

ZONING BOARD OF ADJUSTMENT  
November 3, 2010

**APPROVED as AMENDED:**

12/7/10\_\_jrl\_\_\_\_\_

- AGENDA: CONTINUED VARIANCES: JOHN MESSINA, Holiday Hills Drive, #110-049  
4 VARIANCES: MAXTON TECHNOLOGIES INC., Chestnut Street, #115-026  
VARIANCE: WAYNE MARQUETTE, 79 Arrowhead Point Rd., #103-008
- ATTENDING: Alan DeStefano (Chairman), Michael Willingham (Vice Chairman), Larry Denton, Ashley Dolloff, Sara Shattuck (alternate)
- ABSENT: Lorraine Bohmiller (conflict)
- OTHER: Michelle Bonsteel (Land Use Officer), Steve Yannuzzi (Fire Chief), Michael Capone (Town Administrator), multiple public

The meeting opened at 6:00 pm. Ms. Shattuck sat in for Lorraine Bohmiller. Mr. DeStefano went over the procedure for hearings.

**CONT. VARIANCES: JOHN MESSINA**

As Mr. Messina, nor a representative, was present, the Board took a vote to continue his hearing as a courtesy.

M. Willingham made a MOTION, second by L. Denton, to CONTINUE THE VARIANCE HEARINGS FOR MR. MESSINA TO THE NEXT ZBA MEETING, DECEMBER 7, 2010 AT 6:00 P.M. The motion CARRIED.

**VARIANCE: WAYNE MARQUETTE**

Mr. Willingham asked to recuse himself as his company is handling the sale of the property in question. The Board agreed and it was explained to the Marquette's that this leaves a Board of only 4 members and that a 2 to 2 vote would be an automatic denial. It would be their choice to continue with the hearing tonight or ask to continue to December. They chose to continue tonight.

Mr. Marquette explained that the foundation is cracked and they wish to replace it. They would have the building jacked up and a new foundation poured. The building would then be placed back down on the foundation. They would also be addressing some drainage issues as well.

**MARQUETTE VARIANCE continued:**

The ZBA checked all of the information that had been submitted. Mr. Denton asked if the plan would increase the height and Mr. Marquette stated that it would raise the building 4'. Mrs. Marquette added that it would have the same footprint. The Board determined that they had enough information to go forward.

Mrs. Marquette explained that the current foundation has failed due to cement block cracking and caving in some areas. This is creating unsafe conditions such as mold and also the existing slab has been undermined and is now floating with no soil to support it. The plan is to jack up the building, remove the concrete block foundation, pour a concrete foundation and replace the building onto the foundation. The house will be raised approximately 4'. The contractor list consists of Geddes Building Movers, Chet Caron Excavation, and MJ Flanders concrete. Mr. Caron will prepare access to the property. All protective barriers will be installed to prevent excavation debris from entering the Lake. All electric, plumbing and heating will be disconnected and relocated until ready for installation. Geddes building movers will jack the house high enough to allow the pouring of the foundation. They will then excavate under the foundation and remove the existing cement block foundation. Mr. Caron will remove the material resulting from the excavation. MJ Flanders and Sons will then pour the concrete foundation not to exceed the size of the existing foundation. Mr. Caron will install footing and outfall drains leading to drywells and then will backfill the foundation. Geddes will then lower the house onto the new foundation. All protective barriers will be removed and landscaping will be completed by hand in the Spring.

Ms. Marquette then addressed the 5 criteria for a Variance:

**1. GRANTING WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST:**

It will prevent erosion of the lot by creating proper drainage around the new foundation. It will prevent undermining of the existing structure which could cause potential oil tank issues (the current tank is on the undermined slab) as well as septic pipe issues if the foundation continues to fail. The new basement would also beautify the property by creating storage for items currently stored outside. It will not increase the impervious area of the lot and will only raise the building a few feet. As there are no homes immediately behind this property, it will not affect the view of any abutter. It will increase the value of the surrounding properties by bringing this home up to the standards of the abutter's homes.

**2. THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED:**

Since the project is replacing a damaged foundation, will not increase the footprint and will not change the location, it should not violate any town ordinances. It will prevent any potential damage of the lake ecology as well as preserve the natural beauty of the lake.

**MARQUETTE VARIANCE continued:**

**3. SUBSTANTIAL JUSTICE WOULD BE DONE:**

It would do justice to the homeowner by eliminating the current mold issue by eliminating water in the basement as well as to provide storage space. It will also do justice for the lake ecology by preventing runoff by creating proper drainage. It will also help to maintain the value of surrounding properties and keep water quality of surrounding properties in good health.

**4. VALUES OF SURROUNDING PROPERTIES WOULD NOT BE DIMINISHED:**

The project will not diminish properties as it will help to preserve the water quality of the lake by improving water runoff as well as preventing any waste from damaged septic pipes or oil pipes. It also will provide storage of outside clutter.

**5. UNNECESSARY HARDSHIP:**

The proposed changes are fairly and substantially served since replacing the existing foundation does not have any impact on the rural character of the lake and will also prevent any environmental impacts in the future. It is a reasonable use because it creates a safe environment for the homeowner, eliminating water in the basement and the mold issue. It eliminates the potential hazard caused by broken pipes in the septic system or oil tank. It creates a full height basement and eliminates the sloping knee wall currently there. The current basement is only 5' tall and only goes half way across the width of the house until it reaches a knee wall and then slopes up toward the front of the house. The sloped area is where the water is penetrating under the knee wall. The current situation is not repairable and a new foundation is the only viable solution. It will also provide storage space for outside clutter.

The foundation is failing which is causing: water leakage, mold build up, poor drainage around the foundation, inadequate area to store boiler for heat and hot water, lack of storage area, and potential hazard of oil/septic pipe damage. These problems have been addressed in abutter's properties. The mold problem is dangerous for anyone living in the dwelling and can be cleaned but without these changes, it will return. The plan is to perform the mold mediation after the foundation work is completed.

At this point, Mr. DeStefano asked the Board if they had any further questions. He asked if the foundation now slopes back due to ledge or rock. Mr. Marquette answered that it is due to a rock and the area was hand dug. Ms. Marquette stated that there is to be no blasting; the removal will be done by a chemical. Mr. Denton asked if the septic area is crumbling. Ms. Marquette said that there is drainage and there is eroding under the half wall holding the oil tank. Mr. Marquette added that the present foundation is bowed and water is coming in through cracks. Ms. Marquette stated that the back and side walls have failed; they are not sure of the others. They do feel it best to pour a full foundation.

**MARQUETTE VARIANCE continued:**

Mr. Denton asked how they plan on handling the oil tank. Mr. Marquette said that they are to remove it and then replace it after the work is done. Ms. Marquette added that the mold can be removed and the duct work can be replaced. The leach and septic systems have been found to be fine. Mr. DeStefano informed them that DES permits will be needed for the foundation drains. The Marquette's are aware of this.

Mr. DeStefano asked if anyone from the public was in favor and no-one spoke. He then asked for opposition and, again, no-one spoke. Mr. Lindholm asked what the headroom was to be and Mr. DeStefano stated that they are to add to the 5' they have now. Mr. Lindholm calculated that this would now become 9'. He then asked if ledge had been contemplated and Ms. Marquette answered that they did no soil testing. Mr. Lindholm mentioned that the lot behind had not been considered and this would block their view. Ms. Marquette stated that Barbara Ciraldi called her and has no problem with the plan. There were no further comments brought before the Board.

With no further questions from the Board, Mr. DeStefano presented a synopsis of the plan and then closed the public portion of the hearing.

Mr. Denton stated that the deteriorating condition could attack the lake and/or abutters. He feels that the request is reasonable and not contrary to the Ordinance. The other members agreed. Ms. Dolloff stated the drainage and deterioration problems and their repair go with the Spirit of the Ordinance. As to overcrowding, Mr. Denton added that the footprint will remain the same. As to Substantial Justice, he feels that they have to do something. Mr. DeStefano felt the no diminution of values was straight forward and Mr. Denton mentioned the fact that the neighbor is not against the plan. Mr. DeStefano said that one-story residences are allowed in that area according to deeds. As to hardship, Mr. Denton felt that they need to address the immediate problem and they are taking into account the septic and oil tank. The concern is of the deterioration. Ms. Shattuck felt that they have met the requirements for a Variance. Mr. DeStefano asked that the basement have no residential use but to be used for storage only, there is to be no blasting, and the DES permits are to be obtained.

Mr. DeStefano called for a vote to approve with conditions: **NO BLASTING OF LEDGE OR ROCKS, NO RESIDENTIAL LIVING SPACE, STORAGE AND MATERIALS ONLY, AND MUST RECEIVE DES PERMITS AND COMPLY WITH SHORELAND PROTECTION ACT.** The motion CARRIED. The Notice of Decision was signed and Mr. DeStefano reminded them of the 30-day appeal time.

Mr. Willingham came back to the table at this time.

**4 VARIANCES: MAXTON TECHNOLOGIES INC.**

As the applications and original abutters and advertisements had been read last month, the secretary just read the list of the abutters who were sent a re-notice.

Peter Demarco, representative for Maxton, explained that the owner, Steve Kelleher was here with him. He continued by saying that they wish to erect a 190' cell tower in a 10' x 100' compound.

The Board checked the application for completeness. Mr. Denton asked where the abutters are shown on a map and this was pointed out on one of the maps presented. Mr. DeStefano asked about the list of Waivers and Mr. Demarco stated that they are no longer asking for any waivers.

M. Willingham made a MOTION, second by L. Denton, that THE MATERIALS IN THE APPLICATION ARE COMPLETE. The motion CARRIED.

**10VAR10, Variance from Article X, Section 7.3 (Height)**

1. PUBLIC INTEREST: Mr. Demarco stated that there is a need for wireless service in Bristol. Having the tower would not injure health or safety and is not visible from existing properties due to the topography. They are under requirements of the FCC. The cell tower would be a benefit to improve communication.
2. SPIRIT OF THE ORDINANCE: Mr. Demarco stated that the tower is not contrary to public interest and is consistent with the spirit of the ordinance. There will be little or no impact on the town or abutting neighbors. Besides the town emergency equipment, they can have up to 5 commercial carriers.
3. SUBSTANTIAL JUSTICE: They are using a heavily wooded lot and it will hold the emergency communication for Bristol's Police and Fire Departments.
4. NO DIMINUTION OF VALUES: Mr. Demarco asked if he could defer to their expert on this requirement. The Board determined to continue the rest of the presentation and to hear the expert later.
5. HARDSHIP: Mr. Demarco stated that they plan on a project with minimal impact. Bristol's Ordinance allows only 35' above the canopy which is not fair. It creates an artificially low height in which, at this site, would not clear the tree canopy. The town will have the top 20' of the proposed tower. The extra height is needed so as to accommodate this.

**MAXTON VARIANCES continued:**

Mr. Willingham asked what Mr. Demarco's relationship is to Maxton. Mr. Demarco answered that he is their agent. Mr. Willingham asked how many towers has Mr. Demarco done for them and who is the owner of the property. Mr. Demarco answered that he has represented several companies and that they are leasing the area from Bristol. Mr. Willingham asked what other carriers they will have here. Mr. Demarco stated that they have Team Mobile and will probably have Verizon and US Cellular.

Steve Kelleher, Owner of Maxton Technologies, explained that they will be moving \$53,000 worth of Bristol's emergency equipment to the top of the tower.

Mr. DeStefano asked about the line of site, at 190' and the trees lower, does the lower area get signal. Mr. Kelleher explained that the signal goes by frequency. Mr. DeStefano then asked if outfits like Maine PCS and US Cellular could roam. Mr. Kelleher stated that they enter into a roaming contract. It is possible that US Cellular might not have enough customers here, but they do have others who are interested.

Mr. Willingham asked about any health issues and Mr. Kelleher answered that health is regulated by the FCC. There are no health problems involved. Mr. Demarco added that it is against the law to do anything that would create a health problem. The FCC determines percent of risk straight down and we do not even have 1% of what is allowed.

Mr. DeStefano asked about the main access. Mr. Kelleher answered that it is a dirt road at the end of Chestnut St. Going this way, they will need to take down fewer trees. Mr. Willingham asked about traffic and Mr. Kelleher stated that it is usually once a month by each carrier.

Mr. Denton asked if this is a typical tower. Mr. Demarco stated that they have built a lot of lattice type towers but lately most want a single pole. Mr. Kelleher added that they considered the terrain and the town. Mr. DeStefano mentioned that they are looking for 190' plus 10' for whip antennas. Mr. Kelleher stated that it is for the town's antenna and barely shows. He added that, when he originally met with the town, they were discussing another plot but it was not feasible. There was blockage by Sugar Hill. In comparison, this proposed tower will cover most of the area. They are looking to another site off Route 104 East to accommodate this area for continuous use. Mr. Kelleher then showed plots which show the areas covered now and the proposed coverage areas, which were done by the contractor.

Mr. DeStefano asked for public comment.

**MAXTON TECHNOLOGIES VARIANCES continued:**

Roger Privet, Chestnut St., asked about the emergency services. Mr. Denton stated that they are town services and Steve Yannuzzi, Fire Chief, was asked to explain. Chief Yannuzzi stated that we have deficiencies in the emergency coverage for the town. At present, we have the tower on Hemphill which tones Tenney Mountain for every call. Hemphill does not cover 3A South. The new site would cover everything with only one tone. This would improve the response time. Also, Hemphill consists of 2 telephone poles and the towers are in bad shape. We need to move to a different tower or replace the present tower. The way things are, the ambulance cannot call Franklin Hospital until they reach Hill. The new tower would allow them to transmit an EKG and perhaps save lives. They have had 2 cases since March and had to be transferred to Concord. The new tower would allow them to transmit the EKG and go straight to Concord instead of having to stop at the nearest hospital first.

Mr. DeStefano asked about the FAA requirements and needing a light on the top. Mr. Kelleher answered that the height has to be determined first before they can go to the FAA. Bob Hogan, Maxton Technology, stated that the FAA will tell them what they need after the 190' is approved. Mr. Demarco added that it could be a condition of the approval.

Mr. Denton asked what happens if they cease using the tower. Mr. Kelleher said that it will be deeded to the town.

Andrew Lemay, Real Estate Appraiser, spoke stating that he has been an appraiser since 1976. The Board has been given his report and he then stated his many credentials. For the report, he covered various properties across the country as well as across NH. All have existing exposure to cell towers; some with a minimum exposure and others with more. He included Windham, which has a 490' tower. He looked at the impact on sales and asked the price affect: the affect when showing, any negative feedback, and did it impact the final price. The answers back were all negative. There are always some who won't buy because they can see a tower but the properties still sell. Maine had no affect on 56 sales there. A huge percentage of buyers do not care.

Mr. Lemay conducted a national survey asking: any loss in property value, any tax appeals due to a tower, any loss of sales due to the sight of a tower. Again, the answers were all negative. He received 172 replies on 146 communities. He has included some of the responses in the report. There were 26 responses from NH assessors with the same questions as sent in the national survey and none show any lost value.

**MAXTON VARIANCES continued:**

Mr. Denton asked if any were living in the homes when the towers were built. Mr. Lemay said that there were not, his survey is based on buyers, which determines value. He also looked at average days that a property was on the market and found nothing unusual. Mr. Willingham asked if he compared the values of homes both with towers and without towers. Mr. Lemay answered that he did and there was no difference.

Mr. Willingham expressed that Mr. Lemay had done an excellent job (both Mr. Willingham and Mr. DeStefano are in the Real Estate business). Mr. Willingham asked who hired Mr. Lemay and he answered that the lawyer for Maxton Technology did. Mr. Willingham mentioned that an assessor has to be impartial and is under nationwide standards and certifications. Any partiality could cause him to lose his license.

At this time, Mr. DeStefano asked if any public attending were in favor and would like to speak. Vincent Mignorelli, Budget Blinds (a business located in Bristol) stated that he is in favor of anything that will improve things for businesses that wish to locate in town. A primary concern of business owners interested in locating here is about cellular technology.

Mr. DeStefano then asked for any in opposition. Victor Labonte, Chestnut Street, asked about lighting and if they have filed with the FAA. Mr. Kelleher stated that they are obligated to the town to do so. Mr. Labonte mentioned the study saying that no-one is affected and he asked what about those who do not want to move or to look at a tower.

David Gallagher, Chestnut St.& Ellen Lane, asked how the town would be able to sell the other 2 acres that they own. Mr. Kelleher stated that they have a lease for both lots. Mr. Capone, Town Administrator, corrected this statement by saying that they are leasing a 100' x 100' area on lot #26. Mr. Gallagher then asked if the neighbors take this to court, how much will the town lose then? He also turned to the abutters and asked how many would be willing to testify in court if this is approved. Mr. Gallagher feels that the tower should be on Round Top and wanted to know about that. The Board explained that they cannot make comments on this, they are only here to determine the 4 variances and the necessary requirements. The ZBA purpose is for people seeking release from the Ordinance. Mr. Gallagher then mentioned the sirens that will go off. He was assured by the builder of the tower that there are no sirens or humming and no setbacks.

Mr. Labonte asked if the town has to pay for the calls to the Tenney tower and the Chief answered that we do as mutual aid. It is a set fee in which 36 communities pay. Mr. Labonte stated that he sees a system on Route 106 and the telecommunications truck goes there every day.

**MAXTON VARIANCES continued:**

Kent Gustafson, Chestnut St., stated that the Planning Board requested that they do another balloon test with notification. What happened to it? Mr. Kelleher answered that the test was done last Saturday from 10:00 am to 2:00 pm as advertised. Mr. Kelleher presented photos to show this.

Roger Privet, Chestnut St., stated that the WMUR station on 4/20/10 had Realtor Paul Redman on and Mr. Redman established that a tower could diminish value by 10-20%. He personally feels that the next lot doesn't lose value. Mr. Privet then read the Introduction and a section of Chapter 1 of Bristol's Master Plan. He stated that he does feel that the tower will affect the town.

Elaine Putnam, Putnam Drive (about 500' as the crow flies from the proposed tower) questioned the height. She said the airplanes circle the valley as well as the DART helicopter and paracopters.

Sandy Grimes, Bristol, stated that there is no noise or interference from the tower and asked about interference with Satellite reception. Mr. Kelleher stated that it could block Satellite reception but they would need to realign these to fix that problem if it occurs. Ms. Grimes said that she has been here 26 years and used to be able to see the top of Mt. Cardigan but cannot now. She is questioning the removal of trees. Mr. Kelleher stated that it is in the agreement with the town that there be no interference. Mr. DeStefano thought that, cutting trees would make it more visible and Mr. Kelleher stated that it would be no more than what is seen today. Mr. Hogan added that most canopies are 80' – 90' and the signal shoots up. There is minimal cutting.

Jim Nyberg, Lake St., explained that he is on the Board for Slim Baker and he is concerned about the height. Many people visit Inspiration Point and the tower will only be 100' below this. It is in a direct line just below direct sight/view. From Mr. Nyberg's home, he looks directly at Inspiration Point and no photos were taken from Lake St. or Downtown. He had to work Saturday so was unable to view the test. He would like the test done again so that they could show photos of those areas and from Inspiration Point. Mr. Kelleher stated that the affect is to the abutters. Any other area except there you would still see. Mr. Nyberg admitted that from Downtown, it would blend better where they are proposing.

Terry Fielding, Prospect St., stated that it will affect her view after looking at the photos.

**MAXTON VARIANCES continued:**

Mr. Gallagher asked who will maintain the private road. Mr. Kelleher said that it would be no cost to the town. Mr. Hogan stated that they will maintain it but will only plow if they need to get to the tower. Mr. Gustasson stated that he has been maintaining the road for 16 years. The deed says that the cost is to be shared. So far, he has had gravel brought in, culverts replaced, and paid for plowing. The town will benefit and Maxton will benefit a couple of hundred dollars a month. Mr. Kelleher asked where they got that figure. It is overall to construct the tower but they don't get paid that much. The town gets additional costs besides the initial fee and when they get other carriers, they will pay some to the town as well.

Mr. DeStefano felt that all abutters should share if it is on the deed and that may come into play. Ms. Grimes explained that the town has taken over a number of lots that were included in the sharing. Originally 4 lots were taken but only 2 are left. As nothing has been built, the cost fell to one person. Mr. Capone assured Mr. Gallagher that he will look into the situation and will contact him.

Mr. Messina, Bristol taxpayer, stated that Bristol will only get \$850.00 a mo. rent. In Ma. they get \$40,000.00 a month. He questioned how much Maxton will get. Mr. Kelleher stated that these are arbitrary numbers. He has 2 in Maine that gets \$1,000 a mo. It depends a lot on the area, such as if it is located on a hospital, etc. Maxton is leasing the land and paying \$53,000.00 up front for Bristol's equipment and putting them on line. Mr. Demarco added that they will have to have two carriers in order to break even.

Mr. Gallagher asked how many properties did they see in Manchester and questioned how they can compare Manchester with Bristol. Mr. Lemay answered that they did 26 communities in NH as well as Manchester. Mr. Gallagher felt that, due to the elevation from the center of Bristol, everyone will see the tower. Mr. Kelleher stated that the assimilations are not that it won't be seen from every area of town.

Mr. Privet repeated that the town is to get \$53,000.00 and he felt that it sounds cheap. Mr. Kelleher reminded everyone that two public hearings were held prior to the signing of the contract with the town. Mr. Gallagher started to speak about the \$850.00 plus \$100.00 figures he'd heard and Mr. Willingham interrupted and stated that this has no bearing on the variance. Mr. Willingham asked if Mr. Gallagher has a statement about the height and Mr. Gallagher stated that he doesn't like it.

Mr. Demarco mentioned that Realtors do not have knowledge of values and Mr. DeStefano cautioned him about that statement as he is on the NH Realtors Law Board. Mr. Lemay stated that Realtors do know value, but this is his opinion only.

**MAXTON VARIANCES continued:**

Mr. DeStefano asked if there are any further comments. There were none and the public portion of the hearing was closed.

Mr. Willingham asked if they could address all 4 variances and conduct the non-public review. Mr. DeStefano asked the wishes of the Board and everyone was in agreement with this suggestion.

Mr. Willingham made a statement for the record: that the emotion in the room is on the cell tower. Mr. DeStefano asked about the waivers to be asked for and Mr. Demarco stated that they will not be asking for any now.

**10VAR11: Tower within 300' of horizontal distance of a topographical summit greater than 700' elevation, Article X, Section 7.5**

Mr. Demarco stated that the 5 criteria are pretty much the same as with the height variance. Mr. DeStefano suggested that he only address the differences. Mr. Demarco stated that the site is below the ridgeline therefore the ridgeline covers the tower from below. They are placing the tower on municipal land below the ridgeline to reduce visibility (for Spirit of the Ordinance). The property values are not diminished. Reasonable Justice is done due to the location as it is about as good as it can be with the hill as a backdrop. The lot is owned by the town and will bring in revenue.

Mr. Denton asked if they chose the area specifically so that the ridgeline would help conceal the tower and Mr. Demarco stated that they did. They tried to keep it below as much as possible.

Mr. DeStefano asked for public input for. There was none. He then asked for public comment against and there was none. Mr. DeStefano summarized by saying that they tried to locate it in the best place possible.

**10VAR12: Fall Zone, Article X, 7.6**

Mr. Demarco stated that the wetlands on the property determined where the tower would need to be located. Towers are designed by codes. It was explained that the fall zone is the area it could fall if it came down like a tree. Mr. Kelleher stated that they sent letters to 3 abutters who are in the fall zone but received no answers. Mr. Demarco continued by saying that anyone to be injured would have to be out in a 100 mph wind. Due to the wetlands, they could not place the fall zone 100% on the lot. It is 74' to the back of the property and 70' to the road.

Mr. Denton asked how many towers come down. Mr. Hogan answered that they do not come down around here though the guide wires may if they have too much ice.

**MAXTON VARIANCES continued:**

Mr. Gallagher asked why they took both lot of land for \$850.00 for 5 years. Michael Capone, Town Administrator, stated that it was for public safety for emergency response for the town. The lots have had no revenue for some time. Mr. Gallagher said that he could get \$3500.00 for his land. Mr. Capone stated that the town gets a benefit. Mr. Gallagher didn't agree that it compensates.

Ms. Grimes stated that, as to a tower never falling, trees fall in that area and she questioned what if a tree falls on the tower. Mr. Hogan stated that the area is clear of trees. Mr. Labonte felt that with the 2 lots, it leaves the abutters land useless in the fall. Mr. Privet asked if anyone would buy next door and asked they raise their hand. No-one did.

Ms. Putnam stated that this is a safety issue in a highly residential neighborhood. Will there be no health hazards or biological hazards due to exposure? Mr. Demarco stated that the FAA controls the health requirements. Mr. Willingham asked if they have placed towers on more dense areas and was told that they have.

**10VAR13: Vegetative buffer, Article X, Section 8.1F**

Mr. Demarco stated that, due to the significant wetlands in the area, they cannot do a 150' buffer of dense vegetation as required. They can do 70' – 80' of buffer only.

The Board had no further questions. Mr. Privet asked if they have a Wetlands permit and was told that they do not as yet.

Mr. Nyberg said it should be screened in all directions. Article X, Section 8.6 addresses scenic landscapes and vistas and will also need a variance. He then read the Section. It will be in the direct view of the Slim Baker Recreational Area, he stated. Mr. DeStefano explained that this Section continues and uses an 8.1.F reference which is what we are addressing now. Mr. Willingham felt that the Planning Board had determined the variances needed in a PCC. Mr. Nyberg stated that the applicant is still responsible. Mr. Willingham stated that the ZBA does not determine this and Mr. DeStefano stated that if the Planning Board addresses this, they would have to come back to ZBA.

With no other comments, the public hearing was closed.

Mr. Willingham thanked the gentlemen for their presentation and preparedness and then thanked the public and their emotion in the room. The ZBA must eliminate the emotion and try to come to a conclusion which, for him, will be hard. Mr. Denton agreed that it is hard due to the emotion. Mr. DeStefano said that they could decide to continue before deciding and the Board felt that they would like to continue this evening.

**MAXTON VARIANCES continued:**

Mr. Willingham stated that each variance needs a determination but the relationship makes it hard to separate. Mr. Denton stated that the height is needed for service but is also not pleasing to the eye. The town's future is in a technology age so the need is great for public service and public safety. This makes for hard decisions.

Mr. DeStefano said that he appreciates the concern of viewing cell towers but he sees the Tenney Mountain and Bridgewater towers, as well as a test tower for wind generators in Alexandria from his home. After living with the towers for 8 years, he never focuses on them but sees the mountains, etc.

Mr. Denton added that more and more towers are going up. A lot of them are off Route 93 and most are on the ridgelines. It seems that Maxton has tried to locate their tower as unobtrusively as possible.

Ms. Shattuck agreed that they have done the best job in trying to locate the tower. Mr. Willingham asked about State regulations and Mr. DeStefano felt that we only have time constraints in determining. At an LGC seminar he attended, they said that we must have some really good reasons in order to deny. Mr. Willingham asked if we wanted to do a straw vote and Ms. Dolloff felt that the Board should go through the 5 criteria.

#1. PUBLIC INTEREST: Mr. Willingham stated that the town will benefit as well as our emergency departments. Ms. Dolloff added that it will benefit businesses also. Mr. Denton felt that the interest is for public coverage and emergencies. Ms. Shattuck agreed.

#2. SPIRIT OF THE ORDINANCE: Mr. Willingham stated that the town owns the 2 lots of land and it will put them to use. Mr. DeStefano felt that it tries to give guidance for implementation of towers. Mr. Denton said that no-one likes them but the spirit is for communication.

#3. REASONABLE JUSTICE: Ms. Dolloff felt that this had been met. Mr. Willingham felt that it is closely related to Spirit. It is difficult to separate emotion and benefit but life saving and growth of business and better coverage are reasonable. Mr. Denton agreed.

#4. NO DIMINUTION OF VALUES: Mr. Willingham stated that this is difficult to accept. A lot of emotion of those closest has come forward and they will fear this. There was an excellent presentation by the appraiser and the evidence does not support any diminution of values. Ms. Dolloff said that this was nicely put. Ms. Shattuck stated that there is a lot of emotion but she sold a property in view of a tower in 3 days after putting it on the market. Mr. DeStefano agreed with the study. He is not an appraiser but feels the subject was well researched.

**MAXTON VARIANCES continued:**

Mr. Willingham stated that the comment made that they don't want to see or to sell weighs heavily on him but he must also weigh the benefit to the town. Decisions on what has been said tonight are difficult when we look at the technical presentation.

#5. HARDSHIP: Mr. DeStefano stated that, to deny, Maxton will go somewhere else to locate the tower. Mr. Willingham stated that the town owns the 2 parcels. The hardship would be on the town. Mr. DeStefano added that the hardship is of the two towers for one call. Mr. Denton felt that the new tower would save lives.

M. Willingham made a MOTION to APPROVE THE 4 VARIANCES WITH THE CONDITION THAT, IF THE TOWER HAS TO BE LIT OR THE HEIGHT CHANGED AS REQUIRED BY THE FAA, MAXTON TECHNOLOGY INC. MUST RETURN TO THE ZBA. The vote was 4 in favor, 0 against and the motion CARRIED.

**MINUTES OF OCTOBER 5, 2010:**

M. Willingham made a motion, second by A. Dolloff, to approve the minutes as read. The motion carried.

**COMMUNICATIONS:**

A letter from LGC had been received in which they agreed that the Board had acted within the Board's purview at the last meeting (continuing a case instead of automatic denial). There was also an LGC letter stating that health is okay as a requirement for hardship. Ms. Bonsteel, Land Use Officer, had submitted a list of proposed changes of the Zoning Ordinance.

Mr. DeStefano thanked the Board for their hard and diligent work this evening. With no other business before the Board, M. Willingham made a motion, second by L. Denton, to adjourn at 9:30 p.m.

Respectfully submitted,  
Jan Laferriere, secretary