

Zoning Board or Appeals

April 19, 2022

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

Absent: Jerry Cifor, Randy Gifford

Also Present: Steve Myers, Director, Building and Zoning
Neil Weiner Esq., Attorney
Cristi Shuhart, Alternate Secretary

The meeting was called to order at 7:10 p.m.

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

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

Mr. Dudick told the applicant that per Town Code 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 6 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 that the Board tonight needs to vote in favor of the application with at least 4 votes.

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

Old Business:

None

New Business:

The secretary read the legal notice as it appeared in the Gazette on April 11, 2022

- 1. An application from Cellco Partnership d/b/a Verizon Wireless requests both a use variance and a area variance for installation of a new cell tower on Clifton Park Water Authority property at 36 Boyack Road. 1. (Area) Section 208-95A(8)-A 500' buffer is required between any new cell tower and an adjacent residential property. Appears to be 0'. 2.(Use) Section 208-95D(3)-Cell towers are not allowed in residential zones. The property the tower is sited on is residential as are all adjacent properties. Property is located at 36 Boyack Road, Clifton Park, NY 12065 (Permit # 81320 & 81321).***

Dave Brennan from Young/Sommer, LLC, Attorneys at Law presented the application on behalf of Cellco Partnership with respect for an initial presentation for a new telecommunications facility located at 36 Boyack Road, Clifton Park, NY. He stated that he counted three variances, one being a use variance since it is not allowed in a residential zone. Second, there is a setback of 500 feet from adjacent residential property line which he has 217 ft away from that residential property line. Finally, there is a setback of 110% of tower height to the property line. He references an aerial photo where there is an access road which goes up to the trees to the Clifton Park Water Authority's water tank. That tank to his understanding is 56 feet tall. The trees are about 30 to 40 feet taller than the water tank. They first looked at co-locating antennas on the water tank, but the antennas won't work through the dense foliage of those trees where it would make sense to deploy so instead they are proposing a 110 foot monopole. AT&T is on the water tank so there are existing telephone and electric utilities there. They are proposing to put the monopole next to the water tank. It is tall enough to accommodate two additional carriers. The service in the southeastern portion is lacking which is why they are proposing this. He explains about surrounding sites, one in Gray's Corner's off Beech Road, one in Vischer ferry corner off exit 8 on west side of northway, one off corner of Grooms and Moe Road, one on Flagler's Corner behind the solar farm out on Grooms Road, and one on the Bowman's Orchard property. This process will also require a Planning board process for site plan review. He also explains that the Water Authority's tank is on top of a fairly high ridge so the tower sitting on that ridge should overcome the topography constraints to provide good service.

Dave Brennan explains that they did look at putting the tower near the maintenance garage but the difference in the elevation instead of being 110 feet tall it would be 170 feet to make up in

the elevation difference. He then explains the visual balloon flies to show visibility of the tower through trees.

Mr. Fantini asked Mr. Brennan if he was going to go over the coverage map.

Mr. Brennan then explains the existing coverage at -85 dbm which is appropriate optimal coverage for a wireless facility. The wireless facilities themselves operate at an extremely low power level but the electronics are so sophisticated that even at that very low power range that they will work and transmit. At full power they will be less than 1% of what the FCC allows. When we operate we are at 1% of what the FCC allows. They transmit from a much lower power level.

Mr. Dudick inquired about if he was talking about specifically for Verizon, that Mr. Brennan talked about the fact there will be co-location that he mentioned dish network and that they aren't going to be operating at 1%.

Mr. Brennan stated even when all three are deployed they still are still in the area of 1 to 2% of the allowed amount for multiple carriers.

Mr. Dudick inquired about even with dish broadcasting video content out or are they just talking about telecommunications.

Mr. Brennan stated that dish network is a new interest into the licensed telecommunications.

Mr. Dudick commented dish network in terms of cable broadcast.

Mr. Brennan explained that Sprint and T-Mobile merged and is part of that dish network. They are entering the telecommunications field and that they are not in the capital district yet. So there is AT&T, Verizon and what is now T-Mobile/ Sprint rolled into T-Mobile.

Mr. Dudick asked if this tower is used for 5G service that 5G service would include beyond simple telecommunications that this would also include streaming videos

Mr. Brennan stated that 4G does that now.

Mr. Dudick asked Mr. Brennan that with when he is talking about 1% in terms of wattage. If they are going to consider the increased demand that would come with greater usage with streaming of video and telecommunications in terms of voice and texting where would we expect the high end to be.

Mr. Brennan explained it is still in that 1 to 2% range even with multiple carriers. That there are so many channels upon which Verizon can transmit data back and forth and they will fill up and hit capacity.

Mr. Dudick asked Mr. Brennan that with everything turned on that you still at less than 5%.

Mr. Brennan stated yes.

Mr. Fantini asked about the case law that you need to present to the Board the gap in service. Would statistics show a lack of coverage in this area or prove gap in coverage.

Mr. Brennan explained that the gap in coverage is not just defined that we're in Clinton county up by the Canadian border and that there is literally no service. There is still a couple of places in the state where there is literally no service where you say the gap means. The issue is for the capacity of these phones at that these sites at that distance cannot cover into there. So in a community this large these other site that are 1.2 to 2 miles away are serving everything in between. Those sites get capacity when they use more power to reach you at 2 miles away than at 2 blocks and so they become capacity limited and the issues in service open up. He will bring the RF engineer with him to the next meeting to demonstrate a gap in reliable coverage necessary for the facility.

Mr. Lemire asked Mr. Brennan about the coverage from map provided based upon the Verizon data.

Mr. Brennan explained it is based upon the Verizon RF modeling that predicts the coverage which has been used for 20 years and has been held as adequate proof. He can have a drive test for drop calls to provide to the Board. This area has been identified by a third party independent testing company that goes around and drives.

Mr. Lemire then asked Mr. Brennan that if the third party independent testing companies is one way of checking is the other way to take your data and hire an engineer.

Mr. Brennan explained that in the past the town has used Professor Bill Johnson out of RIT.

Mr. Lemire then asked that beside driving there is there any other way to double check your information.

Mr. Brennan explained that those would be the main ways. Sometimes they have their own drive test data. He feels they are very dialed in on the RF justification of the community and when the Board is ready he will bring in the RF engineer to go through the details.

Mr. Fantini asked Mr. Brennan that he is interested in seeing the 5G coverage as part of locating this tower and for planning ahead so the town doesn't have unnecessary cell phone towers in the future. If we can meet the 4G coverage but also kind of future proof the 5G that would also be important because the main criteria that the courts have is that we need to show the gap or lack of coverage.

Mr. Dudick expressed apologies to Mr. Brennan about jumping in during questions and answers and wants to give him the opportunity to make his presentation.

Mr. Brennan expressed he was happy to answer questions as long as he can to the best of his ability. He will bring back the RF engineer and circle back and make some notes of what the issues are so they can address them. He stated that this will have 5G on it. 5G is a little bit of both technology and frequency. On towers they are deploying nationwide 5G using 2600 CBAN spectrum to provide 5G. The other thing you may see that goes on is a 5G ultrawide high band which are on telephone poles. This will deploy the 5G technology to increase speed from the current 4G but it won't be the ultrawide high band.

Mr. Styles asked Mr. Brennan about supporting evidence about dropped calls and consumer demand data that indicate they are complaining about poor service in that area. There is a concern about the cumulative effect of the RF.

Mr. Brennan stated even with all the carriers on it it's not going to push it to the unsafe territory. He has yet to see this come back at anything other than 1 or 2% of the FCC with everything on.

Mr. Lemire asked what other element is the compelling reason economic or otherwise Verizon needs it.

Mr. Brennan stated the compelling reason is the gap and lack of coverage in combination with the site that is chosen as compared to other locations within the area they serve.

Mr. Lemire then asked about safe and adequate service. Then asked the owner of the property is the Town of Clifton Park.

Mr. Brennan stated it is the Clifton Park Water Authority. That it is a state authority under the public authority's law.

Mr. Lemire asked Mr. Brennan if Verizon entered into a lease with the water authority.

Mr. Brennan stated that yes they have.

Mr. Lemire then asked that the water authority thinks this is a good spot for the tower.

Mr. Brennan stated that they signed the lease and agreed to the location.

Mr. Lemire then asked Mr. Brennan if Verizon wanted to put the antennas on the water tower then they could do that without a variance.

Mr. Brennan stated he would have to check the code. The tower is driving the variance.

Mr. Lemire stated the tower is driving the variance because you can't put a tower in a residential district which was the use variance. It can't be within 500 feet of residences. Mr. Brennan stated that may apply for all antennas because of the 500 ft from the residential property line is driven by some unstated RF concern.

Mr. Lemire stated those were the two variances that were published. That Mr. Brennan mentioned a third variance.

Mr. Brennan stated the third variance that there is a tower setback of 110% of the tower height from the property line. They are more than 110% from the road right of way. The water authority property ends and there is a sliver of Town of Clifton Park property that goes right up to a fence and goes about 140 ft down to the road.

Mr. Weiner then asked Steve Myers that the third variance was not advertised.

Steve responded that he didn't think it was a variance because it was 217 feet to the nearest residential property line.

Mr. Weiner asked Mr. Brennan if it was a setback.

Mr. Brennan stated that he did put it in as setback from a since it was a different property owner from the property line of the Clifton Park Water Authority.

Mr. Weiner asked Mr. Myers if that changed his view.

Mr. Myers stated no.

Mr. Dudick stated that the applicant has been talking about a three variance application when two variances were advertised.

Mr. Weiner stated they will need to look into a third variance being advertised and may have to come back and present the application again.

Mr. Brennan stated he understand and will come back to present again.

Mr. Lemire asked that the reason why the tower is proposed in the corner is because that's the top of the hill.

Mr. Brennan answered that is correct.

Mr. Fantini asked Mr. Brennan that how will he know the map is showing the criteria in gap in coverage. Will the RF engineer going to walk the Board through it and justify the gap in coverage.

Mr. Brennan explained that -85 BBM is what would provide good in building coverage. He goes on to explain that -85 BBM provides good suburban in building and car coverage. He explained that -85 BBM is what Verizon uses nationwide.

Mr. Klimes asked Mr. Brennan that what they are looking for is some type of documentation that this is your industry standard that this is the threshold by which we determine calls. That this is the threshold for compelling argument to go forward.

Mr. Brennan explained that we are going to say that's what it is based on our industry standard That most Boards will hire their own RF consultant to say that Verizon is correct and that is what you need for these phones to work.

Mr. Styles stated to Mr. Brennan that he should be able to find FCC documentation, Federal Communications Commission standards for this stating here is what the government says is standard and what our RF engineer says is necessary to show the Board the congruence between the two.

Mr. Brennan said he can ask them that. He stated one other point that this is being run at -85 BBM the signal strength and the frequency is 700 mega hurts frequency. The 700 mega hurts is their strongest signal as far as propagation at a distance. The higher the frequency it carries more data but it does not transmit as far.

Ms. McCoy asked Mr. Brennan that he had mentioned that the water tower wasn't a good location because of the dense tree foliage around it but that AT&T is on the water tower. Does that work.

Mr. Brennan stated that wouldn't work. Verizon would not spend the money to put the tower 40 feet below the tree line.

Mr. Klimes asked Mr. Brennan what is the difference of the current canopy versus the height of the tower now.

Mr. Brennan stated 30 feet. They say 80 to 90 foot trees, the tower is at 110 feet.

Mr. Dudick asked Mr. Brennan does each tenant on the tower takes up about 10 feet.

Mr. Brennan stated yes.

Mr. Dudick asked That with the tower being 110 feet the third tenant on the tower is going to be at 90 feet.

Mr. Brennan answered that they do it by antenna center lines. Verizon is at 106 feet, 96 feet, 86 feet. The tree canopy is at 80 and 90 feet.

Mr. Dudick asked Mr. Brennan if this will be tall enough.

Mr. Brennan stated that the Clifton Park Water Authority locked them in on the height. In the lease we don't have the landlord tell us we can't change our antennas. In this case they required us to put in the tower elevation the height and it says that we are not extending the height of the tower without their permission.

Mr. Dudick asked Mr. Brennan when you were to build this tower if you were to receive permission does the tower allow in the way they are planning construction to have it be built taller.

Mr. Brennan stated that typically they are not.

Mr. Dudick asked Mr. Brennan that from a construction site they are committing to 110 feet.

Mr. Brennan stated that yes they are.

Mr. Fantini asked Mr. Brennan that AT&T is already on the water tower so even though he is putting the ability for three carriers , T-Mobile & Dish, it's not currently developed.

Mr. Brennan stated yes. Their RF engineer is convinced that AT&T is not getting anything significant as far as their coverage out of their current location. So, from their perspective It's not worth hanging antennas on there trying to fix this because it won't fix the problem. They don't like just hanging antennas on the water tank because there is maintenance issues on occasion.

Mr. Dudick asked Mr. Brennan how far is the water tower antenna to the planned site what is the distance there.

Mr. Brennan answered roughly about 40 or 60 feet.

Mr. Dudick stated the reason he brings it up is that one of the things he is talking about and asking for the variance is the 500 ft distance to the residential. He then asked Mr. Myers if AT&T got that same variance when they located their antenna on the water tower.

Mr. Myers answered it was a co-location it didn't need a variance to the water tower.

Mr. Dudick asked Mr. Myers that because the antenna is on a water tower they didn't need a variance to be within 500 feet.

Mr. Myers responded that a co-location is a much easier process for consideration to the initial setback.

Mr. Brennan stated that he would have to check the code books but that site may predate the town's current iteration of telecommunications facilities regulations.

Mr. Myers stated that co-location and communication towers are separate preference.

Mr. Dudick talked about the effect of having a telecommunications antenna within 500 ft of a residence. There already is. If there is no variance then we are still talking about two separate entities having antenna within that 40 foot area. It's not adding to the RF issue in that zone.

Mr. Brennan stated that it may be driven not by the antennas but the tower structure.

Mr. Lemire asked Mr. Brennan about the 1996 Telecommunications Act lead to the Rosenberg Decision. The theory was that cell phones are utilities and communities had to make allowances for utilities for the good of the community. If the Rosenberg standards are the variance to be granted to the applicant needs only show the variance is required to render safe and adequate service. If there is a safe and adequate service in the area not for Verizon but for AT&T does that satisfy the Telecommunications Act of 1996 and the Rosenberg decision.

Mr. Brennan answered no because that would be improper discrimination amongst carriers.

Mr. Lemire then asked Mr. Brennan that the safe and adequate service is for every business entity that operates cellular.

Mr. Brennan stated he would say licensed carrier.

Mr. Weiner stated to Mr. Brennan that he noticed the leased contract with the Water Authority does show that the Water Authority signed it but not the lease company. He asked if it has been signed.

Mr. Brennan stated that it has been signed. Separately, they get a consent from the property owner to submit the application and the map.

Mr. Weiner stated they should close if they could since the notice maybe less than fully adequate his concern is that they are discussing things that the public may be interested in to participate since they have a right to do under the public notice.

Mr. Brennan agrees and stated they need to come back in with their RF engineer. They come in and do an initial presentation and explain to the board in general terms what the project is about, answer some questions and come back in for a public hearing.

Mr. Lemire asked Mr. Brennan where the last tower was.

Mr. Brennan stated it is the tree on Grooms and Moe Road from 2016.

Mr. Dudick stated that one of the biggest things in regards with cell towers and the applications and the morphing from telephone communication utility sites to now more of a mixed use for cell phones. There is always going to be concerns but there is also an increased understanding from the general public of what these towers are and why they are needed.

Mr. Dudick stated that counsel is looking to wrap things up. Let Mr. Lemire make his point then let Mr. Brennan make a final point and then allow the public to speak.

Mr. Lemire asked Mr. Brennan if the Clifton Park Water Authority is a state agency.

Mr. Brennan answered that no it is a public authority under the public authority's law.

Mr. Lemire inquired that somehow they are affiliated with the Town of Clifton park.

Mr. Weiner stated that the Town Board of Clifton Park appoints the board members of the Water Authority but they are separate entities.

Mr. Lemire asked that the town sets the zoning code and now the town Water Authority is signing a lease which requires a variance from a different town entity (Zoning Board) in order to effectuate their lease. Is that allowed.

Mr. Weiner stated that the applicant before the Board is Verizon not the Water Authority. The Water Authority has entered a lease saying we are willing to lease our property to you but you are subject to whatever zoning code the town has.

Chairman Dudick opened the public hearing and asked for questions or comments. Being none, he wanted to keep public hearing open. He then turned to Mr. Myers.

Mr. Myers suggested that he needs to contact John Scavo regarding the Planning Board. Without Planning Board's initial review to provide some kind of direction to us, Verizon won't get a decision anyway.

Mr. Brennan asked the Board when the next meeting date is.

Mr. Weiner stated the next meeting date is May 17th.

Chairman Dudick made a motion to approve the minute from last meeting from April 12, 2022 but they were not available. They will vote on minutes approval at the next meeting.

Chairman Dudick made a motion to adjourn the meeting. Mr. Fantini seconded. All voted in favor and approval was unanimous. The meeting was adjourned at 8:25 p.m.

The next scheduled meeting will be held on May 3, 2022.

Respectfully submitted,

Cristi Shuhart
Alternate Secretary, Zoning board of Appeals

cc: Town Clerk, Town Board
Zoning Board Members
Steve Myers, Director of Building and development
Town Assessor, Town Highway Department

