

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: INDIAN RIVER VOLUNTEER FIRE COMPANY /

TOWERCO. NEW CINGULAR WIRELESS PCS, LLC

(Case No. 12278)

A hearing was held after due notice on April 1, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 seek a special use exception to place a telecommunications tower. This application pertains to certain real property located on the east side of Banks Road approximately 315 feet north of Long Neck Road (911 Address: 25375 Banks Road, Millsboro) said properties being identified as Sussex County Tax Map Parcel Number 2-34-23.00-287.00.

1. The Board was given copies of the Application, a letter from Alyson Fritzges, Esquire, a portion of the tax map of the area, a plan of existing conditions dated January 10, 2019, a site plan of the Property dated January 9, 2019, drawings of the proposed tower and equipment, a deed to the Property, a lease agreement, an aerial photograph of the Property, an FCC license, a site inventory, a radio frequency report, propagation maps, an electromagnetic exposure analysis, a non-interference report, photo-simulations, an offer of proof, literature on First Net, and curriculum vitae of experts.
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 Andrew Petersohn, Michael Moore, and David Hockey 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 is proposing to construct a 150 feet tall monopole which includes a lightning rod at property owned by the Indian River Volunteer Fire Company. The proposed monopole will replace the 140 feet tall lattice tower currently on site. The tower will be used as telecommunications tower by AT&T.
5. The Board found that Mr. Jordan stated that the communications equipment currently used by the Fire Company will be migrated onto the proposed tower and the proposed AT&T antenna will be compatible with the nationwide FirstNet system for emergency responders.
6. The Board found that Mr. Jordan stated that the radio frequency report shows that there has been a 47% bandwidth increase. According to Mr. Jordan, more people are using cell phones as their computer and more than half of all households do not have a landline. As such, there has been a significant increase in cell phone use.
7. The Board found that Mr. Jordan stated that the purpose of this site is to offload excess calls from sites that are maxed out and to provide in building coverage to nearby properties.
8. The Board found that Mr. Jordan stated that 76% of all 911 calls are made from cell phones.

9. The Board found that Mr. Jordan stated that the Applicant explored other properties as there are three towers within a two-mile radius of this site. One is the tower on this site and the other two sites are too far west to satisfy the proposed network improvements. In addition, the two other sites are in proximity to existing AT&T sites and therefore will not work from a radio frequency standpoint.
10. The Board found that Mr. Jordan stated that the proposed tower will have a negligible visual impact as compared to the existing lattice tower.
11. The Board found that Mr. Jordan stated that the emissions from the proposed site would be less than 1.2% of maximum F.C.C. limits and the antennas would not interfere with other radio or appliances.
12. The Board found that Mr. Jordan stated that there are no F.A.A. issues with the proposed tower.
13. The Board found that Mr. Jordan stated that there will be lights every 50 feet on the tower to comply with the Sussex County Code.
14. The Board found that Mr. Jordan stated that the tower will be able to accommodate four platforms.
15. The Board found that Mr. Jordan stated that the tower will comply with the setback requirements and will have a 6 feet tall fence.
16. The Board found that Mr. Jordan stated that there are no proposed signs for the site.
17. The Board found that Mr. Jordan stated that the Applicant will remove the tower if abandoned for six continuous months.
18. The Board found that Mr. Jordan stated that the proposed facility does not generate any noise or glare and the traffic related to the tower is minimal. The tower will generally require one maintenance trip per month.
19. The Board found that Mr. Jordan stated that there is no impact on water or sewer.
20. The Board found that Mr. Jordan stated that the tower will improve cell phone coverage in the area.
21. The Board found that Mr. Jordan stated that the request for a special use exception will not substantially adversely affect the uses of adjacent or neighboring properties.
22. The Board found that Michael Moore, Andrew Petersohn, and David Hockey affirmed the statements by Mr. Jordan as true and correct.
23. The Board found that Mr. Moore testified that the tower is sturdier than the existing lattice tower. The proposed tower will also have the ability to carry additional antenna which the current tower does not have the structural capacity to do. The tower will support up to four carriers.
24. The Board found that Mr. Petersohn testified that cell phone traffic increases during the summer months and other towers are being exhausted so this tower is needed.
25. The Board found that Mr. Hockey testified that the site is ideal because of the existing tower and the ability of the new tower to increase service in the area; especially for the Fire Company.
26. The Board found that Patrick Miller was sworn in to testify in support of the Application.
27. The Board found that Mr. Miller testified that he is the President of the Indian River Fire Company and that the Fire Company is in favor of this Application which will provide additional coverage.
28. The Board found that Mr. Miller testified there are no complaints from neighbors.
29. The Board found that one (1) person appeared in support of and no parties appeared in opposition to the Application.
30. 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.

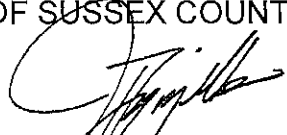
- a. The Property is a parcel consisting of approximately 1.88 acres and is used, in part, by the fire company. This site is a reasonably sized site and can easily accommodate the tower.
 - b. The Applicant demonstrated that the proposed tower will not emit any noise or smells and that the radio frequency 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 testimony in support of support 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.
 - f. The Property is currently improved by a 140 feet tall lattice tower which will be removed and replaced by the proposed tower. There was no evidence that the existing tower had any substantial adverse effect on neighboring and adjacent properties either.
31. 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 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 was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 4, 2019.