

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF March 27, 2012**

**Place:** Town Hall; Meeting room

**Call to Order:** 7:00 pm

**Members Present:** Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Frank Albert; Ingrid Byrd; John Easter, Alt, Amanda Soares, Alt

**Members Absent:** None

**Pledge of Allegiance**

*Chair Chivers asked J. Easter to sit for F. Albert.*

**Approval of Minutes**

Members Sitting for Approval of Minutes: *Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Frank Albert; Ingrid Byrd; John Easter, Alt, Amanda Soares, Alt*

MOTION: J. Szot made a motion, seconded by I. Byrd, to approve the minutes of February 28, 2012 as amended. The motion carried with a vote of 5-0-0.

**Public Hearing – AT & T Request for Extension**

Request for extension Case 09-567 Federal Court Order and Judgment dated April 19, 2011 Applicant: New Cingular Wireless PCS, LLC (“At & T”) c/o Stephen D Anderson, Anderson & Kreiger, LLP One Canal Park, Suite 200, Cambridge, MA 02141; Owner: Paul Hunter 606 North Road, Candia NH 03034, Map 402 Lot 10: Request for extension for Special Exception under 14.06 that is to expire on April 19, 2012. Special Exception to permit construction of a 100 foot monopole, compound with equipment shelter, diesel generator, a gravel access drive and utilities brought in from existing sources on the property in a residential zone.

Members Sitting for this Hearing: *Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Ingrid Byrd; John Easter, Alt*

Applicant/Agents Present: *Susan Roberts, Anderson & Kreiger LLP; Jackie Swenson, KJK wireless*

Abutters/Public Present: *None*

Chair Chivers said this matter comes to the Board with the recommendation from Town Attorney to grant an extension. He gave background chronology and said the Board can decide if a six or twelve month extension is warranted. Chair Chivers said the Special Exception started on April 19, 2011, when the Federal Court issued their final order granting AT & T the right to build the tower. Then AT & T began the process to go through the Site Plan review. They submitted their application on June 3<sup>rd</sup>, 2011, review was June 29, 2011, hearings were on July 6<sup>th</sup>, August 3<sup>rd</sup>, August 17, and approved September 21, 2011. AT & T brought plans to be signed on 11/2/2011 Planning Board meeting. Chair Chivers said now it is winter and they have to renegotiate the lease with the land owners because it has been awhile. Before they could break ground winter set in. AT & T has come to us before their Special Exception expires under section 14.06 to ask for a 6 or 12 month extension. He said it is his view, if the ZBA denies the extension and withdraw their special exception, they will bring us back to court and the ZBA will be faced with another order to accommodate them.

S. Roberts gave an overview of the entire process that started with in November of 2008. She said first they filed an application in November 2008, then there was an issue with notice to a new property owner, they

refiled again at the end of 2008 and in Sept 2009 were issued a decision. Then they requested a rehearing which was denied. Litigation began in 2009 and in August 2010, the Federal Court issued its first order remanding the case back to the ZBA. AT & T came back in the fall 2010 for 3 hearings which resulted in the April 19, 2011 order that they have been operating under ever since. She said now after 3 ½ years their lease with the property owner has to be renegotiated. She hopes the Board will grant a one year extension so they can complete negotiations and to execute paperwork that the Planning Board requires. She said they did not want to take the chance that 6 months may not be enough time and they would have to come back to the Board.

Chair Chivers asked the Board how they felt about a 6 months to a 1 year extension. R. Howe said he did not see a down side. J. Easter was in favor. J. Szot said the fact they have to renegotiate the contract with the home owner is not the Town's issue. She said they had to have known when their lease was up with the home owner and know how long it would take to renegotiate a lease. Now they have come to the Board and are asking for relief because they did not have time to renegotiate the lease. J. Szot said they need to know that is not the Board's issue.

I. Byrd asked S. Roberts several times who continued the hearings during the Site Plan, the Planning Board or at her request. S. Roberts answered each time that because an independent consultant became involved they had several meetings. I. Byrd said that is your responsibility to have the plans correct and per the regulations. I. Byrd said that answered her question.

Discussion continued on a 6 month or 12 month extension. I. Byrd said granting an extension for 6 months, would mean they would know they have to complete the cell tower by the end of the year and if there are unforeseen circumstances they can come back and get another 6 months because they have not used up the 12 month extension.

There was a discussion of constructing the cell tower in the winter. Chair Chivers said they could put the concrete in the ground and be putting up the steel in January as they are only limited by the frost in the ground. He said as long as the concrete is poured they can plow the access road and get in and finish. J. Szot asked why they didn't construct the tower this winter then.

R. Howe asked if they had to be completed within the extension. J. Szot said they only need to be started.

Chair Chivers said the statute says the Board may for good cause shown extend such period by as much as one year. Chair Chivers said they have shown good cause. He said if the Board grants one year they will have plenty of time to negotiate the lease and not be under pressure and build the tower right, instead of putting them under pressure and have them coming back in six months.

**MOTION:** J. Szot made a motion, seconded by R. Howe to grant a one year extension from April 19, 2012 until April 19, 2013. The motion carried with a unanimous vote of 5-0-0.

## **Other Business**

### **Elections**

**MOTION:** J. Szot made a motion seconded by R. Howe to nominate Boyd Chivers for Chairman. The motion carried with a unanimous vote of 5-0-0.

**MOTION:** I. Byrd made a motion, seconded by R. Howe to nominate Judith Szot for Vice- Chairman. The motion carried with a unanimous vote of 5-0-0.

**Adjournment**

MOTION: I. Byrd made a motion, seconded by R. Howe, to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 7:25pm.

The next scheduled Zoning Board of Adjustment meeting is April 24, 2012.

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary