

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2022 – 06
:
Commonwealth of Pennsylvania :
:
: PREMISES LOCATION:
: 175 Hersheypark Drive
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of the Commonwealth of Pennsylvania, with regard to the Pennsylvania State Police Academy property located at 175 Hersheypark Drive, Hershey, Derry Township. A hearing in this matter was held on March 16, 2022, after proper advertising.¹ At that time, Major George Bivens with the Pennsylvania State Police; Nathaniel Broughton, an architect with SOM; Ken Stuck, the Site Development and Maintenance Manager with the Bureau of Communication and Information Systems; Vincent Uglialoro, a radio communication specialist; and Gerad Hughes appeared with applicant’s counsel, David L. Narkiewicz, Assistant Chief Counsel with the Department of General Services, were sworn, and testified at the hearing.

The application indicates that the subject property is located in the Planned Campus North and General Sign Overlay zoning districts. The property is improved with the Pennsylvania State Police Academy and Museum, and the applicant proposes to continue that use. The application seeks a special exception to construct a communication tower greater than 50 feet in height.

¹ Contemporaneously with this application, the applicant filed an application, filed to No. 2022-05, requesting a variance for three signs on the property. With the agreement of the applicant, the hearings on both applications were consolidated with the agreement of the applicant.

The applicant recently acquired more land to build a new state police academy to replace the existing training academy. The property now consists of 146.2 acres. The existing academy was built in the 1950s and occupied in the 1960s. It has become expensive to maintain and is outdated. The academy provides training for the state police as well as other Commonwealth agencies. The goal of this construction is to modernize the training experience for the state police cadets and the trainees from other Commonwealth agencies. During construction, the existing academy will continue to be operational.

There will be a new 5-story main marquee building with classrooms, a 500 seat auditorium, and administrative offices as well as dormitories in the top three floors. There will be 300 dormitory rooms, each with its own private bathroom to afford privacy. Currently, there is double occupancy in the existing dormitory rooms with group showers. Two other buildings, a gymnasium and medical treatment facility, will be attached to the new building, which will have an aluminum and glass appearance. From the back, it will appear that the new building is 4 stories because it will be built into a hill. The building will be visible from the road, but the rest of the campus will not really be visible from the road.

A new stable and garage will be constructed for thirty horses and the associated equipment such as horse trailers and trucks to haul the trailers. The new stable connects to a large pasture that will be surrounded by a white fence similar to the existing fence on Hersheypark Drive. The existing communication equipment is located on a water tower, which will be demolished and an amphitheater will be constructed in its place. As part of the renovations, there will be a 25 lane, 50 yard indoor shooting range constructed. In addition, an

outdoor tactical village will be constructed for training in a variety of scenarios. According to Major Bivens, the scenario-based training is more beneficial than classroom and simulation-based training. The existing outside shooting range and museum will remain on the property. In addition, there are clothing warehouse, groundskeeping, and automotive buildings on the property. The applicant will be maintaining most of the trees on the property and planting other new maple trees. The applicant does not anticipate an increase of traffic to the campus even though the facilities are expanding because they are already doing the training. The expanded facilities will ease the current overcrowding.

Currently, the applicant has its communication equipment on an existing water tank on the property. It uses a fiber/telephone copper line for communications. As part of the renovations, the water tank is being demolished. Therefore, the applicant proposes to construct a communication tower to transport communications to another tower at the Bureau of Communication and Information Services, approximately 4.9 miles away from the property. The new tower will be located near the center of the property and will use a microwave path which is not available with the existing tower. The ground elevation from the property to the Bureau of Communication and Information Services is approximately 50 feet for obstructions and 60 feet for the trees. For clearance of a microwave path, a clearance of 120 feet is necessary. The applicant considered a monopole instead of a tower, but a radio signal needs the open lattice of a tower to be transmitted. A monopole would obstruct the radio signal transmission. This tower would fit in with the Pennsylvania State Police communications network.

The proposed tower is considered a low profile tower as it is 13 feet wide at the base whereas a tower is usually 24 feet wide at the base. The applicant proposes a 120 feet high tower with an additional 3 feet for a lightning rod. The applicant agreed that there would not be any antenna placed on the tower that exceeds 120 feet in height. The applicant confirmed there will not be any structures in the 120 feet radius fall zone. A microwave dish no greater than 6 feet would attach to the side of the new tower. The proposed tower will not violate FAA regulations. Indeed, while the FAA regulations do not require lighting of towers of 120 feet, the applicant will light the new tower. There will be a medium red intensity light at night and a medium white intensity light during the day. There will be no access to the tower from the public entrances. The tower will be inspected quarterly from the ground, and a major inspection involving climbing the tower will be done every five years, which is the industry standard.

The applicant argued that the new tower will not adversely affect the health or safety of the neighborhood because it is replacing an existing tower and will enhance public safety. The tower will use only electricity so it will not overburden the public services. In addition, it will not affect storm drainage or affect other neighboring properties because it will be located near the center of the property. The applicant submitted a copy of the Ordinance requirements for a special exception for a communication tower greater than 50 feet in height with applicant's response to each required criteria, which was admitted into the record. The applicant expressed a concern about the requirement for evergreen screen surrounding the communications ancillary equipment and fence due to security concerns. While there will be a fence around the tower and ancillary equipment, the Pennsylvania State Police discourages the use of evergreen screenings.

Bad actors can hide behind such screenings, creating a security risk to those using the new jogging trail or the tower structure itself. The fence and evergreens would not likely be visible from the street. In addition, the applicant submitted site and sign drawings and other information in support of its application, all of which were admitted into the record.

Dan Panchik, who resides at 950 Front Street, Hershey, testified at the hearing in this matter. He owns the properties at 341 – 343 Laundermilch Road. He was concerned about the lighting of the sign on Swatara Road and was satisfied that only the base of the sign would be lit. He asked if other wireless carriers would use the tower. He was advised that it was possible that other wireless carriers could use the tower, but it would be used primarily for the Pennsylvania State Police.

Daniel Hess, who resides at 1040 Swatara Road, Hershey, testified at the hearing in this matter. According to Mr. Hess, there is only one residential house closer to the Pennsylvania State Police than his. He was pleased that the old water tower would be demolished. He considered it an eyesore. While the new tower will be in eyesight of his property, he has no problem with the applicant's proposal. He said the applicant's property is looking nicer and is manicured. Mr. Hess said Keiffer Road needs some attention as there are many potholes and the berm is breaking down. He was also in agreement with the sign proposal. He was of the opinion that the Swatara Road and Police Academy Drive intersection needs some work. The sign on Hersheypark Drive needs to be bigger as there is a slight bend in the road, and drivers do not see the current sign until they are right up to it. He would like the Pennsylvania State Police to build

a bunker for explosives training but understood this was beyond the jurisdiction of the Zoning Hearing Board.

The Derry Township Zoning Ordinance permits the Zoning Hearing Board to issue a special exception to permit a communication tower greater than 50 feet in height in the Planned Campus North zoning district when the applicant can demonstrate compliance with all applicable criteria. In this case, the record reveals that the applicant has demonstrated compliance with the criteria set forth in §225-502.5, addressed below:

- A. The applicant shall demonstrate compliance with the general design requirements of §225-420, in addition to the requirements of this section. The applicant has satisfied this requirement.
- B. Height requirements. Communications towers, including attached antennas, shall be kept to the minimum height needed to function in accordance with industry standards; however, in no case shall any communications tower exceed a maximum height of 150 feet. The communication tower will be 120 feet high with a 3 feet lightning rod.
- C. Location and setback requirements.
 - 1. Communications towers shall have a minimum yard area, for all yards, that is equal to the height of the tower, including all antennas. The proposed communication tower has a sufficient minimum yard area for all yards.
 - 2. Communications towers shall be located a minimum of 500 feet from the R-1, R-2, or R-3 zoning districts, as well as a minimum of 500 feet from an

existing dwelling or a dwelling lot approved by the Township as part of a subdivision or land development plan. The proposed communication tower will be in the near center of the property so as to be more than the required distance from any residential zoning district.

3. Communications towers in excess of 50 feet in height shall not be permitted to be located in a street right-of-way. The communication tower will not be in a right-of-way.

D. Siting report. The applicant proposing construction of a new communications tower shall demonstrate that a good faith effort has been made to obtain permission to mount the communications antennas on an existing communications tower, building, or other suitable structure within the boundaries of the Township and within 1 mile of the perimeter of the Township. A report shall be submitted with the application for permit approvals, demonstrating that the following requirements have been considered:

1. The applicant shall demonstrate that the tower is necessary to fill a gap in current coverage, or that a lack of adequate capacity is likely to exist within one year of the filing of the application for a new tower, and that the only possibility of closing this gap in coverage or providing adequate capacity is to construct a new tower facility. An existing water tank with communications will be demolished and replaced by the proposed communication tower.

2. The applicant shall demonstrate that there is no existing communications tower, building, or other suitable structure available within a one-mile radius of the proposed location of the tower on which the communications antennas can be located or co-located and replacement that would adequately fill the gap in coverage or provide the necessary capacity, as the case may be. According to the applicant, sharing an existing tower/building space would compromise the security of the critical public safety communications. Any generated radio frequency interference from the shared structure could compromise the quality and security of critical public safety communications.
 3. The applicant shall demonstrate that the proposed location is the least intrusive of the properties studied; that it will not impact any sensitive environmental areas under §225-188 of this Chapter; and that it will not negatively affect public safety with regards to structure failure, falling ice, or other debris which may become detached from the facility. The proposed communication tower will not impact any sensitive environmental areas and will not negatively impact public safety as it will stand alone from any buildings.
- E. Communications towers, communications antennas, and communications ancillary equipment shall be made of materials consisting of a neutral color or a color that blends well with natural surroundings; such as, a low gloss light gray,

light blue, or light green color, unless other colors are required by the Federal Communications Commission or Federal Aviation Commission. The proposed communication tower will be constructed of hot dipped galvanized steel which is low gloss and light gray in color.

- F. Applicant shall demonstrate that sufficient area containing a durable, all-weather surface, will be provided to accommodate parking and turnaround space for all anticipated maintenance and service vehicles to the communications antenna site, without impeding access to other public areas, such as parking and vehicular or pedestrian access areas, or that would otherwise prevent a reduction to the minimum number of off-street parking spaces required for other uses on the site. The proposed communication tower will be installed on a concrete pad with an asphalt lane off the road that leads to the tower. This is separate from any parking, vehicular, or pedestrian access areas.
- G. Ground-mounted communications ancillary equipment.
 - 1. Ground-mounted communications ancillary equipment may be established as part of the communications tower. The equipment and structures shall comply with the yard area requirements of the underlying zoning district in which the equipment is to be located. Where yard areas have been established for a detached accessory use, the equipment structures shall comply with these requirements so long as the equipment is to be freestanding or attached to another accessory use structure. Where no yard areas have been established

for a detached accessory use, or if the equipment structures are attached to a principal uses structure, the yard areas shall comply with the underlying zoning district for a principal use. A communications tower is to be considered a principal use structure. The ancillary equipment has a sufficient minimum yard area for all yards.

2. A fence shall be required around all components of the communications ancillary equipment location and shall be a minimum height of eight feet. The fence shall be consistent with the provisions of this Chapter. Gates shall be locked, except during such times as the communications equipment is manned by operations or maintenance personnel. There will be a compliant fence installed.
3. An evergreen screen shall be required to surround the communications ancillary equipment and fence. The screen shall consist of a row of evergreen trees which shall be planted a maximum spacing of 8 feet, center to center. The evergreen screen shall be a minimum height of 4 feet at planting and shall be a species that is expected to grow to a minimum height of 15 feet at maturity. In addition, existing vegetation which would aid in screening at and around the site shall be preserved to the greatest extent possible. The applicant requested a waiver of this requirement because the Pennsylvania State Police discourages the use of evergreen screenings due to compromised security and safety as bad actors can use the screenings to hide, which puts

individuals on the property and the tower at risk. Further, the tower will likely not be visible to the public.

In addition, the applicant must also demonstrate compliance with criteria set forth in §225-502.B, Specific Criteria For Special Exception Uses:

1. The Township Zoning Hearing Board shall find that the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located.
2. The Township Zoning Hearing Board shall find that the use will not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other public improvements.
3. The Township Zoning Hearing Board shall find that the use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed. The Township Zoning Hearing Board shall consider, at a minimum, the impact of noise, dust, light, odor and adequacy of parking.
4. The use shall meet all other requirements of this Chapter that may apply.
5. The minimum lot area shall be one acre when the use relies on an on-lot septic system.

The Board finds that the applicant is entitled to construct the communication tower at the subject property. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with

the applicable criteria. In this case, the applicant satisfies all of the relevant requirements set forth in §225-502.5 as the Board approves the requested waiver of the vegetative screening because it likely will not be seen from the street.

Moreover, the Board finds that the relief sought will not adversely affect the health, safety, or welfare of residents of the area or be detrimental to or change the essential character of the neighborhood. Moreover, the Board finds that the communication tower will not overburden the public services. More importantly, the Board finds that the requested relief will not cause any parking problems because the property has sufficient parking. In addition, there was no evidence that any noise would be created as a result of the communication tower. Therefore, the Board specifically authorizes the communication tower at the property.

In granting a special exception, 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, §1007.10.A. Based on the Board’s findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 20th day of April, 2022:

1. The applicant’s request for a special exception from §225-502.5, regarding the communication tower is GRANTED. The applicant may construct a 120 feet high communication tower with an additional 3 feet for a lightning rod at the subject property as represented during the hearing of this matter.

2. 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.

3. 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.




Steven Seidl



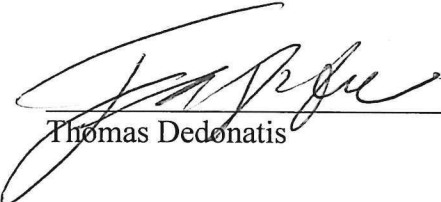
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