

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
DIAMOND TOWERS V, LLC.
FOR A VARIANCE**

* **Case No.: 954**
* **Hearing Dates: 03/07/18**

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Diamond Towers V, LLC.’s request for variance of the special setback requirements found in Section 360, Attachment 3, Table 4, of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on March 1, 2018. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and to assess the ability to grant a variance in this particular situation.

At the hearings held on March 7, 2018, the Board considered the attached list of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use will be located on the south east side of Old Dan’s Rock Road;, three (3) miles south east of Paradise Street, Midland, Allegany County, Maryland.

The proposed use is a cellular communication tower. It will have a height of 199 feet. It will consist of a 195' tower and a 4' lightning arrestor.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use and facts and circumstances surrounding this project would warrant the grant of a variance. The Board’s findings are as follows:

1. The Board of Appeals is specifically authorized to grant a variance in this type of case by Section 360-141 (d) of the Allegany County Zoning Code.
2. That the property upon which the proposed structure is to be placed is in an area where a minimum of ten other towers are located and the proposed use is in harmony with current zoning in the area and the Allegany County Comprehensive Plan.

3. That Section 360, Attachment 3, Table 4, of the Ordinance requires a minimum setback distance for communication towers equal to the height of the structure from buildings on adjacent lots.

4. That the evidence presented by the applicant establishes that an existing structure is located 162 feet from the proposed communication tower.

5. That evidence presented also establishes that this structure is well within the 199 foot special setback requirement.

6. That the proposed structure does not meet the minimum setback requirements and as a result is subject to the provisions of the Allegany County Zoning Code regarding modifications of the zoning regulations found in Section 360-141 (d).

7. That as a prerequisite to the granting of a variance, the applicant must establish that the property whereon structures are to be placed is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property.

8. That Mr. Keith Goldberg, testifying on behalf of Diamond Towers V, pointed out two unusual factors which are, in fact features of the subject property. First, certain soil issues exist which require a placement of the tower within a very small window of space to avoid environmental intrusion. Second, the location of the tower is affected by the number of pre-existing cell towers, and their microwave transmissions, which will be negatively impacted absent the variance requested.

9. That the Board finds that the effect those features have upon the property have a nexus with the part of the zoning law from which the variance is sought, i.e. the setback cannot be met with the existing issues as set forth.

10. That the effect of those factors on the property is unique as compared to similarly situated properties.

11. That the necessity for a variance in this matter is not a result of any action taken by the applicant in this matter but merely the physical layout of the lot in relation to the neighboring properties.

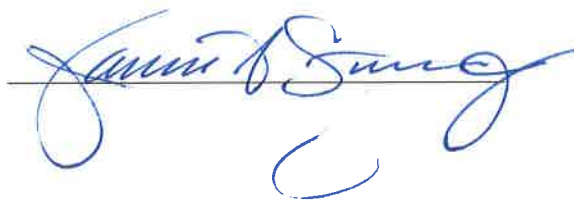

12. That the Board finds that strict adherence to the ordinance will create a practical difficulty for the applicant.

CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing of October 6, 2010, 3-0 in favor of granting the Applicant's request for a variance as to the special setback requirements for a cellular tower pursuant to Section 360, Attachment 3, Table 4, of the Allegany County Zoning Code. The applicant must also comply with all other the terms and criteria of the Zoning Ordinance at all times and must also obtain the approval of all State, County, and municipal agencies whose approvals are required for the conduct of the proposed use.

ATTEST

BOARD OF ZONING APPEALS

 By: 
Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 954

DIAMOND TOWERS V. L.L.C.

MARCH 7, 2018

EXHIBITS LIST

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application* and assorted administrative documents (i.e. invoice(s), receipts, etc.)
- B. Site Plan (Page Z-1 dated February 12, 2018).
- C. Completed *Petition for Variance*. (amended 2/12/2018, covers original request)
- D. Photocopy of an Allegany County Tax Map for property identification.
- E. An *Adjoining Property Owners List* completed and signed by the Applicant.
- F. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- G. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- H. *Inter Office Memo*, prepared by the LDS office, that was distributed to the necessary review agents notifying them of this Case, date, time and requesting comment.
- I. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- J. *Certification of Public Notice*, received from the Cumberland Times/News, certifying that the *Public Notification* was published February 17th, 2018.
- K. Returned *Inter-Office-Memo*, dated 2/23/2018, from Mark McKenzie - SHA, with comment; ".. no comments..."
- L. Email dated 12/18/2017, to LDS Office from Maryland State Fire Marshall's Office, stating ".. no comments, no objection [to project].."
- M. Correspondence dated January 15th, 2018, from Robert Beacom, P.E., Sabre Industries, to Karey Vawter, Diamond Communications, regarding design criteria of self-supporting tower.
- N. Correspondence dated February 9th, 2018, from Jesse Leitzke, Diamond Communications, LLC, to the Allegany County Commissioners/Board of Zoning Appeals, explaining the need for relief from the statutory BRL requirement (fall radius)
- O. Returned *Adjoining Property Owners Notification* addressed to MD Game & Inland Fish Commission with USPS label stating "*RTS, Not deliverable as addressed*".
- P. Memorandum dated March 6th, 2018, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals, regarding site development plan requirements.

Honorable Jacob Schade
Allegheny County Commissioners
701 Kelly Road - Suite 408
Cumberland, MD 21502

Allegheny County Commissioners
701 Kelly Road Suite 407
Cumberland, MD 21502

Forever Media of MD LLC
One Forever Drive
Holidaysburg, PA 16648

~~State of Maryland
Game & Inland Fish Comm RT 8 Box 22
Cumberland, MD 21502~~

<<RETURNED TO SENDER-NOT MAILED>>

Two Way Radio Service Inc.
PO Box 299
Cumberland, MD 21502

Vertical Bridge Towers LLC
750 Park Commerce Drive Suite 200
Boca Raton, FL 33487

Leslie Forsythe
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Maildata BOZA Case 954
Hearing: March 7, 2018
Last Revised: 180413 (Post Hearing)