

Tax Map/Block/Parcel
No. 40-21-468
Case 5747

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Verizon Wireless
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Hanover, MD 21074

ATTORNEY: Chris Mudd, Esquire
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REQUEST: Request for a Conditional use for a proposed telecommunication facility to consist of a 199' tall monopole, panel antennas, a 12'X26' equipment shelter, and a back-up generator, all located in a 50'X50' fenced compound, surrounded by landscape plantings. And a request to reduce the required driveway width from 18' to 12' width, in accordance with Chapter 158.130(F)(1).

LOCATION: The site is located at 2427 Coon Club Road, Westminster, MD, on property zoned "A" Agricultural District in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Section 158.039(C)(2).

HEARING HELD: September 30, 2014

FINDINGS AND CONCLUSION

On September 30, 2014, the Board of Zoning Appeals (the Board) convened to hear the Request for a Conditional use for a proposed telecommunication facility to consist of a 199' tall monopole, panel antennas, a 12'X26' equipment shelter, and a back-up generator, all located in a 50'X50' fenced compound, surrounded by landscape plantings. And a request to reduce the required driveway width from 18' to 12' width, in accordance with Chapter 158.130(F)(1). Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The applicant presented three witnesses for the Board: Richard J. Dyer, Paul Dugan, and David Straitman.

Richard Dyer was accepted by the Board as an expert as a professional engineer with knowledge of the Carroll County site plan regulations. He is a senior engineer with Morris & Ritchie Associates, Inc. He has provided analysis, design, and construction services for a wide variety of wireless communication projects, including steel antenna towers and antenna supporting structures, existing monopoles, freestanding lattice towers and guyed truss towers, and evaluating existing building sites for wireless roof top installations. He had visited the site in question in 2009 and in January 2014. He stated that the proposed site was in the middle of a cornfield.

Verizon had determined that there was a need to fill a coverage gap in the area where the proposed cell tower would be. He noted that a third party reviewer for the county agreed with Verizon that a cell tower was needed in the area. Although Verizon would prefer to use an existing site where it was possible to do so, that option was not available here. Therefore, a new tower would need to be constructed. The tower could not be placed in residential districts in the county. The only two other districts in the area where the cell tower was needed were properties zoned in the agricultural district and the conservation district.

The proposed compound would be 50' by 50'. There would be landscaping around the entire compound, which would include evergreen trees that would grow to approximately 6' high. The trees would block the view of the ground structures. The tower would be about 199' high. It would be about five feet wide at the base and two feet wide at the top. The tower would include colocation so that other carriers could utilize the same monopole for their services too.

In order for a tower to be proposed, there are a number of factors that must be met. The first factor was that there had to be a need for the tower. That requirement was met. There also needed to be a link between the proposed tower and the four existing towers in the area. Topography was a factor in the location of the proposed tower. There was a valley or a 100' drop in the elevation near the proposed tower. The topography factor had to be addressed with the proposed site.

The proposed monopole design of the tower was sleeker and easier on the eyes than the self-supporting tower reflected in Exhibit 10. He stated that cell service would be substantially better if the proposed tower was constructed. The tower would be beneficial to help the quality of life for residents and assist with public safety. The site would be visited a few times a year once constructed. He noted that there would be minimal traffic coming to the site. He explained that there were no adverse effects of placing the tower at this location.

Paul Dugan, the president of Millenium Engineering, P.C., testified as an expert in the field of radio frequency engineering and civil engineering. He is a licensed engineer. He testified that he worked on thousands of cell tower matters. Mr. Dugan also testified that there was a significant gap in coverage in the area. Anyone with a Verizon wireless phone would drop calls in the area described as the valley. The proposed cell tower site was supposed to address this gap in coverage.

He explained some considerations for the applicant to propose a cell tower site. Every property in the search ring would not be an acceptable site for the cell tower. Topography would

be a factor; the site should be close to a road; and the site would need to have a power source among other factors. He stated that the tower had to be close to a bend in Coon Club Road in order to service the needs of the community. He addressed community concerns about moving the site to the west and to other locations. He noted that Verizon could not use any other towers to avoid constructing the proposed tower in order to meet its needs.

He explained that he performed his own independent investigation before stating that the proposed site was appropriate. He first had to make the determination that there were no other colocation areas for Verizon to utilize. He stated that he was loyal to the states where he held an engineering license and would not just rubberstamp any application that was presented to him.

He was clear that in his expert opinion, a cell tower would have to be within one tenth of a mile from the proposed site in order to be effective. He noted that Verizon held an FCC license to serve the residents of Carroll County. As a license holder, Verizon is obligated to provide reliable services in those areas where it holds a license.

He stated that there were no negatives for placing the site in the proposed location. He added that these 199' towers cannot be built to be invisible. Nearby residents are going to see it.

He explained that with the construction of the proposed site a valuable benefit would be given to the community. The service would contribute to public convenience and necessity. The location of a caller to 911 could be pinpointed to the caller's exact location. He explained that there were no adverse effects of placing the tower at this location.

David Straitman, with Avalon Appraisers, LLC, testified on behalf of the applicant. He was accepted as a real estate appraisal expert. He is a licensed real estate appraiser and has been in the field for more than twenty years. His company researched several different locations in both Carroll and Baltimore Counties, using several different techniques, including paired sales data, relative distance to towers and sales prices, prior studies and general public perception, through interviews.

"The results of our research has not found any measurable adverse impact on property values, which have a view of cellular towers. This is consistent with the research results found in *The Effect of Distance to Cell Phone towers on House Prices in Florida*. Our interviews with market participants also found no adverse perception with cell towers, however indicated that cell service and or data service may have an impact on property values, due to the lack of or absence of service."

"It is our opinion that today's required need for technology, which includes the addition to cell phones and data devices being allowed in school classrooms, has become the norm and is accepted within the current marketplace. Therefore, the proximity of the subject's 199 foot monopole tower is not considered to have an adverse impact on values or marketability on surrounding property values."

The Bureau of Comprehensive Planning noted the following about the proposed site in its May 8, 2014 memorandum:

“The request is compatible with the vision and goals for the area, as expressed in the plan. While cellular services are privately developed infrastructure, improved service quality and coverage does increase public safety and quality of life. Development of these projects will provide some added measure of economic development activity.

The application notes that the proposed project has been designed to provide for co-location of up to two additional antenna panels. This satisfies code requirements and also ensures area residents will potentially benefit by minimizing potential visual and community impacts of multiple individual towers.Planning staff does not believe that this proposed project would have a measurable adverse impact on the immediate neighborhood.”

An April 24, 2014 letter was written by Robert P. Hunnicutt to Jay C. Voight, Zoning Administrator. Mr. Hunnicutt was retained by the county to provide a facility location analysis report. In the Conclusions and Recommendations section the following was written:

“Based on the engineering information provided by Verizon Wireless with this application and the supplemental information provided by the applicant, we agree that the vicinity of the Arbutnot property is not adequately served by Verizon Wireless and a new tower with antennas is required to meet their coverage objectives for this part of Carroll County. The Facility Analysis Application, as amended, supports Verizon Wireless’s request for a new monopole and establishes that in this case, alternative technology would not work to provide the intended coverage that could be met with antennas on a monopole as proposed.”

Based on the propagation maps supplied by Verizon there was very little to no coverage in this area. The maps were consistent with the testimony and evidence by the residents. There were no other existing telecommunication towers in this vicinity, and no other tall structures such as a water tank on which Verizon could collocate their antennas.

A number of area residents testified at the hearing. A few testified in favor of the tower: Worth Kerr, John T. Horecni, Craig Simpson, and Ray Glover. They mentioned the importance of connectivity in the valley area and two of them mentioned the importance of the service for grandchildren. Stephen M. Jimenez completed a comment card in Protestant Exhibit 1 that stated “I desire and welcome the cell tower proposed.” A. George Davey supported the construction of the tower via his September 22, 2014 email communication. Thomas Zane sent the Board an August 28, 2014 letter in favor of the tower.

More residents testified in opposition to the tower. In addition, there were more written correspondences addressing opposition to the tower. Most of the people in opposition had concerns with regard to health and property values.

Fran Lathe stated that there were better locations for the tower. She mentioned that the medivac helicopter has landed nearby to where the proposed tower would be located. That vehicle would need to land elsewhere if the proposed tower was constructed.

Larry Lathe stated that he thought the majority of people were against the tower. He said that the people in favor of the tower never had reception in the first place. The tower would have an impact on his view. He would not be able to enjoy sunsets in the same way.

John Gorski testified that he was opposed to the tower being constructed. He was also unsatisfied with the real estate appraisal processes utilized by Mr. Straitman. He also submitted a July 15, 2014 email communication to the Carroll County Commissioners. He stated that “many of my neighbors and myself are adamant about stopping this infringement on our property values and possible long term health issues which may affect those living here.”

Christina Gorski testified in opposition to the tower. She stated that if two houses for sale were identical, except that one of them had a view of a tower, then most people would buy the home without the view of the tower. She stated that the residents tolerated the smell of hog manure and had moved to this area to be surrounded by agricultural land. She felt like the rights of citizens were being violated.

Francis Keck was in opposition to the tower. She stated that the six foot trees would not hide the 199’ tower.

Brenda Frazier testified in opposition to the tower. She was worried about the health effects and the property values of nearby homes if the tower was constructed. She believed that the county would be sacrificing the connectivity needs of the few and trampling on the health and property values of the many. As she put it “I do not understand how Verizon representatives can be committed to supplying service while risking the health of other customers and sacrificing property values to the residents living near the tower.” Although she heard about Verizon’s obligation to provide customers with adequate cellular service, she wanted the tower to be placed elsewhere.

Bob Hahn was against the tower. He believed that other options were available to the applicant. There was no reason that the tower could not be placed somewhere where there were fewer residents. He thought it was better for those in the valley to buy a booster to improve connectivity as opposed to construction of the 199’ tower.

Although residents wanted the tower to be moved to the west of its proposed location and other areas, the Board was satisfied by the applicant’s expert witnesses that the tower could not be placed elsewhere. Residents wanted the tower moved without appreciating that the service needs met by the tower at the proposed location could not be met in other locations suggested by some of those in opposition to the tower.

Many citizens opposed the siting of the tower based on health and environmental concerns. However, the Telecommunications Act of 1996 prohibits state and local governments from regulating the placement of personal wireless service facilities on the basis of effects of radio frequency emissions if the facility in question complies with the Federal Communications Commission’s regulations concerning such emissions. As written, the purpose of the requirement is to prevent telecommunications siting decisions from being based upon unscientific or irrational fears that emissions from the telecommunications sites may cause

undesirable health effects. Courts have enforced this provision of the act and have noted that concerns of health risks due to the emissions may not constitute substantial evidence in support of denial.

The Board found that once construction was completed that traffic would be minimal. There was testimony that there might be one trip to the site a month. The site would not create dust or odor. Noise would not be a problem either. When the generator was tested on a weekly basis there might be a humming sound to nearby residents for a short portion of a day. That was basically the only evidence of any sounds created by the site. The monopole would not have lighting because it was too low to accommodate the need for lights due to air traffic. The monopole was less of a problem and utilized less space than the self-supporting towers or the guide towers. The Board further found that property values would not decrease as a result of the monopole at this location.

The Board was convinced that authorization of the request with regard to a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. The Board recognized that citizens needed cell phone and internet service in today's world. The Board approved the conditional use requested by the applicant. The Board also approved the requested variance. Verizon did not create the driveway that would be used for the tower. With the nominal traffic going to the site it made little sense to have a two lane road. Such a road would decrease agricultural land and provide little to no benefit.

Date

Brian DiMaggio, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.