

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**  
**IN RE: GUMBORO VOLUNTEER FIRE CO. INC., CELLCO PARTNERSHIP D/B/A**  
**VERIZON WIRELESS**

**(Case No. 11678)**

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 southwest corner of Millsboro Highway and Shell Station Road (911 Address: 37030 Millsboro Highway, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 3-33-11.00-23.00. 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 of the Property dated May 20, 2015, and letters and reports dated August 11, 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 proposed tower will be 140 feet tall with a 5 feet tall lighting rod.
5. The Board found that Mr. Tracey stated that the Property consists of approximately 7 acres and is improved with a fire company and related structures.
6. 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 and fencing requirements.
7. The Board found that Mr. Tracey stated that the tower will provide space for collocation for at least two (2) other telecommunication providers.
8. The Board found that Mr. Tracey stated that there is currently a significant gap in coverage in the area and the proposed tower will provide reliable coverage in the area.
9. The Board found that Mr. Tracey stated that the emissions from the proposed tower are 300 times below the Federal Communications Commission ("FCC") maximum requirements.
10. The Board found that Mr. Tracey stated that the proposed tower site has Federal Aviation Administration ("FAA") approval.
11. The Board found that Mr. Tracey stated that there is an existing lattice tower on the Property which is 170 feet tall. The tower is used by the fire company and another carrier.
12. The Board found that Mr. Tracey stated that the existing lattice tower is not structurally sound enough to allow the Applicant to collocate their equipment

- thereon. The tower cannot be modified to accommodate the Applicant's equipment.
13. The Board found that Mr. Tracey stated that there are no other structures within two miles of the Property which could accommodate the Applicant's equipment.
  14. The Board found that Mr. Tracey stated that the proposed tower will be constructed to modern engineering standards and will accommodate two other carriers.
  15. The Board found that Mr. Tracey stated that the Applicant will avoid the fire company's operation in placing the tower and the tower will not interfere with the fire company's signals
  16. The Board found that Mr. Tracey stated that the proposed tower will be 275 feet from the nearest structure.
  17. The Board found that Mr. Tracey stated that there are commercial businesses and a large grain operation in the area.
  18. The Board found that Mr. Cleary testified that he is an engineer and he worked with AT&T to install its equipment on the existing lattice tower. The tower had already been modified and welded to accommodate AT&T's equipment.
  19. The Board found that Mr. Cleary testified that the tower is at 99% capacity and any addition thereto would cause the tower to exceed its structural capacity. The existing tower cannot be modified to accommodate an additional carrier.
  20. The Board found that Mr. Cleary testified that the existing tower was not originally designed as a telecommunications tower but was used for collocation by AT&T.
  21. The Board found that Mr. Cleary and Mr. Grevis, under oath, confirmed the statements made by Mr. Tracey.
  22. The Board found that two (2) parties appeared in support of the Application.
  23. The Board found that no parties appeared in opposition to the Application.
  24. 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 an area near commercial properties and a large grain operation.
    - b. No objection to the tower was noted in the record.
    - c. The Property consists of approximately 7 acres and currently serves as the location of a volunteer fire company and an existing lattice tower used by the fire company and another telecommunications provider.
    - d. The tower will be 275 feet from the near structure will not interfere with the fire company's operations or signals.
    - e. The Applicant demonstrated that the radio frequency emissions will be well below the maximum emissions permitted under FCC regulations.
    - f. 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.
    - g. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
  25. 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 only structure within two (2) miles of the site is a lattice tower on the Property which already serves another carrier and cannot be engineered to accommodate another carrier as the tower is at 99% of its structural capacity. No other structures are located in the area which would 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, 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.