

**Town of Ontario
Zoning Board of Appeals
Minutes
July 27, 2011**

Present: Zoning Board Members – Chairman, John Smith, William Bridson, Robin Mark, Donald Anderson, Town Engineer Kurt Rappazzo of MRB, Deputy Town Attorney Rich Williams, Town Supervisor Robert Kelsch, Jason Ruffell and Sonyia VanPatten – Acting Secretary. Charles Neumann was absent.

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

360 Timothy Lane – Area Variances

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.

Minutes

Chairman Smith discussed the agenda of the additional proposals submitted by SED in order to mitigate concerns. Chairman Smith asked Mr. Schulte and Mr. Abbett from SED to discuss Proposed Site #1.

Mr. Schulte (SED) explained how they are trying to address all of the concerns regarding safety, ice, etc. but that they have not yet gotten into the conversation of the technical concerns of the town. He explained that the goal of SED is to resolve any problems and concerns that the town may have and obtain feedback from the town so that they can make the necessary changes.

Chairman Smith referred to the town board meeting that was held on Monday July 25, 2011 and explained how at this time there is a consensus across the board as to whether or not the current code needs to be re-visited and possibly modified.

Mr. Abbett explained what an FM global data sheet is.

Chairman Smith asked Mr. Rappazzo and Mr. Bridson if they are familiar with the software that SED is referring to. Neither of them was.

Mr. Abbett explained the purpose and design of the software.

George (SED) explained that the documents supporting the software are very comprehensive.

Chairman Smith asked SED if any of the projects that SED has done have ever failed to get insurance. SED responded saying that was correct.

Mr. Abbett discussed the current safety concern of the town and explained that SED is aware of the concerns and committed to and is willing to do whatever needs to be done to increase the comfort level of the town with this project.

Chairman Smith asked if they are willing to open up the records of maintenance of SED's other projects to the town. SED responded saying they are.

Mr. Abbett explained that O & M (Operations and Maintenance) is the highest level of concern and then went on to explain the proposed Site #1. There are 2 factors that they recognized in this proposal; to prevent the actual blade length from over hanging onto Mr. Bechtold's property and parking lot. They chose the new site (#1) in an attempt to minimize the impact on wetlands (to keep it under .1 acres). That is the area that the permit would allow. Mr. Abbett explained the development plan.

Mr. Anderson questioned what would portion of the wetlands would be impacted by placing the turbine in Site #1.

Mr. Abbett explained that they've done a rough estimate for the foundation circumference and explained the Army Corps process and requirements, in order to have minimal impact to the wetlands. He went on to explain that they are willing and committed to following the Army Corps processes for the permit and requirements for land use in a wetland area.

Chairman Smith questioned the placing of the turbine on proposed site #1 and the reasoning behind it.

Mr. Abbett answered that it is to minimize wetland impact and prevent the blade circumference from over hanging onto Mr. Bechtold's property.

Chairman Smith summarized that the purpose of proposed site #1 is to move it East for the blade circumference concern and to not move it north in order to minimize wetland impacts. SED confirmed.

Chairman Smith asked the board if there were any questions regarding site #1. There were none.

Mr. Abbett discussed the current safety concerns and the option to increase the importance factor.

Mr. Schulte explained what the importance factor is and how it's calculated.

At the request of Chairman Smith, Mr. Rappazzo explained further what the important factor is.

Mrs. Mark questioned how increasing the foundation size is going to help the tower if the problem is the blades and the tower height.

Mr. Schulte answered that by increasing one component you increase all the others.

Mrs. Mark asked if the foundation is level with the ground.

Mr. Schulte answered no, it's buried underground.

Chairman Smith requested that they move onto discussing proposed site #2.

Mr. Abbett explained that there is a potential to re-route Timothy Ln. Mr. Schulte further explained that Timothy Ln. has not been discussed at all in regards to where it will permanently be and go. He then asked the board what their thoughts were on the potential of moving Timothy Ln.

Chairman Smith asked the board if they wanted to discuss this option.

There was a brief discussion regarding how difficult it would be to move Timothy Ln., who would be responsible for it and some of the concerns in doing so.

Mr. Ruffell and Mr. Williams explained that it is an option but it would be a decision to be made by the Town Board.

Chairman Smith asked the board members if they had any questions on either of the proposed sites. He then went on record in saying that he is pleased with Site #1 and that he believes the Zoning Board of Appeals owes it to the applicant to give them an answer.

Mr. Bridson asked what the exact safety requirements are for a wind turbine. He also explained his feeling that if the town were to waive the safety rules and someone were to get hurt it is the responsibility of the town. He stated that he was not in favor of waiving the safety regulations and he is not in favor of the proposals.

Mr. Anderson stated that he preferred proposed site #2 best but can live with proposed site #1 as well.

Mrs. Mark stated that she is concerned about ice shed and thinks both proposals address that issue although the fall zone variance is still a significant concern of hers. She's concerned about the size of the turbine and feels that it is an inappropriate size and site for a turbine. Mrs. Mark also expressed that she's basing her answer on visual impact and that she's all for wind turbines, just not in this area. She then asked if they'll be voting on 2 separate variances and motions.

Chairman Smith asked Mr. Williams if he believe there were 2 variances to vote on.

Mr. Williams explained that there are 2 variances being requested. One for height and one for set back/fall zone.

Mrs. Mark stated that she is not ok with the height variance but is ok with the set back/fall zone variance.

Mr. Bridson stated that he is ok with the height variance but not ok with the set back/fall zone variance.

Chairman Smith explained the proposed site #1 in further detail to Mrs. Mark.

There was a brief discussion on moving the turbine back 175 feet.

Mrs. Mark asked what the specific safety risks are.

Mr. Williams explained the general rule of negligence. He stated that it is the responsibility of all 3 boards to act reasonably when it has the power to react.

Chairman Smith concluded that they'd be voting on both the set back/fall zone variance and the height variance.

**AREA VARIANCE RESOLUTION
ZONING BOARD OF APPEALS**

TOWN OF ONTARIO

***RE: 360 Timothy Lane – Wind Turbine Facility*
Variance For Required Distance From Property Lines**

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), as to the required distance from adjoining property lines, to allow the installation of an approximately 328' 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; the Area Variance Follow-up Submission #2, dated June 1, 2011; and the Proposed Alternative Siting – Site 1, dated July 25, 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 provide 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 variance, the Board finds, as follows:

1. The requirement contained in Town Code §150-43(F)(16)(c) 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 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.
3. 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.
4. further, the applicant’s Alternate Siting – Site 1 addresses the potential safety issue of ice shedding off of the Turbine blades on to the parking lot of the adjoining parcel to the west, by removing the prior overhang of the Turbine blades onto such adjoining parcel.
5. 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 Office.

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:

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 variance requested.

As to whether the variance requested represents a substantial variance from Code, the Board finds, as follows:

1. The variance requested is 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 variance, 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, together with the Proposed Alternative Siting – Site 1, dated July 25, 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.

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

Donald Anderson voted Aye

Charles Neumann voted Absent

Robin Mark voted Aye

William Bridson voted Nay

John Smith voted Aye

Motion Approved on July 27, 2011.

**AREA VARIANCE RESOLUTION
ZONING BOARD OF APPEALS**

TOWN OF ONTARIO

***RE: 360 Timothy Lane – Wind Turbine Facility
Variance for Maximum Height***

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), as to the requirement that a maximum height of 100' be maintained, to allow the installation of an approximately 328' 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; the Area Variance Follow-up Submission #2, dated June 1, 2011; and the Proposed Alternative Siting – Site 1, dated July 25, 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 variance, the Board finds, as follows:

6. The requirement contained in Town Code §150-43(F)(16)(c) that the Turbine not exceed 100' in height is intended to take into consideration the potential visual impact on surrounding properties.
7. 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.

8. 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.
9. As a result, the Board finds that the requested variance as to overall height will not create an undesirable change or adverse effect.

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:

4. 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.
5. 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 variance requested.

As to whether the variance requested represents a substantial variance from Code, the Board finds, as follows:

2. The height variance requested is substantial.

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

2. 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 variance, hereby imposes the following specific conditions:

6. This variance is granted only for the plans submitted by the Applicant prepared by TYLIN International, dated May 12, 2011, together with Proposed alternative Siting – Site 1, dated July 25, 2011.
7. All construction is to be completed by December 30, 2012.
8. 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.

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

Donald Anderson voted Aye

Charles Neumann voted Absent

Robin Mark voted No

William Bridson voted Aye

John Smith voted Aye

Motion Approved on July 27, 2011.

Sonyia Van Patten, Acting ZBA Clerk

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