

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

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

(Case No. 12226)

A hearing was held after due notice on November 5, 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 west side of Camp Arrowhead Road, approximately 1.2 miles south of Angola Road (911 Address: 23182 Camp Arrowhead Road, Lewes) said properties being identified as Sussex County Tax Map Parcel Number 2-34-18.00-26.00.

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 notice from the Federal Communications Commission, a deed to the Property, reports dated July 30, 2018, from Andrew Petersohn, and a site plan of the Property dated August 22, 2018.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support and three (3) letters in opposition to the Application.
3. The Board found that Andrew Petersohn and Sean Saxe were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicant. Mr. Tracey also submitted real property valuation studies to the Board.
4. The Board found that Mr. Tracey stated that the Applicant proposes to erect a telecommunications tower. The tower will meet all setback and lighting requirements and no variances will be needed. The tower will also meet all FCC regulations.
5. The Board found that Mr. Tracey stated that the telecommunications tower will not interfere with any radio transmissions in the area.
6. The Board found that Mr. Tracey stated that the Applicant has looked at all properties within a two-mile radius and only found one other property about a mile and a half northwest where a tower could be collocated but that property was too far from the needed service area and was also too close to another telecommunications tower.
7. The Board found that Mr. Tracey stated that trees will screen the tower from neighboring properties and no trees will be removed from the property.
8. The Board found that Mr. Tracey stated that the community of West Bay is located nearby and is owned by owners of this site.
9. The Board found that Mr. Tracey stated that neighbors are looking forward to better communication service in the area.
10. The Board found that Mr. Tracey stated that the tower is designed to collapse on itself and that, even if the tower collapsed, it will not fall on neighboring lands other than lands owned by the State of Delaware.
11. The Board found that Mr. Tracey stated that the tower will not substantially affect adversely the uses of adjacent and neighboring properties.
12. The Board found that Mr. Petersohn and Mr. Saxe affirmed the statements made by Mr. Tracey as true and correct.
13. The Board found that Mr. Tracey stated that the tower will have no adverse impact on real estate values and the noise and traffic associated with the tower will be minimal.


14. The Board found that no parties appeared in support of or in opposition to the Application.
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 parcel consisting of approximately 12.17 acres. This site is a large site and can easily accommodate the tower.
 - 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 federal 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. The Applicant submitted a market study which demonstrates that the tower will not substantially affect adversely the values of neighboring and adjacent properties. Opposition merely presented speculative and unsubstantiated concerns about the effect of the tower on property values.
 - e. The opposition complained about the aesthetic effect of the tower but the Board is convinced that the tower will be largely surrounded by trees and will be screened from view from most properties. The visual impact of the tower should, thus, be minimal and should not rise to the level of creating a substantial adverse impact on neighboring and adjacent properties.
 - f. The opposition raised speculative concerns about the impact of radio frequency waves but the Applicant submitted credible reports demonstrating that the tower will not interfere with radio frequency and that the tower will emit radio frequency at levels well below the maximum level set forth by the federal government. The Board was not convinced that the radio frequency emitted from the tower would substantially affect adversely the uses of neighboring and adjacent properties.
 - g. No evidence was presented which convinced the Board that the tower would have a substantial adverse effect on neighboring and adjacent properties.
16. 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 January 8, 2019.