

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: DELMARVA BROADCASTING COMPANY**

**(Case No. 11415)**

A hearing was held after due notice on July 7, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the height requirement for a radio / television tower.

Findings of Fact

The Board found that the Applicant was seeking a variance of 175 feet from the 150 feet height requirement for a radio / television tower. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located northwest of Road 626 (Appel's Road) 0.6 mile northwest of Road 594 (Webb Farm Road) (911 Address: 9078 Appel's Road, Lincoln, Delaware); said property being identified as Sussex County Tax Map Parcel Number 1-30-8.00-36.05. After a hearing, the Board made the following findings of fact:

1. Mike Kazala, Christopher Wilk, and Paul Dugan were sworn in to testify on behalf of the Application.
2. The Board found that Mr. Kazala testified that he is the General Manager for the Applicant.
3. The Board found that Mr. Kazala testified that the Applicant is replacing an existing tower which cannot meet the needs of current technology.
4. The Board found that Mr. Kazala testified that the existing tower has been in place for over twenty (20) years.
5. The Board found that Mr. Kazala testified that the proposed tower will be the same height as the existing tower.
6. The Board found that Mr. Kazala testified that the proposed tower will be located within forty (40) feet of the existing tower and will meet all setback requirements.
7. The Board found that Mr. Kazala testified that the proposed tower will service up to three (3) cell phone providers.
8. The Board found that Mr. Kazala testified that the current tower will be removed once the proposed tower is constructed and all existing carriers using the tower are moved over to the new tower.
9. The Board found that Mr. Kazala testified that the proposed tower will meet all the requirements with the Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA").
10. The Board found that Mr. Kazala testified that the tower will be lit as required by law.
11. The Board found that Mr. Kazala testified that the height of the tower is standard for FM radio stations throughout the United States.
12. The Board found that Mr. Kazala testified that the Applicant is not seeking to go higher than the existing tower.
13. The Board found that Mr. Kazala testified that the proposed tower will be sturdier and better able to handle newer technologies.
14. The Board found that Mr. Wilk testified that the proposed and existing tower both meet the setback requirements and that the towers are at least one-hundred (100) feet from the property lines.
15. The Board found that Mr. Kazala testified that Verizon currently uses the tower but they will offer to accommodate two (2) additional carriers.
16. The Board found that Mr. Wilk testified that the proposed tower will be able to withstand 120 miles per hour winds making it a more sturdy structure than the existing tower.

17. The Board found that Mr. Wilk that the tower will be a steel tower with guy wires and is designed to collapse upon itself.
18. The Board found that Mr. Kazala testified that there will be no increase in RF radiation.
19. The Board found that Mr. Kazala testified that the use does not substantially affect adversely the uses of adjacent and neighboring properties.
20. The Board found that Mr. Wilk testified that single family residential properties are nearby.
21. The Board found that Mr. Wilk testified that there have been no previous complaints on the existing tower and that the use does not substantially affect adversely the uses of adjacent and neighboring properties.
22. The Board found that neighbor Jody Vasey testified about some questions she had about the tower and that she did not object to the tower.
23. The Board found that Mr. Kazala testified that the proposed tower will be the same size, height, and width as the existing tower.
24. The Board found that Mr. Kazala testified that the guy wires supporting the tower will be enclosed with six (6) feet high fence.
25. The Board found that Mr. Kazala testified that the Applicant is willing to meet with surrounding homeowners with antennas to install filters that will help prevent interference.
26. The Board found that Mr. Kazala testified that the existing tower creates a unique situation and that the Applicant has not created the hardship.
27. The Board found that Mr. Kazala testified that the character of the neighborhood will not be affected since the tower has been in the area for many years.
28. The Board found that Mr. Kazala testified that the variance requested is the minimum variance necessary to afford relief and that the variance requested represents the least modification of the regulation at issue.
29. The Board found that no parties appeared in support of or in opposition to the Application.
30. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique due to the presence of the existing tower. The Applicant seeks to replace the existing tower with a new tower. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The standards of the FCC require that the replacement tower exceed the height allowable under the Sussex County Code. The variance is necessary to enable reasonable use of the Property. The tower cannot be replaced with a tower of the same height without a variance. The difficulty was not created by the Applicant. The existing tower needs technological and engineering upgrades which necessitate its replacement. The variance will not alter the essential character of the neighborhood. The existing tower has been in its current location for many years and is part of the character of the neighborhood. Replacement of the tower will thus maintain that character. The variance sought is the minimum variance to afford relief. The variance represents the least modification of the regulation at issue.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date September 9, 2014