

TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
October 27, 2015

PRESENT: Kevin McCabe
Donald Jablonski
Will Collins, Appointed Alternate
Tim Lederhaus, Chairman
Kevin Roth

ALSO PRESENT: Brian Belson, Senior Building Inspector
Jane Trombley, Secretary
Michael Norris, Town Attorney

ABSENT: Elaine Sobieraski

The October 27, 2015 Zoning Board of Appeals meeting was called to order at 6:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

Alternate Collins was appointed a full voting member due to the absence of Member Sobieraski.

MOTION made by Member Roth, seconded by Member Collins to approve the September 22, 2015 minutes. 5 Ayes, 0 Nays, Carried.

CASE #1 **7048 Slayton Settlement Road – 96.01-1-5 – Karl B. Kowalski** – Requesting an area variance to construct a 158' turbine. Tom Fleckenstein, of Niagara Wind presenting. Mr. Fleckenstein stated this will be the same turbine as was approved for the Baileys a few months back, on Saunders Settlement Road. Mr. Fleckenstein presented a new site plan and stated they want to keep it out of the farm fields, and it will be over by a fence.

Chairman Lederhaus asked about the fence. Mr. Fleckenstein stated it will be electric on three sides to keep the cows out.

Chairman Lederhaus asked if 158' is necessary and Mr. Fleckenstein stated yes, to get the best benefit and it still won't supply enough energy for the entire farm.

Chairman Lederhaus asked what the noise level decibel would be. Mr. Fleckenstein said just under 50 decibels at the base, and 70-80 decibels is the usual talking level.

Member Jablonski asked how large the entire farm is and Mr. Kowalski stated 197 acres. Member Jablonski asked how close to the road this will be. Mr. Fleckenstein stated 400' or more back, so it won't impede anyone's sight.

Member Jablonski asked if there will be an aircraft beacon. Senior Building Inspector Belson and Attorney Norris both stated a beacon is not required for less than 200'.

Chairman Lederhaus opened the Public Hearing.

Rita McGinnis of 7033 Slayton Settlement Road stated she lives across the street and wanted to see where the tower is located, how close to the house and how far it is from the road. Ms. McGinnis was shown the site plan and she asked if there were any aviation restrictions. Chairman Lederhaus told her no. Ms. McGinnis asked about Mercy Flight landing there and Ms. Kowalski stated when Mercy Flight landed there in the past, it was on the other side of the road due to power lines and buildings on their side.

Hearing no further comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Roth, seconded by Member Collins to approve the following decision, read by Attorney Norris:

Applicant is requesting an area variance to install and operate a 10kw wind turbine with a proposed maximum height of 158' (with 140' self supporting lattice tower) in an Agricultural Use (AG) district.

A Public Hearing having been held on October 27, 2015, after hearing from the Applicant, and after considering the comments of all persons who wished to be heard;

NOW, this Board makes the following findings of fact:

- The area is zoned Agricultural (AG). Town Code Section 200-28 permits accessory uses and structures customarily incidental to the principal permitted use.
- Town Code Section 200-29 sets the dimensional height maximum of a structure at 35' for an accessory structure.
- There was no opposition to the proposed variance from adjacent property owners.
- The requested variance is an area variance.
- The parcel is 131.4 acres.
- This parcel is designated as a farm pursuant to Section 301 of the Agricultural and Markets Law.
- All energy produced from the wind turbine will be used for the farm's energy needs and thus is incidental to the primary permitted use of agriculture as defined by the Town Code.

- The Board has taken into consideration the benefit to the Applicant if the variance is granted as weighed against the detriment to other health and safety matters to the neighborhood by such grant.
- The specific benefit cannot be achieved by other feasible means to the applicant. In order to make a small wind turbine feasible, you need at least a minimum of 100' in height.
- This variance will not cause an undesirable change in the neighborhood character or nearby properties as this parcel is located in the Agricultural designed district and is located on a very large tract of land.
- The request is substantial as it exceeds the height maximum of an accessory structure in the AG zone by over 100', however, it is minimized as the proposed height is comparable to existing telecommunications towers in the Town of Lockport.
- The request will not have any adverse physical or environment effects.
- The alleged specific difficulty is not self created as the Applicant is attempting to maximize the use of the land for agricultural purposes and its related energy needs.

Having given substantial weight to the fact that this variance request is located in the Agricultural Zone where accessory uses and structures customarily incidental to the principal permitted use are permitted and it is impractical economic benefits for the less than 35' to achieve practical economic benefits for the applicant, it is determined that the requested variance shall be GRANTED, contingent upon the following conditions:

1. Only one wind turbine shall be permitted on this SBL parcel.
2. The turbine shall be located a minimum of 1.5 times the total height of the structure from any property line or a minimum of the total height of the turbine (158') from any structure located on said property unless said structure is required for the sole purposes of operating said turbine.
3. The maximum height shall not exceed 158'.
4. No advertising sign or logo shall be placed or painted on the turbine, except the small manufacturer logo.
5. Proper safety shutdowns with both manual and automatic shutdown disconnect switches shall be provided and clearly marked on the turbine structure.
6. Exterior lighting on said structure shall not be permitted except as is specifically required by the Federal Aviation Administration.
7. The wind turbine shall be painted a nonobtrusive color (light environmental color such as white, gray or beige).
8. Grounding of structure shall be in compliance with the applicable electrical code.

9. Appropriate warning signage shall be placed on wind turbine and electrical equipment. Signage shall also include one twenty four hour emergency contact number of the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.
10. The wind turbine shall not be climbable up to 12' above ground level or shall have at least 8' fencing surrounding said bottom.
11. The Town can deem the turbine inoperable if it has not generated power within the preceding six months or is in serious disrepair and if deemed inoperable, then the Town may tear the turbine down with written notice to the property owner and the cost of tearing said turbine down shall be borne by the property owner and levied against their taxes.
12. Compliance with procedures as established by the Federal Regulatory Commission, NYS Public Service Commission and Federal Aviation Administration, as applicable.
13. Final Inspection conducted by the Code Enforcement Officer in conjunction with the Town Engineer to insure compliance with all manufacturers' specifications and the New York State Uniform Construction Code.

Further, if not for the parcel being located in the Agricultural Use (AG) District, with said accessory use being used for the agricultural energy needs of the primary agricultural use and the parcel being larger than 10 acres, this Variance would have been denied.
5 Ayes, 0 Nays, Carried.

MOTION made by Member McCabe, seconded by Member Collins to accept tonight's decisions. 5 Ayes, 0 Nays, Carried.

MOTION made by Member Roth, seconded by Member Jablonski to adjourn. 5 Ayes, 0 Nays, Carried.

**BY ORDER OF THE TOWN OF LOCKPORT
ZONING BOARD OF APPEALS**