was hearing this information and because of this information she would not be prepared to vote on the case that night. On a case of this scope Mrs. Dunn did not think that a decision would be made in the same evening. At that point, the Chairman did not want to commit to not completing in the same evening. Attorney Hildreth said they will propose to do one or more balloon tests at the site as well as the alternative sites to give people a chance to see the options. Typically cell tower zoning cases do not get concluded in one night. At this site we may be able to get away with a height of 110' which would be a 27% reduction. Right now there are three different types of



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towers in Windham. Two other alternatives have been explored but not to conclusion. One is at the Country Club and one is at Taylor Farm.

Also proposed is an unmanned and unlighted 12' X 30' standard equipment shelter.

Attorney Hildreth read the supporting facts into the record.

Mr. Donald Haes, Ph.D., CHP Radiation Health Physicist and Safety Specialist, gave some personal background information. Mr. Haes said that Verizon asked him if the site, built as designed, would comply with FCC Regulations. In order to answer the question a theoretical analysis was performed. The calculations are based on what are called "worst case" estimates. That is, the estimates assume 100% use of all transmitters simultaneously. Additionally, the calculations make the assumption that the surrounding area is a flat plain. The resulting values are conservative in that they over predict actual resulting power densities. Theoretical RF field calculations data for the proposed tower indicate a maximal potential RF field level at ground level to be less than one-half of one percent of the current RF exposure guidelines. These results mean that there could be more than 200 similar additional installations at this location and still be within guidelines for RF exposure. In Mr. Haes' opinion the maximum RF emissions from the proposed Verizon Wireless facility would not exceed the FCC guidelines for RF exposure to members of the public. Mr. Haes submitted a copy of his report.

Attorney Hildreth said the only way anyone could say that a tower would have impact to the value of their home would be that they could see it from some vantage point. It would be useful to make part of the record a balloon test to see how that affects judgment. Attorney Hildreth submitted a photo of a 90' mono-pine tower similar to the one approved in Bar Harbor, Maine.

Mr. Partington asked Attorney Hildreth if there were reports or indications that people had issues or response time suffered because of no power and if there were complaints from customers. Attorney Hildreth said that he was not aware of that but from reading the press people were without land line service and relied on their cell phones. Attorney Hildreth said he did not have that data available but will look into it and see what he can produce.

Mr. Kevin Mosher, Radio Frequency Engineer, answering Mr. Partington's question regarding the site at 10 Beacon Hill, said that the AT&T mono-pole located on 10 Beacon Hill Road in Derry did not meet Verizon's coverage objectives for this gap. In addition to being too close to one of their other sites in Derry, service would be degraded substantially and did not cover the gap on I-93. The other sites are more centrally located for the gap in coverage in Windham. Mr. Mosher explained co-locating on towers and that it is cheaper to co-locate rather than build a new tower.



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Mrs. Dunn asked what would be the size of the panels and the size of the microwave dish that may be added to the tower. Mr. Hildreth answered stating that the panels vary in size they can be as long as 8' or as short as 4', approximately 1' wide and 8"-10" deep and there may be three on each side. The dish could be 2' X 2' square or they could be round 2', 4' 6' or 8'. In this application a 2' or 4' dish would be an appropriate size.

Mrs. Fallon said that it was mentioned that there would be a generator in the shed and she asked what fuel would be used for the generator. Mr. Hildreth replied diesel. Mrs. Fallon asked if they would consider using other forms of fuel because the tower would be located in a sensitive, sizeable wetland. Mr. Hildreth said they would consider using propane in appropriate cases.

The Chairman granted a 10 minute recess.

The Chairman called the meeting back to order.

The Chairman announced that only Case 6-2010 would be heard, the other four cases will be moved to another evening. Cases 8-2010, 10-2010, 11-2010 and 12-2010 will be heard on April 7, 2010. This meeting will end at 11:30 PM and Case 6-2010 will be continued to April 20, 2010.

The following residents spoke against this request.

Mr. Joel Dube of 4 Beacon Hill Road presented slides and a binder that contains:

- Summary Presentation
- Detailed Presentation
- Attorney Position Statement and Support
- American Cancer Society Statement
- National Academies News Release
- World Health Organization Study Requirements
- Cellco Partners d.b.a. Verizon Wireless, 10-K Excerpts
- Deutsche Telekom AG's 20-F Excerpts
- Sprint Nextel Corp – S, 10-K Excerpts
- Current Market Analysis, 4 Beach Hill Road
- Phone Survey Support
- Cell Coverage Maps (T-Mobile, Verizon, AT&T, Sprint)
- Bond and Ko-Kang wang Studies
- Video Demonstrating Coverage

Mr. Dube's daughter's bedroom will be 750' from the base of the proposed tower. Cellco has the burden to prove it meets all of the variance criteria and to show that its use will not harm the purposes established by the rural district and the application disregards this requirement and



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provides no relevant information concerning the impact of the 150' tower structure would have on the uses allowed in the rural district.

In order to demonstrate that denial of the variance will result in hardship, Cellco must show that the ordinance denies reasonable use of the property. Such a showing can not be made as the property is already being used reasonably as a single family residence. Cellco's application states that its coverage is insufficient. The fact that it may have limited coverage does not mean that it has no coverage. Verizon's coverage maps using the Verizon Wireless Coverage Locator shows that there are no gaps in coverage. Cellco can only show that it would be more profitable or convenient to use its own network instead of roaming on networks owned by third parties. Convenience and profitability are insufficient ground for a variance.

A cell tower placed within a rural residential subdivision reduces the value of homes in close proximity to the tower. Cell towers bring a negative impact to esthetics and health concerns, both of which contribute to a reduction in the value of surrounding homes. Mr. Dube shared with the Board a current market analysis performed on his house on February 20, 2010 which clearly demonstrates that the proposed tower would reduce the value of his home between 10% and 20%.

Mr. Dube went on to say that the following variance requirements have not been met and respectfully request the variance be denied:

1. Mr. Dube's property value will be diminished.
2. Variance is contrary to public interest. The rural district is intended as a district for rural, residential and non-commercial uses.
3. Denial of the variance does not interfere with the reasonable use of the property as a residence.
4. Granting the variance would do substantial injustice to the residents surround the tower because property values will decrease.
5. Deviation from the ordinance is clearly inconsistent with the spirit of the ordinance which strives to protect the residential nature of the subdivision form commercial uses.

Attorney Justin Richardson, representing Mr. & Mrs. Dube, said that he would quickly go thru the criteria because the Board had already heard them. Attorney Richardson went thru the eleven page, March 23, 2010 letter he sent to the Board.

Mr. Bryan McDade of 6 Beacon Hill Road submitted 32 pages to the Board which include studies from surrounding towns regarding property values.

Ms. Jennifer Allain of 8 Beacon Hill Road submitted a petition signed by 694 Windham residents who are against the cell tower.



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Mr. David Dube (Joel Dube's brother) of 59 Merian Street, Wakefield, Massachusetts submitted a report to the Board that will be read at the April 20, 2010 meeting. The Board decided to hear from Windham residents first

Ms. Alina Tobin of 2 Coachman Road, Windham resident and licensed Real Estate Broker, presented emails she received from other realtors all stating that a cell tower would have a negative impact on property values.

Ms. Marie Hebert of 6 East Nashua Road submitted 15 pages and two maps and said that she purchased her property solely because it was safe from electro-magnetic fields such as power lines and cell towers. Neurological issues from a cell tower are real. Ms. Hebert submitted information supporting her statements.

Attorney Hildreth stated that a Balloon Test will be scheduled for April 10 or 11, 2010 and will fly from 8:00 to 5:00 or 9:00 to 5:00.

Mrs. Dunn said that this (Balloon Test) is going to be a stretch of time when anyone can go and view the test; it is not going to be a scheduled meeting of the Board. The Chairman agreed that it would not be a meeting. Mrs. Dunn went on to say that if Board Members are at the site and observing, they will be on their own time, not as a quorum of the Board. It is important for everyone to know that if Board Members are at the site they could not and would not take testimony from anyone.

Mr. Phil Robbins of Bedros Street questioned the need for a Balloon Test. This is a commercial venture of the property.

Mr. Joel Dube of 4 Beacon Hill Road formally requested a site walk by the Zoning Board.

Mr. Ross McLeod requested the announcement regarding the date and time of the Balloon Test be put in both the *Windham Independent* and the *Pelham-Windham News* and that the cost for Police Detail be paid by Verizon.

Mr. Murray motioned and Mr. Partington seconded the motion to continue Case 6-2010 to April 20, 2010 at 7:00 PM. **Motion passed 5-0.**

Mrs. Dunn asked that Cable provide amplification for the next meeting.

Exhibits

Exhibit A – NH DOT Traffic Study.

Exhibit B – Chart showing number of cell users from 1985 to 2008.

Exhibit C – Photo of storage shed for cell tower.



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Exhibit D – March 18, 2010 Letter from Windham Residents to Verizon declining the invitation to meet.

Exhibit E – Donald L. Haes, Radiation Safety Specialist, 11 pages.

Exhibit F – Photo of Pine Tower.

Exhibit G – Binder from Joel Dube.

Exhibit H – Site Map

Exhibit I – 32 Pages from Bryan McDade.

Exhibit J – Petition

Exhibit K – Submission by David Dube that will be read at the April 20, 2010 meeting.

Exhibit L - Submission by Alina Tobin, 30 pages.

Exhibit M – Submission by Marie Hebert, 15 pages and 2 maps.

Exhibit N – Submission by Paul Richter, 3 pages.

Lot #16-F-4 #8-2010

Applicant – Peter Bronstein

Owner – Brett & Larissa Nigro

Location – 28 Horseshoe Rd.

Zone – Residential A

A variance is requested from Section(s) 401, 702 and Appendix A-1 and 1.10b of the proposed Cobbetts Pond Watershed Overlay District of the Zoning Ordinance to permit a garage / shed with dimensions of 16’-3 x 24’-4 to remain in place on a non-conforming lot of 2,578 sq ft with front setback of 8 ‘ +/- , side setback of 7.5 ft and 12 “ and back setback of 12 “ and 18” with impervious area exceeding 30% and building coverage of less than 20%.

Lot #11-C-1000 Case # 10-2010

Applicant – M & P Pizza Inc. DBA Capri Pizza

Owner – Michael Boyle

Location – 33 Indian Rock Rd.

Zone – Commercial A

A variance is requested from Section(s) 706.4.5 of the Zoning Ordinance for more than the allowed number of signs.

Lot #21-K-43 Case # 11-2010

Applicant – MHF Design Consultants Inc.

Owner – Robert C. Hannon

Location – 38 Turtle Rock Rd.

Zone – Residential A

A variance is requested from Section(s) 401, 406.2, & 702 & Appendix A-1 of the Zoning Ordinance to permit construction of a full foundation for the existing structure and convert



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seasonal dwelling to year round use for the increase in use and volume of a pre-existing non-conforming structure on a pre-existing non-conforming lot.

Lot #21-K-43 Case # 12-2010

Applicant – MHF Design Consultants Inc.

Owner – Robert C. Hannon

Location – 38 Turtle Rock Rd

Zone – Residential A

A variance is requested from Section(s) 1, Subsection 1.6 c (1) of the proposed Cobbetts Pond Watershed Protection Overlay District to permit the installation of a full foundation for the existing structure, conversion of seasonal dwelling to year round use and to allow the existing lot to retain up to 60% of the lot area as existing lawn area where only 10% is allowed under the proposed ordinance.

Mr. Murray motioned and Mrs. Dunn seconded the motion to continue Cases 8-2010, 10-2010, 11-2010 and 12-2010 to the April 7, 2010 meeting. The motion was amended to ask Attorney Bronstein if he would like to move Case 8-2010 from April 13, 2010 to April 7, 2010. **Motion passed 5-0.**

Approval of February 23, 2010 and March 9, 2010 Minutes

Approval of minutes will be done at the April 7, 2010 meeting.

Miscellaneous Board Business

The Chairman asked to schedule Mr. Alosso to attend the April 7, 2010 meeting to discuss an alternate position.

Correspondence

- Copy of March 15, 2010 Letter to Laura Scott from Attorney Campbell regarding Workforce Housing.
- March 17, 2010 Letter from Attorney Bronstein regarding 37 Abbott Road.
- Copy of letter from John Alosso to Mark Samsel regarding an alternate position on the ZBA.
- March 2010 issue of *NH Town and City*.
- Newsletter from Habitat for Humanity.

Mrs. Fallon motioned and Mr. Partington seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for **April 7, 2010 at 7:30 PM** in the Community Development Department.