

**Town of Ontario
Zoning Board of Appeals
Minutes
March 3, 2010**

Present: Zoning Board Members – Chairman, Donald Anderson, William Bridson, Jason Coleman, and Charles Neumann; Richard Williams – Deputy Attorney for the Town; Donna Burolla – Secretary; and William Riddell – Director of Economic Development and Parks and Recreation.

Absent: Robin Schmidt, Zoning Board Member

Chairman Anderson called the meeting to order at 7 p.m., led the Pledge of Allegiance and opened the public hearings.

Public Hearings

1744 NYS Route 104 – Special Use Permit – Redline Powersports

Mr. Matthew Benfante and Mr. Michael Fonte were present and requested approval of a special use permit for Redline Powersports for retail sales of vehicles, powersports and accessories and to dismantle powersports. Mr. Fonte is the owner of the property, zoned Business Transitional (B.T.).

Mr. Benfante said he is now operating the same business located at 6375 Furnace Road and he would like to move the business to the Route 104 site. He currently has a license from New York State to allow car sales and dismantling. He does not sell cars at the Furnace Road site, but in order to obtain a dismantlers' license the permit to sell had to be obtained. Mr. Benfante explained the powersports include ATVs, motorcycles, and water craft.

The zoning board asked about disposal of anti freeze, oil, or brake fluids. Mr. Benfante advised all fluids will be taken off site for disposal by a contractor.

Mr. Neumann asked if any disassembled vehicles will be left outside. Mr. Benfante replied they will be all inside and if they were left outside they most likely would be stolen. Mr. Neumann asked about the current racing cars at the site. Mr. Fonte said the building is now rented, and the vehicles there belong to the existing tenant who will be moving. The vehicles will be removed when the tenant vacates the property.

Chairman Anderson read correspondence from the Wayne County Planning Board dated Feb. 25, 2010 recommending approval of the Special Use Permit with the following conditions:

- 1) All hazardous/toxic materials must be stored, handled and disposed of property,
- 2) "Power sport vehicles" should be clearly defined by the town,
- 3) There should be no outside storage of parts, but outdoor display of power sport products is acceptable during normal business hours,
- 4) There should be no automobile sales
- 5) Any proposed signage must meet Town Code and
- 6) The site should be developed in an aesthetically pleasing manner (through use of landscaping, maintenance, screening, etc.) as the parcel is located on the highly traveled NYS Rt. 104.

Mr. Benfante said he would like to be able to sell cars since the property is zoned for that use. He noted that in order to obtain a dismantlers' license he must have a dealers' license. The zoning board asked where the vehicles to be sold would be parked and the quantity. Mr. Benfante defined the area on the site plan map and said the maximum amount of cars to be sold would be three.

Chairman Anderson opened the application for public comments and there were none.

**SEQRA RESOLUTION
ZONING BOARD OF APPEALS
TOWN OF ONTARIO**

**RE: Redline Powersports
Special Permit
1744 Route 104, Ontario New York**

Tax Parcel Number: 63117-09-003637

WHEREAS, Matthew Benfonte has submitted an application for Special Permit approval for the purpose of establishing a "Powersport" repair, sale and salvaging business at the above location; and

WHEREAS, this application is an unlisted action and has been subject to single agency review pursuant to SEQRA; and

WHEREAS, a short form EAF was submitted by the applicant, dated February 11, 2010, as part of the application materials;

NOW, THEREFORE, upon consideration by the Zoning Board of Appeals of all written and oral submissions and testimony by the Applicant and following a public hearing on this matter, held on March 3, 2010, and the Zoning Board of Appeals having given this matter due deliberation and consideration; it is

RESOLVED that the Zoning Board of Appeals finds that the proposed action will not have any significant adverse impact on the environment, and accordingly, hereby grants a negative declaration pursuant the State Environmental Quality Review Act; based upon the following findings of fact:

FINDINGS OF FACT

1. This resolution is based upon the materials submitted by the applicant including the Special Permit application and questionnaire dated February 11, 2010.
2. The proposed operations of the applicant will result in minimal noise impacts, since the operations will be entirely contained inside the building.
3. Similarly, potential visual impact will be minimal and no new structures are to be built.
4. The operations will involve a limited number of employees and customers, with the result that there will be minimal impact on traffic in the area.
5. Any and all potential impacts involving safety are adequately addressed in the application materials and through conditions of approval.

The within Resolution was moved by ZBA Member Charles Neumann, seconded by ZBA Member William Bridson, and voted upon by members of the Planning Board as follows.

Robin Schmidt voted	Absent
Jason Coleman voted	Aye
Charles Neumann voted	Aye
William Bridson voted	Aye
Donald Anderson voted	Aye

Adopted by the ZBA on March 3, 2010.

**APPROVAL RESOLUTION
ZONING BOARD OF APPEALS
TOWN OF ONTARIO**

**RE: Redline Powersports
Special Permit
1744 Route 104, Ontario New York**

Tax Parcel Number: 63117-09-003637

WHEREAS, Matthew Benfonte has submitted an application for Special Permit approval for the purpose of establishing a "Powersport" repair, sale and salvaging business at the above location; and

WHEREAS, the Zoning Board of Appeals issued a negative declaration, pursuant to SEQRA, on March 3, 2010;

NOW, THEREFORE, upon consideration by the Zoning Board of Appeals of all written and oral submissions and testimony by the Applicant and following a public hearing on this matter, held on March 3, 2010, and the Zoning Board of Appeals having given this matter due deliberation and consideration; it is

RESOLVED that the Zoning Board of Appeals hereby grants approval of the application, based on the following findings and subject to the following conditions:

FINDINGS & CONDITIONS OF APPROVAL

1. This approval is based on the materials submitted by the applicant including the Special Permit application and questionnaire dated February 11, 2010.
2. The use proposed by the applicant is in the categories of "Motor Vehicle Service Station", "Commercial Garage" and "Vehicle Sales & Service", requiring a Special Permit, in accordance with Town Code Sections 150-43(E) and 150-43(F)(10). The ZBA has examined all of the requirements of such Sections, as they relate to the use proposed by the applicant.
3. The operations of the applicant will take place inside the existing structure and no new structures are proposed to be built.
4. The vehicle dismantling operations and repairs will take place inside the building, utilizing hand and small power tools. As a result, there will be minimal noticeable noise outside the building.
5. The only outside storage will be no more than 3 display vehicles during business hours. As a result, visual impact of the operation will be minimal.
6. With regard to potential issues involving safety, any and all liquids removed from vehicles or resulting from the operations of the applicant will be placed in approved storage containers. Further, removal of parts and dismantling of vehicles will occur without the use of cutting torches, oxygen or welding.
7. The parking provided on the site is more than adequate for the proposed employees and anticipated customers.
8. The dumpster used for the operations is to be located to the rear (south) of the building.
9. Based upon the above specific findings, the ZBA further finds that the proposed operation will not cause any injury to the value of other property and will be reasonably compatible with adjoining operations and the character of the district where it is to be located.
10. The operations of the applicant are to be limited to 9 a.m. to 7 p.m. Monday through Saturday.
11. The applicant is to comply with all specific requirements set forth in Town Code Section 150-43(F)(10).

The within Resolution was moved by ZBA Member Charles Neumann, seconded by ZBA Member William Bridson, and voted upon by members of the Planning Board as follows.

Robin Schmidt voted	Absent
Jason Coleman voted	Aye
Charles Neumann voted	Aye
William Bridson voted	Aye
Donald Anderson voted	Aye

Adopted by the ZBA on March 3, 2010.

144 Berg Road – Special Use Permit

Mr. Walter Dutcher requested a special use permit and area variance to allow a wind turbine on 1.884 acres when five acres is required. The property is owned by Ms. Cheryl Hurley and zoned Residential -2 (R-2).

Mr. Dutcher said he would like to construct a wind turbine and he has submitted information about the height and a map showing the location. Ms. Hurley has signed an authorization to allow Mr. Dutcher to represent her with this application. He reviewed the location of the turbine on his map and noted he needed to place it almost in the center of his property to maintain the fall line.

Mr. Coleman noted that the neighbors have agreed with the project contingent on the decibel level. Mr. Gerald Brock, from WindTamer, representing Mr. Dutcher, said the turbine is totally silent and no louder than a breeze going through trees. Mr. Brock said they have never had a decibel reading on the turbine. The decibel level is 25 according to literature submitted with the application. Mr. Dutcher said he has measured the cars at the road at 75 decibels and also the sound of the wind between 50-60 decibels where the turbine would be located. The location of the turbine is near the rear of the property, behind the home and in line with the beginning of a wooded area.

Mr. Brock asked what the town's five acre requirement for turbines was based on. Mr. Neumann said it was based on alternate wind energy supply systems. Mr. Brock said this technology only needs to be 35 feet in the air versus other types which require a higher distance. He noted that the general height for the WindTamer turbine is between 38-39 feet.

Mr. Brock reviewed the design specifications stating a 23 foot tall pole is used, with a two foot sono tube footer, five foot in diameter. Mr. Neumann said the zoning board needs to know exactly how tall this structure will be. He advised Mr. Brock the bottom of the blade needs to be no closer than 25 feet to the ground. Mr. Brock reviewed the drawing submitted. After review, Mr. Brock said the blades will be 27 feet from the ground. Mr. Neumann said the drawing submitted does not show that distance and another design may need to be submitted to verify the design of the footer and the height. Mr. Brock advised the design has been made to withstand winds at 100 mph; however an amendment can be submitted to the drawing.

Chairman Anderson advised the applicants there is an option for a postponement to submit another drawing or a vote could be taken tonight.

After further discussion, Mr. Dutcher said he would like to keep the pole at 23 ft. in height and apply for a variance to allow the blades closer than 25 ft. from the ground. The zoning board determined that the area variance relief needed would be 6 foot which would allow the blades to be 19 ft. from the ground.

Mr. Coleman asked if the turbine pivots. Mr. Dutcher said that is correct.

Chairman Anderson opened the application for public comments. Mr. Tim Murphy, 117 Berg Rd. said he lives across the street from Mr. Dutcher. He said the literature advised the sound is like a refrigerator at 50 db. He said he has done

some research on this and found out that if you stand right under a wind turbine you may not hear it. He questioned where the 50 db level was obtained and at what wind speed. He said online information advised that most wind turbines are measured at 1500-2000 feet. Mr. Brock said that the turbine could not be seen at that distance and the technology acts like a giant muffler.

Mr. Murphy said he felt the town should determine what decibel level should be allowed in a Rural area. He summarized stating the Harbec wind turbine is different since it is located on Rt. 104 and in an Industrial area. Berg Road is a very quiet area. He suggested a sound engineer submit a report with decibel readings at different distances and wind speed and present it to the town. He noted the IEC is an organization that does this type of research.

Mr. Brock stated they have this type of wind turbine in the Towns of LeRoy, Batavia, and they are now also dealing with the Town of Williamson. He stated they present no danger to birds or ice buildup.

Chairman Anderson said this is new technology and the zoning board should have more data to make a determination.

Mr. James Link, 120 Berg Rd., said he has also done some research on the noise aspect of the wind turbine. He found information that said the noise was like a refrigerator running or compared to light traffic noise. He said the phrase "next to light traffic" alarmed him and the reason he moved to the country was to get away from the sound of traffic.

Mr. Brock said the wind blowing at 15 mph is louder than the turbine.

Mr. Murphy said the wind turbine is rated as a commercial generator according to the literature and felt that something smaller in size could be used to accomplish the same purpose for a residential home. Mr. Brock said Mr. Murphy has misinterpreted that information and stated it could be used for light commercial use. He noted the normal home uses 600 kw per month. Mr. Murphy asked if the turbine was designed to be larger to give power back to the grid. He wondered if an energy audit had been done on the home.

Chairman Anderson moved to postpone the application for additional data to address the concerns the board has with this new technology.

Mr. Bridson said three of the major criteria for alternative wind energy devices are five acres; blades must be 25 ft. from the ground; and a distance of 1 ½ times the height for clearance for a fall zone and ice throw. He said he would not be willing to waive the five acre requirement or the 25 ft. blade distance.

Mr. Williams asked if he could contact Robert Bringley, design engineer for the turbine, and talk to him about the concerns of the zoning board regarding the audible characteristics. Mr. Brock agreed to have Mr. Williams contact him, but asked that Mr. Bringley should speak with him before doing any work.

Mr. Neumann also stated that he was not willing to waive the five acre requirement and even if a study was presented regarding audible data, it would not affect his decision. He felt the height of the blade would be acceptable. He was also concerned in not setting precedence for turbines on less than five acres.

Mr. Williams reviewed the balancing test the zoning board should look at in granting this type of variance. He noted the board should consider the presumption of visual impact to the neighbors and that is why the town board adopted the five acre minimum requirement. This proposal is for a 28 ft. high turbine on 2 acres as opposed to one potentially 100 ft. high turbine on five acres. The zoning board needs to look at how close it is to neighbors' homes, visual buffering, and how the neighbors will be affected. If the violation of the setbacks creates a negative effect too great to grant the variance, then it should be denied. On the other hand, if the violation of the setbacks does not create too significant of a problem, the variance should then be granted.

Mr. Williams also reviewed the setting of precedence by granting variances. He advised the zoning board that there is not a precedence set as long as each case is analyzed on its own merits. Usually the facts to support a variance are not identical in the applications.

Chairman Anderson withdrew his motion.

Mr. Murphy said the diffuser is 16 ft. in diameter and that is a large structure to be up in the air. He felt that a smaller unit could be used for a residential home.

Chairman Anderson moved to postpone the application for one month. Mr. Coleman seconded. Vote: 4-0.

William Bridson	- Aye
Robin Schmidt	- Absent
Donald Anderson	- Aye
Jason Coleman	- Aye
Charles Neumann	- Aye

1031 Whitney Road – Special Permit

Mr. Gerald Brock from WindTamer, representing Ms. Laura Bushey, requested a special use permit to construct a wind turbine on 27 acres. The property is owned by Ms. Bushey and zoned Residential -2 (R-2).

Ms. Bushey said she would like to construct a wind turbine similar to the one previously discussed. The zoning board said they did not have a map showing the location. **Mr. Brock and Ms. Bushey presented a map, but the location of the turbine was unclear.** The board asked for a revised map showing a detailed location of the wind turbine and distances to the surrounding structures and property lines. The zoning board asked the height of the turbine to determine if an area variance would be required regarding the location of the blades. After discussion, Mr. Brock advised a variance for the height of the blades would not be required.

Chairman Anderson opened the application for public comments and there were none.

Mr. Coleman moved to postpone the application to the April 7, 2010 meeting. Chairman Anderson seconded the motion. Vote: 4-0.

William Bridson	- Aye
Robin Schmidt	- Absent
Donald Anderson	- Aye
Jason Coleman	- Aye
Charles Neumann	- Aye

Minutes

Mr. Bridson moved to approve the minutes dated February 3, 2010 as presented. Chairman Anderson seconded. Vote: 4-0.

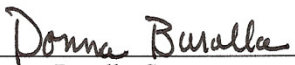
William Bridson	- Aye
Robin Schmidt	- Absent
Donald Anderson	- Aye
Jason Coleman	- Aye
Charles Neumann	- Aye

Vice Chairman Appointment

Chairman Donald Anderson moved to appoint Mr. Coleman as Vice Chairman of the zoning board for 2010. Mr. Bridson seconded. Vote: 3-0.

William Bridson	-Aye
Robin Schmidt	-Absent
Donald Anderson	-Aye
Jason Coleman	-Abstain
Charles Neumann	- Aye

Meeting adjourned at 8:30 p.m.



Donna Burolla, Secretary
Zoning Board of Appeals