

LOWER NAZARETH TOWNSHIP

Board of Supervisors

RE: Liberty Towers Wireless Communication Support Facility

WHEREAS, the Lower Nazareth Township Board of Supervisors is in receipt of a Final Land Development plan entitled "Wireless Communication Support Facility" prepared by Advantage Engineers of Lansdale, Pennsylvania, consisting of (7) sheets, dated November 24, 2010 and last revised May 5, 2011; and

WHEREAS, the intent of the Final Plan is the construction of a 160-foot monopole communication tower and 3600 s.f. communications facility on the Nazareth Borough Municipal Authority property, located on Tax Parcel #J8-26-1A, at 872 Tatamy Road; and

WHEREAS, the Lower Nazareth Township Planning Commission recommended approval of the plan at its April 25, 2011 meeting; and

WHEREAS, the Lower Nazareth Township Zoning Hearing Board granted variances related to this site as outlined in Zoning Appeal ZA2011-01 Order and Opinion (Exhibit A);

WHEREAS, the Township Engineer has reviewed the Final Plan against the provisions of the 2005 Lower Nazareth Township Subdivision and Land Development Ordinance and has offered comments in his letter dated May 10, 2011; and

WHEREAS, the Township Zoning Administrator has reviewed the Final Plan against the provisions of the 2001 Lower Nazareth Township Zoning Ordinance, amended March 23, 2005; and

WHEREAS, the Lower Nazareth Township Board of Supervisors desire to take final action on this plan.

NOW THEREFORE, BE IT RESOLVED that the Lower Nazareth Township Board of Supervisors approve the Final Plan as referenced above, subject to the following conditions:

1. Provided the comments in the Township Engineer's letter dated May 10, 2011 are adequately addressed. Any reports or documentation requested by the Township Engineer must be provided to both the Township and Township Engineer prior to plan recording.
2. The Applicant understands that any changes to the proposed uses and/or the land development in general are subject to Township review and may require additional review and approval by the Board of Supervisors and/or outside agencies. Under no circumstances, shall any site work nor construction occur that is not depicted on the approved plan nor approved by Lower Nazareth Township and outside agencies.
3. For recording, the applicant shall supply two (2) Mylar reproducible prints and (2) paper prints of both Sheets T-1 and Z-1 of the Final Plan, and four (4) full sets of paper prints, all with original signatures, to Lower Nazareth Township. Lower Nazareth Township will obtain all plan signatures. Per the Northampton County Uniform Parcel Identifier

Ordinance, the applicant is responsible for placement of property addresses on the above plans. Upon satisfaction of all conditions of approval and placement of signatures on the Plans, the Township shall record, within ninety (90) days of said satisfaction, the approved Plan at the Northampton County Recorder of Deeds Office as required by Section 513(a) of the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10513(a), as amended and Section 520 of the Lower Nazareth Township Subdivision and Land Development Ordinance.

4. Pursuant to Section 111.I. of the Lower Nazareth Township Zoning Ordinance, the Applicant understands that necessary permit(s) must be issued within (9) months of the date of this resolution and construction started within (12) months of issuance of said permit(s). Should the Applicant fail to obtain the necessary permit(s) and/or begin construction within the prescribed time period, it shall be conclusively presumed the Applicant has waived, withdrawn or abandoned the appeals, and all provisions, variances and permits granted by Zoning Hearing Board and Township Staff shall be deemed automatically rescinded.
5. The applicant is prohibited from commencing any construction activities on this project until a pre-construction conference is scheduled and conducted in compliance with Section 536 of the Subdivision and Subdivision Ordinance and a formal Notice to Proceed is issued by the Township. Said pre-construction conference shall not occur until Items 1-4 above have been satisfied to the Township's satisfaction.
6. All correspondence regarding the plan shall be directed to the Township or if directed to the Engineer, the Township shall be copied.
7. The applicant shall accept these conditions in writing, within five days of receipt of the finalized Board of Supervisors resolution, otherwise the application is denied for failure to comply with the express conditions that are contained in this Resolution.

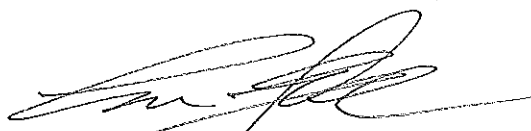
ADOPTED AND APPROVED this 11th day of May 2011, at a regular public meeting.
Motion made by Ricky Johnson and seconded by Martin Baucher. The motion carried unanimously.

ATTEST:

BOARD OF SUPERVISORS



Timm A. Tenges, Manager, Secretary/Treasurer



Eric E. Nagle, Chairman

ZONING HEARING BOARD
LOWER NAZARETH TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA

APPEAL NO.: 2011-01
APPLICANT: Liberty Towers, LLC
PROPERTY LOCATION: 872 Tatamy Road
Tax Parcel Identifier J8-26-1A
General Industrial
OWNERS: Nazareth Borough Municipal Authority
SUBJECT MATTER: Request for variances from the requirements
of Sections 1502.A.19.a and 1502.A.19.j

OPINION

An Application was filed by Liberty Towers, LLC, requesting variances from the following sections of the Lower Nazareth Township Zoning Ordinance: Section 1502.A.19.a. Commercial Communications tower/antenna attached to the ground setback from lot lines and existing street right-of-way lines and 1502.A:19.j no communications tower may be placed within 3 miles of an existing communications tower. The Applicant is seeking the variances to enable the construction of a telecommunications facility which includes the construction of a 160 foot monopole and related equipment at its base within a fenced compound on land which is owned by the Nazareth Borough Municipal Authority. The subject property is located in the GI:General Industrial Zoning District.

The Board finds that:

1. Pursuant to proper legal notice and documents introduced into evidence, a public hearing in connection with this Application was held on February 22, 2011 at 7:00 p.m., at the Lower Nazareth Township Municipal Building, 306 Butztown Road, Bethlehem, Pennsylvania.
2. At the time of the public hearing held on February 22, 2011 the Board members present were Robert Hicks, Chairperson, Manouel Changalis, Alternate Board Member Michael

Gable and Alternate Board Member, Darin Lueders.

3. The Zoning Administrator, Lori Seese, and the Solicitor for the Zoning Hearing Board, April L. Cordts, Esquire were present at the hearing held on February 22, 2011.

4. The Zoning Administrator, Lori Seese, verified that the notice of hearing was properly advertised and proper notification was provided to surrounding neighbors, including the Townships of Palmer and Upper Nazareth with the property properly posted for the hearing held on February 22, 2011.

5. Applicant's Petition and supporting documents were introduced and identified by the Zoning Administrator, Lori Seese, marked as Exhibit "Z-1", and made a part of the record.

6. The Applicant, Liberty Towers, LLC., appeared before the Zoning Hearing Board and was represented by counsel, Crystal Fisher, Esquire.

7. Ms. Fisher stated that the property is located in a GI - General Industrial Zoning District.

8. Ms. Fisher stated that the Applicant is seeking relief from the Lower Nazareth Township Zoning Ordinance to enable the construction of a communications tower and related equipment on land which is owned by the Nazareth Borough Municipal Authority.

9. Ms. Fisher offered Exhibits A #1 thru #9, which were identified during the course of the testimony.

10. Ms. Fisher offered the testimony of Brian Seidel.

11. Mr. Seidel stated that he is president of Seidel Planning and Design, a land use and planning firm.

12. Mr. Seidel identified Exhibit A #1 as a copy of the Applicant's appeal.

13. Mr. Seidel identified Exhibit A #2 as a copy of the land lease agreement between the Applicant and the Nazareth Borough Municipal Authority for the subject property.

14. Mr. Seidel identified Exhibit A #3 as a copy of the documents evidencing ownership of the subject property by the Nazareth Borough Municipal Authority.

15. Mr. Seidel stated that the subject property consists of approximately 24 acres located in the northeast corner of Lower Nazareth Township and is located in a General Industrial zoning district for Lower Nazareth Township.

16. Mr. Seidel stated that a communication tower is a permitted use in a General Industrial zoning district.

17. Mr. Seidel stated that the portion of the property to be utilized by the cell tower use is located in Lower Nazareth Township, however portions of the subject property are located in Upper Nazareth Township and Palmer Township.

18. Mr. Seidel described the property as bounded on the east by a quarry use, with agricultural uses bounding on the north, south and west.

19. Mr. Seidel stated that the Applicant proposes to install a 160 foot high monopole communications tower on the western side of the property.

20. Mr. Seidel stated that the tower will be enclosed by an 8 foot high chain link fence.

21. Mr. Seidel stated that the entire tower area with fencing will be approximately 60' by 60' in area.

22. Mr. Seidel stated that the border with Palmer Township and Upper Nazareth Township runs approximately down the middle of the property.

23. Mr. Seidel stated that the communications tower is an unmanned facility and will be visited for routine maintenance purposes once or twice a month.

24. Mr. Seidel stated that the use will not require sewer service and will not produce any noise or glare.

25. Mr. Seidel stated that Section 1502.A.19.a requires a 160 foot setback for the tower.

26. Mr. Seidel stated that the property is large enough to accommodate the setback requirement however it would require locating the tower closer to the street and it would interfere with the actions of the wastewater treatment plant already located on the property.

27. Mr. Seidel stated that on the eastern side of the tract is a considerable amount of floodplain which would be contrary to moving the location of the tower.

28. Mr. Seidel identified Exhibit A#8 as photo simulations of the proposed tower location indicating surrounding facilities and various views of the tower from roadway locations.

29. Mr. Seidel stated that the proposed plan calls for a 74 foot setback on the west and 80 on the south.

30. Mr. Seidel stated that he believes the proposed location is provide for limited visibility of the tower from the road and for surrounding properties and is appropriate considering the flood plain to the east.

31. Mr. Seidel stated that the proposed location will not interfere with the wastewater treatment plant uses and/or the security of the treatment plant.

32. Mr. Seidel stated that the grant of the setback variances will not alter the character of the neighborhood.

33. Mr. Seidel stated that setback variances for the subject tract had been granted in 2008 pursuant to the application of Sprint Nextel.

34. Ms. Fisher offered the testimony of Anthony Handley.

35. Mr. Handley stated that he is an electrical engineer employed by Millenium Engineering.

36. Mr. Handley stated that Millenium Engineering was employed by the applicant to provide a radio frequency consultation regarding the suitability of the location of the communications tower.

37. Mr. Handley identified Exhibits A #4, #5, #6, and #7 as reports prepared by his firm.

38. Mr. Handley stated that currently there is a need for cell tower coverage to provide service coverage along Routes 33 and 248.

39. Mr. Handley stated that the areas to be served by the proposed tower will cover unserved areas along Route 33 to the east, Tatamy and more areas of Lower Nazareth Township.

40. Mr. Handley stated that no other existing facility can serve the area which will be served by the proposed tower.

41. Mr. Handley stated the 160 foot height of the proposed tower is necessary to provide the necessary service.

42. Mr. Handley stated that the tower will accommodate upper and lower band coverage, to comply with each carrier's individual band width as authorized and licensed by the FCC.

43. Mr. Handley stated that the height of the tower has to account for the topography of the area and the lowest carrier.

44. Mr. Handley stated that the height of the proposed tower will accommodate additional carriers.

45. Mr. Handley stated that there is a need for the additional service that will be provided by the tower.

46. Mr. Handley stated that other communications towers in the surrounding area are 160 feet tall or taller.

47. Mr. Handley stated that the proposed tower will be within a 1.2 mile radius of the two closest cell towers.

48. Mr. Handley stated that the location of the tower within the 3 mile requirement of Section 1502.A.19(a) is the only way to provide communication service to the areas which will be served by the tower.

49. Ms. Fisher offered the testimony of Philip Burtner, licensed Professional Engineer from Advantage engineers.

50. Mr. Burtner stated that his firm is the site engineers for the proposed tower.

51. Mr. Burtner identified Exhibit A#9 as the Site plan drawings for the project prepared by his firm.

52. Mr. Burtner stated that the tower will be constructed of galvanized steel anchored to a concrete foundation.

53. Mr. Burtner stated that the tower manufacturer builds the tower consistent with the communication provider requirements.

54. Mr. Burtner stated that the particular licensed carriers in the locale determine the tower requirements.

55. Mr. Burtner stated that the tower is designed to withstand winds of 90 mph with gusts of 140 mph.

56. Mr. Thomas Itterly, chairman of the Nazareth Borough Sewer Authority, was present for the hearing and stated that the Authority has submitted expansion plans for the southern side of the subject tract.

57. Mr. Itterly stated that there is a transfer sewer line that goes through the subject tract on the northern side.

58. The zoning hearing board members expressed concern regarding township liability in the event of damages caused by the tower.

59. The zoning hearing board expressed the concern that a hold harmless agreement from the Applicant should be obtained by the Township of Lower Nazareth as part of the final approval process for the subject project.

60. No one appeared at the hearing to object to the Applicant's appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

61. The subject premises is located in a General Industrial zoning district.
62. The Applicant seeks approval to construct a communication tower.
63. The subject premises is located at 872 Tatamy Road and has a tax parcel identifier of J8-26-1A.
64. The Applicant requests a variance from the requirements of Sections 1502.A.19.a. A commercial communications tower/antenna that is attached to the ground shall be setback a minimum distance equal to its height from all lot lines and existing street right-of-way lines and 1502.A.19.j. No communications tower may be placed within 3 miles of an existing communications tower. Co-location must be considered prior to any new tower.
65. The Applicant proposes to have an 86 foot setback from the west line of the property and an 80 foot setback from the south line of the property.
66. The Applicant proposes a cell tower that will be within 1.2 miles of 2 existing cell towers.
67. A commercial communications tower is a permitted by right use in a General Industrial Zoning District pursuant to Section 1202.25 of the Zoning Ordinance.
68. The Board finds that there are unique physical conditions including an oddly shaped lot, 100 year flood plain area on the lot and restrictions for the location created by the Nazareth Borough Municipal Authority concerning their future development plans for the location which require the Applicant to locate the communications tower within the rear and side setback requirements required by Section 1502.A.19.a.
69. The Board finds that the applicant can only provide communications services to area residents by constructing a communications tower which will be within a 3 mile radius of 2 existing cell towers.
70. The Board finds that regulatory restrictions, topographical features and structural interference prevent the Applicant from currently providing necessary communication service and that the only method available to remedy the service deficit is by constructing a tower which will be within a 3 mile radius of existing towers.
71. The Board finds due to the aforementioned conditions the Applicant cannot construct a communications tower in strict conformity with the provisions of the Zoning

Ordinance.

72. The Board finds that an unnecessary hardship exists due to the conditions.

73. The Board finds that the unique physical conditions were not created by the Applicant and thus the hardship was not created by the Applicant.

74. The Board finds that because of such unique physical conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and the variances are therefore necessary to enable the reasonable use of the property.

75. The Board finds that the variance will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

76. The Board finds that the variances requested represent the minimum variances that will afford relief and represent the least modification possible of the regulations in issue.

ORDER

APPEAL NO. 2011-01

APPLICANT: Liberty Towers, LLC

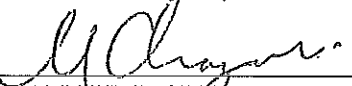
PROPERTY LOCATION: 872 Tatamy Road
Tax Parcel Identifier J8-26-1A
General Industrial

SUBJECT MATTER: Request for variances from the requirements
of Sections 1502.A.19.a. and 1502.A.19.j.

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, the Lower Nazareth Township Zoning Hearing Board, by a unanimous vote, hereby grants the request of the Applicant, Liberty Towers, LLC, for a variance from the provisions of Sections 1502.A.19.a. to wit that the Applicant is granted relief from the setback requirements on the western side of 86 feet and on the south of 80 feet. Additionally the Board grants the request of the Applicant, Liberty Towers, LLC, for a variance from Section 1502.A.19.j of the Lower Nazareth Township Zoning Ordinance allowing for the construction of a communications tower which will be within no less than a 1.2 mile radius of 2 existing cell towers. The Board grants these approvals contingent upon the construction of a communications tower in conformance in size, type and location as set forth in the Applicant's appeal, documentation, testimony and exhibits submitted at the hearing held on February 22, 2011.

LOWER NAZARETH TOWNSHIP
ZONING HEARING BOARD


ROBERT HICKS, CHAIR


MANOUEL CHANGALIS

MICHAEL GABLE

Date: 4/8/11