

CHARLESTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA

**DECISION AND ORDER**

**Application of Crown Castle NG East LLC  
Conditional Use Approval**

**March 4, 2019**

**I. INTRODUCTION**

Crown Castle NG East LLC (the “Applicant”) filed an application for conditional use approval pursuant to Section 27-1621.4.A of the Charlestown Township Zoning Ordinance (“Zoning Ordinance”) in order construct a tower based wireless communications facility within the public right-of-way adjacent to the property located at 3285 Phoenixville Pike, Malvern, PA 19355 (Tax Parcel # 35-4-95) (the “Property”).

A public hearing on the above referenced conditional use application was commenced on February 4, 2019, with public notice properly provided by notice in the Daily Local News on January 11, 2019 and January 18, 2019 as well as by individual notification to property owners within two hundred fifty feet from the property, including the properties directly adjacent to the right-of-way where the facility is proposed. The Applicant’s case was presented by Shawn N. Gallagher, Esquire of Buchanan Ingersoll & Rooney PC through witnesses, Olaniyi Jinadu, Radio Frequency Engineer, and Janet Colleran, government relations specialist for the Applicant.

**II. RELIEF REQUESTED**

While the Property on which the wireless facility that is the subject of this application is owned by the Chester Valley Grange, the facility is proposed to be located within the right-of-way of a Pennsylvania Department of Transportation (“PennDOT”) public road, specifically, Phoenixville Pike (S.R. 1003). In order to construct proposed wireless communication facility in the location within the right-of-way, the Applicants have requested conditional use approval pursuant to 27-1621.4.A of the Zoning Ordinance permitting “Tower-Based Facilities in Rights-of-Way” in the NC-1 Zoning District where the facility is proposed to be located.

The proposed tower based facility consists of a single 38’6” telephone pole with an antenna mounted at the top at a height of 41’8” and equipment to service the antenna mounted on the pole not less than 8-feet from the ground as shown on Exhibit A-6 entitled “Installation of Next-G Pole Mounted Antenna-13 KV & below Systems”. The proposed installation is one of four installations in Charlestown Township with two existing within the right-of-way of Phoenixville Pike and one on Spring Mill Road. The location of the proposed facility is shown on Exhibit 7, Page 10, within the PennDOT right-of-way between the driveways for the properties owned by the Apostolic Christian Church (Tax Parcel 35-4-95.1E) and the Chester Valley Grange (Tax Parcel 35-4-95). The Applicant has obtained a Highway Occupancy Permit from PennDOT identified at the hearing as Exhibit A-2

Section 27-1621.4.C of the Zoning Ordinance provides:

C. Co-location. An application for a new tower-based WCF in the ROW shall not be approved unless the Township finds that the proposed wireless communications equipment cannot be accommodated on an existing structure, such as a utility pole or traffic light pole. Any application for approval of a tower-based WCF shall include a comprehensive inventory of all existing towers within a one mile radius for the point of the proposed tower, unless the applicant can show to the satisfaction of the Township that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other structure cannot be utilized.

In this case, the Applicant provided testimony from its Radio Frequency Engineer, Olaniyi Jinadu, indicating that all PECO electric poles on the south side of Phoenixville Pike in the vicinity of the proposed facility carry “double primary power”, or are located in the trees (Exhibit 1, pp. 6-9) preventing the Applicant from co-locating on those poles. In addition there was testimony that the proposed location for the facility could not be moved to an area west of the driveway for the Church because the facility works in concert with the three other facilities owned by the Applicant in the shown on Exhibit 1, p. 11.

Concerning whether there is a “gap in coverage” in the area where the facility is proposed, Section 27-1621.4.B of the Zoning Ordinance provides that the existence or nonexistence of the gap in coverage shall be a factor in the Township’s decision. Pursuant to Section 27-1621.4.B of the Zoning Ordinance, the Applicant’s expert witness testified that a gap in coverage existed for Verizon for the location in question as shown on Exhibit A-1, pp. 17-19 and further that the proposed facility would eliminate the gap. While extensive evidence on the the gap in coverage was not presented, given the fact that the existence of the gap is only a factor to consider, there is enough testimony to conclude that compliance with Section 27-1621.4.B of the Zoning Ordinance is met.

At the hearing, representatives from the Chester Valley Grange, the owner the property on which the proposed facility is to be located, but within the PennDOT right-of-way were granted party status to the application and inquired concerning compensation for the facility being located on the Grange’s property. We note that any such agreement for compensation would be between the Applicant and the property owner or owners adjacent to the right-of-way on which the facility is located and the existence of any such agreement is not a requirement for the grant of the requested conditional use by the Township.

The standards for conditional use are set forth in Section 27-1621.4 of the Zoning Ordinance and more generally applicable standards in Section 1809. According to evidence presented by the Applicant, specifically Exhibit A-1, it does not appear the location of the proposed facility will create any issue with the health, safety, morals and general welfare of the Township and appears consistent with the nature of the uses in the neighborhood. Moreover the evidence demonstrated that the facility is proposed to be located where it will not cause any physical or visual obstruction to pedestrian or vehicular traffic or create any safety hazards to motorists as required by Section 27-1621.4.E of the Zoning Ordinance. In addition and according

to the Applicant's witness testimony, there was no opportunity for co-location or alternative location for the facility that would be less impactful to the surrounding properties.

### **III. FINDINGS OF FACT**

1. Crown Castle NG East LLC (the "Applicant") proposes to construct a tower based wireless communications facility within the public right-of-way owned by PennDOT adjacent to and on the property located at 3285 Phoenixville Pike, Malvern, PA 19355 (Tax Parcel # 35-4-95) (the "Property").

2. The Property consists of approximately 1.1 acres and is improved with a multi-purpose building and parking lot.

3. The Property is located in the NC-1 Neighborhood Commercial Zoning District.

4. The Applicant's proposed tower facility consists of a single 38'6" telephone pole with an antenna mounted at the top at a height of 41'8" and equipment to service the antenna mounted on the pole not less than 8-feet from the ground as shown on Exhibit A-6.

5. The location of the proposed facility, as shown on Exhibit 7, Page 10, is within the PennDOT right-of-way between the driveways for the properties owned by the Apostolic Christian Church (Tax Parcel 35-4-95.1E) and the Chester Valley Grange (Tax Parcel 35-4-95).

6. The Applicant has obtained a Highway Occupancy Permit from PennDOT, identified at the hearing as Exhibit A-2, for the installation of the proposed facility in the right-of-way

7. The evidence presented by the Applicant demonstrated that the facility is proposed to be located where it will not cause any physical or visual obstruction to pedestrian or vehicular traffic or create any safety hazards to motorists utilizing Phoenixville Pike or accessing the driveways for the properties directly to the east and west of the facility.

8. PECO electric poles on the south side of Phoenixville Pike in the vicinity of the Applicant's proposed facility carry "double primary power" or are located near trees, which prevents them from being used for colocation of a wireless communications facility. (Exhibit 1, pp. 6-9) preventing the Applicant from co-locating on those poles.

### **IV. CONCLUSIONS OF LAW**

1. The Applicant has standing.

2. The Applicant has met the standard for approval of the proposed conditional use.

3. The Applicant has satisfied the standards set forth in Sections 27-1621.4 and 27-1809 of the Zoning Ordinance for Conditional Use Approval.

**V. DECISION AND ORDER**

AND NOW, this 4<sup>th</sup> day of March 2019, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicant, Crown Castle NG East LLC, is granted conditional use approval pursuant to Section 27-1621.4(A) of the Charlestown Township Zoning Ordinance in order to construct a tower-based wireless communication facility within the Pennsylvania Department of Transportation (“PennDOT”) right-of-way adjacent to the property located at 3285 Phoenixville Pike, Malvern, PA 19335 (Tax Parcel # 35-4-95) subject to the following conditions.

1. The proposed use is subject to compliance with all terms and provisions of the Zoning Ordinance, and all other Township Ordinances and regulations, and in addition to the regulations of all other government agencies having jurisdiction over the use including PennDOT.
2. The scope of this approval is limited to the requested use at the requested location within the PennDOT Right of Way for Phoenixville Pike (S.R. 1003) as set forth on the Applicant’s Highway Occupancy Permit No. 06095662 (Exhibit A-2) and representations made by the Applicant made as part of the record at the public hearing.
3. The Applicant shall comply with all exhibits, representations, record evidence, and conditions of approval, which are incorporated herein as part of this approval.
4. The Applicants shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

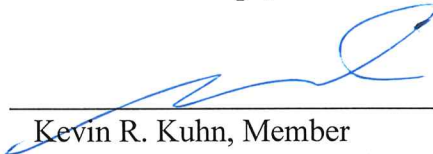
CHARLESTOWN TOWNSHIP



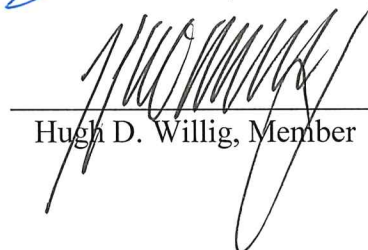
Frank Piliero, Chairman



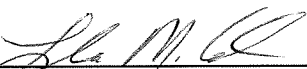
Charles A. Philips, Vice Chairman



Kevin R. Kuhn, Member



Hugh D. Willig, Member

  
Linda M. Csete, Secretary

  
Susan Bednar, Member