

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EM SMITH FARMS LIMITED

(Case No. 12086)

A hearing was held after due notice on January 22, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills.

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 seeking a special use exception to place a telecommunications tower. This application pertains to certain real property located on the southwest corner of the intersection of Hardscrabble Road and Cross Keys Road (911 Address: 28086 Cross Keys Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 1-33-15.00-10.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a Federal Aviation Administration ("FAA") 1-A survey certification, a drawing of the proposed tower, a site plan of the Property dated October 24, 2017, and letters and reports dated February 13, 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 Kevin O'Keefe and Bryan Grevis 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 the Property consists of approximately 46 acres and is primarily used for agricultural purposes. The area near the tower is remote.
5. The Board found that Mr. Tracey stated that the Property also has a market where produce is sold. The tower will be located near the produce market.
6. The Board found that Mr. Tracey stated that the surrounding area is primarily agricultural.
7. The Board found that Mr. Tracey stated that there are no structures within two (2) miles where the telecommunications equipment could be collocated.
8. The Board found that Mr. Tracey stated that the proposed tower will fall 130 times below the maximum radio frequency (RF) requirement set forth by the federal government.
9. The Board found that Mr. Tracey stated that there is a significant gap in coverage in the area and the tower will improve cell phone reception in the surrounding area.
10. The Board found that Mr. Tracey stated that the tower will meet all Sussex County zoning requirements. The tower will meet the setback requirements and will be lit per Sussex County Code.
11. The Board found that Mr. Tracey stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties.
12. The Board found that Mr. Tracey stated that the tower emits no sounds or smells.
13. The Board found that Mr. Tracey stated that traffic associated with the tower will result in approximately one (1) maintenance trip per month after the tower is constructed.
14. The Board found that Mr. Tracey stated that the tower will be designed to accommodate three (3) other carriers.

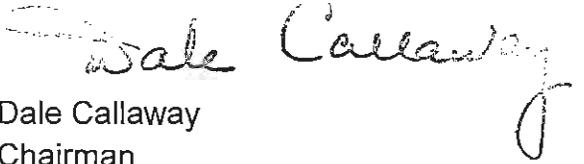
15. The Board found that Mr. Tracey stated that the tower's guy wires will be surrounded by a fence.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public 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 a large parcel consisting of approximately 46 acres and is located in a rural area. The tower will be located near an existing agricultural market.
 - 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.
18. 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, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills. No Board Member voted against the Motion to approve the special use exception application. Mr. Brent Workman 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 before the application
becomes void.

Date March 6, 2018