

**DECISION**  
**TALBOT COUNTY BOARD OF APPEALS**  
**Appeal No. 18-1686**

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on November 5, 2018, on the application of **VERIZON WIRELESS, c/o NETWORK BUILDING + CONSULTING, LLC** (the “Applicant”). The Applicant is requesting a non-Critical Area variance from the 50-foot front setback to locate an above-ground propane tank approximately 20 feet, 2 inches from the property line on a property located at 12721 Ocean Gateway, Cordova, MD 21625. The subject property (the “Property”) is a small, triangular-shaped 0.69-acre (30,056 square foot) parcel owned by Wye Oak, LLC, which submitted an authorization for Applicant to submit the variance application to the Talbot County Board of Appeals. It is shown on tax map 4, grid 18 as parcel 9, and its zoning classification is Limited Commercial (“LC”).

Applicant’s request is made in accordance with Chapter 190 Zoning, Article II, §190-15, Article IX, §190-208 and Article IX, §190-182 of the Talbot County Code (the “Code”). Pursuant to §190-15, a 50-foot setback is required for all structures on properties located within the LC zoning district. Applicant’s variance request seeks relief of this requirement for the purpose of installing a propane tank used to fuel a required back-up generator associated with an existing telecommunications tower facility (the “Tower”) on the Property, of which Applicant is one of multiple co-located wireless service providers.<sup>1</sup>

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<sup>1</sup> Cellular tower co-location is the use of one structure to mount or deploy mobile telecommunications antennas belonging to more than one wireless service provider within a single location. Source: <https://www.cell-phone-towers.com/Cell-Tower-Co-location.html>

Present at the hearing were Board of Appeals members Phillip Jones, Vice-Chairman, John Sewell, Louis Dorsey, Frank Cavanaugh and alternate member Greg Gannon. Harold Bernadzikowski, a manager for Network Building + Consulting, LLC, appeared and testified on behalf of the Applicant. Brennan Tarleton, Planner I, and Miguel Salinas, Assistant Planning Officer attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for a Non-Critical Area Variance.
2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Non-Critical Area Variance with Attached Justification Statement.
7. Staff Report prepared by Brennan Tarleton, Planner I.
8. Comments from State Highway Administration.
9. Authorization Letter.
10. Disclosure and Acknowledgment Form.
11. Aerial Photos.
12. Direction to the Property
13. Site Plan prepared by Morris & Ritchie Associates, Inc.
14. Photos depicting proposed location of propane tank.

Mr. Bernadzikowski testified in support of the application. He said that Verizon Wireless was recently co-located to the Tower in 2016 (permit #16-409) and faced significant space limitations in which to install required equipment because of the Tower's location and the existence of a tree service business on the Property. In response to a question from Vice-Chairman Jones, Mr. Bernadzikowski said that each wireless service provider is supposed to have its own backup power system pursuant to Federal Communications Commission ("FCC") regulations in the wake of Hurricane Katrina in 2005. Some providers use batteries, Mr. Bernadzikowski said, and some providers are grandfathered from adherence to the FCC regulations he referred to; however, Verizon Wireless uses a more substantial backup system, including the propane-fueled backup generation that is the subject of this request. All other responses to the non-Critical Area variance criteria, Mr. Bernadzikowski said, are contained within the formal Justification Statement submitted with the application.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. As stated in the Applicant's formal responses, the triangular-shaped Property is small in size, at less than 7/10 of an acre. A tree service business operates from

the Property, resulting in limited space for the propane tank in order to minimize the impacts on everyday operation and navigation of this site. These shape and size constraints, along with the constraints caused by the Property's existing improvements, necessitates encroachment into the required 50-foot setback. Without a variance, the propane tank would need to be located further away from the Tower than proposed, which could create the need for reconfiguration of parking and equipment storage areas for the existing tree service business' operation on the property.

3. The need for the variance is not based upon circumstances which are self-created or self-imposed. Applicant was not the original developer for the Property, and had no involvement in the way the Property is utilized today. Additionally, the permit issued in 2016 (#16-409), which allowed Applicant to co-locate on the Tower, suggests that Applicant had no role in constructing the Tower in its existing location. Applicant's desires to locate the propane tank close to the Tower because it serves as the fuel source for Applicant's back-up generator on-site.
4. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. According to Applicant, the FCC requires telecommunications facilities, and individual wireless service providers co-located on the same facilities, under certain conditions, to have some form of back-up power, if the primary source of power were to fail. Applicant's backup generator requires a propane tank to provide fuel during such scenario.

5. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Property abuts an existing LC-zoned property and is bound to the north, east and west by public roads. The propane tank's location will be inside an existing perimeter fence on the Property. Due to setbacks required from both roadways (Ocean Gateway/U.S. Route 50 and Old Skipton Road), and the small size and irregular shape of the parcel, it serves the public interest and the interest of adjacent properties to locate the propane tank close to the Tower in order to limit the need for, and potential disturbance created by, site reconfiguration as it pertains to parking and equipment storage for the existing tree service business on the Property.
6. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Applicant is requesting a reduction the front setback from Ocean Gateway/U.S. Route 50 to meet the requirements of the FCC while also being in compliance with the 10-foot separation from any other onsite structures required by the Code. Applicant's request is the minimum necessary to meet the Code standards, as well as limiting the impact on existing operations on the Property. The location of the propane tank is within an existing fenced area and does not appear as though it would obstruct the right-of-way for Ocean Gateway/U.S. Route 50 or Old Skipton Road.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY  
THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **VERIZON WIRELESS, c/o NETWORK  
BUILDING + CONSULTING, LLC** (Appeal No. 18-1686) is **GRANTED** the requested  
variance consistent with the evidence presented to the Board of Appeals, subject to the following  
conditions:

1. The Applicant shall make applications to the Office of Permits and Inspections,  
and follow all of the rules, procedures and construction timelines as outlined  
regarding new construction.
2. The Applicant shall commence construction on the proposed improvements  
within eighteen (18) months from the date of this Decision.

GIVEN OVER OUR HANDS, this 3rd day of December, 2018.

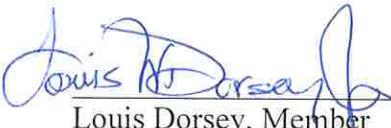
**TALBOT COUNTY BOARD OF APPEALS**



Phillip Jones, Vice-Chairman



John Sewell, Member



Louis Dorsey, Member



Frank Cavanaugh, Member



Greg Gannon, Alternate Member