

**TOWN OF HENNIKER  
ZONING BOARD OF ADJUSTMENT**

October 21, 2009  
*Draft Minutes*

**Members Present:** Doreen Connor, Chairwoman; Joan Oliveira, Vice-Chairwoman; Bob Stamps; Gigi Laberge; Jeff Connor; Roni Hardy, Alternate; Bruce Trivellini, Alternate

**Others Present:** Mark Fougere, Town Planner; Leon Parker; Michael Pon, *Villager*, Edward Pare, Jr.; Andrew L.; Joe Brandi; Pat & John Brown; Shannon McManus; Joyce Bosse; Janet Wilson; Stacey Picard; Evelyn Tatro; Tim McComish; D. Jackson; Jon & Lucia Evans; Michael Bryant; Keith DeMoura; Scott Osgood; Jennifer Astholz, Recording Secretary

*Call to Order*

Chairwoman Connor called the meeting to order at 7:02 pm. She introduced the five full board members and two alternate members that would be hearing the cases.

*Public Hearings*

**Case 2009-106:** K. Daniel Realty Corporation, Inc., Applicant, is requesting a Use Variance from Zoning Article VII, Section 133-32 Permitted Uses, to allow for the establishment of a school (Grades 9 – 12) & classrooms. The property is located at 20 Main Street, Map 2, Lot 473 located in the CV Village Commercial District.

Kevin Daniel presented the application for a Use Variance. He stated that the building being discussed is located on Main Street directly across the street from the New England College Administration building. He stated that it was built with the anticipation that the college would occupy the space, and at that time, zoning allowed this type of activity. Mr. Daniel gave a detailed report of other buildings in the downtown area, and pointed out that many of the buildings are used for educational facilities. Mr. Daniel stated that he is asking for permission to use the Contoocook House for the use for which it was originally planned.

Bob Stamps, Board member, stated that the application states that there is an anticipated enrollment of only 12 students. He asked if they foresee staying at this enrollment or expanding. Janet Wilson, Principal for Bryant Academy, stated that they could anticipate the highest enrollment to be 12-25 students for that space.

Parking for this use at this building was discussed. Mr. Daniel stated that there are 12 parking spaces available. He stated that five entrances will be used, and all of those go into a common area. As parking is situated around the building, there will be no impact to the Town.

Gigi Laberge, Board member, asked for a description of Bryant Academy. Michael Bryant stated that a model school was opened in Claremont in 2003. He stated that the majority of students come from referrals from surrounding schools. He stated that the referred students have some type of learning disability which makes it difficult for them to be successful in a typical public school setting. Mr. Bryant stated that they exclude students with a history of violence or those with difficulty with remediation or maintaining grade-level performance. The proposed high school is collaborating with NEC. They currently lease a classroom on the NEC campus. Bryant Academy has one referral from Weare, and they anticipate receiving referrals from area schools (John Stark, Kearsarge and Hillsboro-Deering, etc.) and anywhere else where a student would benefit being in a private setting.

Chairwoman Connor asked for the applicant to explain what criteria or violent history would exclude a student from Bryant Academy. Mr. Bryant stated that they do not accept those students who have a history of violence against staff or their peers. He stated that the goal of Bryant Academy is to provide a college-preparatory program for serious-minded students. Ms. Wilson stated that court involvement is an exclusionary criterion.

Chairwoman Connor explained the process for the public hearing. She stated that she would call for people that wanted to speak in favor of the application first, followed by those that wish to speak against it. She opened the public hearing at 7:11 pm.

Leon Parker stated that he is a next-door neighbor in that building and would be happy to see someone utilize the empty space.

Sarah Chapim stated that the area of education covers such a broad spectrum and traditional schools do not always fit every student; therefore, having an alternative for students to reach these goals in a different fashion is an excellent idea. She also stated that coordinating with NEC will be a great opportunity.

Chairwoman Connor then called for any comments against the application. Hearing no comments, the Board went into non-public session for discussion.

Joan Oliveira **MOVED** to grant approval for the application in Case 2009-106 for a Use Variance from Zoning Article VII, Section 133-32 Permitted Uses, to allow for the establishment of a school and classrooms. Bob Stamps **SECONDED** the motion. Ms. Connor asked if the Board felt the need to discuss the number of students that could be allowed in the space. Mr. Daniel stated that expansion possibilities are very low. Mark Fougere stated that is usually set by the life safety code. The vote was taken, and the motion **PASSED UNANIMOUSLY**.

**Case 2009-107:** New Cingular Wireless, PCS, LLC by AT&T Mobility Corporation, Applicant, is requesting an Area Variance from Zoning Article XXV, Section 133-130(B)(2) to construct a 135-foot tall telecommunications tower where the Zoning Ordinance permits a maximum height of 77 feet (20 feet above the tree line).

The property is located on Old Hillsboro Road (across from 1040 Old Hillsboro Road), Map 1, Lot 335 in the RR District.

Chairwoman Connor stated that the abutters' list has been verified. She stated that the applicant will present their application for an Area Variance, the public hearing will be opened and then the Board will go into non-public session for discussion before a vote is taken.

Edward Pare, from AT&T Mobility, presented their request for permission to install a 135-foot tall monopine pole with antennae and fiberglass branches (center pole height of 132'). He stated that the tower is designed for three carriers and six antennae. He showed a blow-up of the design to the audience and explained the details of the plans. Mr. Pare explained that Henniker's zoning calls for the tower to only be 20' above the average tree canopy which, in this case, is 57 feet. This only allows for a 77' tall tower which does not provide adequate radio clearance. The proposal also includes a backup generator to allow the facility to operate. Mr. Pare stated that they have submitted the following to the ZBA for review: 1) Area Variance application; 2) copy of Property Tax Map; 3) copy of Property Assessment Card; 4) Abutter Notification list; 5) Report of Radio Frequency Engineer; 6) Radio Frequency Coverage Plot Maps; 7) Statement of Site Acquisition Specialist; 8) AT&T's FCC License; 9) Lease Agreement w/Property Owner; 10) Plans; 11) Viewshed Analysis; 12) Real Estate Study; 13) Sound Study.

Bob Stamps asked why they need a tower that tall. Dan Goulet, Radio Frequency Engineer, stated that they have a license for 1,900 MHz; however, this wavelength gets absorbed by the pine needles and oak leaves. He stated that this signal only travels approximately 1 ½ miles. He then showed 3D topos. He stated that they looked for other areas, even in Hillsboro, to put the tower, but there were still too many gaps along Rte. 202 due to too much "clutter" (anything that absorbs signal) in the area. Mr. Goulet stated that cell carriers are now trying to get signal in the main corridors, residences and businesses as that is what customers have come to expect as they want to be untethered from land lines.

Mr. Goulet explained the inadequacies of trying to co-locate on existing towers. He showed areas where AT&T has gaping holes that they need to fill. He then showed what could be achieved with the proposed tower. Coverage in moving vehicles, residences and business were color-coded. Mr. Goulet stated that he performed studies at the 77' height and what could be achieved with a 10' extension. This provides for some additional coverage but still leaves significant holes which would only allow spotty coverage. He explained that AT&T has an antenna (118' high) on the tower at Pat's Peak; but US Cellular is at the top of that tower. He stated that the problem with using Pat's Peak tower is that there is a ridge in the way. The signal has to get through hills and tree cover down to the roads almost 2 ½ - 3 miles away.

There is an SBA tower with a 10' extension on Falkner Avenue. Route 202 goes on the west side of the ridge and is difficult for the signal to penetrate. Mark Fougere stated that a variance would be needed to put an extension on the Falkner Avenue tower.

Mr. Goulet stated that the cell signal carries 16 watts of power; power is lost as it travels through the coaxial cable, and a lot of that power is effectively lost through attenuation as it goes through trees. Mr. Goulet showed profile views of what happens to the signal from various heights. At the 77' height; most of the signal is lost into the ground; raising the height to 135' raises it high enough above the grade to improve reception. While reviewing various models, he showed that coverage gaps were beginning to improve at a height of 102 feet, but not sufficiently enough. He stated that the data used to create these profiles is accurate. The applicant stated that other places were reviewed to place a tower in Hillsboro; however, it was difficult to reach lower areas.

Mr. Goulet stated that alternative technology is not appropriate for overlapping coverage and does not offer competitive service. He stated that the tower itself is probably not even visible through the trees, but the signal will be able to get through at this height. A model was created at 150' tall, and while this did improve coverage, it was not significant enough to request that height.

Mr. Pare distributed a written radio frequency emissions report prepared by Dan Goulet.

Mr. Pare discussed the balloon test that was performed and explained the photographs. He stated that he had a pre-application meeting with the Planning Board, and two balloons were flown at their request. He stated that many of the trees are higher than 77' tall, so the balloons probably were not visible from most points in town.

Mr. Stamps stated that he drove around town and only saw them from two places.

Mr. Pare showed pictures from the balloon test and explained pictures that were digitized to show the tower. He stated that the descriptions for photos #5 and #6 should be reversed; however, the balloon is not visible in either picture.

Mr. Pare stated that the Real Estate Study declares that construction of the tower will not have any effect on the property values.

Chairwoman Connor asked him to explain the hardship criteria that they must meet for the audience. Mr. Pare stated that the Telecommunications Act of 1996 provides overlay where certain things may pre-empt a Town's zoning regulations. One of the balances for the hardship criteria is caused by not being able to fill a significant gap in coverage. This can be a reason for a Zoning Board's decision to be overturned by the Superior Court. AT&T's need to provide coverage and federal case law that govern telecommunications should help to guide the ZBA's decision. He stated that as coverage is needed to go into more interior locations to reach buildings, houses, etc, we will see the need for these types of requests more frequently.

Mr. Pare stated that the ZBA is only to decide on the tower height. He assured the audience that they still need to go through the proper Planning Board process for site plan review.

Chairwoman Connor asked the applicant to summarize their written answers for each of the criteria used in determining the Area Variance for the audience.

1) Mr. Pare stated that the variance is not contrary to the public interest because doing so will provide service to businesses, residences and moving vehicles. Emergency assistance will be enhanced, and he stated that as in the case of last winter's ice storm, cell phones were often the only reliable form of communication.

2a) An Area Variance is needed to enable the applicant's proposed use of the property given as the topography makes it necessary to go to a tower height of 132 feet. He stated that this is what works the best for this area.

2b) The benefits sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue because, as already testified, Mr. Pare stated that they researched other sites and think this is the most suitable avenue to reach their coverage needs.

3) The variance is consistent with the spirit of the ordinance because they meet all of the criteria except the height. Co-location is provided, there is good natural screening for the tower, and they are away from any neighbors.

4) Substantial just is done if the variance is granted, according to Mr. Pare.

5) The value of the surrounding property will not be diminished. Mr. Pare stated that the Real Estate expert report states that there will not be any impact to the property values which proves to be consistent throughout New England.

Chairwoman Connor stated that the applicant will entertain questions from the Board, and then the public hearing will be opened.

Mr. Stamps stated that he heard of some noise tests being done, and he asked if that takes into account the maximum level of noise generated at the site. Mr. Pare stated that the noise test only monitors the level produced by their equipment and generator. Additional carriers would need to go to the Planning Board and show increased demands.

Gigi Laberge, Board member, asked if the generator only runs when needed and during times of maintenance. Mr. Pare confirmed this.

The closest residence was discussed. Jeff Connor stated that Lot 562 is the closest residential lot which is 169' from the property line (it was not known where the house is located on that lot). The plan meets the 125% setback requirement from the property line.

Joan Oliveira, Vice-Chairwoman, asked how many residences and/or businesses would be helped by the installation of this tower. Mr. Goulet stated that he could get that information, though it would take some time.

There was discussion about the ordinance using the average height of the tree canopy within 50 feet of a tower. If all of the trees were cut except one 90-foot tall tree, the average would then be 90'.

Chairwoman Connor opened the public hearing and called for those in favor of the application to speak.

Larry Colby asked why a crane was not brought into the proposed site. Shannon McManus stated that it was not necessary to do that test as the balloon test gave enough information. When asked how far it is from Old Hillsboro Road, Ms. McManus stated that the fence is 25' from the tower.

Tim McComish stated that the access road turns a corner and he could not see the balloon from the edge of the road.

Mr. Colby asked why they chose this site when in 2001 he was contacted about putting a tower on his property line. He asked why it was necessary to go into a neighborhood rather than closer to the road.

Mr. Pare stated that he is not aware of who contacted Mr. Colby back in 2001, but this is the site that grants adequate coverage.

Joe Brandi stated that he is a Town resident that lives closest to the proposed site. He asked for an explanation of the balloon test, and asked for confirmation that it was performed correctly and measured at the full height.

Mr. Stamps stated that he witnessed the test. He stated that the test was initially scheduled for a Friday or Saturday, but due to stormy weather, it was rescheduled for a calmer day. Mr. Stamps stated that he drove around to approximately 30 places around town, and in his opinion, believes that the balloon was flying at its full height.

Mr. Brandi stated that he is upset about this proposal as it affects him the most. He asked if anyone would look at buying a house with a 135' tower right across the road. He stated that he never expected this to happen by his property. He stated that when in the country, people need to expect to have dead spots with their service. He stated that Rte. 202/9 already has a reputation for being "death alley," so it is a good idea that they cannot use their cell phone while driving on the road. He stated that he is upset that he will see it from his property. He stated that he does not have a problem with the tower constructed to the 77' height as is in the ordinance.

Jeff Connor, Board member, stated that he believes that it would be difficult for Mr. Brandi to see the tower from his property given the nature of the land.

Tim McComish stated that he is an abutter and appreciates the input from the neighbors. He stated that he is personally in favor of improving communications and believes that this could be good, although AT&T overlooked communicating with the neighbors about their plans. He stated that he would be in favor of more cell towers than more houses in the area. He stated that people need to find more creative ways to profit from their land, and he asked if there will be some sort of increased tax with the tower.

Mr. Stamps stated that the land will come out of current use, thereby changing the taxes.

Jon Evans stated that he lives nearby and asked if the Town will make any money on this project, or just the landowner. Mr. Fougere stated that the tower will be taxed as a structure, thereby increasing the tax. Mr. Evans stated that it may have been better received had neighbors known when the balloon test was going to occur.

Ms. Connor stated that they understand this issue and can amend the process for future cases so that there are more public notices.

Leon Parker stated that he would like to see better coverage on Rte. 202. He does, however, find monopine towers to be objectionable and would like to see another camouflage techniques used as a pole is oftentimes less noticeable than a fake tree.

Bruce Trivellini, alternate Board member, asked for the definition of a “significant gap” in coverage. Mr. Pare stated that ‘adequate coverage’ is the prevailing terminology and is measured in length, building coverage and other criteria.

(Roni Hardy left the Board at 8:30 pm.)

Mr. Trivellini asked for clarification of coverage differences between the 132’ height and the 77’ tower. Mr. Goulet showed the coverage gap created by the smaller tower and how it is covered by the 132’ tower. The gap on Rte. 202 is at least one-half mile long. Mr. Goulet stated that 100% coverage will never be achieved in all areas. He stated that this site will not ruin the view shed as land makes the backdrop for the tower.

Ms. Oliveira stated that it is important to note that Rte. 202 is a State road. Mr. Pare stated that the telecommunications license does not recognize Town lines. All of Henniker is rural, and the importance of closing the coverage gap along Rte. 202 is because it is a State road.

Mr. Stamps stated that Item #3(G) of the ordinance states that there should be no adverse effect on the tree canopy and asked how much clearing will be necessary. Mr. Pare stated that a 50’x50’ compound area is required plus whatever is necessary for the roadway. The Planning Board will monitor these plans and control aesthetics.

Shannon McManus, the site acquisition specialist, stated that the area was already logged. She stated that this property is well hidden, has an access road and is close to Rte. 202; these are all attributes that are needed for this project.

Mr. McComish stated that US Cellular and Verizon seem to have full coverage in these areas and feels that it may be unfair to limit AT&T’s ability to provide similar service there.

Chairwoman Connor stated that a written letter had been submitted to the Board from Justin Hart of 58 Gould Pond Road stating his opposition to the height of the proposed tower for our rural community. A copy of the letter was given to the applicant.

Chairwoman Connor closed the public hearing at 8:50 pm and called for Board deliberation and voting on the five criteria used in deciding the application for variance.

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

**Yes – 5                      No – 0**

2) *To establish an unnecessary hardship for an area variance, an applicant must prove that*

*a) an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.*

Ms. Connor referred to the Daniels v. Londonderry case provided in the Board's packet where the court talked about whether or not there is hardship. She stated that one thing to consider is whether the proposed location is significant to closing the telecommunications gap. Also, the applicant's testimony says there are no reasonable alternatives.

Mr. Stamps stated that he believes that the applicant has very clearly demonstrated their needs and has proven hardship.

Mr. Stamps – Yes

Ms. Oliveira – Yes

Ms. Connor – Yes

Mr. Connor – Yes

Ms. Laberge – Yes, though she is not certain if there is other property that may have been appropriate.

**Yes – 5                      No – 0**

*b) The benefits sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.*

Ms. Connor stated that even if there are other areas that fill it, we do not know if they would have still needed an area variance. Mr. Oliveira stated that Ms. McManus has given expert testimony as to why this location is the best option. Ms. Connor asked if there is another method that would achieve the same benefit. Mr. Connor stated that they may be able to use multiple, smaller towers. Ms. Connor stated that if they could go with smaller poles, they would not need a variance. Mr. Stamps believes their coverage calculations are accurate.

Ms. Oliveira – Yes

Ms. Connor – Yes

Ms. Laberge – Abstain

Mr. Connor – Yes

Mr. Stamps – Yes

**Yes – 4                      No – 0                      Abstained – 1**

3) *The variance is consistent with the spirit of the ordinance.*

**Yes – 5**                      **No – 0**

4) *Substantial justice is done.*

**Yes – 5**                      **No – 0**

5) *The value of the surrounding property will not be diminished.*

Mr. Stamps stated that based on the very thorough analysis provided, he agrees with this statement. All other expressed agreement.

**Yes – 5**                      **No – 0**

Bob Stamps **MOVED** to grant the Area Variance as requested in the application for Case 2009-107. Joan Oliveira **SECONDED** the motion. Motion **PASSED, 5-0.**

*Review and Approve Minutes from June 17, 2009 Meeting.*

Doreen Connor **MOVED** to approve the minutes of the June 17, 2009 meeting as amended. Bob Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY.**

*Miscellaneous*

Mr. Fougere stated that the State statutes used for determining hardship are being changed effective January 1, 2010. He suggested that Cordell Johnston speak to the Board about these changes at an upcoming meeting. The Board welcomes his input.

Chairwoman Connor stated that she has to present the ZBA budget at the meeting on 10/31/09. She stated that she will review last year's budget and will propose a realistic budget for 2010. She will email the proposed budget to Board members for their review and comments.

*Adjourn*

Mr. Stamps **MOVED** to adjourn at 9:10 pm. Mr. Connor **SECONDED** the motion, and it **PASSED UNANIMOUSLY.**

Respectfully submitted,

Jennifer Astholz  
Recording Secretary