

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: OCKEL ACRES, LLC

(Case No. 11634)

A hearing was held after due notice on September 14, 2015. The Board Members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard.

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 on the north side of East Redden Road and on the west side of Donovan Road (911 Address: 17120 Ockels Lane, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-24.00-1.05. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter dated July 1, 2015 from the Applicant's attorney, and letters and reports dated May 6, 2015, from Andrew Petersohn.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Sue Manchel, Petros Tsoukalas, and Bryan Grevis were sworn in to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Tracey stated that the proposed tower will meet all zoning requirements and requires no variances. The proposed tower will also meet the lighting requirements and will provide space for collocation.
5. The Board found that Mr. Tracey stated that the traffic related to the tower will be minimal as there will generally need only 2 trips to the site per month.
6. The Board found that Mr. Tracey stated that the tower will require minimal services and the tower will be accessed by an existing driveway.
7. The Board found that Mr. Tracey stated that Verizon Wireless is required to provide reliable coverage and the proposed tower will provide reliable coverage in the area. There is currently a significant gap in coverage in the area.
8. The Board found that Mr. Tracey stated that there is a tower approximately 1.7 miles from the proposed site but it would not cover the gap in coverage.
9. The Board found that Mr. Tracey stated that the emission from the proposed tower are 350 times below the Federal Communications Commission ("FCC") maximum requirements.
10. The Board found that Mr. Tracey stated that the proposed tower will not substantially adversely affect the uses of the neighboring and adjacent properties.
11. The Board found that Mr. Tracey stated that the proposed tower site is isolated and will be between 1,500 and 3,000 feet away from any residential properties. The Property is also heavily wooded.
12. The Board found that Mr. Tracey stated that the proposed tower site has Federal Aviation Administration ("FAA") approval and the proposed tower is not within the flight path of the nearby airstrip.

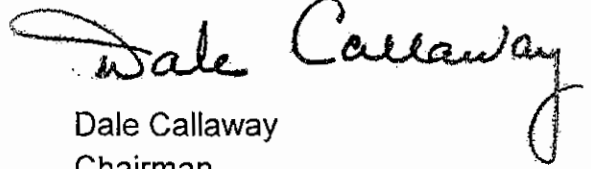
13. The Board found that Mr. Tracey stated that the proposed tower will be 145 feet tall with a 5 feet tall lightning rod and there will be a six (6) feet high fence surrounding the tower and equipment.
14. The Board found that Mr. Tracey stated that there is not a wetland issue with the site.
15. The Board found that Mr. Tsoukalas and Mr. Gavin, under oath, confirmed the statements made by Mr. Tracey.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 telecommunication 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 Property is located in a largely wooded and rural area and the tower will be difficult to see from most neighboring properties. The tower will be approximately 1,500 feet from the closest residential property.
 - b. The Applicant demonstrated that the vehicular traffic impact related to the telecommunications tower will be limited to maintenance visits using an existing driveway on a monthly basis. The vehicular traffic is thus minimal.
 - c. 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.
 - 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.
18. The Applicant also demonstrated that it met the requirements under Sussex County Code Section § 115.194.2 for a telecommunications tower. The Applicant submitted 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.
 - 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.
 - 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, and Mr. Norman Rickard. No Board Members voted against the Motion to approve the special use exception application. Mr. John Mills and Mr. Brent Workman were not present and 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 October 20, 2015