

TOWN OF JAFFREY
Jaffrey, New Hampshire

BOARD OF ADJUSTMENT
Meeting Minutes
February 2, 2010

Present: Chairman Sawyer, Members Belletete, Dodge, DuMont and Webber

Absent: Member Campbell

Staff: Recording Secretary Symonds, Building Inspector Baron

MEETING MINUTES APPROVAL

On a motion by Dumont, seconded by Webber, the minutes for the January 5, 2010 meeting were approved as submitted. (5-0)

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 7:30 p.m. The rules of procedure were read aloud. Notice of hearing for case No. ZBA 10-02 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building and the Library; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicants.

Public Hearing - New Items

1. ZBA 10-02; New Cingular Wireless PCS, LLC (dba AT&T Mobility); (Property of N.E.W.P.) 141 Old Sharon Rd., Map 255 / Lot 7; Zone Industrial

Variance: The applicant proposes an 18 foot tower extension to increase the height of an existing 125 foot tower to a total height of 143 feet above ground level. (Section VIII, Article III, Zoning Ordinance)

Presentation: William Dodge – Downs Rachlin Martin, PLLC; Sharon Horn – Site Acquisition Agent, AT & T; Kevin Brewer – Radio Frequency Engineer, AT & T

Appearance:

Mr. William Dodge stated that it is their practice and understanding that under the Office of Energy and Planning statute they are required to do the same regional notification (within a 20 mile radius) as a new tower even though they are only proposing an extension. The reason is because the extension could cause concern regarding view shed analysis from other municipalities, towns or cities.

Member Webber asked if all the towns were notified. Building Inspector Baron stated that they were notified.

On a motion by Webber, seconded by Belletete the board determined the application to be one of regional impact. (5-0).

The application before the board concerns a 125 foot tower built by Crown Castle Co. in 2001. The request is to add another 18 feet. In addition to the 18 feet AT & T will be adding three antennae's within the pole

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and two tower mounted amplifiers to increase the power of the antennas. There will also be a 12 x 20 equipment shed that will be located within the fenced compound and a generator.

Mr. Dodge explained that no one site will provide coverage for the town. AT & T recently received approval for a site in Rindge and based on that site plus two others they feel they will be able to provide good coverage in Jaffrey. Verizon Wireless has leased the space at 122 feet on the tower. What was analyzed by Mr. Brewer is at a center line of 140 feet AT & T could provide good coverage in a large area of Jaffrey. If they chose to go below Verizon coverage would be spotty. Mr. Dodge did mention that although the spot below Verizon may not be optimum for a carrier it may be a good spot for wifi.

Mr. Dodge reviewed the criteria for a variance as it was submitted.

There being no further comments, Chairman Sawyer closed the public hearing for this item.

Public Hearing - Continued Items

2. ZBA 10-01; Monadnock Quaker Meeting; 3 Davidson Rd.; Map 253/ Lot 23; Zone: Rural (without town water).

Special Exception – The applicant proposes to construct a burial ground. (Section IV, 4.3.1, Zoning Ordinance)

Presentation:

Appearance:

Member Belletete recused himself.

Chairman Sawyer stated that since last month the board has done some investigation and asked if anyone had any comments. Member DuMont stated that Member Webber had some information to share and made a motion that the board listen to his presentation.

Chairman Sawyer announced that the board has looked at all of the State and local rules and there is no doubt in their minds that the applicant does not need to come before the Zoning Board for their proposal. The law states that if a burial ground is not addressed in the local ordinances the board cannot give a special exception.

Member Webber read the following from the handbook titled *The Board of Adjustment In New Hampshire* published by the Office of State Planning “unless a particular use for which an application is submitted is stated in the ordinance as being explicitly allowed by special exception the board of adjustment is powerless to grant.” Member Webber stated that the ordinance does not address burial grounds and therefore he does not believe that the board can grant a special exception.

Member Dodge explained that if you have a use that’s not otherwise permitted in a particular zone, it can be permitted if the board grants a special exception. The use has to be in the ordinance and then the applicant

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has to meet the criteria for a special exception. The special exception being requested is not permitted under the ordinance and this brings up the question of a variance.

Building Inspector Baron stated that if something is not mentioned in the ordinance then it is not permitted. If it is in the ordinance then it is permitted. The subject parcel is in the rural district and churches are allowed there. If a church is allowed then the burial ground, which is private, is ancillary. In Inspector Baron's opinion the only thing the applicant would have to do is have a surveyor lay out the exact plot area and put it in their deed.

Member Dodge believes that a burial ground is an accessory use to the church which means they do not need a variance and they are permitted to have the burial ground. Inspector Baron agrees but feels that by requiring and granting a variance it gives traceability.

Member Webber does not believe that a variance or a special exception is necessary and the meeting will be documented in the minutes.

Member Dodge reiterated that the board cannot grant a special exception and he feels that since the burial ground is an accessory use to the church a variance is not needed. Members DuMont voiced his agreement.

There being no further comments, Chairman Sawyer closed the public hearing for this item.

DECISIONS

1. ZBA 10-02; New Cingular Wireless PCS, LLC (dba AT&T Mobility); (property of N.E.W.P.) 141 Old Sharon Rd., Map 255 / Lot 7; Zone Industrial

Variance: The applicant proposes an 18 foot tower extension to increase the height of an existing 125 foot tower to a total height of 143 feet above ground level. (Section VIII, Article III, Zoning Ordinance)

On a motion by DuMont, seconded by Webber the application proposing an 18 foot tower extension to increase the height of an existing 125 foot tower to a total height of 143 feet above ground level was approved as presented. (5-0)

2. ZBA 10-01; Monadnock Quaker Meeting; 3 Davidson Rd.; Map 253/ Lot 23; Zone: Rural (without town water).

Special Exception – The applicant proposes to construct a burial ground. (Section IV, 4.3.1, Zoning Ordinance)

Subsequent to further investigation it was the decision of the board that the applicant was before them in error and neither a variance nor a special exception was required for a burial ground.

OTHER BUSINESS

None

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ADJOURNMENT

The meeting adjourned at 8:19 p.m.

Submitted:

Attest:

Erlene R. Lemire
Recording Secretary

Lee A. Sawyer
Chairman,
Jaffrey Zoning Board of Adjustment

Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.