

Subject to the 150-day FCC Shot Clock Timeframe Set Forth in 47 CFR § 1.6003(c)(1)(iv)

**PLANNING BOARD
of the TOWN OF HYDE PARK, DUTCHESS COUNTY, NEW YORK**

In the Matter of the Application of

VERIZON WIRELESS OF THE EAST LP D/B/A VERIZON WIRELESS

Premises: Town of Hyde Park
Off St. Andrew's Road
Town of Hyde Park, Dutchess County, New York
Grid # 6164-03-494023

**STATEMENT OF INTENT
APPLICATION FOR SPECIAL USE PERMIT AND SITE PLAN APPROVAL**

I. Introduction

VERIZON WIRELESS OF THE EAST LP D/B/A VERIZON WIRELESS ("Verizon Wireless") (the "Applicant") proposes the installation and operation of a new public utility/personal wireless service facility (a "communications facility") to be located on Town-owned property off of St. Andrew's Road in the Town of Hyde Park, Dutchess County, New York ("Property"). Verizon Wireless intends to install and operate a new communications facility, which is proposed to include a new 150' (154' with 4' lightning rod) monopole communications tower within a 50' by 50' secured compound area on the Property. Verizon Wireless also proposes to install its: (i) antennae at the antenna centerline height ("ACL") of 146', and (ii) equipment on the ground within a portion of the compound area. Details of the proposal are provided in the site plans prepared by Tectonic Engineering included in Exhibit 1 attached hereto. Verizon Wireless' equipment will be in operation twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

The Property is owned by the Town of Hyde Park and is currently vacant wooded land. A copy of a survey prepared by Tectonic Engineering is attached hereto as Exhibit 2. The Town of Hyde Park has agreed to lease a portion of the Property to Verizon Wireless for the communications facility.

For purposes of zoning, Verizon Wireless is considered a public utility under New York decisional law (*Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364 (1993)), and a provider of "personal wireless services" under the federal Telecommunications Act of 1996 (the "TCA"). Summaries of the *Rosenberg* case and the TCA are attached hereto in Exhibits 3 and 4, respectively. Copies of the applicable Verizon Wireless FCC licenses are included herewith in Exhibit 5.

Pursuant to Chapter 101 of the Hyde Park Town Code (hereinafter, the “Wireless Telecommunications Regulations”), this communications facility is permitted upon the issuance of a Special Use Permit from the Planning Board.

II. Purpose of “40A” Facility

The purpose of this site (known internally as the “40A communications facility”) is set forth in detail in the Engineering Necessity Case prepared by Verizon Wireless’ RF Engineer in Exhibit 5 of this Application. As set forth in the Engineering Necessity Case, this project is a necessary and critical upgrade of the Verizon Wireless communications network in the Town of Hyde Park and is permitted under its existing FCC licenses provided in Exhibit 5, subject to local zoning regulations. As provided in greater detail in Exhibit 6, this site is also needed to provide **capacity relief** to the area surrounding the project site and to provide **new coverage for the high band frequencies** (i.e. 2100 MHz).

Upon installation and operation, the proposed facility will provide safe and reliable wireless service to this portion of Hyde Park.

A. Collocation is Not Available.

Consistent with the requirements of the Hyde Park Wireless Telecommunications Regulations, the Applicant investigated whether any opportunities for collocation in the search area existed. This information is documented in the Site Selection Analysis contained in Exhibit 7. As discussed in the Site Selection Analysis, Verizon Wireless considered possible collocation on an existing water tank owned by the Dutchess County Water and Wastewater Authority located at 59 St. Andrew’s Road, which currently has wireless communications antennas of another carrier located thereon. Verizon Wireless made several attempts to convince the Water Authority to lease space to Verizon Wireless for its antennas and equipment. Unfortunately, the Water Authority was not willing to allow any additional antennas to be collocated on the water tank. A reason for this decision was never provided by the Water Authority. As a result, and absent any other existing tall structures or towers in the search area, Verizon Wireless was left to propose a new tower structure.

III. Description of Land Use

As referenced above, Verizon Wireless proposes to install a 150’ monopole communications tower (154’ with 4’ lightning rod) within a 2,500 square foot secured compound area, utilities and access thereto. The details of the tower facility are provided in the site plans provided in Exhibit 1.

Verizon Wireless’ communications facility will consist of the following general components:

- Collocation of nine (9) panel antennas on three (3) antenna frames (three antennas per frame or “sector”) at a height of 146± ft. AGL (antenna centerline).
- One unmanned equipment platform measuring approximately 11.5± ft. x 16± ft. in size, within the fenced compound area.

- The tower and equipment will be located within a 50' by 50' compound surrounded by a chain link fence.

The site is proposed to be accessed via a gravel access drive off of St. Andrew's Road. St. Andrew's Road is a limited access County highway. Although St. Andrew's Road was established as a limited access highway, access is authorized to be granted to the Property from St. Andrew's Road in the event that access to the Property from Route 9G is not available. Due to the property configuration in relation to the location of Route 9G, access to the Property is not available from Route 9G. Verizon Wireless will, therefore, seek authorization from the County of Dutchess for access off St. Andrew's Road.

This access is and will be sufficient for emergency and non-emergency use. Parking is readily available at the site for the proposed use. New utility services (power and telephone/fiber) will be installed underground to a demarcation point located within the compound.

The proposed communications facility will be unmanned and visited for routine maintenance purposes approximately 1 - 3 times per year by Verizon Wireless (only as needed). As such, the project will not have any impact on existing water and sewage services. In addition, neither pedestrian nor vehicular access will be significantly impacted.

IV. Compliance with Hyde Park Wireless Telecommunications Regulations

The inclusion of a special permitted use (also known as a special exception or conditional use permit) in a local zoning ordinance is tantamount to a legislative finding that the use is in harmony with the general zoning plan and will not adversely affect the neighborhood in which the special use is proposed to be located. *Matter of North Shore Steak House v. Board of Appeals of the Incorporated Village of Thomaston*, 30 N.Y.2d at 243 [1972], citing 2 Rathkopf, *Law of Zoning and Planning*, Ch. 54, pp. 54-3 - 54-4; *Matter of Reed v. Board of Standards and Appeals*, 255 N.Y. 126; *Matter of Syosset Holding Corp. v. Schlimm*, 4 A.D.2d 766; *Matter of Bard Harbour Shopping Center v. Andrews*, 23 Misc.2d 894; see also, *Robert E. Lee Realty Co. v Village Spring Valley*, 61 NY2d 892, 893, 474 NYS2d 475 [1984]. In other words, by determining that wireless communications facilities, such as that proposed, are allowed upon issuance of a special use permit, the Town of Hyde Park Town Board made an express finding that a new wireless communications tower located in the existing zoning district is in accord with the general zoning plan for the town.

Moreover, when a proposed special use complies with the special use permit approval criteria established in the relevant zoning ordinance, as is the case here, the Planning Board is required under law to grant the special use permit. See, e.g., *Wegmans Enterprises, Inc. v. Lansing*, 70 N.Y.2d 1000 [1988]; *North Shore Equities, Inc. v. Fritts*, 81 A.D.2d 985 (3d Dep't 1981); see also, Salkin, *New York Zoning Law and Practice*, 4th ed., § 30:15 [2010] (explaining that "[i]f an application for a special use permit shows compliance with all the conditions imposed by the ordinance, a permit must be issued. The board is without discretion to withhold it."). (Emphasis provided).

The proposed communications facility complies in all material respects with the Town of Hyde Park Wireless Telecommunications Regulations.

1. Public Need for Facility: The Applicant has submitted expert proof in the form of a comprehensive report and propagation analyses prepared by its RF Design Engineer documenting that: (a) there are significant coverage gaps in the Town of Hyde Park; (b) the network is experiencing substantial capacity issues; and (c) that by installing a new communications facility at the proposed location and at the proposed height, the Applicant will be able to provide new or improved emergency and non-emergency wireless communications services to the targeted area and relieve the capacity issues. See, Exhibit 6.
2. Tower Design: The tower will be designed as a monopole tower. The tower will be made of galvanized steel which is designed to blend in with the horizon to the greatest extent feasible. All cables will be installed within the monopole tower. The tower design letter prepared by Tectonic Engineering in Exhibit 8 confirms that the tower will be designed to meet existing and industry-approved design standards.
3. Lighting: Verizon Wireless' equipment platform will include a light(s) necessary to illuminate the ground equipment area during maintenance/repair during night hours. The lights will only be used during times when Verizon Wireless is on site during non-daylight hours. The lights will not be visible from adjoining properties.
4. Equipment: Verizon Wireless will not install an equipment shelter but will use a small equipment platform and outdoor equipment. The platform will be significantly smaller than Verizon Wireless' standard equipment shelter. Details of the equipment platform are provided in Exhibit 1.
5. Environmental Standards: The proposed facility will not be located in wetlands or regulated wetland buffer areas or other sensitive receptors such as endangered, threatened or special concern species habitats, water bodies historic or archaeological sites. No hazardous wastes will be disposed at the site. The proposed facility is not anticipated to significantly increase storm water runoff due to the limited nature of the disturbance.
6. Radio Frequency Safety: A completed report entitled "Site Compliance Report" prepared by Centerline Communications is included at Exhibit 9 to document that the proposed facility will be in full compliance with the current FCC RF emissions guidelines (NIER) (§ 164-79(C)(1)).
7. Security Fence: As indicated on the enclosed site plans (Exhibit 1), the tower compound will be secured by a six foot (6') tall chain linked fence.

8. To assist the Town with its obligation under the NYS Environmental Conservation Act (“SEQRA”), a Full Environmental Assessment Form with Visual Addendum has been included in Exhibit 10.
9. Visual Resource Evaluation. Consistent with Section 101-9, the Applicant recognizes that the Town will likely require a “balloon test” for the purpose of evaluating the potential visual impacts associated with the proposed structure. Applicants are prepared to arrange for a balloon test if required. To assist the Planning Board with its consideration of potential visual impacts, Tectonic Engineering has prepared Viewshed Maps which confirm that taking into account existing topography and vegetation, the visibility of the proposed tower will be limited within the two-mile buffer area surrounding the tower location. The Viewshed Maps are provided in Exhibit 11, along with a plot and list of federal and state locations of historical importance.

The first map in Exhibit 11 illustrates the anticipated visibility of the tower based only on existing topography. The second map shows the potential visibility as a result of topography and vegetation. Factoring in topography and vegetation, the overall visibility of the proposed tower will be relatively minor in nature.

10. During the pre-application meeting held with the Hyde Park Planner and Planning Board Chairman on September 23, 2022, the Town confirmed that it would be responsible for sending copies of the Intermunicipal Notice required by Section 101-18.
11. Future Collocation. Verizon Wireless has committed to permit future collocation on the tower upon fair, reasonable and generally accepted industry standards. See, Exhibit 12.
12. Exhibit 13 includes information relative to the anticipated costs to dismantle the facility should the facility be abandoned.
13. Exhibit 14 includes a copy of a non-interference letter.
14. A copy of Verizon Wireless’ proposed safety inspection/maintenance plan is provided in Exhibit 15.
15. Verizon Wireless agrees to notify the Building Inspector within 24 hours if imminent danger is discovered, Verizon Wireless’ intent to repair it immediately and an action plan with a schedule for completion.

V. Impacts of Project are Minimal/Compliance with §108.8.4 Special Use Standards

The potential local impacts of the proposed facility are minor in nature. Additionally, the proposed facility is consistent with the special use standards contained in §108-8.4 of the Code.

- (i) The facility will comply with the applicable requirements contained in Articles 4 and 5 of the Hyde Park Zoning Law and will be consistent with the purposes of the district in which it is proposed to be located. As discussed above, wireless communications facilities are permitted in all zoning districts subject to issuance of a Special Use Permit from the Planning Board pursuant to §101-3(c) of the Zoning Law. The inclusion of a special permitted use in a local zoning ordinance is tantamount to a legislative finding that the use is in harmony with the general zoning plan and will not adversely affect the neighborhood in which the special use is proposed to be located. *Matter of North Shore Steak House v Board of Appeals of the Incorporated Village of Thomaston*, 30 NY2d 238 [1972].

Additionally, the proposed facility will comply with all required setbacks and bulk area requirements. The tower is not subject to the height limitations of the Code per §108-8.4(A)(4). The facility will not disturb any wetlands, flood plains or regulated streams. Except for areas that need to be cleared for access to the facility, existing vegetation will be maintained and serve to screen the lower portion of the facility. Additional screening is, therefore, not necessary.

The tower will not require FAA lighting or markings. Although a ground-mounted light will be installed in the compound to assist technicians that may be required to work on the facility during off hours during an emergency, the light will be designed and located to avoid light spill to neighboring properties.

Water, stormwater and sanitary sewers are not required for this project.

- (ii) The facility is consistent with the purposes set forth in Section 108-1.4 of the Code. The facility will provide critical wireless infrastructure to this portion of the Town of Hyde Park, which is currently lacking in such area. This will support the continued expansion and diversification of the Town's economic and employment base by providing reliable wireless communications services. The facility will not adversely impact the historic properties or traffic in the Town.
- (iii) The facility will not result in excessive noise, dust, odors, solid waste or glare, nor will it create any public or private nuisances. As indicated above, the proposed facility will be an unmanned communications facility. The facility will NOT have an emergency backup generator. Emergency backup power will be provided by batteries installed within the compound. Based on this, the facility will not generate noticeable noise. Upon completion of the installation activities, the normal operation will not involve the generation of dust, odors or solid wastes. Any dust generated during construction activities will be contained on the property.
- (iv) The facility will not generate noticeable traffic, impair pedestrian safety or overload existing roads, considering their current width, surfacing and condition. As an unmanned facility, any additional traffic generated as a result of the routine maintenance of the site will not be noticeable. On average, the site will generate 1-

3 visits per year for routine maintenance. Such visits will generally involve the use of typical SUVs commonly seen on public roads throughout the town.

- (v) The property upon which the facility is proposed is suitable for the proposed action considering the property's size, location, topography, vegetation, soils, natural habitat, hydrology, and its ability to be buffered or screened from neighboring properties and public roads. As indicated in the supporting application materials, the proposed use will be substantially screened due to existing vegetation and topography. The property is currently vacant and wooded land. Due to its limited access off of St. Andrew's Road, it is not anticipated that the property will be put to other uses.
- (vi) The facility will utilize the existing mature vegetation to buffer and screen the lower portion of the tower structure to ensure compatibility with surrounding uses and to protect the natural, historic and scenic resources of the Town, to the extent feasible. As illustrated in the Viewshed Map, the proposed structure is not expected to be visible from significant areas within a two mile buffer area surrounding the location of the facility. This will be confirmed with a balloon test and subsequent visual analysis.

VI. Conclusion

Approval of the communications facility proposed will enable Verizon Wireless to provide or improve advanced wireless telephone services to this portion of the Town of Hyde Park, within the confines of applicable technological and land use limitations. Such approval will also be in the public interest, in that it will allow Verizon Wireless to comply with its statutory mandate to build out its network and provide local businesses, residents and public service entities with modern, safe and reliable wireless communications services. Based upon the foregoing, Applicants respectfully request the issuance of the requested Special Use Permit and Site Plan Approval.

Thank you for your consideration.

Respectfully submitted,

VERIZON WIRELESS OF THE EAST LP d/b/a Verizon Wireless



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Dated: October 5, 2022