

Declaratory Judgment Action (DJA) Suit

On 10/6/20 the Board of Trustees (BOT) of the Village of Upper Brookville made a one-word code change establishing total control over how the Zoning Board of Appeals (ZBA) **MUST** always vote YES to a cell tower application on Village-owned property. (VOP) We are asking a Nassau County Supreme Court Judge to rule that the BOT "exceeded its authority" by making this change. At the same time, the BOT is maintaining the appearance of a traditional ZBA hearing which is a charade.

In other words, the BOT cannot fix the vote one way and tell us that our considered feedback regarding a cell tower in our neighborhood will be taken seriously at a hearing. This is disingenuous when, in fact, the hearing is in name only, and of no real consequence in terms of affecting the ZBA's power to vote NO on our behalf, based on the evidence.

We maintain that the Village cannot lawfully maintain its current position B (see below) which is a hybrid of A and C. It must either revert its position to A or transparently assume C. Position B is deceptive and misleading to Village residents. We either have full say with legal clout at a ZBA hearing, as in A or we have no say at all, as in C.

The diagram below depicts the reasoning behind our DJA suit, taking Municipal law into account:

