

# Town of Clifton Park

Clifton Park, New York



## ZONING BOARD OF APPEALS

March 19, 2019

7:00PM

**Present:** Chairman Dudick, John Klimes, Michael Bloss, Mario Fantini, Lisa McCoy, David Donohue, alternate

**Absent:** Jerry Cifor, Chris Lemire

**Also Present:** Neil Weiner, Esq., ZBA Counsel  
Steve Myers, Director, Building and Zoning  
Meg Springli, Secretary

The meeting was called to order at: 7: 04 pm.

### PLEDGE OF ALLEGIANCE

Chairman Dudick noted that Mr. Donohue would be a voting member in the absence of Mr. Cifor.

Mr. Weiner, Counsel for the ZBA, stated that the Zoning Board had been ordered by a District Court Judge to approve the application, and therefore members may not vote “no.”

### OLD BUSINESS:

1. In the matter of the Cellco Partnership d/b/a Verizon Wireless for a Rosenberg Variance from Section 208-10, permitted uses in R-1 zones; from Section 208.95D(3)(h), new towers not allowed in R-1 zones; and from 208-95E(3)(b), no new towers within 500’ of the property line of an existing residential property. The matter is being returned to the Zoning Board of Appeals for issuance of zoning variances in compliance with the Order of Frederick J. Scullin, Senior Federal District Judge, dated February 6, 2019, which is posted on [www.cliftonpark.org/government/legal-notices.html](http://www.cliftonpark.org/government/legal-notices.html). Property is located at 329 Moe Road, Clifton Park, NY 12065 (Permit #81091)

The secretary read the notice as it was published in The Daily Gazette.

Allyson Phillips stated that she was present from Young Somer, the firm representing the applicant, and that she had nothing further to add.

There being no comment, Chairman Dudick made a motion, seconded by Mr. Bloss to close the public hearing at 7:09pm. All in favor, none opposed.

Mr. Myers stated that the application was a Type II action and that a negative declaration pursuant to SEQR had been completed at the February 2017 meeting and that it was not necessary to reopen SEQR.

Chairman Dudick then stated that, this matter has been placed on our agenda not by the applicant, but by the Town Attorney staff along with their outside counsel which advised them on the litigation aspects of this matter. The record of the zoning board is that on February 7, 2017, this board voted, by a 5-2 vote, to deny the application based on town of Clifton Park criteria for a use variance.

In the federal litigation that followed, Judge Scullin, a Senior United States District Judge ruled that The Federal Telecommunications Act of 1996 applies to Cellco's applications, all of them, before all boards in the town, and that under that act, Verizon had made out a case for a need for the facility and no less intrusive site is available to meet that need, and therefore, Judge Scullin has ordered all boards and departments with approval authority within the Town to issue the site plans, permits and variances necessary to allow Verizon to construct the facility as proposed.

The Town's legal staff, again based on the recommendation from outside counsel, who were retained as experts in cell tower litigation concurring, has determined not to appeal Judge Scullin's order to the Federal Circuit Court Of Appeals, for the Second Circuit, and so it falls to us, as a board, to issue the zoning variances, as applied for, in a procedure consistent with Ny State Law which means at a properly noticed meeting.

On that basis, and for these reasons, I move that we approve the variance for a 100' stealth monopine, with Verizon's equipment located at this 91' level, as well as all of the conditions, commitments, and mitigation measures that Verizon promised throughout the proceeding before this Board.

Moved: Chairman Dudick

Seconded by: Ms. McCoy

to approve the application for a Rosenberg variance as ordered by Judge Scullin, Senior Federal District Court, for a 100' stealth monopine, with Verizon's equipment located at 91', with all the conditions, commitments, and mitigation measures that Verizon promised throughout the proceedings before the ZBA.

Roll Call

Ayes: Chairman Dudick, John Klimes, Michael Bloss, Mario Fantini, Lisa McCoy, David Donohue

Noes: None

Motion was unanimously approved

**NEW BUSINESS:** - None

Chairman Dudick, John Klimes, Michael Bloss, Chris Lemire, Lisa McCoy and David Donohue were present at the March 5<sup>th</sup> meeting.

Chairman Dudick moved to approve the minutes of March 5th, 2019. The motion was unanimously approved by those present.

The meeting was adjourned at 7:13pm

Respectfully Submitted,

Meg Springli