

ZONING BOARD OF ADJUSTMENT  
Francestown, NH 03043

**NOTICE OF DECISION**

On Sunday, April 18, 2010, the Francestown Zoning Board of Adjustment met at 2:00 p.m. in the Town Offices, lower level, to deliberate on and to decide the applications then pending before the Board by New Cingular Wireless PCS, LLC for relief under the Francestown Zoning Ordinance to permit location of a cell tower facility on property located on New Boston Road Tax Map 6, Lot 33-1. Specifically the applicant has requested a special exception under Article VII, Sections 7.1, 7.1.2(a-f) 7.19 and 7.19.1 and a variance under Article II-A, Section 2-A.3.3(2)(c) of the Francestown Zoning Ordinance.

Evidence presented to the Board determined that:

- A gap in coverage exists in Francestown along Route 136 (aka New Boston Road) from the Francestown/New Boston Town line west towards the center of Francestown.
- A tower of 100' to 120' would provide coverage along "targeted area".
- Alternate sites exist in the Dennison Pond Road area.
- New Boston Road is a major travel road to and from Francestown.
- Proposed tower location is visible along the New Boston Road travel corridor.
- Maintenance access road will be required from New Boston Road to Tower site (see also variance request discussed later).
- Cell tower meets setback requirements of section 7.19.1(c) of the Zoning Ordinance
- Applicant has indicated height of tower at 110' will be sufficient for at least one co-locator. Co-Location is encouraged under Sections 7.19 and 7.19.1(b) of the Zoning Ordinance.
- Board previously granted a special exception and two variances for the construction of driveway part way up the hill from New Boston Road.
- Applicant has stipulated they will follow previously approved plan.
- A balloon test was conducted at various heights.
- Use of ATC Tower does not cover "targeted area" at 165'. By adding an additional 30' for a height of 195' ATC Tower still does not cover "targeted area". Additional height is not a modification of the existing tower, but would be a major alteration.

This Notice of Decision will first address the Board's action on the request for a special exception to permit the construction and operation of a Personal Wireless Facility. By a vote of 5-0 the Board has voted to deny the request for a special exception for the following reasons:

- Negative "Visual impact on the overall community" of cell tower {section 7.19.1(a)}.
- Negative "Visual impact on the overall community" of maintenance access road and utilities (section 7.19.1(a)).
- Permanence of construction of maintenance access road.
- Proposed alternate sites offer less of a visual impact on the overall community
- Tower and access will have significant adverse impact on the community and does not meet the criteria of section 7.19 that it will "best preserve the Town's natural beauty, rural characteristics, scenic vistas and architectural history".

- Construction and removal (should the tower ever come down) will result in more alteration to the site than other proposed locations.
- Site is not an appropriate location (section 7.1.2(a)) due to the location of the maintenance road access and topography.
- Site is an important scenic view shed coming into and leaving Frankestown. Area of farms, fields and rural vistas and proposed use is not compatible with surrounding land use (section 7.1.2(a)).

The Board further determined that the applicant has met the requirements of sections 7.1.2(b), (c), (d), (e), (f) and (g) of the Frankestown Zoning Ordinance

The second application before the Board was for a variance to construct and operate an access driveway with a grade exceeding 10%. The Board reviewed the criteria for a variance and determined:

- 1) The variance will not be contrary to the public interest. The Board has determined that the applicant did not meet this criterion. Proposed maintenance access road over slopes would have a negative visual impact on the overall community.
- 2) The spirit of the ordinance is observed. The Board has determined that the applicant did not meet this criterion. Proposed maintenance access road over slopes is contrary to the spirit of the ordinance.
- 3) Substantial justice is done. The Board has determined that the applicant did not meet this criterion. Denial of cell tower facility makes road not necessary.
- 4) The values of surrounding properties are not diminished. The Board determined that the applicant has met this criterion.
- 5) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship if no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property and that the proposed use is a reasonable use. No fair and substantial relationship exists between the ordinance and the applicant's proposed use given that it is not a reasonable use. Maintenance access road is not required due to denial of special exception for cell tower facility.

If those two standards are not met, the statute goes on to state that unnecessary hardship will exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use. Having failed to meet the first criteria, the second one is considered. Property is not significantly different in terms of slope from other properties in Frankestown. Property could be used for other purposes as shown with the prior approved application for residential driveway.

By a vote of 5-0 the Board voted that the applicant failed to meet the criteria for a variance and, therefore, the request for a variance is hereby denied.

Charles M. Pyle

Vice Chairman, Frankestown Zoning Board of Adjustment

April 21, 2010

NOTICE: ANY PERSON AGGRIEVED BY THE DECISION OF THE BOARD MAY REQUEST A REHEARING WITHIN THIRTY (30) DAYS UNDER THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED CHAPTER 677, SECTION 2, TO WHICH STATUTE ATTENTION IS DIRECTED FOR FURTHER REQUIREMENTS.