TOWN OF TILTON
ZONING BOARD OF ADJUSTMENT
August 21, 2001

MEMBERS PRESENT:
Chairman Foster Peverly                                                                   Vice-Chair John
Bernard                                                                                     Calvin Brown
Calvin Brown                                                                                    Jim Foye
Normand Boudreau                                                                           Sandy Plessner

OTHERS PRESENT:
Matthew Walsh                                                                                 Blaine Hopkins
Karen Metcalfe                                                                                 Bill Letendie
Frank and Linda Dalton                                                                      Joe Boucher
Bob Brown                                                                                       Joe
Plessner

AGENDA:
7:00 PM                  Call to order
Minutes of June 19, 2001
Correspondence
Any other business

7:15 PM          Case ZBA#0105-Independent Wireless One /ATC Realty-Applicant is seeking a Variance to Article VI (Chart of Permitted Uses) in the Tilton Zoning Ordinance concerning the Districts cell towers are permitted. Applicant is also seeking a Special Exception concerning Article VI as a special exception is required to install a telecommunication tower. Property is located off of Rt 3 with a mailing address of 22 Chapman Road, Tilton, NH 03276. Tax Map R-8 Lot 6A in the Resort Commercial District.

7:45 PM          Case ZBA#0106-Richard Beaudet-Applicant is seeking a Variance to Article VII (Table of Dimensional Values) in the Tilton Zoning Ordinance concerning the minimum setbacks in the RA District in order to build a garage. The property is located at 282 Sanborn Rd., Tilton, NH 03276. Tax Map R-4 Lot 1 in the Rural Agricultural District.

8:15 PM           Case ZBA#0107-Jutras Signs, representing Burger King- Applicant is seeking a Variance to Article 2.3 (Signage) in the Tilton Zoning Ordinance regarding the square footage of signage allowed. Property is located at 25 Tilton Road, Tilton, NH 03276. Tax Map R-23 Lot 26 in the Regional Commercial District.

7:00 PM       Call to order. Chairman Peverly asked if all the members had read the minutes of June 19, 2001. Normand Boudreau made a motion to accept the minutes of June 19th as presented. Calvin Brown seconded the motion. The Chairman called for a vote. All voted in favor.

CORRESPONDENCE:

1. Letter from Barto and Puffer dated August 15, 2001 to Dana Zucker,
Blaine Hopkins, representing the Sprint PCS Network, stated they began updating the Sprint service last year. Mr. Hopkins said they had service for part of Tilton from the water tower in Franklin, the 190 foot tower built last year near the exit, the Laconia senior housing buildings and the tower in Northfield. Mr. Hopkins stated the area was pretty well covered except for a gap in service in the eastern part of Tilton. Mr. Hopkins continued by saying they did not need a full size tower but were proposing a brown stick with the antennas inside the brown stick. The brown stick would look similar to the Burger King flag pole.

Mr. Hopkins continued by saying the location was an 80.22 acre site belonging to the Frank Dalton Trust. The leased site would be 100 X 100 foot and the compound would be 50 X 50 foot with an eight foot chain link fence around it. The access to the site was existing and very few trees would need to be cut down. The brown stick would be located on an concrete pad, 9 ft. X 12 ft., with three cabinets the size of refrigerators. If the power were to go out the signal would run up to eight hours on batteries. If the power would be out longer than eight hours, generators would be used to continue the service.

Mr. Hopkins explained they could make the tower look like a flag pole without a flag, a brown stick or they could make it look like a pine tree.

At this point of the meeting, the Chairman asked the Board members to read over the applicants response to conditions for a variance. Mr. Hopkins stated he was sure the Board was well aware of the Simplex ruling which basically changed the hardship question into three separate criteria. The members of the Board spent several minutes reading over the applicants facts supporting their request for a variance.

Chairman Peverly asked Mr. Hopkins to show the District lines around the proposed site and after being shown, the Chairman asked Mr. Hopkins if they didn't find one of the permitted zoning districts to be adequate. Mr. Hopkins replied they would rather not go for a variance but didn't feel the surrounding areas would fill the gap in the service.

John Bernard asked if they would consider making the tower a tree instead of a flag pole as the area was mostly trees. Mr. Hopkins replied they could certainly make it a tree if that was what the Board wanted. Mr. Bernard asked what the heights of the trees were in that area and was told they ranged from 60 to 70 foot.

Mr. Hopkins passed around pictures of brown sticks as well as photos taken the day of the balloon test at the proposed site. Mr. Hopkins stated it was a 4 foot balloon (standard weather balloon) and it was red.

Sandy Plessner asked what the ground elevation above sea level for the site was and Mr.
Hopkins replied by stating the elevation was 663 feet above sea level.

7:40 PM The Chairman opened the meeting to public sentiment.

Matthew Walsh, professional planner for the Planning Commission, covered each of the conditions which must be met in order to get a variance. Mr. Walsh did not indicate that he was against the project but did feel aesthetics was an important issue. Among the items Mr. Walsh brought up while touching on the Variance conditions were the following:

1. Can the applicant show proof this location would be the only spot the tower could be; what about locating it in a permitted area.
2. Did the market values discussed include seasonal lake front properties as views add a lot to these properties.
3. Mr. Walsh did not feel the tower had to be 100 feet high.

Mr. Walsh passed out pictures he had taken of the balloon test from his property.

Mr. Hopkins, in response to some of the items Mr. Walsh discussed, covered the following:

1. Why not build a full size tower where it would be permitted. Mr. Hopkins stated if they went into a permitted district and placed a full size tower there, it would have a much greater impact on the surrounding properties, including Mr. Walsh's property.
2. Property values, including waterfront and seasonal properties, would not be impacted. Studies do not show any impacts. These are not opinions, these are based on how the market reacted.
3. The flag has to be lighted at night so there will not be a flag. The pole is only 14 inches at the top.
4. People like to think their property includes what they view but it doesn't. Their property rights end at their property line.

At this point, Mr. Hopkins encouraged the Board to look at the study ATC had sent over for the Board to look at.

Mr. Hopkins stressed the fact that according to what was in the study, property values did not decrease.

Mr. Hopkins covered the conditions for a variance.

1. Granting a variance will not diminish surrounding property values.

Site location is an area zoned Resort Commercial and borders Route 3 and 11 and Philbrook Road. The subject parcel, Map R-8 Lot 6A, is a large tract of undeveloped forest land. The proposed 100 foot tower, with internally mounted antenna, will blend with the surrounding environment due to its low impact size and its siting approximately 1200 feet off of Rt. 3 and 11. During the preceding several years, we have reviewed numerous sales of properties, before and after the construction of a telecommunications facility. We have reviewed property transfers and have collected actual sales data for properties. There has not been one instance where the presence of a tower impacted negatively on the sale price of the property.

2. Granting the variance will not be contrary to the public interest.

The provision of personal communications services (PCS) has become a pervasive fact of modern life, and is a technological breakthrough in how people communicate with each other. There is profound public interest in being able to send and receive such communications. Increasingly, the general populace is relying upon wireless service for
their telecommunications needs. The tower will provide coverage to an area that has no PCS service at the present time and will link to towers that exist off of Rt. 132, and the sites in Laconia.

3. The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment.

The restriction set forth in the Town of Tilton's zoning ordinance limits towers to the RA (Rural Agricultural) and IN (Industrial) zones within town. This restriction is more appropriate for the analog cellular car phone than for the current hand held digital PCS phones. The proposed site is locationally ideal to meet the service objectives of a PCS network. The lots size coupled with its underdeveloped status and being heavily wooded presents a unique opportunity to balance the needs of the wireless industry and its customers with the needs of the community.

4. No fair and substantial relationship exists between the general purposes of the zoning ordinances and the specific restrictions on the property.

The general purpose of the zoning ordinance is to comply with the provision of the Telecommunications Act of 1996. It is unstated, but understood, that the intent of the ordinance is to allow the provision of wireless communications service to the residents of Tilton. However, by restricting towers to only two zones within the Town of Tilton, the ordinance contradicts the stated and unstated purpose of the zoning ordinance. The subject site will not impose any greater or lesser burden upon the town, its residents or their visual resources. Therefore, no fair and substantial relationships exist between the general purpose of the ordinance and the specific restriction on the property.

5. The variance would not injure the public or private rights of others.

Granting the variance would not injure the public or private rights of others given its location on a large heavily wooded undeveloped parcel of land. The Stealth nature of the tower, tree or brown stick with internal antenna, will assist with mitigating overall visual impact and insure that the public and private rights of others are not impacted.

6. Granting the variance will result in substantial justice.

Balancing the applicant's request, the stated purposes and goals of the ordinance and the public interest, one must rationally conclude that a granting of the variance will result in substantial justice. The public will not be injured but will benefit from the introduction of adequate PCS service.

7. Granting the variance will not be contrary to the spirit and intent of the ordinance.

The ordinance restricts the placement of towers to only two zones in town, thereby precluding the provision of adequate hand held digital PCS service. Granting the variance for the proposed use will promote the health, safety and welfare of the community.

Calvin Brown asked if they couldn't located on an antenna that was located within 200 feet of the proposed site. Mr. Hopkins replied that their foundations for their towers were built to federal standards. The tower Mr. Brown mentioned was an AM tower. Mr. Hopkins stated they don't share tower space with AM because of the frequencies. If a cell tower is too close to an AM tower, the have to detune it.
Chairman Peverly asked if there was any other coverage in the area. Mr. Hopkins replied that right now they had a choice of US Cell or Verizon. Chairman Peverly asked if they could use each others service. Mr. Hopkins replied they could not use each others service but they could share each others towers as they have different frequencies so they need their own antennas.

Mr. Plessner asked what the reference to 14 inches was and Mr. Hopkins answered by saying the brown stick is 14 inches across at the top. Mr. Plessner asked how much higher above the surrounding area would the tower be and was told 20 to 40 feet. Mr. Plessner asked if they couldn't accomplish the same thing with a shorter tower. Mr. Hopkins drew a picture representing the line of site between the tower and the receiver. The PCS is digital, line of site, high frequency and it attenuates easily, Mr. Hopkins stated. As the signal goes through foliage, it will attenuate very quickly so when it gets to its destination, it will be too weak. Mr. Hopkins finished by saying they needed pole to be 100 feet to have the signal higher than most of the tree foliage.

Chairman Peverly asked Mr. Hopkins if what he was saying was if they moved the tower back to where it would be allowed in the zoning ordinance, it would be to far and Mr. Hopkins agreed with what Mr. Peverly had said and added the signal would be to weak, especially as subscribers increase in numbers.

Normand Boudreau asked if Mr. Hopkins felt they had a better chance of locating this pole in Tilton than in Sanbornton. Mr. Hopkins replied by saying no even though they knew Sanbornton had a restrictive ordinance, they would be asking for a variance there as well.

Joe Plessner asked if they could paint the pole using multiple colors. Mr. Hopkins stated the pole could be painted brown on the bottom to match the tree trunks and the top could be painted a color to blend with the sky colors. Mr. Plessner asked if anyone else could co-locate on this tower and Mr. Hopkins stated yes it could be built to have 4 or 5 other antennas. Mr. Plessner then told the Board the agricultural district had been chosen by the Town for cell towers because it was some of the highest land areas in Town and seemed to be the most beneficial for everyone. Mr. Plessner continued by saying the applicant made a valid point when they said you could go a 1000 feet to the west and put up a 190 foot tower.

Robert Brown told the Board the Planning Board had understood line of site communications would be needed and that was one reason the agricultural district was chosen. The Planning Board was also concerned about visibility and aesthetics. What the Board didn't want to see was many of these brown sticks along the roadways.

Matthew Walsh stated he did appreciate the aesthetics, but his only concern was if the Board felt they might grant this variance, was to make it a better design. Normand Boudreau asked Mr. Walsh what he considered a better design. Mr. Walsh stated that perhaps a lower tree design or a shorter pole painted a sky color.

Bill Letendie stated he questioned whether you would be able to notice the pole being there. Mr. Letendie stated he was in favor of the tower but didn't want an eye sore to look at.

Frank Dalton asked if Mr. Walsh wasn't further away than what he previously thought. They determined it was about 2400 feet. Mr. Dalton questioned what he would really see at that distance.

8:25 PM The Chairman closed the meeting to public sentiment.
Calvin Brown asked if the applicant was trying to reach people on the west side of the road. Mr. Hopkins replied they were trying to reach everyone everywhere. Mr. Brown wondered if the hills in Belmont might be a better location.

John Bernard asked about the black out area and Mr. Hopkins stated the area of the black out was about 1 to 1 and 1/2 miles square.

Chairman Peverly asked the Board members to fill out a “findings of facts sheet” and reminded the Board the top of the sheet stated, "All the following conditions must be found in the affirmative (Yes) in order for a variance to be legally granted. Mr. Plessner suggested the Chairman also fill out a “ findings of fact sheet” in case he had to vote to break a tie. The Chairman agreed.

The members filled out the sheets. The Chairman read the results.

Sheet one- two nos
Sheet two- two nos
Sheet three- all yes
Sheet four- three nos
Sheet five- all yes

The Chairman asked for a motion. Normand Boudreau made a motion that the request for the variance be denied. Calvin Brown seconded the motion. The Chairman called for a vote. Three voted in favor of denial of the variance. One voted against denial of the variance.

8:45 PM               Case #ZBA0106 -Variance for Debbie and Richard Beaudet. No disqualification's.

Mr. Beaudet explained to the Board he wanted to build a garage but because of the shape of his lot, he needed a variance because one corner of the garage would be in the setbacks. When asked what the State right of way for Sanborn Road was, Mr. Beaudet stated he did not know.

The Board members felt they could not act on the variance request without knowing whether or not the proposed garage would be in the State right of way.

After several minutes of discussion concerning the right of way, the Board felt it would be better to continue the case to allow the Beaudet's time to contact the Department of Transportation for information. Normand Boudreau made a motion to continue Case #ZBA 0106 until September 18th at 7:05 PM. John Bernard seconded the motion. The Chair called for a vote. All voted in favor.

9:00 PM               Case #ZBA0107 A variance for Jutra Signs, representing Burger King. A fax from Jutra Signs asking for a continuation was shown to the Board. John Bernard made a motion to continue Case #ZBA 0107 until September 18th at 7:30 PM. Normand Boudreau seconded the motion. The Chair called for a vote. All voted in favor.

9:10 PM               Meeting adjourned.

Minutes prepared by,

Sandy Plessner