

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TOWNORTH DEVELOPMENT, LLC

(Case No. 12262)

A hearing was held after due notice on January 28, 2019. 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. This application pertains to certain real property located on the west side of Sam Lucas Road approximately 476 feet south of Cave Neck Road (911 Address: 25754 Cave Neck Road, Milton) said properties being identified as Sussex County Tax Map Parcel Number 2-35-20.00-54.00.

1. The Board was given copies of the Application, a letter from Alyson Fritzges, Esquire, a portion of the tax map of the area, an option and lease agreement, a memorandum of lease, an aerial photograph of the Property, an obstruction analysis report, a letter of approval from the Delaware Agricultural Lands Preservation Foundation, reports dated December 5, 2018, from Andrew Petersohn, photographs of the Property, and a site plan of the Property dated November 28, 2018.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support of and no correspondence in opposition to the Application.
3. The Board found that Shaun Paul, Paul Chan, and Dave Grigonis were sworn in to give testimony. Jonathan Jordan, Esquire presented the Application on behalf of the Applicant and he submitted exhibits to the Board to review.
4. The Board found that Mr. Jordan stated that the Applicant proposes to construct a telecommunications tower on a 90 acre far adjacent to Dogfish Head near Milton. The tower will be a monopole structure measuring 195 feet tall.
5. The Board found that Mr. Jordan stated that the tower will fill coverage gaps in the Applicant's cell phone service in the Milton area. The Applicant has explored towers in the area but there are no towers within 2 miles which will fill the Applicant's gap in coverage.
6. The Board found that Mr. Jordan stated that the tower will be set back 235 feet from property lines and will be surrounded by a fence.
7. The Board found that Mr. Jordan stated that the tower will be lit every 50 feet of elevation per County Code and the tower will meet FAA regulations. The tower will not have blinking lights.
8. The Board found that Mr. Jordan stated that AT&T will have antennas at the top of the tower with space for other carriers.
9. The Board found that Mr. Jordan stated that, if the tower is out of commission for a period of six months, it will be removed from the site.
10. The Board found that Mr. Jordan stated that the tower will not substantially affect adversely the uses of adjacent and neighboring properties.
11. The Board found that Dave Grigonis and Shaun Paul affirmed the statements made by Mr. Jordan as true and correct.

12. The Board found that Mr. Paul testified that, in addition to the new coverage this tower will provide, the tower will also alleviate the existing capacity issues to the surrounding sites.
13. The Board found that Mr. Paul testified that AT&T collocates whenever possible but the other structures are either not feasible for this use or are already used by AT&T. AT&T is building coverage to improve service within Milton and the tower is needed to improve service and to support future demand.
14. The Board found that Mr. Jordan stated that the tower will have monthly maintenance visits which will result in minimal traffic and that the tower has no emissions, noise, or smells.
15. The Board found that seven (7) people appeared in support of and no parties appeared in opposition to the Application.
16. 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 unrebutted, 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 90.59 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 smells and that the radio frequency emissions will be well below the maximum emissions permitted under federal regulations. The traffic related to the tower should also be minimal due to the limited maintenance needs of the structure.
 - 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. No parties appeared in opposition to the Application. Rather, the Board received a letter of support from a neighbor and several parties appeared in support of the Application.
 - e. No evidence was presented which convinced the Board that the tower would have a substantial adverse effect on neighboring and adjacent properties.
17. 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
18. The Board also found that the proposed tower exceeds the height limitation set forth in Sussex County Zoning Code §115-179. The Applicant will need to apply


for and obtain a variance in order to build a telecommunications tower exceeding 150 feet. The Board makes no ruling here on whether the proposed tower meets the standards for granting a variance.

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 March 5, 2019.