



# TOWN OF AMENIA

4988 Route 22, AMENIA, NY 12501  
TEL: 845-373-8860, x118 FAX: 845-373-9147

RECEIVED  
JUL 20 2023  
Amenia Town Clerk

## TOWN OF AMENIA ZONING BOARD OF APPEALS

Resolution #2 for 2023

### MODIFYING A CONDITION OF RENEWAL OF A SPECIAL USE PERMIT AND AREA VARIANCE APPROVAL FOR SBA 2012 TC ASSETS, LLC

July 17, 2023

**WHEREAS**, on or about December 8, 2021, the Town of Amenia Zoning Board of Appeals ("ZBA") granted SBA 2012 TC Assets, LLC ("SBA") a renewal (the "Renewal") of its prior 2002 and 2011 special use permit and area variance approvals (the "Prior Approvals") for a telecommunications tower and related facilities (the "Facility") constructed on a wooded portion of a 10.53 acre parcel of land abutting Route 44, owned by Carlton P. Bates and Merium R. Bates, bearing Tax ID No. 7067-00-572230 (the "Property"); and

**WHEREAS**, the Renewal included several conditions modifying or supplementing conditions in the Prior Approvals including Condition #2 providing:

SBA shall take measures to ensure that there is no lapse in operation of the Facility due to electrical failure. Within six months of the effective date of this resolution: (1) SBA shall cause a permanent emergency back-up generator to be installed on the Property based on specifications approved by the Town's engineer; and (2) SBA shall enter into a service agreement for the maintenance and repair of the approved generator to ensure that the generator is in proper working condition at all times. The service agreement shall provide that the approved generator shall be inspected and maintained on a regular basis based on industrial standards and manufacturer's specifications but not less than once every six months after installation. SBA shall provide the ZBA and Planning Board written documentation of the service agreement and each inspection and service of the generator. SBA shall obtain a building permit from the Town prior to the installation of the approved generator on the Property. Written confirmation of the installation of the generator in accordance with the approved building permit shall be provided to the ZBA and Planning Board. Until the permanent generator is installed

on the Property, SBA shall provide a mobile emergency back-up generator to power the Facility within 24 hours in the event of electrical failure.

**WHEREAS**, the Zoning Board of Appeals granted an extension of the special use permit and area variance Renewal on July 18, 2022, modifying and supplementing the Conditions of approval; and

**WHEREAS**, by letter dated November 15, 2022, SBA's counsel submitted a request for a modification of the above condition to allow SBA and its tenant, T-Mobile, to submit a contingency plan to ensure that there is no lapse in operation of the Facility due to electrical failure; and

**WHEREAS**, by letter dated March 7, 2023, T-Mobile provided a contingency plan documenting measures that will be undertaken to ensure that there is no lapse in operation of the Facility due to electrical failure (the "Contingency Plan"). The Contingency Plan is important to the Town because it provides local notice of how T-Mobile will fulfill its FCC obligations to provide continuity of service to the public which must rely upon the Facility for telecommunications during power outages. A copy of the Contingency Plan is attached to this resolution and made a part hereof; and

**WHEREAS**, the ZBA determines that approval of the requested modification will not result in any material changes to the Facility; will be consistent with the Planning Board's 2011 SEQRA determination; and no further environmental review is required and an environmental impact statement will not be prepared; and

**WHEREAS**, at its May 24, 2023 meeting, the Planning Board adopted a resolution granting and modifying SBA's extension request with respect to site plan approval granted by the Planning Board for the Facility consistent with the terms and conditions of this resolution.

**NOW THEREFORE BE IT RESOLVED**, that the Zoning Board hereby modifies Condition #2 based on the Contingency Plan that will be fulfilled by T-Mobile as required by the FCC to ensure that there is no lapse in operation of the Facility due to electrical failure; and

**BE IT FURTHER RESOLVED**, that in the event of change in tenant for the Facility SBA shall require the new tenant to provide a new or updated Contingency Plan documenting how the new tenant will fulfill its<sup>\*</sup>FCC obligation for ensuring that there is no lapse in operation of the Facility due to electrical failure; and

**BE IT FURTHER RESOLVED**, that within 30 days of this resolution, SBA shall provide contact information for a responsible contact for implementation of the Contingency Plan that can be provided by the Town to local emergency services providers for use and coordination in the event of an electrical failure of the Facility; and

**BE IT FURTHER RESOLVED**, that except as modified by this resolution, the terms and conditions of the Renewal and the Prior Approvals shall remain in full force and effect; and

**BE IT FURTHER RESOLVED**, that a copy of this resolution shall be filed immediately in the Town Clerk's Office, and shall be mailed to SBA; and

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately.

Motion by: *James Wright*  
Second by: *Paula Pelosi*

The foregoing resolution was voted upon with all members of the Zoning Board of Appeals voting as follows:

	Yes	No	Abstain	Absent
Terry Metcalfe, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Menegat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paula Pelosi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tracy Salladay	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Dated: July 17, 2023  
Amenia, New York

*Judith Westfall*  
\_\_\_\_\_  
Judith Westfall, ZBA Secretary

