

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2021 – 04
:
Cellco Partnership d/b/a :
Verizon Wireless :
:
: PREMISES LOCATION:
: 1215 Fishburn Road
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Cellco Partnership d/b/a Verizon Wireless with regard to the property located at 1215 Fishburn Road, Derry Township, which is owned and occupied by Fishburn United Methodist Church (the “Church”). A hearing in this matter was held on June 16, 2021, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, the applicant’s representatives, Eric Brinser, a landscape architect with Rettew, and Matt Burtner, a site acquisition consultant with Network Building and Consulting, appeared with the applicant’s attorney, James Strong, Esquire, and all were sworn, and testified at the hearing. No other members of the public testified. All of the applicant’s exhibits were admitted into the record.

The application indicates that the subject property is located in the Hershey Mixed Use zoning district. The property is improved with a church as well as a cemetery and incidental and accessory uses. The applicant and the Church have entered into a long term lease to allow the applicant to use a portion of the church property in order to mount wireless communication antennas. The application seeks a variance from the front yard setback for an accessory structure

as well as a variance to extend from one year to two years the time limitation set forth in the Ordinance to secure a zoning permit, building permit, or certificate of use and occupancy.

The applicant previously obtained relief from the Zoning Hearing Board in Case No. 2016 – 35 for similar relief, which relief was granted and then extended for an additional one year in Case No. 2018 – 15.

The subject property is approximately 6 acres and fronts both Fishburn Road and Robin Road. The applicant proposes to install and operate building-mounted communications antennas with ground-mounted ancillary communications located adjacent to the existing building in order to add additional capacity to the network to provide better services to subscribers. Specifically, the applicant proposes to install six communications antennas that would be mounted to the building located inside a radio-frequency friendly cupola that will be installed at the top of the existing steeple. The cupola will enclose and conceal the antennas. The cupola will be constructed using materials and colors matching those of the existing steeple and building. The existing steeple is 52 feet high. With the proposed cupola and existing steeple, the overall height of the structure will be 66.5 inches.

In addition, communications equipment cabinets will be installed on a concrete slab, measuring 9.5 feet by 11.5 feet, located next to the existing building. This equipment will be 25.3 feet from the right-of-way of Fishburn Road but will be approximately 85.8 feet from Robin Road. The equipment will be enclosed by an eight feet tall white, solid vinyl fence with gates. None of the equipment will be higher than the fence. Evergreen screen plantings will be

installed around the exterior of the fence. The cables connecting the ground-mounted equipment to the antennas will be covered using a color that matches the existing building.

The existing building and sign are closer to Fishburn Road than the proposed equipment. The applicant and Church selected an underutilized portion of the property to install the equipment so as to minimize the impact on the Church, its operations, and surrounding neighbors. While the applicant considered a location on the northwest side of the building, that location was too close to the cemetery and the fenced area would not have been able to screen the cables go up the building to the antennas. The applicant no longer proposes to install a raised platform as had been proposed in its previous applications, but will instead use a concrete pad. Nonetheless, the location of the fence has not changed.

The applicant requested a two year timeframe within which to obtain any necessary permits because this was an expensive site. According to the applicant, the extra time would be helpful to secure funding and required permits.

The lease between the applicant and the Church grants the applicant one parking space. A technician will visit the property in a SVU or light duty truck one or two times per month to inspect and maintain the antennas and equipment. The technician will use the existing access driveway and sidewalk off Fishburn Road.

The Ordinance requires a front yard setback of 50 feet for accessory uses. *See* Ordinance, §225-315, Table 29 and §225-420.c.6.b.i. In addition, the Ordinance limits the time within which to secure a zoning permit, building permit, or certificate of use and occupancy to one year. *See* Ordinance, §225-1007.9.C. The criteria for issuing zoning variances are set forth

in §225-1007.9.A of the Derry Township Zoning Ordinance. The Zoning Board may grant a variance provided that all of the following findings are made where relevant:

1. There are unique physical circumstances or conditions of the lot in question, and due to these conditions, an unnecessary hardship results to the property owner;
2. That because of the physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance, and that the authorization of the variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the applicant;
4. The variance will not alter the essential character of the neighborhood or otherwise impair the appropriate use or development of adjacent property or be detrimental to the public welfare; and
5. That the variance if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

In this matter, the Board finds that the property is unique because of its two front yards and because it allows the applicant to put additional cellular communication antennas into use without constructing a large, stand-alone tower in this vicinity. There is no evidence on the record that the applicant created the hardship as it is not the owner of the property. The Board finds that the proposed building-mounted communications antenna facility, including ground-mounted communications ancillary equipment will not alter the essential character of the neighborhood or impair the appropriate use or development of adjacent properties. Furthermore,

the Board finds that such relief granted will not have a detrimental impact on any other property in the area or the public welfare. As such, the Board finds that the relief granted would not negatively impact surrounding properties. First, the antennas will not be visible. The cupola will be built with materials and contain colors that will match the existing colors and materials of the church. Furthermore, the ground based equipment will not be visible as it will be enclosed by a privacy fence that will be surrounded with vegetative screening. Finally, the Board finds that this relief represents the minimum variance necessary to afford relief and represents the least modification possible of the Ordinance.

Nonetheless, the Board finds that the applicant is not entitled to a variance of two years to secure a zoning permit, building permit, or certificate of use and occupancy, but instead, the applicant will have one year as provided in the Ordinance. The Board finds that the applicant has not established a hardship to justify an extension. In addition, the two year extension request is not the minimum relief necessary to afford relief.

In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, and the Ordinance. *See* Ordinance, §225-1007.9.B. Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 21st day of July, 2021:

1. The applicant's request for a variance from §225-315, Table 29 and §225-420.c.6.b.i regarding the front yard setback for an accessory use is GRANTED. The applicant may encroach to within 24.7 feet of the front property line on Fishburn Road for the proposed ground based equipment.

THE FOLLOWING BOARD MEMBERS VOTE TO GRANT THE FOREGOING RELIEF:

F. Dean Morgan and Michael Angello

THE FOLLOWING BOARD MEMBERS VOTE TO DENY THE FOREGOING RELIEF:

Sandra Ballard

As a result of a vote of two members in favor of the requested relief and one member against the requested relief, the foregoing requested relief is **GRANTED**.

2. The applicant's request for a variance from §225-1007.9.C regarding the time to a secure a zoning permit, building permit, or certificate of use and occupancy is **DENIED**.¹

3. The applicant shall submit to the Township a plan, sealed by an appropriate professional, demonstrating that the existing steeple is structurally sufficient to carry a load of the proposed equipment as well as the cupola, ice, and snow loads.

4. With regard to the ground mounted equipment, the applicant shall construct the

¹ The foregoing relief is denied by a 3 – 0 vote.

equipment so that no portion of the equipment within the fenced area extends beyond the top of the privacy fence.

5. Prior to commencing any construction relative to this project, the applicant shall submit a copy of the fully executed lease for the subject property to the Township.

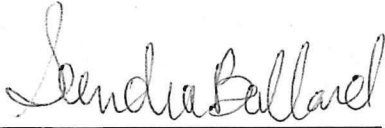
6. If the lease between the Church and applicant is at any point terminated, or if the site is abandoned for any reason by the applicant or its successors or assigns, then, within thirty (30) days of such date, the applicant shall remove all equipment associated with this application, including, without limitation, the antennas and equipment as well as all fencing surrounding the ground based equipment.

7. The applicant shall construct the improvements in strict compliance with the plans and specifications submitted to the Board during the hearing of this matter, provided, however, that if the improvements that are the subject of this hearing, as finally constructed, require less relief than granted by the Board herein, no additional relief from this Board shall be required.

8. Except as extended by applicable law, the relief granted herein shall be valid for one (1) year from the date hereof. In the event the applicant has not, within the time period provided herein, commenced operations, applied for a building permit relative to the improvements where permits are necessary, or constructed the improvements not requiring permits, the relief granted herein shall be deemed to have expired, and the applicant shall be required to comply with the then existing terms of the Zoning Ordinance.

9. Any violation of any condition imposed herein shall be a violation of the

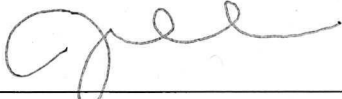
Township Zoning Ordinance and shall be enforced as provided in the Ordinance.



Sandra Ballard



F. Dean Morgan



Michael Angello