

IN RE: : BEFORE THE ZONING HEARING
CELLCO PARTNERSHIP d/b/a VERIZON : BOARD OF DICKINSON TOWNSHIP
WIRELESS : CUMBERLAND COUNTY, PENNSYLVANIA
: DOCKET NO. Z-2017-01

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION GRANTING
APPLICANT'S REQUEST FOR FOUR ZONING VARIANCES
AND DENYING ONE ZONING VARIANCE**

The Applicant seeks the following variances: a use variance to allow a cell tower facility to be constructed in the MDR-O Zoning District; a dimensional variance of approximately 140 feet to the setback requirement for a cell tower from all property lines; a variance from the requirement that a cell tower facility be surrounded by screening; a variance to allow the use of barbed wire in the MDR-O Zoning District; and variance from the requirement that work must commence within three years and construction must be completed within five years after a variance is granted. A hearing on the application was held by the Dickinson Township Zoning Hearing Board on March 22, 2017 at 4:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065.

FINDINGS OF FACT

1. The Applicant is Cellco Partnership d/b/a Verizon Wireless (the "Applicant"), with an address of 4642 Jonestown Road, Suite 200, Harrisburg, PA 17109.
2. The Applicant is the lessee of a 70 foot by 70 foot area located on the property of Robert J. Line, Jr. and Joan P. Line (the "Landowners"), with an address of 139 Burnt House Road,

Carlisle, PA 17015, Dickinson Township (the "Subject Property"). The Parcel Identification Number is 08-09-0525-035.

3. The Subject Property is zoned Medium Density Residential Office (MDR-O) District and consists of approximately 94.29, with the leased area being .11 acres. The leased is located in the southwest corner of the Subject Property.

4. The Applicant proposes to construct a commercial communication tower and antenna facility (the "Facility"), which will consist of a one hundred eighty foot (180') tall commercial communication tower (i.e. monopole) with a five foot (5') tall lightning rod for a total overall height of one hundred eighty-five feet (185'); an equipment platform (11.5' x 22') with a canopy for equipment cabinets; and commercial communication antennas installed on the commercial communication tower at one hundred seventy-five feet (175') above ground level.

5. The Facility will be enclosed by an eight foot (8') board on board wood fence with barbed wire and a gate.

6. The Subject Property fronts on Burnt House Road to the southwest and Interstate 81 to the south.

7. The Applicant intends to utilize an existing gravel access driveway and construct a short twelve foot (12') wide gravel access driveway from the edge of the existing access driveway to the Facility, within a twenty foot (20') wide access easement to access the Facility from Burnt House Road.

8. The proposed utilities to the site will be installed underground within a twenty foot (20') foot wide utility easement.

9. The Facility will also contain two (2) 10' x 20' parking spaces.
10. Interstate 81 is a major, high-speed, limited access, multi-lane, divided highway, with a speed limit of 55 miles per hour.
11. The Applicant is requesting the following variances with regard to the Facility:
 - a. A use variance from Section 205-13.B of the Zoning Ordinance to allow a commercial communication tower and antenna facilities to be constructed in the Medium Density Residential Office (MDR-O) Zoning District;
 - b. A dimensional variance from Section 205-66.C of the Zoning Ordinance to allow the commercial communication tower to be setback less than one and one-half times its height (i.e. 277.5 feet) from the nearest property line;
 - c. A variance from Section 205-66.F of the Zoning Ordinance to allow a commercial communication tower without vegetative screening in accordance with Section 205-30 of the Zoning Ordinance;
 - d. A variance from Section 205-30.C(3) of the Zoning Ordinance to allow the use of barbed wire on the fence around the Facility; and
 - e. A variance from Section 205.51.C(7) of the Zoning Ordinance to allow the Applicant to commence and complete construction of the Facility within five (5) years and seven (7) years respectively.
12. The proposed Facility will be located on an agricultural property as the Subject Property includes a cattle farming operation.
13. The proposed Facility will be located on the lowest classified soils on an untillable, underutilized portion of a previously developed agricultural property to avoid disruption of any

higher agricultural soils, actively farmed areas, existing structures and on-site farming operations on the Subject Property.

14. Much of the Subject Property is used for cattle grazing, including the area near the proposed Facility.

15. The Owner has expressed concerns about the installation of landscape screening around the proposed Facility, since cows are attracted to newly planted vegetation as a new food source.

16. Cows on the Subject Property would likely trample and eat any new evergreen or deciduous plantings.

17. Evergreen vegetation is generally toxic to cows, as cows eating evergreen plants during their pregnancies can experience miscarriages.

18. Instead of a landscape screen for the proposed Facility, the Applicant proposes an eight foot (8') board on board wood fence topped with barbed wire to surround the proposed Facility to prevent unauthorized access.

19. The board on board wood fence topped with barbed wire prohibits climbing access to the tower by securing the Facility from access and use by unauthorized persons.

20. Given the Facility's role in emergency communications, it is essential that the Facility be secure and protected from unauthorized persons.

21. Although there are other areas of the Subject Property that also contain the lowest classified soils, the proposed location of the Facility would be less visible from neighboring properties due to the lower elevation of the area and the presence of existing vegetation along the

property line and overhead electric transmission towers and related electric lines traversing the southern portion of the Subject Property.

22. The communication tower will be a galvanized steel monopole, which tends to blend into the background.

23. Interstate 81 also provides a buffer from the Facility to properties to the south of the Subject Property.

24. There currently exist significant coverage issues for in-vehicle and in-building service along the Interstate 81 corridor for nearly the entirety of the Township resulting in choppy audio, call drops and inadequate data throughput speeds.

25. Wireless devices are widely used by municipal emergency services for voice and data services, including those that impact public safety.

26. Additionally, enhanced 911 (E911) services, which allow a mobile caller to be located by the dispatch center, are dependent on an adequate service level to provide help in an emergency.

27. According to the CDC, nearly half of American homes (49.3%) had only wireless telephones during the first half of 2016.

28. As wireless substitution continues to spread, availability of in-building wireless service, both data and voice becomes increasingly important.

29. The proposed Facility will greatly improve the in-vehicle coverage and will provide for new in-building service on and around the Interstate 81 corridor

30. The Applicant's policy and overwhelming preference is to use existing, tall structures and antenna support platforms when their location, available attachment height and structural capacity are congruent with network requirements.

31. In this case the only existing tall structures proximate to the proposed Facility are lattice towers roughly 1.8 miles due northeast and 2.3 miles due southwest of the proposed Facility.

32. Both towers are too distant from the service gap to effectively solve the Applicant's coverage issues in the targeted area.

33. The Township permits new towers in the Conservation (C) Zoning District, the Business-Industrial (BI) Zoning District and the Mining-Industrial (MI) Zoning District.

34. The areas of the Township that are located in the Conservation (C) Zoning District and the Mining-Industrial (MI) District are in the southern half of the Township and are much too distant from the service gap to effectively solve the coverage issues in the targeted area.

35. Although there are areas of the Business-Industrial (BI) Zoning District within two miles of the proposed Facility, a site there would not meet the Applicant's needs in improving coverage to the targeted area.

36. The Applicant's only option for satisfying the coverage gap is construction of the proposed Facility.

37. The Applicant is licensed by the FCC to provide coverage in the targeted area.

38. The maximum exposure to radio-frequency emissions from the proposed Facility will be far below FCC exposure limits.

39. No potential exists for the manifestation of harmful radio frequency interference as a result of the proposed Facility.

40. Based on the coordinates, ground elevation and total structure height, the proposed Facility is not required by FAA regulations to light or mark the proposed Facility.

41. Mr. Charles Brewer, PA Aviation Specialist for the Pennsylvania Bureau of Aviation, has deemed that the proposed Facility is not an obstruction under the PA Aviation Code and that the PA Bureau of Aviation has no objection to the proposed Facility

42. The proposed commercial communication tower, with an overall height of one hundred eighty-five feet (185'), will be setback a distance of approximately one hundred thirty-seven feet (137') from the nearest property line, which the right-of-way line of Interstate 81, located to the south.

43. Although the proposed tower will be located a distance of less than 277.5 feet from the right-of-way of Interstate 81, the proposed tower will be set back a distance of approximately 201 feet from the nearest travel lane of Interstate 81.

44. The proposed tower will be located outside any required setback of the MDR-O Zoning District.

45. The Pennsylvania Department of Transportation ("PADOT") has no objection to the proposed Facility and no permit for the proposed Facility will be required PADOT.

46. The tower will be set back farther from the property line than several of the approximately 50 to 60 foot tall, overhead electric transmission towers and related electric lines traversing the southern portion of the Subject Property.

47. The electric transmission towers, running parallel to Interstate 81, are located distances of approximately six to ten feet (6'-10') from the Interstate 81 right-of-way line, while the communication tower will be setback a distance of approximately 137 feet.

48. The overhead electric transmission towers are approximately 65 feet from the nearest travel lane of Interstate 81, while the communication tower will be set back approximately 201 feet.

49. PP&L, the owner of the overhead electric transmission towers and related electric lines, has no objection to the proposed Facility as long as the communication tower is constructed in accordance with all applicable design standards and is designed to not hit the electric lines if the communication tower collapses.

50. The communication tower will be designed by a qualified manufacturer and constructed to meet the latest version of TIA/EIA-222-G, "Structural Standard for Antenna Supporting Structures and Antennas," by the Telecommunications Industry Association/Electronics Industry Association, which has been adopted by the Pennsylvania Uniform Construction Code.

51. The communication tower will be designed to collapse onto itself at a specified height so that no contact with the utility lines would occur in the event of a failure.

52. The proposed height of the tower is the minimum height necessary to accommodate the intended commercial communication antenna facilities.

53. No one appeared at the hearing to oppose the application.

54. Notice of the hearing was duly advertised in the Carlisle Sentinel, a newspaper of general circulation, on March 8, 2017 and March 15, 2017

55. Notice of the hearing was posted on the Subject Property on March 8, 2017.

56. Notice of the hearing was mailed to the surrounding property owners on March 8 2017.

CONCLUSIONS OF LAW

1. Sections 10910.2 of the Municipalities Planning Code (the “MPC”), 53 P.S. §10910.2, requires the Zoning Hearing Board to hear requests for variances. Section 910.2 further provides that in granting a variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the MPC and zoning ordinance.

2. Section 910.2 of the MPC further sets for the five (5) criteria, which must be satisfied in order to obtain a variance.

3. Section 205-13.B of the Zoning Ordinance does not permit Commercial communication towers in the MDR-O Zoning District.

4. Section 205-66.C of the Zoning Ordinance provides that a freestanding commercial communication tower shall be set back from all property lines and street right-of-way lines a minimum distance equivalent to 1 ½ times the height of the tower, and in no event shall it be placed within any required setback.

5. Section 205.66.F of the Zoning Ordinance provides that all commercial communication towers shall be surrounded by screening which complies with the requirements of Section 205-30.

6. Section 205-30.C(3) of the Zoning Ordinance provides that the use of barbed wire, or wire on which barbs or points are strung or fastened, is prohibited except in an industrial zone.

7. Section 205-51.C(7) of the Zoning Ordinance provides that all variances approved by the Zoning Hearing Board shall be commenced within three years of the date of approval of such

variance by the Board and shall be fully completed, in the case of construction, or placed in full operation, in the case of a use variance, within five years of said date.

8. The Subject Property is unique because of its proximity to Interstate 81 and its location within an area of the Township that currently suffers from significant coverage issues for in-vehicle and in-building cellular service along the Interstate 81 corridor for nearly the entirety of the Township resulting in choppy audio, call drops and inadequate data throughput speeds. Because existing towers and areas zoned for new towers are too far away to resolve the coverage issues in the targeted area the Subject Property is the only location that the proposed Facility can be sited in order to solve the Applicant's coverage issues.

9. With regard to the variance for the setback of the tower on the Subject Property, in order to avoid disruption of higher classified agricultural soils, actively farmed areas, existing structures and on-site farming operations, as well as site the tower in the least obtrusive area of the Subject Property with the least impact on surrounding properties, the tower must be located as proposed by the Applicant.

10. The variances requested by the Applicant to use a board on board wood fence, eight feet in height with barbed wire at the top, with no landscape screen is necessary to enable the Facility to be properly screened and secured without have additional landscaping added that is harmful to the cattle farming operation on the site.

11. Because of the hardships, there is no possibility that the coverage issues in the Interstate 81 corridor and southern portion of the Township can be resolved.

12. The Applicant has not created a hardship.

13. The requested variances would not alter the essential character of the neighborhood

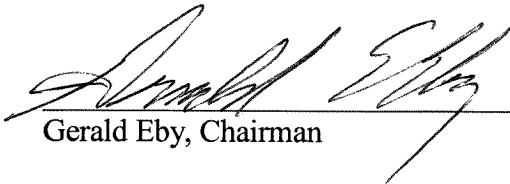
or the zoning district, or substantially or permanently impair the appropriate use or development of adjacent properties, or be detrimental to the public welfare.

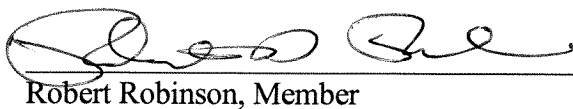
14. The variances would represent the minimum variance to afford relief.

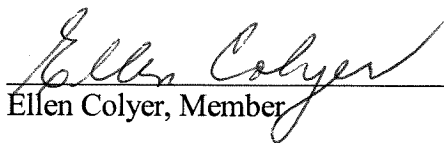
DECISION

In view of the foregoing and having carefully considered the testimony and exhibits submitted to the Board, the Applicant's requests for variances from Sections 205-13.B, 205-66.C, 205.66.F and 205-30.C(3) of the Dickinson Township Zoning Ordinance are granted in strict accordance with the testimony and exhibits, subject to the condition that the Applicant shall comply with all other applicable Township Ordinances. The Applicant's request for variance from Section 205-51.C(7) of the Dickinson Township Zoning Ordinance is denied.

VOTE

Yes 
Gerald Eby, Chairman

Yes 
Robert Robinson, Member

Yes 
Ellen Colyer, Member

ANY PERSON AGGRIEVED BY THIS DECISION OF THE DICKINSON TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY. THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THIS DECISION.

MAILING DATE: