

**TOWN OF NORTH HARMONY  
ZONING BOARD OF APPEALS  
WEDNESDAY  
4/23/08 7:30 PM**

**BOARD MEMBERS PRESENT:** Jim Levesque                      Dick Barton                      Paul Marlinski  
                                 Roger Vaillancourt                      John Churchill Joseph Komar  
                                 Greg Michalak  
                                 Dave Stapleton, Attorney

**OTHERS PRESENT:**     Peter Wiemer                      Ernie Pritchard & Jon Foster (Bergey WindPower)  
                                 Joseph Kutschke                      Don & MaryLou Walter  
                                 Robert Black (Habiterra)

**#1.     Peter Wiemer requesting a Special Permit to construct a 140' tall wind turbine tower on property located at 2809 Butts Rd., Specifically Section 349.00-2-73 (old # 10-1-13).**

Mr. Levesque said that the ZBA had received the Planning Boards recommendation on Mr. Wiemer's request as outlined above. The PB unanimously recommended that the Special Permit be granted by the ZBA providing the following criteria are adhered to:

- guy wires are prominently marked
- placing fencing around the guy wires and ground connections in an "L" shape so the installer can have access to do any maintenance
- after six months of in-operation the tower must be removed
- no lighting on the tower

Mr. Sena said the board also recommends waiving the following stipulations associated with the cell tower/wind farm zoning. Much of the wording in Sec. 619 does not address the specifics of personal wind turbine construction. At the recommendation of Brad Lawson 4 additional stipulations specific to this application are requested.

They are as follows:

- 1) Acceptance of a guy style tower
- 2) No bonding necessary
- 3) Waive the cell tower fee enacting a fee reasonable to an average residential project        of this cost (i.e. \$35.00)
- 4) Acceptance of site plan and establishment of appropriate tower fall zone

Mr. Wiemer stated that the tower would be located more than 140' from the road and approximately 600-700' from the house. It was noted by a neighbor that the tower will be about 155' tall with the addition of the wind turbines (*ref. 3/25/08 PB Minutes*).

Mr. Levesque said that Mr. Lawson had requested a long form SEQRA and asked if it had been completed. Mr. Wiemer said it had been completed. Mr. Stapleton asked if the SEQRA had been filed with the clerk. Mr. Pritchard said they would give her a copy. Mr. Stapleton said the current telecommunications law treats towers as type one actions under SEQRA and without modification to the current Zoning Law, the long form has to be filed. He said the County Planning Dept. and DEC, as well as any other applicable agencies should be notified.

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**Mr. Levesque motioned that the Zoning Board of Appeals take Lead Agency Status on the SEQRA. Mr. Barton seconded and the motion was carried unanimously.**

**On a motion made by Mr. Levesque and seconded by Mr. Churchill, the Town Clerk and Mr. Stapleton are authorized to review Sec. 619, Telecommunications Facility, and determine applicable agencies that should be notified for review of the application. The motion was carried unanimously.**

It was discussed and determined that the Public Hearing Notice should include the height of the tower and turbine at a total of 155'. It was also noted that the Planning Board and Mr. Lawson recommended a Special Use Permit fee of \$35.00 for this project. Mr. Pritchard asked if the Visual EAF portion of the SEQRA needed to be completed. Mr. Levesque said yes. Mr. Stapleton said if there are computer simulations or digital photos available, they should be submitted to the board. Mrs. Thomas said that photos of the tower style appear in the 2/08 application package.

**#2. Joseph Kutschke (re-hear) appearing for a one year review on a Special Permit issued on 4/25/07 for landscape equipment storage on property located at 2051 Gesaman Rd., Specifically Sec. 384.00-1-57 (old # 15-1-43.1).**

Mr. Levesque asked if there were any comments on Mr. Kutschke's activities in the past year. Mr. Kutschke said he had spoken to Mr. Lawson and no complaints have been received from neighbors. Mr. Levesque and Mr. Barton agreed that Mr. Kutschke has adhered strictly to the requirements specified in his original application and the property is well maintained. Mrs. Thomas said she notified all neighbors of the hearing and no complaints were received. Mr. Levesque briefly reviewed the original 4/07 application criteria for the board.

**Mr. Levesque motioned that the ZBA extend for a 3 year period (expiring 4/2011) the Special Use Permit granted on 4/25/07 for landscape and equipment storage on Mr. Kutschke's property located at 2051 Gesaman Rd., Specifically Sec. 384.00-1-57 with the provision that any complaints or violations will be sufficient cause for the ZBA to require a review of the application. Mr. Komar seconded and the motion was carried unanimously.**

Mr. Kutschke asked if he was allowed to add a piece of equipment on the property (i.e. small excavator). He said although he had not provided a specific list of equipment to be stored when he filed the initial request, he did provide photos of the pieces to be stored. Mr. Barton said that something small in keeping with the "one man" style operation would probably not be objectionable. Mr. Churchill said that he thought the original intent was for Mr. Kutschke to get established and then move to a more suitable location if the business is a success. He agreed that the 3 year extension would allow an appropriate timeline for this to occur.

**ZBA**

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**#3. Donald E. Walter requesting a Use Variance to locate an apartment over a barn which does not comply with Section 407 of the Zoning Code on property located at 5901 Stow Rd., Specifically Section 331.00-2-19.**

Mr. Walters said about one year ago he had applied to build a pole barn and the design had included a second floor that was to be unfinished. He said later he decided to finish the second floor as a 2 bedroom apartment with a deck on the rear for rental. His property is located on 19 acres and the barn is located approximately 4-500' from the road and approximately 160' from the main house. Mr. Walters said he would like a use variance to complete the apartment construction. Mr. Levesque noted that in the AG District zoning prohibits the construction of two dwelling units on one property. Mr. Marlinski said that although zoning stipulates one residence on a tax parcel, he feels it applies to more densely populated areas (i.e. lake front). He said because of its rural nature Mr. Walter's property does not have this issue. Mr. Michalak noted that the buildings cannot even be seen from the road and stated that they are beautifully maintained. Mr. Barton asked if the barn has electric. Mr. Walters said just lighting for storage purposes. Mr. Levesque noted that setbacks are not an issue. Mr. Stapleton suggested the board review Sec. 267B, 2a, Use Variance criteria. Mr. Levesque reviewed the law with council and the members present. Mr. Stapleton asked if there was any reason the barn could not be parceled off with a separate deed. Mr. Black, project architect, said it could be done if Mr. Walters wanted. Mr. Stapleton said an easement could be drawn using the existing driveway. Mr. Levesque asked if the parcels are separated would co-use of a septic system be allowed. Mr. Stapleton said Mr. Walters would still own both but it would really be a question for the Health Dept. Mr. Stapleton said if the parcels were separated the requirements for the AG District would be 2 acre parcel, 150' lot width, front/rear setbacks of 50' and side setbacks of 25'. Mr. Levesque asked Mr. Walters if he had any objections to separating the parcels. Mr. Black said it had not really been considered but there was plenty of space for it. Mr. Churchill said it would make the process much easier for the applicant if the properties were separate as it would not require any variances or Zoning Board approval, it would go straight to the building permit process. Mr. Stapleton noted that the Sr. STAR exemption might be affected by this action. He also commented that the deed process could be easily done by the architect in a simple and inexpensive manner.

**Mr. Churchill motioned that the request of Don Walter for a Use Variance be approved as previously stated. Mr. Levesque seconded. A roll call vote was taken. Mr. Levesque, Mr. Barton, Mr. Churchill, Mr. Vaillancourt, Mr. Komar, Mr. Michalak, NO; Mr. Marlinski, YES. The motion was denied by a vote of 6 No; 1 Yes.**

**Mr. Levesque adjourned the hearing at 8:45 PM.**

***Nancy Thomas – Town Clerk***