

Town of Ontario
Zoning Board of Appeals
Minutes
July 6, 2011

Present: Zoning Board Members – Chairman, John Smith, William Bridson, Robin Mark, Donald Anderson and Charles Neumann; Town Engineer Kurt Rappazzo of MRB, Deputy Town Attorney Rich Williams, Planning Board Chairman Eduard Kerkhoven and Katie Kelsch – Secretary.

Chairman Smith called the meeting to order at 7 p.m., led the Pledge of Allegiance.

Minutes

Mr. Smith moved to approve the **minutes dated June 1, 2011** with the following revisions and Mrs. Mark seconded:

Page 9 – Approval Resolution for Bushey Solar PV System – Change all windmill references to Solar PV System and change the referenced meeting dates to June 1, 2011.

Vote: 5-0

John Smith	Aye
Donald Anderson	Aye
Robin Mark	Aye
William Bridson	Aye
Charles Neumann	Aye

Public Hearings

360 Timothy Lane – Area Variances (postponed from last month)

Mr. Robert Bechtold, Northern Development, LLC representing Wayne County IDA and Northern Development, LLC requesting area variances for a 332 foot tall wind turbine at the 360 Timothy Lane (address subject to change). The applicant is looking for relief from Town of Ontario Zoning Code Section: Article VII 150-43-16 (B,C,E,F) and Section: Article IV 150-27. The property is owned by Wayne County IDA and zoned Industrial. Mr. Kevin Schulte and Mr. Scott Abbett of SED were also present.

The application is continued from last month and the public hearing has remained open.

Mr. Kevin Schulte, CEO, SED gave a presentation on the background of SED and their growth. He presented a picture slide show of various wind turbine projects that SED has done and some projects that other companies have done. He also gave examples of various structures throughout town including the water tower and the cell towers. He submitted an elevation rendering to the board.

Mr. Scott Abbett of SED gave a technical update to the board. He distributed a handout of the radiuses of the entranceways from Route 104 and Timothy Lane. He explained that turning onto Timothy Lane requires reinforcing the culvert. They are currently working towards a financial guarantee of some sort. The Army Corp of Engineers has indicated that they will approve of this project as long as SHPO gives their approval. They are working diligently with RG&E to receive approval from them; at this point they have not received a denial.

Mr. Smith informed the board members that the Planning Board passed the SEQR Resolution at their last meeting and reviewed the conditions that were approved that night with the preliminary site plan approval. He asked if the board had any questions.

Mr. Neumann questioned what the diameter of the turbine is and was the preliminary approval at the Planning Board based on all of the latest submissions. Mr. Schulte answered that the diameter is 184 feet. Mr. Kerkhoven, Chairman of the Planning Board confirmed that their preliminary approval was based on all the latest submissions.

Mr. Bridson asked if it was a distorted picture to only show wind turbines near schools and buildings and not ones that are not within close proximity to schools or buildings. Mr. Schulte answered that that was not their intention. Their intention was to show that this board is not the first or the last to look at projects that are similar to the one that they are proposing tonight.

Mr. Neumann asked for clarification on the standpoint of the Army Corp of Engineers and the fact that they don't normally approve windmills in wetland areas, but the fact that it's only one windmill they would entertain it. He also questioned if SED has informed them that there may be additional windmills in the future. Mr. Abbett answered that he thought the Army Corp looked at every project as a wetland impact, but anything under .1 acres; you can go for a nationwide permit. But, the Army Corp of Engineers has

indicated that they will give their approval. And no, they have not discussed future windmills at or around this site with the Army Corp; they are just focusing on the current project.

Chairman Smith asked for any public comment.

Mr. Alan Isselhard, 8135 N. Huron Road, Huron, asked to read a statement to the board. He created a working miniature model of a windmill with the site plan on the Chairman's desk. He proceeded to read a lengthy statement which contained his comments and concerns on the turbine. His concerns include the fall zone, the setbacks, the SEQR form, a decommissioning agreement, the railroad tracks, ice shedding and urged the Zoning Board to reject this project. The statement is filed with the secretary per the Chairman's request.

Mrs. Meghan Schulte, Director of Marketing and Public Relations at SED read a prepared statement. She is speaking in support of the WISP wind project on behalf of the entire staff at SED. Her statement went on to include the benefits of renewable energy provided by the wind, the pride that goes into these projects, the knowledgeable staff and the fact that safety is the priority. The statement is filed with the secretary per the Chairmans request.

Mr. Todd Benderson, HR Manager at Harbec, stated that the employees at Harbec are fully educated on the project and are very receptive to it.

Peg Churchill, Director of WCIDA, stated that the former WCIDA Director supported and facilitated in locating the current turbine at Harbec. The WISP is modeled after the Harbec Plan, which uses all different kinds of renewable energy resources to operate the plant without leaving a carbon footprint. The use of that facility expanded to include Northern Biodiesel and SED. The entire area is all interconnected. The WISP has been used as a model for other industrial parks in the county. This is a draw for other people in the region including colleges. It is a mile marker and a landmark. The WISP is based on the concept of shared energy. Wind and geothermal are both a part of that. It is a way that they can bring industry into Wayne County and into the Town of Ontario. It will show how progressive we are and can be used as a marketing tool. She hopes it will be supported tonight.

John Vavalo, Vice President of Northern Biodiesel, he does a lot of presentations on his business and what interests people the most is how his business is tied sustainably to the WISP project. Being located right under the wind turbine has been a great marketing tool for them. They have doubled the workforce in the last 6 months and intend to double it again in the next 6 months. Encourages people to take a walk around Harbec to see the whole project and what it entails including the turbine. If they can't have a lease agreement and a fixed price for power they may have to look elsewhere for other opportunities. They have the option of being the first carbon neutral plant possibly in the world. He is in support of this project.

Will Engel, General Manager of Harbec, he is responsible for the day to day operation of the business. He is more concerned with the safety of his employees pulling out onto Route 104 than he is with them being close to the wind turbine. They take safety seriously and have full faith in the people at SED.

George McConochie, Employee/Owner SED, when they decided to move their company from their past location, they looked all over NYS and settled on Ontario because of the turbine that was already in existence and what that may have meant for the philosophy of people in this area.

Mike Bechtold, Owner of Optipro, and resident at 2399 Lake Road, he is very excited about this project and also the geothermal stuff. They are putting an addition on their building and hoping someday they will be able to take advantage of the geothermal stuff. In addition there is talk of adding additional wind turbines on other properties in the industrial park that he is very excited about. Would like to express his support for what they are trying to do and feels it is an important source of alternative energy. We have to look at different ways of making energy for the future. There are risks in everything that you do. It is an important endeavor not just for Harbec, but throughout the town and the country.

Loren Pruskowski, CFO/Co-founder of SED, one of the most common questions is can a person put up a turbine and share it with neighbors. The answer is no, because you have separate plots of land. What is being done here with this turbine is a beautiful new business model as the land is owned by WISP. It's important for the board to recognize what they would be doing with approving this project, helping to create a new business model and revolutionizing as to how renewable energy can be used.

Chairman Smith asked for any other public comments. There were none.

Mr. Williams stated he has been in attendance at both boards and has asked Mr. Schulte to give an overview of the safety issues and ice throw concerns that were presented at the Planning Board. Mr. Schulte gave a brief overview of the maintenance of the machine and the safety issues. They are not rejecting the safety issues but rather facing them square in the eye and coming up with positive results and solutions.

Chairman Smith asked Mr. Schulte, what if you are out of business and there is no one left to maintain the machine. Mr. Schulte explained that there are other companies out there that provide maintenance, but it is backed by the manufacturer first. Chairman

Smith asked if it goes defunct, does it shut down. Mr. Schulte answered yes. Chairman Smith asked about ice throw. Mr. Schulte answered that there are 3 different safety features on the machine for ice detection.

Mr. Bridson questioned what if there is a lightning strike. Mr. Schulte stated it is taken to the ground. Mr. Bridson questioned what if there is a fire. Mr. Schulte explained the fire suppression system. Mr. Bridson stated that he doesn't believe that there is anyone in the room against the windmill but his biggest concern is the safety and feels the 1.5 fall zone is still a public safety issue. It seems to him that they are being asked to waive the safety requirements that he town came up with.

Mrs. Mark stated that it has been said that the wind turbine is a draw to the community, how does this directly affect the businesses that are there in the industrial park. Megan Schulte, Peg Churchill, and John Valalo repeated their opinions how the wind turbine draws people to the park, people ask if they can be located near the wind turbine and people come from a lot of different places to view it. Mrs. Mark asked who would benefit from the energy from the windmill. Mr. Bechtold explained the whole overall renewable energy project, the energy management model, including their geothermal stuff, and the windmill will only power Harbec.

Mr. Neumann is in agreement with Mr. Bridson's earlier statements in that there isn't anyone here that is against windmills. He has done some research with FM Global; they set the standards for fire inspection and fire requirements. They also have data loss sheets for windmills and a lot of the things that have been presented are different than what he has read in these sheets. He stated he feels like they are trying to fit 10 pounds into a 5 pound sack.

Chairman Smith asked for any more comments. There were none.

Chairman Smith motioned to accept the resolution

**AREA VARIANCE RESOLUTION
ZONING BOARD OF APPEALS
TOWN OF ONTARIO**

**RE: 360 Timothy Lane – Wind Turbine Facility
Tax Parcel Number: 61117-00-341669
Applicant: Northern Development, LLC**

I move that the Ontario Zoning Board of Appeals grant to the above Applicant relief from Code §150-43(F)(16)(c) to allow the installation of an approximately 332' Wind Turbine Facility, at the above location and bearing the above Tax Parcel number. The within Resolution follows a Public Hearing opened on April 6, 2011 and continued to July 6, 2011 and the review, by the Board of all written and oral submissions, together with due deliberation and consideration.

This application is an Unlisted Action under Section 617.5 and has been the subject of a coordinated review under SEQRA, with the Planning Board acting as Lead Agency. The Planning Board issued a Negative Declaration of Environmental Significance on June 14, 2011.

The within Resolution is based upon the following specific Findings of Fact and subject to the following specific Conditions:

Findings of Fact

This Resolution is based upon the materials submitted by the applicant, including the Site Plan prepared by TYLIN International, dated May 12, 2011; the Area Variance Submission, dated March 18, 2011; the Full Environmental Assessment Form, dated May 13, 2011; the Area Variance Follow-up Submission, dated May 13, 2011; and the Area Variance Follow-up Submission #2, dated June 1, 2011.

The Planning Board, granted to the applicant Preliminary Site Plan approval, by written Resolution dated June 14, 2011, which included a specific condition that the applicant provides to the Town an acceptable "decommissioning agreement".

This Board has examined the application materials and received oral testimony from the applicant, with respect to the factors required to be considered, by it. The Board hereby makes specific Findings as to such factors, as follows:

As to whether an undesirable change, detriment or adverse impact on physical or environmental conditions will be produced in the neighborhood or district by the granting of the requested variances, the Board finds, as follows:

- 1. The requirement contained in Town Code §150-43(F)(16)(c) that the Turbine not exceed 100' is intended to take into consideration the potential visual impact on surrounding properties, while the requirement in the same sub-section of a "fall-zone radius" of 1.5 times height is a safety measure with regard to nearby properties, in the event of tower failure and with regard to potential "ice-throw" in winter conditions.*
- 2. The proposed location of the Turbine in this application is along the industrial corridor of Route 104, which contains numerous power lines as well as an existing Wind Turbine, which, although smaller than the proposed Turbine, is obviously similar in appearance.*

3. *Further, there has been no objection to the proposed location of the Turbine, either by owners of nearby properties or by Town residents who travel along Route 104.*
4. *As a result, the Board finds that the requested variance as to overall height will not create an undesirable change or adverse effect.*
5. *The materials received from the applicant have satisfied the Board that potential safety concerns regarding tower failure are mitigated by proper construction of the facility together with strict adherence to safety precautions and the manufacturer's maintenance recommendations. The applicant has given this Board assurance that it will comply with all such maintenance recommendations and will allow the Town's Code Enforcement Office to monitor such compliance. Further, the applicant has submitted a written statement from Ontario Midland Railroad Corporation indicating that it does not object to the proposed proximity of the Turbine from its property and has assured the Board that a similar written statement will be obtained from RG&E.*
6. *As to potential concerns of "ice throw" from the blades of the Turbine, the applicant has satisfied this Board that such issue is appropriately addressed by the multiple safety precautions and engineering mechanisms that are part of the "ice detection system" included in the design of the turbine, such that it will shut down in the event of any ice build-up on the blades. The applicant has given this Board assurance that it will continually maintain all such safety precautions and engineering mechanisms and will allow the Town's Code Enforcement Office to monitor such compliance.*
7. *As a result, this Board finds that the requested variance as to "fall-zone radius" will not result in an unacceptable safety risk to adjoining properties and the public, provided that the applicant complies with all manufacturing and maintenance requirements and allows monitoring of such requirements by the Town's Code Enforcement Officer.*

As to whether the benefit sought by the applicant can be achieved by feasible means, other than the requested variances, the Board finds, as follows:

1. *The overall size of the proposed Turbine is necessary for the applicant in order to provide a significant portion of the energy needs of its company.*
2. *The size of the parcel on which the Turbine is proposed to be located, which is necessarily adjacent to the applicant's manufacturing facility, does not contain sufficient area to locate the proposed Turbine so that it meets the required "fall-zone radius" requirements of the Town Code*
3. *As a result, this Board finds that there is no feasible means for the applicant to construct the Turbine facility that would not require the variances requested.*

As to whether the variances requested represent substantial variances from Code, the Board finds, as follows:

1. *The variances requested are substantial; however, this fact is mitigated by the efforts of the applicant to locate the Turbine as far away from adjoining parcels as possible, particularly by locating the Turbine as close as possible to its manufacturing facility that will utilize the power generated by it.*

As to whether the difficulty alleged by the applicant is self-created, the Board finds, as follows:

1. *The alleged difficulty of the applicant is self-created, by its desire to produce its own energy, as a business cost-saving measure.*

Conditions of Approval

The Board, in granting the within variances, hereby imposes the following specific conditions:

1. *This variance is granted only for the plans submitted by the Applicant prepared by TYLIN International, dated May 12, 2011.*
2. *All construction is to be completed by December 30, 2012.*
3. *The applicant is to continually maintain all safety precautions and engineering mechanisms recommended by the Turbine manufacturer and will allow the Town's Code Enforcement Office to monitor such compliance.*
4. *The applicant is to obtain and provide to the Deputy Town Attorney a written statement will be from RG&E that it does not object to the proposed proximity of the Turbine from its property.*
5. *This approval is subject to the applicant receiving all Final Site Plan and Special Permit approval from the Planning Board, including compliance with any conditions imposed by the Planning Board.*

Chairman Smith asked for discussion before the vote.

Mr. Anderson stated that he was on the board when the first turbine was approved and there were naysayers at that time, and there is a good record of safety, he is in favor of it.

Mr. Neumann is concerned with the height, the safety issues and the closeness to Route 104.

Chairman Smith stated his motion still stands. He stated the world is filled with risk, and everything that we do, there is a degree of risk to it. Many people have spent many hours to minimize the risk. They have to take steps to be a vibrant, progressive, sustainable, thoughtful community with an eye on the future. We can't ever right risk out. An entirely separate board is in favor of this application and has accepted it.

Chairman Smith educated the board and audience on the fact that there has to be a reason stated as why you are for an application, against or abstaining.

The within Resolution was moved by Zoning Board of Appeals member John Smith, seconded by Board member Donald Anderson, and voted upon by the Board members, as follows:

*Donald Anderson voted Aye
Charles Neumann voted No
Robin Mark voted No
William Bridson voted No
John Smith voted Aye*

Motion for Approval Resolution Failed on July 6, 2011.

Chairman Smith stated the motion to approve the application has failed.

Mr. Williams explained to the board what the process will be from this point forward with the application having failed. He gave a recommendation to the board to make a motion to deny the application along with specific reasons as to why the application will be denied.

There was a discussion on whether to make a denial motion.

Mr. Neumann made a motion to postpone the application to prepare a denial motion. Mrs. Mark seconded that motion.

Donald Anderson voted No
Charles Neumann voted Aye
Robin Mark voted Aye
William Bridson voted Aye
John Smith voted No

7682 Shoreline Boulevard – Area Variance

The application of Nicholas D'Angelo requesting an area variance for relief from the 40' front setback requirement for a new single family home as required by the Lakefront Estates Subdivision Phase 2 (cluster development). The property is owned by the applicant and zoned R-2.

Mr. D'Angelo explained to the board that when the subdivision was approved there was a private drive and trees that were not to be taken down, which is why the setback is 40'. This was the model house. When the house was built the mason built the foundation of the porch closer to the property line that what was originally intended due to it originally sitting on looser fill. They normally don't cut it so close, he has been in business 52 years and this is the first time this has happened. He is seeking a 2 foot variance to the front setback.

Mr. D'Angelo stated that this will not happen all the way down the road and would have happened here if the mason didn't have to push the porch foundation out.

Chairman Smith asked if there was any public comment. There was none.

**RESOLUTION
ZONING BOARD OF APPEALS
TOWN OF ONTARIO
Re: 7682 Shoreline Boulevard
Tax Parcel #63118-00-576115
Applicant: Nicholas D'Angelo
Zone: R-2**

The Ontario Zoning Board of Appeals granted to the above Applicant relief from Code Section Article IV 150-27 Schedule II Area and Bulk Regulations to allow a single family home to be 2 feet closer to the front property line when 40 feet is required, at the above location and bearing the above Tax Parcel number. The within Resolution follows a Public Hearing held on July 6, 2011 and the review, by the Board of all written and oral submissions, together with due deliberation and consideration. This application is a Type II Action under Section 617.5 and, therefore, is not subject to environmental review under SEQRA. This application is a local matter.

The within Resolution is based upon the following specific Findings of Fact and subject to the following specific Conditions:

Findings of Fact

As to whether an undesirable change, detriment or adverse impact on physical or environmental conditions will be produced in the neighborhood or district by the granting of the application, the Board finds, as follows:

- *The garage setback will not create an undesirable change.*

As to whether the benefit sought by the applicant can be achieved by feasible means, other than the requested variance, the Board finds, as follows:

- *The garage has already been constructed and this is the best solution.*

As to whether the application represents a substantial variance from Code, the board finds, as follows:

- *The variance is not an unreasonable request.*

As to whether the difficulty alleged by the applicant is self-created, the Board finds, as follows:

- *The variance request is self-created, but not an issue.*

Conditions of Approval

The Board, in granting the within application, hereby imposes the following specific conditions:

1. *This variance is granted only for the plans submitted by the Applicant, Survey Map prepared by O'Neill-Rodak and dated May 20, 2011.*
2. *This variance is granted for 2' of relief to the front setback.*

The within Resolution was moved by Zoning Board of Appeals member Charles Neumann, seconded by Board member William Bridson, and voted upon by the Board members, as follows:

<i>John Smith voted:</i>	<i>Aye</i>
<i>Donald Anderson voted:</i>	<i>Aye</i>
<i>Robin Mark voted:</i>	<i>Aye</i>
<i>Charles Neumann voted:</i>	<i>Aye</i>
<i>William Bridson voted:</i>	<i>Aye</i>

2194 Kenyon Road – Area Variance

The application of James and Tamara Goetz requesting an area variance for relief from the 60' front setback requirement to replace a front porch on their house. The property is owned by the applicants and zoned Suburban Residential.

Mr. Goetz explained to the board that he would like to replace the front porch on the front of his home for safety and cosmetic reasons. It's over thirty years old and the condition was getting poor. The setback when he built the house was only 40 feet from the front property line. The porch will be 8 x 10 feet and he is seeking a 20' variance.

Chairman Smith asked if there was any public comment. There was none.

RESOLUTION
ZONING BOARD OF APPEALS
TOWN OF ONTARIO
Re: 2194 Kenyon Road
Tax Parcel #63118-00-576115
Applicant: James and Tamara Goetz
Zone: SR

The Ontario Zoning Board of Appeals granted to the above Applicant relief from Code Section Article IV 150-27 Schedule II Area and Bulk Regulations to allow a front porch to be placed 20 from the front property line when 60 feet is required, at the above location and bearing the above Tax Parcel number. The within Resolution follows a Public Hearing held on July 6, 2011 and the review, by the Board of all written and oral submissions, together with due deliberation and consideration. This application is a Type II Action under Section 617.5 and, therefore, is not subject to environmental review under SEQRA. This application is a local matter.

The within Resolution is based upon the following specific Findings of Fact and subject to the following specific Conditions:

Findings of Fact

As to whether an undesirable change, detriment or adverse impact on physical or environmental conditions will be produced in the neighborhood or district by the granting of the application, the Board finds, as follows:

- *The front porch will not create an undesirable change or adverse impact on the physical or environmental conditions in the neighborhood or district.*

As to whether the benefit sought by the applicant can be achieved by feasible means, other than the requested variance, the Board finds, as follows:

- *The location of the structure already exists on the front of the home; it will just be replaced with a somewhat larger structure for cosmetic and safety factors.*

As to whether the application represents a substantial variance from Code, the board finds, as follows:

- *The variance is not an unreasonable request.*

As to whether the difficulty alleged by the applicant is self-created, the Board finds, as follows:

- *The variance request is self-created, but not an issue as it is replacing an existing deck but making it somewhat bigger.*

Conditions of Approval

The Board, in granting the within application, hereby imposes the following specific conditions:

3. *This variance is granted only for the plans submitted by the Applicant prepared by the applicant and dated June 17, 2011.*

The within Resolution was moved by Zoning Board of Appeals member Charles Neumann, seconded by Board member William Bridson, and voted upon by the Board members, as follows:

<i>John Smith voted:</i>	<i>Aye</i>
<i>Donald Anderson voted:</i>	<i>Aye</i>
<i>Robin Mark voted:</i>	<i>Aye</i>
<i>Charles Neumann voted:</i>	<i>Aye</i>
<i>William Bridson voted:</i>	<i>Aye</i>

Chairman Smith moved to adjourn the meeting. Mr. Anderson seconded the motion.

Meeting Adjourned at 9:10pm.

Katie Kelsch
Secretary, Zoning Board of Appeals

The above minutes will become official when approved by the Zoning Board of Appeals