

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DESTORAGE.COM, LLC

(CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS)

(Case No. 12459)

A hearing was held after due notice on August 3, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants seek a special use exception for a telecommunications tower measuring 150 feet tall and a variance of 27 feet from the fifty (50) feet side yard setback requirement on the southeast side for the proposed telecommunications tower. The side yard setback is based on 1/3 of the height of the proposed tower. This application pertains to certain real property located on a through lot on the southwest side of Dupont Boulevard approximately 830 feet northwest of Handy Road (911 Address: 28862 Dupont Boulevard, Millsboro) said properties being identified as Sussex County Tax Map Parcel Number 2-33-5.00-101.00. 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 letter from Maser Consulting, 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, Sue Machel, and Petros Tsoukalas were sworn in to give testimony. John Tracey, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Tracey stated that the Applicant proposes to construct a telecommunications tower which will measure 150 feet tall (including a 5 foot tall lighting rod) on a commercial property consisting of approximately 6 acres along Route 113 between Millsboro and Dagsboro.
5. The Board found that Mr. Tracey stated that there is an active self-storage business on the site and the tower will be located on a paved portion of the site use for car and machine storage.
6. The Board found that Mr. Tracey stated that the area is largely dominated by commercial uses.
7. The Board found that Mr. Tracey stated that the tower will meet County Code for the height, street setbacks, and lighting requirements but one setback variance is being requested.
8. The Board found that Mr. Tracey stated that, according to the FCC license, the Applicant must provide reliable service to customers and to take efforts to increase service when necessary.
9. The Board found that Mr. Tracey stated that the need and demand for cellular service continues to grow as customers are using cellular service to work from home and to educate from home.

10. The Board found that Mr. Tracey stated that 70% of calls to 911 lines are made from cellular telephones.
11. The Board found that Mr. Tracey stated that whenever possible the Applicant prefers to collocate with an existing tower but collocation is not always possible and that, in this case, the Applicant looked for other properties to collocate to no avail.
12. The Board found that Mr. Petersohn testified that he is a consultant for the Applicant and that he prepared propagation models which he described to the Board. According to Mr. Petersohn, there is a lack of strong in-building coverage surrounding the proposed building and that network facilities in the area are all experiencing an overloading of their facilities during busy hours on the network.
13. The Board found that Mr. Petersohn testified that the anticipated demand is expecting to increase up to 46% from 2017 through 2022.
14. The Board found that Mr. Petersohn testified that Verizon looked for existing towers before submitting this proposed site and there were four existing structures in a two mile radius but two of those four structures are already being utilized with antennas and the other two towers are both too far north to address the coverage issue in this area.
15. The Board found that Mr. Petersohn testified that sites which are too close to one another would also lessen the ability of the sites to carry capacity.
16. The Board found that Mr. Petersohn testified that, if this site is approved, there would be up to twelve antennas and some ancillary equipment on the ground and that the coverage would be increased along this Route 113 corridor.
17. The Board found that Mr. Petersohn testified that the RF emissions from this site would be less than 1.5% of the applicable standards at all locations surrounding the facility.
18. The Board found that Mr. Petersohn testified that the FAA does not require lighting on the tower but lighting will be provided in accordance with Sussex County Code.
19. The Board found that Mr. Tsoukalas testified that his firm did the civil engineering work for this site.
20. The Board found that Mr. Tsoukalas testified that the tower will be 145 feet tall monopole which is a tubular steel tower and that there is a 5 foot lighting rod on top of the tower.
21. The Board found that Mr. Tsoukalas testified that the tower is going to be fixed to the ground with a site specific foundation.
22. The Board found that Mr. Tsoukalas testified that the cabinet type equipment and a standby generator will be placed at the base of the tower.
23. The Board found that Mr. Tsoukalas testified that the area measuring approximately 30 feet by 40 feet will be fenced.
24. The Board found that Mr. Tsoukalas testified that the tower will be located in the southeast corner of the Property.
25. The Board found that Mr. Tsoukalas testified that the tower is designed to carry an additional three carriers.
26. The Board found that Mr. Tracey stated that this site is developed and an existing developed portion of the property is being used but there are a number of constraints at this location such as the existing stormwater facility, septic fields, buildings, and utilities which dictate the area where the tower can be located.
27. The Board found that Mr. Tracey stated that the site is unique in that it is a through lot with two road frontages.
28. The Board found that Mr. Tracey stated that the small commercial lot adjacent to this property prevents the Applicant from meeting the setback requirements and that, if that parcel had not been carved out, the lot could house the tower without a variance.
29. The Board found that Mr. Tracey stated that the exceptional practical difficulty was not created by the Applicant as they are working on a previously developed lot.

30. The Board found that Mr. Tracey stated that the variance requested is the minimum variance requested to afford relief.
31. The Board found that Mr. Tracey stated that the variance will not alter the essential character of the neighborhood and that there will not be any adverse effect on adjacent properties as it is in an area with heavy commercial use.
32. The Board found that Mr. Tracey stated that minimal traffic is generated and there will be no impact on public resources.
33. The Board found that Mr. Tracey stated that the tower produces no smells and the tower does not tax resources.
34. The Board found that Mr. Tracey stated that the Property cannot otherwise be developed without the variance.
35. The Board found that Mr. Petersohn and Mr. Tsoukalas affirmed the statements made by Mr. Tracey as true and correct.
36. The Board found that Mr. Andy Strine was sworn in to give testimony in support of the Application.
37. The Board found that Mr. Strine testified that he represents the property owner, DEStorage.com, and the owner supports the Application.
38. The Board found that Mr. Strine testified that there is no other logical area to place the tower on this site and they could not place the tower in the stormwater area due to stability reasons and the effect on utilities.
39. The Board found that Mr. Strine testified that the tower will not negatively affect the business on site.
40. The Board found that one person appeared by teleconference in support of and no one appeared in opposition to the Application.
41. 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 a commercial area on lands used for self-storage. The Property is also a large property consisting of approximately 6 acres.
 - b. No objections from any neighbors about the proposed tower have been noted in the record.
 - c. The Applicant demonstrated that the proposed tower will not emit any noise or smell and that the radio frequency emissions will be well below the maximum emissions permitted under FCC regulations.
 - d. The traffic related to the tower should be minimal.
 - e. 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.
 - f. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
42. 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
43. 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 Property is unique due to its odd shape and development. The Property's odd shape is clear from the survey and the lot is burdened since it is a through lot with frontage along two roads. These conditions have limited the building envelope particularly with regard to a telecommunications tower which has different setback requirements as well. Furthermore, the Applicant is constrained in locating the tower on the site due to the existing development of the Property. There are commercial buildings, septic fields, stormwater facilities, and utilities which further limit the building envelope. Despite those constraints, the Applicant was able to find a location in the southeast corner which meets most, but not all, of the setback requirements. The Property's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a telecommunications tower on the lot.
 - 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, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and development and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a telecommunications tower on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized telecommunications tower to be constructed on the lot. The Board is convinced that the shape and location of this tower are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the Property's unusual shape or otherwise develop the Property. These conditions have resulted in a limited building envelope on the Property and the unusually shaped building envelope and development have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but was created by the lot's unique characteristics.
 - 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 effect on the character of the neighborhood. The area is a commercial area with a variety of uses nearby. The tower will provide better cellular coverage in this area which should benefit neighbors as well. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.

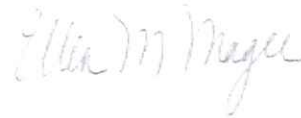
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct the tower on the Property. The Board is convinced that the Applicant explored other options to locate the tower but was unable to do so in compliance with the Code. For example, the stormwater area could not be used for the tower due to stability and engineering concerns.
- 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, Mr. Jeffrey Chorman, 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.

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 October 5, 2020.