

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TOWNORTH DEVELOPMENT, LLC

(Case No. 12283)

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 variance from the maximum fence height requirement for a proposed telecommunications tower.

Findings of Fact

The Board found that the Applicant is requesting a variance of 49 feet from the maximum height requirement of 150 feet to allow a telecommunications tower with a monopole measuring 195 feet tall with a lightning rod of 4 feet for a total of 199 feet tall. 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, a deed to the Property, an obstruction analysis report, propagation maps, non-interference reports, curriculum vitae, FCC license, FAA 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 notes that a special use exception was previously approved by the Board for this proposed telecommunications tower in Case No. 12262. This application pertains only to the height of the proposed tower and the variance needed.
4. 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.
5. The Board found that Mr. Paul testified that the need for this tower is two-fold. First, the tower is needed to provide capacity relief for an existing AT&T site at Milton West, which is at a "point-of exhaust." Second, the tower will be used to pick up incremental coverage in areas that previously had little or no coverage.
6. The Board found that Mr. Paul testified that the height requested is the minimum height required to provide the off-load of capacity from the adjacent tower at Milton West which is currently considered as being over-extended.
7. The Board found that Mr. Paul testified that the software analysis take into consideration clutter and topography and, if the spectrum is exhausted, the Applicant cannot meet its demand. This sector is at an exhaustion point.
8. The Board found that Mr. Paul testified that the topography and clutter between sites play a large impact on the height requested. Nearby development may be a reason for the clutter issue.

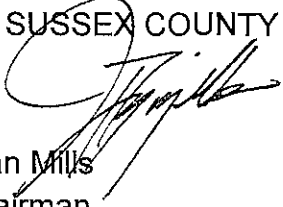
9. The Board found that Mr. Paul testified that this tower is two miles from the Milton West tower and the Milton West tower is 191 feet tall, which is another reason the tower needs to be this tall.
10. The Board found that Mr. Paul testified that there is a significant difference in the ability to accommodate its users from this tower if the tower were 145 feet tall instead of 195 feet tall. The coverage provided by a 145 feet tall tower would be unacceptable to the market and would not be optimal whereas a tower of 195 feet is needed to relieve congestion and meet AT&T's criteria for in-building coverage.
11. The Board found that Mr. Grigonis testified that it is 195 feet tall monopole with a 4 feet tall lightning rod with a total height of 199 feet.
12. The Board found that six (6) people appeared in support of and no parties appeared in opposition to the Application.
13. 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 variance. The findings below further support the Board's decision to approve the Application.
 - a. The Applicant seeks to construct a telecommunications tower measuring 195 feet tall with a lightning rod measuring 4 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.
 - 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. 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 variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the 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 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.