GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 20006 of T-Mobile Northeast LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use permissions of Subtitle C § 1313.2 and Subtitle C § 1313.6, to erect a monopole in the RA-1 Zone at premises 3675 Ely Place S.E. (Square 5438, Lot 801).

HEARING DATES: May 8, 2019 and June 26, 2019
DECISION DATES: July 3, 2019 and July 17, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 9.)[1]

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 7F.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on May 21, 2019, at which a quorum was present, the ANC voted 4-2 to support the application. (Exhibit 37.) The ANC Report indicated that Commissioners raised safety concerns about exposure to radiation and raised the importance of employment opportunities for community members within ANC 7F. Under Subtitle Y § 406.2, the Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978). The Board determined that these issues are outside the scope of the Board's review for the special exception application and therefore were not legally relevant. The Board nonetheless considered the ANC's support of the application.

[1] The Applicant's self-certification form requests special exception relief under Subtitle C § 1313.2. The Board also determined that, because the Applicant is unable to comply with all of the special exception criteria of Subtitle C § 1313.11, it may nonetheless grant the Application under its authority in Subtitle C § 1313.6.

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OP Report. The Office of Planning ("OP") submitted a report recommending approval of the application, subject to the Applicant providing information required by Subtitle C § 1313.11. (Exhibit 30.) OP submitted a supplemental report after the public hearing, recommending the adoption of two conditions that would require the maximum height of be limited to 82 feet and that only one wireless carrier be located on the monopole. (Exhibit 45.) OP's second supplemental report reiterated its support of limiting the proposed monopole to a maximum height of 82 feet. (Exhibit 47.) The Board found that the special exception criteria were met for this application and that, therefore, the adoption of conditions was not necessary.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 31.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the use permissions of Subtitle C § 1313.2 and Subtitle C § 1313.6, to erect a monopole in the RA-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[2] AT EXHIBIT 29.**

VOTE: **5-0-0** (Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Robert E. Miller (by absentee vote to APPROVE; Frederick L. Hill not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

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[2] Self-Certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

FINAL DATE OF ORDER: July 26, 2019

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 § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.