

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit Application submitted by Carmen Charalambous and Edward Donohue, agents for T-Mobile Northeast, LLC, applicant, and the Town of Vienna, owner, for the establishment of a telecommunications facility (T-Mobile WAC401 Vienna) atop the existing Town-owned Water Tower, located at 411-413 Tapawingo Road SW, and in the RS-10, Single-Family Detached Residential zone.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on **September 16, 2009**, 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 2008 Comprehensive Plan includes new language, and a revised Map FCF-1 that now includes the three Town-owned parcels at 8600 Wall Street (NE); 411-413 Tapawingo Road SW; and at 247 Nutley Street NW, into those areas “mapped and recommended” as acceptable for the siting of telecommunications facilities such as wireless communication antennas and supporting equipment.
- B. T-Mobile currently operates a telecommunications facility atop the White Oak Tower at 301 Maple Avenue, West. The original installation occurred after the receipt of a conditional use permit by American Personal Communications LLP on September 21, 1994. The facility was upgraded by successor T-Mobile USA with new cabinet and equipment after the receipt of an amended conditional use permit on April 21, 2004.
- C. The 0.7448 subject parcel is comprised of two RS-10 zoned lots (Lots 406 and 407, Section 4) within the Vienna Woods subdivision (comprised of single-family detached residences), and is located on the northernmost corner of the intersection of Frederick Street SW, and Tapawingo Road SW. Situated 40 feet from Frederick Street, SW, and 95 feet from Tapawingo Road SW, are the closest legs (there are a total of six) of the 119-foot-tall existing water tower. According to the most recent survey, the diameter of the circle that is enclosed by the water tower legs is approximately 42 feet. The water tower itself is now enclosed by an 8-foot-tall security fence that encloses a 93-foot by 106-foot rectangular area. As established through a preceding conditional use application, these two Vienna Woods lots were acquired on September 25, 1956 specifically for the provision of water service to Town residents.
- D. T-Mobile Northeast LLC, desires to install nine (9) panel antennas on the hand-rail that adjoins the catwalk of the existing water tower and to place appurtenant equipment cabinets within a proposed 12-foot by 20-foot lease area situated inside the security fence and near the northernmost leg of the existing water tower. The 9 new antennas—which appear to be about 6 inches wide by 6 feet in height—would join the 4 existing antennas that were recently installed by Cricket. Connecting the tower and ground installations would be a series of cables running down the aforementioned northern leg of the water tower. In addition, some 155 feet of buried conduit would connect the equipment within the lease area to the “community rack” situated near the Frederick Street SW, gated entrance that affords access into the fenced enclosure.
- E. T-Mobile is the latest provider of wireless services to seek a conditional use permit 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. These regulations require the grant of said conditional use permit by the Board of Zoning Appeals after review and recommendation by the Planning Commission. Chapter 4 of the Vienna Town Code requires the approval of all exterior improvements by the Board of Architectural Review prior to the issuance of any building permits associated with this proposal. **Because the subject property is owned by the Town, T-Mobile Northeast, LLC, will be required to finalize a lease agreement with the Mayor and Town Council.**
- F. The Planning Commission first considered this proposal at its regular meeting of August 26, 2009. Upon conclusion of the applicant’s presentation, receipt of opposition comments from nearby residents, and considerable questioning of all parties present, Commissioners decided to continue the matter to the regular meeting of September 9, 2009. Requested additional information included the following:

1. The presence of the Town Attorney was requested at this meeting to provide his legal opinion relative to the Federal Communications Act of 1996 (1996 Act or, simply, the Act) and the requirements for providing cellular telephone service within the corporate limits of the Town.
 2. The applicant was requested to provide whatever information may be available regarding trends in the telecommunications industry and what might be the projected demands for the next 10 years. This projected demand was also requested for quantification in the form of a projected number of antennas at the subject location.
 3. The applicant, and possibly Public Works staff, should address what might be the structural limitation on the number of panel antennas, etc., for the existing water tower on the subject property.
- G. The Planning Commission again considered this proposal at its meeting on September 9, 2009. The Town Attorney attended that meeting and provided both oral and written testimony with respect to the provisions of the 1996 Act. The applicant also provided additional information with respect to the state of the industry and potential future requirements and health aspects associated with radio frequency emissions and the standards set forth by the Act. The motion for approval of the application failed by a vote of 2 ayes and 7 nays, when a majority of the membership determined that the applicant's proposal did not meet the requirements as set forth in the 2008 Comprehensive Plan. The Planning Commissions actions were described in a report from the Chairman to the Board of Zoning Appeals.
- H. Detailed sworn testimony during the public hearing on September 16, 2009, was provided by the applicant's attorney, a real estate expert, an "RF engineer" and a representative from the firm "Site Safe." Testimony from all these individuals further clarified T-Mobile's need to expand service within the Town, the predicted improvement of said service and the minimal impact upon surrounding properties.
- I. The Vienna Town Attorney also provided sworn testimony during this same public hearing relative to his understanding of the 1996 Telecommunications Act, the rights and responsibilities of the Town as the land owner, and the details of the Town's lease with T-Mobile.

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 conditional use permit 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.
2. During the Board's consideration of the subject application, it was noted that the Town was first approached in 1993 for the construction of a lattice tower on the American Legion property and it was through that process that it was determined no new towers would be permitted and that all such facilities must be co-located atop existing structures. After approval of the Telecommunications Act of 1996, the Town rightly decided to include, within its Comprehensive Plan, text and a map that clearly designates those "Encouraged Locations for Telecommunications Facilities."
3. Through sworn testimony, the Board determined that: a) there is a reasonable need to provide improved service within the Town of Vienna to reduce the number of dropped calls, etc.; b) the application is in accord with the provisions of the Town's Comprehensive Plan relative to the construction of new facilities and its requirements for co-location on existing structures; c) the proposed installation and site conforms to the applicable Federal Communication

Commission’s (FCC) rules and regulations; d) the additional antennas along the catwalk of the existing water tower will create a minimal aesthetic impact; e) there is no evidence of a negative impact upon Town parties or adjoining properties; and f) the improved service will result in fewer dropped 911 emergency calls which will fulfill an important safety requirement.

- 4. The Board determined—as offered by the applicant’s representative—that it is necessary to provide an annual report with respect to the T-Mobile operations in the same manner as proffered by Cricket in their application that was approved on January 21, 2009.

IT IS, THEREFORE, ORDERED, this ____ day of _____, _____, that the application, as submitted by Carmen Charalambous and Edward Donohue, agents for T-Mobile Northeast, LLC, applicant, and the Town of Vienna, owner, for the establishment of a telecommunications facility (T-Mobile WAC401A Vienna) atop the existing Town-owned Water Tower, located at 411-413 Tapawingo Road SW, for a conditional use permit in accordance with the above-referenced Code sections shall be approved subject to the condition as set forth in paragraph 4 under the Conclusions of Law above, and with the further requirement that T-Mobile shall obtain all required certificates, licenses and permits.

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