

**Town of Jackson Board of Adjustment**

**Decision in re**

**Application for a Variance from Section 14.6.3 of the  
Zoning Ordinance to permit construction of a new wireless facility support structure near  
so-called Lift Tower 14.**

**With regard to Black Mountain Road (Map R-17, Lot 31B), New Cingular  
Wireless PCS, LLC d/b/a AT&T Mobility and as authorized by John T. Fichera, Trustee  
of Northern Mountain Realty Trust.**

**Case No. 2011-02**

**May 18, 2011**

**1 Background**

1.1 AT&T seeks a variance in order to site the proposed 45' monopole, antennas and related equipment outside of the Telecommunications Overlay Zone as set forth in Section 14.6.3.3 of the Zoning Ordinance. Section 14.6.3.3 states: To the extent that facilities under Paragraphs 14.6.3.1 and 14.6.3.2 [dealing with co-location of antennas on existing structures] are not available, 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

**2 Finding**

**2.1** The Proposed Variance will not be contrary to the public interest and indeed serves the public interest as the proposed location on Black Mountain improves cellular telecommunications service in the Town to a greater extent than if the tower were located in the telecommunications overlay district within 200 ft of Route 16. (by vote of 5 – 0 )

**2.2** The Spirit of the Ordinance is observed. The purpose of this section of the Zoning Ordinance is to avoid and mitigate adverse impacts that communication tower and antennas may create including visual, auditory, environmental, historical, health and safety impacts. As the proposed new tower is adjacent to other telecommunications towers and antenna, any adverse impacts are minimized by collocating with the existing facilities. By vote of 5-0.

**2.3** Substantial Justice is done as co-locating with existing communications facilities minimizes adverse impacts and improves communications service for the public. By vote of 5-0

**2.4** The value of surrounding properties will not be diminished. The Board noted there were no objections from abutters. As the proposed tower is adjacent to existing facilities and there are very limited views of the tower from adjacent properties, limiting any impact. By vote 5-0.

**2.5** Owing to the special conditions of the property that distinguish it from other properties in the area, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship (by vote of 5-0 ) based on

**2.5.1** No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to this property. The Board noted that the proposed new tower will use an existing telecommunications equipment shed and be adjacent to existing towers, which in effect is a co-location, even though there was not a literal co-location of antennas on an existing tower. The existing telecommunications towers and the property's operation as a ski area are existing conditions that distinguish it from other properties.

**2.5.2** The proposed use is an reasonable one.

**3** Decision:

**3.1** The Board of Adjustment grants the Variance **from Section 14.6.3**

Voting in Favor: Joan Aubrey, Frank Benesh, Lisa McAllister, Brian Walker, Martha Benesh

Opposed: none

Recused: Gino Funicella

Dated: May 18, 2011