

## Town of Clifton Park Zoning Board of Appeals

One Town Hall Plaza  
Clifton Park, New York 12065  
(518) 371-6054  
FAX (518) 371-1136



## Zoning Board of Appeals

September 17, 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, Director, 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 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, Young Sommer, stated the application has been previously seen in April 2024 for a cell tower at 11 Meyer Road. He stated this is north of the Rusty Nail and on the opposite side of Route 9. He stated the property backs up to I-87 at the I Love NY sign and is in the rear of an apartment complex. He stated the tower is allowed in the zoning area but setback need variance. Mr. Brennan stated the Planning Board asked that he come here for variances before they move forward with the application and they have taken Lead Agency for SEQRA and they have issued a negative declaration. Mr. Brennan stated the Saratoga County Planning Board has signed off on the application as well. Mr. Brennan stated that he is working with the Town Board to recommend the code addressing the fall zone for the towers be amended. He stated that the setbacks they do not meet are from homes across the highway and 460' from the residential district. He stated they are looking for a 40' setback variance. Mr. Brennan stated they are also looking for variances for the northwest and east areas and at least on setback from the building on the property closest to the location of the proposed tower. He stated that they looked at locations for the tower and came up with 3 areas that this fits but others than this location would put the tower next to property lines and increase the visibility of it as well. Mr. Brennan stated that tower has been designed with a break point and he has a letter from the engineer stating this. He stated that the tower is designed to break at the halfway point and not from the base of the tower and that they have overdesigned the platform for the tower and the bottom half of the tower is built for strength and if the tower were to fall it would fold on itself and not fully to the ground and the fall zone would be 62'. Mr. Brennan stated that once the municipal approvals are done, geo tech studies of the soil will need to be completed. Mr. Brennan stated that tower would be on a pad or a 40' underground pole. He stated foundations are determined by the soil characteristics. Mr. Brennan stated he has the SIMs available for review but they are the same as the last presentation and he can go over them at the request of the Board.

**Public:**

Public hearing closed at previous meeting.

**Board:**

Mr. Lemire asked if there are 3 variances being asked for. Mr. Brennan stated the neighbors across the Northway are 440' so the variance is 60'. Mr. Reese stated there are residential properties next door so there is a greater need for the variance and the residents across the Northway do not need to be addressed as it would be covered with what the applicant is asking for. Mr. Brennan stated that northwest to the property is residential and it would not be hit by a falling pole and it would not reach the ramp for the highway but the pole is closer to the rear of the property than required as well as the side. He stated that the host parcel has buildings on it and they need less than 110% because they are within 100% at the break point to the nearest building, so no buildings would be hit if the tower were to fall.

Mr. Reese stated the applicant has 2 required variances and they are listed in the published agenda. Mr. Reese read from the agenda and stated the Board members struggled with the guarantee verbiage for the fall zone. He stated that hopefully the Town Board resolution has changed this in favor of the Zoning Board.

Mr. Lemire stated that the Town Board approved verbiage differently than what the Zoning Board was provided with the previous week. Mr. Weiner stated that a guarantee would hold the Town accountable so allowing a break away pole with certification would help with this.

Mr. Febo asked if the 62' clear area is now met than they would now meet Town Code. Mr. Weiner stated this is true and the Code also now permits the break point.

Mr. Reese stated the applicant has submitted a stamped letter from the engineer that they will design the 50% break point but then they would need more proof with the design moving forward. Mr. Brennan stated that the design would not be done until the location is found and the boring is done. He stated that the distance variance is needed for the residential area across the Northway. Mr. Reese stated the first part of the application is still valid.

Mr. Dudick asked if the variance requests have been decreased to one. Mr. Reese stated it has been brought to one.

Mr. Febo asked why the 500' from residence is required. Mr. Reese stated it could possibly to keep the towers themselves out of residential. Mr. Brennan stated it is most likely due to safety and esthetics. Mr. Febo asked if 500' is valid if it is not in the same zone. Mr. Reese stated the code does not specifically call out zones only residential properties. Mr. Febo stated he was concerned about the apartments in April and now with the resolution eliminating the guarantee he feels a little better.

Mr. Lemire read from the email from Mr. Reese and stated that his verbiage is not reflected in the resolution passed by the Town Board. Mr. Reese stated what was sent out last week is what was resolved with the notice given tonight as an attachment. Mr. Brennan stated the setback from residential structures is different than the distance for the fall zone and he read from the code. He stated that the residential home next to this property is not in a residential zone.

Mr. Lemire stated that applicant is only in need of one variance at this time for the 60'. Mr. Reese stated the variance requested is 60' from the 500' residential zone. Mr. Lemire asked if the apartments were in a residential zone. Mr. Reese stated they are not in a residential district.

Mr. Reese stated the Planning Board has established Lead Agency for this application pursuant to SEQRA and in May of 2024 the Saratoga County Planning Board stated there is no impact to the community and the mails to neighbors has been satisfied.

Mr. Febo moved, second by Ms. McCoy, to approve the variance as amended. The property is located at 11 Meyer Road, Clifton Park.

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

Conditions:

1. Amended to one 60' variance

The Secretary called the Vote:

**Ayes: 7**

**Noes: 0**

**New Business:**

None

The chairman made a motion to approve the minutes from the August 20, 2024 meeting. All who were present at the August 20, 2024 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Febo second, all voted in favor and approval was unanimous. The meeting was adjourned at 7:55 p.m.

The next scheduled ZBA meeting will be held on October 1, 2024.

Respectfully submitted,

*Paula Cooper*

Paula Cooper

Secretary, Zoning Board of Appeals