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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

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Type of Document

SPECIAL USE PERMIT/VARIANCE

**PREPARER INFORMATION:**

Zoning Office for Selective Site Consultants/Verizon Wireless/Ted Benshoof Property

**TAXPAYER INFORMATION:**

✓ **RETURN DOCUMENT TO:**  
Zoning Office

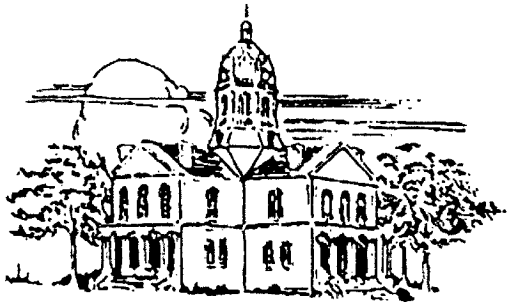
**GRANTOR:**

**GRANTEE:**

**LEGAL DESCRIPTION:**

2800 block of 201<sup>st</sup> Trail, further described as; *FRL E 23.25A /S1/2 SW EX W 33' Section 19 Crawford Township.*

**Document or instrument of associated documents previously recorded:**  
(if applicable)



Courthouse at Winterset  
Madison County, Iowa  
Built in 1876 of native limestone.

Prepared by  
Return to  
**Madison County**  
**Office of Zoning and Environmental Health**  

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**C.J. (Jeff) Nicholl, Environmental Health & Zoning Administrator**

## ***SPECIAL USE AND VARIANCE***

PERMIT NO: 157-17

DATE: November 7, 2017

After a properly held Public Hearing on November 7, 2017, the Madison County Board of Adjustment hereby grants a Special Use Permit & Variance to Verizon Wireless on the following described real estate: **2800 block of 201<sup>st</sup> Trail, further described as; FRL E 23.25A /S1/2 SW EX W 33' Section 19 Crawford Township** for the following:

To allow a height variance to construct a cellular phone tower at a height of 250 ft. with additional 5ft for lightning rod placement, (255' total), and a Special Use Permit for the use of land by a public or private utility service company for public utility purpose.

*A Special Use permit and variance is granted as required by the Madison County Zoning Ordinance under Sections: 6-2 (A), 9-C, 14C (1) & 14-E (12).*

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C.J. Nicholl, Environmental Health & Zoning Administrator  
Secretary to the Madison County Board of Adjustment

**BOARD OF ADJUSTMENT FINDINGS OF FACT AND LEGAL PRINCIPLES UPON WHICH THE BOARD ACTS:**

This matter pertains to the request of Verizon Wireless for a Special Use Permit and Variance on the following described real estate; Madison County property located in the 2800 block of 201<sup>st</sup> Trail, further described as; *FRL E 23.25A /SI/2 SW EX W 33' Section 19 Crawford Township*, to allow the construction of a 250' cellular tower (255') with lightning rod.

Section 14 of the Madison County Zoning Ordinance defines the Exceptions, Modifications, Interpretations and Conditional Uses that are permitted when authorized by the granting of a conditional use permit by the Board of Adjustment.

***Section 14 Exceptions, Modifications, Interpretations and Conditional Uses***

***E. Conditional Uses.***

*The development and administration of a comprehensive zoning ordinance is based upon the division of the County into zoning districts with uniform regulations defining permitted uses of land and structures within each district. It is recognized, however, that there are occasions when in addition to the principal permitted uses, conditional uses may be allowed after careful consideration of the impact of the particular uses upon the neighborhood and public facilities therein. The following uses may be authorized by a conditional use permit granted by the Board of Adjustment. Under no conditions shall the sum or any part thereof be refunded for failure of said application to be approved.*

**SECTION 6 – APPLICATION OF DISTRICT REGULATIONS**

The regulations set by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, as hereinafter provided:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located except agricultural uses are exempt.
2. No building or other structure shall hereafter be erected or altered:
  - a. To exceed the height;
  - b. To accommodate or house a greater number of families;
  - c. To occupy a greater percentage of lot area;
  - d. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;
  - e. In any other manner contrary to the provisions of this Ordinance.

**SECTION 9 – AGRICULTURAL DISTRICT REGULATIONS**

***C. Height Regulations.***

No building shall exceed two, and one-half (2 ½) stories or thirty-five (35) feet in height, except as provided in Section 14.

**SECTION 14 – EXCEPTIONS, MODIFICATIONS, INTERPRETATIONS AND CONDITIONAL USES**

12. Any structure or land used by public or private utility service company or corporation for public utility purpose, including sewage lagoons, or for purposes of public communication may be permitted in any district. The basis for such permit shall be public convenience.
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Section 17 of the Madison County Zoning Ordinance defines the jurisdiction and powers of the Board of Adjustment as prescribed by the State of Iowa.

**Section 17 D Jurisdiction and Powers of the Board of Adjustment**

***D. Jurisdiction and Powers of the Board of Adjustment.***

1. The Board of Adjustment shall have the following powers and duties.
  - a. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in enforcement of this Ordinance.
  - b. To hear and decide applications for conditional use permits and exceptions upon which the Board is required to address by other sections of this Ordinance.
  - c. To grant a variance from the terms of this Ordinance when a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or where by reason of exceptional topographical conditions of other extraordinary or exceptional situation, the strict application of the terms of this Ordinance actually prohibits the use of his property in a manner reasonably similar to that of other property in the same district, and where the Board is satisfied under the evidence before it that a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done. To establish unnecessary hardship, a property owner must show all of the following elements:
    - i. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use; and
    - ii. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood; and
    - iii. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.
2. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 16 of this Ordinance.
3. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
4. Under no circumstances shall the Board grant a variance unless and until the Board shall be satisfied that granting the variation will not:
  - a. Merely serve as a convenience to the applicant and is not necessary to alleviate demonstrable hardship or difficulty so great as to warrant the variation.

- b. Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.
- c. Impair an adequate supply of light and air to adjacent properties.
- d. Increase the hazard from fire and other danger to said property.
- e. Diminish the value of land and buildings in the County.
- f. Increase the congestion and traffic hazards on public roads.
- g. Otherwise impair the public health, safety and general welfare of this inhabitants of the County.

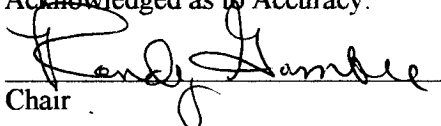
5. Every variance, exception or conditional use permit granted or denied by the Board shall be supported by testimony or evidence submitted in connection therewith.


After careful consideration of all the information that has been presented, and for the factual reasons set forth in the above noted sections and the checklist applicable to that section and Section 17 both of which are incorporated by this reference herein, the Board of Adjustment hereby finds:

The applicant has X / has not \_\_\_\_\_ met the requirements of the Madison County Zoning Ordinance

Dated this 7th day of November 2017

Acknowledged as to Accuracy:

  
 \_\_\_\_\_  
 Chair

  
 \_\_\_\_\_  
 Secretary

Original Filed with the Secretary of the Board of Adjustment on November 7, 2017.

MADISON COUNTY BOARD OF ADJUSTMENT

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Application for Special Use & Variance  
Selective Site Consultants/Verizon Wireless

DECISION

Date: 11-7-17

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On November 7, 2017 at 7:00 p.m., pursuant to the rules of procedure of the Board of Adjustment, a public hearing was held and conducted on the Application for Special Use Permit and Variance filed by Selective Site Consultants/Verizon Wireless on September 25, 2017 regarding the property described as the 2800 block of 201<sup>st</sup> Trail, Section 19 Crawford Township further described as the FRL E 23.25A /S1/2 SW EX W 33'. At the hearing the Board of Adjustment, reviewed the completed application form(s), relevant provisions of the Madison County Ordinances, all documents constituting the record from the Zoning Administrator, documents received from the Applicant, heard the statements, remarks and comments by the Zoning Administrator, the Applicants, as well as statements, remarks and comments by others in attendance. After all information had been received and all interested parties heard by the Board of Adjustment, the hearing was closed pursuant to the rules of procedure of the Board of Adjustment.

Following the close of the hearing a motion was made by MARY to Approve the Special Use application and CARRIE seconded this motion. A roll call vote was conducted on the motion to Approve the Special Use Permit with the following votes:

Randy Gambal –	<u>yes</u>
Fred Howell –	<u>–</u>
Randall Johnson –	<u>yes</u>
Carrie Larson –	<u>yes</u>
Mary Terry –	<u>yes</u>

The motion to Approve the Special Use was PASSED.

A motion was then made by RANDALL to Approve the Variance application and CARRIE seconded this motion. A roll call vote was conducted on the motion to Approve the Variance with the following votes:

Randy Gambal –	<u>yes</u>
Fred Howell –	<u>–</u>
Randall Johnson –	<u>yes</u>
Carrie Larson –	<u>yes</u>
Mary Terry –	<u>yes</u>

The motion to Approve the Variance was PASSED.

A motion was then made by MARY to approve as written the "Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts," which is attached hereto and incorporated herein by its reference. CARRIE seconded the motion and a roll call vote was conducted with the following votes:

Randy Gambal –	<u>Yes</u>
Fred Howell –	<u>Yes</u>
Randall Johnson –	<u>Yes</u>
Carrie Larson –	<u>Yes</u>
Mary Terry –	<u>Yes</u>

Accordingly, the "Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts" was approved as written and approved and adopted by the Board of Adjustment.

DECISION:

As the motion to approve the Special Use Permit was PASSED,  
the Special Use Application is Approved

As the motion to approve the Variance was PASSED,  
the Variance application is Approved

Dated this 7th day of November 2017

Acknowledged as to Accuracy:

Randy Gambal  
Chair

[Signature]  
Secretary

Original Filed with the Secretary of the Board of Adjustment on November 7, 2017.

Written Notification of Decision sent to:

Selective Site Consultants Inc.  
9900 West 109<sup>th</sup> Street, Suite 300  
Overland Park, Kansas 66210