

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19415-A of Verizon Wireless, Motion for Modification of Consequence, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the time limit condition of BZA Order No. 19415 to allow the temporary location of a Cell on Wheels (“COW”) in the RF-1 Zone on Square 643E, Lot 800.

The original application (No. 19415) was pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.9, to locate a temporary Cell on Wheels (“COW”) in the RF-1 Zone at premises located on Square 643E, Lot 800.

HEARING DATES (19415):	February 8, 2017 and March 8, 2017
DECISION DATE (19415):	March 8, 2017
ORDER ISSUANCE DATE (19415):	February 13, 2018
MODIFICATION DECISION DATES:	February 21, 2018 and March 7, 2018

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On March 8, 2017, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Verizon Wireless (the “Applicant”) in Application No. 19415 for a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.9, to locate a temporary Cell on Wheels (“COW”) in the RF-1 Zone. The Board issued Order No. 19415 on February 13, 2018. (Exhibit 7 of the record for Case No. 19415-A.) The Board’s approval was subject to two conditions:

1. Approval of the temporary location of the COW is granted for a term to end March 15, 2018.
2. The Applicant shall not permit collocation of the COW by any other wireless service provider.

MOTION FOR MODIFICATION OF CONSEQUENCE

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On February 5, 2018, the Applicant submitted a request for modification of consequence to the conditions of Order No. 19415. Specifically, the Applicant seeks to modify Condition 1 of the Board's Order that limits the approval to a term to end on March 15, 2018. (Exhibit 3.) The Applicant argues that the modification of this condition is necessary because, though a new permanent location for the COW has been secured and permits for the new facility have been filed, construction on the new site will take approximately six months. After the new site is in operation in the fall of 2018, the Applicant intends to remove the temporary COW from the Subject Property and restore the site as necessary. For this reason, the Applicant requests to extend the term of approval for Order No. 19415 by six months, to expire instead on September 15, 2018.

The Applicant indicated that the proposed modification of consequence does not require additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify Condition 2 of approval included in BZA Order No. 19415.

The Merits of the Request for Modification of Consequence

The Applicant's requested modification of a condition of the Order complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties shall be allowed at least ten days to submit a response to the request. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 6D; the ANC Commissioner for Single Member District 6D02; and Brian Friedman, the party in opposition to Application No. 19415. (Exhibit 3.) Though the parties were allowed at least ten days for response, neither the affected ANC nor the party in opposition to the underlying case filed a response to this request for modification of consequence.

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report on February 20, 2018 recommending approval of the proposed modification of consequence. (Exhibit 8.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence. Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a modification of consequence to a condition approved in Case No. 19415, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval. During its initial deliberations on this request, the Board expressed concern about the Applicant's maintenance of the Subject Property and its plans to restore the property after the temporary COW is removed. Therefore, the Board requested that the Applicant submit plans for site maintenance and restoration in advance of the Board's decision. The Board conditioned its approval of the

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modification of consequence on the Applicant's compliance with those plans, as filed to the record in Exhibit 9.

As noted, the parties to the underlying case were the ANC, Brian Friedman, and the Applicant. The ANC and Brian Friedman did not submit a response to the request for modification of consequence. Accordingly, a decision by the Board to grant this request would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 19415 is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS, AS MODIFIED:**

1. Approval of the temporary location of the COW is granted for a term to end September 15, 2018.
2. The Applicant shall not permit collocation of the COW by any other wireless service provider.
3. The Applicant shall maintain the site according to the Supplemental Facility Maintenance Plan and Permanent Restoration Plan in Exhibit 9.

In all other respects, Order No. 19415 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON MARCH 8, 2017: 4-0-1

(Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

VOTE ON MODIFICATION OF CONSEQUENCE ON MARCH 7, 2018: 4-0-1

(Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter G. May to APPROVE; Lorna L. John not participating.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA K. BARDIN
Director, Office of Zoning

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FINAL DATE OF ORDER: March 12, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.