

TOWN OF SUGAR HILL

STATEMENT IN SUPPORT OF APPLICATION

FOR VARIANCE

APPLICANT: Blue Sky Towers IV, LLC ("Blue Sky")

TENANT: Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless")

OWNER: Presby Family Irrevocable Trust

SITE ADDRESS: Sugar Hill Road (Route 117), Sugar Hill, New Hampshire

PARCEL ID: Map 216, Lot 4

ZONING DISTRICT: RR1 – Rural Residence

This Statement in Support of Application for Variance is respectfully submitted by the Applicant for a multi-use wireless communications facility consisting of a 150 foot monopole with a six foot lightning rod and equipment within a 100' x 100' lease area on the property owned by the Presby Family Irrevocable Trust on Route 17 (Map 216, Lot 4) in the Town of Sugar Hill. The request herein includes a request for the approval of the antennas and equipment of Verizon Wireless, who has entered a Tower Lease Agreement with the Applicant for space on the proposed tower, all as detailed herein and shown on the included plans.

See Exhibit 1, Recorded Memorandum of Tower Lease Agreement

I. Description of the Applicant

Blue Sky is a developer of wireless infrastructure. Blue Sky engineers, deploys, owns and Operates technologically advanced shared wireless infrastructure across the country and in Puerto Rico and the U.S. Virgin Islands, including an extensive network of towers (www.blueskytower.com).

Representative:

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II. Applicant's Interest in the Property

The Owner and Blue Sky entered into a certain Lease Agreement by which Owner leased to Blue Sky an approximate 10,000 square feet of ground space on a portion of Owner's property for the placement of a wireless communications facility all as shown on the attached plans.

See Exhibit 2, Ground Lease Agreement

See Exhibit 3, Zoning Drawings

III. Project Summary

The Applicant proposes a 150 foot monopole type tower with Verizon Wireless' six (6) panel antennas mounted at a centerline elevation of 145 feet above ground level. Verizon Wireless will encompass a 12' x 20' equipment lease area within the 50' x 65' fenced compound, with telco/power/fiber connections, telecommunications cabinets and a back-up power generator all on concrete pads within the proposed fenced compound. The compound will be surrounded by a 6 foot tall chain link fence topped with barbed wire for additional security. An ice bridge will run from the equipment lease area to the tower to protect cabling between Verizon Wireless's equipment and the cable located near the base of the tower. Utilities will run overhead from the street to the compound as shown on the plans and according to utility company specifications.

Access to the site will be over an existing private road, crossing Salmon Hole Brook. Given the local concerns with the hydraulic capacity of the existing stream crossing, the Applicant, working together with ProTerra Design Group Engineering, Redfish Engineering, and the property owners (Presby Construction), has designed a conceptual replacement of the Salmon Hole Brook Crossing to meet DES standards for Tier 3 Streams including the following:

- Span that meets 1.2 x bankfull width plus an additional 2 feet requirement per the NH Stream Crossing Guidelines
- Per these guidelines, Redfish calculated:
- Span width = $(1.2 * 24 \text{ (Bankfull Width)}) + 2 = 31 \text{ feet}$
- Span the channel (i.e., no closed-bottomed structure)
- Sufficient size to convey the 100-year 24-hour design storm and cause no more than 1-foot rise
- Simulate a natural stream channel
- A vegetated bank on both sides of the channel to provide a wildlife passage shelf
- A natural alignment and gradient of the stream channel

Once operational, the facility will be unmanned. Trips to and from the facility will be limited to once or twice a month, on average, by maintenance personnel to ensure that the

telecommunications equipment remains in good working order. The equipment is maintenance free. However, in the event that maintenance of the equipment becomes necessary, the Applicant will perform the necessary maintenance.

See Exhibit 3, Zoning Drawings

See Exhibit 4, Stream Crossing Replacement - Conceptual Design Summary

On March 15, 2025, Virtual Site Simulations, after courtesy notice and consultation with the Town, floated a balloon at 150 feet above ground level on the proposed parcel at the proposed location of the tower to prepare a photographic simulation of the tower from over 20 locations within a two mile radius.

See Exhibit 5, Photographic Simulations

The Significant Coverage Gap

Verizon Wireless is in the process of deploying its Fourth Generation ("4G") voice and data services over LTE highspeed wireless system in the 700 MHz, Cellular (800 MHz), PCS (1900 MHz), AWS (2100 MHz), and CBRS frequency bands as well as its Fifth Generation ("5G") NR services in its cellular, C-band and 28 GHz frequency bands. Verizon Wireless must close significant gaps in its wireless communication service and address capacity, interference and high speed broadband issues in the Town of Sugar Hill and surrounding areas.

The proposed site will fill in a significant service coverage gap and provide much needed capacity for Verizon Wireless customers in the Sugar Hill area and improve deficient service to important roadways such as Sugar Hill Road (Route 117), Center District Road, Pearl Lake Road, South Road and the surrounding roads and communities in proximity to the site. Verizon Wireless currently operates wireless facilities in Sugar Hill and the surrounding towns. As a result of distances between existing sites, topography and customer traffic, these existing facilities do not provide sufficient coverage. The proposed site will enable Verizon Wireless to fulfill its objectives in providing reliable service pursuant to its Federal Communications Commission ("FCC") licenses.

As the demand for wireless voice and data services continues to grow, Verizon Wireless manages the footprint of each sector so that it can support the demand within the area it is primarily serving. While improving coverage to this area, the proposed facility will also serve existing and anticipated demand in the vicinity and offload some of the burden experienced by surrounding sites. The proposed facility is an effective solution to provide capacity relief to the area.

Verizon Wireless's antennas must be high enough above ground level to allow transmission of the signals above trees, structures, and other natural or man-made structures that may diminish the signal strength. Based upon its review, Verizon Wireless's Radio Frequency team has concluded that the antennas located on the tower at a centerline of 145' feet above ground level will close the coverage gap and provide the needed capacity relief in this area.

See Exhibit 6, RF Report

See Exhibit 7, Verizon Wireless FCC Licenses

To find a site that will close significant gaps in its network, computer modeling software is used to define the search area within which a site could be located at a sufficient height that would have a high likelihood of remedying the network deficiencies identified by the Radio Frequency engineers. Once this search area was defined, Blue Sky and Verizon Wireless search within the area for existing buildings, towers and other tall structures of sufficient height which might meet the objectives. If and only if there are no tall structures available within the area, the team searches for suitable raw land sites on which to place a wireless communications facility. After a thorough analysis of all existing structures and raw land, the Applicant identified the proposed site as the only feasible location to close this significant gap.

To determine regulatory compliance, theoretical calculations of maximal radio-frequency (RF) fields have been prepared. The conclusion of the report is that the emissions from the proposed facility are well within the guidelines for compliance with the FCC's limits for RF exposure.

See Exhibit 4, RF Report

See Exhibit 8, Alternative Site Analysis

See Exhibit 9, Radio Frequency Exposure FCC Compliance Assessment

IV. Satisfaction of the Variance Standards

A wireless telecommunications facility is not a Permitted Use or a Use Allowed by Special Exception in the Rural Residential One Zoning District under Section 304.2 of the Sugar Hill Zoning Ordinance. As such, a variance is required.

Pursuant to Section 1805 of the Sugar Hill Zoning Ordinance, the Board of Adjustment may grant variances in accordance with Section 1806 if:

1806.1(A) No diminution in value of surrounding properties would be suffered

The proposed facility will have no measurable impact on surrounding property values. In fact, increasingly, reliable wireless service is an attractive feature to homebuyers who do not feel safe without it. As land lines are becoming a rarity, reliable infrastructure can be a positive factor on property values. The tower will not be artificially lit, the design of the monopole is the least intrusive design to blend to the extent practicable with the surroundings and topographical features. The equipment is set back from the road in a manner that minimizes visibility.

See Exhibit 10, Real Estate Market Study

1806.1(B) Granting the variance would not be contrary to the public interest

The proposed facility will not be contrary to the public interest and in fact will be of benefit to the public interest. The proposed facility will not alter the essential character of the Town and will not threaten public health, safety or welfare.

The availability of wireless communications enhances community safety and is increasingly relied upon by civil defense and other safety officers as well as the general public in times of crisis, natural disaster, and bad storms. Wireless service also provides a benefit to residents and is an attractive feature and service to businesses. The proposed facility, by providing these services to the Town, will promote the health, safety, convenience and general welfare of the inhabitants of the Town of Sugar Hill.

The proposed facility is designed to minimize any effect on the sound environment. The facility will comply with all relevant local, state and federal requirements regarding sound.

1806.1(C) By granting the permit, substantial justice will be done

Substantial justice will be done by granting the variance. While few guidelines exist regarding whether or not granting variances is "just," the Office of State Planning provides perhaps the best explanation of this standard:

It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance. New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (2024).

Currently, innumerable local residents and businesses are losing the opportunity to enjoy wireless services at a remarkably low-impact cost to the Town. Emergency personnel

are placed at a disadvantage, and first responders may lag to arrive at accidents due to inadequate wireless communications. At the same time, Verizon Wireless and other wireless providers are missing the chance to fill gaps in their networks. The only "gains" presently operating are minimal at best since the construction of this facility will neither detrimentally affect the environment nor the values of nearby homes. In sum, present "losses" substantially outweigh existent "gains."

If the facility is built, however, both the Town and the Applicant would benefit considerably. The facility will enhance community health and safety. They will promote the general welfare. They will attract prospective residents, visitors, and businesses. Most important, the Applicant's proposal offers all of these benefits at very little cost.

Indeed, it remains difficult to identify any specific "losses" that could be suffered by any particular individual or group as a result of the construction of this facility. As noted above, professional assessments show that they will not detrimentally injure the environment or surrounding property values. Any potential "losses" that could occur would be more than made up for in public gains. Put differently, the gains that enhanced wireless service would bring to the general public would substantially outweigh any perceived burdens suffered by immediate abutters. Clearly, substantial justice is done by granting the variance.

The wireless telecommunications facility will fill a substantial gap in wireless coverage in the Town of Sugar Hill. The gap in coverage that exists in the Town prevents Verizon Wireless from providing uninterrupted wireless service to current and future public and private users of its wireless communication system. The wireless telecommunications equipment has been designed in an effort to satisfy service objectives and address the Town's concerns of aesthetic compatibility with the surroundings.

1806. `(D) The Spirit of the Ordinance will be observed

Granting the requested zoning relief is consistent with the spirit of the Town's Zoning Ordinance which was enacted for the purpose of promoting the health, safety, and general welfare of the inhabitants of the Town of Sugar Hill.

Locating the proposed facility at the proposed location advances the important goals provided for in the Sugar Hill Ordinance. Remedyng the coverage gap and providing service to the Town promotes community health and safety by allowing private parties and emergency personnel to respond quickly to urgent events, advances the general welfare by providing a desirable service and attracts prospective residents and businesses.

The proposed facility poses no threat from fire, flood, panic or other dangers. It will not require municipal services and will not negatively affect traffic.

1806.1(E) Denial of the permit would result in unnecessary hardship to the owners seeking it

For purposes of subparagraph E, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**
- (ii) The proposed use is a reasonable one.**

New Hampshire's Supreme Court has focused on the critical inquiry for determining if unnecessary hardship exists is whether the challenged zoning restriction interferes with the reasonable use of the applicant's property. *Harrington v. Town of Warner*, 872 A.2d 990 (NH 2005) (defendant sought variance to expand a 26-acre manufactured housing park); *Rancourt v. City of Manchester*, 149 NH 51 (2003) (certain abutters sought to prevent an applicant for a variance from building a horse barn on the applicant's property); *Ryder Daniels et. al. v. Town of Londonderry*, 2008-04 7(N.H. 7-15-2008) (certain abutters sought to prevent an applicant for a variance to construct a 170-Foot monopole telecommunications tower on a residential parcel). The modern emphasis for unnecessary hardship has therefore been on reasonableness.

In *Harrington*, *Rancourt* and *Ryder*, cases in which the New Hampshire Supreme Court upheld the granting of use or dimensional variances on a finding of unnecessary hardship, the emphasis was clearly on consideration of reasonableness. From the follow-up cases to *Simplex* and *Boccia* which expand upon and clarify them, we know that variance applicants no longer must show that the zoning ordinance deprives them of any reasonable use of the land. Rather, they must show that the use for which they seek a variance is 'reasonable considering the property's unique setting in its environment.' *Rancourt* at 53. Further that "[w]hen an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of a specific parcel of land for that purpose should be considered for purposes of determining hardship." *Ryder Daniel v. Town of Londonderry*.

Denial of a variance would interfere with the reasonable use of the property, considering its unique setting, topography and elevation. This specific property distinctively remedies, in a low-impact manner, Sugar Hill's current gap in wireless coverage.

The property sits squarely within the existing coverage gap for Verizon Wireless and consists of suitable acreage and tree cover to ensure that the facility will be largely screened

from nearby homes to the greatest extent possible. Indeed, due to the specific characteristics of this property, the wireless telecommunications facility would remain largely concealed and safely setback from existing abutters' homes.

The proposed facility satisfies the Variance Criteria under the Telecommunications Act of 1996 because:

Verizon Wireless is applying for zoning approval for the installation of equipment that provides wireless services, and therefore the application is subject to Section 704 of the federal Telecommunications Act of 1996 ("TCA"), codified at 47 U.S.C. §332(c)(7)(B). Without the relief requested, Verizon Wireless would be unable to provide adequate coverage by filling this existing significant gap in coverage, thereby creating a hardship recognized by federal and state courts interpreting the TCA. The site is located within the limited geographic area whereby Verizon Wireless' radio frequency engineers determined that a wireless facility is required. Federal courts interpreting the TCA have held that where an applicant for the installation of wireless communication facilities to provide communication services seeks zoning relief as required by the municipal ordinance, federal law imposes substantial restrictions affecting the standard for granting the requested relief. The TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the FCC's Declaratory Ruling commonly referred to as the "shot clock".

In *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38 (1st Cir. 2009), the First Circuit Court of Appeals held that an effective prohibition occurs if a carrier demonstrates a significant gap in coverage. Likewise, the court considers the level of willingness to cooperate. In *Nextel Communications of the Mid-Atlantic v. Wayland*, 231 F.Supp.2d 396 (D. Mass. 2002) and *Omnipoint Communications MB Operations, LLC v. Town of Lincoln*, 107 F. Supp. 2d 108 (D. Mass. 2000), the courts held that a municipality must approve a wireless facility if denying the petition would result in a "significant gap" in wireless services within a municipality because such denial would amount to an effective prohibition of wireless services. See 47 U.S.C. §332 (c) (7) (B) (i) (ii). The court recognized that "an effective prohibition can exist even where a town allows for the erection of [wireless communications facilities] but subject to criteria which would result in incomplete wireless services within

the town, i.e., significant gaps in coverage within the town." *Town of Lincoln*, 107 F. Supp. 2d at 117. Therefore, if an applicant establishes that the proposed facility would fill a significant gap in its wireless service coverage and is the least intrusive and feasible means reasonably available to accomplish that end, then the municipality must approve the requested zoning relief.

There are no First Circuit decisions that prohibit the Board from considering whether a denial of an application would constitute an effective prohibition of wireless service. In fact, case law indicates that local land use boards should consider whether a denial would be an effective prohibition in violation of the TCA, and by doing so, avoid litigation. See *Second Generation Props., L.P. v. Town of Pelham*, 313 F.3d 620, 630 (1st Cir. 2002) ("[s]ince board actions will be invalidated by a federal court if they violate the effective prohibition provision, many [local land use] boards wisely do consider the point").

Conducting an effective prohibition analysis conserves municipal resources. If the Board were to deny the variance in spite of the overwhelming evidence that such denial would equate to an effective prohibition, the matter would end up before the courts, wasting municipal resources and needlessly burdening the judicial system.

Furthermore, if the Board denies the requested variance, it would function as a blanket ban on wireless telecommunications facilities across most of Sugar Hill, in direct violation of federal law. See *Town of Amherst, N.H. c. Omnipoint Commc'n Enters., Inc.*, 173 F.3d 9, 14 (1st Cir. 1999) ("Suppose, for example, that in denying an individual permit, the town zoning authority announces that no new towers will ever be allowed or sets out criteria that no one could meet. The fact that the ban is embodied in an individual decision does not immunize it...If the criteria or their administration effectively precludes towers no matter what the carrier does, they may amount to a ban 'in effect' even though substantial evidence will almost certainly exist for the denial"); See also *Sprint Spectrum, L.P. v. Town of Ogunquit*, 175 F. Supp. 2d 77, 91 (D. Me. 2001) ("[a]n ordinance should not be construed to create absurd, inconsistent, unreasonable or illogical results").

Through the evidence submitted, Blue Sky and Verizon Wireless have demonstrated that significant gaps exist in its network in this area of Sugar Hill and the proposed facility is the only location to fill the significant gaps in coverage. The denial of the variance request would effectively prohibit the provision of wireless service and for this reason, it should be granted.

VII. CONCLUSION

The proposed wireless communications facility is located squarely within the existing significant coverage gap for Verizon Wireless. The property consists of suitable acreage and

tree cover to ensure that the facility will be largely screened from nearby homes to the greatest extent possible.

The Federal Government has endeavored to fulfill the mandate to facilitate competition in the telecommunications industry by the passage of the Telecommunications Act of 1996. Specifically, Section 704(a) of the 1996 Act provides among other things that wireless communications facilities may not be prohibited in any particular area and that denial of zoning relief must be based on substantial evidence. Accordingly, a denial of the foregoing Application would be contrary to the public interest that would effectively prohibit Verizon Wireless from

The Applicant is committed to working with local communities in siting and construction of its antenna facilities. Because of the Applicant's desire to be a good neighbor and establish long-term relationships, the Applicant makes every effort to identify potential community concerns and incorporate all appropriate mitigation measures in the site selection process. By designing the monopole in this location, the Applicant has considered the nature of the surrounding area in designing a facility to satisfy the aesthetic requirements of the Ordinance.

As clearly demonstrated by the radio frequency data provided herein, Verizon Wireless has a significant gap in coverage in the Town of Sugar Hill. The gap in coverage that exists in the Town prevents Verizon Wireless from providing uninterrupted wireless service to current and future public and private users of its wireless communications system.