

**BEFORE THE ZONING HEARING BOARD OF
SCHUYLKILL COUNTY**

RE: Request for a Special Exception and Variances by Cellco Partnership d/b/a Verizon Wireless.

BEFORE: Eric Seitzinger, Scott Thomas, Mary Jo Moss, and Dave Ambrose, Members of the Schuylkill County Zoning Hearing Board (“Board”).

MINUTES OF HEARING

Name of Applicant	.	.	.	.	Cellco Partnership d/b/a Verizon Wireless 4642 Jonestown Road, Suite 200 Harrisburg, PA 17109
Location of Subject Property	.	.	.	.	26 Schaeffer Lane, Landingville, PA 17972 Schuylkill County, Pennsylvania UPI: 47-04-0012-001
Owner of Property	.	.	.	.	James A. and Angela J. Schaeffer 26 Schaeffer Lane Landingville, Pennsylvania 17972
Zoning Classification	.	.	.	.	(AG) Agricultural District
Date of Hearing	.	.	.	.	August 6, 2015
Place of Hearing	.	.	.	.	Courtroom #5 Schuylkill County Courthouse Pottsville, PA
Appearances (for Board)	.	.	.	.	Shane H. Hobbs, Esq.
Appearances (Applicant)	.	.	.	.	Richard M. Williams, Esq. 600 Third Ave. Kingston, PA 18704-5815
Applicant’s Witnesses	Shawn Paul; Jim Rodgers; Ryan Bynehal
Protestants	None

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FINDINGS OF FACT

After a hearing conducted on August 6, 2015 with all interested parties and in consideration of the evidence presented, the Board finds as follows:

1. Cellco Partnership d/b/a Verizon Wireless (“Applicant”) initiated this hearing by applying for a Special Exception and Variances with the Zoning Office of Schuylkill County.
2. Applicant proposes a Commercial Communication Tower Facility (“Tower”) consisting of a 185’ self-support tower (factoring a 5’ lightning rod) as well as an 11.5 ft. x 16 ft. prefabricated equipment shelter to be located within a 50’ x 50’ lease area (“lease area”) on the subject property (“Property”), situated at 26 Schaeffer Road, Landingville, Schuylkill County, Pennsylvania, UPI: 47-04-0012-001.
3. The Property is owned by James A. and Angela J. Schaeffer, husband and wife.
4. The Property is located in a (A) Agricultural District District under the Schuylkill County Zoning Ordinance (“Ordinance”).
5. The Applicant seeks the following relief under the Ordinance:
 - a. Special Exception in accordance with § 306.C.A.2.c.
 - b. Special Exception in accordance with & § 402.A.16.a.5.
 - c. Dimensional Variance pursuant to Article 4, § 16.a.1;
 - d. Dimensional Variance pursuant to Article 4, § 16.a.2; and
 - e. Variance pursuant to § 803.A and § 804.
6. Public notice of the hearing was given by advertisement and published in the Pottsville Republican Newspaper on July 20, 2015 and July 27, 2015.
7. Notice of the hearing was given by mail to the interested parties, sent on July 20, 2015.
8. Notice was also posted on the affected tract of land (“Property”) on July 20, 2015. Copies of the notice are being made part of the record, together with the original copy of the Application.
9. Applicant’s attorney, Richard M. Williams, Esquire (“Williams”) provided introductory testimony as it applies to the proposed plan and design of the Tower and the Property.

10. Williams offered into evidence a binder (numbered 1 – 11) containing documents and information in support of the Applicant's requests. Said binder was properly authenticated and accepted by the Board as evidence and made part of Applicant's record.
11. Jim Rodgers ("Rodgers") a site consultant, testified on behalf of Applicant and offered evidence in relation to the necessity for the Tower, its location, and its lack of impact upon the District.
12. Rodgers further testified that the parcel chosen - the Property Owner's parcel - for the Tower is the most feasible option for the Applicant in accordance with the Pennsylvania Municipalities Planning Code ("MPC") and the Ordinance.
13. Shawn Paul ("Paul"), a Radio Frequency Expert, testified on Applicant's behalf, proposing the improved broadband signal strength for the District and surrounding areas with the construction of the Tower.
14. Ryan Bynehal, a Civil Engineer working on behalf of the Applicant, testified that the proposed site and Tower would be or is in compliance with any and all Federal Aviation Administration regulations, that Applicant is licensed by the Federal Communications Commission, and that the Property at issue is well positioned for Verizon Wireless to fulfill its objective of providing continuous, reliable service to subscribers in the Landingville Borough who currently experience gaps in coverage.
15. The Owner of the Property, Angela J. Schaeffer (co-owner with her husband, James A. Schaeffer), testified that she desired the proposed lease area for the Tower to be located in the north-western corner of her Property/parcel.
16. Applicant's witnesses offered into evidence several documents and exhibits illustrating the radio frequency broadband area as well as the site proposal and other supporting documents, all of which are accepted and made part of the record.
17. The Board finds Applicant's witnesses as credible and, if applicable, adequately qualified in their respected fields.
18. The witnesses and exhibits all suggest that the signals produced by the Tower will not cause any type of health concern or hazard to the residents of the community.
19. The Applicant agreed on record that, if the proposed Tower is no longer in active use, it shall be removed within six months after the discontinuance of use.
20. There were no objections or public comments made from any individuals in attendance.

CONCLUSIONS OF LAW

1. The Board is empowered with exclusive jurisdiction to hear and render decisions in Special Exception requests filed with the County. § 111.D.4 & § 116.
2. A Commercial Communications Tower is a permitted by right use within an Agricultural district under the Ordinance. § 306.C.2.A.c.
3. A Commercial Communications Tower as a principle use must comply with additional requirements set forth in the Ordinance. § 402.A.16.
4. The Board finds that the Applicant has satisfied its burden to justify the award of the two (2) Special Exception requests consistent with its application.
5. The Board finds that the Applicant has satisfied its burden to justify the variance requests under Article 4, § 16.a.2 & § 16.a.5, and Sections 803.A and 804 of the Ordinance.
6. The Board denies Applicant's request for variance-relief under Article 4, § 16a.1 of the Ordinance.
7. In regards to the proposed lease area and pursuant to Article 4, § 16a.1., the Board finds that Applicant failed to demonstrate that the variance sought is the minimum variance that will afford relief, and that without a variance Applicant would suffer an unnecessary hardship. Township of Harrison v. Smith, 161 Pa. Cmwlth. 166, 170; 636 A.2d 288, 290 (1993).

DECISION

AND NOW, this 3rd day of September, 2015, after considering the application, exhibits, and relevant testimony of Cellco Partnership d/b/a Verizon Wireless, the Schuylkill County Zoning Hearing Board ("Board") hereby **GRANTS** Applicant's Special Exception requests; **GRANTS** Applicant's requests under Article 4, § 16.a.2 & § 16.a.5, and Sections 803.A and 804 of the Ordinance and; **DENIES** Applicant's relief sought under Article 4, § 16.a.1 of the Ordinance.

The Board Directs the Zoning Officer to approve a permit that is consistent with this this decision. The Board imposes the condition on the Applicant that the Tower be constructed in such a way that should it fall over, the Tower be contained within the Property and not cross over any Property lines. Article 4, § 16.a.1.



SCOTT THOMAS, Vice Chairman

See attachment

ERIC SEITZINGER, Member

See attachment

MARY JO MOSS, Member



DAVE AMBROSE, Member

DECISION

AND NOW, this 3rd day of September, 2015, after considering the application, exhibits, and relevant testimony of Celco Partnership d/b/a Verizon Wireless, the Schuylkill County Zoning Hearing Board ("Board") hereby **GRANTS** Applicant's Special Exception requests; **GRANTS** Applicant's requests under Article 4, § 16.a.2 & § 16.a.5, and Sections 803.A and 804 of the Ordinance and; **DENIES** Applicant's relief sought under Article 4, § 16.a.1 of the Ordinance.

The Board Directs the Zoning Officer to approve a permit that is consistent with this this decision. The Board imposes the condition on the Applicant that the Tower be constructed in such a way that should it fall over, the Tower be contained within the Property and not cross over any Property lines. Article 4, § 16.a.1.

SCOTT THOMAS, Vice Chairman

<i>Eric Seitzinger</i>	dotloop verified 09/04/15 3:13PM EDT PXOD-7NOK-PJJS-GZUC
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ERIC SEITZINGER, Member

MARY JO MOSS, Member

DAVE AMBROSE, Member

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The Board Directs the Zoning Officer to approve a permit that is consistent with this this decision. The Board imposes the condition on the Applicant that the Tower be constructed in such a way that should it fall over, the Tower be contained within the Property and not cross over any Property lines. Article 4, § 16.a.1

SCOTT THOMAS, Vice Chairman

ERIC SEITZINGER, Member



MARY JO MOSS, Member

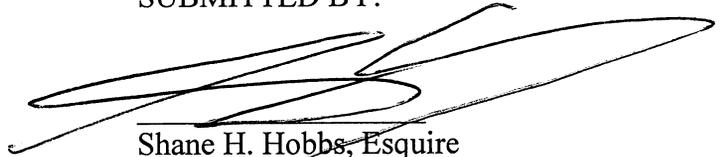
DAVE AMBROSE, Member

AFFIDAVIT

I, Shane H. Hobbs, Esquire, Solicitor to the Schuylkill County Zoning Hearing Board, being duly sworn according to law does hereby attest and say, that Board Members Eric Seitzinger and Mary Jo Moss read and understood the attached Decision. That, under the time constraints in filing this Decision, these Members provided signatures on separate yet identical documents which are attached hereto.

Date: 9-4-15

SUBMITTED BY:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Shane H. Hobbs, Esquire
Solicitor