

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

April 16, 2024

Present: Chairman Michael Dudick, Christopher Lemire, John Klimes, Lisa McCoy, Scott Styles, Juliano Febo, Mark Brockbank (alternate)

Absent: Chad Gregory

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 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 **David Nash** requests two area variances from chapter 208-12. The first variance: No accessory building shall be placed closer to a front property line than 80 feet. The proposed front property line setback is 55 feet for the proposed detached garage. The variance requested is 25 feet from the 80 feet front property line setback.*

The second variance: No accessory building shall be placed closer to a side or rear property line than five feet in a R-1 District. The proposed side yard setback is 1 foot for the proposed detached garage. The variance requested is 4 feet from the 5 feet side yard property line setback. The property is located at 12 Sweet Brier Drive, Clifton Park NY.

Applicant:

Dave Nash, owner, stated Mr. Reese came to his home and helped to redesign the proposed carport. He stated the carport is now being proposed to be 75' back so he is now only asking for a 5' variance and it would be behind the home by about 10'. He stated he could redesign the layout more but he would like to stay at least 6' from the hill to be able to do maintenance on his property. He stated that the setback is now further and the Carport is now smaller, being 24'x55' instead of 30'x50'. Mr. Nash stated the 2 existing car ports will be removed and a new concrete slab will be poured for the proposal before the car port is installed.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 7:08 p.m.

Board:

Mr. Dudick clarified with the applicant that the new front setback variance that is being asked for is 5'. Mr. Reese stated that he needs a 5' variance for the front now but not for the side setback as the owner of this property also owns the neighboring property so there is a 0' side yard setback. Mr. Reese stated this lot is not a buildable lot due to the easement for the drainage pipe as well for Town owned parkland. Mr. Reese stated it would not be suitable for sale for residential use.

Mr. Reese stated that this is a Type II action, and no further SEQRA is required and that the 3 required neighbors have been notified in March 2024, and that it was reposed for the change in variances. He state that the Saratoga County Planning Board has waived the application and will not be reviewed.

Mr. Klimes moved, second by Mr. Ms. McCoy, to approve the variance as requested. The property is located at 12 Sweet Brier Drive, Clifton Park, NY.

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

The Secretary called the Vote:

Ayes: 7

Noes: 0

Old Business:

An application from Aaron Cote requests an area variance from chapter 208-12. No accessory building shall be placed closer to a front property line than 80 feet. The proposed front property line setback is 40 feet for the proposed carport. The variance requested is 40 feet from the 80 feet front property line setback. The property is located at 20 Blue Barns Road, Clifton Park NY.

Applicant:

Aaron Cote stated he is here tonight for a variance for a car port. Mr. Cote stated when he was here last the carport was proposed to be in front of the tree in his yard. He stated since then, with the request of the Board and consulting with Mr. Reese and the carport is now 6 feet of his fence line and he is now asking for a 22'varance.

Public:

No public comment.

Board:

Mr. Dudick how far behind the home the car port is now. Mr. Reese stated the home is 62' from the road so the port will now be 5' but the covered porch adds 1.5'.

Mr. Brockbank asked if the driveway would be connected to the carport. Mr. Cote stated it would be connected via crusher run.

Mr. Dudick asked if the port cannot be moved back further due to the fence. Mr. Cote stated that this is correct and if the fence were removed then he would be breaking code for the pool. He stated that the rear of the car port is open so the fence would not be complete. Mr. Dudick stated that applicant could move t the car port further back and make it a 3 sided car port to enclose the pool and the rear yard would still be enclosed. Mr. Cote responded that the property is on shale and bedrock so they would have to drill to relocate the fence and it would be too costly for him.

Mr. Febo asked if neighbors had called about the application. Mr. Reese stated that there have been no inquiries from the 3/2/24 notifications. Mr. Cote stated he is buffered from the landscaping that is in place and he went to the neighbors across the street and they stated they had no concerns. Mr. Febo asked if the applicant would be ok with a condition to maintain the foliage. Mr. Cote stated that he was planning to keep it with the last presentation and plans to keep as much as he can now.

Mr. Lemire asked if the applicant was planning on keeping the 60' tree that was in the front yard. Mr. Cote stated he wants to keep the tree. Mr. Lemire commented that other than the fence on the flat side of the property this application could go behind the home. Mr. Cote stated it could and then he would need to redo the fence and he prefers not to due to cost and that there is a lot of shale in the ground. Mr. Lemire asked if the pool had its own safety fence around it. Mr. Cote stated it did.

Mr. Klimes asked what is considered the building line, the foundation or the porch. Mr. Rese stated that this is up to the Board's digression, and that when a home is generally constructed the

stairs and porch are in front of the building line. Mr. Cote stated that he has a covered porch. Mr. Reese state that it is 62' to the building line and 57' to the front of the porch.

Ms. McCoy asked if the fence was continuous around the property. Mr. Cote stated it was.

Mr. Febo asked if there were 2 panels for the gate to the rear yard. Mr. Cote stated there are two 4' panels for the gate.

Mr. Lemire asked why the car port cannot be put by the gate and if there car port would be on a slab. Mr. Cote stated the car port would be with crusher run and attached to the driveway. Mr. Cote stated the carport would be freestanding but secured within code. Mr. Lemire asked if the carport had to be 20' wide or if it could be shortened. Mr. Cote stated he would have to look into this.

Mr. Dudick stated that the applicant has options; for the Board to deny, the Board to approve, or to withdraw the application. Mr. Dudick stated that if the Board denies the application the applicant cannot come back with a similar application.

Mr. Weiner stated moving the fence may be a better option and that the application has 62 days from opening to make a decision.

Mr. Febo stated that the Board does appreciate and notices the applicant working with the Board and their requests.

Mr. Dudick stated that if the applicant gets a quote for the fence relocation and comes back to the Board with it may help.

Mr. Cote stated he will look into suggestions that the Board has made and he would like to return for the May 21, 2024 meeting.

New Business:

An application from Cellco Partnership dba Verizon Wireless proposing a new communication pole requests two area variances. The first being from Town Code Chapter 208-95 E (3) (b). No communication tower shall be within 500 feet of the property line of any existing residential property. The proposed communication pole is located 440 feet from an existing residential property line. The variance requested is 60 feet from the 500 feet distance from a residential property line. The second being from Town Code Chapter 208-95 E (3) (j) all new communication towers must have a one-hundred-ten-percent clear zone in case of tower failure. The proposed communication pole is 124 feet in height. The clear zone calculates to 136 feet and there is an existing structure within 80 feet of the tower. The variance requested is 56 feet from the 136 feet clear zone. The property is located at 11 Meyer Road, Clifton Park, NY.

Applicant:

Mr. Dave Brennan stated that he is here tonight with Rick Andrews and Sarah Coleman, and this is for a cell tower. Mr. Brennan stated that they are here tonight looking for an area variance. He stated that there is a PDD on the west side of the Northway and there is 500' across the highway. He showed the proposed site on a map in the meeting and stated that they will be calling the site the Rusty Nail site. Mr. Brennan stated they are targeting the area here that has less than ideal coverage and is needed. He stated the RF Department and that the company is notified if there is deficient coverage. He stated the tower would be behind the I love NY sign on the highway and if it fell it would not be on the highway lanes. Mr. Brennan stated that it is not 0% that the poles could fall but not predictable either. He stated that this cell tower would look similar to others that have gone up in the area along the highway and he showed a map in the meeting of the buildings and parking areas it would be around. Mr. Brennan stated the pole would have a fence around it and a generator is not currently being proposed. He stated he has not received confirmation to know if this would need an aerial light but it has been sent to the FAA due to the proximity of the application to Round Lake being considered a landing area. He stated that the existing parking lot and driveway would be utilized for access.

Public:

No public comment.

Mr. Dudick stated that the public hearing would remain open.

Board:

Mr. Lemire asked if the fall zone was due to apartments being close. Mr. Brennan stated it is not, it is measured from the property line not from the building. He stated that to the northwest it is about 120' and it is 80' to the building but it is on the same property.

Mr. Reese stated the clear zone is not met due to the apartments. Mr. Brennan stated he needs to look at what is closer and if they can put it 80' from the apartments. He stated that notices were sent out.

Mr. Brennan stated that he could go through the simulation slides if the Board wishes but all of them have been submitted for consideration. Mr. Brennan showed slides indicating where the potential visibility would be and balloon flight photos.

Mr. Reese asked if the tower would be expandable above or below Verizon. Mr. Brennan stated that the towers have to be expandable and that other carriers would go below Verizon. And it would be able to carry at least one other carrier on the pole.

Ms. McCoy asked if Verizon would raise their [pole if needed. Mr. Brennan stated that they trend at about 120' high to be closer to people on the ground and if they make it higher then it may interfere with other sites. Mr. Brennan showed a photo of the visibility from the Rusty Nail Tavern.

Mr. Reese asked if the applicant has documentation of the site selection. Mr. Brennan stated that they do and after the area was researched. He stated that Ms. Coleman looks at zoning maps and

then sees what real estate they fall into. He stated that this is a B-3 zone. Mr. Reese stated that his concern is it falls within the clear zone and there are people living there.

Mr. Lemire asked if this was an allowed use for the zone. Mr. Reese stated it was an allowed use. Mr. Brennan stated that the code states that it needs to be 500' from the property line excluding the property it is on and that it is zoned neighborhood business not residential. Mr. Lemire asked if the residents are closer than 500' and on the same property, does this not count. Mr. Reese stated the apartments are not considered residential. Mr. Brennan stated that his interpretation of the code is the fall zone starts at the property line and a break line will be provided for the monopole and it will collapse at ½ the height, not at the base.

Mr. Weiner asked if the break point would satisfy the fall zone. Mr. Brennan stated he feels that it would and that soil tests would be done and they have been sent out to the company that builds the base.

Ms. McCoy asked if there was any way to move the tower further away from the apartments. Ms. Coleman stated that she walked around the complex and even if they moved it to another location there it would be in a valley and would have to be increased to a 200' tower.

Mr. Brockbank asked about putting the tower at the left top corner of the property. Ms. Coleman stated it is a part of the natural dip in the land as well.

Ms. McCoy asked if there was a tower in Clifton Park that did not have a full fall zone. Mr. Reese pulled up area towers and found none around the residential areas.

Mr. Dudick stated that this is a rental property so there is no personal risk involved and the residents change. Mr. Dudick asked if residents are notified. Mr. Brennan stated if the tower fell it would have to be from the base and in the right direction for this to be a high risk.

Mr. Lemire asked if this was granted and the tower falls on apartments, what the repercussion is. Mr. Reese stated he feels it would be the engineer but it may be the Board. Mr. Brennan stated he has never seen a reported case of a Board approving and then being sued for malfunction. Mr. Lemire if this was owner occupied residence would the applicant still need a variance. Mr. Brennan stated they would still have to be here but the owner would be able to consent.

Mr. Styles asked how far the tower is from the highway. Mr. Brennan stated that the tower would not reach the travel lanes and if a car goes off the highway then elevation would provide protection.

Mr. Brennan stated they need SEQR from the Planning Board and then he plans to come back to the Zoning Board of Appeals for variance approval, and then back to the Planning Board for a Special Use Permit.

Mr. Reese read from Chapter 208-97 (F) 9 for a SEQR and an SUP and that he has spoken to the attorney and they stated it is not typical for SEQR to be held for 2 Boards and asked if the Zoning Board agree to allow the Planning Board to establish Lead Agency status. Mr. Reese stated that the Saratoga County Planning Board reviewed the application and found no community impact.

Mr. Dudick moved, second by Ms. McCoy to recommend the Planning Board of the Town of Clifton Park establish Lead Agency for this application.

Discussion:

Mr. Reese stated that 683 Riverview Road has withdrawn their application.

The chairman made a motion to approve the minutes from the April 2, 2024, meeting. All who were present at the April 2, 2024 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 8:45 p.m.

The next scheduled ZBA meeting will be held on May 7, 2024.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals