

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CELLCO PARTNERSHIP D/B/A

VERIZON WIRELESS

(Case No. 11533)

A hearing was held after due notice on March 2, 2015. 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 special use exception to place a telecommunications tower.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to place a telecommunications tower. This application pertains to certain real property located northeast of Watson Road (Road 500) approximately 2,200 feet northeast of Ellis Grove Road (Road 498) (911 Address: 51777 Watson Road, Laurel, DE); said property being identified as Sussex County Tax Map Parcel Number 4-32-6.00-33.02. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, responses from the Applicant regarding the special use exception standard, a portion of the tax map of the area, correspondence pertaining to the Application from the Applicant and its witnesses, and a site plan dated July 22, 2014.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Andrew Petersohn and Petros Tsoukakas were sworn in and testified regarding the Application. John Tracey, Esquire, presented the Application to the Board.
4. The Board found that Mr. Tracey stated that the proposed tower will be 145-feet tall with a five (5) feet lightning rod.
5. The Board found that Mr. Tracey stated that the Property consists of 13.8 acres and that the area near the Property is rural in character with isolated homes. There are no subdivisions nearby.
6. The Board found that Mr. Tracey stated that the proposed tower will meet all height and setback requirements and the proposed tower will meet the lighting requirements set forth in the Code.
7. The Board found that Mr. Tracey stated that the proposed tower will be located to the rear of existing agriculture buildings and near adjacent tree lines so that the tower can meld into the Property as much as possible.
8. The Board found that Mr. Tracey stated that the proposed tower will be no closer than 375 feet from any dwellings on neighboring properties.
9. The Board found that Mr. Tracey stated that the Applicant is a holder of a Federal Communications Commission (FCC) license and is required to provide reliable service. Due to the increased demand for service in this area, the proposed tower is needed. The Applicant has been advised of gaps in service. The Applicant sought tall structures for collocation but there were no locations available for collocation. The nearest structure was 2.3 miles away from the Property and would not alleviate the Applicant's coverage issues.

10. The Board found that Mr. Petersohn testified that the area near the proposed tower is rural and that the Applicant has little service in the area. Mr. Petersohn showed the Board coverage maps of the area.
11. The Board found that Mr. Petersohn testified that there is a great expanse of unserved area between Laurel and the Maryland/Delaware border. The proposed tower will serve that unserved area.
12. The Board found that Mr. Petersohn testified that in home service is used as the standard to provide reliable coverage. The proposed tower is approximately four (4) miles from another tower site and the other tower will not be able to serve this gap in coverage.
13. The Board found that Mr. Petersohn testified that he is a licensed Delaware engineer and that the proposed tower will be 210 times below the FCC safety emissions requirement. These sites are low power facilities as compared to television and radio antennas.
14. The Board found that Mr. Tracey stated that the proposed tower site will include a fifty (50) feet by fifty (50) feet fenced in compound. The equipment shelter will be located within the compound. At least two other providers may be able to collocate on the tower
15. The Board found that Mr. Tsoukakas testified that he is the civil engineer on the project. The Property is not located within a flood zone or wetland area. The proposed tower will be site-specific engineered and will be designed in compliance with all necessary codes.
16. The Board found that Mr. Tracey stated that the use will not substantially adversely affect the surrounding and neighboring properties. The site does not generate any noise or smells and the only traffic will be once a month for maintenance. The natural screening on the Property will lessen the visibility impact of the proposed tower.
17. The Board found that Mr. Tracey stated the tower will provide better coverage to cell phone users in the area and that customer complaints related to dropped calls led to this application.
18. The Board found that Mr. Petersohn affirmed the statements made by Mr. Tracey regarding the RF emissions of the proposed tower and that Mr. Tsoukakas affirmed the statements made by Mr. Tracey regarding the civil engineering of the proposed tower
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive and un rebutted, the Board determined that the application met the standards for granting a special use exception because the proposed telecommunications tower will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Applicant demonstrated that the vehicular traffic impact related to the telecommunications tower will be limited to maintenance visits on a monthly basis. The vehicular traffic is thus minimal.
 - b. The Applicant demonstrated that the proposed tower will not emit any noise or smell and that the radio frequency emissions will be well below the maximum emissions permitted under FCC regulations.
 - c. The area near the proposed tower is rural with the closest dwelling to the tower being 375 feet away. The Applicant has convinced the Board that the proposed tower will be adequately screened to minimize the visual impact of the tower on neighboring properties.

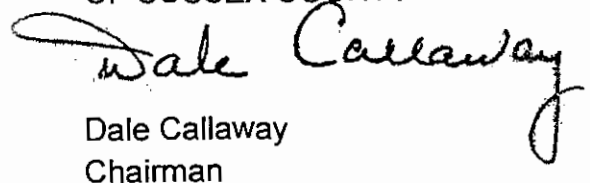
- d. The proposed tower will fill a gap in coverage in the Applicant's cell phone service and should enhance the service in the areas around the tower which would benefit neighboring and adjacent properties.
 - e. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
21. The Applicant also demonstrated that it met the requirements under Sussex County Code Section § 115.194.2 for a telecommunications tower. The Applicant submitted a site plan and appropriate documentation demonstrating compliance with § 115.194.2.
- a. The Applicant submitted documentation showing that existing structures within a two (2) mile radius of the Property were unavailable for collocation. The nearest structure was 2.3 miles away and would not fill the Applicant's gap in coverage.
 - b. The Applicant substantiated a need for the tower on the Property. Testimony presented by the Applicant demonstrated that the proposed tower will help fill a gap and coverage which has arisen, in part, due to an increased demand for services.
 - c. The Applicant demonstrated that the proposed tower will be designed to accommodate at least two (2) additional PCS / cellular platforms.
 - d. The proposed tower will be set back from adjoining property lines by a minimum of one-third (1/3) the height of the tower.
 - e. Pad sites, ground equipment structures, and guy wires shall be surrounded by a minimum six (6) feet tall fence as shown on the documentation submitted by the Applicant.
 - f. The Applicant demonstrated that the tower shall have warning lights which will meet all applicable requirements of the Federal Communications Commission and the Federal Aviation Administration.

The Board granted the special use exception application finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception 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 April 21, 2015