

BEFORE THE TOWN OF MILTON PLANNING AND ZONING COMMISSION

IN RE:)
)
SPECIAL PERMITTED USE)
APPLICATION FOR) **Tax Map Parcel No. 235-20.08-32.00**
CELLCO PARTNERSHIP D/B/A)
VERIZON WIRELESS.)

DECISION

BACKGROUND

The Town of Milton Planning and Zoning Commission (“the Commission”) held a duly noticed public hearing on January 19, 2021, concerning an application submitted by Cellco Partnership d/b/a Verizon Wireless (“Verizon”) for a special permitted use on Sussex County tax map parcel number 235-20.08-32.00 (“the Property”), also known as 210 Front Street. The application seeks approval for permission to construct a 145-foot tall (including 5-foot tall lightning rod) cellular communications monopole as a public utility or essential use pursuant to Town Code Section 220-13B(4). The Property is partially located in the 100-year floodplain, zoned R-1 and is approximately 2.3 acres.

In addition to the application, Verizon provided a proposed site plan with information on the Property, as well as the monopole and other equipment. Verizon also submitted: a letter evaluation dated September 16, 2020 from dBm Engineering, P.C.; a study titled Impact of a Telecommunications Tower upon Values of Residential Properties dated August 2005 from Appraisal-Associates, Inc.; an article titled Cell Phone Towers Do Not Affect Property Values by Richard A. Forsten, Wendie C. Stabler and Olufunke O. Fagbami from the May/June 2016 issue of the American Bar Association’s *Probate & Property Journal*; and a letter dated January 13, 2021 from Maser Consulting P.A. regarding the design of the monopole. Pennoni, the Town Engineer, also provided a letter dated December 2, 2020 regarding the special permitted use site plan review #2. John Tracey, Esquire, of Young Conaway Stargatt & Taylor, presented for Verizon and called: Andrew Petersohn, P.E., of dBm Engineering, P.C.; Matthew Graubart, P.E., of Sabre Industries; and Sue Manchel of Verizon.

The Commission received a number of written comments¹ in advance of the public hearing, as well as public comment² at the hearing, all in opposition. The record was left open for Verizon to provide the information of non-objection by the Delaware State Historic Preservation Office (“SHPO”) and information on the monopole’s design safeguards regarding a potential catastrophic event. The Commission then received a letter dated February 1, 2021 from Sabre Industries regarding the monopole’s design, as well as a letter summary of the Section 106 consultation process of the National Historic Preservation Act (“NHPA”) dated January 28, 2021 from EBI Consulting, along with an addendum dated February 12, 2021.

¹ Written comments were received from Barry Goodinson, Richard Wells, Gina D’Onofrio, Carla D’Onofrio, Deborah Snyder, Jessie Cirwithian, and Dale and Judy Wierenga.

² Public comments at the hearing were provided by Allen Sangree, Barry Goodinson, and Richard Wells.

ANALYSIS UNDER THE TOWN CODE

The Property is zoned R-1. In the R-1 District, “public utilities or essential services” are a special permitted use. Section 220-6 defines “public utilities or essential services” as follows:

The erection, construction, alteration, maintenance or operation by utility companies of underground, surface or overhead gas, electrical, steam, wastewater, stormwater or water transmission systems, including but not limited to poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, light stations, telephone lines, hydrants, pumping stations and other similar equipment, structures and accessories thereto, reasonably necessary for the furnishing of adequate service by such companies or agencies or for the public health, safety or general welfare.

Section 220-34 governs special permitted uses. Subsection A describes the purpose and intent as “to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objective of this chapter and their effect on nearby properties.”

To accomplish that purpose and intent, Subsection B authorizes the Commission to permit, permit with conditions, or not permit the requested use based on the standards and procedures in Section 220-34. When permitting a use, the Commission may impose Chapter 220’s standards and requirements, plus other conditions that the Commission considers “necessary and reasonable to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole.” The express examples of those conditions are: controlling the size, location and number of vehicle access points; increasing the street width; limiting the number, size and location of signage; limiting hours of operation; and requiring fencing, screening and landscaping or other facilities to protect adjacent or nearby property.

Subsection D of Section 220-34 then provides the standards for judging a special permitted use application, including Section 220-34D(2) for any use “located in, or directly adjacent to, a residential district” such as this application.

Subsections A through C of Section 125-20 of the Milton Town Code, as amended in 2016, expressly states:

§ 125-20. Protection of public and private systems.

A. No new public or private utility system shall be constructed within any special flood hazard area.

B. Replacement public or private utility systems shall be relocated outside of special flood hazard areas. If deemed unfeasible to relocate by Town Council, replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters from adversely affecting these systems in any fashion.

C. Any new, replacement, or redefined public or private utility system shall be reviewed and approved by the Town Council prior to installation.

APPLICATION

Based on the record, the majority of the Commission finds as follows:

1. The use complies with the standards in the R-1 district, enumerated in Section 220-13, including its dimensional requirements.
2. The Commission has considered and finds, overall, the application promotes the public health, safety, welfare, comfort and convenience of the public in general and of the residents of the immediate neighborhood in general. Approximately one-third of Milton residents, as well as visitors, use Verizon cellular phone service, and the Town is largely in a “seam” of the network. Additionally, cellular phone use has vastly increased, particularly with children learning remotely and people working remotely during the current pandemic. This use in turn shrinks the “footprint” of the existing infrastructure.
3. The Commission has considered and finds, to the maximum extent possible, the application furthers the express intent of Chapter 220,³ including: facilitating community economic development in terms of job development, retention and investment; promoting public health, safety, and general welfare; conserving the value of land throughout the Town; and prescribing the most desirable use for which the Property may be adapted, subject to special regulation. The Property’s “wet” condition and the floodplain regulations limit the range of desirable uses. Businesses are relying more and more heavily on cellular service, as are individuals, including for emergency and public safety calls.
4. As such, the application is in compliance with the general purpose and intent of Chapter 220, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to street giving access thereto. The monopole would be on the eastern portion of the Property, which currently houses the Town’s Public Works Department yard and is a relatively large parcel compared with adjacent parcels. Verizon would have direct access off Front Street, though the unmanned use would not require any significant traffic to the site. The wastewater treatment plant is across Front Street from the Property.
5. The establishment, maintenance, or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town. The evidence presented alleviated concerns regarding any health effects, even when using maximum assumptions. The study and article submitted by the applicant alleviated the concerns raised regarding a potential negative effect on property values.
6. The proposal will not result in the destruction, loss, or damage of any natural, scenic or significant historical resource. As noted above, EBI Consulting prepared an environmental review for the Property as part of its regulatory review by the Federal Communications Commission (FCC). The review focused on the National Environmental Policy Act

³ Section 220-4 provides the purpose of Chapter 220.

(NEPA) compliance and included an evaluation of whether historic properties or archaeological sites may be affected by the proposed telecommunications facilities under Section 106 of the National Historic Preservation Act (NHPA). Verizon moved from the initially proposed site within the Property due to the discovery of potentially historically significant buttons. The submissions to SHPO reflected no direct effect on historic properties in the area of potential effects and no adverse visual effect on the same, and SHPO has continued to concur.

7. The proposal will not create excessive additional requirements of public costs for public facilities and services and will not be detrimental to the economic welfare of the community. The proposed use will not create significant additional requirements, particularly in comparison to developing the Property as additional homes, with a portion in the floodplain. The better cellular service will promote the economic welfare of the community.
8. The proposal will be served adequately by essential public facilities, such as highways, streets, police and fire protection, stormwater drainage, water and sewer, schools, or that the applicant for the proposed special use shall provide that these services be adequately obtained. The use will be served adequately and may assist in facilitating police and fire protection. Verizon acknowledged its need to provide the site with such facilities.
9. The proposal essentially conforms with the Comprehensive Plan. The 2018 Comprehensive Plan is a long-term, large-scale planning document. Here, there are no specific or unambiguous terms prohibiting a cellular communications tower on the Property, and more generally, the Comprehensive Plan advises the Town to work with private utilities to make adequate utilities available to support opportunities for economic development.
10. All proposed structures, equipment or material shall be readily accessible for fire and police protection. The use will be directly available off Front Street. The conditions noted herein and the site plan approval process will further ensure accessibility.
11. The proposed use shall be of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and shall not be detrimental to the orderly development of adjacent properties, in accordance with the zoning classification of such properties. The evidence presented indicated that the monopole proposed here would be the least noticeable and will be at least partially shielded from view by existing trees, as well as that the use will not affect adjacent property development.
12. The proposal conforms to all applicable requirements of Chapter 220, Article VII's Development Guidelines. This includes Section 220-52, which provides in pertinent part:

§ 220-52. Antennas, towers and satellite dishes.

...

B. Any apparatus used for the receipt or transmittal of UHF, VHF, HF or any other radio, video or microwave signal for commercial purposes will be reviewed on a case-by-case basis and approved by the Planning and Zoning Commission on an as-needed basis where it would be a benefit to the community of the Town of Milton residents.

Verizon has shown, and it was essentially uncontroverted, that the Town needs improved cellular service from Verizon, which is used by roughly one-third of the Town residents. The evidence showed the Town is largely in a “dead zone” and this location will greatly relieve that issue, providing a benefit to the community.

13. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to existing streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, the said residential district or conflict with the normal traffic of the neighborhood. There will not be pedestrian traffic to the use, and vehicular traffic will be minimal. Given the generally “wet” condition of the area and the floodplain, the Commission has included the conditions below.
14. The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. Verizon has agreed to fencing as a condition.

CONCLUSION

For the reasons stated above and on the record at a duly noticed meeting on February 16, 2021, the Commission voted 5 to 2 to approve the special permitted use application, with the following conditions:

- The access drive shall be constructed first and in a manner that supports emergency equipment and Verizon’s machinery and equipment, including that used for the construction, and in a manner acceptable to the Town Engineer.
- The site will include fencing around the ground structure and equipment, up to and including solid fencing, and landscaping, with the type and location determined in the site plan approval process.
- The site plan process shall also include a determination of the area needed for the monopole to be set back from structures in case of catastrophic event, and the monopole shall be set back one-third of its height plus 10 feet from any property line.
- The use must meet and receive all applicable approvals under the Town’s floodplain management regulations, including Section 125-20.
- The monopole must meet all applicable requirements of the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). The monopole shall include only the lighting necessary to meet FCC and FAA requirements.
- The monopole specifications shall meet or exceed the specifications set forth in the aforementioned letter from Sabre Industries.
- No signs shall be permitted on the monopole.
- Collocation of telecommunications equipment on the antenna tower shall not be permitted without approval of modification of the special permitted use.
- Verizon shall post a bond for 125% of the estimated cost of removing the monopole and equipment, with the Town Engineer approving the cost estimate. The monopole and equipment shall be removed after a 90-day period of abandonment, commencing on the date the monopole is no longer in operation.

/s/ Richard Trask
Chairperson
Dated: 3/18/2021

/s/ George Cardwell AICP, PTP
Commissioner
Dated: 3/18/2021

/s/ Maurice McGrath
Commissioner
Dated: 3/18/2021

/s/ Larry Lieberman
Commissioner
Dated: 3/18/2021

/s/ Andrew Gogates
Commissioner
Dated: 3/18/2021

DISSENT

For the reasons stated below and on the record at a duly noticed meeting on February 16, 2021, the application should be denied. While additional cellular infrastructure may be needed, this is not a proper location. Among the goals of the Comprehensive Plan for the Broadkill River is to increase visual and physical access to the river. Potential implementation strategies include envisioning a Front Street “gateway” to the Town. This proposed use hinders that goal. Additionally, it will visually impact historic homes. The proposed use is neither in character with the current adjacent properties nor in harmony with the appropriate and orderly development of the district going forward, particularly with the wastewater treatment plant to be relocated off of the river.

/s/ Lynn Ekeland
Commissioner
Dated: 3/18/2021

/s/ Don Mazzeo
Commissioner
Dated: 3/18/2021