

Franeestown Zoning Board
Proposed Minutes
October 8, 2009

Members Present: Silas Little (Chair), Abigail Arnold, Sue Jonas, Lois Leavitt and Charles Pyle

Starts at 7:30 p.m.

Mr. Little opens the meeting at 7:30 p.m., introduces himself and the Board member. The AT&T application for a cell tower on Dennison Pond originally continued to tonight's meeting will be further continued until the November 12th meeting. A consultant will not have a report ready until next Tuesday, October 13 and a joint hearing with the Planning Board is scheduled that night to hear his report. Also the application for other tower on the New Boston Road Pettee property will be brought forward and noticed for November.

Continuation of Public Hearing: Montgomery Application for Variances (2), property located at 1204 Pleasant Pond Road, Map 19, Lot 15.

Application is to construct a septic system within 100' of wetlands and within 125' of mean high water: Article 2, Section A-2.6(a)(1) and Article 2, Section A-6.4(1). Shannon Monahan, septic designer, is representing the applicant.

A site walk was conducted on Sept. 19th.

Shannon Monahan, representing the applicant, presents an amended application for a use variance. She reads into the record the criteria for hardship under a use variance and notes that the property is a grandfathered seasonal cottage, used as such for 70 years with no septic, but an outhouse. They can meet State setback requirements, but not the Town's. She has prepared an amended plot plan to delineate the setbacks better. No connection will be made from the proposed well on this property to the other cottage on the first, front lot. Mr. Little asks for clarification that well will be used only for septic under current application. Ms. Monahan confirms that is correct.

Ms. Hardwick presents a letter to the Board on behalf on the Conservation Commission (ConCom). She states that the Con Com is concerned with additional uses: dishwashers, washing machines, disposals, and the effect of chemicals leaching into ground. Mr. Pyle asks if the concern is more about the location to the Pond than to the Wetland; Ms. Hardwick says yes. Mr. Pyle then asks Ms. Monahan if it would be possible to move the septic system back to meet to setbacks for the shorelands; not possible because of the topography of the property. Tank must be positioned as shown on the plan. Mr. Pyle asks if the field could be moved back, but Ms. Monahan replies that she has only 10' extra to work with and she wishes to reserve that for any issues when system is put in.

David Hackett, an abutter, speaks in favor of plan. A septic system would be an improvement over raw sewage going into land. He adds that with the age of the Montgomery's he believes it would be better for them to have a septic system. Pleasant Pond is tested for phosphates and other chemicals. Ms. Arnold notes that tests for phosphates are only done upon request or for special issues and also notes that some camps still have outhouses and also dishwashers.

Mr. Little asks if any other abutters, against or in favor, would like to speak. No further discussion.

Ms. Jonas moves that the public discussion be closed, Mr. Pyle seconds and all in favor.

Mr. Little reviews the criteria for a variance: no indication of a diminution in value and not contrary to the public interest. With the criteria for hardship for a use variance he notes the seasonal use of the property and proposes that should the Board grant the variance they may wish to state that there should be no dishwasher, garbage disposal, etc. Also suggests that a covenant or legal document be created and filed so there would be a permanent record. Given that condition he believes that the applicant would meet the three prongs for the

hardship criteria. Ms. Arnold asks for clarification of proposal. Document would be recorded and would show up in title search. He concludes that there would be no injury to others by installing a septic system.

Mr. Pyle notes that there is no distinction in the Zoning Ordinance between seasonal and non-seasonal use. In other ZBA cases a condition has been made for seasonal use and by having this case recorded would be good. He wishes that at least one setback could be met.

Mr. Little continues with the final two criteria that granting the variance would do substantial justice and not be contrary to spirit of the ordinance.

Ms. Arnolds moves that the application be approved subject to the conditions as stated by Mr. Little: property owner provide a recordable document indicating seasonal use, no dishwasher, garbage disposal, etc., and that septic system is only for this cottage. Ms. Leavitt seconds the motion; all in favor.

Mr. Little adds that there is a thirty day appeal period. Ms. Monahan asks whether she needs to wait the thirty days or can submit an application to Peter Hopkins, the Town building inspector. Mr. Little replies that someone may appeal within the thirty day and decision will not be final until then.

Time is approximately 8:00 p.m.

Continuation of Public Hearing: SBA Network Services & AT&T Wireless application for Variances (expansion of use greater than 20%, setbacks, slopes), and for a Special Exception (wetlands crossing) by SBA Network Services Case #09-VA-1 – location Map 7, Lot 1

Ms. Arnold steps down and Mr. Barbalato joins the Board. Mr. Springer is representing applicant along with Dan Hamm, Audre Klumb, Shannon MacManus and Russ Putnam.

Mr. Little received a letter from the ConCom. Copies are provided to the Board and to Mr. Springer. Copy of deed for fire tower lot is attached to the letter. Mr. Little reads letter into the record, which concerns the revised proposal for a trail to the tower site. ConCom letter believes that revised proposal is better, but they have the same concerns as previously noted in a letter to the Board. They believe that application should be denied due to steepness of slopes and use as a road rather than a trail. Letter also notes that a rare plant was found along the access easement and also that area of wetlands around stairs should be protected during any construction. The ConCom should be notified to monitor any construction. Also concerned about the access by the public over the top of the mountain with the installation of a new maintenance shelter. Mr. Little also reads from the deed, which indicates access across top of mountain on the property to where the old fire tower was located. Deed is from 1984 and recorded at the Hillsborough Registry of Deeds.

Mr. Springer asks if the Board has received a letter from the Fire Chief, which it has not. The Chief has verbally told Mr. Springer that he had no problem or concerns with the application. Board has not received a letter, but Mr. Little notes that if letter is not received it can be made a condition of any approval.

Mr. Springer submits a letter from Capt. David Roerick, Hillsborough Police Dept, in support of the application, which he reads the letter into the record. Proposal will improve access for any repairs to towers. Also a couple of notes have been changed as requested and cubic feet of fill have been converted to cubic yards. He presents new plans to the Board. A site walk was held on September 26 with the ConCom. Mr. Putnam represented the applicant at the site walk and at a subsequent ConCom. meeting on Oct 5.

Approximate time is 8:15 pm

Mr. Springer indicates change to plan is an “end around” the top to avoid going where stairs are now and having to blasting top ledge for access road. Road will go around as shown on plan. In response to ConCom concerns something other than woodchips will be used along road.

Mr. Springer addresses the ConCom letter. Notes that road exists now from bottom of Mountain to where their property beings. He thinks it is unfair, if road cannot continue as proposed. ConCom objects to use of four wheel drive vehicle, but Mr. Springer believed that this was a concession to the Town. This is a commercial property with commercial use. Believes that there are currently four-wheel vehicles using the property. They would consider gating the access. Regarding the potential rare plant, Mr. Springer notes that they had a clean NEPA report and that plant appears to be on area not within AT&T property. Mr. Little questions the NEPA report and how it was determined. Regarding the deeded easement, a meeting was held with Bart Mayer, town counsel, and others to address Town's concerns and address access road. He states that they will do whatever is necessary to fix the access the road as the Town wishes.

Mr. Springer addresses the criteria for variances and special exception. He notes that a lot of the objections are why things can't be done the way it was done before, but technology is different – few, if any, cell phones fifteen years ago. What worked fifteen years ago will not work today, which is why they are looking for the improvements. Helicopter does not work for maintenance and repairs.

Mr. Little questions why plan shows only one USGS benchmark instead of the two shown previously. Mr. Hamm states that this is an oversight and will be corrected. Mr. Putnam adds that he pointed out the second disk is in a high traffic area and needs to be avoided.

Mr. Springer continues that the driving force behind the application is the need to provide service under federal law. It is important for coverage as was shown by Dan Goulet. Tower will provide coverage and also possibilities for co-location.

First variance is a request to increase size of compound by about 23% for a new maintenance shelter. Ordinance allows for a 20% increase. Second variance is for setbacks because of height of the proposed tower. Necessary setbacks are 150' which cannot be achieved with size of lot. Mr. Springer discusses the five criteria for an area variance:

1) Proposed use would not diminish property value. Tower will not diminish property values. There is already an existing facility with no abutting residential properties. No fumes, no lights, no structures. Setbacks are for fall zone and they have erected hundreds of these with no problems.

2) Not contrary to public interest. It would be in the public interest to allow construction as proposed. Demand for this type of service and a huge increase in cell phone use makes sense to increase an existing site.

3) Unnecessary Hardship

Necessary to enable use of property given the special conditions of property - Area topography is challenging and special. Variance is needed for use of property

Cannot be achieved by some other method - Because of setbacks and size of site no feasible alternatives. No abutter opposition to this site.

4) Granting variance would do substantial justice - There will be substantial justice if granted. Increasing compound by small amount will not be hardship. Tower will allow for co-location, better use of facility and improved reception.

5) Not be contrary to spirit of ordinance. - Co-location opportunities due to height

Third variance request is from the steep slope ordinance. Proposal has been amended and does not include blasting any more. Materials can be removed later on. Areas of slopes to be filled are listed as "A", "B", "C" & "D" on the plan and are limited in size and scope.

1) Proposed use would not diminish property value - Low impact, commercial facility on site. No noise, smoke, fumes. Any vehicular traffic can be stopped with gate. Stairs should be removed for safety reasons. Already existing access road to property. Will not diminish property value.

2) Not contrary to public interest - Will meet public interest by upgrading road. Improve ability to maintain facility, take out stairs. There will be no through vehicular traffic. Will be happy to gate road and put up a nox box or whatever the town wishes.

3) Unnecessary Hardship

Reasonable use and uniqueness. - Use is currently as a telecommunications facility. Need access across the steep slope and cannot use without the access. Minimal impact, unique topography cannot be accessed otherwise

Fair and reasonable use. - Granting variance to cross steep slope is reasonable way to access site. Believe that prohibition precludes crossing use. Not sure that this is type of project that steep slope ordinance is designed to protect against. Distance of slope is not great.

Injury to public or private rights of others. - Does not believe that it will harm public right. Willing to work with town on access across site.

4) Substantial justice

Impact on steep slope is minimal. No blasting and minimal change to landscape.

5) Not contrary to spirit and intent of the ordinance.

Steep slope requirement is designed for larger areas and more uses. Concedes that even if ordinance concerns crossing of steep slope there, minimal impact.

Fourth and final application is for a special exception for two wetlands crossings. Bridges will not impact wetlands. Appropriate location. Mr. Springer discusses the criteria for a special exception
Not adversely affect property values – Does not believe it will limit value of neighboring property
Adequate and appropriate facilities provided – no additional facilities will be necessary. No nuisance or hazard – wetlands crossing will not be nuisance or hazard. No burden on public services. Life safety code will be met. Planning Board site plan approval after ZBA case. Written materials have been submitted for all these criteria.

Mr. Little asks what will replace the woods chips as discussed earlier. Mr. Putnam notes that ConCom wanted a strong and stable material for areas “A”, “B”, “C” & “D” and were especially concerned about runoff during rain.

Mr. Pyle refers to plan Z-1 and asks about fence and limiting access through site. Currently you can walk by site. Mr. Springer refers to plan T-2 with topo lines and does not believe it will be difficult to create a path on either side of fence around compound. Asks for clarification on ice bridge which just covers the cable lines. Mr. Putnam says that this was discussed during the ConCom meeting and agreed that a path could be created around the far side of the facility. USGS monuments will be unobstructed.

Mr. Pyle second concern is over the road and four variances for slope and two wetlands crossing. Slopes exceed 25% now and proposed slopes will still exceed 25%. Not sure how four wheel drive vehicles will access site. Approving something that will still be greater than 25%. Ordinance does not differentiate with distance of slope. Trail now becomes something more with vehicle use. Mr. Springer responds that they have looked at this closely and can make it safe for their purposes and can gate access. Mr. Pyle notes that the Board will still be approving something greater than 25% and he cannot remember the Board ever approving something that is greater than 25%. His impression after last meeting was that road would have low use and not be used by four wheel drive vehicles.

Time is approximately 9:00 PM

Mr. Putnam apologizes if there was confusion over vehicle use and he is hoping over time that the road will become more of a trail. Other Tower sites have slopes of same degree and they have no problem accessing with four-wheel drive. There is also the option of accessing via ATV's. Mr. Springer also notes that they could reduce slope with more material. His instructions were to use as little materials as possible. The area of steepest slope is one with rock ledge. Road will have limited use. Mr. Pyle notes that this issue is very germane to what the Board usually considers, such as driveways. Discussion follows on slope as proposed versus additional fill and lower slope. Mrs. Jonas asks about distance of Area “B” slope; approximately 36'

Mrs. Leavitt asks what the next step is regarding the road easement. Mr. Springer and Mr. Mayer have traded e-mails about the issue. He has responded to Mr. Mayer review with some comments.

Mrs. Jonas asks how often generators run. About once a month for an hour or so. This is back-up in case power goes out. Brief discussion on decibel level followed. Mr. Hamm thought it would be about 60 db.

Mr. Little opens for public comments. Ms. Hardwick says that ConCom is concerned over proposed road and notes that the last time a maintenance shelter was added no one thought about the effect on the access. Shelter cuts across what was the access and ConCom is concerned about new building further limiting public access.

Mrs. Freese noted that during site walk Chris Danforth thought there should be a better solution than wood chips along road.

Ben Haubrich raised the issue of ice falling off of tower during ice storm and fall zone. Mr. Springer responded that it is the same issue as a church tower. Not aware of any problems with tower and tall structures and fall zone. US Cell Tower is 100' and the current tower here is 40' and no problems. Not aware of anything done to tower to prevent ice build-up.

Discussion about future co-locators and additional maintenance shelters. Co-locators would have to come before the ZBA for approval.

Ms. Hardwick notes that direct abutter is the Town and ConCom represents the Town.

Bob Lindgren raises issues of visibility of proposed tower. Minimal impact now due, but he is concerned over impact of much higher tower. Trees keep view of current tower to a minimum and proposed tower would be more noticeable. Mr. Lindgren notes that his property abuts the town property. He discusses hiking trails, proposed new tower and its potential visual impact.

No further public comments. Mr. Pyle moves to close the public hearing portion of the application, Jonas seconds; all in favor.

Discussion on date to deliberate. Mr. Little suggests a special date before the next regularly scheduled meeting. Motion to meet on October 28th at 7:30 p.m. All in favor. Mr. Little notes this will be a public meeting, but not a public hearing. He will post a notice.

Public Hearing continued to October 28, 2009 at 7:30 p.m.

Mr. Little states that a consultant will be presenting a report on the other AT&T cell tower cases on October 13th at the Planning Board Meeting at 7:30 p.m. Board will hopefully receive a hard copy and can follow-up with questions at our next meeting. Mr. Pyle notes that he attended the Planning Board meeting and stated that the ZBA will only be coming to hear the report. Mr. Lindgren has notice the meeting as a joint meeting in case the zoning board come and wants to ask questions. Mrs. Jonas will not be able to attend.

Pyle moves to adjourn, Leavitt seconds; all in favor

Meeting adjourned at approximately 9:35 p.m.

Respectfully Submitted,

Charles M. Pyle
Vice Chairman, Francestown ZBA

October 14, 2009