

**TOWN OF BOLTON
DEVELOPMENT REVIEW BOARD**

NOTICE OF DECISION

This matter came before the Bolton Development Review Board (DRB) on the application of Alexander D. McEwing (Applicant/Landowner) for a variance from Bolton Zoning Ordinance Article VI, Sec. 8, Nonconforming Structures and Uses, pursuant to Bolton Zoning Ordinance Article IV, Sec. 3, Appeals and Variances. Applicant requests a variance to allow for the replacement of a nonconforming structure, the communications tower (Present Tower) located on Robbins Mountain (Tax Map I.D. No. 12-12005-3) with a new communications tower (Proposed Tower) with a maximum height of eighty-four (84) feet to accommodate five personal wireless service providers, two T.V. stations, two radio stations and a rescue squad.

The DRB conducted a duly warned public hearing on August 15, 2001. Present at this hearing were Applicant, Brian Sullivan, attorney for Applicant, Joe Papa of Nextel, Wayne Lukacher of Verizon Wireless, Arthur Dreher of DuBois and King, Sandy Carter of Verizon Wireless, Scott Fishman of Verizon Wireless, Fred Jordan of the Green Mountain Club, Dick Ward, Bolton Zoning Administrator, Ray Atwood and Rob Heimbuch. A continuance of this hearing was held on September 19, 2001. Present at this hearing were Applicant, Brian Sullivan, attorney for Applicant, Kent Snelling and Kristin Snelling of Nextel Partners, Jennifer Downey and Charlie Van Winkle of Devon Mobile, Lee Jones and Andy Squires of Richmond Rescue, Wayne Lukacher and Sandy Carter of Verizon Wireless, Christopher Bramley of Independent Wireless One, Tom Buckley of Cellular One, Jed Reitman of IWO (Sprint PCS), Arthur Dreher, project engineer, DuBois and King, Inc., Dick Ward, Bolton Zoning Administrator and Leigh Sykes. Based upon the testimony provided at the above-mentioned public hearings and submission of documents for this application, the DRB finds, concludes and decides as follows:

FINDINGS OF FACT

1. Applicant owns a parcel of land situated on Robbins Mountain in the Town of Bolton, identified as Tax Map I.D. No. 12-12005-3.
2. Applicant requests a variance to allow for the replacement of a nonconforming structure, the communications tower located on Robbins Mountain (elevation 2088 feet) with a new communications tower with a maximum height of eighty-four (84) feet to accommodate five personal wireless service providers, two TV stations, two radio stations and a rescue squad.
3. Applicant's parcel of land is located in Rural II District, Town of Bolton.
4. The Present Tower is 65 feet high; the lower 45 feet is of lattice construction and the upper 20 feet consists of a six-inch pole secured to the lower lattice structure. The tower is ten feet wide at the base, tapering to four feet at the top of the lattice section. The Proposed Tower is 84 feet high; the lower 69 feet is of lattice construction and the

upper 15 feet consists of a six-inch pole secured to the lower lattice structure. As shown on the tower layout map submitted by DuBois & King, the bulk in width of the Proposed Tower is increased due to the three platform faces.

5. The Present Tower now maintains the maximum degree of collocation that is physically possible. It supports the antennas used by the Town of Richmond Rescue Squad, radio stations WLKC (103.3 FM), WGLY (91.5 FM), WBVT (UHF 39), Trinity Broadcasting Network (UHF 16) and cellular communications providers, RCC Atlantic, Inc. d/b/a Cellular One (Cellular One) and NYNEX Mobile Ltd. Partnership 1 d/b/a Verizon Wireless (Verizon Wireless). In a decision dated _____, 2001, the DRB approved the collocation of Devon Mobile Communications to erect four additional panels on the Present Tower.

6. Collocation on the Proposed Tower would include all users on the Present Tower as well as two additional users, namely, Nextel WIP Lease Corp. d/b/a Nextel Partners (Nextel) and Independent Wireless One Leased Realty Corp. d/b/a Sprint PCS (Sprint).

7. Applicant proposes to construct a new equipment shelter, measuring 20 ft. by 10 ft., at the Proposed Tower site within the existing clearing to serve Nextel.

8. Applicant proposes to construct a concrete pad, measuring 12 ft. by 9 ft., at the Proposed Tower site within the existing clearing to serve Sprint.

9. Applicant proposes to extend the existing cable tray that runs from the existing equipment shelters to the Present Tower to reach the Proposed Tower. Applicant proposes to run a cable tray from the new Nextel shelter and Sprint concrete pad to the Proposed Tower and to run power lines from the existing utility pole to the Nextel shelter and Sprint concrete pad.

10. Applicant proposes to extend the chain link fencing that surrounds the improved portion of the site to encompass the new improvements to the site.

11. Construction of the Proposed Tower is estimated to take three weeks to one month and the Present Tower would remain in place during this period. The Present Tower would be removed when the Proposed Tower becomes operational.

12. Applicant proposes to do all construction and removal by helicopter.

13. Access for maintenance by the wireless carriers is estimated at one trip per month plus any emergency visits. Access is by foot or snowmobile through the Fish and Game Club property in Richmond or by helicopter. The Applicant and the State prohibit the use of ATV's for access to the site.

14. The range of EMF emissions from the Proposed Tower is estimated at 2%-3%.

15. A Jurisdictional Opinion from the Agency of Natural Resources (ANR) and Environmental Board (Act 250) is contained in a Project Review Sheet dated August 22, 2001 indicating that this project does not trigger Act 250 jurisdiction.

CONCLUSIONS

1. Applicant's property is situated in Rural II District as defined in Bolton Zoning Ordinance Article III, Section 4.

2. Variances may be granted if they meet the standards as set forth in Article IV, Section 3 of the Bolton Zoning Ordinance.

3. Pursuant to Article IV, Section 3 (1) of the Zoning Ordinance, this Board must determine if there are unique physical circumstances or conditions and that unnecessary hardship is due to such conditions. The DRB concludes that the subject parcel and tower are situated on the top of a mountain and that limited access and difficult terrain limits the use and creates unique conditions that are not generally shared by the Rural II District.

4. Pursuant to Article IV, Section 3 (2), this Board must determine that because of such physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable reasonable use of the property. The DRB concludes that there is no possibility to meet the requirements in strict conformity with the provisions of the regulations and that the authorization of a variance is necessary to enable the reasonable continued use of the property.

5. Pursuant to Article IV, Section 3 (3), this Board must determine that the unnecessary hardship has not been created by the Applicant. The DRB concludes that the Present Tower, which was erected in the 1940's, has a limited capacity and was constructed in accordance with technology available at that time. Changes in technology which have occurred since that time create demand for additional tower space to accommodate wireless carriers and provide an opportunity for development to be sensitive to the scenic integrity of the Town. The DRB concludes that the hardship is created by the unique topographical conditions and the nature of the Present Tower and not by the Applicant.

6. Pursuant to Article IV, Section 3 (4), this Board must determine that the variance, if authorized, will not alter the essential character of the neighborhood, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. The DRB concludes that this variance will not alter the essential character of the neighborhood, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. Pursuant to Section IV, Utilities and Facilities, of the Bolton Town Plan, "The Town of Bolton presently has two Communications Towers for radio and cellular phone transmissions, located on Ricker Mountain and Robbins Mountain. In order to prevent the proliferation of towers on other mountain tops, the Town plans to designate these two areas as the location of any additional necessary towers to preserve the scenic corridor."

7. Pursuant to Article IV, Section 3 (5), this Board must determine that the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Zoning Bylaw and the Town Plan. In order to reduce the number of towers needed, collocation is encouraged. This variance will provide the maximum collocation by accommodating five wireless service providers,

two television stations, two FM radio stations and the Richmond Rescue Squad. The DRB concludes that this variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the Zoning Ordinance and Town Plan.

DECISION AND CONDITIONS

Based upon the Findings and Conclusions set forth above, the DRB unanimously approves the Applicant's request for a variance with the following two conditions with the intent of lessening the visual impact of the Proposed Tower on the Town of Bolton community and the State of Vermont natural landscape.

1. That the tower's existing overhead power service be abandoned and that a new power service line be run on the ground within the existing right-of-way or newly obtained right-of-way(s). The new power service shall be completed within three (3) years of the Proposed Tower's completion. As changes in technology have created demand for the Proposed Tower, this condition will allow the changes in technology to be utilized for power service to the Proposed Tower.

2. That no additional cutting or trimming of the natural vegetation occur within the existing power service right-of-way or newly obtained right-of-way(s). The intent is to allow the forest and undergrowth to regenerate and to eliminate the aesthetical impact that the power service line has on Robbins Mountain.

Approved by the DRB on October 18, 2001.

Michael Rainville, Co-chair

Shirley Zundell, Co-chair

Members present and voting in favor: Michael Rainville, Shirley Zundell, Rob Heimbuch