

## Town of Clifton Park Zoning Board of Appeals

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## Zoning Board of Appeals

November 15<sup>th</sup>, 2022

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

**Absent:** Randy Gifford

**Also Present:** Steve Myers, Director, Building and Zoning  
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 7 voting members of the Board here tonight, so that 4 of 7 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 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 tonight with Mr. Rick Andrus, a Verizon engineer. He stated that he has been before the Boards for the cell tower proposal on CPWA land. He stated that the public hearing has been closed and the proposal has been modified, and is now for a stealth monopole. He stated that he has shown drone flies in the past and that other poles have been looked at. He stated that professionals hired by the Town have given their professional opinions on the proposal and there is only one other carrier on the property which is AT&T and they are located on the water tower. Mr. Brennan stated that the site is needed in this area for coverage and that other locations have been looked at to the east and the south as well as the transfer station; however they did not provide the coverage needed in the area of the current proposal. Mr. Brennan stated that they need a use variance and an area variance for this public utility and the need for it are shown in the reports and the intrusion is minimal. Mr. Brennan stated that he feels he has met the requirements to prove he needs the variances and there are no professional comments that contradict this is needed.

**Public:**

No public comment.

**Board:**

Mr. Fantini asked for photos for the drone fly and simulation. Mr. Brennan stated that they have been provided already for review. Mr. Fantini asked if tree trimming was an option if it could be on the water tower. Mr. Brennan stated that over an acre of trees would need to be topped and some are off property so it would not be feasible.

Mr. Lemire went through the Town Code regarding cell towers and quoted from Section 208-95(a) and stating that it says it encourages space sharing as well as alternate towers to minimize disruption to the area. He read from the Section quoting subsections 3-8, 208-95(d) 1-5, 208-95(e) 2 and 3, and 208-109 (c) that spoke about the ZBA code review, modifications, and interpretation. Mr. Lemire stated that it is on a hill with a water tower and existing antenna on the tower. He stated that if they were to put another antenna on the tower that the applicant would not be here before the Board. He stated that he feels that the applicant has not met the criteria for prioritization per 208-95 due to co-location being available. Mr. Lemire stated that he is not questioning gaps in coverage but looking at whether the Town's priorities are being met.

Mr. Dudick asked if the coverage gap could be filled by putting another antenna on the water tower and how much of the filling of the coverage gap is deemed sufficient.

Mr. Brennan stated that Professor Johnson stated that on the water tower was not optimal and that this is an alternative tower structure as it is stealth. Mr. Brennan stated that per Code 4a they are using an alternative. He stated that his own consultants stated this would not work on the water tower.

Mr. Dudick stated that he agrees that to see the proposal from the ground it would be at an acute angle through the trees but he wants to be fair and follow the laws. He stated that he wants to make sure the public and the Board is all informed.

Mr. Cifor stated that he felt that the last time the ZBA voted down a cell tower the Federal Courts overruled it and that he feels that this is a waste of Town time and money when the federal law will override it anyway. He stated that he would personally approve this application at this time. He stated that the federal law was intended for essential communications and not for entertainment purposes as it has turned into not. He stated that he feels that the applicant has checked all the boxes.

Mr. Klimes stated that he feels there is no right answer but feels that a stealth monopole is a compromise.

Mr. Dudick stated that he feels there is no need for screening equipment at the base. He stated that the application is for a cell tower and all applications are looked at individually. He stated that this does not seem to be creating an eye sore and he has no problems with the application.

Mr. Dudick moved, second by Mr. Cifor, to approve the variances as requested. The property is located at 36 Boyack Road, Clifton Park, NY 12065.

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

Mr. Dudick read the Use Variance Criteria, Mr. Dudick answered in favor to all 4 criteria.

Conditions:

1. 114' stealth monopole

2. no generator

The Secretary called the Vote:

**Ayes: 6**

**Noes: 1, Mr. Lemire**

**Old Business:**

*An application from AJ Signs requests a variance from Chapter 171- freestanding sign area – existing sign area 149 square feet, proposed sign area addition – 38 square feet – total freestanding sign area 187 square feet – 150 square feet allowed – variance requested 37 square feet. Property is located at 1023 NY Route 146, Clifton Park, NY 12065 (Permit #81341)*

**Applicant:**

Tom Wheeler – AJ Signs - Mr. Wheeler stated that Ravenswood sign is in the middle of an entrance that is being taken over by the Town for a roadway. He stated that Ravenswood has a lease with the office building next door for parking so they would like to move the Ravenswood sign onto the office sign. Mr. Wheeler stated that he is asking for more square footage to add to the sign because the restaurant does not want to lose visibility.

**Public:**

No public comment.

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

**Board:**

Mr. Weiner stated that this does not seem to be an off premises sign.

Me. Dudick stated that he feels they can modify the sign as long as Ravenswood is paying for space on the property. He stated that if Ravenswood no longer pays for space on the property they would have to remove the sign. Mr. Dudick stated that this seems to be a unique circumstance.

Mr. Reese stated that the definition of tenancy does not mean building space. He stated that an area variance is needed to increase square footage of the sign and the application was changed.

Mr. Weiner asked if this would need to be re-advertised. Mr. Reese stated it did not as what is written on the agenda is what was advertised.

Mr. Klimes asked if the application was changed to the office owner as the sign is on her property. Mr. Wheeler stated that it has and AJ Signs is representing her. Mr. Weiner stated he has the authorization, but he would like an updated one for after the publication date.

Mr. Lemire asked if the owner of Ravenswood would also look to have a sign on their own property when it becomes a boulevard. Mr. Wheeler stated they are not looking into getting one.

Mr. Dudick stated that by right they can have one up to 60square feet. He would like a condition stating that if there is one at the office there cannot be one on the restaurant property as well.

Mr. Reese stated that this is an unlisted action an no further SEQR is required. H stated that there are no environmental impacts.

Mr. Klimes moved, second by Mr. Cifor, to approve the variance as requested. The property is located at 1023 NY Route 146, Clifton Park, NY 12065.

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

Conditions:

1. One sign allowed on rented property in place of on property signage
2. Sign can only remain on rented property as long as Ravenswood remains a tenant

The Secretary called the Vote:

**Ayes: 7**

**Noes: 0**

**New Business:**

*An application from Whitney Lane Holdings, LLC has proposed installing an animated sign located at 1208 Route 146. Applicant requests a Use Variance from Chapter 171-4H.(3)(n.) to replace a freestanding sign with a freestanding sign with animated reader board. Variance required to put an animated sign in prohibited area. Property is located at 1208 NY Route 146, Clifton Park, NY 12065 (Permit #81343)*

**Applicant:**

Stephanie Berdard – Ms. Berdard stated that this is on the west side of town near Ravenswood and most of the area has been renovated. She stated that over the last year this property has been before the Boards for renovations as well. She stated that it is a PDD due to and RV dealership being on the property in the past. She stated that the building is set back from the main raod and the elevation is lower than the roadway so it is not fully visible from Route 146. Ms. Berdard stated that this is zoned B-3 and a PDD sign was approved in 1999. She stated that requesting an

animation board will help to fill the plaza. She stated that she feels the sign requested will not create a detriment to the area.

**Public:**

No public comment.

**Board:**

Mr. Fantini stated that this addresses a use variance not an area variance. Ms. Berdard stated that Chapter 171 of Code states a variance for a sign permit and 171-12 is where she is seeking relief from as a sign is permitted. She stated that she submitted a letter for the relief that originally stated use variance and then she resubmitted the same day a letter for a sign variance.

Mr. Reese stated that 171 4(h) does not allow a sign in the area asked for. Ms. Berdard stated that 171-12 does not say use.

Mr. Dudick stated that the ZBA does not do sign variances. Ms. Berdard stated that is what she submitted for.

Mr. Lemire stated that the Board was not prepared for this as there is a discrepancy in what the applicant is asking for. He stated that the ZBA was prepared to hear a use variance application only.

Mr. Reese stated that the application will be reviewed and Mr. Weiner can be consulted and the applicant, should they need to return can come back at the next scheduled meeting.

The chairman made a motion to approve the minutes from the October 18<sup>th</sup>, 2022 meeting. All who were present at the October 18<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. Lemire second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:52 p.m.

The next scheduled ZBA meeting will be held on December 6, 2022.

Respectfully submitted,

*Paula Cooper*

Paula Cooper

Secretary, Zoning Board of Appeals