

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP  
BUCKS COUNTY, PENNSYLVANIA**

**Application No.** 8-2010

**Applicant:** Liberty Towers, LLC  
c/o Lemanowicz, L.P.  
1012 N. Bethlehem Pike  
Suite 200 B-3  
Lower Gwynedd, PA 19002

**Owner of Premises:** Marion Dworakowski  
27 Bunker Hill Road  
Ottsville, PA 18942

**Subject Property:** Tax Parcel No. 9-29-2 , which is located at 754 Edison Furlong Road in Doylestown Township.

**Prayer of Relief:** The Applicant proposes the construction of a telecommunications facility, including a cell tower, on the subject property, a use which is permitted by conditional use approval by the Doylestown Township Board of Supervisors. The Applicant requests a variance from §175-16.F-4.d of the Doylestown Township Zoning Ordinance ("Ordinance") in order to locate the proposed wireless communications tower less than 200 feet from occupied buildings.

**Hearing History:** The application was filed in Doylestown Township on October 21, 2010. The first hearing took place on December 20, 2010 and was scheduled to resume, with the consent of the Applicant, on February 24, 2011. The Applicant requested continuances of the hearings scheduled both on February 24, 2011 and subsequently on April 18, 2011. The hearing resumed on May 6, 2011, pursuant to a waiver of MPC hearing rights from the Applicant, but did not conclude. The final hearing was held on June 20, 2011. All hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA. 18901



requirements of twenty (20) feet in that its two (2) side yard setback distances are ten (10) feet and five (5) feet.

5. The use of the property as a single family detached dwelling is permitted by right in the C-1 District.

6. The subject property is "L" shaped with a narrow frontage on Edison Furlong Road (44.97 feet) extending for a distance of approximately 225 feet at that width until it widens out to approximately 113 feet at the rear.

7. To its West, the subject property is bordered by a fitness center, ("Cornerstone") and to its East by a vacant strip of land accessing a larger vacant parcel to the rear. Immediately adjacent to that strip of land is an automobile repair shop. Across the street from the subject property are residential structure and uses.

8. The Applicant desires to construct and operate a wireless telecommunications facility on the subject property. It proposes to raze the existing residential structure on it and has executed a site lease of approximately 100' x 100' to accommodate a 150 foot monopole tower; an array of T-Mobile antennas at a height of 140 feet; an array of AT&T antenna at a height of 135 feet; and an array of Metro PCS antennas at a height of 115 feet. Another user, at the height of 125 feet, is contemplated. As a result of the site lease, the Applicant has the requisite standing to make application to this Board.

9. Additionally, the leased area will include wireless communications facility equipment cabinets for the intended users; concrete equipment pads; coaxial cables; utility meters; fencing; and an 18' x 33' parking/turn-around area, as well as a gravel access road. The concrete equipment pads are proposed to be 10' x 20' in size.

10. All three (3) proposed users of the monopole are federally licensed wireless communications service providers.

11. The monopole tower is proposed to be located on the subject property at a distance of 80 feet from the existing residential structure. It will also be located, if constructed as proposed, at a distance of 127' 7/8" to the existing Cornerstone Fitness Center to the West; and 132' 2 7/8" to the existing auto repair shop to the East.

12. A cellular telecommunications facility is permitted in the C-1 Zoning District, but only as a conditional use approved by the Doylestown Township Board of Supervisors.

13. A telecommunications facility is defined at Ordinance §175-16.F-4 which, at subsection (d) states that "...any communications tower shall be located no less 200 feet from any occupied building."

14. As depicted on Exhibit T-7, a portion of the subject property is bordered by the R-1 Residential Zoning District of Doylestown Township.

15. The Applicant presented propagation studies from both AT&T and T-Mobile which evidenced that there is a significant gap in seamless and reliable

telecommunications coverage in the area of the subject property. It examined a "target area" to identify existing properties within which this significant gap in coverage could be adequately addressed. The target area includes the intersection of Edison Furlong Road and Route 263 and its surrounding vicinity within which telecommunications facilities could be placed that would resolve the gap in coverage identified in this area.

16. The Applicant's testimony indicated that, depending upon the height of the antennas, and the frequency at which they are permitted, the range of reliable coverage would include an area from 3/4 of a mile to 2 miles in the vicinity of a proposed telecommunications facility.

17. The target area identified by the Applicant is depicted in Exhibit A-20. That area includes several properties in surrounding municipalities as well as Doylestown Township. That exhibit depicts a one (1) mile radius of reliable coverage for the facility proposed in this application.

18. Based upon the evidence presented in these hearings, the Board finds that of the approximately twelve (12) properties in Doylestown Township so identified, six (6) would support a permitted telecommunications facility without variance.

19. Significantly, one of those properties, at the intersection of Route 263 and Swamp Road in Doylestown Township, is owned by a property owner who has submitted a sketch plan depicting a proposed telecommunications facility that would meet all requirements of the Ordinance without relief therefrom. That plan was received into evidence as Exhibit T-7.

20. The Applicant's position regarding hardship to the subject property was expressed by its land planner, Brian E. Seidel, who was qualified to testify as an expert in land planning before the Board.

21. He opined that none of the uses permitted in the C-1 District of Doylestown Township would be permitted on the subject property without relief from the Ordinance.

22. However, Doylestown Township, during its presentation, presented the testimony of Judith Stern-Goldstein, its own land planner, who was also qualified to testify as an expert in these proceedings.

23. She testified that, as the Township's land planner, she was familiar with the Township's ordinances and regulations, that she has visited the subject property and that she had reviewed the Ordinances that are applicable, including the Zoning Ordinance, and compared it to the application.

24. Stern-Goldstein noted that a single family detached dwelling, as presently exists on the property, is permitted by right in the C-1 District. This use, which is consistent with the single family detached dwellings located across Edison Furlong Road, is permitted, by law, to continue with its nonconforming dimensions. If necessary, she stated, the house could be rehabilitated and expanded, consistent with the Ordinance, provided that there is no increase in the dimensional nonconformity.

25. Stern-Goldstein also opined that use G-5, contract services, and use G-6, trades, would also be permitted by right on the subject property without variance.

26. The variance sought in this application seeks a reduction in the 200 foot separation distance by approximately 73 feet, in the case of Cornerstone and 68 feet in the case of the auto repair shop. Thereafter, she testified that use E-1, office uses, use E-2, medical offices, and use E-3, service business, would all be permitted by right on the subject property and would require only "minor" parking variances. She opined that these parking variances would represent the minimum relief necessary to permit those three (3) uses on the subject property and that that relief is less impactful than the extent of the relief sought in this application.

27. The evidence presented by the Applicant and the Township leads the Board to find that the subject property is being used for a permitted use; can be used for a permitted use in the future without variance; or can be used in the future with variances that are less impactful than those sought in this application.

28. Based upon Ms. Stern-Goldstein's expertise and evaluation of the Ordinance and the property, the Board rejects the Applicant's planner's testimony that no use would be permitted on the property without variance. Further, it finds that Ms. Stern-Goldstein's testimony is credible and competent based upon a more complete and thorough evaluation of the property and its Ordinance regulation.

29. Stern-Goldstein also noted that §175-16.F-4.e.2 requires as follows: "Where the proposed site abuts a Residential Zoning District, towers shall be permitted only where they are disguised by attaching them to an existing tall structure where the proposed tower does not increase the height of the existing structure or by disguising the tower so that it resembles a tree, silo or church steeple so that it will fit in with the residential character of the community."

30. A portion of the property, on its western side, borders a R-1 Residential Zoning District. This application does not propose a tower consistent with this Ordinance provision and no variance was sought therefrom.

31. Stern-Goldstein testified that, in her expert opinion, the telecommunications facility proposed on the subject property is inappropriate based upon its shape, size, and surrounding density.

32. A number of residential neighbors entered their appearance in opposition to the Applicant's request and others testified in opposition to it.

## **CONCLUSIONS OF LAW**

1. This application proposes a variance from the 200 foot separation distance between buildings and cell towers only. It does not represent a challenge to the validity of the Zoning Ordinance or an assertion that there is a de facto exclusion of telecommunications facilities within Doylestown Township.

2. The Applicant did not successfully establish that the subject property cannot reasonably be used as zoned. Its existing use as a single family detached dwelling is permitted by right and can continue in the future.

3. The competent and qualified evidence of the Township's land planner establishes that there are at least two (2) other primary uses that could be employed on the property without variance and that the residential structure on the property could be expanded at its nonconforming setback and could accommodate, in addition, accessory residential uses permitted on residential properties in the C-1 District.

4. Further, the Board accepts the opinion of the Township's land planner and concludes that the variance relief sought in this application is not the minimum variance necessary. In this regard, there are three (3) primary uses, identified in the Ordinance, that could be accommodated on the property with zoning relief that is less impactful than the variance relief sought here.

5. The Board concludes that there are several properties within the "target area" defined by the Applicant that would accommodate a telecommunications facility without zoning ordinance relief and that, in fact, one of the properties identified by the Applicant within the target area is in the planning stages for uses that would include a permitted telecommunications facility that would address the gap in coverage identified by the Applicants in these hearings.

6. Notably, the Board takes notice of the fact that one of the buildings that is located less than 200 feet from the proposed cell tower is on a property that is similarly sized to the subject property, and which had been denied a variance for a telecommunications facility based upon the same provisions of the Ordinance from which relief is sought in this application.

7. The competent evidence indicates that the subject property is not burdened by a hardship which would prevent its use as permitted by the Ordinance.

8. The Board concludes that the relief sought by the Applicant here is not the minimum variance necessary to allow the reasonable use of the property as permitted.

9. The Board further concludes and adopts the expert opinion expressed by the Township's land planner that the subject property and its surrounding buildings indicate that it is inappropriate for a telecommunications facility use based upon its shape, size and location.

10. Accordingly, the Doylestown Township Zoning Hearing Board determined that the Applicant has not sustained its burden of proof to establish the necessary hardship and requirements of §175-136 of the Ordinance regarding variance relief.

WHEREFORE, the Zoning Hearing Board of Doylestown Township DENIES the Applicant's request for a variance from §175-16.F-4.d of the Doylestown Township Zoning Ordinance.

**ZONING HEARING BOARD OF  
DOYLESTOWN TOWNSHIP**

**By:** W. Andrew McPherson, lsl  
W. Andrew McPherson, Chairman

William J. Lahr, lsl  
William J. Lahr

Richard K. Gaver, lsl  
Richard K. Gaver

***IMPORTANT NOTE:*** Pursuant to §175-136 and §175-137 of the Doylestown Township Zoning Ordinance, the relief granted herein shall expire five (5) years from the date of this decision.