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September 19, 2023

FEDERAL EXPRESS

Kenneth L. Cimino
Director – Planning, Zoning and
Development
Town of Ocean View
201 Central Avenue, 2nd Floor
Ocean View, Delaware 19970

Re: Application of Cellco Partnership d/b/a Verizon Wireless; 222
Maintenance Road, Ocean View, Delaware

Dear Mr. Cimino:

I write to submit the applications of Cellco Partnership seeking a special exception and area variance to construct a one hundred eighty-five foot (185') tall (including a five foot lightning rod) telecommunications tower within the lands of the Bear Trap Dunes golf course property in Ocean View. As the Town is, I believe, aware, there have been significant gaps in wireless coverage within Town limits for some time. In recent years, with the increase in traffic and development, along with the advent of texting and steaming services, the demand on wireless facilities, and thus the gaps in wireless services, has only increased. As such, additional infrastructure is required to address this deficiency, hence this request for permission to construct a new telecommunications tower.

As noted by the submitted applications, two forms of relief appear to be needed: a (1) special exception and (2) a height variance.¹ As to the latter, the 35-foot height limitation in

¹ There is an argument to be made that no height variance should be required for this project. §140-39 of the Town of Bridgeville Code notes that the height limitations in the Code “do not apply to appurtenances usually required to be placed above roof level and not intended for human occupancy”. While this section contains a few examples of such structures, it is not, by its own admission, an exhaustive list. Telecommunications towers, such as that proposed here, would seem to fit comfortably within this exception as, in addition to not being utilized for human habitation, they are necessarily tall in order to insure the adequate functionality of the network as detained in the attached RF Engineer’s Design Report.

the Code makes it impossible for effective telecommunication coverage to be provided to the Town and surrounding property. Cellular telecommunication technology necessarily requires height to be effective as the network relies on line of sight technology to enable towers to connect with each other and pass signals that are on the move from one location to the next. The shorter a tower, the more likely its signal will be blocked by buildings, trees or other structures, thus degrading the ability of people to connect to the network. The 185-foot tall height chosen for this tower was selected based on its proximity to other towers in the surrounding area to ensure effective signal coverage for this region. As the RF Design Report notes, the chosen height represents the “absolute minimum” necessary to achieve a “high percentage” of the site’s design goals.

Although a rather unique variance, we believe that the request to exceed the height limitations in the Code is warranted for this matter. As the evidence before the Board will show, the situation in this application is unique as, while the Code provides for the placement of such towers, if held to the code-mandated 35-foot height limitation, no tower would be constructed as the 35-foot height limitation effectively bars their construction. Approving a variance, however, allows for a tower to be constructed that will fill in the significant gaps in coverage along and to the west of Atlantic Avenue. As these towers, upon construction, do not tax municipal resources (sewer, water, schools, traffic, etc.), it will have little to no impact on surrounding properties and would not impair the use and enjoyment of the subject (or surrounding) property. Indeed, by providing reliable wireless coverage, the requested variance will be a benefit, not a detriment, to the public welfare.

With regard to the required special exception, we believe the evidence will show that the construction of this tower will be in concert with the requirements of §140-131 of the Code. With regard to the general standards within the zoning ordinance, the applicant believes that the construction of this tower will have no detrimental impact on surrounding property. These facilities, as noted earlier, do not tax government resources as, in addition to being unoccupied, they generate very little in the way of vehicular traffic (typically one trip in and out each month). The tower emits no noise or odors, and is, as the submitted documentation shows, is well within the permitted FCC range for emissions from the facility. While the height of the tower makes it impossible to obscure the tower, however, based on its location within the perimeter of the golf course facility, we believe any impact will be minimal.

Attached to this correspondence, and in addition to the completed application, you will find the following:

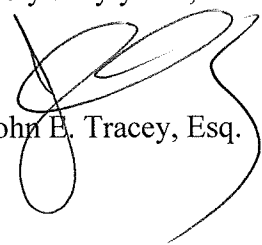
- Two (copies) of the site plan
- The required RF Engineer’s Reports
- An appraisal report and related ABA article regarding the impact (or lack thereof) of cell towers on adjacent property values
- A structural engineer’s report
- Form Tower Removal Agreement
- FCC Licensing Documents
- Certificate of Insurance

Young Conaway Stargatt & Taylor, LLP
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This Firm's check in the amount of \$1,500 representing the combined application fee for this matter.

We look forward to the opportunity to expand upon the materials submitted with this application at the soon to be scheduled Board of Adjustment hearing. In the interim, however, should the Town require any additional information or have any questions regarding this application, please do not hesitate to contact me at 571-6740.

Very truly yours,



John E. Tracey, Esq.

Enclosures

SINCE 1889



Fee: \$ 750.00

TOWN OF OCEAN VIEW, DELAWARE
BOARD OF ADJUSTMENT
VARIANCE APPLICATION

Land Use • Permitting • Licensing • Code Enforcement • Public Works

302 539-1208 (office) • 302 537-5306 (fax)

kcmunio@oceanviewde.gov / www.oceanviewde.gov

SINCE 1889



V - _____

Variance is defined as relief from the strict application of the provisions of Chapter 140 of the Code when, owing to special conditions or exceptional situations, a literal interpretation of this Chapter will result in exceptional practical difficulties to the property owner.

Application, requesting a variance from the Code of the Town of Ocean View, is hereby made for property located at: 222 Maintenance Road, Ocean View, DE 19970. The Justification for the Variance

(Explanation of Hardship) is: the need to construct a 185' tall telecommunications monopole for purposes of providing reliable cellular, text and data services to Verizon Wireless customers in and around the Town of Ocean View

I/We, the property owner(s) and/or applicant(s) do certify that all information and documents provided for this application are accurate, to the best of our knowledge, and I/We further understand that a hearing will not be scheduled until this application is complete as determined by the Administrative Official of the Town of Ocean View.

Owner(s) of Record (Print): Bear Trap Partners L.L.C. Phone #: 302-436-3000

Address of residence: 21 Village Green Drive, Ocean View, DE 19970

Signature(s): *Nicholas Freeman* Date: 8/25/23
 (Property Owner(s))

Applicant(s) (Print): Cellco Partnership d/b/a Verizon Wireless Phone #: 816-351-6208

Address: 512 Township Line Road, Bldg. 2, Fl. 3, Blue Bell PA 19422

Signature(s): *Kenneth L. Dean* Date: 08/29/2023
 Applicant(s)

TOWN USE ONLY:**Administrative Official Signature:**

Variance Request for: PIDN: _____ CTM#: _____ Zoned: _____

from: Article(s): _____, Section(s): _____

Code Requirement: _____

Variance Requested: _____

Date Received: _____ Date Advertised: _____ Hearing Date: _____

BOARD OF ADJUSTMENT USE ONLY:

Approved: _____
 Date

 Chairperson, Board of Adjustment

Denied: _____
 Date

 Chairperson, Board of Adjustment

C:\MCM 011818

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TOWN OF OCEAN VIEW

201 Central Avenue – 2nd Floor

Ocean View, DE 19970

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NOTICE

To: ALL APPLICANTS FOR VARIANCES, SPECIAL USE EXCEPTIONS, CONDITIONAL USES, BUILDING PERMITS AND OTHER PERMITS

Re: Homeowners' Associations and Restrictive Covenants and Conditions

Applicants for variances, special use exceptions, conditional uses, building permits and other permits, such as home based businesses, are required to comply with all Town Codes and with all deed restrictions applicable to their property.

Compliance with Town Codes and the granting of a Town variance, special use exception, conditional use, building permit or other permit does not eliminate the need for applicants to comply with deed restrictions applicable to their property or have their homeowners' association approval.

If a conflict exists between the requirements of deed restrictions and Town Codes, the more restrictive applies.

The Town will enforce its codes, but not deed restrictions, which will include *per diem* fines and court costs.

A violation of a deed restriction may result in legal action by a person authorized to enforce the deed restrictions and the applicant may be liable for the court costs and reasonable attorney fees incurred by the person enforcing the deed restrictions.

In order for the Board of Adjustment to grant a special use exception or variance, the Board must find that the applicant has proven the following:

STANDARDS FOR GRANTING OF VARIANCES

1. **Uniqueness**
 - a. Unique physical circumstances or conditions (such as irregularity, narrowness or shallowness of lot size or shape, or exceptional typographical or other physical conditions, peculiar to the property).
 - b. That unnecessary hardship or exceptional practical difficulty is due to such unique conditions, and not to general circumstances or conditions and cannot be developed in strict conformity.
2. **Cannot otherwise be developed**
 - a. There is no possibility the property can be developed in strict conformity with the zoning ordinance.
 - b. That the variance is necessary to enable reasonable use of the property.
3. **Not created by the applicant**
 - a. The unnecessary hardship or exceptional practical difficulty cannot have been created by the applicant.
4. **Will not alter the essential character of the neighborhood**
 - a. The variance will not alter the essential character of the neighborhood.
 - b. The variance will not substantially or permanently impair the appropriate use or development of adjacent property.
 - c. The variance will no be detrimental to the public welfare.
5. **Minimum variance**
 - a. The variance is the minimum that will afford relief.
 - b. The variance will represent the least modification possible of the regulation in issue.

STANDARDS FOR GRANTING A SPECIAL USE EXCEPTION

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code (for instance, time limitations).

BOARD OF ADJUSTMENTS STANDARDS FOR RELIEF

In order for the Board of Adjustment to grant a variance or a special use exception, the Applicant must be prepared to answer the following questions and address the following factors:

VARIANCES

1. Uniqueness

- a. Do you have a unique circumstance or condition, such as, irregularity, narrowness or shallowness of lot size or shape or exceptional typographical or other physical condition peculiar to the property? If so, please explain:

See Attached correspondence, reports & plans

- b. Is there an exceptional practical difficulty due to such unique condition (and not related to general circumstances or conditions)? If yes, please explain:

2. Possibility of Development

- a. Can the property be developed in strict conformity with the zoning ordinance without a variance? If not, please explain:

b. Is the variance necessary to enable reasonable use of the property?

3. Has the difficulty been created by the Applicant? If not, please explain:

4. Effect on Surroundings

a. Will the variance alter the essential character of the neighborhood?

b. Will the variance substantially or permanently impair the appropriate use for development of adjacent property?

c. Will the variance be detrimental to the public welfare?

5. Extent of variance

- a. Will the variance represent the least modification possible of regulations at issue?
- b. Is the variance necessary to afford relief?
- c. Will the variance represent the least modification possible of regulations at issue?

SPECIAL USE EXCEPTION

1. Will the exception substantially affect adversely the uses of adjacent and neighboring property?

See Attached Correspondence, Reports and plans

2. Are there any other requirements, which are applicable to the specific exception being requested (for example, time limitations)?