

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: LOUIS DONALD O'NEAL, TRUSTEE & SHIRLEY FAYE O'NEAL, TRUSTEE
(Case No. 12028)

A hearing was held after due notice on October 2, 2017. The Board Members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, 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 Applicants are requesting a special use exception to place a telecommunications tower. This application pertains to certain real property located at the northeast side of Sycamore Road (Road 466), approximately 892 feet northeast of East Elliot's Dam Road (Road 467A) (911 Address: 12537 Sycamore Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-7.00-33.00. 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 February 7, 2017, and letters and reports dated July 18, 2017, 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 Sue Manchel, Andrew M. Petersohn, and Mike Cleary were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Tracey stated that Verizon Wireless is building out its wireless network – particularly in western Sussex County.
5. The Board found that Mr. Tracey stated that the proposed tower will be 150 feet tall which includes a 5 feet tall lightning rod.
6. The Board found that Mr. Tracey stated that the tower will be located in a portion of the Property near existing tree lines and away from existing structures.
7. The Board found that Mr. Tracey stated that the nearest structures to the tower on the same side of the street are over 1,000 feet away and 950 feet away from the other side of the street.
8. The Board found that Mr. Tracey stated that existing agricultural buildings will screen views of the tower.
9. The Board found that Mr. Tracey stated that the surrounding area is rural and used agriculturally.
10. The Board found that Mr. Tracey stated that no variances are needed for the tower.
11. The Board found that Mr. Tracey stated that the tower will meet the Sussex County lighting requirement; though the Federal Aviation Administration ("FAA") does not require that the tower be lit.
12. The Board found that Mr. Tracey stated that a fence will be located around the compound.
13. The Board found that Mr. Tracey stated that the Applicant has submitted documentation to the Board demonstrating the need for the tower in this area and the tower will fill a gap in coverage.
14. The Board found that Mr. Tracey stated that there are no structures within two miles available for collocation for Verizon but the tower will be designed to allow for collocation by two other providers.

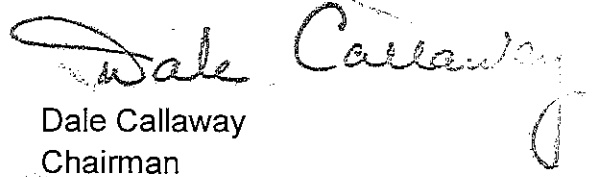
15. The Board found that Mr. Tracey stated that, under the worst-case scenario, the tower will fall 160 times below the federal minimum RF requirements.
16. The Board found that Mr. Cleary and Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.
17. The Board found that Mr. Tracey stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties. The tower will not tax services and the tower will have no impact on schools.
18. The Board found that Mr. Tracey stated that the tower will necessitate approximately one vehicular trip per month for service and will use an existing entrance off Sycamore Lane.
19. The Board found that Mr. Petersohn testified that two nearby towers suffer from capacity issues and this tower will help offload the traffic from those towers. The new tower will improve coverage in the area as a whole.
20. The Board found that no parties appeared in support of or 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 approximately 38 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 federal 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.
 - 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application. Ms. Ellen Magee did not participate in the discussion or vote on 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 December 12, 2017