

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JANKI RAMNATH & BIDYAWATTIE RAMNATH /

NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY

(Case No. 12282)

A hearing was held after due notice on March 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 and a variance from the maximum fence height for a proposed telecommunications tower.

Findings of Fact

The Board found that the Applicants are seeking a special use exception for a proposed telecommunications tower and a variance of 6 feet from the height limitation for telecommunication towers of 150 feet. The proposed tower will measure 150 feet tall with a 6 feet tall lightning rod. This application pertains to certain real property is on a through lot located on the northwest side of Oneals Road approximately 160 feet west of Sussex Highway (Route 13) and on the south side of Easter Lane approximately 204 feet west of Sussex Highway (Route 13) (911 Address: 27718 Oneals Road, Seaford) said properties being identified as Sussex County Tax Map Parcel Number 1-32-7.00-24.00.

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, a letter of authorization, an FCC license, a radio frequency report, propagation maps, an electromagnetic exposure analysis, an FAA compliance report, an FCC compliance and non-interference report, curriculum vitae of experts, and a site plan of the Property dated December 4, 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 Christopher Lash 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 there is a lack of reliable coverage in the area and the proposed tower is designed to improve coverage. The tower is designed to work with other AT&T antennae.
5. The Board found that Mr. Jordan stated that the increase in cell phone usage has necessitated this request. He noted that 80% of all 911 calls are made from cell phones and approximately 60% of houses do not have landlines.
6. The Board found that Mr. Jordan stated that, in order to achieve reliable coverage, the antennas need to be mounted at 150 feet with a 6 feet tall lightning rod. As such, a height variance of 6 feet is requested.
7. The Board found that Mr. Jordan stated that, in addition to the improvement in reliable coverage, this tower would also help with the off-load from existing towers when they are at excess capacity.
8. The Board found that Mr. Jordan stated that the electromagnetic exposure analysis demonstrated that the tower will operate at 0.6% of the applicable FCC standards.
9. The Board found that Mr. Jordan stated that an FAA report shows that the FAA would not require the tower to be lit but, per Sussex County Code, the tower will be lit at every 50 feet.

10. The Board found that Mr. Jordan stated that the site would be visited once per month and will not generate noise, traffic or other adverse effects on surrounding or neighboring property.
11. The Board found that Mr. Jordan stated that the tower will benefit the community by providing reliable cell phone service.
12. The Board found that Mr. Jordan stated that there is no visual impact on the community.
13. The Board found that Mr. Jordan stated that there will be space on the tower for two additional carriers.
14. The Board found that Mr. Jordan stated that the minimum setback will be 75 feet which is greater than the 50 feet required by Sussex County Code.
15. The Board found that Mr. Jordan stated that the Property consists of approximately 5 acres and neighboring property is also owned by the Applicant.
16. The Board found that Mr. Paul explained the science behind the analysis presented in the exhibits. He uses industry standard software and AT&T data to determine reliable coverage and the analysis also takes into consideration clutter in the area.
17. The Board found that Mr. Paul testified that AT&T prefers not to build towers but the tower is needed and it will result in significantly improved coverage in the area and will help address growing demand. This demand is related to customers using cell phones in lieu of personal computers. He noted that the tower will also allow for First Net to be deployed for public safety.
18. The Board found that Mr. Lash testified about the capabilities of First Net and that, in case of an emergency, first responders would get first access to service.
19. The Board found that Mr. Paul, Mr. Lash, and Mr. Chan affirmed Mr. Jordan's presentation as true and correct.
20. The Board found that Mr. Jordan stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties.
21. The Board found that Mr. Jordan stated that the variance requested is the minimum variance to afford relief as 150 feet is needed for coverage.
22. The Board found that Mr. Jordan stated that the topography and clutter are the reasons the tower needs to be taller.
23. The Board found that Mr. Jordan stated that the tower needs to communicate with other towers.
24. The Board found that Mr. Jordan stated that there would be a drop in coverage with a shorter tower.
25. The Board found that Mr. Paul testified that most antennae in the area are taller than 150 feet. The closest tower is 3.4 miles away which is another reason the tower needs to be taller. The closest tower is 153 feet tall plus the lighting rod and the center of the antennae is located at 149 feet. He believes that a tower measuring 150 feet gives optimal coverage.
26. The Board found that six people appeared in support of and no parties appeared in opposition to the Application.
27. 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 5 acres and is adjacent to other lands of the Applicant. 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 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.
28. 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
29. 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 variance. The findings below further support the Board's decision to approve the Application.
- a. The Applicant seeks to construct a telecommunications tower measuring 150 feet tall with a lightning rod measuring 6 feet tall. The tower is consistent with heights of nearby towers and needs to slightly exceed the height limitation so that the tower can adequately communicate with other towers in the area. The Applicant has clearly demonstrated that there is clutter and topographical issues which also necessitate that the tower be slightly elevated to provide optimal coverage for its customers. These conditions are unique and have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the lot and these conditions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The area surrounding the Property suffers from unreliable coverage and the tower is needed to improve cell phone coverage in the area. The tower needs to be greater than 150 feet tall in order to clear clutter in the area and to adequately communicate with other towers in the area which are also taller than 150 feet. The Board is, thus, convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the telecommunications tower on the Property while providing the optimal coverage needed. The Board is convinced that the height of the tower is also reasonable, which is confirmed when reviewing the documents provided by the Applicant. The Board specifically notes that only the lighting rod will exceed the height limitation.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the clutter in the area which has necessitated that the tower be slightly taller than allowed under the Code. The Board is

convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics, the clutter in the area, and the height of other nearby towers.

- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the tower will have no adverse effect on the character of the neighborhood. The tower will be a height similar to other towers in the area and the tower will result in improved cell phone coverage, which should benefit neighbors. The Board also notes that the lightning rod is the only portion of the tower which will exceed the height limitation so the visual impact of the additional 6 feet should be minimal. The tower will be located an additional 25 feet from property lines so the visual impact of the tower should be further limited. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized telecommunications tower on the Property. The Board is convinced that the Applicant has taken effort in its design process to reduce the height of the structure while also designing the tower to clear the nearby clutter and to better communicate with other towers.

The Board granted the special use exception and variance application finding that it met the standards for granting a special use exception and a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception and variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception and variance application. Mr. John Mills did not participate in the discussion or vote on this 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 April 2, 2019.