

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: BAR-SGR, LLC, CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
(Case No. 11677)

A hearing was held after due notice on December 14, 2015. The Board Members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 on the northwest corner of Zoar Road and Lawson Road (911 Address: 24296 Lawson Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-34-15.00-10.00. 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 site plan plan of the Property dated April 28, 2015, and letters and reports dated August 24, 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 Manchell, Michael Cleary, 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 Applicant is requesting a special use exception to place a telecommunications tower. The proposed tower will be 145 feet tall with a 5 feet tall lighting rod.
5. The Board found that Mr. Tracey stated that the Property consists of approximately 70 acres.
6. The Board found that Mr. Tracey stated that the proposed tower will meet all zoning requirements and requires no variances.
7. The Board found that Mr. Tracey stated that the proposed tower will meet the lighting and fencing requirements.
8. The Board found that Mr. Tracey stated that the tower will fill a significant gap in coverage which exists in the area and will provide reliable coverage.
9. The Board found that Mr. Tracey stated that the proposed tower is over 650 feet from the nearest structure and the proposed tower will blend in with the tall trees on the Property.
10. The Board found that Mr. Tracey stated that the proposed tower side has Federal Aviation Administration ("FAA") approval.
11. The Board found that Mr. Tracey stated that the emissions from the tower, at a worst case scenario, are 300 times below the Federal Communications Commission ("FCC") maximum requirements.
12. The Board found that Mr. Tracey stated that there are no structures within a two (2) mile radius of the proposed tower site to collocate. The closest structures are over three (3) miles from the site and the Applicant is already located on those structures.

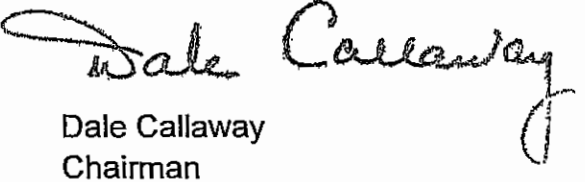
13. The Board found that Mr. Tracey stated that the proposed tower will not substantially adversely affect the uses of the neighboring and adjacent properties.
14. The Board found that Mr. Tracey stated that the tower will not tax any resources and the traffic related to the tower will be minimal as there will be generally only one trip to the site per month after it is constructed.
15. The Board found that Mr. Tracey stated that the tower will provide space for collocation for up to two (2) different providers.
16. The Board found that Mr. Cleary and Mr. Grevis, under oath, confirmed the statements made by Mr. Tracey.
17. The Board found that two (2) parties appeared in support of the Application
18. The Board found that no parties appeared in opposition to the Application.
19. 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 rural area and the tower will be difficult to see from most neighboring properties as it will be screened by nearby trees. The Property is also a large parcel consisting of approximately 70 acres.
 - b. The proposed tower will be located approximately 650 feet from the nearest structure
 - c. The Applicant demonstrated that the vehicular traffic impact related to the telecommunications tower will be minimal.
 - d. The Applicant demonstrated that the radio frequency emissions will be well below the maximum emissions permitted under FCC regulations.
 - e. 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.
 - f. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
20. 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 three (3) miles away and would not fill the Applicant's gap in coverage. In fact, the Applicant is already located on that structure yet a gap in coverage still exists.
 - 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, 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 January 26, 2016