

Tax Map/Block/Parcel
No. 79-11-13
Case 5540

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: T-Mobile Northeast LLC & Judith Reinke
7621 Ridge Road
Marriottsville, Maryland 21104

ATTORNEY: Greg Rapisarda for Applicant
Dave Bowersox for neighbor, Susan Biro

REQUEST: An application for a conditional use for a 199 ft. cellular communication tower and a variance from the on-site dwelling (if required).

LOCATION: The site is located at 7621 Ridge Road, Marriottsville, MD 21104, on property zoned "C" Conservation District in Election District 5.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-15

HEARINGS HELD: March 30, May 27, June 24, July 22, October 28, 2010

FINDINGS AND CONCLUSION

On March 30, May 27, June 24, July 22, and October 28, 2010, the Board of Zoning Appeals (the Board) convened to hear the request for a conditional use for a 199 ft. cellular communication tower and a variance, if needed, from the on-site dwelling. Based on the testimony and evidence presented, the Board made the following findings and conclusion:

T-Mobile Northeast LLC (the Applicant) is a provider of personal communication services. The co-applicant, Judith Reinke, is the owner of 64.12 acres (+/-) of land at 7621 Ridge Road (the Property). Ms. Reinke resides on the property and operates a horse farm there. The Applicant's commercial license from the Federal Communications Commission requires it to provide adequate coverage to cell phone customers within the geographic boundaries of its license. The Applicant conducted a search of the subject area for a suitable location for a 199 foot cell tower to remedy a gap in cell phone coverage along Ridge Road and the surrounding area. In June of 2009, the Applicant and Judith Reinke entered into a lease agreement to allow the erection of a 199 foot monopole tower and equipment complex on a 25 ft. x 35 ft. space on the property. Just prior to the last hearing, the Applicant submitted a revised application which relocated the proposed tower 925 ft. to the east of the original location and within 120 ft. of the Reinke residence. Pursuant to Section 223-15 (C) (6) (a), the Applicant and a consultant engaged by the County exchanged information before the application was submitted regarding the gap in phone service coverage in this area, the feasibility of alternative technologies, the availability of other possible locations, and the possibility of co-locating the antennae on any existing towers. The County's consultant, after reviewing all of the requested data, concurred

that there was a need for a tower at this location and that the Applicant had exhausted all other possible alternative sites and feasible technologies.

Evidence presented to the Board regarding this application was voluminous. The Board heard testimony from the Applicant's radio frequency engineers regarding the gap in phone coverage in this area and the need for a tower on the property. They further testified that a system using an alternative technology would not be feasible and would result in even more towers (albeit smaller ones) in the neighborhood. A land planner for the Applicant testified regarding the Applicant's fruitless search for alternative sites and co-location possibilities and the suitability of the property for the proposed tower. A qualified real estate appraiser testified that the tower in this location would not adversely affect the neighbor's property values. He submitted a report to the Board documenting his findings.

Opposition to the tower cited perceived health risks to the neighbors from the tower. However, the Board is pre-empted under Federal law from regulating cell towers and related facilities on the basis of health and environmental effects.

The surrounding neighborhood is rural, with farms and scattered residences. It is adjacent to a state park and the tower at this new location will not be visible to most of the neighbors. No measurable traffic will be generated by this use. The Applicant's appraiser's testimony was persuasive and uncontradicted. The Applicant has demonstrated a need for the tower at this location and has no other feasible sites in the search area. Co-location was rejected by the owner of a nearby tower. The Applicant does not have the capability to use alternative technologies which would not require a tower of this size. The Property is located in a remote rural area, and the tower will not be visible to most neighbors and motorists on Ridge Road. Space on the proposed tower will be made available to other carriers, thereby reducing the need for other towers in the area. No noise will be generated by the tower. Traffic from the tower will be negligible, as the tower is unmanned and will be visited monthly for inspections by the Applicant. In short, there is nothing unique to this area or the Property such that adverse effects from the tower at this location would be greater here than elsewhere in the Conservation zone. All requirements of the zoning code have been met by the Applicant, and the opposition to the tower was unsupported by any credible evidence. Accordingly, the conditional use for a 199 ft. (+/-) monopole tower at the revised location was granted. Due to the concerns of an adjoining neighbor, a condition was imposed requiring that access to the Property must be constructed solely on the Reinke property.

The Applicant also sought a variance in the event one was needed due to the location of the tower near the Reinke residence. It has long been the position of the Zoning Administrator and the Board that the "fall zone" setbacks applicable to towers are inapplicable to a landlord's or applicant's own building or structure, as the leases with tower companies are freely entered into and the setback protections are effectively waived as to the landlord's or applicant's property. The Board concurred and determined that a variance was unnecessary in this case.

30 November 2010

Date

Howard B. Kramer
Howard B. Kramer, Chairman