

CITY OF ALBANY, ALBANY COUNTY, NEW YORK

In the Matter of the Application of

CELLCO PARTNERSHIP d/b/a Verizon Wireless

Premises: 40 Steuben LLC
58 North Pearl Street a/k/a 40 Steuben Place
City of Albany, Albany County, New York
Section 76.34, Block 2, Lot 18

**APPLICATION FOR BUILDING PERMIT APPROVAL &
MINOR CERTIFICATE OF APPROPRIATENESS**

I. Introduction

CELLCO PARTNERSHIP d/b/a Verizon Wireless ("Verizon Wireless" or the "Applicant") proposes the construction of an unmanned public utility/personal wireless service facility (a "communications facility"), located on the rooftop of an existing building owned by 40 Steuben LLC. The premises is located at 58 North Pearl Street (a/k/a 40 Steuben Place) in the City of Albany, Albany County, New York (Tax Map Parcel No. 76.34-2-18 and is located in the MU-DT (Mixed-Use Downtown) Zoning District and Downtown Albany Historic District (the project is referred to herein as the "Albany DT Communications Facility") [TABS 1 & 2; see also Zoning Site Plan of Tectonic Engineering, P.C. at TAB 11].

Verizon Wireless is considered a public utility under New York decisional law¹ (*Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364 (1993)) [TAB 3], and a provider of "personal wireless services" under the federal Telecommunications Act of 1996 (the "TCA") [TAB 4]. 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. Copies of the applicable Verizon Wireless FCC licenses are included herewith [TAB 5].

Pursuant to the recently adopted City of Albany Unified Sustainable Development Ordinance (hereinafter, the "USDO"), this project is permitted in any zoning district subject to issuance of a building permit (USDO, § 375-3(C)(6)(o)(iii) - "The mounting of antennas that are covered or colored to match the color and texture of the background surface on any existing building or antenna support structure, provided that any antenna mounted on the exterior wall of a structure not exceed height of the wall). Due to the location of the building in the Downtown Albany Historic District, the application must also receive a Minor Certificate of Appropriateness from the Chief Planning Official.

¹ To the extent variance relief is required for this project, this State's highest Court determined in *Rosenberg* that the ordinary variance standard is inapplicable and a cellular telephone company applying for relief need only show that (1) the relief is "required to render safe and adequate service," and (2) there are "compelling reasons, economic or otherwise," for needing the variance. *Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364, 372 (1993).

II. Description of Land Use

Verizon Wireless proposes to flush mount a new communications facility on the exterior wall of 58 North Pearl Street. The new communications facility will consist of the following general components:

- eight (8) panel antennas wall mounted and mounted on the existing chimney;
- 11'-6" x 16' accessory equipment platform on the rooftop, screened with metal walls; and
- cabling connecting the antennas to the telecommunications equipment and associated utility service connections.

Utilities will be obtained from the existing service connections already available at or near the premises. The proposed communications facility will be unmanned, and visited for routine maintenance purposes approximately 2 - 3 times per year (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 [see, Zoning Site Plan of Tectonic Engineering, included herewith at TAB 11].

III. Compliance with Building Permit Requirements in City of Albany USDO

Verizon Wireless' proposed communications facility complies in all material respects with the USDO and general Building Permit requirements:

- A. Building Permit Application:** A completed City of Albany Building Permit Application is provided in TAB 1.
- B. Certificate of Appropriateness:** § 375-5(E)(13). This Application, provided as TAB 2, does not involve the construction of a new primary structure, does not include or require a subsurface investigation, and the State Historic Preservation Office has provided the attached concurrence that the installation does not materially change the historic characteristics of the property. TAB 9. Therefore, we ask that the Chief Planning Official grant a Minor Certificate of Appropriateness.
- C. Antennas Colored to Match:** The proposed antennas will be painted to match the existing building. See "Antenna Note" included on multiple sheets, TAB 11. Photo simulations have been provided at TAB 7.
- D. Antennas do not Exceed Height of Existing Building:** A Site Plan prepared by a New York State Licensed Professional Engineer and showing all existing and proposed structures and improvements is included at TAB 11. In addition, photographs of the existing conditions are provided at TAB 8. As depicted in the zoning drawings, the antennas are flush mounted to the existing building structure and do not exceed the height of the existing building.
- E. Enclosed Support Structure Designed to Match and Does not Exceed Height of Adjacent Support Structures:** The proposed equipment platform support structure will be screened to match the building and the height does not exceed the height of the existing penthouse. See TAB 7.
- F. Structural Report:** A letter from Tectonic Engineering confirming that the roof is

structurally capable of handling the installation is attached at **TAB 6**.

- G. Proof of Insurance:** The applicable certificates of insurance are included with the Building Permit application. **TAB 1**.

For these reasons, Verizon Wireless respectfully submits that the proposed project complies in all material respects with the general building permit requirements in the City of Albany USDO.

Public Necessity

As noted above and in **TABS 3 and 4**, Verizon Wireless is recognized as a public utility under New York law and a provider of personal wireless services under the federal Telecommunications Act of 1996. This project is a public necessity in that it is required to render adequate and safe 4G hand-held telephone service (mobile and in-building) to a significant portion of the City of Albany.

Location on the existing building with no increase in overall building height will enable Verizon Wireless to address a significant gap in wireless services in the City of Albany, thereby enhancing the public health, safety, welfare and convenience by providing government, businesses and individuals with efficient, state-of-the-art 4G communications services police, fire and other emergency or non-emergency use. This, combined with the federal mandate to expeditiously deploy advanced 4G wireless services across the nation and Verizon Wireless' FCC licenses to provide such services in the City of Albany, demonstrates that Verizon Wireless' facility is a public necessity. Without the construction of the communications facility proposed, the public would be deprived of an essential means of communication, which, in turn, would jeopardize the safety and welfare of the community and traveling public.

IV. Conclusion

Verizon Wireless respectfully submits that approval of this project will 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 safe and reliable wireless communications services. Verizon Wireless' project complies in all material respects with the zoning requirements of the City of Albany USDO and with the Building Permit form.

Attached to this Application and Statement of Intent are the following:

1. Building Permit Application with copies of the certificates of insurance;
2. Minor Certificate of Appropriateness Application;
3. Documentation of Public Utility Status and Overview of the *Rosenberg* Decision;
4. Overview of Telecommunications Act of 1996;
5. Copies of Verizon Wireless' FCC Licenses for the Albany County area;
6. Structural Certification of Steven M. Matthews, P.E. – Tectonic Engineering;
7. Photographic Simulations prepared by Tectonic Engineering;

8. Photographs of Existing Conditions prepared by Tectonic Engineering;
9. State Historic Preservation Office concurrence memo dated November 18, 2016;
10. Redacted lease Agreement; and
11. Zoning Site Plan Drawings prepared by Tectonic Engineering.

If you should have any questions or require any additional information concerning this project, I can be reached at (518) 438-9907.

Thank you for your consideration.

Respectfully submitted,

CELLCO PARTNERSHIP d/b/a Verizon Wireless



David C. Brennan, Esq.
Regional Local Counsel

Dated: August 11, 2017

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR: Steuben 40 Ltd.

By: *I. David Swawite*
Name: I. David Swawite
Its: Director

Date: 2/16/2017

WITNESS

Handwritten Signature

LESSEE: CELLCO PARTNERSHIP d/b/a Verizon Wireless

By: *Richard Polatas*
Name: Richard Polatas
Its: Director Network Field Engineering

Date: 5/30/17

WITNESS

Barbara Clark

For the purpose of Section 32 only:

40 Steuben LLC

By: *I. David Swawite*
I. David Swawite
Its: Managing Member

Date: 2/16/2017

WITNESS

Handwritten Signature