

**Jackson Board of Adjustment**

**May 18, 2011**

**UNOFFICIAL UNTIL APPROVED**

**Draft May 18, 2011**

**Members in Attendance:** Frank Benesh, Brian Walker, Joan Aubrey, Lisa MacAllister. Alternates attending the meeting were Gino Funicella and Martha Benesh. Members of the public in attendance are: Lisa Fearon, Jon McNeal, John Fichera

The Chairman called the meeting to order at 7:00 p.m.

**Approve the Minutes of February 2, 2011** The minutes of February 2, 2011 were approved as submitted.

**Public Hearing – Northern Mountain Realty Trust (Map R17, Lot 31-b) Variance request Jackson Zoning Ordinance 14.6.3.3** Chairman Benesh noted this is a variance application submitted by John Fichera on behalf of AT&T wireless. He noted the Public Hearing will be opened, information will be presented; folks will be given an opportunity to review information and express support or opposition and then the Public Hearing will be closed and the Board will deliberate.

Chairman Benesh opened the Public Hearing at 7:02 p.m.

It was noted that twenty notices were sent out and twenty were returned; the Hearing was also noticed in the Conway Daily Sun and in the E-news.

Lisa Fearon, an attorney for AT&T and Jonathan McNeal from FAI Communications are in attendance today; AT&T is requesting a variance from 14.6.3.3 of Jackson's Zoning Ordinance which states that preference will be given to siting a facility within the designated Telecommunications Overlay Zone, which shall consist of an area within 200 feet on either side of the traveled center line of NH Route 16 within the Jackson town limits. She reviewed the process so far and how this application got to where it is today. The original proposal was for a free standing tower in 2009 but that was denied as a Variance from 14.6.3.3 was required; AT&T then came back with another proposal locating an antenna on lift tower 14 by building a ten foot extension to the RCC tower that's there now. That application was pending then AT&T got approval to install a temporary tower there. This temporary tower provided Jackson with some mobile coverage. The temporary tower was approved but then they learned the proposal to extend the lift tower an additional ten feet wouldn't work from a structural standpoint. This time AT&T is proposing to install a separate, stand-alone forty-five foot monopole. This will make use of the equipment shelter that is already there; they will move the antenna off the temporary set up and onto the forty-five foot monopole. The main reason for requesting the variance is because Black Mountain is outside the Telecommunications Overlay Zone and this is a proposal for a new tower. The coverage area with the new tower was reviewed; they will also explain

why the temporary facility isn't enough and why AT&T needs to locate the antenna outside of the Telecommunications Overlay Zone. Plans showing coverage were distributed and reviewed by the Board. It was noted the new proposed tower will be able to provide more coverage, high speed cable and better call coverage. If the tower were located along the Route 16 corridor there are many areas that would not get the coverage the tower on Black would provide. Jonathan also reviewed the alternative site which is a little beyond the Post Office. Lisa reiterated that although they came up with a couple of places in the Telecommunications Overlay Zone; they just didn't provide the same amount of coverage as the proposed tower would.

Lisa would like to walk through the criteria and present their reasons for approval of the variance.

- 1) The variance would be contrary to the public interest. The new tower will serve the public interest as it will improve the coverage area; it won't affect the area as it is already being used for recreation; there is already another telecommunications tower up there. The proposed use won't be a threat to public health, safety or welfare as shown by submitted item Tab A; the maximum exposure levels are below the FCC allowable standards. Lisa noted that while not submitted with the application she does have a copy of a structural letter discussing the structure of the post monopole and it shows what would happen under severe situations like ice and wind. The tower collapse information is to be provided to the Board; she can make more copies. The monopole is designed to collapse within itself in the event of a catastrophe; there are different points along the monopole that would buckle; it won't fall down like a tree would. The tower is designed for very severe wind and ice conditions. This meets the first criteria.
- 2) The spirit of the ordinance would be observed. Lisa noted the spirit of the ordinance is to allow the towers but only in a way that avoids or mitigates impact; it also would allow the structure to be in co-location. The spirit of the ordinance is observed as there is no other opportunity for co-location within the area. AT&T has a tower that can't be extended as noted earlier so they can't provide any further coverage. Tab E has photo simulations that show the visual impact; it shows the proposed tower and what the visibility would be from different locations. As far as environmental impact, Tab J shows an environmental study prepared in 2005; they are in the process of getting a revised one and will submit it to the Selectboard when they go for the building permit. This new tower will be right next to the old one; the area already has towers.
- 3) Granting the variance would do substantial justice because it is the only legal way for AT&T to provide coverage in the Black Mountain area where coverage is desirable and it utilizes the existing infrastructure on the site; there would be no harm to the public as per the reports from the FCC.
- 4) The values of surrounding properties would not be diminished. There is a tower already there. It can be shown by the photo simulation; with first the visibility of the tower and the proximity of the tower that there is no impact. The tower is located in an area that is already developed and near an existing, permitted facility. Tab L has a report Andrew Lamay did for a different site in New Hampshire; she's not saying it applies directly to

this site but it is attached just as reference regarding different factors that affect property values. The report ultimately concludes that there's no impact to properties (in that area) due to the cell tower.

- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Lisa noted the proposed use is reasonable; and it's clear section 14.6.3.3 allows Telecommunication towers. There will be minimal impact given the design and placement and the proposed tower is designed to fill a substantial gap in coverage. While a copy of the case isn't attached, the NH Supreme Court made a ruling involving Londonderry that applies here. The Black Mountain site is the correct elevation to provide the expanded coverage. It's a reasonable use because there is already a tower there and the proposed use is compatible with the recreational use currently in place on Black Mountain.

Lisa noted this is the end of her presentation; she feels the Board will find the five criteria have been met for the requested variance.

Joan Aubrey asked if the plan is to remove the RCC structure when the new tower goes up; John Fichera noted the existing AT&T Mobile tower is staying as is the Public Radio tower; the Public Radio tower is sixty-five feet and about one-hundred-ten feet from the proposed tower location. These all have different frequencies and the elevation of the proposed tower won't interfere with the Public Radio tower (which is twenty feet taller than the proposed monopole). There will be no changes to the access roads either.

Gino Funicello asked if the monopole had been tested to be able to withstand the winds that occur in that area; some folks have anemometers that show winds reach one-hundred-four miles an hour regularly. John Fichera noted the monopole is designed and tested for an average wind speed to 94 mph. This monopole is designed for the wind and weather expected at the site. Chairman Benesh noted that really would be up to Building Inspector Andy Chalmers to review.

Martha Benesh noted the monopole is supposed to collapse but it still calls for the fall zone; she wants to know if she's up there skiing is she going to be close to this. John Fichera affirmed this letting her know it will be like the towers she skis by already. The monopole is designed so if it falls it won't hit another structure. This new design telescopes inward; it is wired at the bottom and if something happens that lets go and the sections fall inward.

Chairman Benesh asked if there were any abutters or members of the public who would like to make a statement; there were none. He asked the Board members if they had any last comments or questions before the hearing is closed. Joan Aubrey wanted to make sure the ski area is okay with this; which was affirmed. John Fichera noted the infrastructure is already in there; given the fact that the mountain has a number of towers and lift towers that are taller than this; he'd like to go forward with this; it's the right way to do it.

Chairman Benesh reminded the Board that this is a variance application to allow the tower to be located on Black Mountain; it doesn't address any of the other issues in the Zoning Ordinance so these folks have to comply with all else; it doesn't relieve them of the obligation to allow co-

location in accordance with the Zoning Ordinance. All further issues will be discussed with the Selectmen when they go for their permit.

Chairman Benesh closed the Public Hearing at 7:25 p.m.

Joan noted there are other communications towers up there; this is not the tallest or the only tower up there. It seems to her that it is within the spirit of the Ordinance to have these in one location; it won't impact the quality of life here in Jackson.

Chairman Benesh noted he'd like to go through the worksheet.

- 1) The variance would not be contrary to the public interest Chairman Benesh noted that no one has come forward to question this or to say it's not in the public's interest or not in the spirit of the ordinance. No one is objecting and there are aspects of this that are good; such as the expanded coverage area.

**Chairman Benesh, seconded by Gino Funicella, made a motion that the Board finds it would be in the public interest to grant the variance. The motion passed unanimously.**

- 2) The spirit of the ordinance would be observed Chairman Benesh noted in this case Jackson's ordinance does allow for towers and tries to encourage co-location of these and encourages putting it in the Telecommunications Overlay Zone. Joan pointed out this application does include co-location. Brian noted the road and infrastructure are already in place. Chairman Benesh noted this is a very good point. Brian also noted placing the tower in the Telecommunications Overlay Zone wouldn't improve coverage. Chairman Benesh noted more of the population, which is in town, would benefit from the proposed placement rather than along Route 16; Martha agrees but would like to get AT&T to build something over in the upper Route 16 corridor.

**Chairman Benesh, seconded by Gino Funicella, made a motion that the Board finds that the spirit of the ordinance is observed; because it does have the co-location aspects that the Board discussed. The motion passed unanimously.**

- 3) That granting the variance would do substantial justice Gino noted there is no other alternative; the other site wouldn't work; Joan Aubrey noted there is no loss to the public. Chairman Benesh noted no one has said this is going to kill their property values; Martha noted that at this point in time having a cell tower nearby should not create any loss of value noting that if your house has 3G service it will be worth more than a home without. **Joan Aubrey, seconded by Martha Benesh, made a motion that substantial justice is done for reasons the Board discussed. The motion passed unanimously.**
- 4) The values of surrounding properties would not be diminished Chairman Benesh noted, as discussed earlier, the Board has not seen any evidence that the value of surrounding properties would be diminished. Joan noted there would not be issues of health according to the documents submitted.

**Joan Aubrey, seconded by Martha Benesh, made a motion that the values of surrounding properties would not be diminished. The motion passed unanimously.**

- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship Chairman Benesh noted this is always the hardest one but as the applicant has pointed out this is a reasonable use for the property and there isn't a reason to require them to locate the tower in the Telecommunications Overlay Zone. The ordinance encourages co-location. Martha asked what the applicant would have to do if this is denied and Chairman Benesh noted this Board doesn't know what they would do if this is denied; they could leave the temporary tower and power there. The applicant has already been told the other structure can't be expanded and no other towers/services are changing on the mountain.

**Chairman Benesh, seconded by Gino Funicella, made a motion that it would be an unnecessary hardship to literally enforce the provisions of the ordinance. The motion passed unanimously.**

Chairman Benesh asked if former Selectman Funicella needed to abstain; Gino doesn't believe he was involved at all when this came forward but he will abstain. It was noted the application was originally turned down in 2008 when Jackson's interim building inspector said we needed a variance. As Gino recused himself; Martha Benesh will be the alternate voting on granting this variance. **Brian Walker, seconded by Martha Benesh, made a motion to approve the variance. The motion passed unanimously.**

**Other Business** Chairman Benesh proposes that the Board observe a moment of silence in recognition of David Urey's long years of service to this Board and his passing last week. All were urged to take a moment to think about all his contributions to this town. (silence) Chairman Benesh noted David will be missed on this Board.

The Board would like to offer official congratulations to Brian on the change in his marital status.

There was no further discussion.

The meeting was adjourned at 7:38 p.m.

Respectfully submitted by:

*Martha D. Tobin*

Transcriptionist