

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TUCKER FARM, LLC

(Case No. 11552)

A hearing was held after due notice on April 20, 2015. The Board members present were: Mr. Dale Callaway, 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 south of Road 227 (Hummingbird Road) approximately 620 feet west of Road 229B (Carpenter Road) (911 Address: 20780 Hummingbird Road, Ellendale, DE); said property being identified as Sussex County Tax Map Parcel Number 2-30-28.00-8.00. 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 Andrew Petersohn, and a site plan dated July 15, 2014.
2. The Board found that the Office of Planning and Zoning received one letter in support of the Application and no letters in opposition to the Application.
3. The Board found that Kenneth Farrell, a civil engineer, and Brian Grevas, a radio frequency engineer, were sworn in and testified regarding the Application. John Tracey, Esquire, presented the Application to the Board. Mr. Tracey submitted an aerial photograph of the Property.
4. The Board found that Mr. Tracey stated that the proposed tower will be 120 feet tall with a five (5) feet tall lightning rod.
5. The Board found that Mr. Tracey stated that the proposed tower site is approximately 1,100 feet from the nearest structure and there is not a clear view of the site from the road due to existing trees in the area.
6. The Board found that Mr. Tracey stated that the proposed tower site will meet zoning requirements and that no variances are needed. The site will be fenced and lighted per the Sussex County Code.
7. The Board found that Mr. Tracey stated that the tower will be designed to allow for two (2) other carriers to collocate thereon.
8. The Board found that Mr. Tracey stated that the radio frequency waves from the proposed tower, under a worst case scenario, will be 190 times below the minimum radio frequency requirement.
9. The Board found that Mr. Tracey stated that the proposed site meets Federal Aviation Administration ("FAA") requirements.
10. The Board found that Mr. Tracey stated that the proposed tower is needed due to a large gap in coverage and the tower will fill this gap in coverage.
11. The Board found that Mr. Tracey stated that a lattice structure is located 1.7 miles away from the Property but placing antennae on this structure would not fill the gap in coverage and would provide redundant, inefficient coverage. There were no available sites to collocate.

12. The Board found that Mr. Tracey stated that it would be cheaper for the Applicant to collocate on an existing structure but there was no structure which would meet its needs.
13. The Board found that Mr. Tracey stated that the proposed tower is approximately 900 feet from the road and that an existing driveway will be used to access the tower site.
14. The Board found that Mr. Tracey stated that the use will not substantially adversely affect the uses of the surrounding and neighboring properties.
15. The Board found that Mr. Tracey stated that the site emits no noise or smell and does not increase traffic in the area.
16. The Board found that Mr. Farrell, under oath, confirmed the statements made by Mr. Tracey regarding the site plan.
17. The Board found that Mr. Grevas, under oath, confirmed the statements made by Mr. Tracey regarding the radio frequency engineering.
18. The Board found that no parties appeared in support of the Application.
19. The Board found that one (1) party appeared in opposition to the Application.
20. The Board found that Ryan Ducco was sworn in and testified in opposition to the Application.
21. The Board found that Mr. Ducco testified that he has concerns about the effect of the proposed tower on property values and about seeing the blinking lights from the tower.
22. 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 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 Board found the documentation submitted by the Applicant and the statements made by Mr. Tracey, as confirmed by Mr. Farrell and Mr. Grevas, to be credible and persuasive.
 - b. The Board was not convinced that the property values of neighboring and adjacent properties would be substantially adversely affected by the proposed tower. The opposition provided no studies, appraisals, or other documentation to support his claim that the tower would impact property values by 15-20%. The Board did not find the opposition's claim to be credible, persuasive, or supported by substantial evidence.
 - c. The Board was also not convinced that the lights from the proposed tower would have a substantial adverse effect on neighboring and adjacent properties. The tower is located on a large rural property and is surrounded on three sides by large, mature trees. The proposed tower is located over 1,000 feet from the nearest dwelling and, if it can be seen, the visual impact of the tower should be minimal. The opposition even conceded that the tower would likely be out of sight from his property due to the mature trees near the proposed tower.
 - d. 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. No evidence to the contrary was submitted by the opposition.
 - e. 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. No evidence to the contrary was submitted by the opposition.
 - f. The area near the proposed tower is rural with the closest dwelling to the tower being 1,100 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. The proposed tower will be surrounded on three sides by existing woods on the Property.

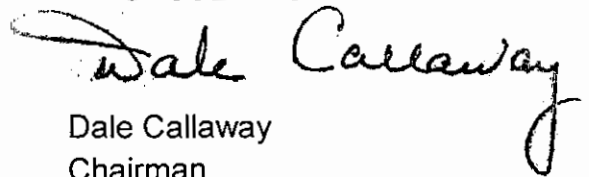
- g. As noted on the reports submitted by the Applicant, the proposed tower will fill a gap in coverage in the Applicant's cell phone service and should enhance the service in the areas around the tower which would benefit neighboring and adjacent properties. A neighbor submitted a letter which stated that she does not have cell phone service in the area and that she supports the Application.
 - h. No evidence was presented which convinced the Board that the tower would have a substantial adverse effect on neighboring and adjacent properties.
23. 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 1.7 miles away and would not fill the Applicant's gap in coverage. Rather, collocating on that structure would provide redundant and inefficient 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 in coverage which has arisen.
 - 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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application. Mr. Jeff Hudson did not participate in the discussion or vote of this 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 June 9, 2015