

## Town of Clifton Park Zoning Board of Appeals

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## Zoning Board of Appeals

October 18<sup>th</sup>, 2022

**Present:** Chairman Michael Dudick, Jerry Cifor, Christopher Lemire, John Klimes

**Absent:** Randy Gifford, Mario Fantini, Lisa McCoy, Scott Styles (alternate)

**Also Present:** Scott Reese, Zoning Administrator      Paula Cooper, Secretary  
Neil Weiner Esq., 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 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 4 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 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 this application is for the same location and structure as the last time he was before the Board. He stated that he was asked to provide additional information and he looked at the tower as stealth modified. Mr. Brennan stated that simulations have been submitted as both a mono pole as well as a pine. He stated that if a stealth pole were preferred it would have to be taller than just the pole. He stated that they are willing to keep the pole at the height requested which is 114' and to lower the antenna to allow for the false tree top. Mr. Brennan stated the appraisals for the tower and sale prices for the homes did not show negative property loss.

**Public:**

MaryAnne Stanton – 31 Dorsman Drive – Ms. Stanton stated that she submitted a letter on October 13<sup>th</sup> with 10 questions, some of them Mr. Brennan Had already answered. She asked if the cone with the 20' extension would not apply to this application. But she asked what would stop the CPWA from changing the lease agreement to gain additional revenue for more occupants on the pole and asked if the telecommunications act would override the lease. Ms. Stanton asked if the CPWA offered any other bids for the pole and if general liability coverage in the insurance cover acts of god and if there is enough insurance to cover damage to the water tower. Ms. Stanton asked if there would be a generator and if FAA light requirements change if the applicant would have to accommodate the change in regulations. She stated that she feels the Board should take into consideration all concerns and not allow the Federal Law to override their decision and that she did go to the CPWA with the community petition. Mr. Dudick stated that the CPWA did not put anything out to bid but that the applicant approached the CPWA. Mr. Brennan stated that he believes that the insurance would cover the water tower and mitigations would be put in place. Mr. Dudick stated that if regulations change for generators or other aspects, that the Town, County, Federal and State laws would need to follow. He stated that the ZBA can help mitigate but that they do not create these laws. Mr. Brennan stated that 64-09

spoke of increasing the tower by 20' if it necessary but there is an FCC declaration from monopoles and he has not heard of or seen it under 64-09. He stated that the CPWA lease keeps the tower to a certain height. Mr. Weiner stated that he feels that Mr. Brennan is correct and that the Board is not able to restrict with conditions per the FCC law but the stealth would help cap the height. Mr. Brennan stated that he is unaware of a second carrier but will work with CPWA. He stated that he believes the company's insurance is \$2 million but it is large and has amenity clauses to help if damage exceeds the policy. Mr. Brennan stated that there is also a removal clause in the lease agreement and there is a \$75,000 removal bond. Mr. Brennan stated that he has a generator outside of his office showed 2 pictures, one of which was this one, and he stated that he has heard it running once. He stated that the generator is turned on for about 30 minutes every 2 weeks. Mr. Brennan stated that Mr. Scavo in the planning Department has confirmed that FCC requirements do not requires a light for this pole proposal.

Robert Melia – 34 Dorsman Drive – Mr. Melia asked what the definition of a good signal is as he has service for his generator through Verizon and he has 4 bars. Mr. Melia asked what rent amount does Verizon get for other carriers to be put on the pole. Mr. Melia stated that there is a generator on the CPWA property now and it runs all the time because the power goes out frequently in this part of Town. Mr. Melia stated that he understands that the CPWA is a private company, but the community has voiced that they do not want this in their area. He stated that notifications were mailed but he never received one even though this affects him. Mr. Melia stated that a law being broken due to variances changes the law. Mr. Dudick that this is the ZBA and the Town has zoning laws and people come here for relief from these for special circumstances and then gave examples. Mr. Weiner stated that that what is done at these meetings are lawful. He stated that the ZBA is not as powerful as the lawmakers in DC and to change the laws the community needs to speak with their local lawmakers.

Mark Stanton 31 Dorsman Drive – Mr. Stanton stated that he attended a Water Authority meeting and appealed and submitted questions in writing. Mr. Stanton asked if responses would be given in writing as the Water Authority has claimed that they will not allow subletting but the ZBA is stating that Verizon could. Mr. Weiner stated that they are dealing with relief from the law and not subletting. Mr. Lemire quoted 208-95(A-4) and stated that they need to take all applications into consideration as a ZBA. Mr. Stanton stated he would like to know what revenue Verizon would gain or CPWA would lose if this was not approved.

Lee Colenecoff – Jamison Drive – Mr. Colenecoff stated that the CPWA stated that in the lease a certain amount of footage they are allowing but that about the 30' necessary to go into the ground. He stated that the tower is close to a residential area and asked if alternative area would be possible with an increased height to achieve the same goal without affect to the community. Mr. Brennan stated that the foundation to the pole is pad and pier which would be within the lease agreement area and that an evaluation of the soil would be done to determine which type of foundation would work but both pad and pier would be within the leased area. Mr. Brennan stated they looked at other options but keeping under 199' would still not be sufficient coverage.

Mr. Dudick moved, second by Mr. Cifor to close the public hearing at 8:17 p.m.

**Board:**

Mr. Dudick asked if the tower antennas are dropped by 5' and Verizon has the top spot, how many other carriers could go on the pole. Mr. Brennan stated that it could potentially be 3-4 but since Verizon is at 101', then the next carrier would be 91' then 81'. Mr. Dudick asked if anyone could go at 71'. Mr. Brennan stated that he does not believe so but it would probably be Verizon and one other carrier. Mr. Dudick talked about the potential for lower towers and having more of them. Mr. Brennan stated that they cannot go too much lower as the tower proposal is close to the canopy already. Mr. Dudick stated asked if there is a potential or lower and trimming the tree tops. Mr. Brennan stated that the trees that would need to be trimmed would total about one acre and they would be on the CPWA property. He stated that there would be room on the property for the Verizon pole as well as one other pole due to property lines and fencing. Mr. Brennan stated he showed the drone flies at the last meeting with the view of the treetop canopies. He stated that he provided for review. Mr. Dudick stated that it sounds like there is a plan for the base and sounds are being addressed as there is no generator is being proposed. He stated that the base seems to be concealed but this would be addressed by the Planning Board when the site plan is reviewed. Mr. Brennan stated that he feels that the site is screened well and he does not feel that it is visible from the parking lot. Mr. Brennan stated that the definition for a good signal is for it to reach into homes or a traveling car.

Mr. Lemire stated that a SUP has been applied and asked about Lead Agency. Mr. Reese stated that the Planning Board has declared Lead Agency for the SEQR process, but are waiting to hear the application further until the ZBA has made a decision.

Mr. Brennan asked to be put on the November 15<sup>th</sup> agenda.

#### **Old Business:**

*An application from Caryn Mlodzianowski requests an area variance from 1) 208-50.3B from the required 30 feet front yard parking setback. Actual setback 13.7 feet. Variance required = 16.3 feet. 2) 208-50.3.D from the required 50 feet building rear yard setback. Actual setback 22.5 ft. Variance required = 27.5 ft. Property is located at 1739 Route 9, Clifton Park, NY 12065 (Permit #81338).*

#### **Applicant:**

Caryn Mlodzianowski – Bohler Engineering – Ms. Mlodzianowski stated that this application is for a proposed redevelopment with 4 requested variances from September 20. She stated that based on feedback from that meeting she knew parking was a concern. Ms. Mlodzianowski stated that the footprint was 7,020 sf per floor with 71 parking spots. She stated that they have modified the application and there are no side yard setback variances required and the footprint would be 6,305 sf and 71 parking Spaces. She stated that the square footage of the second floor has been decreased and the total square feet of the building is 10,600 sf. Ms. Mlodzianowski stated that they still need a rear yard setback variance but they are bringing parking into compliance.

#### **Public:**

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 8:24 p.m.

**Board:**

Mr. Lemire confirmed that the second floor would be 4,345 sf. Ms. Mlodzianowski stated it was.

Mr. Klimes stated that some of the requests on this property are unavoidable and would need variances.

Mr. Cifor asked if the applicant foresees any more variances in the future such as signage. Ms. Mlodzianowski stated that she does not foresee there being any.

Mr. Reese stated that he has no new comments and that the Saratoga County Planning Board has found no significant county-wide or intercommunity impact.

Mr. Dudick stated that he felt before that this was a large building for a small plot and that sometimes parking can become an issue but he feels comfortable with the modifications made by the applicant.

Mr. Cifor moved, second by Mr. Dudick, to approve the 2 variances as presented tonight. The property is located at 1739 Route 9, Clifton Park, NY 12065.

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

The Secretary called the Vote:

**Ayes: 4**

**Noes: 0**

**Old Business:**

*An application from AJ Signs requests an area variance from 1) Chapter 171-4H.(1) no off premises signs shall be allowed – variance requested = to allow an off premises sign on property. 2) Chapter 171 – Freestanding sign area existing sign area 90 sq. ft. and relocated sign area 33 sq. ft. = 123 s. ft. – Max allowable = 60 sq. ft. – Variance requested = 63 sq. ft. 3) Chapter 171-6B (1) – no freestanding sign may be located less than 50 ft. from any other freestanding sign – Requested 0 ft. – Variance requested = 50 ft. 4) Chapter 171 – freestanding sign frontline setbacks is 15 ft., existing sign front line setback 24 ft. Relocated sign front line setback requested 12 ft. – Variance requested 3 ft. Property is located at 1023 Route 146, Clifton Park, NY 12065 (Permit #81341)*

**Applicant:**

Tom Wheeler – AJ Sign – Mr. Wheeler stated that he is here tonight for the sign for Ravenswood. He stated that the sign will be relocated as the road is being taken over by the Town to accommodate new development. He stated that technically Ravenswood is in a lease

with an offsite business to allow for overflow parking. He stated that the easement for the sign will go away when the Town takes over the now private drive and it becomes a town road.

**Public:**

No public comment.

**Board:**

Mr. Dudick asked if the easement is for the access to the restaurant or for the sign. Mr. Scott Schreifels – Ravenswood owner – Stated that the same owner was originally for the restaurant and the Citgo. He stated that when the owner of the property sold the restaurant they gave an easement and that the sign has been at its current location since 1972.

Mr. Lemire stated there was an easement from the gas station to the restaurant in 1973 and 2016, with Carrabassett Square Management that was bought from Wayne Beale and sold to Van Auken, which is the applicant now. Mr. Schreifels stated that his is true, that the restaurant and the office building were given easements at the same time. He stated that the easements are still in place but will sunset when the Town takes over the road. Mr. Lemire stated that from what he was presented, the easement was only good for the lease that was signed in 1972. Mr. Reese stated that the deed from 2016 has an easement as well. Mr. Lemire stated that the original deed limits the easement to the lease agreement. Mr. Schreifels stated that when the property was sold in 1974 to Roma Pizzeria, Inc., there was another easement and he submitted it for review.

Mr. Weiner stated that the easement on the Roma Pizzeria, Inc. purchase is from 1983 and it predates the sign ordinance. Mr. Weiner stated that the sign for Ravenswood has been there since he moved into the area. Mr. Schreifels stated that he still uses the ingress and egress easement.

Mr. Lemire stated that in 2003 a new sign was requested, and the sign was refaced, and the original height was kept per Steve Myers. Mr. Wiener stated that the business on the adjacent parcel is also entitled to a sign. Mr. Dudick stated that if he goes on the office sign he would lose square footage as he would have to go on their existing sign.

Mr. Reese stated that the maximum allowable freestanding sign area is 150 sf in this zone.

Mr. Dudick asked how much Mr. Schreifels is paying in rent to use the parking. Mr. Schreifels stated \$3500 per year for parking. Mr. Dudick stated if the owner of Ravenswood was given room on the existing sign there would be no need for a variance and he could put a sign on his own property.

Mr. Lemire asked why the owner is here now asking for a variance. Mr. Schreifels stated that Mr. Earle owns the property to the rear of his and if the road were to stay private, they would not be asking for a variance.

Mr. Wiener asked if the applicant has spoken to Mr. Earle and if they could come up with a solution. Mr. Schreifels stated that Mr. Earle told him about the Town taking the road and the sign being removed in July.

Mr. Reese stated that a typical roadway Right-of-Way width for the Town is 60' and this is 50' so he is not sure how much he would be comfortable giving any area in the Town's Right-of-Way to relocate the sign.

Mr. Dudick stated that no one is allowed to have a sign that is not on their own property except for a few properties on Route 9. Mr. Schreifels stated that he would like a sign on Route 146. Mr. Dudick stated that signage on a property that is not owned by the same person is by definition, a billboard.

Mr. Lemire stated that Mr. Schreifels should talk to a lawyer to have documents to show the history of the easement. Mr. Weiner stated that he should go back to his lawyer and talk to Mr. Earle to see if anything can be mitigated.

Mr. Dudick stated that the applicant can talk to the office property owner and make one sign not 2 and try to comeback for a variance for sign size.

**New Business:**

None

The chairman made a motion to approve the minutes from the October 4<sup>th</sup>, 2022 meeting. All who were present at the October 4<sup>th</sup>, 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 9:18 p.m.

The next scheduled ZBA meeting will be held on November 15<sup>th</sup>, 2022.

Respectfully submitted,

*Paula Cooper*

Paula Cooper

Secretary, Zoning Board of Appeals