

Unofficial
As of 7/17/07

**HOOKSETT
ZONING BOARD OF ADJUSTMENT
MINUTES
JULY 17, 2007**

HOOKSETT PUBLIC LIBRARY

CALL MEETING TO ORDER AT 7:03 P.M

INTRODUCE MEMBERS OF THE BOARD

C. Pearson, D. Johnston, R. Savoie, J. Levesque, R. Bairam, T. Murphy Roche, J. Gorton, R. Duhaime

ELECTION OF CHAIR AND VICE-CHAIR FOR 2007-2008 YEAR

R. Savoie nominates Tracy Murphy-Roche for chair and Chris Pearson for Vice-Chair. D. Johnston seconded. Vote unanimously in favor.

CONTINUED PUBLIC HEARING

OMNIPOINT COMMUNICATION/T-MOBILE

305 Bicentennial Road, Map 44, Lot 3

Variance

from Article 5.A. to allow for a wireless communications facility in the medium density residential district, and a Variance from Article 28, Section O.5.a for side and rear setbacks.

Adam Braillard, Attorney representing T-Mobile

This is a proposal to install a wireless communication tower at 305 Bicentennial Road within the MDR district. There is a significant gap in communication in this area.

On the site plan, we are accessing the road off the existing paved driveway from Bicentennial Drive. We are using the existing pathway and will be improving it. The facility will have a one hundred and eight foot lattice tower. The elevations are shown on Z1.

The height of the tower is 180 and the antennas will not exceed the height of the tower at 175 feet (9 panel antennas). There will be coax cabling, which will not be viewed and will be connected to 3 base cabinets at the base of the antenna. With the cabinetry will be a battery back up cabinet on a 6 x 6 slab 8" high. That will be within a 60' x 80' fence 8' high with barb wire. The height of tower is to accommodate other carriers. We would also agree to a rental rates for other carriers. With that will come additional antennas and additional ground equipment. The reason for the need for this antenna is based on a network study, which showed a significant gap in service in this area.

Sameer, Engineer with T-Mobile: Ref. Tab 4 of the submittal package.

This shows existing and proposed coverage. The third page shows existing towers in the area.

Based on customer feedback of dropped calls, we developed the gap areas. Green is the existing coverage area. White shows not reliable coverage. We have over 20,000 vehicles that travel this area in the course of a day.

The green only represents T mobile coverage and not for example Verizon coverage.

A map was distributed showing all the towers in the area including all carriers.

The distance to pick up a signal is about a mile.

R. Savoie: Have you looked at any other areas, which could support a tower?

A. Braillard: As required, we did provide an alternative site review letter (tab 10).

The Site Acquisition Department gets a map and is told there is significant gap and wants it filled. This is a significant area on Route 93,3 and Mammoth Road. As a team, the searched the area and looked for existing towers where they could co-locate an antenna.

C. Pearson: I didn't see that you looked at leasing any other structure.

A. Braillard: We have sites both north and south of this area that are close to this site.

We are on a tower that is to the north, which is a Sprint tower. The next southern tower is on a water tank in Manchester.

R. Savoie: There is a cell tower right off Route 28 that should service this area which is located on a commercial site. There are a lot of potential sites in this area, which it appears that you missed, that would be better.

J. Duffy:

If you look at Article 28 of the Zoning Ordinance indicates an inventory of existing communication towers including specific structures is to be provided. The only thing provided were light poles from SNHU and Livingston Park. There was also a list of towers in Bow, Derry, and Allenstown.

A. Braillard: The last map provides the inventory of the Hooksett area.

Given the information we provided to the board, and the information of the existing area and T-Mobile's objectives, we request to waive that area of the by law. If that information is requested, and we only show a two-mile radius, it would not be applicable to provide that to the north.

J. Duffy: The ordinance states this shall not be a waive able ordinance.

A. Braillard: We are trying to provide the least amount of detriment to the public while providing the most service. We are trying to complete the coverage with one site.

A concern with putting up two towers so close is we only have so many spectrums and there might be overlapping spectrums and interference. We tried to optimize the scenario from all angles, from a zoning, from a leasing, from a construction, and from a frequency standpoint.

R. Savoie: Have you check this out with the airport for frequencies?

Sameer: The FCC regulates the bands.

R. Savoie: What about the tower height with regard to FAA?

A. Braillard: I don't believe we have run a check by FAA.

R. Savoie: Someone else must be on that frequency; it's just a matter of where it is located.

Sameer: Some operate at 800 mhz, but ours is at the higher end, and these have no chance of interference.

A. Braillard went through the criteria (see file).
There will be evergreen shrubs screening the area.

C. Pearson: Has T-Mobile installed towers in any other residential areas.

A. Braillard: I don't know.

C. Pearson: Have there been studies to what the installation of a monopole does to the home value in a residential area?

A. Braillard: They have.

C. Pearson: Is that included in the packet?

A. Braillard: It is not.

Sameer: This tower will benefit any T-Mobile customer or any customer that has a GSM technology.

C. Pearson: What in the zoning is restricting the owner from a reasonable use of his property.

A. Braillard: He can lease it because of the unique characteristic of his property.

C. Pearson: There are not a lot of restrictions for this property. He can do a lot with this property. Our zoning laws are not interfering with the reasonable use. He could subdivide if he wishes. There are a lot of things that could be done to this property. There is nothing unique to this property that keeps him from doing that.

A. Braillard: This is a reasonable use. The applicant has applied for a reasonable use of the property. The property abuts Route 93, and the size of the property is unique with respect to other properties in the area. The property is unique in and of itself due to where it lack in coverage. That

can be unique criteria. It is a dense heavy wooded property. That is how we argued that this property is unique.

No fair and substantial restriction exists:

We feel there is no substantial relationship with the by laws and the restriction.

As we applied for, we think that the restriction would not be substantially relative.

Injure private rights:

These criteria are not specifically spelled out in any area.

The uniqueness of the property and monopole style is the least intrusive means of providing coverage.

Based on the pictures, it shows there would be no injuring to public or private rights.

C. Pearson: These photos were taken in the summer. If they were taken in the winter; you would have wide-open areas. The pictures therefore are somewhat inaccurate.

A. Braillard: We take these pictures when we are going to place the application.

C. Pearson: This must have been considered for a certain time frame, it would be nice to see some other photos.

R. Duhaime: You don't think there would be any detriment with that tall of a tower in a residential area. How can that **not** be detrimental to a home?

A. Braillard: I based my opinion on studies that I have seen in the New England area. We didn't provide that study and I'm not an expert and maybe we need to provide that study.

The area variance

They are similar, but the criterion isn't as stringent.

The variance needed, given the special condition of the property, references what was previously mentioned in the uniqueness of the property.

The applicant has tried to provide the least intrusive application while providing coverage in an area, which has a gap.

The spirit of the ordinance and substantial justice:

Notwithstanding the variance request, the applicant believes this application complies with the rest of the wireless zoning ordinance. It meets the height; it is a monopole on a large parcel.

Notwithstanding the area and use variance, the application complies with the other governing ordinance.

C2 of the plans shows the measurement of the tower from the lot lines. We do not meet the rear and side setbacks. There is a one to one setback requirement. The tower must be setback a distance from the property line. It is setback by 134 feet and we don't meet the side yard, which is 100 feet. We meet the front setback of 180 and we meet the second side yard of 138 feet. My understanding that this application after TRC, was

moved. The committee requested it be pushed back towards I93.
It's 100 feet from the parcel between Donati and the subject parcel, Map 38, Lot 29.
We abut Donati at the corner of Donati and Bicentennial.
There will be no guide wires.

C. Pearson: With regard to I93, are their setbacks for the highway.

A. Braillard: I don't know if they have been contacted or notified at DOT and the State.
My understanding that the intent of the setback is if the tower would to fall it would not do any damage. This tower is designed to withstand up to winds of 100 mph.
This tower meets all the State and federal criteria for withstanding winds.

J. Duffy: It appears that the abutters' list may be lacking. There appears to be 3:

Map 44, lot 17, Gilbertson

Map 44, lot 60 State

Map Town of Hooksett

Since you are asking for a variance for rear and side setbacks, the town must be provided with what would happen if the tower were to fall.
This monopole is designed to have no breaking point.

In the application you requested a variance for the height. In the MDR buildings can't be higher than 75 feet but this does not qualify for a building. You included this variance for height but it is not required

On the zoning summary table, your side yard setback for the equipment is 30 feet and it should be 35 because this a corner lot.

We did receive a letter July 11th

from the City Clerk in Manchester that it is to be read into the record stating that the Manchester Alderman are opposed to the building of any cell tower in a residential neighborhood.

Public Open

Mark Roy: The letter read into the record. We are not opposed to wireless or towers, we all use cell phones. We have a concern with the value of properties and if this is residential area. The Simplex decision is about the spirit of the ordinance. There is property over the line in Manchester that this affects. When you see this tower outside your door, it does affect the tax base in Manchester. Earlier, it was deemed that the application is incomplete because of abutter notifications and information required for inventory. Will this be go forward tonight?

Tracy Murphy-Roche: Yes, but we will give the public an opportunity to speak tonight.

Mark Roy: If there are further notices, I ask that Manchester be notified. There is no hardship for MDR. It is a single family residential. The only hardship is for T-Mobile and it's customers. There are other towers that can be put up in less intrusive areas.

Adam should change least intrusive to cost affective.

The City of Manchester has a number of sites and it doesn't have to affect the residential area. I know you will do this due diligence.

Thank you.

Bob Rosenthal: 302 Bicentennial

I was able to look through the 9 page legal document submitted by Omni point Communication.

1. It stated the tower is well removed from public road and residential neighbors. A couple hundred feet from me is not considerable distance.
2. The tower is in a remote area: This is MDR district. It is not a remote area
3. The statement made "there will not be a negative effect on land". I disagree.

Does anyone in this room agree with that statement other than him?

4. It states the proposed location provides a natural buffer with natural tree.

The trees in the area are 60 feet, and the tower is 180. If leaves are on the trees you have 120 feet to look at, if there are no leaves there will be 180 feet to look at.

This board has the ability to provide variance. To allow this to go through is illogical and inappropriate.

Raymond Barbuto: 105 Vasseur St., Manchester

I want to thank Denise Bouchard, your resident, came to my house and said do you know what they are proposing to do. I'm only here because of your resident who was willing to make us aware. She brought two towns together.

She showed me a letter that went out to abutters and there are only two that received that letter. On this picture, if you are at the stop sign at Donati, that is my house. The house my wife and I have tried to make a home as well as many others. None of us were notified. When were these pictures taken. What year?

The proposal shows 5 houses effected. Our home is number 5 and we weren't notified. If she didn't notified us we never would have known.

When she showed this picture, it showed this tower. I understand now that there are three sections. Will there be guide wires and what happens if there are winds over 100 miles an hour? Have any real estate surveys been done? If this is 180 feet, it is 280 feet from my property. We will be looking directly at this tower. I can't believe that it will not have a red light on this.

Who is the person that owns this property? Is he the one going for this variance or is someone representing him? Will this person representing him be living near there? Will there be microwaves on this tower? Will this cause cancer in the area? None of these studies were done. He has no studies done. We were notified on July 7th by Mrs. Bouchard, a resident of Hooksett.

We found out 3 days ahead of time and thank you for delaying this because we couldn't fit in the room.

I don't know any service company that uses T-Mobile. I work for energy north.

We have Sprint or Nextel because we need to communicate instantaneously. Under the legal argument, it consists of a large wooded area. It is not a large wooded area. It is 300 feet from my property. It goes on and it says it will be in a large remote area. When were the pictures taken, how many years ago? Was it in the summer? There are NO winter pictures. You stated "The proposal will not have a detriment to the land". There is no real estate study to support that statement.

The proposal says no excess noise. Will there be guide wires? I read on line that a certain high pitch results from these guide wires.

Is this an appropriate use of land in your town? I don't understand why the owner can't put up 2,3 or 4 houses. Wouldn't that be better for the town's tax base.

Under the Supreme Court, there is little provision for hardship. Hardship to whom? Is it a hardship to T-Mobile or the property owner?

If this denial would result in an unnecessary hardship, what about the property value to the surrounding homes. The tower, located here, would make it difficult for us to sell our home.

T-Mobile will be gone and we are left with the consequences of this. There are 17 houses within that 500-foot range.

Thank you to your resident for coming to Manchester and giving us the opportunity to be here.

Susan Lasus, 364 Paquette Ave, Manchester

I would like to be notified.

Trees are bare in Manchester 6 months out of the year. I have a sunroom in the back, and I can't go out there because it is a fishbowl. Everyone driving down the street will see the towers. I disagree that it is a MDR. If you look further up, it is high density. These homes were here first. We can't move our homes once the tower comes in. The residents should take priority.

He doesn't meet the setbacks and the property value is going down. I hope you deny the applicants variance.

Bruce Sisin, Vasseur and Paquette

I am not against progress but within reason. There are a number of high points on commercial land. Also, I'm paying on an assessment of 450,000. I am paying on land that abuts Bicentennial.

That tower should lessen my taxes but that never happens. Manchester North End is zoned R1A which is very dense, a Single-family residence every 100 feet. We live there because it is a nice area that is zoned residential and residential is residential. It would be interesting for a certified appraiser to take a look at the impact on the value.

John Giodis: 306 Bicentennial

Being at 306, I am across the street and didn't get a notice. I am across the street and miss being a direct abutter by a couple of feet. There use to be a road there and I don't know why we weren't notified.

From my property there is water that travels from my land to Bicentennial.

There is a road that has already been constructed in there. There has to be water there. Are there wetlands in there? Have the studies been done. I will be looking out all my windows and see a tower 9 months out of the year.

Verizon has good coverage. There has to be something else they can do besides put a tower in **this** area.

Earnest Guimond: I have lived here since 1977 and had a cell phone with US cellular since the 80's. I have no dead zones. I would suggest looking a SNHU or the water tower. I don't understand the technology but I feel bad if they can't access the technology but we should not be subjected to cell towers every few feet to satisfy them. Don't impose on us.

Mario Allard: 183 Wellsly Street:

We have T-Mobile. I never had a problem. I would give up that 1-mile radius not to see that tower every day.

Gary Casteldino: 60 Vasseur St. Manchester

My house has a direct view of this location.

My wife and I are opposed to this as well. As an attorney, I understand the criteria required. I think the presentation fell short in meeting the burden of proof. I have reviewed the legal argument and it fell short in the area of "decrease in value". It was the first point for Hooksett and the last point in the argument and very limited. That is a major concern.

One criterion is applicant must show the applicant can't be contrary to public interest. It was pointed out that orally and written that this is a wooded lot and it is not removed from neighborhoods. In addition the courts said that using a residential lot for a cell tower is a contradiction to

the spirit of the ordinance. The plan of the zoning ordinance does not allow for a cell phone tower. The most important criteria for a variance is the need to establish hardship. In the questioning, where is the hardship.

The answer is that T-Mobile has to deliver reliable service to its customer. That is not part of the hardship. The hardship must be inherent in the land. Why can't it be used as a residential land. That case was not made. The only case made was that this is a great site for us. For those reasons, and the significant concern, with the material submitted, the applicant doesn't and hasn't met the criteria to say they will not diminish the property value of the surrounding area.

The burden of proof for that argument has not been met.

Fred Bishop, Hooksett:

I can also see the tower from my house. It is in a residential area.

Denise Bouchard 303 Bicentennial drive

I do strongly appose this as an abutter.

Dave Duval, Vasseur, Manchester: I think the board asks some good questions and the applicant fell short in answering them. There are many other commercial sites that will suit this need.

Amy Vacanos: I didn't know of this either. I thank the effort of others. We all agree that it is not the area for this. I oppose the tower.

Steve Boisvert: Vasseur, Manchester: A 180 foot whatever is not a good thing. It will affect us all and I hope you will deny this.

Elaine Pichanski, Manchester:

I would like to go on record to say the same that this tower is only benefiting this company and will not benefit our homes, children or animals. I oppose this.

Jack Resick , 94 Aspen Way: What is inside this fence with barbwire if a teen goes over it?

Adam Braillard: We are proposing a fence with barbwire to prevent unlawful entry.

If someone got inside the compound, I don't think there are any electric components exposed.

Benjamin Lee: 12 Royal Oaks Drive, Manchester: I represent my dad and he is opposes to this variance.

Tracy Murphy-Roche: We will not close this hearing but we will end the discussion for tonight.

My concerns are I don't think the application is clear. Based on what happened tonight, if the applicant returns, it should be addressed in the same format that it appears. I could not follow your presentation because it didn't match. I would hope you would come back with it more organized.

My other concern is the diminution of property value. It's not what we think or the abutters think, its what a professional thinks. It is my recommendation that you have a professional, someone with experience with doing reports and investigations on how these towers affect the surrounding area, present a report. That should be available to the public and us.

J. Duffy:

We could find someone and I recommend so that it doesn't appear that the report is slanted, the town hire someone at the cost of the applicant.

Tracy Murphy Roche: so recommended.

My other concern is the lack of notification of abutters. We can assume that this will be renoticed.

J. Duffy: We need an abutters list and if we could get something from the city of Manchester, that would be helpful.

Mark Roy: Is it determined that this is regional impact? I can give you as many names as is required.

J. Duffy: Regional impact is with regard to site plan review. This board doesn't deal with regional impact.

Mark Roy: If we warrant this regional impact, we could access the help of SNHP.

R. Savoie: We need to include the State and the FAA as well as the lights and the height of the tower.

Tracy Murphy-Roche:

My last point is I think this applicant wasn't as prepared as they should have been. If we are going to take the time, it should be prepared and well thought out.

C. Pearson: Are we going to schedule a site walk?

Tracy Murphy Roche:

Since the abutters weren't properly notified, we will meet again and I suggest we do a site walk. There also appears to a development to have begun already. I believe that it is imperative that we visit the site.

J. Duffy: If you do a site walk, the applicant should fly a balloon so you can see the height of the tower.

C. Pearson: I ask the applicant to look at other sites in Hooksett that would be better.

Tracy Murphy Roche:

Under Article 28, there are things that are to be provided to this Board under Wireless Communication that we expect to have at the next meeting.

***C. Pearson motioned to continue the Public Hearing to September 11, 2007 and schedule a site walk. Seconded by R. Savoie.
Vote unanimously in favor***

Continue this September 11, 2007 at 7:00 pm at the Hooksett Public Library.

Site walk schedule for August 6 at 5:30 in front of the property at 305 Bicentennial Drive.

ADJOURNMENT

The meeting was declared adjourned by the Chair.

Respectfully submitted,

Lee Ann Moynihan