



**TOWN OF VESTAL
ZONING BOARD OF APPEALS**
605 Vestal Parkway West
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ZBA BOARD MEMBERS:
Chairman - Mark S. Johnson
Mark Tomko
Tom Smallcomb
Paul Houle
George Gerner
Attorney - Matt Butler, ESQ.
Alternate: Eugene Burns

**TOWN OF VESTAL
ZONING BOARD OF APPEALS**

In the Matter of the Application of

UP STATE TOWER, LLC

For a Special Permit and variances
as required by Chapter 24, Article IV,
Division 1, Section 24-152, Chapter 24
Article V, Division 2, Section 24-327 (2)
and (4) of the Code of The Town of Vestal,
Broome County, New York (Zoning Ordinances)

DECISION

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TOWN CLERK'S OFFICE

At a meeting duly scheduled for August 25, 2016, the Zoning Board of Appeals of the Town of Vestal held public hearing to consider the application of Up State Tower, LLC , regarding the premises situate at 604 Vestal Parkway West, (tax map no.: 173.21-1-3) for a Special Permit as required by Chapter 24, Article IV, Division 1, Section 24-152 and variances under Chapter 24, Article V, Division 2, Section 24-327 (2) and (4)(Zoning Ordinances) of the Code of the Town of Vestal, Broome County, New York pertaining to applicants' request for permission to construct a one hundred and fifty foot (150 ft) self-supporting cell tower on the subject property in this "I-D" Industrial Development District.

Counsel for the applicant, Matthew T. Kerwin, Esq. of Barclay Damon, appeared at the hearing in support of the application. Land owner, Louis Turdo, Jr. was also present and in support of the application. Board members Mark Johnson, Chairman, Paul Houle, Thomas Smallcomb and

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Eugene Burns were present and all stated that they had visited the site and were fully familiar with the characteristics of the area and shopping center.

After due deliberation, the Zoning Board of Appeals makes the following findings of fact and conclusions of law:

Prior to the hearing, the applicants supplied the Board with a detailed letter from setting forth the reasons for the special permit request, a legal memorandum, project plans, survey and photos.

The applicant is desirous of constructing a 150-foot-tall cell tower on the subject site to support the wireless operations provider, Blue Wireless. Mr. Kerwin went through the plans in great detail and further explained the intricacies of how wireless companies need these towers to provide adequate service coverage to a particular area. Mr. Kerwin also set forth in his papers that these Cell companies are to be treated as “public utilities”. Coverage maps and specifications were provided to the Board that appear to indicate that the applicant has searched out all appropriate locations and that the proposed location is the best fit. There is actually a tower not far from the Town Hall, but applicant advised that it was not sufficient for the needs of a modern wireless provider. There were no other tall structures in the area where applicant could co-locate their equipment, so they are in need of a new tower. Given the proximity to the highways traversing Vestal, the applicant presented the plans for the tower, which include a built in stress point. This stress point is where the tower would fail under extreme weather. As presented, the tower’s stress point would prevent any portion of the tower from falling onto the highways. Mr. Kerwin presented evidence that the Federal Aviation Administration has already given a “no hazard” determination with respect to the project.

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The hearing was opened to the public, and after hearing no one wishing to be heard, the public portion of the hearing was closed.

The Board was presented with a long form SEQRA submission by the applicant. The Board then proceeded through their point by point SEQRA review, ultimately finding that a Negative Declaration was appropriate.

This Board is in possession of Broome County's 239 l and m review. There have not been identified any significant countywide or inter-community impacts associated with the proposed project.

A motion was made by Board Chairman, Mark Johnson to grant Up State Tower, LLC a Special Permit under Section 24-152 for the construction of the Cell Tower in this Industrial Development District and a variances under Section 24-327 (2) of 100 feet and a variance of 150 feet under Chapter 24-327 (4), as presented to the Board, with the conditions that applicant provide Code Enforcement with 1) a maintenance plan; 2) reclamation plan and 3) Applicant work with Code Enforcement to ensure that the proposed structure is above the flood plain.. The motion was seconded by Thomas Smallcomb. A vote was called, and:

Therefore, in consideration of the above, and in balancing the factors of 1.) Change in character of locality; 2.) Alternate methods to achieve what the applicant desires; 3.) The degree of variance sought; 4.) Effect on the physical conditions existing in the locality; and 5.) Any self-created difficulties, and it appearing that the proposed home occupation would have a negative impact on the character and/or nature of the neighborhood, the application by Up State Tower, LLC for a Special Permit under Section 24-152 and variances a Special Permit under Section 24-152 for the construction of the Cell Tower in this Industrial Development District and a variances under

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Section 24-327 (2) of 100 feet and a variance of 150 feet under Chapter 24-327 (4), as presented to the Board, with the conditions that applicant provide Code Enforcement with 1) a maintenance plan; 2) reclamation plan and 3) Applicant work with Code Enforcement to ensure that the proposed structure is above the flood plain, is **GRANTED** by a vote of 4-0.

The applications were unanimously granted. The votes were cast as follows: Chairman Johnson-Aye, Paul Houle-Aye, Thomas Smallcomb-Aye, Eugene Burns-Aye.

In the event that the special permit and variances is not utilized within four months from the date hereof, then the variances and/or special permit shall be deemed revoked.

Dated: *September 11, 2016*

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 
Mark Johnson, Chairman