

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit and Variance Application submitted by Carmen Charalambous, agent for T-Mobile Northeast, applicant, and on behalf of Dukas Properties LLC, owner, for approval of a conditional use permit and associated height variance from Section 18-75.2 of the Vienna Town Code, for the establishment of a new telecommunications exchange facility (T-Mobile 7WAC276F DWG) atop the existing DWG Building located at 527 Maple Avenue East, and in the C-1, Local Commercial zone.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on **March 17, 2010**, for a conditional use permit in accordance with Sections 18-209:216 of the Code of the Town of Vienna, Virginia. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. The 2009 amendment to the Town's Comprehensive Plan was approved by the Mayor and Town Council at the meeting of October 26, 2009, after the formulation of a favorable recommendation by the Planning Commission at its meeting of September 23, 2009. This amendment included a small text change on page 74 of the Plan and a revision to its Map FCF-1 to extend the "Encouraged Locations for Telecommunications Facilities" into the C-1 and C-1A zoned areas within the 400 and 500 blocks of Maple Avenue East. During the various discussion sessions, it was noted that at least two existing buildings within this extended area would avail themselves to use by the telecommunications providers; the current applicant has closely watched these proceedings and has now selected the DWG building for its newly-proposed installation.
- B. The subject property at 527 Maple Avenue East, is comprised of Lots 100 and 104 in the Murmuring Pines subdivision. The corner lot (#100) encloses 26,342 square feet and the interior lot (that fronts East Street SE) encloses 22,000 square feet in area. The combined area of each parcel—both of which are zoned C-1, Local Commercial—is 48,342 square feet or 1.11 acres. Topographically, the combined parcels range in elevation from about 372 to 383 feet in height, with a rise from Maple Avenue East, to the rear of the subject tract.
- C. The existing two-and-one-half story building (now known as the DWG Building) is situated entirely on the corner lot and is approximately 33 feet in height. The parcel to the rear provides "parking support" for the 22,320-square-foot subject building and is separated from the adjoining RS-16 zoned parcel at 117 East Street SE, by a masonry screen wall.
- D. T-Mobile Northeast continues to expand its existing network through the current proposal to install 9 panel antennas, appurtenant equipment and a visual screen on the rear portion of the existing DWG Building. The proposed visual screen will be a "simulated brick" screen wall measuring 11 feet by 24 feet (264 feet in area) in area and will be situated some 20 feet from the farthest rear wall projection of the building and between 23 and 24 feet from either side. The proposed enclosure will extend to a height that is 48 feet from the ground level at the front of the building and will provide space necessary to place three groups of three (3) panel antennas measuring about 5 feet in height, 1 foot in width and about 6 inches in depth. Several equipment cabinets will be placed atop a steel platform placed inside the proposed corrugated metal screen.
- E. In conformance with the Town's regulations, all wireless services providers must obtain a conditional use permit (except if situated in the CM, Limited Industrial zone) for the establishment of a "telecommunications exchange" in accordance with the language of §§ 18-13, 18-31 and 18-209:216 of the Town Code.
- F. Because the proposed roof-top enclosure will be about 15 feet in height, and it does not fall within the criteria for "penthouses and other structures" as set out in § 18-164 of the Town Code, the grant of a height variance will be required. In accord with those height provisions as found at § 18-75.2, all that portion of the T-Mobile enclosure that exceeds 35 feet above ground level will be subjected to the "clearly demonstrable hardship" criteria for variances as defined in §§ 18-233A and B of the Town Code.

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- G. Chapter 4 of the Vienna Town Code requires the approval of all exterior improvements by the Board of Architectural Review (BAR) prior to the issuance of any building permits associated with this proposal.
- H. The Planning Commission considered this application at its regular meeting of February 24, 2010. After careful consideration, the Planning Commission recommended approval of the request by a vote of 7-1 (Commissioner Sienicki voting nay).

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

1. Granting of the requested height variance from § 18-75.1 of the Vienna Town Code, as approved by majority of the Board of Zoning Appeals, will not be detrimental to the health, safety or welfare of the neighborhood, nor to the persons who reside therein, and is approved in accordance with the provisions of § 18-233 of the Town Code.
2. While the Board of Zoning Appeals expressed concerns with respect to the grant of the height variance and any potential future precedents, it was noted that the enclosure height was tied to the use of the panel antennas and to this particular type of conditional use permit. One Boardmember also indicated a concern for superseding the Town's maximum building height regulations; however, it is completely necessary in this circumstance. Sworn testimony was offered by the applicant that the enclosure must be placed at this elevation to obtain the type of service required by T-Mobile and must be in place whether it would screen equipment cabinets or not.
3. Boardmembers who supported the height variance application also noted that the result of T-Mobile's discussions with the provider at the Westwood Country Club was an unsatisfactory height level that would not provide the same level of service as the subject location. Data from the applicant also indicated that the subscriber base in this area is unsatisfactory due to the unsatisfactory coverage currently provided by T-Mobile, and it is necessary for the company to improve both through its investment of a telecommunications site and equipment at the subject location.
4. A minority of the Board expressed a concern that the grant of the variance was not warranted in the current circumstance and that the degree of hardship should be the same for telecommunications providers as for other applicants seeking height variances. The issue of "going down a slippery slope" was also noted along with the applicant's business decision not to locate cabinets inside the building as opposed to the rooftop.
5. Granting of the requested conditional use permit—as determined by a majority of the Board of Zoning Appeals—will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use, will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood, and will be in accord with the Master Plan of the Town of Vienna.
6. The majority of the Board also determined that the approval of the T-Mobile conditional use permit application would be a benefit to the Town by affording increased competition among wireless telecommunications carriers.

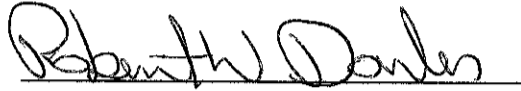
IT IS, THEREFORE, ORDERED, this 19 day of March 2010 that the application, as submitted by Carmen Charalambous, agent for T-Mobile Northeast, applicant, and on behalf of Dukas Properties LLC, owner, for approval of a conditional use permit and height variance from Section 18-75.2

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of the Vienna Town Code for the establishment of a new telecommunications exchange facility (T-Mobile 7WAC276F DWG) atop the existing DWG Building located at 527 Maple Avenue East, and in the C-1, Local Commercial zone, all in accordance with the above-referenced Code sections shall be approved as submitted.

A handwritten signature in black ink, appearing to read "Robert W. Dowler", written over a horizontal line.

Robert W. Dowler, Vice-Chairman
Board of Zoning Appeals
Town of Vienna, Virginia

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit Application to place 12 cell wireless antennas and related radio equipment at 527 Maple Ave East, in the C-1 Local Commercial zone. Application filed by Alex Beiro, Jr. of NB+C on behalf of Dukas Properties, LLC, owner.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on October 19, 2016, for a conditional use permit in accordance with Sections 18-209:216 of the Code of the Town of Vienna, Virginia. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

The subject property is comprised of Lots 100 and 104 and encloses a total of 48,342 square feet. The existing 2 ½ - 3 story building is approximately 35 feet in height at the tallest portion. The parcel to the rear provides parking support and is separated from the adjoining residential lot by a masonry screen wall.

There are nine existing T-Mobile antennas, appurtenant equipment and a visual screen on the rear portion of the building. This was approved on March 20, 2010 by the Board of Zoning Appeals.

Verizon wishes to expand its network with the installation of 12 antennas, appurtenant equipment and a visual screen right next to the existing T-Mobile telecommunication facilities. The proposed screen will match the existing screen wall of the building and the T-Mobile screen. The wall is measured 12 feet by 19 feet and will be situated 12 feet from the rear wall and 4 feet from the south side. The enclosure will be approximately 47 feet from the ground level and provide space for four groups of panel antennas.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

Improving the Town's telecommunications coverage benefits both the residents and the businesses.

The 1996 Telecommunications Act requires localities to make reasonable accommodations for telecommunications facilities.

The requested location is consistent with the Town's encouraged locations for telecommunications facilities.

IT IS, THEREFORE, ORDERED, this 31 day of October, 2016, that the application requesting a conditional use permit to place 12 cell wireless antennas and related equipment at 527 Maple Ave East, in the C-1 Local Commercial zone, application filed by Alex Beiro, Jr. of NB+C on behalf of Dukas Properties, LLC, be approved as submitted.



Robert Petersen
Board of Zoning Appeals
Town of Vienna