

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - PENNSYLVANIA

Vineyard Oil and Gas Company v. North East Township Zoning Hearing Board

Commonwealth Court of Pennsylvania - July 31, 2019 - A.3d - 2019 WL 3432069

Oil and gas company filed action challenging decision of township zoning hearing board granting telecommunications company's application for dimensional variance and special exception, allowing construction of self-supporting cell tower structure on leased property.

The Common Pleas Court entered order affirming decision. Oil and gas company appealed.

The Commonwealth Court of Pennsylvania held that:

- Telecommunications company was not entitled to dimensional variance from township zoning ordinance setback requirements;
- Telecommunications company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure; and
- Telecommunications company was not entitled under Telecommunications Act (TCA) to grant of dimensional variance and special exception.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property did not have "unnecessary hardship," and thus company was not entitled to dimensional variance from township zoning ordinance setback requirements, notwithstanding fact that stream bisected leased property creating floodplain conditions, where property was currently being productively used for automobile repair business and salvage yard, and property contained septic tank and gas well.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property failed to establish cost of monopole was preclusive, that safety required structure other than monopole, or that self-supporting structure had least adverse practical visual impact, and thus company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure, in proceedings before zoning hearing board, where testimony was given that self-supporting structure "performs a little better" in terms of withstanding wind, and that company would save company \$25,000 with self-supporting structure.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property failed to establish cost of monopole was preclusive, that safety required structure other than monopole, or that self-supporting structure had least adverse practical visual impact, and thus company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure, in proceedings before zoning hearing board, where testimony was given that self-supporting structure "performs a little better" in terms of withstanding wind, and that company would save company \$25,000 with self-supporting structure.

