

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JOHN W. DAVIDSON, TRUSTEE**

**(Case No. 12201)**

A hearing was held after due notice on September 17, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 Applicant is seeking a special use exception to place a telecommunications tower on the property. This application pertains to certain real properties located on the southwest side of Harbeson Road, approximately 436 feet and 670 feet north of Hollyville Road (911 Address: 22602 Harbeson Road, Harbeson) said properties being identified as Sussex County Tax Map Parcel Number 2-34-10.00-70.06 and 2-34-10.00-70.07.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, reports dated September 7, 2018, from John Bosco, a report dated April 25, 2018, from Andrew Petersohn, and a site plan of the Property dated August 4, 2018.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support and no correspondence in opposition to the Application.
3. The Board found that Andrew Petersohn and John Davidson were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Tracey stated that the Property is located on the corner of Hollyville Road and Harbeson Road and is commercially zoned. The Property is used for a masonry & house moving business. The tower will be located on the south corner of the Property outside the area used for that business.
5. The Board found that Mr. Tracey stated that the tower will measure 151 feet tall and that there are no variances requested as the tower will comply with all aspects of the Sussex County Zoning Code, including all lighting and setback requirements.
6. The Board found that Mr. Tracey stated that the nearest tower is 1.96 miles away and will not satisfy the Applicant's gap in coverage. The proposed tower will address a gap in coverage along Route 5.
7. The Board found that Mr. Tracey stated that the tower will meet all FCC regulations pertaining to radio frequency and, at its maximum output, would only be 1.8% of the maximum allowable limit.
8. The Board found that Mr. Tracey stated that the tower emits no sounds or smells.
9. 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.
10. The Board found that Mr. Tracey stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties.
11. The Board found that Mr. Davidson affirmed the statements made by Mr. Tracey as true and correct.
12. The Board found that Mr. Petersohn testified that the tower will improve service in the area for Verizon subscribers where Verizon suffers from capacity issues. The tower will also be available for collocation for other providers.

13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 commercial parcel consisting of approximately 1.25 acres. The tower will be located near an existing masonry and house-moving business.
  - 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.
15. 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, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date November 20, 2018