

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

DONNA K. HARRIS & RICHARD H. HARRIS

(Case No. 11953)

A hearing was held after due notice on May 1, 2017. 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 east side of Hitch Pond Road (Road 463) approximately 1,400 feet north of Arvey Road (Route 451) (911 Address: 34401 Hitch Pond Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 3-32-9.00-4.03. 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 February 23, 2017, a portion of the tax map of the area, an aerial photograph of the Property, site plan of the Property dated February 17, 2017, and letters and reports dated January 12, 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 Andrew Petersohn, 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 145 feet tall with a five (5) feet lightning rod. The tower will total 150 feet in height.
5. The Board found that Mr. Tracey stated that all setback and lot size requirements will be met according to the Sussex County Zoning Code.
6. The Board found that Mr. Tracey stated that a surrounding fence is proposed as required.
7. The Board found that Mr. Tracey stated that the Property is heavily wooded and the tower will be located within the woods.
8. The Board found that Mr. Tracey stated that neighboring properties are used for poultry farming as well as residential uses.
9. The Board found that Mr. Tracey stated that there are significant gaps in coverage in the area and the proposed tower will fill gaps in coverage.
10. The Board found that Mr. Tracey stated that the number of cell phone use only households is increasing.
11. The Board found that Mr. Tracey stated that there are no structures within a two mile radius available for collocation.
12. The Board found that Mr. Tracey stated that the tower complies with Federal Aviation Administration ("FAA") requirements and will not interfere with other signals. The proposed tower also meets RF emission requirements set forth by the federal government.
13. The Board found that Mr. Tracey stated that the tower will have no effect on neighboring properties.

14. The Board found that Mr. Tracey stated that the lot is heavily wooded and the tower will have effective screening.
15. The Board found that Mr. Tracey stated that the tower produces no noise or smells and will not tax resources that would negatively impact the property and surrounding neighbors.
16. The Board found that Mr. Sacks, under oath, affirmed the statements made by Mr. Tracey.
17. The Board found that Mr. Petersohn, under oath, affirmed the statements made by Mr. Tracey.
18. The Board found that Mr. Peterson testified that the tower will serve a dual purpose by filling a gap in coverage while also providing an offload tower for service to a tower nearby. The tower will provide the Applicant with greater capacity to serve is customers and will cover a larger area. Ultimately, the tower will improve cell phone reception in the area.
19. The Board found that three (3) parties 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 Property is also a large property consisting of 8.42 acres.
 - b. No objections from any neighbors about the proposed tower have been noted in the record.
 - 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.
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 May 16, 2017