

Members Present: Acting Chairperson Marcella Perry; Keith Chamberlain; Angela Bystrack, Timothy Morgan, Alternate-Timothy Kinnon

Members Absent: Lyndon Avery

Others Present: Planner, Kathy Menici; Secretary, Sally Stirling and others as identified below.

**Call to order:** Acting Chairperson M. Perry called the meeting to order at 7:00 p.m. She introduced the members of the Board and Planner.

**Appointment of Alternates:** Acting Chairperson M. Perry appointed Alternate, T. Kinnon for the vacant position in the absence of Lyndon Avery.

M. Perry read into the record the purpose of the hearings and stated the rules of procedure.

A motion was made by K. Chamberlain and seconded by T. Morgan to accept the agenda as proposed. Voted unanimously.

**CONTINUED APPLICATIONS:**

**Case#ZO5-33**

**Map14 Lot 21**

**Use Variance**

**New England Nominee Trust**

**486 East Side Dr. (Route 28A)**

**David J. Fenton Jr. Trustee**

Application submitted by Industrial Communications & Electronics d.b.a Unicel on behalf of the property owner, New England Nominee Trust, David J. Fenton Jr. Trustee, for a Use Variance from Article 300, Section 301 and Article 200, Section 270, to construct a telecommunication tower outside the specified Telecommunication Overlay District. The property is located 486 East Side Dr in the Lakeshore Residential Zone.

Applicant Donald Cody, director of operations for Industrial Communications and Electronics was present and introduced their legal representative Earl Duvall and their director of engineering and RF propagation manager Kevin Delaney.

Applicant gave a powerpoint presentation indicating both present and projected coverage by cell phone towers in Alton. Color copies of the presentation would be available for the board and for the record at the end of the meeting. Randall Howes, radio frequency engineer with RCC and Andrew Lemay, certified real estate appraiser and assessor with the town of Hopkinton were also introduced. D. Cody explained for the record that the applicant is Industrial Communications and & Electronics and that the co-applicant is Rural Cellular Corp d.b.a Unicel, a slightly different arrangement than in the case description. He gave the background of his company, which has been in business for 26 years in New England and is still a licensed FCC carrier. His company is proposing 2 sites where all providers of wireless services can be placed to get the best coverage with the fewest sites.

K. Chamberlain asked how accurate propagation studies are. Response: Very accurate.  
K. Menici pointed out that a couple carriers depicted on the maps do not have antennas anywhere in town. Response: Yes, the only tower is Prospect Mt.  
K. Chamberlain asked who are the carriers on that tower? K Menici: Verizon, US Cellular, Nextel. Unicef was recently approved. Sprint and T-mobile are not on it.  
K. Chamberlain asked whether one particular phone company owns the tower? K.Menici: Midwest Towers. Gridcom owns the tower on Old Wolfeboro Rd. and Nextel will locate there.

T Morgan asked for clarification about the applicant. Response: The property is owned by New England Nominee Trust. Question by K .Chamberlain: So you're a real estate holding company that leases out sites on the towers? Response: Yes

K Delaney described the property and reiterated why a tower is necessary on that site  
T. Morgan asked whether there was any composite of the first 4 overlay maps. Response: No.

K. Delaney described the property, reiterated why a tower is necessary on that site and stated that the effect on the area is minimal. The property was purchased for the purpose of building a tower.

K. Chamberlain: Have you actually closed on and recorded the property? Response: Yes

M. Perry asked the elevation of the property: Response: about 900 ft.

T. Morgan asked who are their competitors. Response: 2 categories: other tower developers such as American Tower, SBA, RCC and also cell carriers will sometimes build for themselves if necessary. Most companies would rather co-locate.

T. Morgan asked the applicant if he was suggesting that other competitors wouldn't show up next month if the board approved his application. Response: These 2 sites along with what you already have will solve your telecommunications wireless needs for the foreseeable future.

K. Chamberlain asked K. Menici whether the applicant would still be covered and bound by the town's telecommunications chapter even if the company is a real-estate developer. K. Menici: Yes, but not necessarily if the tower is outside the overlay designated areas. We would need clarification from town counsel in that case. K. Chamberlain specifically requested the applicant's response on the same question.

K. Chamberlain: Will you need to build more towers in the area? Response: No

K. Chamberlain: Why didn't you show us a composite coverage map of the overlay district?  
Response: We can provide that, but all we have now is individual maps.

A.Bystrack: How did you figure the predicted coverage? Response by Randy House, engineer for Unicef: The map is computer-generated signal map geo-referenced and accurate within 30 ft. done with electronic testing devices and digital photos.

K. Delaney explained the balloon test conducted in June and showed 2 sets of pictures, one with the balloon and one with the tower superimposed.

K. Menici inquired why the photographs were only taken from different points within the town of

Alton, but none were taken from out on the water or from Wolfeboro or Gilford, since state RSA recognizes that the visual impact of cell towers becomes a regional issue. Response: The tower could not be seen from Wolfeboro or Gilford and he didn't have means to get out on the lake.

K. Menici: How can you verify that they can't be seen from Wolfeboro: We drove around and couldn't see it but didn't take any photographs.

E. Duvall then spoke to the by-law and why the variance is justified. Currently only one tower is allowed in each of the 4 overlay districts and the proposed tower is outside the approved districts.

1. The tower will not have a detrimental effect on the neighborhood. Andrew Lemay has concluded that there is no diminution of value. The proposed location has a very high tree canopy, about 40 ft. higher than the tower. The tower is located away from homes, is a neutral color, not artificially lit, no signs, or writing, graphics, etc.
2. The development is in favor of the public interest because there is need for reliable wireless communication both for safety and convenience.
3. Substantial justice is done because the public's interest in denying them is minimal and the benefit to the general public and applicant is great.
4. Granting the variance is consistent with the spirit of the ordinance because they are necessary for health and safety objectives of the town.
5. Denial would cause hardship (Simplex)
  - 1) Uniqueness: The current zoning restriction interferes with the reasonable use of the property which is ideal to cover significant gaps in cellular communications. No other property offers such coverage. (Rancourt vs. Manchester decision mentioned)

K. Chamberlain: When was Rancourt vs Manchester established? 2003?

K. Menici: A couple years old. Simplex and Boccia both were subsequent to Rancourt and have modified variance criteria. E. Duvall agreed to provide copies of these case findings

(Continuing with Simplex)

2) There is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property. The placement of the tower is away from homes, amidst a high tree line, will minimize impact on the skyline and the tower will not be directly on the shore and is set to the back of the parcel.

3) The variance will not injure the public or private rights of others. The wireless facility will actually be beneficial to the public. No public or private nuisance will be created.

Earl Duvall: Concerning Boccia: We will address the area variance later but it's important for me to mention the TCA act and a couple Massachusetts cases, both Nextel, against the towns of Provincetown and Weyland. When determining whether to grant a variance to a wireless provider, a zoning board must consider whether its decision will violate the TCA. Under the TCA a zoning board cannot deny a variance if it would have the effect of prohibiting wireless services.

K. Chamberlain: That's probably why our town picked out the 4 locations, to satisfy the TCA?

K. Menici: Correct. The TCA prohibits a municipality from zoning against telecommunication towers within their boundaries, but within that act also reinforces the municipality's right to

identify those locations that are acceptable.

D. Cody: The bylaw was well intended, but the town did not pick those sites based upon what is technically feasible. We cannot provide service from within those zones.

K Chamberlain: Until you show us the coverage that the town has now vs. your proposed we can't make a decision.

M. Perry: I agree

D. Cody: Perhaps we should put up another balloon and you can make your own judgment.

K. Chamberlain: If a balloon were put up on any of the sites we'd see it. That won't help here.

Back to the presentation:

E. Duvall: I brought up these specific cases because they apply to the hardship prong. A wireless provider's need to close a significant gap in coverage in order to avoid an effective prohibition of wireless service constitutes a unique circumstance when a zoning variance is required. There is a significant gap in RCC coverage that we can remedy only by locating at East Side Drive.

Without this board granting the requested variance there will be a significant gap resulting in prohibition. As the current ordinance is written 270.1 purposes a-1, it would be impossible to satisfy all those requirements, effectively prohibiting service. Also the National tower case vs. town of Sudbury.

K. Menici: Do you have any N.H case law? Response: I have first circuit case law and case law from district court in Mass. that I can provide.

A.Bystrack: How did you determine the height of the canopy? The tower looks more than 40 ft. higher. Response: A surveyor determined the height of the trees.

A.Bystrack: How many other properties did you test in the rural zone as opposed to our most restricted zone, the Lakeshore zone? Response: I did propagation studies on about 15 different and approached landowners to see if they would sell.

K. Chamberlain: What's in the future for wireless? Response: Technology is changing so we can't predict. Cable TV, phone service over internet are increasing. There will be new services.

K. Chamberlain: Will there be more towers or taller towers? Response: If there were sufficient demand we would return to the board.

M. Perry: How many carriers can you accommodate? Response: 5 carriers plus some minor ones.

K. Chamberlain: What other communities are you working with to prevent redundancy?

Response: New Durham, Farmington, and Wolfeboro have towers to link with this site. We own sites in Farmington & Epsom.

T. Kinnon: What is the maximum distance from a tower for cell phone use? Optimum 4-5 miles? Response: Yes, but you're limited not necessarily by towers but by size of the phone.

K. Chamberlain: Why are you not camouflaging the tower? Response: Usually the board decides that camouflaging is just as unnatural-looking as a metal tower. I can shrink it to a monopole but it's more a matter of getting used to whatever is there.

K. Menici: If this board grants the variance, the planning board will still have to decide about camouflaging.

T. Morgan inquired about grounding of the tower. Response: They are well grounded with wires but no hazardous materials are used.

K. Chamberlain: How thoroughly did you investigate the locations in the overlay district?

Response: They don't provide proper coverage. Getting to them is difficult. There are no utilities.

K. Menici: This board has the authority to require an engineering review by a town engineer to assist in interpreting the data that has been presented. In addition you have town counsel and one of his partners also specialized in cell tower law.

The meeting was opened to the public. Speaking in favor: no response.

Speaking in opposition:

David Slade and Marilyn Slade, owners of Merrimici Hill, abutters on the east of the proposed site. The property has been in the family since 1953. Historically this was original property bought by James McDuffy under direct grant from the king of England and the home built was the first built in the area.

D. Slade provided 2 documents previously faxed to the board showing that the proposed site is not in the public interest:

1. The scenic beauty of the town will be damaged. It is right on the bay.
2. This is a self-imposed hardship. The property was bought for this purpose.
3. They want to put a tower in the middle of a residential district.
4. Concerning justice, the abutters are directly affected.
5. A tower 200 ft. from the property diminishes the value of any property. No appraisals mentioned in the applicant's letter apply to this property.

He also questioned what will happen when technology changes. Will the towers be torn down?

Response by K. Chamberlain: Yes the town would require it

M. Slade added that the coverage provided in the overlay districts has not been clearly shown to be inadequate.

A. Bystrack asked the names of the other abutters.

K. Menici: Yes we need them for the record and we have letters from them: John Shulton & Jean Krause residing at 478 East Side Dr., opposed; Robert Florino, 2 East Side Dr., opposed; David & Priscilla Lawrence, 218 Gilmans Corner Rd., opposed; Robin Nahil, 16 Lionel Terrace, opposed. The board members have copies of the letters in their packets. Mr. Slade's 3 letters are also part of the record.

James Bureau asked whether there would or should be a light on the top of the tower? Response by K. Chamberlain: It is in the planner's report that the FCC and the FAA will have their own regulations about that.

Rebuttal: Typically the response to any tower is "not in my backyard." We have tried to pick a remote location.

Chad Blackiston on behalf of RCC: These 3 locations are ideal.

K. Chamberlain: Are you familiar with the Meredith Bay tower: Response: We own it and

another in Meredith.

Andrew Lemay was introduced to speak to real estate values. His document is in the presentation materials. He had not been asked to determine the values of any particular property.

The market, not the existing property owner, determines the value. Abutters have a normal adverse reaction, but after 6 months the value is not affected.

K. Menici: Both of your examples are in either urban or urbanizing areas. Alton is rural and proximity to the water and views from the properties affect value. Can you give examples where towers have been located in residential areas in rural resort communities, where the tower would interfere with a view from an existing dwelling unit? Response: No, but I don't think that this tower will be between the house on Merimici Dr. and the water. You will see the tower from the lake, but it's in the woods.

E. Duvall stated that as written section 270 prohibits reliable personal communication service. This location is the only location that will satisfy the coverage gaps. Concerning hardship, Mr. Slade is confusing the former standard, pre-simplex, with what Simplex says now. We do not have a compilation of the 4 overlay districts but you can still see significant gap.

K. Delaney showed all 4 slides and there was significant gap on 28A. and agreed to bring a map of all areas together.

Motion made by T. Kinnon and seconded by T. Morgan: that we continue this hearing to the regularly scheduled meeting on Jan 5, time to be decided by the planner, based on other applications received for that meeting, and that at that date the applicant will provide us with overlay projections for the 4 accepted sites in the zoning ordinances to include a master overlay of what their proposal is in comparison to what is allowed by zoning ordinances and that a survey be done by an independent engineer assigned by the Town of Alton and that the ZBA will meet with town counsel specifically to review the coverages to see if the overlays are accurate and the impact of the surrounding communities. I would also like to have the town contact the towns of Gilford and Wolfeboro to see if they have any feelings on this project. Voted unanimously.

K. Menici asked if the board wants to meet with counsel and with the town's review engineer prior to the next public hearing? T. Kinnon stated that the engineer's report could be just submitted. The engineers should be at the next hearing to answer questions.

K. Menici; We have some procedural issues to solve. We only have one case read into the record and we have 3 applications that haven't begun to hear yet. By statute, once an application is submitted to a zoning board, the board must accept that application within a certain period of time. M. Perry All these are being continued. We need to open each case tonight and continue them because a lot of information will apply to all the cases.

K Menici : I want to make the applicant aware that the engineering review is at the expense of the applicant, not the town. After discussion with the applicant she stated that the town chooses the firm and an estimated cost is given prior to the review being initiated. The applicant has the freedom to withdraw his application if the engineering firm or the cost is not to his liking. A copy of the review would be sent to the town and to the applicant.



**OTHER BUSINESS:**

1. Approval of Minutes of the November 3, 2005, meeting. The minutes for November 3 were not submitted in time to be reviewed. The minutes for Nov. 17 were verbatim so do not need to be reviewed. It was pointed out that C. Weston's name is in the Nov. 3 meeting, so those minutes definitely need to be reviewed.
2. Old Business: K. Chamberlain questioned whether we were supposed to vote for officers? Nominations were requested for chairman of the ZBA. T. Morgan pointed out that one of the long-term members is not present and therefore requested that the election be continued until Jan. 5. K. Chamberlain stated that only a majority of the members need to be present according to the bylaws. A motion was made by M. Perry, seconded by A. Bystrack, to continue the election to Jan 5. Three in favor, 2 opposed.
3. New Business: none
4. Correspondence: none
5. Any other business that comes before the Board: none

Motion made by K. Chamberlain to adjourn, seconded by T. Kinnon. Voted unanimously.  
Meeting adjourned at 10:28p.m.

Respectfully submitted,

Sally Stirling, Secretary Pro-Temp