

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
June 19, 2013

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair, Derek Lick, Dane Headley, Doug Sweet, and Ed Canane; alternate, Sue Reel (alternate Carla Krajewski was absent); Laurie Hayward, Land Use Coordinator; Stephanie Cerino, Gary Chirichill, and Theresa Martel, an abutter to Cerino; and Kevin Fadden, ITW Site Acquisition Specialist; Kevin Delaney, ITW Engineering & Regulatory Compliance Manager; and Steven Grill, of Devine Millimet, Attorney representing Industrial Towers and Wireless (ITW); Ivan Pagecik of IDK Consultants, a cell tower specialist advising the Board; and interested members of the public.

The meeting was called to order at 7:00 PM, by Bill Hallahan.

The Chair asked the Land Use Coordinator (LUC) to take the roll call and the roll was called. The Chair asked the LUC to read the public hearing notice. The LUC read:

“You are hereby notified of a Public Hearing to be held on **June 19, 2013** at or around 7:00 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request:

By **Stephanie Cerino, 46 French Road, Tax Map # 09-154,266** for two variances:

1. Variance to Article V.C.4., to permit the applicant to construct a wraparound deck within the side yard/abutter’s property line setback requirement; in a rural agricultural district.

2. Variance to Article III.I.3., to permit the applicant to use a converted recreation vehicle as a “temporary construction trailer” during the construction of her new house.”

The Chair then read the Articles from the Sutton Zoning Ordinances regarding setbacks, Article V.C.4 and construction trailers Article III.I.3.

The Chair asked the LUC whether all fees have been paid. The LUC stated that the fees were not yet paid and it was her omission- she had not asked the applicant for payment until that day. Ms. Cerino stated that she knows about the fees and plans to pay the amount due the next week. The Chair read the Article from the Sutton Zoning Ordinances regarding setbacks, Article V.C.4. Hallahan explained that there are two different sections of the proposed deck, one at 19 feet from the side setback and one at 20 feet, in a 25 foot setback zone. He read the

second ordinance regarding construction trailers, Article III.I.3. Hallahan explained that the ordinance does allow 90 days. The variance is to extend it to a year.

Gary Chirichill stepped forward to give more detail on Ms. Cerino's application. He explained that they plan to remove a camp that is on blocks. They plan to stay in the same footprint as the building being removed, build a foundation, and then build a 2 story log house. The Chair explained that the key to the hearing is the 6 foot deck and balcony and the small variance on the 25 foot setback.

Hallahan also addressed the construction trailer request and the requirement that there be adequate septic and water systems on site. Gary Chirichill explained that they would use the plumbing that currently exists. Sweet asked about the setbacks and how they were determined and how confident Chirichill was that his drawings and measurements were accurate. Chirichill explained how he arrived at his measurements. Sweet then asked about septic system approval. Chirichill stated that he had the state approved septic plan. He showed it to Sweet. Sweet explained that the applicant would need to obtain or produce a construction approval and an operational approval for the septic system. Sweet further stated that the septic plan that Chirichill showed was for the septic system as originally configured and not what exists now or in the proposed structure. Sweet further suggested that Chirichill contact the licensed designer of the septic plan that he has and ask for assistance in documenting that he has an approved septic system in place. Hallahan explained that the approval of the variance for trailer might have as a condition the septic approval. Sweet asked if the applicant would be willing to merge the small side lot with the house lot. Chirichill said that they did not want to do that as it might be important that be separate if, for example, an abutter wanted to acquire it to provide access to their property. Sweet asked about the vacant home site shown on the plot plan. The applicant said he plans to build only one house and that will be on the site of the current structure, not on the "vacant home site".

Lick asked why they couldn't simply place the deck on the west side which would not require a variance. Chirichill explained that the configuration that they are requesting improves the flow, including access to basement and wood storage. He explained that there are many acres of wooded land behind the property, so he didn't feel that anyone would be impacted. The western side of the house is also not the best from a passive solar point of view. The south is better in the winter for heating. The Chair asked the LUC whether there was any input from the abutter in question. The LUC stated that there was no input from either of the two abutters up to the start of the meeting.

Hallahan asked about the timing on the building of the house. Chirichill said that they will not begin building right away as they have to cut the wood and dry it before they can even begin the work. Chirichill explained that they were using hemlock which is a very dense wood and will require more dry time than pine would. Hallahan asked what the expected point in time for occupancy in the new house. Chirichill says they expect to demolish the old house in August and begin building in September. Hallahan asked whether they were going to be able to

complete the house within the specified one year. Chirichill said that he did expect to have the house done within the year. The Chair called for input from abutters. Theresa Martel, who is one of two abutters, spoke in favor of the variances. Derek questioned Chirichill again regarding whether there were any other options that would allow them to build without requiring a variance. Chirichill explained that to meet design considerations on a small, nonconforming lot (.3 acres) and maintain same footprint and passive solar benefits this is the best option.

The chair moved to close the public hearing, Headley seconded the motion, and it was voted unanimously to close the hearing. Chirichill thanked the Board. Hallahan asked for any question or concerns from board members. Canane said that he had no concerns. Canane and Sweet briefly discussed that the applicant does need to have construction and operational approval for the septic system. Canane expressed that he doesn't see that as part of the Zoning Board's deliberations as much as it is a Building Permit issue. Canane did comment that he feels that the applicants are looking to make some good improvements to the property. The Chair asked Sweet for his thoughts. Sweet said that he would feel better if the applicant merged the two lots as that would eliminate the setback request. It was noted that the unmerged lot is a .08 acre "sliver". The Chair explained that he was not sure that the septic approval is the purview of the ZBA. Sweet reiterated that he feels it is in everyone's interest to make sure that the approval is there – especially in the property owner's best interest. Lick said that he does not believe that the septic system is necessarily the Board's concern. Hallahan said that it is not so much the new house as the trailer issue that brings the septic into play. The variance requires that appropriate septic and water be available to any occupied construction trailer. He pointed out that as the small side lot cannot be built on, there is no concern regarding the less than 25 feet setback. He also noted that it would not make sense to ask the owners to move the house from the current footprint simply to add a 6 foot wide deck and that makes this a unique situation. He noted that there would be a much greater disturbance of the land for a 6 foot deck. Hallahan noted that if the house and/or deck were moved more in the direction of French Road; that would require the need for a new variance for setback from the road.

The Chair called for worksheets.

Variance 1. Side setback. There was a question whether the deck was covered or uncovered. The LUC noted that where there was a deck on top of a deck, it was taken to mean that the first floor deck was covered by the upper deck. There was a brief discussion among the members regarding what constituted a covered deck and whether this might be considered an open, not covered, deck. The Zoning Ordinance permits uncovered decks of less than 10 feet in width without consideration to the setback requirements. **It was determined that it is essentially an uncovered deck and that meant that no variance is required.** Derek Lick clarified that **and upper deck does not create a cover for the lower deck; therefore, no variance is required for the 6 foot wraparound deck.**

Variance 2. Construction trailer. The chair noted that the issue of septic and water is taken care of by the use of the current systems. Variances worksheets were completed. There was a brief discussion about whether the concern about the septic system is pertinent to the Board's decision. **Lick moved that the applicant be given a variance to permit the use of a conversion recreation vehicle as a construction trailer while the new house is under construction for up to one year, Headley seconded the motion and it was voted unanimously to approve the variance.**

Thus ended the first hearing.

The Board took up the second hearing, a continuance of the ITW Appeal.

The Chair asked the LUC to take roll-call. The LUC took the roll call. Mr. Hallahan addressed Attorney Grill, reminding him that on the first meeting it was explained that the variance would be based on the new Ordinance voted in March 2013. Hallahan noted that recent communications referred to old numbering. Grill stated that he felt the language was pretty much the same in both the old and new Ordinance. The LUC stated that it was not the same and that a change was made in the new Ordinance in reference to the "canopy of trees". Grill stated that he understood that and that the specific reference was not to the issue of tree canopy. The Chair also explained that Derek Lick who was here for first session and not the second is here again. He asked whether ITW had any issue with Lick sitting in tonight. Lick explained that he had read the minutes from the last meeting and all of the email communications. Attorney Grill said that there were no issues with Lick sitting in on this hearing.

Hallahan explained that the documents that had been sent to the Land Use Office had all been forwarded to the members for their review and that there would likely be questions regarding those documents. Grill spoke explaining the spreadsheet that was submitted had a representative sampling of towers in the area. He further stated that it was not all of the towers in the area; management had decided to only list those shown on the spreadsheet. Then he took up the issue of ITW as a carrier or service provider. He noted that he had provided a letter supporting their position. He stated that they have provided data that supports their position. He feels that they are building out a network that no one else has. He also noted that there has not been large opposition turnout and he feels that shows how good a choice the site is. He suggests the board should ask itself: do you want service in this area of town. Grill further stated that he feels that the Ordinance in Sutton is restrictive enough so that if this fails, it is unlikely that anyone else will attempt to put a tower to cover the same area in Sutton. He stated he feels that "if you build it they will come." Headley asked about Grill's written comment about one photograph of the balloon test. Grill said that there are two issues with one or two photographs: a lack of perspective, the result of not having good points of reference in the photo such as having the full house in the photo and it seemed that a zoom lens might have been used in a way that would not show a more natural view from the house.

Hallahan asked for status of the Bradford tower that ITW has approval to build. Delaney said utilities are there but tower not built. Tower construction should begin in the next month. Hallahan asked what commitments they had from carriers for use of the Bradford tower.

There was a brief discussion regarding whether the letter provided by ITW from AT&T actually constituted a "commitment" letter. Members differed in their sense of the letter; but, in general, it was considered, at best, a very "weak commitment". Hallahan asked for a definition of "PCS". It was defined by as "personal communication services". It was explained that "PCS" carriers are higher frequency service providers like AT&T, Sprint, and T-Mobile which are the three majors. Verizon sometimes uses higher frequencies, sometimes lower. The definition of ESMR was given as enhanced specialized mobile radio, such as the old Nextel. ITW is an ESMR.

Hallahan referred to a spreadsheet that ITW provided and specifically asked about an Alton tower installation. Grill explained that there was a legal battle over an Alton site and that there were site challenges and there was only room for three carriers and there are three on the short tower. It was especially difficult because of scenic concerns over Lake Winnepesaukee which is a very sensitive protected area and the topography is difficult. Grill said it took such a long time to get the tower approved that once it was approved; they immediately had three carriers sign-up. Headley asked if the proposed Sutton tower was just for this area or added; Delaney says for this area. Lick asked at what MHz ITW functions. Delaney says ITW functions at 900 MHz which is a bit higher than Verizon; not as high as a PCS carrier would need.

The Chair said that he would like to go around the table to hear questions or comments from Board members. Canane commented that the letter from AT&T made little impact on from his point of view; however, he felt that the legal firm letter in support of ITW as a carrier was very persuasive. Hallahan asked Sweet if he had anything that he wanted to discuss, he said that he did not. Hallahan asked Headley for comments. Headley reiterated that historically and actually, the letter of intent is important. There was review and some discussion of the information provided on the spreadsheet. Lick asked what creates the preference for lattice towers. Delaney said they think that lattice towers are safer and easier to work on and visually nicer. Lick asked about expansion and could the tower be built to be expandable – Delaney said anything could be designed to be expandable. He asked if that would be an issue for ITW if the Board made a Condition that a tower be expandable. Grill replied that there are a number of issues that arise when there is an attempt to build an expandable tower. He explained that it is often a logistical nightmare to work on a tower and keep it so that it can be expanded. It is expensive and in practice often requires the relocation of an already installed carrier in order to get a carrier to the top (often "the top" is contracted for). Grill spoke to a preference that they start at 145 feet and then if they can expand to 165 feet, that might work. Lick asked if they have any sites currently constructed where ITW is the only "tenant". Delaney said they do have a site in Auburn NH where the tenant is not located on the tower yet; but is paying rent. There may be some others, for example Epsom. Delaney explained that where ITW is on a tower, it is "push-to-talk" which is more like "walkie-Talkie". Lick asked what kinds of entities

ITW provides with services. It was stated that ITW provides communication services for businesses like oil companies for their delivery trucks and for other delivery services. Hallahan asked if police and fire departments use it. Delaney said it is rare for police & fire to use their towers. Hallahan asked if it is economically feasible to ITW to be the only tenant on a tower. The answer was yes although they prefer to have additional users on a tower and actively work to sell leases. Lick asked if they have been given any approvals with conditional height. Grill replied that he is not aware of any variance done that way. There have been approvals for "expandables". Lick stated that he does understand the issue of what comes first the tower or the commitment to use the tower. Headley expressed his concern based on the towers in place currently in the town and that they are not finding it easy to get new tenants. Lick noted that he believes that each location is a distinct situation.

Hallahan asked for public comment. Sandra Olin came forward and showed the board the photos that she took and explained where she took the photos. Olin stepped forward and showed her photos to the members of the Board. She explained that she could clearly see from places in the house and yard. Hallahan asked if she took the photos. She said yes, she did and they weren't altered. Headley asked if a zoom was used. Mrs. Olin stated that she did use a zoom lens on one of the photos. She expressed concern for property values, for the health of neighbors, and for noise. Lick asked Olin whether she had a preference for lattice or monopole. She stated that she had not done enough research on that to have a definitely opinion. Canane asked Mrs. Olin whether she thought there was year around visual impact. She said that she thought there would not be visual impact during the summer. Chris Stotler spoke and thanked the board for their work. He stated that he could see the balloon from his house. The Chair asked for any more comments. Canane asked for information on width at various heights. Delaney said he didn't have that information off hand; but, the tower does taper. Sweet asked about monopoles and what diameter. Lick asked which has greater decibels, lattice or monopole. Delaney said their data doesn't clearly say one type or another is more prone to noise. Lick asked about a generator. Delaney said that they currently do not plan for a generator; although, they do use batteries. Hallahan indicated that any changes after-the-fact should come before the Board. Canane asked about PCS carriers and at what heights could PCS carriers be set and how carriers and height affects tower width when antenna arrays are taken into consideration. Sweet asked about widths of monopoles. Grill stated that it varies with installation and some do taper. Lick asked about the difference Lattice versus Monopole in terms of decibels of noise. **Hallahan moved to close the public hearing, Sweet seconded the motion.** Asked about color and painting, Delaney and Grill addressed the question explaining that monopole towers were galvanized steel, gray in color, and not painted. There was a question about whether there should be stated conditions under which the Applicant would have to return to the Board for approval. Hallahan stated that, if there was any change entertained from what was presented in the hearings and approved, then ITW should come back before the Zoning Board of Adjustment. Canane asked the Applicant for clarification again about types of carriers and height minimums for each type of carrier. **Hallahan again moved to close the public hearing and it was voted unanimously to close the public hearing.**

Hallahan open deliberations stating that there is federal law that there must be a reason not to support expanding cell phone coverage/improved communications. He said in this case, the location is excellent and there have been relatively few people with serious concern about this installation. He feels the only question he has is about the height. Hallahan noted that he spoke, again, with the specialist Ivan Pagecik. He mentioned that at 145 feet they could have a reasonable situation for the applicant. There ensued a discussion regarding height and numbers of carriers and the spirit of the ordinance regarding height and the requirement for letters of intent. Lick indicated that he supported having a tower in the proposed location. The question for him was whether to approve a tower that would allow a PCS carrier or a tower to permit multiple carriers. Canane did the addition and stated that at 145 feet could have 3 cellular carriers and 2 pcs. At 125 feet they could have 3 cellular carriers. Sweet said he could support 135 feet which would allow 3 cellular and 1 PCS he feels town has mandated shorter towers. Canane added that he feels tower is needed, wanted and placed correctly. He also said that the more recent towers in the spreadsheet are the lower towers. He believes that what is shown on the spreadsheet may indicate that heights are coming down. Hallahan noted that the Bradford tower was approved at 185 feet. Canane said he supported a tower at 135 feet. The discussion moved on to whether monopole or lattice. Canane and Sweet specified a preference for "monopine". Headley said that if in the woods, a monopine seemed a good idea. The Board discussed the location and that there is not much in the way of deep woods there. Lick stated that he did not have a preference. Grill asked to address "monopine". He explained that they must be larger and they are very noticeable. He mentioned Canterbury on route 93. He said the branches tend over time to fall off requiring work with cranes to repair. Grill stated ITW's strong preference to avoid a "monopine".

Bill Hallahan called for worksheets. The variance was addressed first. In general, cell towers are in the public interest at 135 feet coverage is provided while the public expressed desire to limit height is taken into account. The spirit of the ordinance is also addressed by limiting the height to 135 feet. One abutter had concern and by lowering the height to 135 feet that concern is addressed. Lick also pointed out that there are situations where cell coverage is a positive for home value. **Lick moved to approve the variance for a monopole cell tower at 135 feet above ground level, Hallahan seconded the motion and it was voted unanimously to approve the variance for a height of 135 feet, to be a monopole tower.** LUC asked if there was any statement about adding conditions such as expandability. Lick said no.

Board members moved on to the Special Exception worksheet. Lick moved that they grant a special exception for a monopole cell tower that is to be no more than 135 feet above ground level; the motion was seconded and voted unanimously.

Chairman Hallahan thanked the Kevin Delaney, Kevin Fadden, and Steven Grill for their work on this application and preparing for and attending these hearings.

This closed the public hearings.

Approved 8/21/2013

Minutes: Hallahan moved to accept the revised minutes for the meeting of May 15, 2013, Canane seconded the approval and it was voted unanimously.

It was agreed that, as there were no hearings scheduled for July, the July meeting would be cancelled.

Next meeting is to be held Wednesday August 21, 2013 at 7pm.

There being no further business, the meeting was adjourned at 10:30 PM.

Respectfully submitted,

Laurie Hayward

Land Use Coordinator