

**ATKINSON ZONING BOARD OF ADJUSTMENT  
21 Academy Avenue  
Atkinson, New Hampshire 03811**

**Public Hearing Meeting Town Hall  
Wednesday, June 11, 2014**

Members Present

Glenn Saba, Chair  
Sam Zannini, Vice Chair  
Dick Paquin  
Rob Robicsek

Others Present

Sue Killam, Chair, Planning Board  
Adam Kurth, Esq., Anderson & Kreiger  
Ernesto Chua, AT&T RF Engineer  
John Nestor, Nanepashemet Project  
Management

Call to Order: Chairman Saba called the meeting to order at 7:47 PM.

Correspondence: None

Discussion: The Board discussed home business and which businesses are exempt. Section 450 discusses home occupations. 450:1 states that all home occupations except those exempted in the regulation should be required to apply. Sue Killam, Planning and Zoning Administrator requested the Board make a decision regarding allowing businesses that meet the requirements of ZBA regulation 450 to be granted exemptions without going to the Zoning Board of Adjustment. Atkinson Code Enforcement feels that the businesses should apply to the Zoning Board of Adjustment.

Chairman Saba requested a motion.

**Vice Chairman Sam Zannini made a motion that the Planning and Zoning Administrator should be allowed to make the determination whether a home business is exempt from applying for an exception under Zoning Regulation 450:5. Member Dick Paquin seconded the motion, all members of the Zoning Board of Adjustment present voted in favor. Vote: 4/0.**

**Public Hearing– 7:30 P.M.**

**1) Application for Variance from Article VII Section 800:3-c submitted by New Cingular Wireless PCS, LLC ("AT&T") c/o Adam Kurth, Esq., to allow a proposed 150 foot tall AGL Monopole with twelve panel antennas and associated equipment and equipment shelter, and diesel generator and fencing to be located on residentially zoned property owned by Atkinson Farm Inc. at 85 Country Club Lane, Map 1, Lot 12 in the RR2/SCR Zone.**

Vice Chairman Sam Zannini recused himself. Planning and Zoning Board of Adjustment Administrator, Sue Killam sent certified notices to all abutters. Nicholas Middleton - present; and Sam Zannini - present. Christine Lewis Morse - present.

Mr. Saba informed the applicant that there were only three members of the Board present and any vote would have to be unanimous.

Mr. Adam Kurth, Attorney for New Cingular Wireless PCS, LLC appeared before the Zoning Board of Adjustment. Mr. Kurth requested to wait for a fourth member of the Board.

**Mr. Rob Robicsek made a motion for a ten minute recess to 8:00 PM. Mr. Dick Paquin seconded the motion. All members of the Zoning Board of Adjustment present, Chairman Saba, Mr. Dick Paquin and Mr. Rob Robicsek voted in favor. Vote: 3/0.**

Chairman Saba recalled the meeting from recess at 8:05 PM.

Mr. Kurth requested to ask one or two more questions. First, if Mr. Keating shows up after the meeting starts, would it be possible for him to participate. Mr. Saba agreed that Mr. Keating could participate if he arrived after the hearing started.

Second, if the hearing is continued, is there any procedure where the alternate, if he is able to view the video or tape of the meeting, be allowed to participate. Mr. Saba replied that the people who are present today would have to vote on the application.

Mr. Kurth informed the Board that if he had some indication that Mr. Keating would be present, that in fairness to the applicant it would be better to continue. Mr. Saba informed Mr. Kurth that the Board has reached out to Mr. Keating but have not been able to reach him. Mr. Kurth requested to wait another ten minutes.

Chairman Saba requested a motion.

**Mr. Dick Paquin made a motion for a ten minute recess to 8:20 PM. Mr. Robert Robicsek seconded the motion. All members of the Zoning Board of Adjustment present, Chairman Saba, Mr. Dick Paquin and Mr. Rob Robicsek voted in favor. Vote: 3/0.**

Chairman Saba recalled the meeting from recess at 8:18 PM.

Chairman Saba informed Attorney Kurth that the member who stepped down because he is an abutter is willing to participate if it is agreeable with the applicant.

Attorney Kurth informed the Board that he is comfortable with Mr. Zannini sitting in, and would also like Mr. Keating to participate.

Chairman Saba asked the Board if they were comfortable allowing Mr. Zannini to participate in the meeting and vote on the application although he is an abutter. The other members of the Board present agreed that Mr. Zannini could be allowed to vote on the application.

Chairman Saba asked Attorney Kurth if it would be necessary to read the abutters list due to the extensive length of the list of abutters. Attorney Kurth informed the Board that it would not be an issue for the applicant if Chairman Saba did not read the abutters list.

Attorney Kurth appeared before the Board. He explained that the applicant is here for a use variance for a proposed 150 foot tall AGL monopole cell tower at the Atkinson Country Club. First, Attorney Kurth showed the audience the location of the cell tower. It is located off Shannon Road in Atkinson. Referring to Plan Sheet C1, the closest property is the gravel operation in Salem, New Hampshire. The second closest property is the wastewater treatment area. The closest buildings and structures, and part of the proposed access drive are owned by Atkinson Farm, Inc. An aerial view shows that there

are extensive trees and vegetation. The gravel operation is almost directly due north of the proposed tower location. It is also close to the Salem dump.

Attorney Kurth turned to Sheet C5 of the site plan which has a view of the compound area. Again, it is a proposed 150 foot high multicarrier monopole style cell tower. It will be located within a fifty foot by fifty foot fenced equipment compound. There are twelve proposed antennas and an approximate antenna center line height of 146 feet. The top of the antennas will be flush with or the same height as the top of the tower. The cabling runs down within the tower and across an ice bridge to a proposed 11.5 by 16 foot equipment shelter. A proposed generator on a concrete pad is the other major piece of equipment in the compound. It will only run for emergency purposes and be tested approximately once a week for about 30 to 40 minutes. There is an existing access drive that leads to the wastewater treatment area which will be used to service the site. A guard rail will be added. There is an 8 foot high chain link fence with 3 strands of barbed wire for a total height of nine feet.

Chairman Saba asked how tall the structure would be relative to other structures or trees in the area. Mr. Kurth replied that referring back to Sheet C3, the ground elevation is 204 feet. Based on the way that the lot is set back from Shannon Road and the surrounding trees plus the site of the tower it would be difficult to view from the road. The tree line leading up to the compound and extensive vegetation and trees surrounding the area which would screen the site. It would also be screened from the club house and golf course.

Attorney Kurth requested to speak about the need for the site and requested the Board to look at Tab 5 of the application package which contains the Radio Frequency Coverage Report and map. The first sheet shows existing coverage. The orange dot is the proposed site location. Green dots are existing sites in Atkinson and surrounding towns. The white areas show insufficient coverage. Page 2 shows where the proposed site would fill in coverage in Atkinson and nearby Salem. Coverage would be provided to Atkinson along Providence Hill Road and Atkinson Country Club. The tower would also provide extensive coverage to the Town of Salem.

Mr. Saba asked if there was a reason it was not more omni directional. Ernesto Chua, the radio frequency engineer for AT&T explained that it was better if it was sectorized. Mr. Chua explained that with three sector antennas, they can have multiple, independent radios. With omni antennas, they can only have one or two. Three antennas are the standard, if there is too much overlap it will cause interference. Chairman Saba asked why there was not more coverage towards the people of Atkinson. Mr. Chua explained that the original objective was to cover Salem, but they chose the clubhouse so that they could cover parts of Atkinson, too. Mr. Kurth explained that the site in Haverhill, Massachusetts benefits Atkinson and the tower will benefit the country club which is used by Atkinson residents and businesses.

Mr. Kurth has gone through the variance criteria in the application package. The Daniels case discussed what the hardship criteria and need criteria are for a telecom application and respectfully requested that the Board grant the proposed variance to AT&T. The coverage plots in the RF report demonstrate the need for the tower.

Chairman Saba asked Attorney Kurth to explain alternative technologies defined in the wireless ordinance. Section 800:3:d states that the wireless telecommunication facility that uses alternative technologies may be considered in all zones.

Attorney Kurth could not recall if alternative technologies or designs is defined in the zoning ordinances. Options could be disguised as a tree or put inside a building. Ms. Killam explained that the intent of the phrase was exactly what Attorney Kurth tried to describe, on a pole, a water tank or in a steeple are

some alternatives being used. Ms. Killam also explained that State and Federal law have changed greatly in the last few months, and that section 800 might have to be rewritten.

Attorney Kurth read Zoning Ordinance Definition Section 300 A5: innovative siting techniques such as clock towers, bell towers, telephone poles. He felt that is a nice provision to seek. Mr. Paquin asked if the applicant was asking for relief from Article 800:3:c - towers are allowed in industrial zones.

Attorney Kurth explained that the agricultural residential area is significant and there is no straight industrial zone in the zoning ordinance, there is the commercial industrial zone in the top northwest corner and in the southeast of the map. AT&T has an existing facility in that northwestern corner, site 3151, but coverage does not extend as far south as the proposed site.

Mr. Paquin clarified that to get the coverage the applicant is looking for, there is no industrial site available. Mr. Kurth explained that although the site is in a residential zone, it is surrounded by commercial/industrial properties.

Ms. Sue Killam requested to speak and explained that the propagation maps show how the signals travel and Atkinson has some unique topographies that interferes with signals and it would take a very high tower to get into some areas. The tower is being located to fill gaps in coverage. Mr. Paquin stated that the hardship is due to the zoning of the area AT&T wants to cover; this is the best site available and it happens to be in a residential zone, which is the hardship. Attorney Kurth agreed, also because of the amount of residential zones in Atkinson which makes it difficult to find a site in a commercial/industrial zone; as well as the topography in Atkinson; the location of this property is unique because of its location and size.

Chairman Saba opened the discussion to the public. Nicholas Middleton from 650 Valley Drive asked if there was a FAA beacon required, if the generator is in a box and if there were a significant amount of trees being removed on the perimeter of the site.

Attorney Kurth explained that at Tab 6 of the application is the tower air determination report stating that the structure does not require registration from the FAA and no lighting would be required. The generator will not be surrounded by additional structures, but it has state of the art soundproofing. Based on the distances from other properties it is well within soundproofing requirements in the ordinances. It is a 50 kilowatt generator; somewhat bigger than a home generator. As shown on the plans, it is in a cleared area, AT&T always minimizes the amount noise. Mr. Nestor informed the audience that no trees are being removed.

Chairman Saba had one more question. At what distance do the towers become no danger at all as far as radio signals or frequencies. Mr. Kurth replied that he is not sure but he has seen hundreds of reports, it is an area highly regulated by the FCC, and the signals coming from the tower are 1 to 5% of what the FCC allows. Mr. Robicsek remarked that towers are highly regulated.

Mr. Zannini asked if it were true that emergency personnel have responded to an emergency at the country club and have not been able to communicate by dispatch; and with the new tower at least first responders would have communication by cell. Mr. Kurth added that AT&T has done many studies showing that the number of emergency calls from cell phone have increased enormously.

As shown on the plans, the tower is designed for a total of four carriers, AT&T does not have planned tenants at this point, but it is designed to accommodate additional carriers, thus reducing the number of towers in the town.

Mr. Saba informed the audience that if there was no further input he would close public participation and requested the applicant to walk through the application according to the five criteria.

Mr. Saba asked Attorney Kurth to go through the application step by step according to the five variance criteria of RSA 674:33.

- 1) Granting a variance would not be contrary to public interest. The applicant has demonstrated that the application is in accordance with the general purposes of the Atkinson Zoning Ordinance and the general location of the site. It is an area that needs service by a carrier; it will allow the carrier to provide enhanced wireless coverage in the area; it enhances public safety; it is a benefit to businesses and residences traveling in the area; it allows AT&T subscribers to communicate with emergency services; and, it alleviates a significant gap in coverage.
- 2) The spirit of the ordinance is observed. The applicant wishes to balance the interest of the residents and the carrier while minimizing adverse impacts. The tower will provide improved wireless communication, it preserves the rural character away from the Town Center; the surrounding properties are commercial/industrial. It is an advanced facility, is remotely monitored and will only require one or two visits a month from technicians. It is technically in a residential area, but the surrounding properties are commercial/industrial. It is significantly set back from the closest property line which is 359 feet from the gravel pit to the northeast; and it is screened by vegetation. It provides improved wireless communication services and access to emergency services in the area.
- 3) Granting the variance will do substantial justice. As demonstrated by the RF Report, there is a significant coverage gap in the area. Granting the variance for the tower will allow AT&T to fill the gap in coverage.
- 4) The variance can be granted without diminishing the value of abutting properties. Based on the remote site, the general use of the properties in the immediate area, as in the Daniels case which concluded that the tower did not diminish the value of surrounding properties. It is a benefit to the surrounding properties and the area because it improves wireless coverage and communication.
- 5) Owing to special conditions of the property that distinguish it from other properties in the area; denial of a variance would result in an unnecessary hardship. Once again, is the need to provide coverage in the specific area. Particular aspects of the property, its location in connection with the area that needs service, the size of the property, the extensive tree coverage and the use of the surrounding properties make it a compatible use and make it unique for a proposed site and would make it a hardship.

Chairman Saba requested a vote.

**1) *Granting the variance would not be contrary to public interest.***

Discussion: Chairman Saba stated he believed that no harm will be done to the general public based on the location of the proposed site, and the main road traveled is densely vegetated so the tower would be very difficult to see and the benefit is the coverage of cellular coverage.

**Vote: The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek voted that granting the variance would not be contrary to the public interest based on the application and the discussions as presented. Vote: 4/0.**

**2) *The spirit of the ordinance is observed.***

Discussion: The use of antennas is allowed in all zones in town, it is a matter of the type, this particular type is only allowed in industrial zones. Mr. Zannini stated that the rural charm is being preserved. The abutters are a gravel pit and a wastewater treatment plant.

**Vote: The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek agreed that the spirit of the Ordinance would be observed by granting the variance based on the application and the discussions as presented. Vote: 4/0.**

***3) Substantial justice will be done if the variance is granted.***

Discussion: Any loss to an individual would be outweighed by gain to the general public. Mr. Robicsek stated that it obviously gives a benefit of service to a lot of people, so that the benefit to the many is met. Mr. Zannini stated that it is a benefit to the Atkinson Country Club and all the people who visit there, including emergency personnel.

**Vote: The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek agreed that granting the variance would be substantial justice based on the application and the discussions as presented. Vote: 4/0.**

***4) The values of surrounding properties will not be diminished.***

Discussion: Mr. Saba stated that cell phone service could possibly be a benefit to the value of surrounding properties. It is hidden within the vegetation and currently there is nothing close. Mr. Paquin requested the Board look at Country Club Drive and he has heard that there are plans to build condominiums by that road. The owner of the site also owns the site where the condominiums may be built and they do not think property values will be diminished. Mr. Zannini does not feel his property values will be diminished. Mr. Middleton, the other abutter present does not have an issue. Mr. Robicsek stated normally he would have an issue, but there is so much property around, the proposed site is next to the Salem dump and the wastewater treatment plan and the other abutting property owners are too far away. Therefore, he can't see how their property values will be diminished.

**Vote: The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek, agreed that the values of surrounding properties will not be diminished based on the application and the discussions as presented. Vote: 4/0.**

***5) Denial of the variance would result in unnecessary hardship to the owner.***

***A) No fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property.***

Discussion: Mr. Robicsek stated because industrial zoning in Atkinson is so limited the site is as close to the spirit of the location as anything in the Town because of its proximity to the gravel pit and the land fill. Chairman Saba stated in 5(A), the handbook talks about how the Board should approach it and states once the purpose of the ordinance provision has been established, the property owner needs to establish that because of the special conditions of his property, application of the ordinance to his property would not advance the purposes of the ordinance in any fair and substantial way. The special conditions of the property, given the large buffer and even though it is residential there are no

close privately owned residences, so advancing the provision to protect that zone does not advance the purpose at all.

**The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek, agreed that the provisions of 5 (A) of the ordinance, no fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property based on the application and the discussions as presented. Vote: 4/0.**

***B) The proposed use is a reasonable one.***

Discussion: Chairman Saba read the handbook which states that the applicant must establish that because of the special conditions of the property the proposed use is reasonable, and must include analysis of how nearby properties will be affected and the municipality zoning goals generally. Chairman Saba stated in his opinion, cell towers are needed more and more and this is a great location because it is so well hidden. Member Dick Paquin stated he bases his opinion on the public, but there have been no public statements present. Another basis is the hardship, whether it is truly a hardship and he feels this is the best place for the tower.

**Vote: The members of the Atkinson Zoning Board of Adjustment present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek agreed that the provisions of 5 (B) of the ordinance, the proposed use is a reasonable one, based on the application and the discussions as presented. Vote: 4/0.**

Chairman Saba requested a motion.

**Vice Chairman Zannini made a motion to approve the application by Application for Variance from Article VII Section 800:3-c submitted by New Cingular Wireless PCS, LLC ("AT&T") c/o Adam Kurth, Esq., to allow a proposed 150 foot tall AGL Monopole with twelve panel antennas and associated equipment and equipment shelter, and diesel generator and fencing to be located on a residentially zoned property owned by Atkinson Farm Inc. at 85 Country Club Lane, Map 1, Lot 12 in the RR2/SCR Zone. Discussion: None. Member Robert Robicsek seconded the motion. All members of the Board present, Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Robert Robicsek voted in favor. Vote: 4/0.**

Chairman Saba reminded the applicant that there is a 30 day appeal, so any work done before then is at the applicant's own risk.

Chairman Saba asked if there was any other business. There was none. Chairman Saba requested a motion to adjourn.

**Vice Chairman Sam Zannini made a motion to adjourn the Wednesday, June 11, 2014 meeting of the Atkinson Zoning Board of Adjustment. Member Dick Paquin seconded the motion. All members present voted in favor to adjourn. Vote: 4/0.**

The next regular Zoning Board Meeting is scheduled July 9, 2014.