

**Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
July 18, 2006**

AGENDA

7:30 PM **Motion for rehearing filed on behalf of Kendridge Farm, LLC c/o Monique Waldron, 285 N. Haverhill Road, Kensington with respect to the ZBA's decision to grant a variance to Industrial Tower and Wireless, LLC and Co-Applicant Cingular Wireless from Article XV, Section S2- USE Districts for construction of 180" monopole and equipment area in a Residential Zone.**

(2006-04)

Members Attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Norman J. Freeman

Alternate Members: Catherine Belcher, Paul Falman

Chairman Daly opened the meeting of the East Kingston Zoning Board of Adjustment at the East Kingston Town Hall on July 18, 2006, at 7:30 PM with regards to a Motion for rehearing filed on behalf of Kendridge Farm, LLC, c/o Monique Waldron, 285 N. Haverhill Road, Kensington with respect to the ZBA's decision to grant a variance to Industrial Tower and Wireless, LLC and Co-Applicant Cingular Wireless from Article XV, Section S2 - USE Districts for construction of a 180" monopole and equipment area in a Residential Zone.

Mr. Daly explained that because of the nature of the request for rehearing, the Board was taking no public testimony and the motion for rehearing stood on its own. He also explained that if the board determined to grant the rehearing, they would schedule a rehearing on the merits within 30 days. If the Board denied the motion for rehearing, the applicant had the right to appeal to Superior Court.

Mr. Daly reminded the Board that the standard for rehearing is new evidence or a clear demonstration that the board was in error as a matter of law. He informed Mrs. Belcher that she would be voting on this decision. Mr. Daly addressed the members of the Board and asked for comments.

Mr. Daly provided the Board members with copies of three cases and explained that the laws were progressing at a very rapid pace and that the Supreme Court keeps modifying its decisions.

Mr. Daly stated that the applicant for rehearing has argued that the Board made an error in that they found in their decision that the variance was not contrary to public interest nor was it injurious to the public rights of others; citing Chester Road and Gun Club. *"This appeal asks that we construe the requirements that the variance not be 'contrary to the public interest' or 'injure the public rights of others.' These requirements are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance." See Bacon, 150 N.H. at 471.*

Mr. Daly reminded the Board that through discussion at the May ZBA meeting, it was the Boards' determination that the applicant had passed both of those tests. The question before the Board now was to determine whether they had decided that incorrectly or if there was any new evidence that would convince the Board to change that decision.

Mr. Daly explained that further on in the same case, which the applicant did not cite, after explaining those standards the Court said that *"One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would 'alter the essential character of the locality.'"*

Mr. Daly reminded the Board that it had taken that into consideration and discussed it at length when they made their original decision and asked the Board for comments.

Mrs. Belcher stated that the property was already altered as it was afflicted by steep grades and railroad and utility easements, and Great Brook ran through a portion of the property as well. She did not think that the tower would threaten public health, safety or welfare or alter the character of the area. She stated that if anything, power lines could be more of a problem.

Mr. Falman offered the fact that the slope of the land did not meet the requirements of the town for building a house; that every residentially zoned lot could not necessarily have a house built upon it. The Board felt that the land was appropriate for the construction of a cell tower. Mr. Freeman commented he felt that the neighborhood would not be impacted any more with the cell tower than it would if it were suitable for a subdivision to be built there.

Mr. Daly stated that although the Board was reasonably satisfied that the hardship test was fulfilled, the issue was whether or not the variance requested was consistent with the nature and purpose of the zoning ordinance. The zoning ordinance establishes that the town is comprised of farms and residences, and there is a very limited commercial area. A chapter in the Town's ordinance was specifically cited stating "*that cell towers should be built in a specific area; the commercial zone.*" Having said that, Mr. Daly reminded the Board that it has the authority to grant variances where they are satisfied the conditions have been met. This was done at the last meeting and was deemed to be consistent with the zoning ordinance.

Mrs. Belcher stated that when the zoning ordinance was drafted, the types of towers available at that time were of the lattice variety and were designated to be constructed only in the commercial zone for safety sake. As technology changes, so do the towers and the new monopoles are built to collapse upon themselves, presenting no danger. In her opinion, the spirit of the ordinance would not be contradicted by the construction of the monopole.

Mr. Ciardelli explained the reason the Zoning Board exists is because everything in the zoning ordinance is not in black and white and judgment calls have to be made. There are places in the commercial zone where a cell tower could be constructed which would be so visible that people would be against it. This location, even though in a residential area, is already impacted by various utility easements and slope. There would be much benefit to the town for safety and communications. This is part of the reason the Board makes judgments. Mr. Falman agreed that the reason for the Board was that all possibilities could not be planned ahead for and also agreed that technology is ever changing.

Mrs. Belcher stated that she had read the arguments and although she could understand the issues of concern, she did not feel that there was enough evidence to change her mind; Mr. Falman agreed.

Mr. Daly asked for a Motion.

MOTION: Mr. Ciardelli **MOVED** the Zoning Board deny the Motion for Rehearing as not enough proof was shown. Mr. Falman seconded, and the motion carried unanimously.

The meeting was adjourned at 8:15 PM.

Respectfully Submitted,

Barbara White
Recording Secretary