

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(9 Greenwood Place)		
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Flax Properties, LLC	*	HEARINGS OF
Legal Owner		
City Switch, LLC	*	BALTIMORE COUNTY
Contract Purchaser		
	*	CASE NO. 2021-0085-A
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Flax Properties, LLC, legal owner and City Switch, LLC, contract purchaser (“Petitioners”) for property located 9 Greenwood Place, Pikesville (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §426.6(A)(1) to allow a wireless telecommunications tower be set back less than 200 ft. from any other owner's residential property line, and from BCZR, §426.6(A)(2) to allow the equipment/structure housing the equipment for the tower to be setback less than 50 ft. as required in BCZR, §255.2.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Appearing on behalf of the Petitioners were: Luke Neiswander, Radio Frequency Engineer for Verizon Wireless; Jay Shapiro, Real Estate Manager with Network Building & Consultants; Shea Beltran with Network Building & Consultants; Kevin Cunnie, Project Manager with WT Group; and Jason Green, PE with WT Group. Petitioners were represented by Andy Rotenstreich, Esquire, Charles Schaller, Esquire and the law firm of Baker, Donelson. Also in attendance at the request of the Petitioners was Jeffrey Perlow, Zoning Supervisor for Baltimore County. Interested citizens Laura Coyne,

Regional Manager of Apartment Services representing Brittany Apartments and neighboring resident Paul Bender, PE also participated in the hearings.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The case proceeded by way of modified proffer by Mr. Rotenstreich and the Petitioner’s witnesses. The Property is approximately 40,092 sq. ft. and is split-zoned Manufacturing, Light (ML) and Density Residential (DR-16). To the north of the Property is an active railroad track followed by townhomes located on Anandale Court (DR 5.5). To the south is the Brittany Apartment complex (DR 16). To the east are industrial/commercial uses (ML, MLR) and to the west is I-695.

Luke Neiswander testified that, as a Radio Frequency Engineer for Verizon Wireless, his job involves planning wireless network coverage by studying geographic areas and market trends to determine both coverage and capacity issues. Using Verizon’s planning tools to calculate the number of users and the amount of data traffic being used, he monitored three (3) sites: one at (1) Millford Mill; (2) Walker Avenue; and the other (3) McDonogh Rd. (Pet. Ex. 8). Mr. Neiswander provided a graphic entitled *Wireless Coverage Maps* which detailed the signal strength from existing antennas within that search area. (Pet. Ex. 2). Verizon identified that search area as ‘*Baltimore and Northwest*’. The Wireless Coverage Maps revealed that the signal strength is poor and the network coverage is approaching 100% capacity. This has resulted in slow data, dropped calls, and calls that fail to go through, including emergency calls to 911. This is a heavily populated area. Mr. Rotenstreich indicated that network will reach its capacity within the next year.

Mr. Neiswander then explored whether Verizon could collocate onto existing towers within the search area. Unfortunately, there was no tower within ½ mile. The nearest tower, owned by Baltimore City Community College (“BCCC”), was within .9 miles but would not provide relief to the network congestion. (Pet. Ex. 5). Consequently, collocation was not an option. Mr. Rotenstreich added that while Verizon has an existing antenna on the roof at 1726 Reisterstown Rd., Pikesville, it has not cured the deficiency.

Mr. Neiswander commented that the only remaining option was to search for a site to build a new tower. According to Mr. Rotenstreich, his client, City Switch, LLC obtained zoning relief to construct a tower in the railroad right-of-way just north/northeast of the Property. However, City Switch was not granted access across a private right-of-way in order to gain access to the public right-of-way. Because access to the public right of way was needed to both construct and maintain the tower, that site was no longer a candidate. (Pet. Ex. 6). Another potential site was the Old Court Metro Station. Unfortunately, discussions with Baltimore County did not materialize.

Mr. Neiswander became familiar with the Property here because it was located not only within Verizon’s search ring, but was zoned ML, and had an access road from Greenwood Place. The Property was also located on higher ground which meant that the tower could remain at 145 ft. in height along with a 10 ft. lightning rod for a total of 155 ft. He explained that the topography was important because FAA Regulations do not require a tower under 200 ft. in height to have light(s). (Pet Ex. 8). Additionally, Petitioner Flax Properties, LLC, as the legal owner, expressed a willingness to lease an area of land for the tower and equipment. Photographs simulating the proposed tower were provided. (Pet. Ex. 3).

Testifying next for the Petitioner was Jay Shapiro, Real Estate Manager with Network Building and Consulting, LLC. Mr. Shapiro testified that Verizon hired his company to handle the zoning issues associated with the Property. Mr. Shapiro testified about the need for variance relief from the required setbacks. Mr. Shapiro agreed with Mr. Rotenstreich's characterization that the Property was an elongated, triangular shaped Property located between I-695 in the west and an active railroad right-of-way in the north. He further acknowledged Mr. Rotenstreich's statement that, due to the peculiar shape and location of the Property, the Petitioner would suffer a practical difficulty and/or unreasonable hardship if the BCZR setbacks were required to be met. In this regard, Verizon would be unable to remedy the capacity and coverage issues that the Baltimore and Northwest area has without the requested relief. Mr. Shapiro agreed that there will be no increase in residential density and that the cell phone tower use is innocuous in that there will not be any light, noise, odor, traffic or dust created by its use. Petitioners urge that the construction of the tower on the Property will benefit the health, safety and general welfare of the network area in that wireless broadband speeds and coverage will improve. Petitioners add that 78% of calls to 911 originate from cell phones.

Testifying next for Petitioner was Kevin Cunnie, Project Manager with WT Group, an engineering and consulting firm. Mr. Cunnie is the principal in charge of the Telecommunications Division. WT Group was hired by City Switch to design the Property for the proposed tower and equipment. Toward that end, WT Group prepared a site plan detailing the location on the Property of both the tower and the equipment (the "Site Plan"). (Pet. Ex. 1). WT Group subsequently amended the Site Plan to add the zoning lines and relevant setback dimensions to confirm that the tower, its equipment and the access easement area would be contained entirely within the ML part of the Property, and would not be located in the DR 16 portion (the "Amended Site Plan"). (Pet.

Ex. 10A, 10B).

In explaining the Amended Site Plan, Mr. Cunnie testified that the zoning line was determined by applying the zoning maps to the survey of the Property conducted by Bateman Civil Survey, Co. dated April 21, 2020. (Pet. Ex. 10A, 10B). Verizon will be leasing from Flax Properties, an area measuring 35 ft. x 50 ft. (1,750 sq. ft.) which will be enclosed with a wooden fence (the “Lease Area”). Lease Area will contain the tower, Verizon’s equipment/any structure housing the equipment, as well as three (3) ‘future lease areas’. Mr. Cunnie explained that those smaller areas can be sub-leased to other carriers seeking collocation on the proposed tower.

In regard to the variance from the required setbacks, Mr. Cunnie opined, as reflected on the Amended Site Plan, that due to the proximity of the Brittany Apartments to the south and the townhomes across the railroad tracks to the north, as well as the homes located to the west, variance relief is needed on each of these sides from the required 200 ft. setback. The Amended Site Plan provides the actual setbacks from the center of the proposed tower to each of these other residential property lines as follows: (1) North – 141 ft., 153.5 ft., 173.3 ft. and 194.2 ft.; (2) South – 30 ft.; and (3) West - 85 ft. (Pet. Ex. 10A, 10B).

Mr. Cunnie also addressed the distance from the equipment and/or the structure housing the equipment to the adjacent property line as meeting the minimum setback requirements in BCZR, §255.2, except on the south side where the Brittany Apartments are located. On the south side, Mr. Cunnie stated that the proposed setback is 45 ft. On this issue, Mr. Perlow from OZR stated that the minimum setback requirements in BCZR, §426.6A.2 refers to the underlying setback attributable to the ML zone as prescribed in BCZR, §255.2 which requires a 50 ft. setback.

Laura Coyne, the Regional Manager for Apartment Services, 216 Shilling Circle, Suite 215, Hunt Valley, MD 21031 which operates the Brittany Apartments, asked questions in regard

to the imposition, if any, on Brittany Apartments when construction of the tower/equipment occurs and in regard to the issue of noise from the tower and/or equipment. Mr. Rotenstreich responded that construction will not occur on Brittany Apartments property. He also added that the only possible noise from the tower could come from a carrier's use of an emergency generator which, if used, would only emit noise from testing for 10 minutes, once per month.

Paul Bender, PE, 3 Deauville Court, Apt. 1A, Bldg. 3, Pikesville, MD asked questions about the network and signal capacity, plans for other carriers to collocate on the antenna, the impact of noise from a possible generator and as well the need for guy-wires to stabilize the tower. Mr. Rotenstreich addressed those questions and stated that no guy-wires were needed for this tower.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

First, the Petition here will be amended to clarify that the Property is split-zoned ML and DR 16. The Petition will also be amended to add variance relief under BCZR, §426.6.A.2 in regard to the 45 ft. setback on the south side for the equipment/structure housing the equipment for the tower from another property line, as required for ML zoned land as set forth in BCZR, §255.2. I find that the Amended Site Plan clarified issues raised by the DOP in its ZAC Comment and confirmed that the tower and equipment/structure housing the equipment as well as the access easement would be contained entirely within the ML portion of the Property and not in the DR 16 portion. (Pet. Exs. 10A, 10B).

Second, I find that the Property's shape and location make it unique from other properties in the area. Because of its peculiar shape and location, I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted because a cell phone tower could not be constructed for this coverage area, which would cause the wireless and broadband network for the Baltimore and Northwest region to reach capacity. In this densely populated area, the number of people using cell phones and other wireless devices have resulted in poor signal strength as reflected on the Wireless Coverage Maps. (Pet. Ex. 2). The Petitioners did not create this hardship; they are proposing a solution to the overstressed network. The construction of the tower will alleviate the logjam of data traffic and provide an improved wireless network infrastructure which is needed in this area for government services, health care, employment, education, community, and families. Health and safety concerns in this community are better met where 911 calls placed from cell phones do not disconnect or fail to go through to the operator. As such, I find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of light, noise, odor, traffic or dust generated by either the tower or its equipment.

THEREFORE, IT IS ORDERED, this 3rd day of **September 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from BCZR §426.6(A)(1) to allow a wireless telecommunications tower be set back less than 200 ft. from any other owner's residential property line as set forth on the Amended Site Plan (Pet. Exs. 10A, 10B) and from BCZR §426.6(A)(2) and §255.2 for a minimum setback of 45 ft. on the south side in lieu of the required 50 ft. for an ML zone, be, and they hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DOPS ZAC comment, a copy of which is attached hereto and make a part thereof.
3. The Amended Site Plan (Pet. Exs. 10A, 10B) shall be incorporated herein and made a part of this Order.
4. The Petitioner shall enclosed the Lease Area (as defined herein) with a wooden fence to match the existing wooden fence.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm