

Ulster County Planning Board



Dennis Doyle, Director

Mark Boncek, Chairman
Town of Denning ZBA
PO Box 277
Claryville, NY 12725

RECOMMENDATION

REFERRAL NO: 2013-182

DATE REVIEWED: 12/04/13

Re: Wind Turbine – Area Variance

Summary

This is a request for a height variance to allow for the construction of a 176' tall wind turbine facility for private/residential use located in the R-zoning district off Yeagerville Road. The proposed use is not listed as an allowed use with the Town's zoning regulations.

The following materials were received for review:

- Cover letter from Chase Wind dated 8/28/13
- Photograph of similar rural installation
- Application for building permit
- Request for site plan review
- Application for special use permit
- Short EAF
- Lead agency impact assessment
- Aerial site layout map
- Tax map
- Property reference map
- One-line diagram showing typical utility interconnection
- Endurance wind system pamphlet
- Turbine specifications
- Tower and foundation design plans
- Certificate of insurance
- Addendum for NYS Dept of Ag and Markets Law Issues
- Memo from Chase Wind dated 11/16/13
- List of neighbor properties
- Turbine petition
- Planning Board meeting minutes dated 9/12/13
- ZBA meeting minutes dated 9/30/13

Recommendations

The UCPB has the following concerns: Area vs. Use Variance, SEQR Review, and standards.

Area vs. Use Variance

The application has been presented to the local ZBA and to the County as an area variance for height. However, the proposed use is not a listed use on the Town's schedule of district use regulations. The zoning statute does contain clause 3.4.5, which states, "Any uses not specifically permitted shall be deemed to be prohibited." The Town ZBA, as a matter of process needs to determine whether they have in front of them a use variance or if they are treating this as a "customary accessory use." The Rural residential district does allow for "various accessory uses," but is silent as to allowing wind turbines as accessory. Some caution is needed as to determining that wind turbines are an accessory use, in that this would allow them in any district, and on any lot, regardless of size. In addition, the majority of other statutes that UCPB staff have reviewed do not treat wind turbines as accessory uses.

Required Modifications

The ZBA will need to determine whether to treat this as an area variance as submitted or as a use variance. Keys to this determination are the meaning of the clauses: "any uses not specifically permitted shall be deemed to be prohibited" and "various accessory use." Should the use be deemed permitted then the area variance would come into play. Should the ZBA determine that a use variance is necessary, the supporting documentation from the applicant will be needed for granting such a variance.

SEQR Review

Per NYCRR Part 617.4(b)(7) establishes as Type I *actions* "any structure exceeding 100 feet above original ground level in a locality that has no zoning regulation pertaining to height;" and goes on to note "this would include, but not be limited to, buildings, signs, towers, power generating windmills, and ski jumps" (emphasis added). And, while the Town has established zoning regulations for height it would seem appropriate to conduct a coordinated review, given the public controversy and potential impacts of the proposal. Please note that this assumes that the Planning Board has a role in the approval process, which it would not have should the ZBA rule that this is a customary accessory use. In looking at the need for additional material under SEQRA, specific attention should be paid to visual impacts. Photo-simulations would be as preferable as the balloon test that is restricted due to wind conditions. Rather than conduct a noise study the applicant should be asked to produce noise results for similar windmills at the distance of the structure from the property line and note any neighbor noise complaints from any of its installations.

Required Modification

If necessary, the ZBA and planning board should conduct a coordinated review of that proposal. In making its decision the ZBA should have photo-simulations of the facility from a point or points determined by the ZBA and have information on noise as noted above.

Zoning Amendments - Standards

The community should be proactive in permitting its residents to move to renewable energy sources that includes wind and solar. Applicants should not be left in regulatory limbo nor should the community put itself at risk for failure to address the need to allow for these uses. The Town of Denning zoning statute would benefit significantly from the inclusion of standards for siting wind turbines. Adjoining municipalities have done this (Neversink) and their experience should be seen as a guide.

Advisory Comment

The Town should seek to provide specific standards for wind turbines in its zoning statute. A hierarchal approach is preferred where wind turbines below a certain threshold are permitted by right; providing conditions such as height, distance from adjoining neighbors and overall visibility are met. Larger wind facilities would then be allowed only on very large parcels and only with the issuance of a special use permit. The Town of Neversink's existing zoning regulations and the NYS Department of Energy Research and Development Authority (NYSERDA) are both potential resources to the Town in the development of such standards. The Ulster County Planning Department's staff would be happy to assist in drafting such a statute or providing additional resources.

Reviewing Officer

Robert Leibowitz, AICP
Principal Planner