

Unofficial

**HOOKSETT ZONING BOARD OF ADJUSTMENT
MINUTES**

Tuesday, November 10, 2009

**HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

Chairman Pearson called the meeting to order at 7:01 pm.

PLEDGE OF ALLEGIANCE

INTRODUCTION OF THE BOARD

Chairman C. Pearson, R. Bairam, R. Duhaime, J. Levesque, D. Pare and Town Council Rep. J. Gorton.

APPROVAL OF MINUTES

R. Bairam motioned to approve the minutes of October 13, 2009. Seconded by J. Levesque.

Vote unanimously in favor. (1 abstained)

C. Pearson declared that Alternate D. Pare would be voting on all applications.

CONTINUED PUBLIC HEARINGS

CROWN COMMUNICATION

210 Whitehall Road, Map 15, Lot 86-1
Industrial Zone

A request for a Special Exception as specified in Article 11, Section B.2 to install a wireless communication facility in the Industrial Zone.

A Variance from Article 28, Section O.5:a which requires a front, side and rear yard setback equal to the height of the tower. The proposal is to construct a 150-foot monopole tower. The center of the tower is a greater distance than the height of the tower from the front and rear yards, but is 113.67 feet from the side yard to the east property line.

D. Klasnick: Since the last meeting, I prepared and submitted correspondence date October 29th to this Board. I felt this would be useful for both myself and the Board in reviewing the work that has gone into this application. This is helpful to refresh everyone on what was presented in the past. Prior to coming to the town, Crown spent a considerable amount of time looking for an appropriate location considering zoning and aesthetics as well as RF requirements. I want to emphasize, we met back in May with TRC and incorporated changes. We met with the Planning Board so they could offer their opinion on the Special Exception. They voted in favor of the monopole tower in the Industrial Zone. We submitted a comprehensive application and looked at alternative sites. We conducted a balloon test. As a result, you requested we move the tower closer

down Whitehall. We showed improvements based on that. We funded two separate studies both of which support what this applicant has presented. In addition to the applicant's study, the Stanhope Report found the same. AT & T supplied a great deal of RF information and supports the position that what is needed is an even taller tower. But not to be a detriment, we did not increase the tower. We have met with the board 3-4 times. We satisfy the dimension Variance. Although under the by law, because this is an Industrial Zone, you could put a car lot or manufacturing facility, the Zoning Board said you can put a tower. We need additional relief for the height of the tower, because we don't satisfy the fall zone. Crown moved the tower toward the industrial lot which is over 113 feet from the industrial parcel and more than 150 feet from the residential parcels. This is an allowed use pursuant to a Special Exception.

R. Duhaime: What is average tree canopy height by the tower?

D. Klasnick: The average tree canopy height was not undertaken. I don't believe that is an application requirement.

Jim Donahue believes it is 65 to 70 feet as a guess.

D. Klasnick: The technology is a line-of-site technology so it must be above the tree height.

D. Klasnick: I was trying to tie in the analysis of the Londonderry case when you are looking at a telecommunication tower, the board needs to consider the federal overlay which doesn't preempt but requires they try to give guidance at the local level.

C. Pearson: What is the proposed noise mitigation plan at the site.

D. Klasnik: For the site itself, the elements would create no noise. Each carrier will have a building, which will include equipment and an emergency generator, which will operate only in an emergency. It will have cyclical testing. This is programmed remotely and can be scheduled at the time the Board feels is least disruptive. The generators used are fitted with a silencer. There is exhaust, but the silencer reduces the noise of that generator. The HVAC's are usually two (2) per site and only one is used at a time and is similar to air conditioning noise at a residents.

John Chungas from the Stanhope Group reported on the results of the valuation impact study done at the request of the Board.

The town engaged us to look at the proposed Cell Tower location. We were called after the balloon test, so I did not have that as part of the analysis. I was provided with the photo simulations of the balloon test. I also walked the site. The owner took me to the physical location of the proposed tower. The tower is typical of the monopoles seen in the past and the topography is similar to the southern NH area. Farrwood drops off and the woods are a mix of soft and hard woods. Everything was in full foliage when the study was done. In the photos and when viewing the neighborhood, there are homes on Farrwood and Whitehall that will have partial views of the tower and some will have no

view. That is typical for towers in this area. In approaching our opinion, we try and find sales of homes with views of towers and similar homes with no views. We try and keep the neighborhood influences the same. We don't select homes close to highways or other areas where an argument can be made that commercial may influence. We try and find towers in the community where we are working. That is not always possible, but Hooksett has 3 communication towers, two are in areas that are commercial and residents are incidental. There is one behind Lindsay Road neighborhood. That neighborhood is stable and we found one sale there with partial view of the tower that was market rate sale and compared to a sale that didn't have a view of the tower and they were comparable. There was another sale in 2008 on Nancy Road and that was a bank foreclosure and felt that was an unfair comparison. We went to other towns with view and no views of towers. New England is known for variation in style and we couldn't identify a diminution in value with homes with views of cell towers.

C. Pearson asked Dan to review the setback for the drop zone on the variance.

D. Klasnick: The pole is design to fall within the confines of the property. There is a break point within the 100-foot zone.

The Alternative Site Study was done by Mark Hutchins and submitted to the Board.

Conclusions from page 9.6 were read into the record. (See file)

Abutters:

Chris Linds, 22 Farrwood: I don't think anyone will argue that everyone has put a lot of effort in putting this tower up as well as from the abutters. My house is currently on the market and I want to speak to the difficulty of selling with the proposed tower. I have had four (4) people walk away when they learnt of the proposed tower. I think that is a real indicator of the impact of the tower. Some offers that came back and the lower offers were because the tower was in play. Doris Labbe summarized our concerns. The Board needs to take into consideration my concerns with a proposed tower and the fact that I have had four (4) offers removed once they learnt of the tower in my backyard. My house went on the market in February.

What is different with this case and the Candia case?

R. Duhaime: Candia wanted a tower in a residential zone and there was better location.

C. Pearson: We did get some great information from the abutter. We did receive a response from Mr. Hutchins. Mr. Hutchins reviewed the alternative technology. Each one was reviewed in detail and none of them seemed to work given the tower and its location. He looked into the DAT's system, which works, well in urban development.

Doris Duhamel Labbe: There were some notes regarding the alternative analysis. He does state that there was no model that was based on 180 feet on the water tower except it won't meet adequate coverage.

Response: The results of modeling are shown on figure 6 and 7. The suggestion of using a 190-foot tower is shown on the attached figure, is not helpful for the east.

D. Labbe: The comparables for values are not justified. You can't even see the towers from the house on Campbell. They didn't do a multiple regression. I don't think he is a noise analyst. The model is not what will be seen if there are co locators on the tower. One comparable was given 5000 for views and if we get the tower, it will detract from the views.

J. Chungas: The comparable is a limited view of the tower. When I viewed it, there were leaves and now there are few leaves and it wasn't a full view. We don't use regression analysis because in New England we don't have the number of sales to create a regression analysis. Florida has done these because they have mass buildings. Our typical analysis is property by property. Regression analysis involves numerous properties and eliminating differences and is an expansion of a compared sales analysis.

D. Labbe: On Page 6 of my letter, there has been six (6) properties sold on the street. 14 Farrwood has been for a sale since October of last year. 22 Farrwood has been for sale since February due to the tower. 16 Farrwood sold for less than the assessed value. There is 13 ½ months of inventory in the town.

Dan Baudette, 23 Farrwood: My front porch has a direct view of the tower. During the balloon test, we could see 40% of the tower. It is clearly visible in a defoliated state. Why would each provider have a need for redundant HVAC. To say they have noise abating equipment is not the same as limited noise. What is the din created by all that machinery? I think tabling this maybe in order due to last minute material submitted.

D. Klasnick: This proposal is just AT&T. Co locators will have their own equipment. AT & T has a backup generator for when there is an emergency when people need to communicate. This will be an AT&T's generator.

P. Rowell: There is no further review required for any future co locators. This is the review for all four (4).

Steve Laliberte, 18 Farrwood: I took from my 401 K to live in this beautiful neighborhood and I'm not pleased to have this tower in my backyard.

Bob Jodoin: I've done real estate since 1971 and I can't understand how someone can say how the property value will not be impacted. I go by the tower on By Pass 28. The noise isn't what matters, it is the RF interference. I think you need to table this until more things are found out.

P. Rowell: The tower on By Pass 28 is used for microwave switching gear as well, which could contribute to the interference.

D. Klasnick: AT&T is a FCC license carrier and is required not to interfere with other carriers.

Allan Kessler, 19 Farrwood: I just got a tax bill and they raised my taxes and I'm fed up with it. I'm retired. I don't want it in my neighborhood.

Rhonda Pelletier, 17 Farrwood: I looked for land for years and specifically didn't choose a perfect lot because it had a cell tower. It will bring down our property values. I chose a place and I don't want to live next to a cell tower. It is just a sin that they will do that to us.

Judith Harisiades, 25 Farrwood: I saw the balloon test and we will see full view of the tower from our front door. We looked for a site that was aesthetically pleasing. I wouldn't buy my house if I could see the tower. It will impact my property value.

Stefanie Swalgen, 20 Farrwood: This is in my backyard. I bought there to stay there. We put a pool and we plan to stay there forever. My concern is safety. We came to Hooksett 9 years ago. We looked for a place that wasn't near any power lines. Safety was important to us. I'm concerned about safety. I don't feel that Crown Communication has looked at alternatives. At the end of the day, even if there are any alternatives, I don't think it's fair to say, yes we will put this in your backyard. Just because the other side of my property isn't residential, it's not fair to put it there. I don't want it there.

Close Public session.

R. Duhaime: I don't want a cell tower in my backyard but does this meet the criteria and did they do due diligence. There is no planning in the master plan for cell towers. We have laws that state we can have cell towers in this zone. These communication towers try and find the best location. The Planning Board did say they like this location. I didn't think this was that bad of a location for a cell tower?

Special Exception Criteria:

1. *The specific site is an appropriate location for the use or structure.*

By consensus, all five (5) members agreed that this was an appropriate location given it is in the Industrial Zone. With the minimal site view at this location, the tower fits the terrain.

2. *No factual evidence is found that property values in the District will be reduced due to incompatible land use, by such use.*

The two reports, one from the applicant and one from the third party, say there is no impact. There is no factual evidence showing there is a diminution in value. All five (5) members accepted the findings of the reports.

3. *No nuisance or hazard will be created by the proposed use.*

C. Pearson: They are bound by FCC regulation and they claim there is no hazard.

If they need to run a generator due to a power failure, there will be the same noise as any other home running generators during a power outage.

All five (5) members agreed there is no nuisance or hazard created.

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

All five (5) members agreed it was an adequate and appropriate facility for the proposed use.

5. The requested use will not impair the integrity or character of the District or adjoining Zones nor be detrimental to the health, morals, or welfare of the community.

C. Pearson: It is evident that the integrity of the residential neighborhood will be affected. It will improve cell coverage in the community but will affect the integrity and the character of the abutting neighborhood.

R. Bairam: It does affect the character of the neighborhood, but it will improve the reception.

J. Levesque: It will change the character but it will be beneficial to the community with better cell coverage.

R. Duhaime: I don't think it will impair the integrity or the character.

R. Bairam: It will hurt the character of the neighborhood and I don't know if the improvement of cell reception will balance it.

D. Pare agreed with R. Bairam.

C. Pearson: Farrwood does abut that Industrial Zone and many things could go in to that zone that would not require a Special Exception. It could be something that could impair the air quality and could be very noisy such as a freight terminal. Many Industrial uses could have a greater impact.

J. Levesque: The cell tower needs to be looked at but there is no noise or traffic impact.

R. Bairam: They will not need to clear many trees with this use.

Three (3) members agreed that the applicant met the criteria. Two (2) members were opposed.

J. Levesque motioned to approve the request for a Special Exception as specified in Article 11, Section B.2 to install a wireless communication facility in the Industrial Zone at 210 Whitehall Road. Seconded by R. Duhaime.

R. Duhaime: I think based on the work done by the neighborhood, I would be open to giving the abutters input to the aesthetic make up of the tower.

Vote: 2:3 motion failed. Request for a Special Exception was denied based on failure to meet criteria 5. This will impact the integrity of the abutting neighborhood.

NEW PUBLIC HEARING

F & Z Real ESTATE HOLDINGS, LLC

1556 Hooksett Road, Map 18, Lot 1

Performance Zone

Appeal of Administrative Decision for a building permit for Unit B at the property. The purpose is to upgrade Unit B for an office to be leased as an accounting office for a sole practitioner.

Luke Webster and Steven Zannini:

L. Webster: The property located at 1556 Hooksett Road, Map 18, Lot 1 is just under two (2) acres and is being used as auto repair and sales. It is being used as Unit A. This was approved in 2000 and amended in 2002 as auto sales. In August 2009 the applicant requested a fit up for unit B for a 10 x 11 office space. It is a separate office space within the structure. The applicant wanted that area for a solo practicing accounting. The tenant is ready to move in. The office is sheet rock and concrete. The CEO denied the permit because the application was not approved for this use. The site plan review process is understood and is used to understand the impact on the property. This will have a benign impact and we feel Mr. Rowell was in error and those items were highlighted in the application. The use is an approved use in the Performance Zone. The square footage of the structure was taken into consideration when reviewing the parcel. There is ample parking on that property. A solo practicing accounting will have minimal impact on the parcel. The unit is inside the structure. The building department was aware of the two units when the applicant came forward for a permit for unit A. This would allow for a more productive use on the parcel. The tenant has been prevented from moving in and this is contrary to the spirit of the ordinance. We request you reverse Mr. Rowell's decision to deny the permit. This will have no impact on the property.

P. Rowell distributed four (4) folders to the chair.

I will show the Planning Board never approved a second unit and the applicant has presented no information other than a copy of a permit. I have been dealing with Mr. Zannini since the fall of 2008 when I received a complaint regarding the operation of the business. At that time, I pulled a site plan, which is a 2000 site plan of the former owner, which is the controlling document. There was another review in 2002 of the former owner and there is no record of that signed plan. After the complaint, I spoke with Mr. Zannini to try to bring this property into compliance. I stopped by to finish this process and I was told Mr. Zannini wouldn't continue to make the property compliant. I started drafting a Notice of Violation and then Mr. Zannini requested a tenant fit up for unit B. The site was originally approved for sales only, but upon review it appears that the Planning Board approved repair with conditions of landscaping and where cars could be parked.

In the record, supplied by Mr. Zannini was a copy of the building permit. The permit signed by Mr. Zannini and sign by the former building inspector is no reference of a unit B. There is reference to a unit A. If the applicant was approved for units A and B, there would be reference to that. There is a wall framing detail between the auto repair and office area. The last page has floor plans of the proposed work. It is a detailed floor plan with no reference to unit A or unit B. If at some point, the Planning Board approved a unit B, it would have been shown on that document. Not having the building permit in our file and relying on Mr. Zannini's copy, the permit he supplied showed a drawing. The computer generates the permits. Why would the permit show are A and B when the application only refers to A? I spoke to Mr. Zannini and his attorney and I recommended they go before the Planning Board to add unit B. Instead, they chose this route and I'm defending no fit up because I don't see where the Planning Board has reviewed unit B. I don't have the authority to permit anything that is not on the site plan. This is commercial property and I would go beyond my authority to grant this approval. Mr. Zannini is using the right side and the service bays. The left side was used for storage. It is framed only. I denied a second electrical service as well.

C. Pearson: Why not go before Planning Board?

L. Webster: We appreciate his comments, but we feel it was unreasonable given the nature of the use and the office is built and already a separate area. It is within your authority to grant the permit or requiring us to go before the Planning Board based on the use.

C. Pearson: It is a reasonable use of the space.

L. Webster: If we are required to amend a site plan, there is an added expense.

P. Rowell: They can request a waiver of full site plan requirements.

Mr. Zannini: When I moved in to the building, the building department was in flux. Never did anyone tell me that I had to go before the Planning Board. M. Bonstell was aware of the future service and the future tenant. I thought once I got a tenant, I could get a permit. I want it to be completely separate. This was how I was told to proceed. There were so many personnel changes.

R. Bairam: Is their adequate parking?

P. Rowell: That is to be addressed by Planning Board.

P. Rowell: I don't have a problem with the construction that was done at unit A but I don't believe that the Planning Board ever approved a second unit.

Mr. Zannini: I was approved to put the wall up for unit A.

J. Gorton: At that point in time, there was lot of turmoil in the department.

If the board votes to clean it up, does the applicant have to go before Planning Board?

P. Rowell: I have no problem with the work being done on the building. I wasn't comfortable with a completely different site plan review.

J. Levesque motioned to grant the Appeal of Administrative Decision to upgrade the property to occupy unit B. Seconded by R. Bairam.

Vote 3:2 motion carries

1266 SMYTH ROAD

1266 Smyth Road, Map 48, Lot 19

Medium Density Residential

A request for a Special Exception as specified in Article 18, Section G:2.a which states a forty (40) foot setback shall be required from the wetland boundary to any structure or any paved area and shall remain in its natural, undisturbed state.

D. Duval: I am requesting a Special Exception to create a driveway on a 5.7 acre lot, which violates the wetland setbacks. There is no other way to get into this lot other than impacting the setback. We want a driveway for a residential home. The wetland setback takes up the frontage. There will be about 10 feet from the drive to the wetland if we have the driveway come out at a 90-degree angle. This way we will not have to touch the wetlands.

D. Duval read from the criteria. (see file)

We attempted to meet with Conservation and will try and work out a meeting time.

1. It is only way into the site without dredge and fill
2. Residential house in a residential zone
3. It is an allowed use with no impact to wetland
4. It is a residential use and will get state approval for the septic
5. Zoned residential and it is going to be one single residential lot.

Open Public Hearing:

Abutters

Linda Mitchell, 3 Johns' Drive: We have pond on our property that abuts the property.

D. Duval showed the distance from the location.

Ross Londo, 32 Prescott Heights: I just wanted to locate my driveway.

D. Duval indicated the location of Mr. Londo's drive.

Close public

Site walk scheduled for Saturday, November 21 at 8:00 am at the site.

ADJOURNMENT

Chairman Pearson adjourned the meeting at 10:00 PM.

Respectfully submitted,

Lee Ann Moynihan