

CITY OF ALBANY, ALBANY COUNTY, NEW YORK

In the Matter of the Application of

CELLCO PARTNERSHIP d/b/a Verizon Wireless

Lands n/f 151 HJB LLC
151 Henry Johnson Blvd
City of Albany
Albany County, New York
Section 65.64, Block 6, Lot 31

**APPLICATION FOR ROSENBERG AREA VARIANCE,
BUILDING PERMIT and STATEMENT OF INTENT**

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Premises: 151 HJB LLC
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BUILDING PERMIT APPROVAL**

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 151 HJB LLC. The premises is located at 151 Henry Johnson Boulevard in the City of Albany, Albany County, New York (Tax Map Parcel No. 65.64-6-31 and is located in the MU-CU (Mixed-Use Community Urban) Zoning District (the project is referred to herein as the "Arbor Hill 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 law (*Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364 (1993)) [TAB 4], and a provider of "personal wireless services" under the federal Telecommunications Act of 1996 (the "TCA") [TAB 5]. 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 6].

Pursuant to the recently adopted City of Albany Unified Sustainable Development Ordinance (hereinafter, the "USDO") and the written determination of Senior Planner, Lauren Alpert, dated February 21, 2018 [TAB 12], this project is permitted as an accessory use in any zoning district subject to an area variance issued by the Board of Zoning Appeals ("BZA").

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 install a new communications facility on the roof of the 41' 6" tall existing building located at 151 Henry Johnson Boulevard. The new communications facility will consist of the following general components:

- eight (8) panel antennas mounted on non-penetrating roof top mounts at center-line heights of 42' and 44';
- 11'-6" x 16' accessory equipment platform within a 18' x 22' fenced lease area at grade; 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. Access will originate from Henry Johnson Boulevard and will utilize the existing paved parking lot. 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 Planning and Development Requirements in City of Albany USDO

Verizon Wireless' proposed communications facility complies in all material respects with the USDO and general planning and building permit requirements:

- A. **Rosenberg Area Variance Application:** A completed City of Albany Area Variance Application is provided in TAB 2. The proposed facility will be roof-mounted slightly above the height of the existing building and therefore an area variance is requested. Verizon Wireless' proposed communications facility complies in all material respects with the requirements of the Rosenberg public utility variance exception standard:
 1. **Public Need for New Facility:** The purpose of the proposed facility is to provide additional wireless network bandwidth and improved performance to the northeastern portions of the City of Albany including the Arbor Hill and West Hill neighborhoods, and along portions of Northern Boulevard (US-9), Henry Johnson Boulevard, and Livingston Avenue. Due to heavy customer usage on Verizon Wireless' 4th Generation LTE network generated from downtown and state capitol portions of the City and the lack of a dedicated facility in/near Arbor Hill, Verizon Wireless' existing surrounding macro sites are not able to adequately satisfy the existing and emerging usage demand in this neighborhood and throughout the surrounding area.
 2. **Existing Towers:** In connection with this evaluation, the Applicant has retained the services of a real estate expert working in the telecommunications field to assist in the evaluation of existing towers in and around the City of Albany. Based upon review of the search area, it is clear that the 151 Henry Johnson Boulevard building is the best candidate and is centrally located in the search area and that there are no existing towers.
 3. **Placement Location is Constrained:** In choosing the mixed-use building located at 151 Henry Johnson Boulevard as a potential location for the proposed facility, Verizon Wireless followed a two-step process. The macro cell sites currently serving the area (Verizon Wireless' "Patroon Island" facility located on the Leo O'Brien Federal building rooftop and "North Albany" facility located on the Thurlow Terrace Apartment building at 116

Western Avenue) have reached maximum capacity in 2017 and have become overloaded and at this time provide reduced performance to the Verizon Wireless telecommunications customers being served by them. The area surrounding 151 Henry Johnson Boulevard is a relatively small geographic area focused on the commercially-developed area at the Livingston Avenue / Henry Johnson Boulevard intersection. The existing rooftop of 151 Henry Johnson Boulevard offers sufficient height to “see” over or around the majority of local building and vegetative clutter in the area, and will satisfy coverage and capacity objectives without the need to develop a new tower facility. See TAB 7.

4. **Least Intrusive Means; Minimum Relief:** As noted, the highest point of Verizon Wireless’ antennas will be located at the 44± ft. centerline level of an existing 41’ 6” building. Location on this existing structure will provide localized coverage to this important area of the City of Albany. In this context, Verizon Wireless’ antennas and associated equipment will not be significantly visible to the public. Finally, the proposed project minimizes potential land use conflicts by locating Verizon Wireless’ equipment at an existing building rooftop.

The proposed location of Verizon Wireless’ communications facility on the existing building is the least intrusive means of providing the necessary level of service to this area of Albany. “[W]here the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced.” *Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364, 371 (1993) (internal citations omitted).

Based upon the foregoing, Verizon Wireless respectfully submits that it has satisfied the burden of proof under New York’s *Rosenberg* standard.

- B. **Site Plan/Zoning Drawings:** 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.
- C. **No Significant Adverse Impacts:** For the following reasons, this project will not have an undue adverse effect on the surrounding community or neighborhood and will not have any risk to public health:
 - A completed City of Albany Short Environmental Assessment Form (“Albany EAF”) is included as part of TAB 3. As stated above, Verizon Wireless will locate its antennas and associated telecommunications equipment on an existing building. Collocation in this manner will dispense with the need for an additional new tower facility in this part of the City of Albany.
 - The proposed communications facility will address a significant gap in Verizon Wireless communications services in the northeastern portions of the City of Albany (specifically the Arbor Hill and West Hill neighborhoods, portions of Northern Boulevard (US-9), Henry Johnson Boulevard, and Livingston Avenue), thus enhancing the public health, safety, welfare and convenience by providing businesses and individuals with an efficient, state-of-the-art 4G communications

services system for police, fire and other emergency or non-emergency use [TAB 7].

- The proposed communications facility will be located on a secure rooftop area of 151 Henry Johnson Boulevard, which is not accessible to the public. A certification by a New York State Licensed Professional Engineer that the structure of the building is capable of supporting the facility is included at TAB 8.
- A Visual Impact Assessment, with photographic simulations of the location of the wireless telecommunications installation, can be found at TAB 9. Photographs of the existing conditions are included at TAB 10.

As these materials demonstrate, there will be no requirement for FAA marking and/or lighting as a result of this project. All antennas and equipment mounted to the building will blend in with background conditions. Verizon Wireless' equipment will be located on the building rooftop and in the existing parking lot and will not be significantly visible to the public.

- As also noted above, 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, and adequate parking for infrequent maintenance visits exists on site. Utilities will be obtained from the existing service connections already available at or adjacent to the premises.
- While properly a matter of federal jurisdiction and not a specific application requirement under the USDO, Verizon Wireless has provided a report from a New York State Licensed Professional Engineer (Paul Dugan, P.E. of Millennium Engineering, P.C.), documenting the fact that the communications facility proposed will comply with the requirements of the Federal Communications Commission ("FCC") for radio frequency ("RF") signal exposure. As noted in that report, the facility will transmit at well less than 1% of the limits imposed by the FCC. Accordingly, this project does not pose any potential RF-based public health or regulatory issues [TAB 7, Appendix A].
- Finally, while also a matter of federal jurisdiction, the Applicant has submitted a letter from its RF Engineer, documenting that the proposed facility will not interfere with communications devices operating in the surrounding vicinity [TAB 7, Appendix B].

For these reasons, Verizon Wireless has established that this project will not have an undue adverse effect upon adjacent property, the character of the surrounding neighborhood and surrounding areas, traffic conditions, parking, utility facilities or other matters affecting the public health, safety, welfare or convenience in accordance with USDO § 375-5(E)(4)(c).

- D. Consistent with Comprehensive Plan and the USDO:** For the reasons set forth herein, this project will conform to all applicable standards and conditions set forth in the City of Albany Unified Sustainable Development Ordinance.

Section 3.7 (“Utilities and Infrastructure”) of the Albany 2030 Comprehensive Plan specifically addresses Utilities and Infrastructure. In particular, the Comprehensive Plan states:

“The world is becoming a wireless society, and access to wireless networks is not just a luxury, but a necessity for educational and economic competitiveness.”

The goal of the Comprehensive Plan is to provide equitable communication opportunities for communities throughout the City. As outlined by the Verizon Wireless Engineer, the proposed facility is a public necessity for the Arbor Hill and West Hill neighborhoods. Collocation on this existing building will permit Verizon Wireless to provide an important service to the northeastern portion of the City of Albany.

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

Public Necessity

As noted above and in **TABS 4 and 5**, 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 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 Rosenberg public utility variance exception standard, and any potential impact on the community created by this project may properly be considered to be minimal.

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

1. Master Application, Owner Consent and Building Permit Application;
2. Area Variance Application;

3. Short Environmental Assessment Form;
4. Documentation of Public Utility Status and Overview of the *Rosenberg* Decision;
5. Overview of Telecommunications Act of 1996;
6. Copies of Verizon Wireless' FCC Licenses for the Albany County area;
7. Radio Frequency (RF) Justification and Site Selection Analysis prepared by the Verizon Wireless RF Engineer;
- 7(a) Radio-Frequency Safety Report prepared by Paul Dugan, P.E. of Millennium Engineering, P.C.;
- 7(b) Non-Interference Letter prepared by the Verizon Wireless RF Engineer;
8. Structural Certification of Steven M. Matthews, P.E. – Tectonic Engineering;
9. Visual EAF Addendum with Photographic Simulations prepared by Tectonic Engineering;
10. Photographs of Existing Conditions prepared by Tectonic Engineering;
11. Zoning Site Plan Drawings prepared by Tectonic Engineering; and
12. Zoning Determination Letter by Lauren Alpert dated February 21, 2018.

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.

Dated: April 18, 2018

Respectfully submitted,

CELLCO PARTNERSHIP d/b/a Verizon Wireless



David C. Brennan, Esq.
Regional Local Counsel