

Francetown Zoning Board
Proposed Minutes
April 18, 2010

Members Present: Silas Little (Chair), Richard Barbalato, Lois Leavitt and Charles Pyle

Meetings opens at 2:03 p.m.

Mr. Little opens the meeting. Purpose is to continue deliberations on the following cases:

New Cingular Wireless (AT&T) Application for Variance (slope) and Special Exception (Cell Tower Facility), property located on New Boston Road, Map 6, Lot 63-2 and Application for Variance (slope) and Special Exception (Cell Tower Facility), property located on Dennison Pond Road, Map 6, Lot 61-2.

Sue Jonas will be five or ten minutes late. Mr. Little proposes that the Board commence its deliberations and not wait for Mrs. Jonas.

Following introductions of the sitting Board members, Mr. Little asks if the Board has reviewed the minutes from the last meeting: yes, all had read them over. He next asks if the Board agrees that the minutes correctly reflect the sense of the Board at the last meeting to deny the application for special exception at the New Boston Road site. All four members agree that the minutes are accurate. Second, he asks if the minutes accurately reflect the Board being in favor of a cell tower at one of the alternate sites at the Dennison Pond Road site. All four members agree that the minutes are accurate and Mr. Little asks that the minutes reflect the unanimity of the four sitting Board members on both proposals.

Mr. Little wants to emphasis that with alternate sites “B” or “C” on Dennison Pond Road the abutting property owners with the exception of the Jones’ property will not see the proposed tower. Jones will look down on the tower. He asks that the minutes reflect all of this. Mr. Pyle points out that you will see the tower from field off of Dennison Pond Road. Mr. Little says agrees, but his point was regarding the view from residences.

Mr. Pyle has only circulated drafts of the proposed notices of decisions to Mr. Little and not the rest of the Board as was discussed at the last meeting. Mr. Little makes copies available to other Board members, who spend a few minutes reviewing the two drafts.

Beginning with the New Boston application, Mr. Pyle reads the notice. He notes he has listed the following items as “evidence presented to the Board”:

- A gap in coverage exists in Francetown along Route 136 (aka New Boston Road) from the Francetown/New Boston Town line west towards the center of Francetown.
- A tower of 100’ to 120’ would provide coverage along “targeted area”.
- Alternate sites exist in the Dennison Pond Road area.
- New Boston Road is a major travel road to and from Francetown.
- Proposed tower location is visible along the New Boston Road travel corridor.
- Maintenance access road will be required from New Boston Road to Tower site (see also variance request discussed later).
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance

- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Board previously granted a special exception and two variances for the construction of driveway part way up the hill from New Boston Road.
- Applicant has stipulated they will follow previously approved plan.
- Balloon test was conducted at various heights.

Mrs. Jonas has joined the Board. Mr. Pyle continues reading the proposed notice of decision: Board by a vote to be determined has voted to deny the application for the followings:

- Negative "Visual impact on the overall community" of cell tower {section 7.19.1(a)}.
- Negative "Visual impact on the overall community" of maintenance access road and utilities {section 7.19.1(a)}.
- Permanence of construction of maintenance access road
- Proposed alternate sites offer less of a visual impact on the overall community
- Tower and access will have significant adverse impact on the community and does not meet the criteria of section 7.19 that it will "best preserve the Town's natural beauty, rural characteristics, scenic vistas and architectural history".
- Construction and removal (should the tower ever come down) will result in more alteration to the site than other proposed locations.
- Site is not an appropriate location {section 7.1.2(a)} due to the location of the maintenance road access and topography.
- Site is an important scenic view shed coming into and leaving Francestown. Area of farms, fields and rural vistas and proposed use is not compatible with surrounding land use. {section 7.1.2(a)}
- The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Francestown Zoning Ordinance

Next was the second part of the application, an area variance to construct and operate an access driveway with a grade exceeding 10%. Pyle noted that the Board really didn't get into a discussion of the variance. He believed that the Board's minutes showed the applicant met the standard that the proposal would not diminish surrounding property values, but had not meet the criteria for public interest and spirit of the ordinance. Based on the minutes he was unsure of Board's feelings regarding hardship and substantial justice.

Mr. Little believes that the Board will have to look at the new variance standards as of January 1. Board needs to look at standards the time of the notice of decision. Pyle asks if this is true even if the application was started beforehand. Little cites the "time of decision rule" and a city of Manchester case. He also is not sure that this request is an area variance; Pyle notes that was the application submitted.

Mr. Little suggests that under the evidence section an additional bullet be added referring to the ATC Tower site. Board notes that both AT&T and Mr. Pagacik noted gaps in coverage with the ATC Tower. After a very brief discussion all agree to add the following bullet:

- Use of ATC Tower does not cover the "targeted area" at 165'. By adding an additional 30' for a height of 195' also does not cover the "targeted area". Additional height is not a modification of the existing tower, but would be a major alteration.

Mr. Pyle asks for any additional comments or additions. Hearing none, he moves to deny the special exception; Jonas seconds. 5-0 vote in favor of denying special exception.

Mr. Little reviews the criteria for a variance under current law RSA 674:33.I(b).

He believes that the access road is contrary to the public interest by crossing the steep slopes. The variance request was generated by desire for cell tower on knoll. Since the Board has voted to deny the cell tower, it was not in the public interest to have a road.

He adds that the spirit of the ordinance is not observed and that substantial justice is not done. No need for road if there is no cell tower. There is no evidence that the value of surrounding properties will be diminished. Final criteria is that literal enforcement of the ordinance would result in unnecessary hardship and that no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property and that the proposed use is a reasonable use. If those two standards are not met, the statute goes on to say that unnecessary hardship will exist if, and only, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot reasonably be used in strict conformance with the ordinance and is therefore necessary to enable reasonable use. Mr. Little believes that there is a fair and substantial relationship between the ordinance and the application proposed use given that it is not a reasonable use. Also, referring to the second part of the criteria, the property is not significantly different in terms of slope from other properties in Francess town. Property could be used for other purposes as shown with prior application for driveway.

Mr. Pyle summarizes that the variance does not meet public interest, hardship, substantial justice and spirit criteria, but does meet the one for surrounding property values. He moves to deny the variance; Little seconds motion. No further discussion, all in favor (5-0) of denying the request for a variance.

Nest is to be discussed is the application for a special exception 2 for a cell tower Dennison Pond property

Mr. Little believes that Board should add the same bullet point for the ATC Tower with case; all agree

Begins, Mr. Pyle reads the notice. He notes he has listed the following items as “evidence presented to the Board”:

- A gap in coverage exists in Francess town along Route 136 (New Boston Road) from the Francess town/New Boston Town line west towards the center of Francess town.

Mr. Barbalato questions whether gap in coverage is an AT&T term. Pyle notes that both AT&T and Pagacik stated there was a gap and he is referring to the gap general terms.

- A tower of 100’ to 120’ would provide coverage along targeted area.
- Alternate site exists at a proposed New Boston Road site.
- Dennison Pond is a rural road in a residential area.
- Balloon tests were conducted at the three proposed locations at various heights.
- Maintenance access road will be required from Dennison Pond Road to the tower site
- There are no slopes, wetlands or other issues associated with the maintenance access road.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance.

- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.

He will add an additional bullet point about the ATC tower as was added to the New Boston Road decision. Mr. Little also suggests adding "sparsely developed" to the third bullet to read "...in a sparsely developed residential area".

Mr. Pyle continues reading the proposed notice of decision that the Board by a vote to be determined has voted to approve the application. Mr. Pyle stops; it is his understanding that the abutters prefer site "B". John Ratigan has communicated this to Bart Mayer. Site "B" is the farthest proposed site. General discussion follows and plans dated March 3 are reviewed. Board agrees that "B" is farthest site and was previously referred to as site "C" by the Board. Site is further identified as Monopole B on sheet C-2B of plan submitted March 3, 2010: proposed ground elevation of 794', located at Latitude 43°00'11.5" N and Longitude 71°45'53.8" W. It is the site that has a yellow balloon.

Pyle has included a list of reasons for approval he believes should be included under the Telecommunications Act.

- Of all possible alternatives the site best preserves "the Town's natural beauty, rural characteristics, scenic vistas and architectural history" {section 7.19}.
- Site will have the least "visual impact on the overall community" {section 7.19.1(a)}
- Maintenance access road will not have a negative "visual impact on the overall community" {section 7.19.1(a)}.
- Proposed alternate site offers less of a visual impact on the overall community

Pyle wonders if this is redundant. Little suggests "have a greater visual impact".

- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Section 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance
- Site is an appropriate location {section 7.1.2(a))} due to the location of the maintenance road access, topography and density of trees and foliage.
- The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Francestown Zoning Ordinance

He listed possible conditions for discussion. First condition is that the applicant will provide written confirmation of compliance with the life safety code and approval from the Fire Chief. Little may have received approval for first site, but this is a new one. Second, site plan approval will be obtained from the Planning Board. Third, a high-density branch monopine shall be used to hide the proposed monopole; exact design to be determined by the Planning Board. He listed three other conditions in italics for possible discussion. Does Board wish to refer to the sediment and erosion control plan? Do we want to put in any reference to road access from Dennison Pond Road? Last meeting Board felt this was more of a Planning Board. And finally any reference to tree removal. Mr. Little would like to add a condition to keep existing vegetation as screen and around fence as a buffer. Let the Planning Board decide. Mr. Little suggests that around compound and road they leave as much existing vegetation as possible, and around the fenced perimeter of the compound a screen of conifers to buffer to any generator noise. Pyle adds over time tree growth will help with the visual as several people were concerned over loss of some trees. Condition should be added that road will follow plan as shown. Proposed road is not a "bowling alley".

Mr. Barbalato asks about a bond; Planning Board will establish any bond.

Pyle asks about a condition for road access. Mr. Little agrees that condition should refer to plan as presented. Emphasize that road is a gentle hook or curve versus a straight shot in. Road or maintenance access road shall follow plan as show on sheet C-2B. Do we care about location of entrance? Little feels Planning Board and Road agent address. All agree. Road is a low traffic generator - four trips a month.

Jonas asks about fencing along Dennison Pond Road. Plan shows only fence around compound and is not an issue. May have a bar at the entrance, but again a Planning Board call as to how it looks at Dennison Pond. Restriction on access would be more of a concern for AT&T.

Does Board want to refer to a sediment and erosion control plan? Mr. Little expresses over a specific plan that could be altered; more of a Planning Board issue. Suggestion that a general reference to a plan to be approved by the Planning Board be included as a condition. All agree.

Mr. Pyle summarizes the conditions for approval as: written confirm of life safety code, site plan approval, monopine approval by the Planning Board, sediment and erosion control plan approved by the Planning Board, reference to road following the plan as presented, and that they keep existing vegetation outside for print of compound and along access road, and a natural buffer be placed around fence to mitigate generator noise, specifics to be determined by the Planning Board.

Pyle moves to approve application. Jonas asks about height limitation to 110'. Pyle will add that approval is for height of 110" and moves to amend motion. Little seconds and asks if any further questions, proposed changes or discussion. Hearing none asks for a vote; 5-0 to approve application for special exception. By a unanimous vote Board grants special exception.

Little thanks all and closes public meeting. Pyle seconds; all in favor.

Public meeting is closed at approximately 2:56 p.m.

Respectfully submitted,

Charles M. Pyle
Vice Chairman, Francestown Zoning Board of Adjustment

April 19, 2010