

BEFORE THE BOROUGH OF MILLERSVILLE ZONING HEARING BOARD

IN RE: :
: :
APPLICATION OF : Case No. 13-02
T-MOBILE NORTHEAST LLC :
FOR A SPECIAL EXCEPTION AND :
VARIANCES :

DECISION OF THE ZONING HEARING BOARD

A. FINDINGS OF FACT

1. Applicant is T-Mobile Northeast LLC, 400 Street Road, Bensalem, Pennsylvania 19020, the prospective lessee of a cell phone tower site.
2. The subject property is tax parcel number 44067692, a 57.7 acre tract of ground which is part of the campus of Millersville University.
3. The subject property is located within the Borough of Millersville, Lancaster County, Pennsylvania.
4. Applicant has written permission from Millersville University to file this application by letter of April 24, 2013, submitted as part of the application.
5. On April 25, 2013, Applicant filed a request for a special exception to operate a commercial communications antenna as well as several variances.
6. The application was advertised, the property was posted, and adjoining property owners were notified. Notice of the hearing was also posted in the Millersville Borough hall.
7. A hearing was held May 23, 2013. The hearing was stenographically recorded.
8. The regular zoning board members were all present with the exception of Karen Eckert. In her absence, Reverend David R. Fisher, the alternate, served.

9. At the commencement of the hearing, the zoning board's Solicitor announced that the board had conducted an executive session prior to the commencement of the public hearing.

10. Applicant was represented by Bernadette Hohenadel. Also testifying in support of the application were Deborah Baker, an independent site acquisition consultant; Ronald Frisbee, from Millersville University; Philip Burtner, a structural engineer; and Basam Iskandar, a radio frequency engineer. No one testified in opposition to the application.

11. In the course of testimony, Applicant introduced Applicant's Exhibit 1, an aerial photograph of the lower portion of the Millersville University campus showing the site of the proposed tower; Applicant's Exhibit 2, a three-page set of drawings describing the site; Applicant's Exhibit 3, a letter dated April 29, 2013, from Sabre Industries, the manufacturer of the antenna, stating that the antenna was designed to collapse within a radius of 60 feet from the base; and Applicant's Exhibit 4, a series of signal propagations studies performed showing the coverage provided by the present antenna as well as the coverage that would result from various other alternatives.

12. Applicant currently operates an antenna on the rooftop of Burrows Hall on the Millersville University campus. Burrows Hall, as well as the other tall dormitory building on campus, are scheduled for demolition in May 2014, which requires that a new antenna location be provided.

13. Burrows Hall and the other tall dormitory building will be replaced by lower structures that will not have sufficient strength to support an antenna. Also, even if the structures to be demolished were being replaced with tall structures of sufficient strength, there would be a gap of service for several years while the new buildings are being constructed.

14. The present site has been in operation for approximately 16 years, and Applicant has designed its antenna system on the assumption that coverage can be provided either from the current location or a location very close by. Ms. Baker testified that there were few options as far as where the replacement antenna could go, because the antenna needs to duplicate the coverage provided by the existing antenna. Moving the antenna a substantial distance in any direction would result in a gap of coverage.

Also, moving the antenna to the north, west, or south, would interfere with existing residential uses. Moving the antenna to the east would require placement of the antenna in a university parking lot or in very close proximity to a university building.

15. The proposed site for the antenna would be surrounded by parking lots and utility buildings except to the south, where an existing residential structure is 127 feet away, in Manor Township.

16. The site selected is near an existing Verizon antenna on the west edge of campus. It is also adjacent to the switching building that provides electric power to the university campus and a PPL electrical substation.

17. The pole would be of galvanized steel construction and would be grey in finish in order to reduce visibility.

18. Ms. Baker testified that she requested Verizon to allow co-location on its nearby antenna. However, the co-location offered by Verizon was 25 feet lower than the present height. Applicant's Exhibit 4 indicated that co-location on the Verizon tower would result in a significantly diminished area of service compared to the existing and proposed sites.

19. Applicant testified that a 160 foot tall tower is necessary to provide the equivalent coverage from the existing site, and offered Applicant's Exhibit 4 in support of that calculation.

20. The proposed facility would consist of a 160 foot tall monopole tower, with a lightning rod. The communications facility would be located at the 155 foot level. Locations would be made available to other providers at lower locations on request.

21. The site will consist of a 50 foot by 60 foot leased area, with a 10 foot by 10 foot concrete pad to house the equipment. The facility would be surrounded by a 7 foot high chain link fence, topped by a 1 foot roll of barbed wire. The fence would be surrounded by evergreens on 5 foot centers to provide a planting screen.

22. The gate onto the property would be locked. The only parties with the combination would be the Applicant, Millersville University, and representatives of public emergency services.

23. In support of his request for a lot setback variance, Applicant produced a letter from the manufacturer indicating that the tower would collapse, under stress, within 60 feet of the base.

24. Neither the owners nor the occupants of the residential structure appeared and testified, nor did they offer any written comments.

25. The zoning officer stated that both the Planning Commission and Borough Council were in support of the application.

26. Following the conclusion of testimony, the Board conducted an executive session.

27. Following the executive session, the board resumed public session and voted 4-1 to grant the requested special exception and variances, as presented, with Chairman Kirk dissenting.

B. CONCLUSIONS OF LAW

1. The property is located in the R-1 A Residential Academic District.
2. Commercial communications antennae are allowed as a principal or accessory use by special exception in the District.
3. The required setback for a tower is the applicable principal building setback line, or a minimum distance of 100 feet plus the total height of the tower.
4. The maximum permissible height is 150 feet.
5. A commercial communications antenna is subject to specific performance criteria of Section 402.A.13.
6. The special exception criteria involve a number of technical requirements, such as an 8 foot security fence, a statement by the professional engineer that the antenna will meet structural and wind resistance requirements, that the applicant be required to offer space to other communication providers on the tower, that co-location be carefully investigated, and that, if the tower is not active for six months after discontinuance of all uses, the tower shall be removed.

C. DISCUSSION

This case involves a special exception as well as a number of variance requests. We will consider the variance requests first.

Variances are properly granted when the applicant shows that by reason of physical characteristics unique to the property, strict application of the zoning ordinance would be unreasonable and would result in a hardship. The applicant must show that the need for variances involves the actual use of the property and are not matters of mere economic convenience. The need for the variance cannot be self-inflicted. If granted, the variance must represent the minimum relief necessary to afford a reasonable use of property.

Given the very specific nature of Applicant's use, we feel that the need for variances has been met. This is not a situation where a communications facility is seeking to expand existing coverage. The Applicant is losing its existing facility due to the impending demolition of a building it does not own. The present antenna has been in place for 16 years. Applicant has designed its communications network around the existing site. Applicant must provide an antenna at about the same height and in more or less the same location, in order not to create gaps in coverage. Locating a substantial distance away from the existing antenna is not an option. We accept Applicant's testimony that co-location on the Verizon tower is not an option. Without variance relief, Applicant will be deprived of its reasonable and lawful use.

The board is satisfied that Applicant has produced credible evidence that a setback variance may be granted. The board accepts as credible the testimony that the tower will collapse within 60 feet of the base, in the unlikely event that there is a collapse at all. In reaching this conclusion the board takes note that the proposed site is not near any dormitory buildings, and is only near one residence. Further, that residence is, at a minimum, 127 feet from the base.

Applicant is asking for a 10 foot height variance from the 150 foot allowed. We accept as credible Applicant's radio frequency engineering testimony that additional height is necessary to continue to provide the same coverage as presently exists. We do not discern any community harm from allowing a 160 foot tall tower in place of a 150 foot tower.

The board is satisfied that the tower has been designed in a manner to minimize its visual intrusiveness and environmental impact as far as possible. It is located on the edge of the campus, in the vicinity of utility buildings and another cell tower. There is no perfect place to locate a cell phone tower. We are satisfied that this represents a site selection that creates the minimal harm possible to the community health, safety and welfare.

In response to questions by the solicitor, Applicant's witness stated that if the tower was not in use, it would be removed pursuant to the requirements of Section 402.C.3.c., provided it was understood that as long as there were any co-locators on the tower, the tower could not be abandoned without impacting services to co-locators.

As far as the special exception criteria are concerned, the board is satisfied that Applicant met its initial burden of showing compliance with both the general and specific special exception criteria. Once applicant meets that burden, the burden then shifts to those opposed to the use to show that the proposed use is more adverse to the community health, safety and welfare than such uses generally are. No such testimony was produced. Therefore, Applicant met its burden of proof for a special exception.

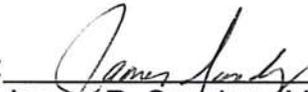
D. DECISION

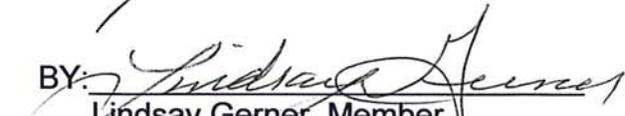
AND NOW, this 23rd day of May, 2013, Applicant's request for a special exception and variances are granted as follows:

1. Applicant is granted a special exception to erect a commercial communications antenna at the site indicated in the application.
2. Applicant is granted a variance from the tower setback requirements to be allowed a setback of 66 feet.
3. Applicant is granted a setback variance to erect its antenna within 127 feet of a residential structure.
4. Applicant is granted a variance from a requirement that all possible co-location opportunities within a one mile radius be exhausted.
5. Applicant is granted a height variance for a monopole antenna 160 feet rather than the 150 feet allowed by ordinance.

6. The zoning relief is granted upon the condition that Applicant erect, operate and maintain the tower and associated equipment in accordance with the testimony offered and exhibits presented at the hearing.

THE MILLERSVILLE BOROUGH
ZONING HEARING BOARD

By: 
James R. Sanchez, Vice-chairman

BY: 
Lindsay Gerner, Member

By: 
Vickie Usciak, Member

By: 
Rev. David R. Fisher, Alternate

James A. Kirk, Jr., Chairman dissented from this decision.