

**THE CITY OF NEW CASTLE
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Cellco Partnership d/b/a Verizon Wireless
512 E. Township Line Rd., Bldg. 2, Flr. 3
Blue Bell, PA 19422

OWNER: Deemer's Landing LLC
1300 Deemers Landing
New Castle, DE 19720

NCC TAX PARCEL NO. 21-014.00-500
PUBLIC HEARING DATE: December 19, 2017
DATE OF DECISION: January 16, 2018

REQUESTED: Applicant requested a special exception under sections 230-25.1 and 230-57 B of the Zoning Code of the City of New Castle (the "Code") to allow placement of telecommunications infrastructure on the roof of an existing building located at 419 West Ninth Street, New Castle, DE, NCC Tax Parcel No. 21-014.00-500.

Per §230-25.1, the Board of Adjustment may grant a special exception in the Residential Commercial (RC) zone to permit "telecommunications facilities" as defined in Section 230-1 of the Code, excluding free standing telecommunications towers or monopoles in zoning districts other than the Historic Resident and Historic Commerce Districts, subject to certain limitations, requirements and conditions. In addition, the Board must find that the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest, subject, however to such conditions and safeguards as the Board deems appropriate. Section 230-25.1 also requires that:

1. The applicant must demonstrate a significant need for the facility by proving a significant gap in cellular phone coverage;
2. The applicant must demonstrate that there are no co-location options available to support the proposed telecommunications facilities;
3. No telecommunications "tower" (as defined in section 230-1 of the code) or monopole facility shall be permitted;
4. The applicant must provide screening or other stealthing of the

- telecommunications facilities acceptable to the Board of Adjustment; and
5. All special exception applications for telecommunications facilities shall require prior review and recommendation by the Planning Commission.

Mayor Jimmy Gambacorta chaired the meeting. Also present as Board members were City Engineer David Athey and City Solicitor Daniel R. Losco. Mr. Jeffrey Bergstrom, New Castle Code Official, was present as well to respond to questions from the Board. Mayor Gambacorta read into the record the official notice of the hearing. That notice was timely published in accordance with the law and a copy of the notice was admitted into the record.

John Tracey, Esq. represented the applicant, Cellco Partnership, d/b/a Verizon Wireless, at the hearing. With Mr. Tracey were witnesses Andrew Petersohn with DBM Engineering, and Ken Ferrell of CMC Engineering, both engineers involved in wireless communications technology. Both witnesses were sworn in as witnesses by Mr. Losco. Mr. Tracey described the subject property as a 6 story residential apartment building approximately 65 feet in height. The applicant proposes installing a steel equipment platform supporting natural gas generator, battery cabinet and related equipment. In addition, the proposed facilities will include 3 steel antenna platforms located at the east, north and west sides of the building. The platforms are 7 feet wide, 9.5 feet long and approximately 11 feet high. Each antenna platform will include two antenna arrays. The antennas will each be camouflaged by fiberglass screening panels in the same color as the building's siding such that the equipment cannot be seen from street level.

Mr. Tracy explained that the area of the City where Cellco proposes to erect the telecommunications facilities is number 2 on Verizon's list of high priority areas requiring enhancements to ensure adequate cell phone coverage. He advised that the only other co-location possibility in the City would be MSC's water tower located within a mile of the subject property. However, MSC has refused permission to place antennas on the tower so co-location is not an option. No other existing structure in the critical area of need has sufficient height to allow for proper functioning of the antenna array. Use of the Deemer's Landing roof for this purpose avoids the need to build another tower.

Mr. Petersohn testified that he has worked professionally for Verizon for two decades. In October, 2017, his engineering firm prepared a radio frequency design analysis for the City (Applicant's Exhibit 1) which identified two problems: 1. Coverage problems for phone calls made to or from buildings in the southern part of the City where calls either can't go through or are dropped before completed; and 2. Capacity problems at times of high user volume. He explained that the existing monopole located approximately 1 mile from the subject property was overburdened causing near chronic problems of dropped calls and slow response. He anticipates that this capacity problem will increase as more and more wireless phones and computers are

used simultaneously. Mr. Petersohn explained that Verizon's option to improve service in this area was to enhance existing antenna assets. It has already installed 4G LTEE equipment and new antennas at all their New Castle area facilities. Mr. Petersohn referenced Exhibit 1 which includes an illustration depicting problematic existing phone coverage issues in the southern portion of the City when the system is at "50% load"---meaning the system is running at about 50% of capacity. He opined that the antenna array proposed for the roof of the Deemer's Landing building will address both the problems of call penetration into buildings and capacity during times of high user volume.

Exhibit 2 introduced by the applicant was an August 29, 2017 "Interference Analysis" report prepared by DBM Engineering. Mr. Petersohn testified that he independently evaluated the potential for harmful interference generated by the proposed telecommunications facilities proposed for the subject property. His study concluded that the proposed design for this facility, including a total of not more than 12 panel style antennas arranged in three sectors will not cause direct interference with transmissions of police, fire and ambulance personnel because they operate on a different band width than the frequency Verizon is licensed to use. Mr. Petersohn indicated that indirect interference can sometimes occur, but in this case the output of the proposed antenna array is "extremely low" such that problems would only occur if there were multiple telecommunications installation in close proximity to one another. No other installations are proposed for the subject property so no indirect interference will occur.

Mr. Tracey then introduced as Exhibit 3 an Electromagnetic Exposure Analysis prepared by DBM Engineering and also dated August 29, 2017. Mr. Petersohn summarized the findings of this study by stating that even assuming maximum exposure to radio-frequency emissions from the proposed Cellco facility, the exposure to humans will be at least 80 times less than the applicable FCC limits at all locations of public access. The report quotes the National Telecommunications Act of 1996 as stating that "no state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio-frequency emission to the extent that such facilities comply with the [Federal Communications] Commission's regulation concerning such emissions."

Applicant's Exhibit 4 was a December 19, 2017 letter report from CMC Engineering describing the specific facilities proposed and opining that they will pose no health, safety or public welfare concerns due to weather, wind, ice or earthquakes, or otherwise endanger the structural integrity of the building itself. Mr. Ferrell, a civil engineer, confirmed these opinions in his testimony.

Applicant's Exhibit 5 was a November 17, 2017 letter from CMC Engineering describing

the “spring isolator” mechanisms to be anchored between the steel equipment platform and the gas powered generator. These devices provide noise and vibration protection to the apartment units in the Deemers Landing building.

Mr. Athey asked is Verizon would lose customers if the special exception were not granted. Mr. Petersohn agreed that poor coverage and dropped calls would ultimately result in the loss of customers. Mr. Tracey concluded by saying that FCC rules require Verizon to provide “reliable” services to New Castle residents.

The Board accepted into evidence a letter dated December 13, 2017 from David Baldini, Chair of the New Castle City Planning Commission, along with the minutes of the Planning Commission’s November 20, 2017 hearing on the applicant’s telecommunications facilities proposal. The Planning Commission voted to recommend to the Board that the application be approved as submitted, with the condition that the architectural panels be aligned with the architectural components of the building facade in a symmetrical fashion and that they not exceed 12 ft. in height.

The floor was then opened to public. Carol Hickman testified in opposition to the application. She felt that the rooftop facilities, even though hidden by fiberglass panels designed to meld in with the building’s siding, would be an eyesore. She was also “skeptical” of potential health risks posed by radio emissions but offered no scientific data or studies identifying any particular health risk. Ms. Hickman also testified that she is not aware of neighbors having problems with dropped calls.

Another resident, Kathy Dunn, testified that she preferred seeing a new cell tower erected rather than the rooftop antennas proposed, and suggested other locations in the City for such tower facilities.

Thomas Firtelli, a non-resident who owns property in New Castle, asked the Board to postpone a vote until he had a chance to review the Planning Commission’s minutes from the November 20, 2017 hearing. He did not believe that radio waves transmitted by a cell tower one mile away would not effectively service the cell phone needs of residents in the southern portion of the City. He also expressed general concern over health risks and questioned why §230-25.0 of the Cod prohibits telecommunications facilities of this sort in the Historic zoning districts.

On motion of Mr. Losco, seconded by Mr. Athey, the Board votes to grant the special exception subject to the following conditions: 1. That no telecommunications facilities or screening panel be more than eleven (11) feet higher than the surface of the roof of the building

at 419 W. 9th Street; and 2. That the applicant promptly remove all of the telecommunication facilities, screening panels and related equipment in the event the technology they support becomes obsolete. Otherwise, the Board finds that the grant of the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest. Mayor Gambacorta voted against the grant of a special exception citing the testimony of the residents and property owners concerning the negative visual impact of the facilities and the possible health risks.

Vote: 2-1 (Grant: Athey and Losco; Deny: Gambacorta)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Jimmy Gambacorta, Chairperson

NOTE: This decision is neither a building permit nor a Certificate of Occupancy. Appropriate permits must be obtained from the applicable governmental agencies prior to construction or establishment of any use on the property. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the Office of the Board of Adjustment.