

# Young / Sommer LLC

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### Via Federal Express

Chris Brand, Planning Board Chairman  
Town of Marlborough  
21 Milton Turnpike  
Milton, New York

RE: Application of Cellco Partnership d/b/a Verizon Wireless Proposed Public  
Utility/Personal Wireless Service Facility  
“Node 11” located at 1488 US 9W

Dear Chairman Brand and Members of the Planning Board:

During the May 15, 2017 Planning Board meeting, we discussed Verizon Wireless' desire to seek a waiver from the setback requirements provided in section 152-14 of the Zoning Law. At that time, we agreed to outline our reasons supporting our request for a waiver of the setback requirements.

Section 152-14 requires all wireless communications facilities to be setback a minimum distance equal to two times the height of the proposed tower from property lines and rights of way. In this specific application, the height of the proposed utility pole is 41.3 feet. This would require a minimum setback equal to 82.6 feet. For the reasons that follow, we believe that is appropriate for the Planning Board to grant a waiver from the setback requirements for this specific application.

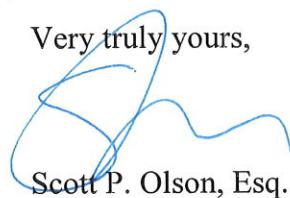
1. As detailed in our application, the proposed structure utilized to support the antenna and minor equipment will be a wooden telephone/utility pole, similar

in size and appearance to traditional utility poles currently located in the existing Route 9W right of way.

2. Existing utility poles located in rights of way do not comply with zoning setback requirements. Such utility poles are located extremely close to existing property lines and adjacent to highways and roads.
3. The updated zoning, adopted in January, 2017, permits a wireless telecommunications facility, such as that proposed, to be located in an existing right-of-way or on town property without the need to comply with established setback requirements (i.e. the only permit required in such a situation is a Building Permit).
4. There are no practical differences between existing utility poles located in rights of way and a similarly designed utility pole located just outside of the right-of-way, such as that proposed.
5. Moreover, Verizon Wireless was forced to locate the proposed utility pole just outside the existing right-of-way due to unreasonably high fees required by Crown Castle along all New York State rights-of-way. Crown has an agreement with the state of New York to manage all state lands, including rights of way, regarding wireless telecommunications facilities and dictates the required fees. The extreme price requirements mandated by Crown are not justified, and as a result, Verizon Wireless was forced to look for alternative locations. Mobilite, LLC has recently petitioned the Federal Communications Commission to interpret the Telecommunications Act of 1996 to prohibit municipalities from charging excessive fees for use of public rights of way relative to structures similar to that proposed. Petition for Declaratory Ruling dated November 15, 2016, accepted by FCC on November 15, 2017 and currently under consideration by the FCC.
6. Finally, installation of the utility pole proposed in compliance with the required setback requirements would look out of place with the character of the area. Utility poles are traditionally located in or close to existing rights of way. For this reason, Verizon Wireless has proposed to place the proposed pole close to the Route 9W right of way. As proposed, there is a 14' front set back. Placing the proposed pole over 80' from the right of way would look inconsistent with the general surroundings.

For the foregoing reasons, Verizon Wireless respectfully requests the Planning Board to waive the setback requirements for this proposed utility pole.

Thank you for your consideration.

Very truly yours,  
  
Scott P. Olson, Esq.

cc: Kelley Spear, Tilson