

ZONING BOARD OF ADJUSTMENT

Francestown, NH 03043

NOTICE OF DECISION

On Thursday, February 18, 2010, the Francestown Zoning Board of Adjustment met at 7:30 p.m. in the Town Offices, lower level, to deliberate on a requested rehearing concerning the Board's previous denial of an application for variance under Article II-A, Sections 2-A.3.3 of the Francestown Zoning Ordinance to permit the construction of a road over slopes greater than 25%.

The Board upon review found that the five criteria for a Variance were met and by a vote of 5-0 granted a Variance under Article II-A, Section 2-A.3.3 of the Francestown Zoning Ordinance to permit the construction of an access road by SBA Network Properties, Inc and AT&T Wireless Services, Inc. on property located on Crotched Mountain, Francestown, NH (Tax Map 71 Lot #1) over slopes greater than 25%. Request shown graphically on a set of plans filed February 18, 2010 with the Board and titled "SBA CROTCHED MOUNTAIN: 226 East Road, Francestown, NH 03043; Site Number NH07345, revised 2/12/10, sheets T-1, C-1, C-2, Z-1, Z-2, ES-1, ES-1 and P-1

The Board granted approval subject to the following conditions

1. Access road shall be considered a maintenance vehicle and pedestrian access trail and shall hereafter be referred to as an "access trail".
2. Width of the access trail shall be no wider than eight (8) feet, except for two corners with a width of 12' or less as identified on Sheet C-2 of the above referenced plan dated 2/12/10.
3. Construction equipment will be permitted for a period of sixty (60) consecutive days for construction of the access trail. Applicant shall notify the Building Inspector within five (5) business days of the start of construction. Extension of the construction period may be granted by the Board of Selectmen. Only construction equipment as shown on Exhibit 1 (see attached) shall be permitted.
4. Following completion of the access trail only small utility vehicles such as skid steer, small excavators, ATV's and snowmobiles as shown in Exhibit 1 (see attached) shall be permitted.
5. Following completion of the access trail, the applicant shall reclaim the access trail subject to review and approval by the Conservation Commission and Planning Board.
6. The applicant is to maintain public access to and to preserve the integrity of USGS monuments located on the site and shown on sheets C-1 and C-2 of the above referenced plans.
7. Applicant is reminded to prepare a plan showing public access across the parcel for the trail to the former fire tower and to construct the same, to be approved by the Conservation Commission, Planning Board and Board of Selectmen (see condition #2 of the Notice of Decision, dated October 29, 2009)
8. Use of the access trail shall be limited to pedestrian travel by the public and small off-road vehicles for maintenance purposes only by applicant and co-locators as shown in Exhibit 1 (see attached).
9. A sediment and erosion control plan will be implemented as shown on the plans dated September 28, 2008 (sheets ES-1 and ES-2), subject to review and approval by the Francestown Conservation Commission and Planning Board (see condition #3 Notice of Decision dated October 30, 2009).
10. A gate shall be constructed at the beginning of the access to the applicant's property.
11. The applicant shall post a bond in the form and amount acceptable to the Planning Board to ensure removal of the access trail and any bridges (mats) when the facility's use is terminated. See condition #4 of Board's Notice of Decision dated October 30, 2009.
12. The applicant is reminded to obtain site plan approval from the Planning Board.

The Findings of Fact are set forth in the Board Minutes of the meeting.

Charles M. Pyle
Vice Chairman for the Board
February 18, 2010

NOTICE: ANY PERSON AGGRIEVED BY THE DECISION OF THE BOARD MAY REQUEST A REHEARING WITHIN THIRTY (30) DAYS UNDER THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED CHAPTER 677, SECTION 2, TO WHICH STATUTE ATTENTION IS DIRECTED FOR FURTHER REQUIREMENTS.

ZONING BOARD OF ADJUSTMENT
Francestown, NH 03043

NOTICE OF DECISION

On Sunday, April 18, 2010, the Francestown Zoning Board of Adjustment met at 2:00 p.m. in the Town Offices, lower level, to deliberate on and to decide the applications then pending before the Board by New Cingular Wireless PCS, LLC for relief under the Francestown Zoning Ordinance to permit location of a cell tower facility on property located on Dennison Pond Road, Tax Map 6, Lot 61-2. Specifically the applicant has requested a special exception for one of three proposed sites at the aforementioned location under Article VII, Sections 7.1, 7.1.2(a-f) 7.19 and 7.19.1.

Evidence presented to the Board determined that:

- A gap in coverage exists in Francestown along Route 136 (New Boston Road from the Francestown/New Boston Town line west towards the center of Francestown.
- A tower of 100' to 120' would provide coverage along targeted area.
- Alternate site exists at a proposed New Boston Road site.
- Dennison Pond is a rural road in a sparsely developed residential area.
- Balloon tests were conducted at the three proposed locations at various heights.
- Maintenance access road will be required from Dennison Pond Road to the tower site
- No slopes, wetlands or other issues are associated with the maintenance access road.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance.
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Use of ATC Tower does not cover "targeted area" at 165'. By adding an additional 30' for a height of 195' ATC Tower still does not cover "targeted area". Additional height is not a modification of the existing tower, but would be a major alteration.

By a vote of 5-0 the Board has voted to approve the request for a special exception of a cell tower facility. Cell tower is a 110' monopole designated as "Monopole B" on site plan dated March 3, 2010 and further identified as being located at Latitude 43°00'11.5N, Longitude 71°45'53.8W at an elevation of 794'. Approval is granted for the following reasons:

- Of all possible alternatives the site best preserves "the Town's natural beauty, rural characteristics, scenic vistas and architectural history" (section 7.19).
- Site will have the least "visual impact on the overall community" (section 7.19.1(a)).
- Maintenance access road will not have a negative "visual impact on the overall community" (section 7.19.1(a)).
- Proposed alternate sites have a greater visual impact on the overall community
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Section 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance
- Site is an appropriate location {section 7.1.2(a)} due to the location of the maintenance road access, topography and density of trees and foliage.

The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Frankestown Zoning Ordinance
Approval of the special exception for a cell tower facility is subject to the following conditions:

- 1) Applicant will provide written confirmation of compliance with the life safety code and approval from the Fire Chief.
- 2) Site plan approval will be obtained from the Planning Board.
- 3) A high-density branch monopine shall be used to hide the proposed monopole; exact design to be determined by the Planning Board.
- 4) A sediment and erosion control plan shall be implemented subject to approval by the Planning Board.
- 5) Actual access point for maintenance access road is to be determined by the Planning Board and the Road Agent. Maintenance access road from Dennison Pond Road to cell tower facility will be the crook or gentle curve design, as opposed to a straight line, as indicated on Sheet C-2B of the site plan dated March 3, 2010 in order to make the maintenance access road less visible from Dennison Pond Road and abutting properties.
- 6) Applicant will preserve vegetation along the access road and around tower facilities, subject to Planning Board review and approval.
- 7) Applicant will place a screen of conifers around the fence of the cell tower facility to buffer any potential generator noise and to mitigate against any future loss of trees, subject to Planning Board review and approval.

Charles M. Pyle
Vice Chairman, Frankestown Zoning Board of Adjustment
April 21, 2010

NOTICE: ANY PERSON AGGRIEVED BY THE DECISION OF THE BOARD MAY REQUEST A REHEARING WITHIN THIRTY (30) DAYS UNDER THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED CHAPTER 677, SECTION 2, TO WHICH STATUTE ATTENTION IS DIRECTED FOR FURTHER REQUIREMENTS.

ZONING BOARD OF ADJUSTMENT
Francestown, NH 03043

NOTICE OF DECISION

On Sunday, April 18, 2010, the Francestown Zoning Board of Adjustment met at 2:00 p.m. in the Town Offices, lower level, to deliberate on and to decide the applications then pending before the Board by New Cingular Wireless PCS, LLC for relief under the Francestown Zoning Ordinance to permit location of a cell tower facility on property located on New Boston Road Tax Map 6, Lot 33-1. Specifically the applicant has requested a special exception under Article VII, Sections 7.1, 7.1.2(a-f) 7.19 and 7.19.1 and a variance under Article II-A, Section 2-A.3.3(2)(c) of the Francestown Zoning Ordinance.

Evidence presented to the Board determined that:

- A gap in coverage exists in Francestown along Route 136 (aka New Boston Road) from the Francestown/New Boston Town line west towards the center of Francestown.
- A tower of 100' to 120' would provide coverage along "targeted area".
- Alternate sites exist in the Dennison Pond Road area.
- New Boston Road is a major travel road to and from Francestown.
- Proposed tower location is visible along the New Boston Road travel corridor.
- Maintenance access road will be required from New Boston Road to Tower site (see also variance request discussed later).
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Board previously granted a special exception and two variances for the construction of driveway part way up the hill from New Boston Road.
- Applicant has stipulated they will follow previously approved plan.
- A balloon test was conducted at various heights.
- Use of ATC Tower does not cover "targeted area" at 165'. By adding an additional 30' for a height of 195' ATC Tower still does not cover "targeted area". Additional height is not a modification of the existing tower, but would be a major alteration.

This Notice of Decision will first address the Board's action on the request for a special exception to permit the construction and operation of a Personal Wireless Facility. By a vote of 5-0 the Board has voted to deny the request for a special exception for the following reasons:

- Negative "Visual impact on the overall community" of cell tower {section 7.19.1(a)}.
- Negative "Visual impact on the overall community" of maintenance access road and utilities (section 7.19.1(a)).
- Permanence of construction of maintenance access road.
- Proposed alternate sites offer less of a visual impact on the overall community
- Tower and access will have significant adverse impact on the community and does not meet the criteria of section 7.19 that it will "best preserve the Town's natural beauty, rural characteristics, scenic vistas and architectural history".

- Construction and removal (should the tower ever come down) will result in more alteration to the site than other proposed locations.
- Site is not an appropriate location (section 7.1.2(a)) due to the location of the maintenance road access and topography.
- Site is an important scenic view shed coming into and leaving Francestown. Area of farms, fields and rural vistas and proposed use is not compatible with surrounding land use (section 7.1.2(a)).

The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Francestown Zoning Ordinance

The second application before the Board was for a variance to construct and operate an access driveway with a grade exceeding 10%. The Board reviewed the criteria for a variance and determined:

- 1) The variance will not be contrary to the public interest. The Board has determined that the applicant did not meet this criterion. Proposed maintenance access road over slopes would have a negative visual impact on the overall community.
- 2) The spirit of the ordinance is observed. The Board has determined that the applicant did not meet this criterion. Proposed maintenance access road over slopes is contrary to the spirit of the ordinance.
- 3) Substantial justice is done. The Board has determined that the applicant did not meet this criterion. Denial of cell tower facility makes road not necessary.
- 4) The values of surrounding properties are not diminished. The Board determined that the applicant has met this criterion.
- 5) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship if no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property and that the proposed use is a reasonable use. No fair and substantial relationship exists between the ordinance and the applicant's proposed use given that it is not a reasonable use. Maintenance access road is not required due to denial of special exception for cell tower facility.

If those two standards are not met, the statute goes on to state that unnecessary hardship will exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use. Having failed to meet the first criteria, the second one is considered. Property is not significantly different in terms of slope from other properties in Francestown. Property could be used for other purposes as shown with the prior approved application for residential driveway.

By a vote of 5-0 the Board voted that the applicant failed to meet the criteria for a variance and, therefore, the request for a variance is hereby denied.

Charles M. Pyle

Vice Chairman, Francestown Zoning Board of Adjustment

April 21, 2010

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ZONING BOARD OF ADJUSTMENT
Francestown, NH 03043

NOTICE OF DECISION – MOTIONS FOR REHEARING

On Thursday, May 27, 2010, the Francestown Zoning Board of Adjustment met at 7:30 p.m. in the Town Offices, lower level, to consider two motions concerning the Board's April 18, 2010 decision to grant a special exception to New Cingular Wireless PCS, LLC to permit a cell tower facility on property owned by Charles and Rita Pettee and located on Dennison Pond Road, Tax Map 6, Lot 61-2.

The Board has voted to approve the following requests for rehearing:

By a vote of 5-0 the Board voted to approve the request for a rehearing submitted by New Cingular Wireless PCS, LLC. Though the request was for a limited rehearing to a) an adjust to the location of the tower and compound, b) an adjust to the location of the driveway and c) revise the condition for Planning Board site plan review, the Board voted not to limit the rehearing to those matters.

By a vote of 4-1 the Board voted to approve the request for a rehearing submitted on behalf of Robert Jones and Stella Simakova, and Catherine Roehrig and Virginia (Heidi) Roehrig Kaufman. The Board voted to limit the rehearing to consideration of the Sanderson property on Dennison Pond Road as an alternative site.

The Board will hold a public hearing on July 8, 2010 at 7:30 p.m. to consider the above matters.

Charles M. Pyle
Vice Chairman, Francestown Zoning Board of Adjustment
May 31, 2010

Posted: Francestown Post Office
Francestown Town Offices

ZONING BOARD OF ADJUSTMENT
Fracestown, NH 03043

NOTICE OF DECISION

On Thursday July 8, 2010 the Fracestown Zoning Board of Adjustment met at 7:30 p.m. to consider the rehearing requests by New Cingular Wireless PCS, LLC. By a vote of 5-0 the Board has voted on the rehearing request to amend its decision of April 18, 2010. Changes to that decision as a result of the rehearing are noted in **bold**.

On Sunday, April 18, 2010, the Fracestown Zoning Board of Adjustment met at 2:00 p.m. in the Town Offices, lower level, to deliberate on and to decide the applications then pending before the Board by New Cingular Wireless PCS, LLC for relief under the Fracestown Zoning Ordinance to permit location of a cell tower facility on property located on Dennison Pond Road, Tax Map 6, Lot 61-2. Specifically the applicant has requested a special exception for one of three proposed sites at the aforementioned location under Article VII, Sections 7.1, 7.1.2(a-f) 7.19 and 7.19.1.

Evidence presented to the Board determined that:

- A gap in coverage exists in Fracestown along Route 136 (New Boston Road from the Fracestown/New Boston Town line west towards the center of Fracestown.
- A tower of 100' to 120' would provide coverage along targeted area.
- Alternate site exists at a proposed New Boston Road site.
- Dennison Pond is a rural road in a sparsely developed residential area.
- Balloon tests were conducted at the three proposed locations at various heights.
- Maintenance access road will be required from Dennison Pond Road to the tower site
- No slopes, wetlands or other issues are associated with the maintenance access road.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance.
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Use of ATC Tower does not cover "targeted area" at 165'. By adding an additional 30' for a height of 195' ATC Tower still does not cover "targeted area". Additional height is not a modification of the existing tower, but would be a major alteration.

By a vote of 5-0 the Board has voted to approve the request for a special exception of a cell tower facility. **Cell tower is a 110' monopine designated as "Monopine B' " on site plans dated May 12, 2010 and shall be located either within the 50' fenced tower compound as shown on sheets C-2 and C-3 of plans dated May 12, 2010 or at a site to be approved by the Planning Board that shares 30% or more of its footprint the 50' compound as shown on the aforementioned plans.**

Approval is granted for the following reasons:

- Of all possible alternatives the site best preserves "the Town's natural beauty, rural characteristics, scenic vistas and architectural history" (section 7.19).
- Site will have the least "visual impact on the overall community" (section 7.19.1(a)).
- Maintenance access road will not have a negative "visual impact on the overall community" (section 7.19.1(a)).

- Proposed alternate sites have a greater visual impact on the overall community
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Section 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance
- Site is an appropriate location {section 7.1.2(a)} due to the location of the maintenance road access, topography and density of trees and foliage.

The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Francestown Zoning Ordinance

Approval of the special exception for a cell tower facility is subject to the following conditions:

- 1) Applicant will provide written confirmation of compliance with the life safety code and approval from the Fire Chief.
- 2) Site plan approval will be obtained from the Planning Board.
- 3) A high-density branch monopine shall be used to hide the proposed monopole; exact design to be determined by the Planning Board.
- 4) A sediment and erosion control plan shall be implemented subject to approval by the Planning Board.
- 5) Actual access point for maintenance access road is to be determined by the Planning Board and the Road Agent. Maintenance access road from Dennison Pond Road to cell tower facility will be the crook or gentle curve design, as opposed to a straight line, as **identified on Sheets C-2 and C-3 of the plans dated May 12, 2010** in order to make the maintenance access road less visible from Dennison Pond Road and abutting properties.
- 6) Applicant will preserve vegetation along the access road and around tower facilities, subject to Planning Board review and approval.
- 7) Applicant will place a screen of conifers around the fence of the cell tower facility to buffer any potential generator noise and to mitigate against any future loss of trees, subject to Planning Board review and approval.

Charles M. Pyle

Vice Chairman, Francestown Zoning Board of Adjustment
July 12, 2010 as amended

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ZONING BOARD OF ADJUSTMENT

Francestown, NH 03043

NOTICE OF DECISION

On Thursday, September 9, 2010, the Francestown Zoning Board of Adjustment met at 7:30 p.m. in the Town Offices, lower level, to consider the application by Douglas Farrell of 3 Abbott Lane (Map 8, Lot 40) for Variance under Article II-A, section 2-A.2.6 of the Francestown Zoning Ordinance to permit a 16' by 16' shed within 100' of wetlands and 50' of a perennial stream.

The Board upon review found that the five criteria for a Variance were met and by a vote of 4-0 granted the aforementioned Variance subject to the following conditions:

1. Bathroom is to be removed,
2. Water line to location disconnected,
3. Septic line to location disconnected, and
4. No residential use of structure, i.e. overnight accommodations.

Charles M. Pyle, III
Vice Chairman, Zoning Board of Adjustment
September 14, 2010

Case: 10-V-1

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ZONING BOARD OF ADJUSTMENT

Francestown, NH 03043

NOTICE OF DECISION

On Thursday, September 9, 2010, the Francestown Zoning Board of Adjustment met at 7:30 p.m. in the Town Offices, lower level, to consider the application by Robert Todd for a Variance on property owned by David and Patricia Schell, 28 Candlewood Hill Road, Map 6, Lot 48-3. Variance is requested to waive the requirement that lots have two buildable acres in order to permit a subdivision of existing lot into two lots. One 14 +/- acre lot (#1 as indicated on the plan submitted) will be placed in conservation easement and a statement that the lot may be used only for purposes in the conservation easement will be placed on the plan. No relief is requested for the remainder lot (#2 as indicated on the plan submitted).

The Board upon review found that the five criteria for a Variance were met and by a vote of 3-0 granted the aforementioned Variance subject to the following conditions:

- 1) The plan submitted to the Planning Board shall state very clearly that the "lot is not a building lot per the decision of the Zoning Board of Adjustment, September 9, 2010" and
- 2) Any plan recorded with the Registry of Deeds shall state very clearly that the "lot is not a building lot per the decision of the Zoning Board of Adjustment, September 9, 2010".

Charles M. Pyle, III
Vice Chairman, Zoning Board of Adjustment
September 14, 2010

Case: 10-V-3

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