

**CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA**

**RESOLUTION 2018-084**

*A RESOLUTION APPROVING VARIANCES FROM THE REQUIRED HEIGHT AND SETBACK FOR A WIRELESS COMMUNICATIONS FACILITY FOR THE PROPERTY LOCATED AT 11351 UPPER 33<sup>RD</sup> STREET NORTH AND FROM THE EXPIRATION DATE REQUIREMENTS FOR THE CONDITIONAL USE PERMIT AND VARIANCE*

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, Verizon Wireless, 10801 Bush Lake Road, Bloomington MN 55438 (“Applicant”), has submitted an application to the City of Lake Elmo (the “City”) for a variance to allow construction of a wireless communications facility that does not meet the required maximum height and minimum setback standards required for wireless communications facilities as well as a variance from the one year expiration requirement for a conditional use permit and variance.

**WHEREAS**, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.109; and

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said matter on July 9, 2018; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated July 9, 2018; and

**WHEREAS**, the City Council considered said matter at its July 17, 2018 meeting.

**NOW, THEREFORE**, based on the testimony elicited and information received, the City Council makes the following:

**FINDINGS**

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.
- 2) That all the submission requirements of said Section 154.109 have been met by the Applicant.
- 3) That the proposed variance includes the following components:

- a) A 9-foot variance from the maximum height requirement for wireless communication facilities, which require that the maximum height of wireless communications facilities within the PF – Public and Quasi-Public Open Space districts is 125 feet, to allow a 125-foot wireless communications facility with a 9-foot lightning rod.
- b) An 88.5-foot variance from the minimum setback requirement for wireless communications facility, which requires that wireless communications facilities be setback a distance from the property line equal to the height of the tower, to allow a 45.5-foot setback for a wireless communications tower from the easterly property line.
- c) Variances from the requirements that a variance shall expire if work does not commence within twelve months of the date of granting such variance and that a conditional use permit is void if substantial construction has not taken place within twelve months of the date on which the conditional use permit was granted.

4) That the Variance will be located on property legally described as follows:

ALL OF THE FOLLOWING DESCRIBED TRACT WHICH LIES SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY OF SAID ST. P. S. & T. F. RY., (NOW OWNED AND OPERATED BY THE UNION PACIFIC RAILROAD): THAT PART OF THE WEST HALF OF SECTION THIRTEEN (13), TOWNSHIP TWENTY-NINE (29) NORTH OF RANGE TWENTY-ONE (21), LYING WITHIN THE FOLLOWING BOUNDARIES, TO-WIT: BEGINNING AT THE QUARTER POST IN THE CENTER OF THE SOUTH LINE OF SAID SECTION; THENCE RUNNING NORTH ALONG THE CENTER LINE OF SAID SECTION TO A POINT IN THE CENTER OF THE SAINT PAUL & STILLWATER ROAD; THENCE SOUTHWESTERLY ALONG THE CENTER OF SAID ROAD TO A POINT FORTY FOUR (44) RODS WEST OF THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION TO A POINT IN THE SOUTH LINE THEREOF FORTY-FOUR (44) RODS WEST OF THE CENTER POST IN SAID LINE; THENCE EAST FORTY-FOUR (44) RODS TO THE PLACE OF BEGINNING, EXCEPTING, HOWEVER, A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH, BEING FORTY-FOUR (44) FEET ON THE NORTH SIDE AND FIFTY-SIX (56) FEET ON THE SOUTH SIDE OF CENTERLINE OF ST. P. S. & T. F. RY. TRACK AS CONSTRUCTED OVER AND ACROSS EAST FORTY-FOUR (44) RODS OF WEST ONE-HALF (W1/2), AND ALSO EXCEPTING THEREFROM THE EAST 726 FEET OF THE SOUTH 1800 FEET OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 13, TOWNSHIP 29 NORTH, RANGE 21 WEST, WASHINGTON COUNTY, MINNESOTA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, SUBJECT TO THE RIGHT OF WAY OF MINNESOTA TRUNK HIGHWAY NO. 5 (ALSO KNOWN AS STILLWATER BOULEVARD NORTH), AND IS ALSO SUBJECT TO A 20 FOOT ROAD EASEMENT RECORDED BY DOCUMENT NUMBER 328273 IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA, AND IS ALSO SUBJECT TO A NORTHERN STATES POWER EASEMENT RECORDED IN BOOK 136 OF DEEDS, PAGE 297, IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY MINNESOTA SECTION 13 TOWNSHIP 029 RANGE 021

- 5) That strict enforcement of the requirements from which the variance was requested would cause practical difficulties, and that the property owner proposes to use the property in a reasonable manner, as a majority of the site is used by the City for stormwater ponding and is heavily wooded, and so this is the only site on the parcel that would be suitable to construct the monopole. The applicant has reviewed a number of alternatives to the site and found this to be the most suitable. Lowering the tower height to accommodate the lightning pole and

still be at the required height would decrease the tower's effectiveness. Further, the applicant has explained that the process of procuring contractors, ordering parts, and short construction seasons would result in the commencement of construction within one year of granting the variance to be very difficult.

- 6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner, as the parcel is unique in that most of it is being used for stormwater ponding for the downtown area. The property became a stormwater pond prior to it being considered a location for a monopole. Lowering the height of the tower would decrease its effectiveness, and the lightning rod is needed for safety reasons.
- 7) That the proposed variance will not alter the essential character of the locality in which the property in question is located, as the monopole will be well screened from the public right-of-way and adjacent properties. The additional height of the lightning rod will not be visible against the sky.
- 8) That the proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood, as the proposed monopole will have no effect the supply of air and light, increase congestion or impair property values within the neighborhood. A majority of the base of the tower will be screened in a heavily wooded area, and the applicant has shown that the fall zone is shorter than the requested reduced setback.

### CONCLUSIONS AND DECISION

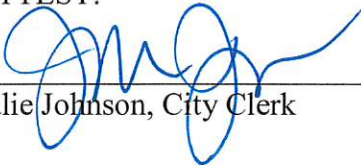
Based on the foregoing, the Applicant's application for a Variance is granted.

Passed and duly adopted this 17<sup>th</sup> day of July 2018 by the City Council of the City of Lake Elmo, Minnesota.



Mike Pearson, Mayor

ATTEST:



Julie Johnson, City Clerk