

**ZONING BOARD OF APPEALS
Town of Orchard Park, New York**

Z.B.A. Orchard Park

Date June 8, 2018

(we) Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless, the Appellant or an authorized representative of the Appellant, residing at 1275 John Street, Suite 100, West Henrietta, NY 14586 HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE

DECISION OF THE BUILDING INSPECTOR to deny (use) (Building Permit) on the premise at N/A
Off Ellicott Road Orchard Park, New York, as per 144-49(C),(D) a

A Waiver / Variance to the Zoning Ordinance is requested for these reasons:

The zoning ordinance lists the maximum height of 35' (See § 144-9, Zoning Schedule of Uses within the A-1 zoning district). Pursuant to § 144-53(A) of the Orchard Park zoning ordinance, Verizon Wireless respectfully requests a waiver of (or in the alternative, if necessary, a variance from) the 35' height limit to permit the 144' tower (plus 4' lightning rod).

The applicable standards of review for the ZBA are set forth in Exhibit C.

The appellant affirms under penalty of perjury that the information contained herein is true to the best of his/her knowledge.

(Signed)  (Phone) (585) 263-1140
By Nixon Peabody LLP, its attorneys
By Jared C. Lusk, Esq.
Address 1300 Clinton Square, Rochester, NY 14604

The owner of record of the above property therein requesting the Variance, his attorney or agent with written authorization must be present at the Public Hearing. \$100.00 Filing fee must accompany this Appeal. No refund of fee under Town Law.

EXPIRATION OF APPEAL DECISION-ARTICLE 9, Section 144-63, "D", par.(d) - Unless otherwise specified by the Zoning Board of Appeals, a Decision on any appeal or request for variance shall expire if applicant fails to obtain any necessary Building Permit or comply with the conditions of said authorized Permit within (12) months from the date of authorization thereof.

FOR OFFICE / BOARD USE:

FEE PAID _____ REC'D BY _____

Erie County Division of Planning Recommendations: _____

SEQRA Applicable _____

Determination _____ Date _____

BOARD ACTION:

Initial Hearing Date: 7/17/18 Action 500 5.0
2nd Date: 8/21/18 Action 4-1 Permitted
3rd Date: _____ Action _____
4th Date: _____ Action _____
Final Date: _____ Action _____
Chairperson Kim Bowers
Date: 8/21/18

**RESOLUTION OF THE ZONING BOARD
OF APPEALS OF THE TOWN OF ORCHARD PARK
AUGUST 21, 2018**

WHEREAS, Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless (“Verizon Wireless”) applied to the Zoning Board of Appeals of the Town of Orchard Park (the “ZBA”) for (i) site plan approval, (ii) a tower permit, and (iii) a waiver of the tower height restrictions set forth in the Town of Orchard Park Zoning Ordinance (“Code”) § 144-53(A) (collectively, the “Approvals”) to construct and operate a wireless telecommunications facility (the “Project”) on property to be leased from Wesleyan Church of Orchard Park Inc. located off Ellicott Road (Tax Parcel No. 185.03-2-15.11) in the Town of Orchard Park (the “Project Site”); and

WHEREAS, the Project consists of a 144’ monopole tower and a 9’-4” x 16’ equipment platform and associated equipment at the base of the tower, together with other site improvements, as shown on the plans by Costich Engineering, P.C. submitted with Verizon Wireless’ application (the “Application”); and

WHEREAS, on July 17, 2018, the ZBA has conducted a full and comprehensive single agency review of potentially adverse environmental impacts from the Project pursuant to the State Environmental Quality Review Act (“SEQRA”) and has duly issued a negative declaration pursuant thereto and thereafter, conducted a public hearing on the Project, which hearing was held on July 17, 2018, at which Verizon Wireless made a presentation and the public was afforded the opportunity to be heard; the public hearing having been duly closed on July 17, 2018; and

WHEREAS, Verizon Wireless submitted extensive testimony, documentary evidence, and exhibits to the ZBA in support of its Application, all of which has been considered by the ZBA in evaluating the Application of Verizon Wireless; and

WHEREAS, the Project was duly referred to Erie County Planning Department pursuant to General Municipal Law § 239-m, which Planning Department pursuant to correspondence dated July 10, 2018 returned the matter to this Board for local determination.

NOW, THEREFORE, upon careful and deliberate consideration by the ZBA, of all written and oral submissions and testimony by the applicant, appropriate agencies and the public, and the ZBA having given this matter due deliberation and consideration; it is

RESOLVED, that the ZBA grants the Approvals requested in Verizon Wireless’ Application for the reasons, and subject to the conditions, set forth below:

REASONS SUPPORTING GRANTING OF THE APPROVALS:

1. The Project will be constructed in accordance with the site plan submitted with the Application.

2. Environmental Review: The negative declaration issued pursuant to SEQRA by the ZBA regarding the Project is fully incorporated herein and made a part hereof.
3. Verizon Wireless is a public utility, as defined under New York law, and also is licensed by the FCC to provide wireless telephone telecommunication services within and around the Town of Orchard Park.
4. Under New York Law, public utilities such as Verizon Wireless, because they provide essential services are afforded a relaxed standard of review by this ZBA, rather than the standards generally required for use variances and/or other approvals.
5. Verizon Wireless has established the need for Project to provide reliable wireless telecommunication service to the public for the portion of its grid network in its Powers Road cell located in and around the Hamlet of Ellicott in the Town of Orchard Park.
6. Verizon Wireless has established, to the satisfaction of the ZBA, that the proposed Project is necessary to allow Verizon Wireless to provide an adequate level of service to the area.
7. Verizon Wireless has established, to the satisfaction of the ZBA, that the proposed height of the Project is necessary to allow Verizon Wireless to provide reliable service to the Powers Road cell from the Project Site, and that the proposed height will not endanger or tend to endanger the public health, safety, morals or the general welfare of the community.
8. Verizon Wireless will comply with all applicable FAA and FCC regulations.
9. Verizon Wireless has satisfied the requirements for wireless telecommunication facilities as set forth in Article VII of the Code.

CONDITIONS ON GRANTING OF THE APPROVALS:

1. Verizon Wireless shall remove the Project if it becomes obsolete or ceases to be used for its intended purpose for twelve (12) consecutive months, as required under Code § 144-51(E).
2. Verizon Wireless shall provide a removal bond in the amount of \$50,000 to assure appropriate removal of the Project in the event Verizon Wireless fails to do so, as required under Code § 144-51(E).
3. Verizon Wireless shall comply with the Project inspection and repair requirements set forth in Code § 144-51(F) and Code § 144-51(G), respectively.

The within Resolution was motioned by ZBA Member, Kim Bowers, seconded by ZBA Member, Bob Lennartz, and voted upon by members of the ZBA as follows:

<u>Kim Bowers</u>	Voting	<u>Yes</u>
<u>Bob Lennartz</u>	Voting	<u>Yes</u>
<u>Bob Metz</u>	Voting	<u>Yes</u>
<u>Dwight Matar</u>	Voting	<u>Yes</u>
<u>Lauren Kaczor</u>	Voting	<u>No</u>

Rosemary M. Messina
8/21/18, Secretary
Town of Orchard Park Zoning Board of Appeals