

RE: AT&T MOBILITY, : ZONING HEARING BOARD OF
Applicant : THE BOROUGH OF CARLISLE
: :
: CASE NO. 19-08
: :
Request for Variances : Date of Decision: July 16, 2019

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

The Applicant, New Singular Wireless PCS, LLC, d/b/a AT&T Mobility, has applied for variances for two (2) locations within the Borough of Carlisle (the “Application”)¹. The first location is 47 Kerrs Avenue, located in the Borough’s R-4 zoning district (“Node 1”). The second location is 630 North East Street located in the Borough’s R-5 zoning district (“Node 2”). Node 1 and Node 2 may collectively be referred to as the “Antennas.” Both Antennas will utilize existing utility pole locations in the public right-of-way. Both utility pole locations are owned by the United Telephone Company of Pennsylvania. The Application was submitted on June 12, 2019.

The specific variance requested for both Antenna locations is from Section 255-199(A)(50)(c)(2) of the Borough of Carlisle Zoning Ordinance (the “Ordinance”). This section does not allow non-tower wireless communication facilities (“WCF”). A non-tower WCF is defined in the Ordinance as a wireless communication facility, including but not limited to antennae and related equipment. Non-tower WCF shall not include support structures for antennae and related equipment. Ordinance Section 255-199(A)(50). Ordinance Section 255-199(A)(50)(c)(2) does not allow for non-tower WCFs in either the R-4 or the R-5 zoning districts. The Applicant includes a request for a variance from Section 255-38 for the Kerrs Avenue location

¹ Case No. 19-08.

(in the R-4 zoning district) and a variance from Section 255-44 for the North East Street location (in the R-5 zoning district).

After proper advertisement and notice, a public hearing was held on July 3, 2019, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Stephanie E. Chertok, Vincent Champion, Christopher Fowler, and Alternate Board Member Joel Hicks were present. Solicitor Kurt E. Williams was present on behalf of the Board. Attorney Christopher H. Schubert was present on behalf of the Applicant. The hearing was stenographically recorded.

Mike Skelly, Planning, Zoning & Codes Manager for the Borough presented the case and described how cellular technology has changed in recent years along with more and more demand for services from residential areas, as well as the traditional demands in commercial areas.

Shaun Michael Paul was accepted by the Board as an expert in radio frequency engineering. Mr. Paul testified on behalf of the Applicant. Also testifying on behalf of the Applicant was Ron Woleslagie and Dale Kellman. Mr. Woleslagie is a site acquisition consultant and Mr. Kellman is a project consultant for this project. Mr. Paul testified specifically that the variances were necessary to place the Antennas in very specific areas of the Borough to accommodate demand accounting for the highest demand day from customers in that area. The "macro sites" (large cellular antenna facilities) currently servicing the Borough of Carlisle will soon no longer be able to handle the demand from customers in certain areas of the Borough. The siting of the Antennas is very specific. Small cells antennas generally cover only eight hundred to one thousand feet (800' – 1,000') in radius. As described by the Applicant's engineer, the downtown Carlisle macro site is trending to exhaustion. The Applicant desires to offload certain signal areas to the two small cell Antennas that have been applied for. The sites are chosen very carefully to fill the capacity gaps. The small

cell Antennas will be placed on top of utility poles where there is an existing pole. The Applicant proposes to replace existing poles with poles that will be thirty-five feet (35') above the ground plus two (2) feet for the equipment installed on top, for a total of thirty-seven feet (37') in height. Currently there are no other small cells located in the Borough. The exact location of the small cells is dictated by the demand of the public's use of the wireless communication facilities. The Applicant provided testimony that there are no health risks associated with the small cell units.

The Applicant presented Exhibits A-1 through A-17 which were reviewed and accepted by the Board. The Applicant testified that the small cells will be operated in accordance with Federal Communication Commission ("FCC") requirements. The small cell Antennas will not be co-located with a generator but will be powered from the traditional power grid on the utility poles themselves. One additional equipment box would be mounted on each utility pole, located ten feet (10') above the ground.

The Applicant's attorney made the Board aware of FCC order No. 18-133², released on September 27, 2018, effective January 2019, which, according to the Applicant, preempts local control of the placement of small cell communication facilities. The Applicant stated that in order to maintain good relations with local municipalities, the Applicant was filing the applicable variance requests to place the small cell Antennas in the Borough of Carlisle in compliance with local ordinances.

The Applicant testified that 911 services, emergency medical services and other government entities rely on cellular and data transmissions to serve the public and that without the installation of the small cell Antennas, these services could be hindered in the future. Regarding the location of the new small cell Antennas, the Applicant testified that there was very low

² <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

flexibility to move the proposed small cell Antennas to another location to achieve the same desired results in terms of relief of the data from the macro sites. By the forecasted date of January 2022, the existing macro sites will be out of bandwidth.

Mr. Skelly testified that in 2015, the Carlisle Borough Council amended the Ordinance regarding wireless communication facilities.³ However, since that time there have been many technological changes which now bring about the small cell technologies and requests like the current Application to place small cells or non-tower WCFs on utility poles and similar structures within the Borough.

The Applicant presented testimony that the style of the small cell Antennas will be a “can-tenna” pole top mount type, approximately two feet (2’) high. There will be no ground equipment and no generator. Each can-tenna will hook to the electric grid via the pole. The existing poles in the two locations will be replaced with more robust new utility poles. The Applicant has an access agreement to place such antennas on the utility poles through an agreement with United Telephone a/k/a CenturyLink. AT&T pays the full cost to replace the pole. The Antennas will connect to the data infrastructure via fiber that comes from the poles as well. The Antennas will be monitored 24/7, require very little maintenance, and are only visited by a maintenance crew if there is a problem. Photo simulations for both sites were provided by the Applicant in Exhibits A-14 and A-15.

Chairman Chertok asked if there were any audience questions or comments.

Borough Councilmember Dawn Flower-Webb presented the Board with Exhibit Borough-1, a July 3, 2019 letter addressed to the Zoning Hearing Board from the Borough of Carlisle signed by Mayor Timothy A. Scott. The exhibit was accepted by the Board. The letter states that the

³ Ordinance No. 2220 (April 9, 2015).

Council takes no position as to whether the Application should be granted or denied by the Zoning Hearing Board, but in the event the Zoning Hearing Board grants the requested variances, Council requests several conditions of approval. Those conditions are:

1. The replacement wooden utility pole and proposed cylindrical antenna proposed near the 47 Kerrs Avenue location have a total combined height of no more than thirty-seven feet (37').
2. The replacement wooden utility pole and proposed cylindrical antenna proposed near the 630 North East Street location have a total combined height of no more than thirty-seven feet (37').
3. The box to be installed housing new equipment on each pole, identified as an "equipment shroud" in the Application, have dimensions no larger than forty inches (40") in height, fifteen and three-quarter inches (15 ¾") in width and twelve inches (12") in depth.
4. Each box to be installed housing new equipment on each pole must be mounted no lower than ten feet (10') from the ground or sidewalk grade/level.
5. The areas where installation takes place must be returned to the same condition that existed prior to disturbance. This includes, but is not limited to, the replacement of sidewalk and curbing using the same materials, such as Belgian block as appropriate, for example, and the planting/replacement of like plants of similar size in the landscaped area near the 630 North East Street pole location.
6. AT&T Mobility obtain all construction, street cut and other appropriate permits for the work it will be performing as required by Borough Ordinances.

In addition to the six above conditions, the Borough Council asked for a standard approval condition that the Applicant comply with all applicable state, federal, local and Borough laws, ordinances and regulations. The Applicant's attorney accepted all of these conditions of approval as reasonable.

The Applicant concluded its presentation by describing how the right-of-way is the "property" under the public trust and is unique. The customer demand for data services is unique. The installation of the poles as set forth in the Application is the least relief required to enhance the public safety and welfare and EMS services. The Antennas will have no adverse impact on the public. The hardship is not self-created since radio waves follow the laws of physics and there has been an exponential increase in demand by customers for the data services.

There was a brief discussion amongst the Board members with input from Councilmember Flower-Webb that a long-term Council solution is needed, rather than piecemeal ongoing variance applications for non-tower WCFs. Mr. Skelly advised the Board that he was not opposed to the granting of the Application.

II. Order and Decision of the Board

Based upon the Application as submitted and the testimony provided, the Board makes the above findings of fact and issues the following Order and Decision as set forth below.

It is hereby ordered and decided as follows:


- A. The Board finds that the Applicant has met its burden of establishing those criteria necessary for the grant of a variance to Zoning Ordinance Section 255-199(A)(50)(c)(2) of the Borough of Carlisle Zoning Ordinance to allow for the Antennas – the proposed small cell telecommunication facility a/k/a non-tower wireless

communication facility. The grant of variance applies to locations at 47 Kerrs Avenue and 630 North East Street in the Borough of Carlisle.

- B. To the extent necessary, variances are also granted from Section 255-38 relative to 47 Kerrs Avenue and Section 255-44 relative to 630 North East Street.
- C. The grant of all variances is subject to the conditions of approval as agreed to by the Applicant, and as set forth in Borough Exhibit 1.
- D. The representations made by the Applicant in the Application, the supporting documentation, and the testimony at the public hearing shall be considered conditions of these variances granted. Changes from said representations, documentation and testimony, other than minor technical changes, or failure to comply with the conditions of the variance approvals, shall be considered a violation of the variances, and may result in revocation of the variance approvals if not brought into full compliance within sixty (60) days of written notice of non-compliance from the Borough
- E. The Board hereby decides by unanimous vote that the variances to Zoning Ordinance Sections 255-199(A)(50)(c)(2) are hereby granted.

In addition to the above, the Applicant shall comply with all applicable federal, state, local and Borough laws, ordinances and regulations.

Borough of Carlisle Zoning Hearing Board

By: 
Stephanie E. Chertok, Chair
Date: 7/16/19

Any person aggrieved by this decision of the Zoning Hearing Board may appeal to the Court of Common Pleas of Cumberland County. The appeal must be taken within thirty (30) days of the date of this Decision.