

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19415 of Verizon Wireless, pursuant to 11-X DCMR § 901.2, for a special exception under the antenna towers and monopole requirements of 11-C DCMR § 1313.1, to locate a temporary Cell on Wheels (“COW”) on Square 643E, Lot 800.

HEARING DATE: February 8, 2017; March 8, 2017

DECISION DATE: March 8, 2017

DECISION AND ORDER

This application was submitted on November 9, 2016 by Verizon Wireless (“Applicant”). Following public hearings on February 8, 2017, and March 8, 2017, the Board voted 4-0-1 (four votes in favor, one seat vacant, not voting) on March 8, 2017, to grant the application.

Preliminary Matters

Application. The application was initially filed pursuant to 11-X DCMR § 901.2 for a special exception under the antenna and monopole requirements of 11-C DCMR §1313.1. The proposed relief was requested to permit the location of a temporary Cell on Wheels (“COW”). (Exhibits 1, 10.) The zoning relief requested in this application was self-certified pursuant to 11-Y DCMR § 300.6. (Exhibit 7.) The application included photographs of the property and plans depicting the proposed COW. (Exhibits 14, 17.)

Notice of Application and Notice of Public Hearing. By memoranda dated November 29, 2016, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); Advisory Neighborhood Commission (“ANC”) 6D, the ANC for the area within which the subject property is located; the single-member district representative for ANC 6D02; the Councilmember for Ward 6; and the District Department of Transportation (“DDOT”). (Exhibits 20-24.)

A public hearing was scheduled for February 8, 2017. Pursuant to 11-Y DCMR § 402, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, the Councilmember for Ward 6, and ANC 6D on December 5, 2016. (Exhibits 30 – 33.) Notice of public hearing was also published in the D.C. Register on December 23, 2016. Finally, the Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject property on January 23, 2017. (Exhibit 38.)

Requests for Party Status. In addition to the Applicant, ANC 6D was automatically a party in this proceeding. Brian Friedman filed a party status request in opposition to the

application on January 24, 2017, and supplemented the party status request on two occasions. (Exhibits 39, 42, and 44). The Board chose to grant party status over objections from the Applicant. (2/8/17 Hearing Transcript (“2/8 Tr.”) at 306.) The Party in Opposition raised objections to the proposed COW due to its location on the Randall Recreation Center property and claiming the COW was not necessary to fix a gap in coverage given the Applicant’s previous site, the Capitol Skyline Hotel. (Exhibits 39, 42, 44, and 49.)

Applicant’s Case. The Applicant provided testimony and evidence from Brian Stover, a representative of Verizon Wireless, Jay Schapiro, a consultant for Verizon Wireless, Alexandra Bull, also a consultant for Verizon Wireless, and Paul Dugan, and expert in engineering and antenna technology. The Applicant and its expert witness described the project, explained the need for the special exception relief, and addressed issues regarding community concerns. Such information was also included in the Applicant’s initial application submission, its pre-hearing submission, and its post-hearing submission. (See also Exhibits 1-18, 36, 36A-G, 48, and 48A-D.)

Government Reports. By reports dated January 27, 2017, and February 27, 2017, and through testimony at both public hearings, OP recommended approval of the application. (Exhibits 40 and 50.)

By report dated January 19, 2017, DDOT recommended approval of the application. (Exhibit 37.)

ANC Report. At a regularly-scheduled and duly-noticed public meeting held December 12, 2016, with a quorum present, ANC 6D voted 7-0-0 to send a letter to the BZA regarding the application, noting certain concerns, including the location of the proposed COW on a public recreation center, certain missing items from the application, and the impact on the community. (Exhibit 35.) The Board requested clarification from the ANC regarding the ANC’s position on the Application, and the Chairperson of the ANC, Andy Litsky, submitted a letter clarifying that the ANC was in opposition to the application for the reasons stated in the previously-submitted letter, including the use of public space. (Exhibit 52.)

Parties and Persons in Support. No individuals or organizations testified in support of the application at the public hearings.

Parties and Persons in Opposition. The Board heard testimony and received evidence from the Party in Opposition to the application. (Exhibits 39, 42, 44, and 49.) The Party in Opposition raised concerns related to a gap in wireless coverage, the location of the COW, and the fact that a previous Verizon Wireless antenna site was located on a nearby property. No individuals or organizations other than the Party in Opposition testified in opposition of the application at the public hearings.

Post-Hearing Submissions. At the end of the first public hearing, the Board requested additional information from the Applicant regarding the propagation map showing the gap in coverage, detailed information on other locations considered for the COW and why they were not feasible, examples of other field-installed antennas, and information regarding the potential permanent installation. The Applicant submitted the materials requested by the Board and included replies to the specifically raised concerns. (Exhibits 48, 48A-D.) The Party in Opposition submitted a response to the Applicant's post-hearing submission, continuing to object to the COW's location and suggesting alternative sites. (Exhibit 49.) OP also submitted a response to the Applicant's post-hearing submission, noting OP's continued support of the temporary COW. (Exhibit 50.)

At the close of the second public hearing, the Board proceeded to deliberate based on the evidence and testimony that was properly submitted into the record, including specific consideration of the concerns and issues raised by ANC 6D and the Party in Opposition at the hearings (3/8/17 Hearing Transcript ("3/8 Tr.") at 140-151.)

The Vote of Approval. The Board voted 4-0-1 (four votes in favor, one seat vacant, not voting) to approve the application for special exception relief. (3/8 Tr. at 150-151.) To explain its decision and reasoning, the Board now issues this order.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is the location of the Randall Recreation Center adjacent to South Capitol Street SW (Square 643E, Lot 800) (the "Property").
2. The Property includes recreation facilities, including a baseball field on the northeast portion of the Property. The COW is located in the northeastern corner of the Property outside of a fence enclosing the baseball field. (Exhibit 15.)
3. The Property is located to the west of South Capitol Street SW. (Exhibit 8.)
4. To the west of the Property are primarily residential uses, including single-family homes. To the east and south of the Property are sites currently poised for redevelopment. To the north of the Property is Interstate 695. (Exhibit 48A.)
5. The site is not located in a historic district nor is the building on the Property currently designated as a historic landmark listed in the D.C. Inventory of Historic Places or the National Registry of Historic Places.
6. The Property is located in the RF-1 Zone District. (Exhibit 8.) An antenna or monopole is permitted in the RF-1 Zone District by special exception. (Exhibit 10.)

The Project

7. The Applicant received permission from the head of the Department of Consumer and Regulatory Affairs (“DCRA”) to locate the COW on the Property for a temporary period of 90 days in anticipation of the January 2017 Presidential Inauguration pursuant to 11-B DCMR § 204. (2/8 Tr. at 335-336; 346-347.)
8. The Applicant previously had an antenna site located on the roof of a nearby hotel. The lease for the antenna site was terminated by the landlord and the Applicant sought another location in order to avoid coverage loss for the area. (Exhibit 10.)
9. The COW is 84 feet in height, with the center line of the antennas located at a height of approximately 84 feet above the ground. The COW and related support facilities take up approximate 1,250 square feet on the Property. (Exhibit 17.)
10. The temporary approval from DCRA expires on March 15, 2017. (3/8 Tr. at 150.) The Applicant proposes to continue locating the COW on the Property for a longer temporary period while the Applicant assesses viable permanent site locations that would provide adequate coverage. (Exhibits 10, 36, 48.)
11. In order to prevent a loss of coverage, the Board’s approval of the COW would need to be effective prior to or by March 15, 2017. (3/8 Tr. at 150.)

Zoning Relief

12. An antenna or a monopole, including a COW, is not allowed in the RF-1 Zone District as a matter of right. (Exhibit 10.)

Review Pursuant to 11-C DCMR §1313 of the Zoning Regulations

13. Section 1313.1 of Subtitle C of the Zoning Regulations authorizes the BZA to approve a monopole for a property in the RF-1 Zone District if the applicant demonstrates compliance with the relevant requirements of 11-C DCMR 1313 and the applicant demonstrates that the special exception meets the requirements of Section 901.2 of Subtitle X of the Zoning Regulations by (i) being in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and (ii) not tending to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

14. Pursuant to 11-C DCMR § 1313.5, the Board finds that the location, height, and other characteristics of the temporary COW meet the requirements of that Section.

- a. The COW is consistent with the purposes of Subtitle C, Chapter 13 of the Zoning Regulations as required by section (a) by providing a temporary antenna in an appropriate location to serve the South Capitol area to maintain coverage for the Applicant's customers. (Exhibits 10, 15, 36, 36A-G, 40, 45, 48, 48A-D, 50, and 51A1-A2.)
- b. The COW is not designed or available for colocation by other service providers as required by section (b). While the Zoning Regulations typically require a site to be available for colocation, OP and the Board recommended, and the Applicant agreed, to limit the COW to not provide colocation to minimize the height and area of the facility (Exhibits 40, 48, and 50.) While the ANC mentioned concerns about the Applicant's initial proposal's lack of colocation (Exhibit 35), and the Applicant initially agreed to allow colocation to satisfy the ANC's concerns (Exhibit 36), after both OP and the Board mentioned concerns about the impacts of colocation, the Applicant agreed to not allow colocation on the COW. (Exhibit 48, 48, and 50.) Based on careful consideration of OP, the Party in Opposition, and the ANC's concerns about the COW's visibility and impact on the Property, the Board determines colocation would not be suitable for the site. (Exhibit 35, 39, 42, 44, 48, and 50.)
- c. The COW is located so the visual impacts are minimized to the greatest practical extent from neighboring property and adjacent public space as required by section (c) because the COW is located as far as possible from neighboring areas as possible and is designed to mimic the surrounding light features serving the baseball field (Exhibits 10, 17, 36, 36A-G, 40, 45, 48, 48A-D, and 50). The ANC and the Party in Opposition expressed concern about the installation of the COW on a public recreation field that would be visible to those in the area. (Exhibits 35, 39, 42, 44, and 48.)¹ After careful consideration, the Board finds that the Applicant has located and designed the COW to minimize visual intrusions on the surrounding area because it is located as far as possible from neighborhood uses, is located near an overpass and major street thoroughfare, is designed to mimic

¹ The Board notes that the Party in Opposition discussed other concerns related to the COW such as negotiations of a permanent lease on the previous site and issues related to the past lease. (Exhibits 39, 42, 44, and 49.) While these items were of importance to the Party in Opposition, they are not germane to the decision regarding the special exception, as the Board and the Office of the Attorney General stated at the public hearing. (3/8 Tr. at 116.) The Board appreciates the Party in Opposition's concerns and the Applicant's responses to those comments (Exhibits 48, 48A-D); however, the Board does not have the jurisdiction to consider comments relating to prior leasing arrangements in its review of the special exception application.

existing light structures, and will only be a temporary installation. (Exhibits 10, 17, 36, 36 A-G, 48, 48A-D, 50, and 51A1-A1.)

- d. The COW is designed and constructed to preserve existing trees as required by section (d), because the installation will not disrupt any trees at the Property. (Exhibit 10). Further, the Applicant submitted a maintenance plan committing to address landscaping and upkeep surrounding the installation. (Exhibit 48C.)

15. Pursuant to 11-C DCMR § 1313.6, the Board finds that the application meets the requirements of that Section.

- a. The COW is designed to provide coverage that fills a significant gap in coverage in the South Capitol area as required by sections (a) and (b). (Exhibits 10, 15, 36, 36A-G, 48, and 48A-D.) The Board acknowledges that both the Party in Opposition and the ANC advised they did not believe the gap in coverage existed, given the fact that they had knowledge that the landlord at the previous site was still open to entering into a new lease with the Applicant. (Exhibits 35, 39, 42, 44, and 48.) However, the Applicant testified that the previous lease was terminated and the Applicant was proposing the COW to provide temporary coverage until a permanent site was obtained. (Exhibits 10, 36, 46A-G, 48, 48A-D; 2/8 Tr. at 336-339, 361-362; 3/8 Tr. at 92-93.) After careful consideration, the Board finds that the lease termination and negotiation for a permanent site present a gap in coverage if the COW's temporary approval were not extended. (Exhibits 15, 48B.)
- b. There are no other mounting options available, the COW at the Property will generate the least adverse impacts, and the COW is using the least intrusive means to fill the gap in coverage, as required by sections (c), (d), and (f). (Exhibits 10, 17, 36, 36A-D, 40, 48, 48A-D, and 50.) The Board acknowledges that the ANC and the Party in Opposition both expressed opposition to the location of the COW on the Property, objecting to the public nature of the site. (Exhibits 35, 39, 42, 44, 48, and 52.) Both the ANC and the Party in Opposition proposed other locations for the COW. (Exhibits 35, 39, 42, 44, and 48.) The Applicant provided evidence and testified that the Property is the only viable location in the necessary coverage area to provide the propagation necessary to fill the gap in coverage for a temporary period. (Exhibits 10, 15, 36, 36A-G, 48, and 48A-D.) Specifically, the properties proposed by the ANC and the Party in Opposition are inadequate to serve the needed coverage area, not the appropriate height to cover the necessary area, do not have adequate space for a temporary facility, or are too close to residential areas to be appropriate, or a combination of these factors. (Exhibit 48A.) The Board specifically credits the Applicant's

detailed map explaining why the adjacent properties are not available for a temporary COW facility. (Exhibit 48A.) The Board specifically finds that the Property generates the least adverse and intrusive impact given the temporary nature of the proposed COW. (Exhibit 48.)

- c. The COW's height and other physical characteristics do not exceed those minimally necessary to fill the gap in coverage as required by section (e). (Exhibits 10, 15, 17, 36, 36A-G, 48, 48A-D.) The Applicant's RF engineering expert testified that the height of the COW and related equipment were what are required to fill the gap in coverage. (2/8 Tr. at 422-426.) The ANC noted a lack of information on the size of the compound servicing the COW (Exhibit 35), but the Board finds that the Applicant provided adequate evidence regarding the minimal area for the COW. (Exhibits 10, 17, 36, 36A-G, 48, and 48A-D.)
 - d. The COW will be in full compliance with the Federal Communications Commission cumulative and individual RF emission levels as required by section (g). (Exhibit 13.)
16. If the proposed COW is of a height in excess of that permitted by the Height Act, the Mayor or the Mayor's agent would have to approve that height, as required by 11-C DCMR §1313.7. (Exhibit 40.)
 17. Pursuant to 11-C DCMR §§ 1313.8 and 1313.9, the Board finds that the COW is set back a distance equal to its total height from any residentially developed property and is set back a minimum of 28 feet from all property lines. (Exhibits 10, 17, and 40.)
 18. Pursuant to 11-C § 1313.11, the Board finds that the Applicant provided the requirements for the antenna application (Exhibits 1-18, 36, 36A-G, 48, and 48A-D.) The ANC noted certain deficiencies in the materials provided as part of the initial application, including lack of an official maintenance plan. (Exhibit 35.) The Applicant supplemented the application with additional materials, including an official maintenance plan. (Exhibits 36, 36A-G, 48, and 48A-D.)
 19. Pursuant to 11-X DCMR §901.2 (a), the Board finds that the proposed COW is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The temporary COW meets all of the requirements of the Zoning Regulations, as set forth above, and is being provided in an appropriate location to temporarily provide service to an area, ensuring no loss to services. (Exhibits 1-18, 36, 36A-G, 40, 48, 48A-D, and 50.)
 20. Pursuant to 11-X DCMR §901.2 (b), the Board finds that the COW will not adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map. As discussed above, the proposed COW's location is located as far from

neighboring properties as possible and will have a limited impact on neighboring properties due to its temporary nature. The only activity at the site would be maintenance workers, whose visitations would be limited, and the use of the Property as a recreation center would not be impeded (Exhibits 10, 17, 36, 36A-G, 48, and 48A-D.)

21. Based on the foregoing, the Board finds that the Applicant has met its burden of proof under the Zoning Regulations to support the proposed COW's special exception.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception pursuant to 11-C DCMR § 1313.1 to locate a COW on the Property.

The Board is authorized under Section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(2)) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11-X DCMR § 901.2.

For the reasons set forth above, the Applicant has demonstrated with sufficient evidence and the Board found that the COW is necessary to fill a temporary gap in coverage. The Board also found that the Applicant sufficiently demonstrated its satisfaction of the criteria in 11-C DCMR § 1313, which creates a presumption that the special exception should be granted. In so finding, the Board has specifically considered the impacts of the temporary COW and found that, despite the arguments of the ANC and the Party in Opposition, the requested special exception relief is unlikely to cause adverse impacts to the neighborhood particularly given the temporary nature of the COW. Therefore, the Applicant is entitled to the special exception relief.

Based on the findings of fact and for the reasons discussed above, the Board also concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. In doing so, the Board concludes that the proposed COW is consistent with the zone plan.

The Board has accorded ANC 6D the "great weight" to which it is entitled. In doing so, the Board fully credited the unique vantage point that ANC 6D holds with respect to the impact of the requested zoning relief on the ANC's constituents. The ANC sent a letter raising concerns regarding the application and followed with a clarification letter from the ANC's chair that the ANC is in opposition to the proposed COW. The Board has carefully considered ANC 6D's opposition to the special exception, and for the reasons stated above, the Board has found that the

Applicant's proposed COW, particularly in light of its temporary nature, results in a project that will not harm the public good.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Order, the Board finds OP's report and testimony to be persuasive.

Based on the findings of fact above, the Board determined that the effective date of this Order must be on or prior to March 15, 2017 in order to prevent the loss of coverage to the site if the COW was to be decommissioned. Therefore, the Board agreed to waive 11-Y DCMR § 604.11 and make the effective date of this Order March 15, 2017.

Based on the findings of fact, and having giving great weight to the recommendation of OP and ANC 6D, the Board concludes that the requested zoning relief **IS APPROVED**, conditioned upon the requirements set forth below with respect to the COW:

1. The COW is temporarily approved to be located on the Property until March 15, 2018.
2. The COW may not be used for colocation of any additional wireless carriers.

VOTE: 4-0-1 (Frederick Hill, Carlton Hart, Lesyllee White, and Peter May in support; one Board seat vacant.)

Vote taken on March 8, 2017.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

THE BOARD VOTED TO WAIVE 11-Y DCMR §604.11, AND THE ORDER IS EFFECTIVE AS OF MARCH 15, 2017.

PURSUANT TO 11-Y DCMR § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

DRAFT ORDER

PURSUANT TO 11-A DCMR § 303.3, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.