



**TOWN OF DARTMOUTH**  
 Office of the Zoning Board of Appeals  
 400 Slocum Road, Dartmouth, MA 02747  
 (508) 910-1868

MINUTES

RECEIVED  
 2015 MAR 5 AM 11:48  
 DARTMOUTH TOWN CLERK

DATE OF HEARING: January 6, 2015  
 CASE: SPECIAL PERMIT/VARIANCE CONTINUANCE  
 CASE NO: 2014-22  
 Petitioner/Applicant: NEW CINGULAR WIRELESS PCS, LLC (AT&T™)  
 Property Owner: THISTLE TRUST LLC, TENANT AND CONCORDIA COMPANY LLC, LANDLORD  
 Representative: ELISABETH RUTKOWSKI OF TRM AND EDWARD PARE, JR., Esq.  
 Subject Property: 300 GULF ROAD  
 Registry of Deeds: BOOK 7917 PAGE 343  
 District: MARITIME/MARINE INDUSTRIAL

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Dr. Rahim Aghai  
 ABSENT: Robert Gardner, Michael Medeiros and David Dore  
 Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira  
 ALSO PRESENT: Edward Pare, Jr., Esq. and Dan Goulet CSquared System, LLC

*6:33 P.M. Chairman Jacqueline Figueiredo opened the hearing giving a brief summary of case Special Permit/Variance Case #2014-22 proposal for AT&T Telecommunications Facility located at 300 Gulf Road that was continued from December 9, 2015. The original application for the petition was filed on May 16, 2014 and the first public hearing was on July 8, 2014. There have been a number of continuances for a number of reasons prior to today's public hearing. The Petitioner has submitted a revised plan that reflects changes: the location on the subject property, as well as the height of the proposed monopole from 150' to 100'. She stated that much information has been shared by the Petitioner, Residents, the Boards Consultants, and Town Counsel and that many alternative sites have been examined and it has been determined that there are no existing structures that can be used to meet AT&T's need. She noted that alternative sites have been already discounted for this proposal and tonight's meeting will be a review of sites that have been suggested by residents.*

*Chairman Jacqueline Figueiredo asked Attorney Savastano to make opening comments. Attorney Savastano asked that all present be professional and to focus on the facts and the law.*

*Chairman Figueiredo read into the record the list of names and dates of letters that have been received by the board since the November 5<sup>th</sup> hearing. She asked AT&T Attorney Pare to respond to a letter from Massachusetts Historical Commission. He stated that they have the information and he is waiting for a response from them and all the information is with the Massachusetts Historical Commission.*

NEW CORRESPONDENCE AND DOCUMENTS RECEIVED SINCE DECEMBER 9, 2014

- November 11, 2014 e-mail from David Ehrens via Roberta Moore
- November 15, 2014 e-mail from Mia Lahti
- November 19, 2014 letter from Michael & Pauline Pope
- November 20, 2014 letter from Roberta Moore
- December 11, 2014 letter from MHC

- January 6, 2014 letter from Dartmouth Historical Commission
- January 4, 2015 letter from Peter Rhys Jenkins
- Slide show document from opposition
- Reports from Attorney Edward D. Pare, Jr.
- Reports from Consultant David Maxson, Isotrope
- Report from EG Advanced Engineering Group regarding Kevin Santos Property
- Communication from MHC and Dartmouth Historical Commission
- Information from David Ehrens/Roberta Moore: Real Estate Survey Results

Mr. Pare stated that he received a letter from Mr. Jenkins but waited to respond until this evening's meeting. He also stated that AT&T does not pay the consultant; the fee is paid to the Zoning Board and the Zoning Board determines how the consultant is compensated. He then stated he submitted plans and the only change is the unipole design, that the antennas will be placed inside the tower structure. After the balloon test and the neighbor's response, the owner insisted that that be done, and AT&T accommodated that. He said there was a question about the exposure; the report based on the unipole design is that it is still at the 2.45% of the maximum permissible exposure. Also, the Concordia Group supplied AT&T with a list of potential alternate locations. Mr. Pare addressed those alternative sites and attached is a report dated December 5, 2014 from Mr. Pare regarding those sites.

*Chairman Figueiredo asked the board members for any comments or questions, there were none at this time.*

*Chairman Figueiredo summarized report from David Maxons, Consultant from Isotrope regarding alternate sites. See Attached report.*

*Chairman Figueiredo asked the public for any comments.*

Peter Rhys Jenkins, Bill McQuiggan and Michael Pope representing Stop Concordia presented a power point which outlines various issues. See attached document. Mr. Jenkins also stated that the power point can be seen at [www.stopconcordia.com](http://www.stopconcordia.com)

Kevin Santos, who owns property located on Bakerville Road and Gulf Road which abuts Concordia stated he was contacted by Mr. Pope regarding his property as an alternate site. After the last meeting he approached Town Counsel and Elisabeth Rutkowski (AT&T) regarding his property as a potential site but no one contacted him. Mr. Santos stated he has an agreement with another cell tower company for the option to lease his property to construct a cell tower.

Mr. Pare stated that they did not further investigate Mr. Santos's property because there are wetlands and it's in a Residential Zone.

*Mr. Choubah asked Mr. Santos if he had any preliminary mapping form the company who contacted him about a tower on his property, Mr. Santos said he could get it to the board.*

Mr. Pope remarked on the Oliver property stating he spoke to Mr. Oliver and that his property is 40' higher in elevation than Concordia's. Also regarding the Purdy property, it is on the ridge that runs down to Bakerville Road and from that site the owner can see the water tower down at Gentry Lane.

Mr. Pare responded that they didn't look at the back lot (lot2)of Mr. Santos's property, because it would require a wetlands crossing and all of the access points have wetland issues which require Conservation Commission approval for crossing.

Mr. Goulet, C2 Squared Systems Consultant, presented his calculations refuting the presentation made by the representative for "Stop Concordia".

*Chairman Figueiredo summarized report from David Maxons, Consultant from Isotrope regarding Observations on Resident Commentary Regarding AT&T Gulf Road Tower Application. See Attached report.*

*Attorney Savastano advised the Board to first address the issue of whether a significant gap exists. He indicated that the Board could have a discussion and since the public hearing is still open, it may lead to additional questions from the public. A discussion among the Board members followed. Chairman Figueiredo said that the Board needs to make a determination if a significant coverage gap exists. She said that her view is that based on the evidence received from the consultants and the licensed professionals who have the required equipment and technology, that there is evidence of a significant gap. Mr. Choubah said that the Board needs to rely on the professionals; AT&T provided detailed information based on the engineers' software and technology. He said that the Board's consultant is in agreement with what has been presented by AT&T and that he feels that there is a gap in coverage. Dr. Aghai said that he agrees that there is a gap based on the information presented by the professionals. Chairman Figueiredo concluded that based on the discussion, the conclusion is that there is a significant gap.*

*Attorney Savastano clarified that the Board is not considering the State standards for any variance consideration in this case, which this case would not meet, but must consider the Federal variance standards, which have been determined by the courts. Ms. Figueiredo referenced Attorney Savastano's memo dated November 19, 2014.*

*The Chairman raised the issue of potential alternative sites. Mr. Choubah said that based on the information provided that there are only 2 potential sites – the Santos property and the Oliver property on 333 Bakerville Road. The Santos property has significant wetlands issues and the Oliver site would require a 150' pole.*

*Attorney Savastano informed the Board that it can consider the amount of relief required for each property in the determination of whether it is a feasible site. He noted that in a Residence B District the Special Permit requires a setback to the property line equal to 2x the height of the tower, and additionally a setback from any residential building or school equal to the height of the tower. He briefly reviewed the potential issues with the Oliver property including an increased non-conformity and insufficient frontage.*

*Mr. Choubah indicated that the Santos property does not appear to be feasible, given the extent of the wetlands. Mr. Savastano stated that the Environmental Affairs Coordinator has informed him that a wetlands crossing permit would be required and that the Environmental Affairs Coordinator has stated that he would recommend against this to the Conservation Commission if there was another site available that did not require a wetlands crossing. Attorney Savastano indicated that the Oliver site did not have wetlands issues but did have zoning issues.*

*Attorney Pare informed the Board that the Oliver site would require a 150' tower, which he didn't think the Board would consider feasible. He stated that if the Board considers a 150' pole feasible, they would investigate this site further.*

*Chairman Figueiredo noted that at this location, a 150' pole would require 300' setbacks to the property line and a 150' setback from the residential structure.*

*Attorney Perry addressed the Board and stated that there are feasible alternatives.*

*Attorney Savastano informed the Board that they need to look at all the relief required and make a determination what the Board wants the applicant to look at for alternatives.*

Attorney Pare stated that they have looked at alternatives and have chosen what they believe to be the most feasible.

*Chairman Figueiredo stated that the Board needs to look at what is feasible for relief within the residential setting. The Board needs to weigh all the evidence and whether it is worth pursuing a tower on a different site or are the issues just being transferred from one site to another. She said that there appears to be only one workable alternative – 333 Bakerville Road. She requested that the applicant determine if the owner is interested and that Town Counsel present a zoning analysis of the relief that would be required so that the Board could make a comparison of the two sites. Attorney Savastano informed the Board, that if another site would be formally considered, it would require a new application.*

Mr. Jenkins expressed his concerns to the Board.

*The motion was made by Mr. Choubah and seconded by Dr. Aghai to continue the case to January 20, 2015. The motion passed unanimously.*

*9:25 P.M. Hearing Adjourned*

Michelle Vieira, Principal Clerk  
Zoning Board of Appeals  
Date of approval: \_\_\_\_\_



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