

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEPHENS RENTALS, LLC

(CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS)

(Case No. 12472)

A hearing was held after due notice on September 21, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, 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 height requirement for a telecommunications tower.

Findings of Fact

The Board found that the Applicants seek a special use exception for telecommunications tower and a variance of 8 feet from the 150 foot height limit for a telecommunications tower. This application pertains to certain real property located on the south side of Old Racetrack Road opposite Brick Manor Road (911 Address: N/A) said properties being identified as Sussex County Tax Map Parcel Number 5-32-20.00-14.02. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from John Tracey, Esquire, a portion of the tax map of the area, an aerial photograph of the Property, miscellaneous reports from Andrew Petersohn, and a site plan.
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 was sworn in to give testimony about the Application. John Tracey, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Tracey stated that this Application is for a new 158 foot tall telecommunications monopole and that a 5 foot tall lightning rod is included in the 158 feet.
5. The Board found that Mr. Tracey stated that the Property consists of approximately 5 acres located west of Delmar on South Old Racetrack Road on property zoned HI-1 and that the use of the Property is commercial and industrial.
6. The Board found that Mr. Tracey stated that the tower will be at least 1,200 feet from residences.
7. The Board found that Mr. Tracey stated that the monopole and equipment will be located in the southwest portion of the Property and the tower will be located away from the active use of the Property so as not to interfere with that use.
8. The Board found that Mr. Tracey stated that the monopole will be lighted at every 50 feet as required by Sussex County Code.
9. The Board found that Mr. Tracey stated that the need for good cell phone service has risen as the majority of homes no longer have a land line and over 70% of all 911 calls are made from cellular phones.
10. The Board found that Mr. Petersohn testified that the existing service for the Town of Delmar is being provided by a 170 foot tall tower which is located to the north of the Town and that tower covers the area to the west.
11. The Board found that Mr. Petersohn testified that the Applicant seeks to offload in-town cellular traffic because demand for the service has increased and the new tower will help to offload that cellular traffic.

12. The Board found that Mr. Petersohn testified that the proposed tower would be central in that western area and would improve service and give more efficient coverage for the Town of Delmar.
13. The Board found that Mr. Petersohn testified that the tower in Town is 170 feet tall and the proposed tower will need to be close to the height of the other tower so that it can absorb that traffic.
14. The Board found that Mr. Petersohn testified that other towers in the area did not solve the problem the Applicant was experiencing and that this site will provide better in vehicle and in building coverage for the area.
15. The Board found that Mr. Tracey stated that some locations were identified as possible collocation sites but two of those sites the Applicant is already using and the other sites were too far away or too close to existing towers to give the desired result. The Applicant approached the Town of Delmar about collocating on a water tower but the Town declined for multiple reasons.
16. The Board found that Mr. Petersohn testified that there will be better coverage in the area if the request is approved.
17. The Board found that Mr. Petersohn testified that capacity enhancement is the goal.
18. The Board found that Mr. Petersohn testified that the tower will only emit 1.5% of the maximum allowable RF emissions.
19. The Board found that Mr. Petersohn testified that there is no FAA requirement for the warning lights but the Applicant will light the tower per County Code.
20. The Board found that Mr. Petersohn testified that the tower will be available for other collocations and the site will be fenced.
21. The Board found that Mr. Petersohn testified that 80% of the tower will benefit service in Delaware.
22. The Board found that Mr. Tracey stated that demand has driven the need for new towers.
23. The Board found that Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.
24. The Board found that no one appeared in support of or opposition to the Application.
25. 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 located in an industrial and commercial area on lands zoned HI-1. The Property is also a large property consisting of approximately 5 acres.
 - b. No objections from any neighbors about the proposed tower have been noted in the record.
 - c. The Applicant demonstrated that the radio frequency emissions from the tower will be well below the maximum emissions permitted under FCC regulations.
 - d. 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.
 - e. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
26. Except for the setback requirements for which the variance is needed, 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. 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.
 - e. 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
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 variance. The findings below further support the Board's decision to approve the Application.
- a. The Applicant seeks to construct a telecommunications tower measuring 158 feet tall with a lightning rod measuring 5 feet tall. The tower is consistent with height of a nearby tower and needs to slightly exceed the height limitation so that the tower can adequately communicate with the other tower in the area. The Applicant has clearly demonstrated that most of the extra height is needed for a lightning rod. The Applicant is constrained on where it can locate a tower and this location will fill a gap in coverage to allow the Applicant to provide better coverage to its customers. The height of the nearest tower, however, necessitates a slightly taller tower to enhance that cellular coverage. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicant.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. 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 adequately communicate with another tower in the area which is 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.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the need for the new tower or the gap in coverage that necessitates a tower in this location and the need for a tower that is slightly taller than allowed under the Code. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created the lot's unique characteristics, gap in coverage, and the height of another nearby tower.
 - e. 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 another tower in the area and the tower will result in improved cell phone coverage, which should benefit neighbors. Most of the additional height of the tower beyond 150 feet will be a lightning rod which should not be as noticeable as the antenna. 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.

- f. 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 fill the gap in coverage and to better communicate with another tower
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 was approved. The Board Members in favor were Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Mr. Jeffrey Chorman voted against the Motion to approve the special use exception and variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date November 16, 2020