

CITY OF BEACON

CITY COUNCIL

Resolution No. _____ of 2019

RESOLUTION

**GRANTING A SMALL CELL WIRELESS FACILITY SPECIAL USE PERMIT
TO VERIZON WIRELESS (110 HOWLAND AVENUE)**

WHEREAS, the City Council received an application from Verizon Wireless (the “Applicant”) for a Small Cell Wireless Facility Special Use Permit to install two panel antennas and related equipment on a new 52 foot tall wood utility pole, along with ancillary equipment on the ground at the base of the new pole and equipment mounted on the new utility pole two feet above the ground to approximately twelve feet above the ground (“the Proposed Action”) on privately-owned property located at 110 Howland Avenue in the R1-40 Zoning District, known and designated on the Tax Map of the City of Beacon as Parcel ID #6054-14-347464 (the “Property”); and

WHEREAS, pursuant to § 223-26.4.B of the City of Beacon Zoning Code, Special Use Permit approval by the City Council is required to install a new utility pole for a small cell facility which is over fifty feet in height and to install antenna equipment on the pole at an elevation less than eight feet from the ground; and

WHEREAS, the City Council is the approval authority for the Special Use Permit pursuant to City of Beacon Zoning Code §§ 223-18.B and 223-24.5; and

WHEREAS, the application consists of application forms, correspondence, the Environmental Assessment Form and professional studies; and

WHEREAS, the Site Plan is shown on drawings, entitled “Howland Micro” last revised March 5, 2019, as prepared by EBI Engineering, P.C; and

WHEREAS, the Proposed Action is an Unlisted Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, the City Council referred the application for the Proposed Action to the Dutchess County Planning Board and City of Beacon Planning Board for report and recommendation; and

WHEREAS, the Planning Board considered the Proposed Action at its March 12, 2019 meeting and issued a report to the City Council dated March 14, 2019 recommending a 6 foot high fence, made of the same materials as the nearby dumpster enclosure, be

constructed to surround the facility and evergreens be planted near the edge of the property to screen the view from the house that has a clear view of the utility pole; and

WHEREAS, the Dutchess County Department of Planning and Development issued a report to the City Council dated March 18, 2019, recommending that the City inquire whether moving the tower further east, closer to the base of Mt. Beacon and the tree line, would better camouflage the proposed tower without significantly impeding the radiofrequency signal; and

WHEREAS, a public hearing on the Special Use Permit application was originally scheduled for May 6, 2019, however the Applicant failed to notice the public hearing pursuant to the requirements set forth in § 223-61.3 of the City of Beacon Zoning Code; and

WHEREAS, on June 17, 2019, the City Council opened and closed the re-scheduled public hearing on the Special Use Permit application, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council inquired whether the height of the wooden utility pole and antennas could be reduced to a height less than the proposed height of 52 feet for the utility pole and proposed antenna centerline height of 50 feet; and

WHEREAS, Verizon provided a supplemental height justification in response to the City's inquiry; and

WHEREAS, Verizon explained that the proposed 50 foot antenna centerline height allows for adequate and reliable coverage for the area, including East Main Street, while maintaining the ability to "contain" the site so it does not overshoot and degrade the network as a whole. If the antenna centerline height is located too low the site becomes unusable since it will be excessively blocked by area clutter including terrain, buildings and foliage; and

WHEREAS, Verizon further advised that lowering the antenna centerline height to 48 feet would not be preferred and would impact coverage, however Verizon agreed that considering the FCC's new definition of "small wireless facility" which became law after Verizon designed the facility, and limits the height of a small cell facility to 50 feet it would be a reasonable compromise to lower the height of the wooden utility pole and the antenna centerline height to 50 feet and 48 feet, respectively; and

WHEREAS, the City Council has reviewed the application for a Special Use Permit against the general standards for Special Use Permits and Wireless Telecommunication uses set forth in the City of Beacon Zoning Code §§ 223-18.B and 223-24.5, and finds that the proposal, in conjunction with the conditions set forth herein, complies with these sections of the City of Beacon Zoning Code, as set forth below; and

WHEREAS, as explained by the City Attorney, the Telecommunications Act of 1996 and the FCC's *Declaratory Rule and Third Report and Order*, adopted September 26, 2018, make it unlawful for local governments to prohibit, or have the effect of prohibiting, the provision of personal wireless service within the meaning of Section 332(c)(7)(B)(i)(II); and

WHEREAS, an effective prohibition occurs where a state or local action inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities; and

WHEREAS, pursuant to Section 332(c)(7)(B)(iv) of the Telecommunications Act of 1996 "no state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions."

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby finds pursuant to §§ 223-18 and 223.24.5 of the City of Beacon Zoning Code that, along with the imposition of the conditions set forth herein:

1. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
2. The location, nature and height of the monopole, antennas, fencing and other associated equipment and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
3. Operations in connection with the wireless telecommunications facility use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristic than would be the operations of any permitted use, not requiring a special permit.
4. Relocation of the small cell facility towards Mount Beacon, further back from the parking area, eastward/southward, was reviewed and is not a viable option for the Applicant due to radiofrequency signal concerns with relocating the facility further back on the property relative to the existing tree lines. Specifically the northern tree line which would create additional "shadowing" degrading the capability of the site to unacceptable levels. Under the Telecommunications Act of 1996, local governments cannot prohibit, or have the effect of prohibiting, the "provision of personal wireless services." A local requirement could effectively prohibit the "provision of personal wireless

services” not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services.

5. The proposed configuration of the two panel antennas is reasonable based on the Applicant’s coverage and capacity objectives. As discussed above, local governments cannot inhibit a provider’s ability to introduce new services or otherwise improve service capabilities. The selected antennas have been specifically required due to their narrow horizontal and vertical beam widths as well as remote tilt capabilities. These are critical design functions necessary for this site to cover the required areas while minimizing overshooting interference.
6. The wireless telecommunication services facility will not be required to have FCC lighting, based on its height.
7. The wireless telecommunication services facility is sited to the maximum extent permitted and technically feasible to have the least adverse visual effect on the environment and its character, on existing vegetation and on the neighboring residence in the area of the wireless telecommunication services facility.

BE IT FURTHER RESOLVED, that after taking a “hard look” at each of the relevant areas of environmental concern through review of the Environmental Assessment Form and all associated materials prepared in connection with the Proposed Action, the City Council hereby adopts the attached Negative Declaration.

BE IT FURTHER RESOLVED, that the City Council grants a Small Cell Wireless Facility Special Use Permit to Verizon Wireless to install two panel antennas and related equipment on a new wood utility pole, along with ancillary equipment on the ground at the base of the new pole and equipment mounted on the new utility pole on privately-owned property located at 110 Howland Avenue, as set forth and detailed on the plans prepared by EBI Engineering PC, last revised March 5, 2019, upon the following conditions:

1. The new wooden utility pole shall be installed at a height not to exceed 50 feet. The antennas shall be installed at a centerline height not to exceed 48 feet and the top of the antennas shall not exceed a height of 50 feet. The Applicant shall submit an updated Drawing Set, including a revised Site Plan, to the City incorporating the height limitation set forth herein.
2. No permits shall be issued until the Applicant has paid to the City all applicable fees and professional review fees incurred in connection with review of this Application.
3. A copy of this Resolution shall be attached to the Certificate of Occupancy.

4. FCC warning signage should be routinely inspected and maintained at the site. It is the Applicant's responsibility to comply with all FCC rules and regulations that are applicable to the site and its operations.
5. The proposed antennas, mounting structures and cable runs shall be color matched to the pole and in accordance with the photo simulations provided for this application. All proposed equipment shall be of a matte finish.
6. The Applicant shall provide screening on the south side of the existing fencing around the existing dumpster and proposed Verizon equipment enclosures to supplement the on-site deciduous trees and to further shield visual impacts to residential properties to the south. The Applicant shall plant at least two trees (an evergreen or similar non-deciduous species) with a minimum height of 8 feet at the time of planting. All trees shall be planted to the satisfaction of the City Planner. The Applicant and the property owner shall maintain any and all trees planted pursuant to this condition and replace the tree(s), in-kind, if it dies or is removed for any reason.
7. The Applicant shall construct a six foot fence around the facility, made out of the same materials as the dumpster enclosure located on the site.
8. Evergreens shall be planted near the edge of the property to screen the view from the neighboring residence at the end of Chiusano Drive, to the satisfaction of the City Planner. The Applicant and the property owner shall maintain any and all trees planted pursuant to this condition and replace the tree(s), in-kind, if it dies or is removed for any reason.
9. A structural and foundation analysis shall be provided as part of the future Building Permit application.
10. The Applicant's plans show a future parking lot light mounted on the proposed wooden utility pole. Prior to the installation of any light pole, an illumination plan demonstrating no spillover of light shall be provided to the Building Department for approval. The proposed parking lot light is not part of the Applicant's Special Use Permit Application. Prior to the issuance of the Building Permit, the Applicant shall send a copy of this resolution to the property owner and shall specifically identify this condition and advise the property owner that before installation of any parking lot light, an illumination plan must be approved by the Building Department.
11. The Applicant shall provide a sign at the site with the contact information for the Applicant's personnel responsible for the site.
12. As-built drawings shall be prepared for the Building Department files which depict the actual locations and heights of all Verizon small cell equipment including - but not limited to - the wooden pole, antennas, pole-mounted

equipment, fencing, and subgrade utility runs and tie-ins. Any screening or landscaping required by the City Council shall also be included on the as-built drawings, along with notes for the facility Maintenance Plan.

13. Grounding and bonding certifications shall be provided to the Building Department.
14. Operations shall be maintained in accordance with the § 223-24.5 of the City of Beacon Zoning Code and all other applicable local, state and federal laws and regulations.
15. Unless otherwise superseded by the FCC, the design and use of the proposed wireless telecommunication services facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform to the maximum NIER exposure standards promulgated by the FCC. Said certification shall include a report by a licensed professional electrical engineer with expertise in radio communication facilities and/or health physicist acceptable to the City Council. A copy of such certification report shall be submitted to the City Council prior to commencing operation of such facility and a copy shall be filed with the Building Inspector.
16. The City Council shall require annual certification of conformance with the applicable RF emissions standards.
17. Copies of certification reports shall be submitted to the City Council whenever they are required to be submitted to the FCC. The City Council may hire a qualified professional of its choosing to review and confirm such initial and subsequent certification reports, the cost of which shall be reimbursed by the applicant in accordance with the escrow account procedures established by City of Beacon Code. Any violation of the emission standards shall require immediate discontinuation and correction of the use responsible for the violation.
18. In accordance with §223-24.5.S, the Applicant shall submit to the City Building Inspector an annual structural/safety inspection. The structure shall be inspected annually from a structural and safety perspective by a licensed professional engineer or at any other time that the Building Inspector determines that the structure may have sustained structural damage. A copy of the inspection report shall be submitted to the Building Inspector. The City of Beacon reserves the right to inspect any wireless telecommunication services facility to ensure compliance with the City of Beacon Code, FCC regulations and state and federal law.
19. If there is a change in operations in the future (frequency bands or class of service such as 5G), the applicant shall be required to notify the City Building Department and submit an updated RF Emissions report.

20. Any proposed increase in Verizon's number of antennas, antenna sizes, or number/sizes of ground based equipment cabinets shall be approved by the City prior to any modifications (e.g., upgrades or minor modifications as defined under the FCC's Eligible Facilities Request). Any plans for collocation will need to be reviewed and approved by the City under the appropriate application process.
21. As used herein, the term "Applicant" shall include its heirs, successors and assigns.
22. In accordance with Section 223-18.F(1) of the Zoning Law, this Special Permit Approval authorizes only the particular use specified in the permit and shall expire if:
 - a. A bona fide application for a Building Permit is not filed within one (1) year of the issuances of this Special Permit Approval; or
 - b. If all required improvements are not made within one (1) years from the date of issuance of the Building Permit; or
 - c. If said use ceases for more than six (6) months for any reason.
23. In accordance with Section 223-18.F(2) of the Zoning Law, the City Council may grant one (1) or more extensions of up to six (6) months each, to (a) complete the conditions of approval for the special permit use, upon a finding that the applicant is working toward completion of such conditions with due diligence and has offered a reasonable explanation of its inability to complete such improvements and file a bona fide application for a building permit, and (b) to complete construction of the improvements, upon a finding that the Applicant is prosecuting construction with due diligence and has offered a reasonable explanation of its inability to complete the Project. The City Council may impose such conditions as it deems appropriate upon the grant of any extension. The granting of an extension of time shall not require a public hearing.
24. Any proposed revision to this Special Permit Approval shall be submitted to the City Council. The City Council, in its discretion, shall determine the appropriate procedures for consideration of the proposed revision, and whether such revision is material enough to require further environmental analysis, further project review and/or a public hearing, as it may deem appropriate.
25. The Building Inspector may revoke this Special Permit Approval where it is found that the use of the premises does not conform to the limitations and conditions contained in the Special Permit Approval.

26. If any of the conditions enumerated in this resolution upon which this approval is granted are found to be invalid or unenforceable, then the integrity of this resolution and the remaining conditions shall remain valid and intact.
27. The approvals granted by this resolution do not supersede the authority of any other entity.

BE IT FURTHER RESOLVED, that on June 18, 2018, the City Council adopted a resolution which requires the City Council to consider at the time of approving a land use project whether it is appropriate to require a weatherproofed copy of the site plan and architectural renderings of the project to be posted on a sign to be maintained at the property from the time of commencement of construction until substantial completion of the structure; the Building Inspector advised since the structure is limitedly visible from Howland Avenue, impacts a small area on a developed lot and is located in a paved parking lot it would serve no real purpose to have a sign posted on the property, the City Council therefore finds that such a sign is not required for this land use approval.

Dated: July 15, 2019

Resolution No. _____ of 2019			Date: <u>July 15, 2019</u>				
<input type="checkbox"/> Amendments			<input type="checkbox"/> On roll call				
<input type="checkbox"/> Not on roll call.			<input type="checkbox"/> 2/3 Required. <input type="checkbox"/> 3/4 Required				
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy J. Casale					
		Motion Carried					