



# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT May 16, 2019

**APPLICATION:** A-19-15

**APPLICANT:** Cellco Partnership, d/b/a Verizon Wireless  
512 Township Line Rd.  
Bldg. 2, Floor 3  
Blue Ball, PA 19422

**OWNER:** American Industrial & Marine Electric, Inc.  
P.O. Box 715  
Dover, DE 19903

**PROPERTY LOCATION:** 3449 Midstate Rd., Felton, DE 19943

**NATURE OF REQUEST:**

**A-19-15 Cellco Partnership, d/b/a Verizon Wireless (Owner: American Industrial & Marine Electric, Inc.)** seeks a 25% expansion of a legal non-conforming use to allow for the expansion of a nonconforming cellular communications equipment compound (§205-218.A of the Kent County Code). The property is located on the north side of Midstate Rd. (Co. Rd. 34), approx. 1,890 ft. east of Robbins Rd. (Co. Rd. 383), west of Frederica. Levy Court District: 4<sup>th</sup>. Zoning District: AC. **Tax Map No. SM-00-130.00-02-56.00-000.**

The applicant is requesting the variance to enable an expansion of a legal nonconforming cellular tower facility by 16.8% by expanding the compound of the tower facility by 411 sq. ft. The current compound is 2,448 sq. ft. in size.

#### I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicant and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends **APPROVAL** of the request based on the analysis of the four criteria from the applicants and staff as follows:

#### II. RESPONSE TO CRITERIA:

##### 1. The proposed extension or enlargement does not change to less restricted and

**more intense use.**

Applicant Response:

See attached letter.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Telecommunication Towers are a Conditional Use in the AC district. The proposed expansion is keeping within the nature of the activity that is already occurring on site and the applicant has stated these changes are to support the placement of a new antenna on the existing lattice tower.

- 2. The extension or enlargement does not exceed 25% of the gross square footage in use at the time of the creation of the nonconformity.**

Applicant Response:

See attached letter.

Staff Response:

The proposed additions to the site at this time only amount to a 16.8% increase in the structures and uses that currently exist on the site. A variance was previously approved by the Board in 1998 for the use to expand 7.1%, so if approved the site will have expanded 23.9%.

- 3. The extension or enlargement will not violate the height or coverage regulations for the district.**

Applicant Response:

See attached letter.

Staff Response:

The maximum height for a telecommunication tower is 200 ft. and the maximum lot coverage is 25%. The applicants request shows compliance with these provisions.

- 4. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.**

Applicant Response:

See attached letter.

Staff Response:

The enlargement will not adversely impact the adjacent property owners since this change will not cause an increase in traffic coming to the site, but only allow the applicant to provide further co-locations on the tower. Due to the facility's distance from the road, this proposed change will not be visible by passing traffic. The closest home is 300± ft. from the expanded area so they shouldn't be affected by this expansion.

This recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Board of Adjustment shall give considerable weight to public testimony received during the public hearing in considering its decision.

### **III. APPLICATION BACKGROUND INFORMATION:**

- The applicant is seeking a variance to expand an existing legal nonconforming use by up to 16.8%.
- The applicant is proposing a 411 sq. ft. fenced area that will include a new equipment cabinet, utility frame, outdoor generator on a concrete pad, and a utility meter on a backboard.
- The site is 1.5± acres in size and is currently improved with a telecommunication tower with fenced compound and other structures supporting the tower.
- There have been three previous Board applications on the subject site.
- A-76-41 was approved to allow for the erection of a 165' tall microwave tower on June 17, 1976.
- A-85-60 was approved to allow the increase in tower height by an additional 85' on July 18, 1985.
- A-98-65 was approved to allow a 25% expansion of the tower's compound by a total of 7.1% (±200 sq. ft.) on September 17, 1998.
- The subject site is zoned AC (Agricultural Conservation District). The purpose of the AC District is to provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity. The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicant is advised that, should the request be granted, a Building Permit shall be obtained prior to the placement of any structures. For more information, contact the Division of Planning at (302) 744-2471 or Department of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

**ENC:** Exhibits A & B & C

Letter from applicant discussing variance criteria