

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

September 6th, 2022

Present: Chairman Michael Dudick, Jerry Cifor, Christopher Lemire, Mario Fantini, John Klimes, Lisa McCoy, Scott Styles (alternate)

Absent: Randy Gifford

Also Present: Scott Reese, Zoning Administrator
Paula Cooper, Secretary
Neil Weiner., Attorney

The meeting was called to order at 7:00 p.m.

All stood for the Pledge of Allegiance. Roll call was taken.

Mr. Dudick stated that in the absence of Mr. Gifford, Mr. Styles would be a voting member.

Mr. Dudick told the applicant that per Town Code that the applicant would need 4 out of 7 of the Board members to vote in favor of the application to pass. He let the applicant know that there are 7 voting members of the Board here tonight, so that 4 members need to vote in favor tonight to grant the variances. He asked the applicant if they would like to come back at a later date or if

they would like to proceed knowing the Board tonight needs to vote in favor of the application with at least 4 votes.

The applicants stated they would like to continue tonight knowing 4 of the 7 votes need to be in favor of the application tonight.

Old Business:

An application from Cellco Partnership DBA Verizon Wireless has proposed a new cell tower on the Clifton Park Water Authority property at 36 Boyack Road. As a result of this three (3) variances are required. 1. Section 208-95A.(8)-A 500' buffer is required between any new cell tower and an adjacent residential property. The cell tower is proposed within 26' of a residential property. Although the property is owned by Clifton Park Water Authority, it is still the closest residential property. (Area Variance). 2. Section 208-95B – this section requires a 110% clear zone for the tower height. Tower is 114' tall which requires a clear zone of 125.4'. this results in a variance required of 99.4' (Area Variance). 3. Section 208-95D this section does not allowed towers in a residential zone. The property the new tower is sited on zoned residential as are all the neighboring properties. Property is located at 36 Boyack Road, Clifton Park, NY 12065 (Permit #81320 & #81321)

Applicant:

Dave Brennan – Mr. Brennan stated that he is here for a new telecommunication pole on the Clifton Park Water Authority location. He stated that they were referred to the Planning Board to establish SEQRA. He stated that the Planning Board requested and that the ZBA has agreed. Mr. Brennan stated that the Planning Board issued a negative declaration and that the application has now been re noticed for public hearing. Mr. Brennan stated that they are here tonight for 2 area variances and a use variance. He stated the ZBA needs to grant theses variances need to be granted for him to return to the Planning Board for a Special Use Permit. He stated that they are aiming for 85dbm to be able to provide satisfactory in-building coverage. He stated that the 110' monopole would be for Verizon and the antenna would be at the 106' mark with a lightning rod 4' above. Mr. Brennan stated that the tower would be next to the existing water tower on the property which AT&T already has an antenna on. He stated that he believes that if the tower application is approve AT&T would ask to move over to their pole. He stated that with this application there is no lighting, no generator, or air traffic marking necessary. Mr. Brenna showed a map of the area indicating a no coverage area. He stated that he has been asked why not put this elsewhere and stated that if they were to do so it would not adequately service the area that currently has gaps and that they are too far away along with dual ridge lines in the area that obstruct coverage. Mr. Brennan showed photos of the visibility of the pole with a balloon and leaf off conditions. He stated that the tower would only be visible with leaf off conditions.

Public:

Lori Gough – 24 Jameson Drive – Ms. Gough asked if there would be reflectors on the tower if there are no lights. Mr. Brennan stated that there would be no reflectors or markings. Ms. Gough asked why they are asking for 26' variance when the code states 500' and asked if there was

anywhere else they looked into putting the tower. Mr. Brennan stated that Mr. Myers had previously stated that the property is 217' from a residential property that is owned by the Town. Ms. Gough asked why this location was chosen. Mr. Dudick stated that due to the height, this is what the applicant is looking for.

Eric Wade – resident – Mr. Wade stated that the 500' separation was put into code on purpose due to top exposure. He stated that the tower is visible vs. invisible, and that he has been to the tower site and the tower is about 60', and the trees are lower so if the antenna needs to be higher it will be visible. Mr. Wade suggested the antenna be out lower and the trees around it could be trimmed so it would not be visible. He stated that he feels it is an eyesore, ugly, and that it would decrease property value. Mr. Dudick stated that he believes that the 500' buffer is not due to health concerns as far as the ZBA is aware of and the number was created out of convenience so the ZBA can look at the impact on the area. Mr. Reese stated that if the public would like to look at the balloon flight photos the Town has them available for the public.

Mark Stanford – 21 Danton Drive – Mr. Stanford stated that there are trees around his home and that he is not willing to cut those trees and he has cell service when walking around. He asked why antennas cannot be shared and if roaming was not available anymore. He stated that there is room by the airport for an antenna and asked if they could put one there and asked if there were any customers in the area that have not had good service. Mr. Brennan stated that the balloon was flown at leaf off conditions at tree level so looking up at the antenna the pole would not be visible. He stated that the drone fly showed the tops of the trees, and that the frequency waves can travel thru windows and brick. Mr. Rick Andres from Verizon stated that the radio frequency can only take so much resistance before they lose service and that is why it is important to be above 750 frequencies and above the trees. He stated that at higher frequencies the coverage is less and there is an increase in loss of service.

Gilberto Perez - Resident – Mr. Perez stated that he and his family do not have any problems with cellular service and asked if this would be for 4G OR 5G. He asked how this proposal would benefit the homeowners and what happens if other carriers want more as well, he stated that once the public was told smoking was good and now we realize otherwise and this is new technology. Mr. Perez asked if this would sustain a growing Town in 10 years from now or if they have studied the effects on children. He stated that he feels people's perception is their reality and they need to keep this in mind.

David Ruetsch – 3 Trevor Court – Mr. Ruetsch stated that he found that studies are inconclusive for health benefits. He stated that he is a former teacher and that he is not against the tower just not in this location. He stated that the Sportsman Club is nearby, about 2.5 miles and they would probably like to have Verizon here. He stated that there is also a dead zone in that area. He stated that there are hills on that property. Mr. Ruetsch stated that he feels that cells towers are too close together and thinks that some of the towers are paying \$2,000 per month for people to have them on their properties. He handed in for the record, a signed survey of the residents that are opposed to the application. Mr. Dudick asked if the applicant looked at the Sportsman Club and asked the applicant why they did not choose to go there. Mr. Brennan stated that it was not the right height or location to provide the most coverage. Mr. Brennan stated that Verizon did a drive test to show dead areas and it showed problems. Mr. Brennan stated that FAA regulations require a light on anything over 200' and if the tower were to be put on the Sportsman Club it would need to be higher.

Mr. Dudick stated that the Board listens to resident concerns as well as the applicant presentation and they do not always grant variances. He stated that there are certain criteria that they look at and listed them.

Resident – 17 Jameson Drive – The resident stated that lack of evidence is not evidence. He stated that he is hearing that no health impacts were found but they don't yet know everything about technology and he asked the Board to think of families that would be impacted and if it were them, would they vote the same way. Mr. Cifor stated that Federal Law stated that they cannot consider health issues; he stated that he has read a lot of studies but legally they are not allowed to consider this. Mr. Andres stated that frequencies are reused and have been for many years. He stated that old TV frequencies are being reused for cellular communication. Mr. Brennan stated that national, federal, and FCC use these services as well as local ambulance companies work off of Verizon to be able to find address and state trooper do also. Mr. Reese stated that the report from engineering touched on the rules and regulations that the Town is able to work off of.

Stacey Schaffer – 26 Jameson Drive – Ms. Schaffer stated that she lives in the home to the left of the tower and was not allowed to put in a pool due to access. She stated that kids use the park and it draws families, so safety for them during construction is a concern. She asked why 2 miles up the road do not work for the applicant.

Eric Wade – 36 Jameson Drive – Mr. Wade asked what the process is for tonight and for determination. Mr. Dudick stated that the vote will occur when all of the information has been obtained and it will not be tonight but probably next time the application is heard.

Steve Champetty – 26 Jameson Drive – Mr. Champetty stated that he keeps hearing the applicant state that there is lack of coverage but the neighbors don't have issues. He stated that he does not dispute the studies but they do not make sense and that esthetics and property values will be affected. He stated that most people steer away from towers and electrical lines. He asked the applicant why they cannot increase output on what is existing. Mr. Fantini stated that the AT&T antenna is currently on the water tower; Mr. Dudick asked how AT&T is working when they are under the tree line currently. Mr. Brennan stated that his belief is that it does not and that AT&T will ask to come to Verizon's antenna if approved. Mr. Cifor asked if the antenna pole could be camouflaged to look more like Moe Road tower. He asked if they could see a rendering of this at the next meeting.

Pei Pichne – 28 Jameson Drive – Mr. Pichne stated that he has just moved here from Taiwan and saw the water tower when he moved there. He stated that he feels safe living where he is but there are no studies on radiation effect and no documentation of any radiation. He stated that he feels cutting the trees from the top would only allow them to grow back and it does not make sense to him. He stated that he has Verizon for a carrier and he has no coverage problems.

Robert Melia – 34 Dorsman Drive – Mr. Melia stated that the first home built in this area knew about a water tower but they were not aware that AT&T has been there. He stated that he has AT&T and does not feel it helps with coverage. He asked how much the CPWA was getting from Verizon being on their property and has concerns about the value of his property being negatively affected by this application. He stated that he feels that this is different from pool variances and that 100's of homes and 1,000's of people would be affected by this.

Ralph Reale – 13 Hiawatha Drive – Mr. Reale asked why some variances are passed when the impact seems to be substantial. Mr. Fantini stated that cell towers are considered utilities. Mr. Dudick stated that utilities get different standards of review. He stated that they still have to meet certain zoning codes and explained what they are and what happened a number of years ago when the Town ultimately had to go to court over a denied tower. Mr. Dudick stated that if the public could show proof of decreased home value due to the tower it would be considered but could still be overturned in court. He stated that due to the use by first responders it is considered essential. Mr. Weiner stated to change the federal laws the residents need to contact their councilmen.

Maryann Stanton – 31 Drosman Drive – Ms. Stanton thanked the Board for their attention tonight. She stated that she understands that they have to have a reason to turn down the application with Federal guidelines but the Town Code 208-95D does not allow for this. Mr. Cifor stated that state and Federal law supersedes the Town Law. Mr. Dudick stated that state and Federal go above the Town law. Ms. Stanton asked then why the last one was done without public knowledge and AT&T seem fine with their height so why not Verizon. She asked if Verizon could use the water tower instead of their own pole as well. Mr. Fantini stated that the applicant has a 12 page document stating the lack of coverage in the area so hopefully a compromise can be found. Mr. Weiner stated that cellular coverage is a public utility not an entertainment source.

Burton Gove – 24 Jameson Drive – Mr. Gove stated he was unclear on the water tower vs. a cell tower and the difference and asked if the town or Verizon would get paid extra to add another carrier onto the pole if approved. Mr. Dudick stated that rental for the tower would be for Verizon and then Verizon rents the space for their pole. Mr. Grove asked if the tower could be lowered and if that would affect the number of other carriers looking to get on the same pole. Mr. Dudick stated that its one 110' tower vs. two 90' towers.

Mr. Dudick stated that the public hearing would not close tonight. He stated that he would like the applicant to come back with some alternatives to look at that were discussed tonight such as a stealth tree and a simulation of trees being cut down from the tops. He stated that he would also like Verizon to reach out to other companies and see if a colocation would be a definite not a hypothetical idea. Mr. Brennan stated that he cannot speak for AT&T but the coverage gaps do not work for Verizon.

A member of the public stated he would like to hear responses from the applicant to the comments made tonight. Mr. Brennan stated he would submit written responses before the next meeting.

Board:

Ms. McCoy asked about the finding for the industry standards and the coverage in the area. Mr. Brennan stated that they had Mr. Bill Johnson look at the project proposal and that he has indicated a gap in coverage in the area.

Mr. Fantini stated that coverage maps are 4G and that the industry is moving to 5G and asked if this pole would be good enough to support the 5G network or if another tower would have to be built. Mr. Brennan stated that low band and high band work in frequencies, 700 and 850

frequency is what is being converted to 5G and that the low frequency bands would meet 5G needs as well. Mr. Brennan showed the drone fly photos above the tips of the trees to show how high they plan to make the tower without it being visually obtrusive and stated that the water tower is about 70' high.

Mr. Lemire asked if there was consideration in cutting the trees. Mr. Brennan stated that CPWA owns the property and this is proposed to be in the corner. He stated that the Town owns the property adjacent so they are separate authorities. Mr. Lemire suggested that they could possibly come to an agreement to be good neighbors. Mr. Brennan stated that if the trees are trimmed then the water tower would be visible as well, but he would look into this as being an option. He stated that he is unsure of the maintenance of this and the water tower but this is not ideal. He stated that the radio frequency report has been done with Verizon and AT&T at full strength and that it is less than 1% of what the FCC allows and that the tower would turn on and off dependent on the usage. Mr. Lemire asked if there are variances for the current water tower. Mr. Reese stated he is unsure. Mr. Brennan read from the code and then stated that he does not believe so. Mr. Lemire stated that if the pole were to go on the tower than no variances would be needed.

Mr. Cifor asked what frequency they would operate at full strength. Mr. Brennan stated that all 5 in 3 sectors are at 120 degrees at full capacity. Mr. Reese stated that the Planning Board has established Lead Agency for SEQR and has issued a negative declaration with a Type I action. He stated that a letter issued from John Scavo to Steve Myers mentioned the Federal Communications Act.

Mr. Klimes asked if the frequencies were measured in microwatts. Mr. Brennan stated they are and are still under the FCC standards. Mr. Klimes stated that based on a public need to fill a gap in coverage for AT&T he would like to see proof. Mr. Brennan stated that he presumes they will ask for a colocation and never directly stated they had a gap.

Mr. Fantini read the four points from Mr. Scavo's letter that need to be considered. Mr. Dudick stated that the applicant has shown that the frequencies are below the FCC standards and cannot be considered.

Mr. Cifor asked what the difference was for the 3G, 4G, and 5G and if there would be a decrease in frequency. Mr. Brennan stated that it would be the same frequency just faster service. Mr. Cifor asked if to do this if there would be more towers or if the existing ones would be converted. He stated it would be the existing towers and frequency with upgraded base equipment to run on 5G.

Mr. Dudick asked the applicant when he would like to return to the Board with requested information. Mr. Brennan stated that he would come back for the October 4th, 2022 meeting.

New Business:

*An application from **Chick-fil-A, Inc** requests variances the sign law, Chapter 171 of the town code. Per Table 1 of the Sign Law business is allowed a maximum of 2 wall signs with a total area of 60 sf. The applicant has requested 4 wall signs totaling 236 sf. They*

have also requested variances for the wall sign heights. Variances required: 1. 2 wall signs allowed, 4 requested, variance for 2 additional wall signs required. 2. 60 sf maximum allowed, 236 sf requested, a variance for 176 sf required. 3. The wall signs are stated to be installed at 22'-8.5" (this is from the attorney summary since the height cannot be determined from the drawings). Maximum height allowed is 16'/4 variances for 6'-8.5" each is required. Total variances 6. Property is located at 304 Clifton Park Center Road, Clifton Park, NY 12065 (Permit #81336).

Applicant:

Tim Freytag – Bohler Engineering – Mr. Freytag stated that he is here tonight with Clint Maxim from Chick-fil-A and Paul VanCodd. He stated that he has worked with the Planning Board and TAC for the SUP and site plan. He stated that construction is to start this month on the building. Mr. Freytag stated that all aspects of the site have been covered with the TAC and there were many site constraints. He stated that the building has 2 fronts with no access to Route 146 so they have to have access off Clifton Park Center road as well as a shared driveway with 99 Restaurant. Mr. Freytag stated that they are not apart of the mall so there is no shared signage and there is a large hill on Route 146. He stated that there will be isolated drives thru with no conflict with dine in guests. He stated that the drive thru would have 2 canopies to help protect employees from the weather and 3 drive thru lanes, 2 to order from and one to deploy. Mr. Freytag stated that they would with TAC to customize the building and color scheme. He stated that with the TAC he had to increase the building height and windows to fit in with the neighborhood. He stated that the building has a long façade on the front with one sign facing Clifton Park Center Road, one sign over the patio entrance, one to the north up higher so that Route 146 can see and one sign over the drive thru. He showed renderings of the building with the proposed sign placements as well as a plan showing which areas the signs would visually cover.

Public:

Ralph Reale – 13 Hiawatha Drive – Mr. Reale stated that he is happy that he has a 2 sign limit and asked about the existing Clifton Park Center Mall sign. Mr. Freytag stated that the sign is on their property and is planned to be moved and has been approved by the Town. Mr. Dudick explained the history of how this happened and the parcels involved.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 11:02 p.m.

Board:

Mr. Dudick asked if there would be a freestanding sign. Mr. Freytag stated there would be in the northwest corner of the property in a wall sign blackout area.

Mr. Fantini asked the building size. Mr. Freytag stated it is 5,000sf

Mr. Reese stated that the wall signs are less than originally asked as Mr. Myers measured the area using a singular rectangular calculation. Mr. Maxim stated that they used a trapezoid method. Mr. Reese stated that the area of sign defined in the Town Code includes any frame, which is an integral part of the display. Using a single continuous perimeter composed of rectangles the proposed sign can be broken down to two rectangles. He stated that with this

measurement 36.3 is in box one and box 2 would hold the “C” form the company name. Mr. Reese stated that if 2 signs were 30 sf it would be allowed

Mr. Klimes stated that they are looking at 145.7sf for 2 signs and needs variances. Mr. Reese supplied other variances and locations similar to this. Mr. Klimes asked how big the freestanding sign would be.

Mr. Dudick stated that they are trying to avoid a certain image and has not approved more than 2 signs but more directional signs are allowed. He stated that he feels the intersection to the west is served by the sign on the drive thru and the extra is not needed. Mr. Dudick stated that he is not locked on 30’ each but only wants 2 signs. He stated that cell phones can easily direct someone to a location so the needs for extra signs are not necessary. Mr. VanCordt stated that McDonald’s has 5 signs. Mr. Dudick stated that this was done before his time on the Board. Mr. VanCordt stated that the building is below grade and visibility is critical with the location and access to the site being limited. He stated that he feels that precedent does not fit here. Mr. Dudick stated that 60sf is not the limit and he is willing to give more.

Mr. Lemire suggested getting rid of the freestanding sign and allows 3 wall signs. Mr. Freytag stated that the front door sign is needed and that Clifton Park Center Road sign is the main façade with frontage and agreed that the drive thru sign has the least impact.

Mr. Klimes stated that he feels that the north sign has no impact due to the freestanding sign.

Mr. Freytag stated that the height is due to TAC requirements but would like to change the request to 2 wall signs and 74sf total.

Mr. Klimes moved, second by Mr. Dudick, to approve the variance as amended. The property is located at 304 Clifton Park Center Road, Clifton Park, NY 12065.

Mr. Klimes read the Area Variance Criteria, Mr. Klimes answered in favor to all 5 criteria.

Amendments:

1. Elimination of 3rd variance for four wall signs – reduced to two wall signs
2. 2 wall signs with 74 sf total, variance 14 sf granted
3. Maximum height wall sign variance for 7’ granted

The Secretary called the Vote:

Ayes: 7

Noes: 0

The chairman made a motion to approve the minutes from the July 19th, 2022 meeting. All who were present at the July 19th, 2022 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Cifor second, all voted in favor and approval was unanimous. The meeting was adjourned at 11:15 p.m.

The next scheduled ZBA meeting will be held on September 20th, 2022.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals