

**BEFORE THE
ZONING HEARING BOARD OF
FAIRVIEW TOWNSHIP, ERIE COUNTY, PENNSYLVANIA**

IN THE MATTER OF

Property owners:

Craig and Melinda Eisenfelder

2200 Manchester Road

Erie, PA 16505

:
:
: Premises at 2200 Manchester Road
: Fairview Township, PA
:
: Index No. (21) 54-77-2.02
:

FINDINGS OF FACT

1. The Property Owners are Craig and Melinda Eisenfelder, 2200 Manchester, Erie Pennsylvania, (hereinafter "Property Owners").

2. Property Owners own the Subject Property located at 2200 Manchester, Erie, Pennsylvania (hereinafter "Subject Property").

3. The Subject Property is located in Fairview Township, Pennsylvania, and is identified by the Erie County Index No. (21) 54-77-2.02. The parcel is currently zoned I-3.

4. There are currently two existing structures located on the Subject Property which Property Owners use as part of their self storage business.

5. Applicant is Up State Tower Co., LLC, 4915 Auburn Avenue, Bathesda, MD, 20814.

6. With Property Owners' permission, Applicant would like to erect a 155 foot cell tower on the Subject Property. This tower would be located on the Subject Property with approximately a 27 foot side yard setback.

7. Fairview Township Zoning Ordinance, Section 201(A) provides:

This Ordinance is inclusive zoning in that no use may be operated in a district unless it is specifically included as a use by right for that district, and *each parcel shall be limited to one principal or permitted use per lot.* (Emphasis added.)

8. Fairview Township Zoning Ordinance, Section 708(A)(6) permits "Utility, communication, communication towers, electric and gas company operations" in the I-3 District.

9. Fairview Township Zoning Ordinance, Section 708(C)(6)(b) permits towers to exceed 100 feet by Special Exception provided that:

Section 708(C)(6)(b):

1. The structures must be in operation and not vacated for more than 6 months.
2. The applicant must supply Fairview Township with a bond or suitable form of financial surety for the removal of such structure.
3. *The minimum setback to all property boundaries shall be the height of the structure, plus 30 percent. (Emphasis added.)*

10. In the present case, the application of Fairview Township Zoning Ordinance, Section 708(C)(6)(b)(3) would require a side yard setback of 201 feet (155 feet + 30%).

11. Applicant is seeking:

- A. A Variance to Fairview Township Zoning Ordinance, Section 201(A) to allow two uses on the Subject Property.
- B. A Variance to Fairview Township Zoning Ordinance, Section 708(C)(6)(b)(3) to allow for a side yard setback of 27 feet.
- C. A Special Exception pursuant to Fairview Township Zoning Ordinance, Section 708(C)(6)(b) to allow for the erection of a 155 foot tower.

12. Attorney Thomas Kubinski appeared and testified on behalf of Applicant and Property Owners.

13. Attorney Kubinski testified that:

- A. the Subject Property is the best available location in the area to improve cellular communications services;
- B. due to the configuration of the parcel, the Subject Property cannot be subdivided;
- C. the proposed tower would be self-collapsing;
- D. the Applicant needs the requested use and side yard Variances and Special Exception to erect the proposed tower;
- E. the use of the Subject Property for a cell tower is a minimal use which will not have any adverse effect on Township residents and visitors; and

F. the proposed development would comply with all other Township, State, and Federal regulations.

14. There was no other testimony or correspondence offered either in favor of or in opposition to Applicant's request.

15. The Board addressed the request for a Variance to Fairview Township Zoning Ordinance, Section 201(A). The Board voted unanimously to deny this Variance request.

16. Given the Board's decision with regard to Fairview Township Zoning Ordinance, Section 201(A), the Variance request with regard to Fairview Township Zoning Ordinance, Section 708(C)(6)(b)(3) and the Special Exception pursuant to Fairview Township Zoning Ordinance, Section 708(C)(6)(b) were rendered moot.

CONCLUSION OF LAW

Applicant has failed to meet its burden to entitle it to the requested variance of Fairview Township Zoning Ordinance, Section 201(A). The Subject Property has a lawful use. Applicant has failed to present compelling reasons for this Board to grant a second use for the Subject Property.

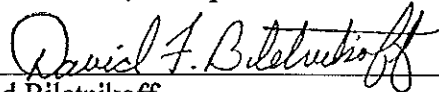
DECISION

AND NOW, this 5th day of April, 2016, the Fairview Township Zoning Hearing Board hereby denies Applicant's request for use and side yard variances and denies Applicant's request for a Special Exception.


These Findings of Fact, Conclusions of Law, and Decision are signed this 12th day of April, 2016.



Brian McGrain, Chairperson



David Biletchikoff



Judy Miller



Josh Ritchie