

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19415 of Verizon Wireless**, 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:** February 8, 2017 and March 8, 2017  
**DECISION DATE:** March 8, 2017

**DECISION AND ORDER**

This self-certified application was submitted on November 9, 2016 by Verizon Wireless (the “Applicant”) on behalf of the District of Columbia, the owner of the property that is the subject of the application. The application requested a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.1 of the Zoning Regulations to allow the temporary location of a “cell on wheels” (“COW”) in the RF-1 District at Lot 800 in Square 643E. Following a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted to grant the application subject to two conditions.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated November 29, 2016, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 6D (the “ANC”), the ANC in which the subject property is located; and Single Member District/ANC 6D02. Pursuant to 11 DCMR Subtitle Y § 402.1, on December 5, 2016 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6D, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on December 23, 2016 (63 DCR 15732).

Party Status. The Applicant and ANC 6D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Brian Friedman.

Applicant’s Case. The Applicant provided evidence and testimony about the proposed cell on wheels monopole from Paul Dugan, a radio frequency consulting engineer and an expert in antenna

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**District of Columbia**  
**CASE NO.19415A**  
**EXHIBIT NO.7**

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technology, including radio frequency (“RF”) safety; Alexandra Bull and Jay Schapiro, consultants on network building; and Brian Stover, the Applicant’s real estate manager for the Washington/Baltimore region. According to the Applicant, the proposed COW was needed to replace a previous antenna site whose lease had been terminated, so as to avoid severe impacts to the Applicant’s coverage and service in the area until a new permanent location could be found.

OP Report. By memorandum dated January 27, 2017, the Office of Planning recommended approval of the requested zoning relief for a period of no more than one year from the date of the issued order. (Exhibit 40.) OP filed a supplemental report, dated February 27, 2017, reiterating its recommendation. (Exhibit 50.)

DDOT. By memorandum dated January 19, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 37.)

ANC Report. By letter dated December 21, 2016, ANC 6D indicated that, at a properly noticed public meeting on December 12, 2016 with a quorum present, the ANC voted to send a letter to the BZA stating the ANC’s issues and concerns about the application. The ANC acknowledged that “providing adequate cellular service to residents of ANC 6D and to visitors to the area is an important goal,” but stated that the subject property was not an appropriate location for either a temporary cell on wheels or a permanent cell tower, and that the ANC did not believe “that the criteria for granting a special exception are met in this case....” (Exhibit 35.) By letter dated March 8, 2017, the chairman of ANC 6D reiterated the ANC’s opposition to the application, objecting especially to the use of public space for the monopole and its visual intrusion, especially if other carriers requested collocation. (Exhibit 52.)

Party in Opposition. The party in opposition, Brian Friedman, disputed the Applicant’s claim that location of the COW at the subject property was necessary to avoid gaps in service, and asserted that the COW would be visually intrusive.

**FINDINGS OF FACT**

1. The subject property is a large parcel bounded generally by South Capitol Street to the east, Interstate 695 to the north, and I Street S.W. to the south. (Square 643E, Lot 800.).
2. The subject property is irregularly shaped. Its lot area is 137,322 square feet.
3. The subject property is used as a public recreation center known as the Randall Recreation Center. The site contains outdoor recreational facilities including a basketball court and an athletic field.
4. The Applicant proposes to operate a temporary communications facility, a cell on wheels (COW), at the northeastern corner of the subject property west of South Capitol Street and south of the I-395/I-695 interchange, in an area that is currently unused. The facility will

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include a ballasted monopole, 84 feet high, with 12 antennas and associated equipment contained in a fenced compound with an area of 1,250 square feet.

5. The antennas and equipment will be mounted approximately 80 feet above grade for reception and transmission of wireless telecommunications. The planned height and other physical design characteristics of the COW are the minimum necessary to fill a coverage gap that would otherwise occur in the wireless service provided by the Applicant.
6. The COW will be set back at least 28 feet from all lot lines.
7. Installation of the planned COW will not require the removal of any trees. The treeline surrounding the subject property averages approximately 40 feet.
8. The proposed COW will comply with applicable requirements of the Federal Communications Commission, including with respect to cumulative and individual radio frequency ("RF") emission levels. (Exhibit 13; Hearing Transcript ("Tr.") of February 8, 2017 at 325-326.)
9. The Applicant will be responsible for all maintenance and removal of equipment in connection with the COW. Service and maintenance inside the equipment trailer will be performed on an as-needed basis. Upon completion of the term of the installation, the Applicant will remove all equipment on-site and return the area to its original condition. (Exhibit 48C.)
10. Consistent with the requirements of Subtitle C § 1313.13, the Applicant will not install any signs, including advertisements, at the COW site except for a small sign on the exterior of the site with identification information and a toll-free telephone number, staffed 24 hours every day, for use in reporting any issues or concerns about the site. (Exhibit 48C.)
11. The Applicant previously provided service in the area through antennas at the Capitol Skyline Hotel at 10 I Street, S.W. in accordance with a lease that has been terminated.
12. The director of the Department of Consumer and Regulatory Affairs informed the Zoning Administrator on December 2, 2016 that a 90-day approval/permit was issued to the Applicant pursuant to Subtitle B § 204 to occupy a leased space at the Randall Recreation Center for installation of a temporary cell on wheels. The Applicant obtained a lease agreement with the Department of General Services to have a site installation, and installed the COW in mid-December. The Applicant subsequently filed this application to continue the cell site for a longer temporary period.
13. The Applicant could not identify any existing building appropriate for collocation of its antennas, and no existing tower or monopole structures were located in close proximity to the site that was decommissioned. The Applicant provided aerial photographs of potential

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alternative locations, and indicated that those sites were not appropriate for reasons including that the sites lacked appropriate ground space and that the buildings were not of sufficient height, were too close to existing sites, or would not allow for coverage on South Capitol Street. (Exhibits 36B, 48A, 51A2.)

14. The Applicant submitted propagation maps of the area served by the existing antenna to illustrate the loss of coverage that would occur absent the COW installation. In accordance with Subtitle C § 1312.1, the Applicant submitted maps depicting the area to be served by the new monopole as well as the locations of other antennas providing service by the Applicant and any antenna tower or monopole of any provider within a two-mile radius of the subject property. The Applicant filed a site plan showing all structures and antennas on the site, elevation drawings of the structure and proposed antennas, and a picture of the proposed antenna. (Exhibits 15-17, 48B, 51A1.)
15. The subject property is located in an RF-1 zone that also encompasses areas to the north, south, and west of the subject property.
16. Purposes of the RF zones include to allow for limited compatible non-residential uses. (Subtitle E § 100.3(b).)
17. A monopole may be permitted as a special exception use in the RF zones. (Subtitle C § 1313.2; Subtitle E § 106.1.)
18. The area to the west of the subject property is developed with a mix of residential buildings, including apartment houses and attached and semi-detached principal dwellings north of I Street. Other uses, including a hotel and church, are also located in the vicinity.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks a special exception under Subtitle C § 1313 to allow the temporary location of a “cell on wheels” (“COW”) in the RF-1 District at Lot 800 in Square 643E. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) 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 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle C § 1313, a monopole may be permitted in specified zones, including RF-1, if approved by the Board in accordance with Subtitle X of the Zoning Regulations. (Subtitle C §§ 1313.1, 1313.2.) In accordance with Subtitle C § 1313.5, the location, height, and other characteristics of a monopole must be (a) consistent with the purpose of Subtitle C, Chapter 13, “Antennas”; (b) designed and available for collocation by other service providers; (c) located so the visual impacts are

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minimized to the greatest practical extent, from neighboring property and adjacent public space, or appropriately screened by landscaping or other techniques to minimize the visibility of the antenna tower or monopole; and (d) designed and constructed to preserve existing trees to the greatest practical extent. A monopole must be set back a minimum horizontal distance equal to its total height as measured from the ground, from any residentially developed or zoned property (Subtitle C § 1313.8), and each part of a monopole must be set back from each lot line the greater of the following: (a) 20 feet; or (b) a distance of at least one-third of the total constructed height (Subtitle C § 1313.9).

Based on the findings of fact, the Board concludes that the proposed temporary cell on wheels will satisfy the requirements of Subtitle C § 1313. The temporary COW will be consistent with the purposes of Subtitle C, Chapter 13 as stated in Subtitle C § 1300.1 since the installation will conform to the placement and construction standards required by the Zoning Regulations.

Generally, the location, height, and other characteristics of a monopole must be designed and available for collocation by other service providers. (Subtitle C § 1313.5(b).) In this case, the Applicant initially did not propose to allow collocation of the COW by other telecommunication service providers on a commercial basis due to the temporary nature of the COW. ANC 6D raised a concern, stating that the Applicant's assertion that "the regulation is 'not applicable for the COW context'... should not be deemed sufficient." In response to ANC 6D, the Applicant stated that the COW would be designed "to be available for collocation should another carrier need the space." (Exhibit 36.) However, the Office of Planning recommended against making the COW available for collocation, because collocation would require an increase in the height of the monopole, which the Applicant estimated at 10 to 20 feet per carrier, as well as the need for additional ground equipment. (Tr. of February 8, 2017 at 402.) According to OP, that additional height would not be appropriate at the subject property. The Board concurs with OP in determining that the Applicant should not permit collocation of the temporary COW. The additional height required for collocation would not be appropriate given the use of the property as a recreation center and the proximity of the COW installation to the views associated with South Capitol Street. In accordance with Subtitle C § 1313.12, the Board may impose conditions found necessary to mitigate potential adverse impacts and protect adjacent and nearby property. Accordingly, a condition is adopted in this order to prohibit collocation of the COW by other carriers. By eliminating the need to increase the height of the monopole and to install additional ground equipment, the condition is necessary to avoid the creation of adverse impacts, especially objectionable visual conditions, that would be associated with a larger installation.

In accordance with Subtitle C § 1313.5(c), the location, height, and other characteristics of a monopole must be located so the visual impacts are minimized to the greatest practical extent, from neighboring property and adjacent public space, or appropriately screened by landscaping or other techniques to minimize the visibility of the antenna tower or monopole. The Board concludes that the proposed site is appropriate for the temporary installation of a COW. The location will not be close to residential uses and will not interfere with use of the public recreation facility. As noted by OP, the COW will be located near an overpass "where visibility would be minimized

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from the closest residential properties,” which are located some distance away to the west of the site, such that the monopole would not be immediately visible from the two-story residences with direct views east along H Street. The height of the monopole will be the minimum necessary to provide coverage, particularly since the need for additional height will be eliminated by the prohibition against collocation of other carriers’ equipment on the COW.

ANC 6D asserted that the Applicant “does not fulfill this requirement” because the “monopole will be surrounded by generators and other equipment, enclosed by a chain link fence ... [where] its 84-foot height will be 44 feet above the surrounding tree line.” (Exhibit 35.) The Board does not agree. The visual impacts of the COW will be minimized to the greatest practical extent by its location at the edge of the subject property, adjacent to areas devoted to public recreation facility use and to wide streets, including a highway and South Capitol Street, and at a distance from neighboring residential uses. The installation will not require the removal of any existing trees. As required by Subtitle C § 1313.8, the COW will be set back a minimum horizontal distance equal to its total height from any residentially developed or zoned property. The COW will also satisfy the minimum setback requirement of Subtitle C § 1313.9, since each part of the monopole will be set back from each lot line the greater of 20 feet or a distance of at least one-third of the total constructed height. Consistent with Subtitle C § 1313.13, the Applicant will not install any signs, including advertisements, on the COW installation, except for a small sign on the exterior of the site with identification information and a toll-free telephone number for use in reporting any issues or concerns about the site.

The Board shares the concerns expressed in this proceeding about the need to avoid the use of public parks as the location for cellular facilities whenever possible. The Board also recognizes the need to provide service coverage, particularly in urban locations. The Applicant demonstrated the need for a temporary installation to ensure adequate coverage during the interval after the termination of its prior lease until the Applicant locates a suitable location for a permanent installation.<sup>1</sup> The Applicant also demonstrated the lack of viable options for the installation.<sup>2</sup> Other potentially suitable sites were not appropriate for various reasons, including their location, inadequate building heights, and the lack of adequate ground space for related equipment. Accordingly, the Board concludes that the application should be granted to provide a temporary location for the COW for a period of one year.

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<sup>1</sup> In compliance with Subtitle C § 1313.11, the Applicant provided written and graphic documentation of (a) the area to be served by the proposed COW (Exhibits 15, 48B); (b) the area at risk of inadequate service (Exhibits 15, 48B, 51A1); (c) the location of any other antenna or related facility sites providing service by the applicant within a two-mile radius, including public space, of the proposed site (Exhibit 16); (d) other towers or monopoles within a two-mile radius of the proposed site with identified heights above grade (Exhibit 16); (e) an explanation of why the Applicant could not collocate on an existing tower or monopole (Exhibit 10); (h) the topographic conditions of the area to be served (Exhibit 17); (i) the relative height of the monopole to the tops of surrounding trees within one-quarter-mile radius of the proposed site as they presently exist (Exhibit 10); (j) the proposed appearance of the COW, including exterior finish (Exhibits 17, 36E); and (k) a maintenance plan (Exhibits 10, 48C, 48D, 51A1.) Subtitle C §§ 1313.11(f) and (g) require information about collocation, which is not relevant to this application in light of the Board’s decision not to permit collocation of other carriers’ equipment on the temporary COW.

<sup>2</sup> See Exhibit 48A.

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In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception to allow the temporary location of a cell on wheels, as conditioned in this order, 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. As discussed above, the Board does not find that operation of the COW on a temporary basis will create any adverse impacts on the use of neighboring property.

Approval of the requested special exception will be in harmony with the RF-1 zone, since the purposes of the RF zones include to allow for limited compatible non-residential uses (Subtitle E § 100.3(b)). A monopole may be permitted as a special exception use in the RF zones. (Subtitle C § 1313.2; Subtitle E § 106.1.)

**Great weight**

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)). In this case ANC 6D expressed reservations about specific aspects of the Applicant’s proposal. The Board has addressed those issues and concerns in this order, and was not persuaded that they warrant disapproval of the zoning relief requested in this application. ANC 6D concluded that the application did not meet all the requirements for approval of a special exception under Subtitle C § 1313.5, so that the BZA should consider whether relief should be granted under Subtitle C § 1313.6; the ANC also concluded that “the application is insufficient” with respect to the latter provision. For the reasons discussed above, the Board concludes that the Applicant has satisfied the requirements for the requested temporary special exception relief under Subtitle C § 1313.5; therefore, Subtitle C § 1313.6 is inapplicable in this proceeding.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle C § 1313 to allow the temporary location of a “cell on wheels” (COW) in the RF-1 District at Lot 800 in Square 643E. Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT** to the following **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.

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**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** February 13, 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.

PURSUANT TO 11 DCMR SUBTITLE Y § 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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



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**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.**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on February 13, 2018, pursuant to 11 DCMR Subtitle Y §§ 205.3, 604.5, and 604.6, a copy of the order entered on that date in this matter was mailed first class, delivered via inter-agency mail, or delivered by electronic mail to each party who appeared and participated in the public hearing concerning the matter, the Councilmember representing the ward within which the property is located, and any affected ANC, as defined by Subtitle Y § 101.8, and the Council Chair and At Large Councilmembers, all of whom are listed below:

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**ATTESTED BY:**

  
\_\_\_\_\_  
**SARA K. BARDIN**  
**Director, Office of Zoning**