

RESOLUTION

DISAPPROVING

APPEAL NO. 2017-01

WHEREAS, Strategis LLC, 2530 Superior Avenue #303, Cleveland, OH 44114, as agent for Crown Castle and Verizon Wireless, Appellant, on December 7, 2016, filed Appeal No. 2017-01 under Section 393.1 to 393.4 of the Zoning Resolution, requesting that a conditional use be permitted for a telecommunications tower to be located at 11251 Montgomery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, public hearings were held on said appeal on February 6, 2017 and March 6, 2017, notice of such hearings were given by first class mail to parties of interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the dates of said hearings in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS, objections were filed pursuant to O.R.C. 519.211(4)(a) objecting to the appeal and according to Section 54.1(c) of the Zoning Resolution, if a timely notice of objection is received and Sections 519.02 to 519.25 of the Ohio Revised Code apply to the telecommunications tower then an application shall be made in accordance with the regulations herein to the Symmes Township Board of Zoning Appeals; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "A" Residence District; and

WHEREAS, Article XXXV (Conditional Uses) provides, in part, that a Conditional Use may or may not be appropriate in a particular location depending on a weighing, in each case, of the public benefit against the local impact, the amelioration of any adverse impacts through special site planning, and development; and

WHEREAS, according to testimony offered at the public hearing, the appellant is requesting a Conditional Use to permit the construction of a telecommunications tower at Montgomery Community Church, 11251 Montgomery Road; and

WHEREAS, according to testimony offered at the public hearing, the subject property is located on the west side of Montgomery Road, north of Cornell Road and south of East Kemper Road; and

WHEREAS, according to further testimony offered at the public hearing, the applicant originally submitted a plan to construct a one hundred fifty (150) foot high three (3) sided panel-style telecommunication tower with a two hundred forty (240) square foot canopy covered equipment pad within a three thousand (3,000) square foot fenced-in area and accessed by a gravel drive. However, after the Board had concerns about the design style and the lack of adequate plans the Board continued the meeting for thirty (30) days; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is now proposing to construct a one hundred fifty (150) foot monopole telecommunication tower with a two hundred forty (240) square foot canopy covered equipment pad within a three thousand (3,000) square foot fenced-in area and accessed by a gravel drive; and

WHEREAS, Sections 385 and 386 of the Zoning Resolution provide for the General Considerations and Specific Criteria pertaining to Conditional Uses and Sections 393.1 to 393.4 apply to telecommunications towers; and

WHEREAS, according to further testimony offered at the public hearing, the proposed telecommunications tower would be consistent with the spirit and intent of the Zoning Resolution in that such towers are permissible in areas zoned for residential use, provided that they comply with the additional standards contained within the Zoning Resolution; and

WHEREAS, there was some testimony offered at the public hearing, that the proposed telecommunications tower would not likely have an adverse effect on the immediately adjacent uses, including a daycare and office building to the south, a school use to the west, and the

existing church development to the north and east. However, the one hundred fifty (150) foot high tower would be visible to homes on Vicksburg Drive, Snider Road, Avant Lane and a single-family home on Montgomery Road. However, there was additional testimony from residents and interested persons including the headmaster from Cincinnati Hills Christian Academy, a representative from Sibcy Cline Realtors, and several residents from Avant Lane that it would have an adverse impact upon adjacent property, including property values, or the public health, safety and general welfare of the community and therefore objecting to the Conditional Use; and

WHEREAS, according to further testimony offered at the public hearing, the majority of the church property, including the area of the proposed telecommunications tower, is designated as Public/Semi-Public/Institutional on the adopted Symmes Township Land Use Plan. However, the adopted plan does not contain any reference to telecommunications towers so the plan would not apply to the proposed development; and

WHEREAS, according to further testimony offered at the public hearing, the proposed telecommunication tower with concrete pad for equipment and fenced-in area and proposed gravel access drive complies with the specific criteria as follows:

Section 393.1(b) provides that if a telecommunications company proposes to place the telecommunications tower in an area zoned for residential use, the applicant must establish that it will have a minimum setback of two hundred (200) feet from the base of the tower or any guy wire anchors to the property line. The applicant has moved the tower from the original location. The revised plans now indicate a setback of sixty one point ninety two (61.92) feet from the western property line and sixty four point twenty five (64.25) feet from the southern property line. A setback variance is still required since the abutting property is also zoned "A" Residence. However, no homes will be directly impacted since it is occupied by an existing school development and there is a large buffer area. The distance to the closest residential property line on Vicksburg Drive would be approximately three hundred eighty five (385) feet while the distance to the closest property line of a home on Avant Lane would be approximately nine hundred sixty (960) feet. A tower located 200 feet from the southern property line as required by this section would be much closer to meeting the applicant's stated intent to place the tower as far from all surrounding residences as possible.

Section 393.1(c) provides that micro antennas not exceeding five (5) feet in height may be placed on any existing conforming buildings in any zoning district. This section is not applicable to the proposed telecommunication tower.

Section 393.1(d) provides that except for buildings, fences and parking areas essential to the operation of a particular telecommunications tower, all other uses accessory to the telecommunications antenna and towers including, but not limited to, business offices, maintenance depots, and materials and general vehicle storage, are prohibited from the site unless otherwise permitted in the zoning district in which the telecommunications antenna and/or tower is located. The proposed telecommunication tower would not include any of the above listed accessory uses.

Section 393.2(a) provides that the telecommunications company shall demonstrate, using the latest technological evidence, why the telecommunications antenna or tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. Part of this demonstration shall include a drawing showing the boundaries of the area around the proposed location which would probably also permit the telecommunications antenna to function properly in the company's grid system. This area shall be considered the allowable zone. The original submission included aerial maps that did not include labels or titles. The revised submission includes aerials that have titles and labels though they don't exactly identify an "allowable zone." The "Verizon Search Ring" shown on the revised map indicates a one half (1/2) mile ring around the intersection of Montgomery Road and East Kemper Road with coverage maps at various heights that may show need for new service in this area. However, the demonstrated need is related to Advanced Wireless Services and not to basic phone services. No evidence has been submitted that phones do not work in this area even indoors and there has been no evidence submitted that the tower would not accomplish

the service needs if located in compliance with the setback requirements of the Zoning Resolution.

Section 393.2(b) provides that if the telecommunications company proposes to build a telecommunications tower (as opposed to mounting the antenna on an existing structure), it is required to demonstrate that it has contacted the owners of nearby tall structures within the allowable zone, asked for permission to install the telecommunications antenna on those structures, and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made by the property owner, based on prevailing market values. The applicant previously submitted a series of "Abutters Map" documents that showed nearby tall structures but was inconsistent with the project narrative. No revisions have been submitted to these maps. The revised response letter includes a statement that the surrounding structures at Kroger, Cincinnati Hills Christian Academy and Christ Hospital are below the design threshold of one hundred forty (140) feet and refers to a series of revised maps showing coverage at various heights. The map for a fifty five (55) foot height does indicate a far less coverage area than the proposed tower height. Based on the evidence submitted, it is likely that locating the tower on existing tall structures would not satisfy the stated service needs but revised and corrected maps would be necessary to ensure that this section has been addressed. Revised and corrected maps were not submitted to ensure that this section has been addressed.

Section 393.2(c) provides that the applicant demonstrate that all reasonable means have been undertaken to avoid any undue negative impact caused by the "clustering" of telecommunications towers within an area zoned for residential use. The original map provided was difficult to read. The revised map shows that the nearest tower is a one hundred ten (110) foot flagpole-style tower near the northeast corner of Montgomery and East Kemper Road but the applicant states that it would not work because it is at capacity, not of sufficient height and also lacks available ground space for associated equipment and would not be able to support modern wireless equipment because the newer equipment is too large to be located inside the pole. However, no evidence has been provided to support the claim of lack of capacity or size of equipment. There are also three (3) towers located on the opposite side of I-71, outside of the applicant's search area.

Section 393.2(d) provides that the Board may deny the application to construct a new telecommunications tower in an area zoned for residential use if the applicant has not made a good faith effort to mount the telecommunications antenna on existing structures. The radio frequency report submitted with the application and the project narrative both indicate that there are no other suitable existing structures on which the antenna can be mounted. There are still deficiencies in the evidence discussed above.

Section 393.2(e) provides that an applicant must demonstrate that technically suitable and feasible sites are not available in an area other than an area zoned for residential use and that the site is located in the least restrictive district that includes a technically suitable and feasible site. The response letter indicates that sites at Harpers Station, Harpers Point Racquet Club, the Symmes Township greenspace behind Harpers Station, a Duke Energy property, Cincinnati Hills Christian Academy, a property for sale by NAI Bergman and Harpers Crossing were considered and rejected, mostly for a lack of interest in leasing space by the property owner or lack of space on the property. However, no evidence of any attempt to contact these property owners has been submitted to support the claims.

Section 393.2(f) provides that the applicant shall demonstrate that the telecommunications antenna/tower is the minimum height required to function satisfactorily and to accommodate the co-location requirements and must be a monopole design. The revised plans indicate a change to a monopole design with stealth panels to screen the antenna from view. The applicant has submitted maps to indicate what coverage levels would be at fifty five (55) feet, one hundred (100) feet, one hundred forty (140) feet and two hundred (200) feet. However, there is no discussion or evidence that indicates why the coverage provided at one hundred forty (140) feet is necessary versus the coverage at one hundred (100) feet. A coverage map of the tower at the proposed height of one hundred fifty (150) feet was also not included.

Section 393.2(g) provides that all telecommunications towers shall be fitted with anti-climbing devices as approved by the manufacturers. Furthermore, the applicant shall demonstrate that the proposed telecommunications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice or other debris, electromagnetic fields or radio frequency interference. However, if the specific safety issue in question is determined to be regulated by either Federal Communications Commission (FCC) regulations or applicable building code regulations, and the operation or construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met. The proposed tower, if approved, would be required to receive a building permit and comply with all associated safety regulations at the time of construction. The applicant has indicated in the project narrative that as a condition of approval they would agree to remove the last ten (10) feet of climbing pegs and submit a radio frequency compliance report with the building permit application.

Section 393.2(h) provides that for reasons of aesthetics and public safety, telecommunications facilities shall be effectively screened on each site. Screening shall consist of a solid masonry wall or solid fence not less than four (4) nor more than six (6) feet in height and located not less than thirty (30) feet for each property line. Spaces between any screening device and adjacent property lines shall be buffered by use of landscape plant materials including but not limited to grass, hardy shrubs, evergreen ground cover and maintained in good condition. The proposed tower location would be inside of a fenced area that would be located thirty (30) feet from all property lines and would include privacy slats in the six (6) foot high chain link fence. Existing natural screening is greater than four (4) feet in height.

Section 393.2(i) provides that in order to reduce the number of telecommunications antenna support structures needed in the Township in the future, the owner of an existing telecommunications tower shall not unreasonably deny a request to accommodate other uses, including other telecommunications companies and the telecommunications antenna of local police, fire and ambulance departments. The owner of an existing telecommunications tower may request reasonable compensation for the use of the telecommunications tower. For the purposes of encouraging co-location of cellular or wireless antenna and others uses telecommunications towers shall be designed, engineered and constructed one hundred fifty (150) feet in height or taller to support telecommunications antennas installed by three (3) or more telecommunications service uses which includes police, fire and ambulance departments. In addition, an applicant must demonstrate that the area acquired by lease or otherwise acquired for the use and construction of the telecommunications tower and accessory structures is sufficient in size to accommodate any additional structures that may be required if additional users are added to the telecommunications tower. The proposed telecommunication tower would be able to provide space for Verizon Wireless and up to three (3) additional co-locations in compliance with this section.

Section 393.2(j) provides that the telecommunications company must demonstrate to the Township that it is licensed by the Federal Communications Commission (FCC). No approval will be granted to any applicant unless proof of current FCC license for the proposed use of the telecommunications tower is provided. The applicant has not submitted an FCC license for the use of the proposed tower but has agreed to provide it as a condition of approval.

Section 393.2(k) provides that if the telecommunications site is fully automated adequate parking shall be required for maintenance workers. If the site is not fully automated, the number of required parking spaces shall equal the number of employees working on the largest shift. All parking specifications and requirements shall be consistent with the applicable parking requirements as established in the Zoning Resolution. The revised site plan includes a gravel parking area and access drive without the required parking spaces. However, at the public hearing the applicant offered to pave the parking area and access drive in accordance with the Zoning Resolution.

Section 393.2(l) provides that telecommunications towers under two hundred (200) feet in height shall be painted silver or have a galvanized finish retained or be finished with a neutral color matching its background in order to reduce visual impact. The applicant

shall demonstrate that the proposed telecommunications tower is the least aesthetically intrusive facility for the neighborhood and that all buildings and structures be architecturally compatible with the architecture of the adjacent buildings and structures. The revised plan depicts a monopole design with a matte galvanized finish with stealth panels.

Section 393.2(m) provides that a full site plan be required for all proposed telecommunication sites except telecommunications antennas to be placed on existing structures. The applicant has submitted site plans that include all of the required elements.

Section 393.4(a) provides that no telecommunications tower shall be permitted on any lot on which any non-conforming building or structure is located nor upon which any non-conforming use or activity is occurring without first obtaining a variance from the Township Board of Appeals. The existing church use on the property has been approved by the Board of Zoning Appeals and there are no nonconforming uses, buildings or structures existing on the site.

Section 393.4(b) provides that no telecommunications tower shall be constructed, replaced or altered without first obtaining the applicable building permit. The proposed telecommunication tower would be subject to building permit requirements, if approved.

Section 393.4(c) provides proof shall be provided by the applicant in a form satisfactory to the Board that the proposal has been approved by all agencies and governmental entities with jurisdiction and conforms to all applicable requirement of the Ohio Department of Transportation, the Federal Aviation Administration, the Federal Communication Commission or the successors to their respective functions. The applicant has submitted a Certificate of AM Regulatory Compliance related to AM broadcast stations and a Determination of No Hazard to Air Navigation from the FAA. The applicant has stated that all additional regulatory documents will be provided as a condition of approval.

Section 393.4(d) provides that any special Zoning Certificate issued under this Section shall be revocable and may be revoked after notice and hearing if any continuing condition of the Zoning Certificate has been violated and is not remedied within thirty (30) days of written notice from the Township Zoning Inspector. This will apply to the proposed tower if approved.

Section 393.4(e) provides that if it is determined that any provision of this Resolution is inconsistent with Section 519.211 of the Ohio Revised Code then the Resolution shall be interpreted and applied in a manner most consistent with Section 519.211. There are no known issues of inconsistency between the Zoning Resolution and ORC Section 519.211 and there is no "zoning exemption" as stated in the project narrative.

WHEREAS, Section 381 of the Zoning Resolution states that the Board may, in accordance with the procedures and standards set out in this Article, and other regulations applicable to the district in which the property is located, approve by resolution those uses listed as conditional uses in Table 35-1, in the Table of Permissible Uses or in any other part of this Resolution; and

WHEREAS, Section 383.6 provides that the Board shall approve the conditional use, approve the conditional use subject to further specified approvals or modifications necessary to achieve full compliance with all standards, or disapprove the conditional use; and

WHEREAS, this Board, after careful consideration of all the facts, testimony, all other evidence and the applicable provisions of the Zoning Resolutions and relevant law, the proposed plan does not comply with the standards and conditions set forth in the Zoning Resolution; and therefore the requested Conditional Use is hereby disapproved.

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby disapprove the appeal for the Conditional Use to install a telecommunications tower at the proposed site in accordance with the authority granted in Zoning Resolution and does hereby determine that a Conditional Use and

Zoning Certificate may not be issued to the appellant consistent with the terms set forth in this Resolution; and

BE IT FURTHER RESOLVED that all testimony, plats, plans, applications, minutes of the public hearing and other documents and data submitted be and are hereby made a part of this Resolution.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 3rd day of April 2017.

Mr. Fowler – ‘nay’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

DENIED: APRIL 3, 2017

Luanne C. Felter
Zoning Secretary

Ronald Ruehlmann, Board Vice-Chairperson