

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LYONS, LLC

(Case No. 11885)

A hearing was held after due notice on December 12, 2016. 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 Lewes-Georgetown Highway (Route 9) and Dairy Farm Road (911 Address: 18186 Dairy Farm Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-10.00-51.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicant's attorney dated October 12, 2016, a portion of the tax map of the area, an aerial photograph of the Property, site plan of the Property dated September 7, 2016, and letters and reports dated October 12, 2016, and January 13, 2016, from Andrew Petersohn.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Shaun Paul, Sue Manchel, and Shawn Sacks were sworn in to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant.
4. The Board found that Mr. Tracey stated that the proposed tower will be 140 feet tall including a 5 feet tall lightning rod.
5. The Board found that Mr. Tracey stated that the proposed tower will be located to the rear of the Property near trees and there will be a gravel drive from Dairy Farm Road to access the tower site.
6. The Board found that Mr. Tracey stated that the tower will be over 1,200 feet from any neighboring dwelling and that dwelling is owned by one of the owners of the site where the tower will be placed.
7. The Board found that Mr. Tracey stated that the tower site will comply with the Sussex County Zoning Code requirements on setbacks, fencing, and lighting.
8. The Board found that Mr. Tracey stated that the Applicant submitted both a radio frequency report and interference report to show compliance.
9. The Board found that Mr. Tracey stated that the site is compliant with Federal Aviation Administration ("FAA") guidelines and does not need to be lit per FAA guidelines. The Applicant will contact FAA upon completion of the tower's construction.
10. The Board found that Mr. Tracey stated that the emissions report shows the site complies with Federal Communications Commission ("FCC") guidelines. The radio frequency ("RF") emissions from the site, even at full capacity, is 147 times below the FCC's RF emission maximum level.
11. The Board found that Mr. Tracey stated that the proposed tower location is needed to fill a gap in coverage.

12. The Board found that Mr. Tracey stated that there are no other locations within two miles of the site which are available for collocation and will fill the gap in coverage. There is only one facility within the two mile radius but it will not cover the gap in coverage and the structure is not structurally compatible with the antennae and equipment used by the Applicant.
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 property values do not diminish outside of 600 feet of a tower.
15. The Board found that Mr. Tracey stated that the tower will not make any noise or require any services.
16. The Board found that Mr. Tracey stated that the tower will be designed to accommodate two (2) other carriers.
17. The Board found that Mr. Paul, under oath, affirmed the statements made by Mr. Tracey in reference to the reports submitted with the Application.
18. The Board found that Mr. Sacks, under oath, affirmed the statements made by Mr. Tracey in reference to the tower site being code compliant.
19. The Board found that one (1) party appeared in support of the Application.
20. The Board found that no parties appeared in opposition to the Application.
21. 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 nearest residential dwelling is located over 1,200 feet away and is owned by an owner of the Property. No objections from any neighbors about the proposed tower have been noted in the record.
 - 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 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.
 - d. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
22. 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 the two (2) mile radius was not structurally compatible with the Applicant's equipment and the structure 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.

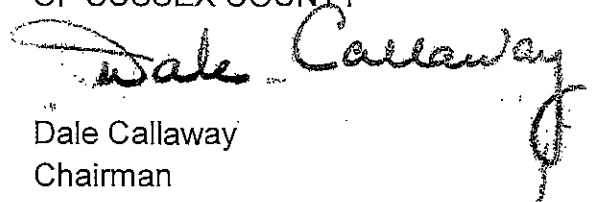
- f. The Applicant demonstrated that the tower shall have warning lights which will meet all applicable requirements of the Federal Communications Commission and the Federal Aviation Administration.

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, 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 2/7/2017