

Tax Map/Block/Parcel
No. 13-17-290
Case 5754

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Cellco Partnership d/b/a Verizon Wireless
900 Junction Drive
Annapolis Junction, MD 20701

ATTORNEY: Christopher D. Mudd, Esq.
210 W. Pennsylvania Ave., Ste. 500
Towson, MD 21204

REQUEST: A request for a Conditional use for a proposed telecommunication facility to consist of a 195' tall monopole and antenna array, an 11'6" X 16'-10 1/2" equipment shelter, and a back-up generator, all located in a 50'X50' fenced compound, surrounded by a wooded area, and for a variance to permit a two-way access road to be twelve (12) feet wide instead of the required eighteen (18) feet wide.

LOCATION: The site is located at 4318 Backwoods Road, Westminster, MD, on property zoned "Agricultural" in Election District 6.

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

HEARING HELD: October 28, 2014

FINDINGS AND CONCLUSION

On October 28, 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 195' tall monopole and antenna array, an 11'6" X 16'-10 1/2" equipment shelter, and a back-up generator, all located in a 50'X50' fenced compound, surrounded by a wooded area, and for a variance to permit a two-way access road to be twelve (12) feet wide instead of the required eighteen (18) feet wide. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The applicant presented three witnesses for the Board: Marc A. Marzullo, Paul Dugan, and David Straitman.

Marc A. Marzullo was accepted by the Board as an expert as a professional civil engineer. He was also familiar with Carroll County zoning laws and site plan regulations. He is the president of Entrex Communications Services, Inc. He has been responsible for providing professional engineering services for the design of over 2000 communications sites for wireless cellular, wireless internet, satellite radio, and paging sites and engineering services. He has prepared thousands of site plans. He had visited the site in question in preparation for the case. He also was responsible for the preparation of Exhibit 2. He stated that the proposed site was on farm land that included a wooded area.

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. He stated that the tower would be in compliance with Federal Communications Commission rules and would also meet all setback requirements.

The proposed compound would be 50' by 50'. The compound would be fenced in. The tower would be about 199' high. The tower itself would be 195' and then the added 4' would be a part of the antenna structure taking the total height to 199'. 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 existing towers in the area. He mentioned the 50 properties in the search ring where the tower would have to be located. See Exhibit 8. Some of the property in the search ring was protected pursuant to an agricultural land preservation plan. See Exhibit 9. He helped Verizon take the balloon test for the subject property. The balloon test involves placing a balloon at the height of the highest portion of the tower. Then photographs were taken from various locations around the balloon to determine the visibility of the proposed tower from those various locations. The results of the balloon test are contained in Exhibit 5A through 5J. He testified that the tower would be obscured by the 80' trees around it.

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. The site would be visited once a month per individual carrier 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.

He stated that the property had an irregular shape. He provided testimony for the support of the variance with regard to reducing the 18' access road to 12'. He noted that the 18' requirement would be the equivalent of a highway in the middle of the farm. The variance

request would allow more farm land to remain as farm land. The total amount of footage for the access road would be approximately 1700 feet.

Paul Dugan, the president with 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. He stated that in some areas there was no service available when he attempted to place a call. 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. He explained that the distance between the Wentz tower and the Union Mills tower in Figure 2 of Exhibit 14 was about seven or eight miles. The service in the area between those sites was unreliable. He noted that Verizon could not use any other towers to avoid constructing the proposed tower in order to meet its needs. The whole area had peaks and valleys, which made service unreliable in the area.

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 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.

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, Howard 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 of 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 to the Backwoods Road proposed site.”

The Bureau of Comprehensive Planning noted the following about the proposed site in its August 25, 2014 memorandum:

“The above-referenced BZA case is consistent with this designation [Agricultural]. The surrounding area is comprised primarily of agriculture, forest, and large lot single-family type uses. Planning staff does not believe that the erection of a cell tower coupled with adequate screening would have an adverse impact on the immediate neighborhood.”

A July 28, 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 application. In the Conclusions and Recommendations section the following was written: “Based on our review of the Location Analysis Application, we recommend the monopole and antennas as proposed by Verizon Wireless.”

Based on the propagation maps supplied by Verizon there was very little to no coverage in this area. 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 few residents testified at the hearing. Those residents who testified included: Charles Hedges, Larry Shockney, and Emily Johnston.

Charles Hedges stated that he would have about twenty feet of the tower in his site line. He would be able to see the portion of the tower above the trees. He questioned whether the large number of migratory geese and other birds would be affected by the tower. He also mentioned a fairly high volume of air traffic in the area. It was stated that the tower would be marked in aviation charts. It was also noted that a tower under 200’ did not have lights pursuant to air traffic.

Larry Shockney was concerned that the tower would be 288’ from where he resided. He also was concerned about his health. He noted that many of the arguments he saw on the internet involved health concerns. He did not believe that all of those concerns were invalid.

Emily Johnston stated that she would have a lovely view of a monstrosity. She had a concern that someone would raise the tower in the future and put flashing strobe lights on it. She stated that she saw 50,000 hits of complaints with regard to cell towers on the internet. If even half of those complaints were valid we should be concerned. She was also concerned about how the tower might affect wildlife.


A few 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 per carrier. The site would not create dust or odor. Noise would not be a problem either. The monopole would not have lighting because it was too low to accommodate the need for lights due to air traffic. 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 for a 195 foot tower with 4 feet of antennas for a total of 199 feet. The Board also approved the requested variance. 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.

November 04, 2014

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.