

Town of Rockland
Zoning board of appeals
June 7th, 2021
#1 Area Variance
Hudson Valley Wind & Solar LLC

Members present: Chairman Arthur Reigal , Perry Keuhn, Shelia Schultz , Daniel Smith , Emily Casey

Public Hearing Convened at 7pm by zoom

Steven Demolas and Hudson Valley Wind & Solar LLC are seeking Area variance to erect a 100ft Wind turbine at 630 White Roe Lake Rd. Livingston Manor, NY

David Puzzo; Hudson Valley Wind & Solar representative introduced their plan to erect an 100ft Wind Turbine at 630 White Roe Lake Rd. as a hybrid system – 12k / 10kw micro tower with battery backup. The wind turbine requires 100 ft altitude, with density of the trees ranging from 60-70ft, in order to operate properly the wind turbine requires 30ft above the canopy of the trees.

Member Schultz asked about the service of the Solar and wind turbines as off grid or public use. Question of location and proximity to neighbors and the road were raised Applicant would have private use and not sell back to the utility's companies. Additional questions were raised in how the Wind turbine would affect the views scape of the forested White Roe Lake area.

Mike Soriano manufacturer representative for applicant Wind Turbine's reiterated that this would be a positive thing for the neighborhood and environment, encouraging the use of more green energy.

Member Keuhn asked about the existing Wind Turbine at Apple Pond farm in the Town of Callicoon, this is a first (1st) look case for the Town of Rockland.

Numerous neighbors submitted letters and spoke out against the Wind turbine.

Others spoke out with positive views of the use of green renewable energy such as Richard Riesling from Apple Pond Farm in the Town of Callicoon and Wes Gillingham from Catskill Mountain keepers and Wild Roots Farm in the Town of Liberty.

Member Casey main concern was the lack of Zoning code and possible present set.

Member Smith stated that he was in favor of renewable energy and understands the larger picture.

Issues were raised of the location of the wind turbine in proximity of the road and neighbors as well as the view scape of the White Roe Lake area. A major concern of the variance was the setting a precedent for others.

Member Art stated their positive view on what wind turbines can bring to the growing need for green renewable energy with the example of the Carbondale Wind turbines but also voiced their concerns of the negative impact on the White Roe Lake view scape. The second concern raised was the lack of local Zoning regulation and the height restriction refer to on this topic. The current code sets the maximum height of a structure at 35 feet with exemptions listed (flag poles, belfries, etc)

CEO Glen Gabbard added the overall question in regard to Zoning code: Is a wind turbine customary incidental structure to a residence? It has been determined by the code enforcement office that with regards to the height restriction and what is customary with this community in single family home, wind turbines are not customary incidental or accessory use or special permit use.

A motion to close the meeting was made by Member Schultz and seconded by Member Casey.

Public hearing was closed at 7:46 pm

Town of Rockland
Zoning Board of Appeals
Regular Meeting: June 7, 2021, at 7:47 pm

Chairman Riegal opened the regular meeting with the pledge to the flag.

Approval of Previous Minutes

Previous minutes of April 14th, 2021 were corrected. Under Zoning Board Action replace #6 with:
-decision to vote for granting the variance was based upon the following:

- 6. “ Will be generating sales tax and service to the community.”

Chairman Riegal stated

Motioned made by Emily Casey and seconded by Dan Smith to correct the minutes and by unanimous consent the previous minutes were approved as corrected and amended.

Case Review discussion

Continued discussion regarding the lack of Town zoning regulations and the applied height restrictions to the Wind turbine. After a vigorous discussion regarding the effect on the local View scape particularly as it relates to being located within the blue line of the Catskill Park, environmental pro’s & cons and possible precedents all members felt that this project is not possible due to the many concerns that a precedent could be set due to a lack of local zoning regulations.

Chairman Riegal stated that all decisions of the ZBA need to be defensible in a court of law and if an applicant were to approach the board in the future, they would have to be approved if they met the same criteria as code must be applied equitably:

His decision to vote against the variance was based upon the following:

1. This is new construction: as such it is a self-created hardship per the Standard of Review for Area Variances issued by NYS as the property is in reach of the NYSEG grid and, in fact, will be tied to it.
2. Wind Turbines are not currently listed in the exceptions to code height restrictions in section 185-15 B.
3. Inability to defend an approval in an Article 78 proceeding with no underlying local law to support it.
4. The variance asked for is triple the allowable 35 foot height for structures in the RC district which does not meet the definition of “variance” in its *De Minimis* intent.

5. Concerns about the impact to hedonic property values within the Catskill Park relating to noise and the viewshed.
6. Concern that this is not, at the root, an Area Variance since turbines are not listed as a permitted use nor are they commonly incidental to a dwelling as stated by the Code Enforcement Officer. This would actually place the project in the category of Use Variance. Such a variance, at the outset, would fail the Otto Test required by NYS law.
7. If viewed solely as an Area Variance as applied, the granting of such variance with no basis in local law would set a precedent for any other applicant wanting to build a turbine to that height. Since code must be applied equitably across the zoning district each future application must be granted and thus this Board would be creating new zoning code "out of whole cloth" instead of interpreting existing code passed by the elected representatives of the Town of Rockland Board as is the function of an *appeals* board.
8. There exists documented neighborhood opposition related to noise and viewshed issues.

With no further discussion the Board moved into the **Standard of Review process.**

ZBA: Standard of Review: Area Variance

Zoning Board of Appeals must balance the benefit to the applicant versus detriment to the health, safety and welfare of the neighborhood. The burden of proof lies with the applicant. Factors to be assessed:

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

Discussion: will create an undesirable change of character in the neighborhood and community as well.

Resolution: There will be an undesirable change produced by granting this variance

By _____ Schultz _____ Seconded ____ E. Casey _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

2. **Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

Discussion: Solar panels are available plus the addition on grid utilities, with neighborhood opposition and the view shed impact.

Resolution: The benefits can be achieved by other methods

By _____ Schultz _____ Seconded ____ D. Smith _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

3. Whether the requested area variance is substantial.

Discussion: The Wind Turbine is triple the height is restriction of the Town zoning code.

Resolution: The area variance is substantial

By ____ E. Casey _____ Seconded ____ Kuehn _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Discussion: Impact on the view shed, impact on the neighborhood

Resolution: Will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

By ____ P. Kuehn _____ Seconded ____ S. Schultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Discussion: The possibility of tree removal, any new construction is self-created

Resolution: The difficulty is self-created

By ____ P. Keuhn _____ Seconded ____ S. Schultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

Zoning Board Action

Approve _____

Deny ___X___

Approve with conditions (below) _____

The area variance as requested by the applicant is hereby denied, the project does not to meet the requirements of the Town of Rockland Zoning code re: permitted structures and height restrictions and lack of zoning regulation in reference to wind turbines. Applicant has been referred to The Town of Rockland Town Board for further assistance.

Resolution by _____ P. Kuehn _____

Seconded ___S. Schultz _____

Roll Call Vote

Perry Kuehn – No

Sheila Schultz – No

Emily Casey – No

Arthur Riegal – No

Daniel Smith - No

Motion to adjourn made and passed by common consent at 8:36 pm