



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

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Approved on February 10, 2011

ZONING BOARD OF APPEALS

MINUTES OF MEETING

OCTOBER 14, 2010

This meeting was called to order at 7:00 P.M. by Chairman Thomas Hanson. Other Members present were: William Corkum, Sharron Ampagoomian, Carol Snow, Associate Member Stephen Witkus, Associate Member Brett Simas, and Associate Member Harold Hartmann.

Absent from this meeting was Diane Woupio and Daniel Batt.

A motion was made by Sharron Ampagoomian to approve the minutes of September 9, 2010, motion seconded by William Corkum, the vote being unanimous.

PUBLIC HEARING: (12-APP-10) Mass Wind, LLC, Applicant

This hearing was held to consider the petition of Mass Wind, LLC, 4 Tannery Row, Somerville, MA appealing the Building Inspector/Zoning Official's decision to deny a building permit for the construction of two wind turbines to be located on Upton Street, shown on Assessor's Map 25 as Parcel 162. The application was denied in part due to the use being classified as a utility and the height exceeding 30 feet. The structure would be 208 feet in height with blades of 77 feet in length for an overall height of 285 feet.

The property is located in an Industrial-1 zoning district and is owned by Rufin VanBossuyt and Rena M. Richard, 125 Westboro Road, Upton, MA.

The Building Inspector has made the determination that the generation of electricity would fall under the use of a power plant, which is a permitted use in an I-1 Zoning District. However, the maximum height for a structure in an I-1 Zoning District is 30 feet. It was his determination that the two wind turbines would require a dimensional variance for height. Attorney Lane argued that they are exempt from the 30 foot height restriction in that they qualify under Note C of Table 173-120 (Table of Height and Bulk regulations). The applicant is now appealing that decision to the Board.

ZONING BOARD OF APPEALS – MINUTES – OCTOBER 14, 2010

The public hearing was opened at 7:05 with the reading of the public hearing notice by Board Member Sharron Ampagoomian. Assigned to this hearing by Chairman Thomas Hansson were Carol Snow, Sharron Ampagoomian, William Corkum, and Brett Simas.

Attorney Henry Lane was present representing Mass Wind. He stated that Mass Wind is proposing to construct two wind turbines to generate electricity in an area of land zoned for industrial use on Upton Street. The wind turbines would be located near an existing cell tower and a water tower.

Mr. James Sheehan, Building Inspector, was present and he stated that he denied a building permit because it did not qualify under exemption C of the By-law (173-20) therefore he did not have the authority to issue a building permit. Mr. Sheehan stated that the By-law, which was written in 1967 when wind turbines were not even thought of, has a footnote to allow exemptions for certain structures. Note C of Section 173-20 of the By-law state that special industrial structures such as: cooling tower and other similar structures where the industrial process requires a greater height, provided that any such structure shall not occupy more than 15% of the lot area and shall not be less than 50 feet from any lot line. It is his determination that the conversion of wind into electricity is not an industrial process nor does a fifty foot setback seem reasonable for a wind turbine which could be between 200 and 400 feet in height.

Board Member William Corkum asked about the electricity generated from the wind turbines. Attorney Lane replied that any power produced by the turbine would be put back into the power grid system maintained by National Grid. He added that the town could enter into some sort of agreement with the Power Company and Mass Wind to save upwards of 20 percent in yearly electric bills.

Board Member Brett Simas stated that the By-law was created in 1967 when wind turbines were not even on the radar. He asked Mr. Lane if it was his opinion that had there been wind turbines at the time the By-law was written, would the exemptions have been written the same to accommodate a different setback for a potentially 500 ft. structure or does he feel that the By-law as written does not reflect this type of a structure in terms of protection for the town and its residents. Mr. Lane replied that he was not going to suggest that the town could not have thought about a more restrictive By-law. However the By-law did take into consideration cell towers and cooling towers which are large water bearing structures, both of which could cause damage if they were to topple over.

Mr. Simas then asked Mr. Lane if he was suggesting that the nature of a cooling tower and cell tower are the same as a wind turbine which has movement and sound. Mr. Lane replied that he is not suggesting that but stated that if cooling towers are allowed within 50 ft. of a lot line than why should other structures have to be further away from the lot line?

Mr. Hansson opened the discussion to the audience. He cautioned them that the Board is here this evening to determine if the Building Inspector was justified in denying a building permit for the wind turbines. It is up to the Board to determine if the Building Inspector based his denial on his interpretation of the By-law. He also stated that the Board would not be getting into the specifics of safety and health issues because that is not the issue before them.

ZONING BOARD OF APPEALS – MINUTES – OCTOBER 14, 2010

Tom Potenza, 12 Linkside Court, stated that he formerly lived in Framingham near the Edison Plant where there was a peaking station installed for peaking power. They would sell electricity to Connecticut, Rhode Island, and New York or whoever was on the grid when it was needed. That peaking station ran at their will potentially up to 24 hours a day 7 days a week. It was not controlled by the town or the state. He stated that he did not want to see that happen here.

Judy Uthoff, 128 Clubhouse Lane, expressed concerns that the Board didn't want to listen to the opinions of the abutters and asked when they would be allowed to be heard. Chairman Tom Hansson replied that it depends on how the vote goes this evening and whether or not the applicant will proceed any further should the appeal be denied.

Thomas Voltaro, Attorney for Global Signal Acquisitions, was present also. His client has a cell tower on a nearby parcel. (Map 25, Parcel 151). He stated that wind turbines were not even a consideration when By-laws were written in the 1950's, 1960's and the 1970's and asked that the Board uphold the decision of the Building Inspector.

Marilyn Macilvane, 109 Clubhouse Lane, expressed concerns of the distance of the proposed wind turbines from Upton Road. Her concern was for future expansion of the area.

John Martin, 22 Linkside Court, questioned the setback and asked if it was designed for a fixed or moving structure. A cell tower and a water tower are stationary but a wind turbine is not. Board Member Stephen Witkus replied that the By-law does not specify that one way or the other.

Mr. Martin also questioned if the health and safety of the residents in the area is taken into consideration in the issuing of a building permit. Mr. Sheehan replied that he can only enforce his regulations and the building codes and the other departments enforce theirs when a building permit is issued. Mr. Martin added that there is a difference between something that is safe to use and something that can affect the health and safety of the people who live nearby. The wind turbine may be inspected and deemed safe to use but how does it impact the people who live near it? It may be structurally built to code and built to perform in a certain way but in actuality it has other affects besides being safe to use.

Michael Shore, 27 Linkside Court, stated that the Building Inspector is employed by the Town to enforce codes and By-laws that are deemed appropriate by the Town. The situation at hand is that the Building Inspector has done his job utilizing the information that has been given to him by the laws of the Town of Northbridge and has come up with a specific determination that this proposal does not meet the current By-laws. It is now up the Zoning Board of Appeals to reaffirm that the Building Inspector has done his job. The By-law was written in 1967 and that is what is in existence today. The Board has to deal with what is in existence today and not the hypothetical. The Building Inspector has done his job and stated that it doesn't meet the criteria for the By-laws that are currently in place. Based on that, his decision should be affirmed by this Board.

ZONING BOARD OF APPEALS – MINUTES – OCTOBER 14, 2010

Charles McCauley 126 Clubhouse Lane stated that he supports the decision made by the Building Inspector and requested that the Board uphold that decision. He thanked the Building Inspector for doing his job and the Board for publicly notifying the residents of this project.

Board Member Sharron Ampagoomian re-read the public hearing notice reiterating the scope of the Board's job this evening. She stated that the Board is not trying to deny the residents an opportunity to speak. However, it is the Board's scope to focus on the issue at hand which is to either uphold the determination of the Building Inspector or not. Should there be future public hearings regarding this issue, the residents will then have an opportunity to voice their concerns.

A motion was made by Sharron Ampagoomian to close the public hearing and take the matter under advisement. Motion seconded by Brett Simas, the vote being 5-0 in favor.

Brett Simas stated for the record that many residents were present this evening and they all have a right to be heard. Even though this is not the forum in which to do that he wants to make it very clear to everyone that the reason they are not able to share all of their concerns is that the Board has a very simple decision to make this evening. They are here tonight to hear testimony on whether this is an industrial process and whether or not the Building Inspector was justified in making his decision to deny a building permit based on his interpretation of the By-law. If the applicant comes back before the Board for a Variance, the abutters will be notified and additional testimony will be taken at that time.

After some discussion, Board members unanimously agreed that the Building Inspector was justified in making his determination based on his interpretation of the By-law.

A motion was made by Sharron Ampagoomian to deny the appeal and uphold the determination of the Building Inspector. Motion seconded by Brett Simas the vote being 5-0 in favor of the motion.

Thomas Hansson will write the decision.

Reorganization of the Board (Chapter 4-204)

A motion was made by Carol Snow to nominate Tom Hansson as Chairman. The motion was seconded by William Corkum, the vote being unanimous.

A motion was made by Tom Hansson to nominate Carol Snow as Vice-Chairman. The motion was seconded by Sharron Ampagoomian the vote being unanimous.

A motion was made by Carol Snow to nominate Sharron Ampagoomian as Clerk. The motion was seconded by William Corkum, the vote being unanimous.

Notice will be filed with the Town Clerk.

ZONING BOARD OF APPEALS – MINUTES – OCTOBER 14, 2010

There being no further business the meeting was adjourned at 8:30 P.M.

Attested by,

Brenda M. Ouillette
Administrative Assistant.

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD
OF APPEALS (Approved on February 10, 2011)**