

**JOINT PLANNING BOARD AND ZONING BOARD OF APPEALS
CITY OF ONEIDA, MADISON COUNTY, NEW YORK**

In the Matter of the Application of

Oneida Wind 1, LLC (New Leaf Energy, Inc.)

Date: July 30, 2023

Re: Application for Area Variance for the Proposed Wind Turbine on Brewer Road

**STATEMENT OF INTENT
APPLICATION FOR
AREA VARIANCE**

I. Introduction

New Leaf Energy, Inc., on behalf of its affiliate Oneida Wind 1, LLC (the "Applicant") is seeking approval to construct a single wind turbine with associated features and infrastructure on an approximately 153-acre parcel located on Brewer Road in the City of Oneida, Madison County, also known as Madison County tax parcel number 46.-2-42.3 (the "Property"). The Property is located in the City of Oneida's Agricultural ("A") zoning district, which permits the use of "wind energy conversion systems" subject to the issuance of a conditional use permit. The turbine model anticipated for the Project has a height of 560 feet, measured from the ground to the top of the blade in the vertical position. Permanent features for the Project include a wind turbine, turbine foundation, gravel pad around the foundation, crane pad, gravel access road off Forest Avenue, overhead and underground utility lines, a utility communication tower, and utility poles. Temporary features needed during construction include a construction staging area, stockpile, blade lay down area and truck route around the turbine. The staging area and truck route will be constructed of gravel, but following the turbine installation, the stone will be removed and the area de-compacted and restored with topsoil and seeding. The remaining areas will remain pervious but will require de-compaction and reseeding following turbine construction.

The City of Oneida's (the "City") Zoning Code (the "Zoning Code") states that the maximum height of any "wind energy conversion system" shall be 450 feet. Zoning Code § 190-26.2 (E)(2)(b). However, the height of the wind turbine anticipated for the Project will be 560 feet. Thus, the Applicant is seeking an area variance from the 450-foot maximum height requirement from the City Zoning Board of Appeals (the "ZBA"). The Project will comply with all other Zoning Code regulations.

II. Standard for Area Variance

Pursuant to General City Law § 81-B (4)(b): "the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant." With respect to an area variance, the ZBA shall consider the following five factors:

- (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;
- (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;
 - (3) Whether the requested area variance is substantial;
 - (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (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. *Id.*

The ZBA must balance the factors, and no one factor is dispositive. For the reasons below, the Applicant respectfully requests that the ZBA grant the requested height area variance.

III. The Project meets the requirements for an area variance.

A. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

The requested area variance will not cause an undesirable change to the essential character of the neighborhood because an allowable use is proposed. The Project is located in the City's A zoning district, where wind energy facilities are permitted uses, subject to the issuance of a conditional use permit. The fact that the City Common Council designated wind energy facilities as a permitted use in the A district is a legislative finding that the Project is appropriate and thus consistent and in harmony with the community plan. *See North Shore Steak House, Inc. v. Bd. of Appeals of Inc. Vill. of Thomaston*, 30 N.Y.2d 238, 243 (1972) ("The inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood."). Zoning Code Section 190-26.2(A) states that "[t]he City adopts this section to promote the effective and efficient use of the City's wind energy resource through wind energy conversion systems..." Construction of the Project furthers the Town's intention to promote sources of renewable energy.

The installation of a turbine measuring 560-feet instead of 450-feet will not result in a change of character of the neighborhood, nor will it create a detriment to nearby properties. There will be no significant impacts from the Project (e.g., noise, reduction in property values, etc.) on surrounding properties that would result from granting the area variance. The Property currently contains open fields and is surrounded by a mix of agricultural and residential land uses. The change in turbine height will not alter the size of the Project or the area coverage. The taller tower will still meet required property line setbacks and noise regulations as required by the Zoning Code.¹ In addition, the taller tower will not change the size or location of the gravel access road associated with the Project. Also, the Project is situated adjacent to high voltage power transmission lines, and thus the Applicant's proposed plan is not out of character with the

¹ There have been significant advances in wind blade technology, "including greater size and more height (which means the turbine can tap higher wind speeds), with less noise," Kevin Hand, *How New Wind Turbines Produce Far More Energy*, Wall Street Journal, May 16, 2021, available at <https://www.wsj.com/articles/wind-turbine-renewable-energy-11620848318>.

area's existing scheme of development.

As such, granting the requested variance will not create an undesirable change or negative impact in the community or neighboring properties.

B. The benefit sought by the applicant cannot be achieved by another feasible method, other than an area variance.

There is no feasible way for the Applicant to comply with the Zoning Code's maximum height requirement for wind energy conversion systems, as wind turbines measuring 450 feet or less in height are no longer available in today's market. Furthermore, for the Applicant to achieve comparable power output from legacy 450-foot turbine technology would require the construction of more than one turbine on the Property. The Applicant has explored this option, but the construction of multiple turbines on the Property would not comply with Zoning Code required spacing and setback requirements. In addition, constructing multiple turbines on the Property is also not feasible because multiple turbines would exceed applicable sound requirements due to shorter and faster blades. An alternative that does not allow the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance. See *Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep't 1998) (granting an area variance where the board's determination that the applicant had alternative means of achieving the benefit was "clearly erroneous," because the applicant's objective was to face the proposed patio toward the water, not merely to build a patio). There are no other alternatives or redesign options that will achieve the Applicant's goal of constructing a wind turbine -- a permitted use -- since manufacturers have moved to higher, more efficient and powerful turbines to increase energy production. The benefit of a renewable energy source such as a wind turbine which will provide energy to the local electrical grid, cannot be achieved by other feasible alternatives.

Additionally, granting the Applicant's request for a 560-foot tower is the minimum variance necessary as this is the minimum height of turbine towers on the market today. Thus, the Applicant must receive the requested variance in order to construct the Project.

C. The area variance is not substantial.

The increase in turbine height is not substantial given the size of the Property, the nature of the surrounding area (largely vacant land) and the lack of negative impacts on the character of the neighborhood and surrounding properties. Given that the Zoning Code already permits wind turbines as tall as 450 feet, a 560-foot wind turbine will not appear substantially different to the surrounding area. Even if the ZBA considers the 110-foot difference to be substantial, the ZBA must consider all area variance criteria in determining whether the variance sought is, in actuality, a substantial one. This is a fact-based determination. See *Wambold v. Vill. of Southampton Zoning Bd. of Appeals*, 140 A.D.3d 891 (2d Dep't 2016) (where the court upheld the Zoning Board of Appeal's grant of the area variance even though it was substantial since the court found no evidence that the variance would have a detrimental effect on the character of the neighborhood, or physical and environmental conditions, nor would the variance impose a detriment to the health, safety, or welfare of the community). Nevertheless, this determination is not a purely mathematical calculation, but should consider the unique facts and circumstances in totality, including whether the variance sought will have a negative impact on the community.⁴

This difference in turbine height will be insignificant and will not cause negative impacts to the community. The visual appearance with the change in height will be minimal and the Project complies with all other applicable local laws. Even if the requested area variance is substantial, given the complete lack of significant negative impact on the surrounding properties or on the overall character or condition of the community, the requested area variance should be granted.

D. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the community.

The granting of the area variance will not have a significant undesirable effect or impact on the physical conditions in the neighborhood or district because, as explained above, it would not change the allowable use or increase the impact from the allowable use. The Project will not adversely affect or impact the physical conditions of the neighborhood or district, and the visual impacts of this difference in height are negligible. Further, the Project does not pose any significant environmental impacts to the community, and instead, presents opportunities for positive impact as a safe, quiet, clean generator of electricity. The immediate area consists of agricultural, rural residential, and undeveloped, wooded land. Adding a wind turbine to the makeup of this neighborhood will not present a significant impact on residential properties.

Additionally, the advancement of turbine technology results in a decrease in noise production from wind turbines at increased heights. A sound study conducted on increased tower heights prepared by Epsilon Inc. (previously submitted to the City by the Applicant) concluded that a tower measuring 560 feet in height will not exceed the 45 decibel requirement as provided in the Zoning Code. See Zoning Code § 190.26E (2)(h)(4).

An increase in tower height will not pose a negative environmental impact to the community. Any impacts to the Project area will remain the same whether a wind turbine is 450 feet tall, or 560 feet tall. Additionally, the area of the base of the tower will not change, therefore, the Project will not increase in lot coverage.

Thus, the requested variance will not negatively impact the physical or environmental conditions in the neighborhood.

E. The Applicant did not create the hardship.

The requested variance is not self-created because it is driven by the advance in technology in wind turbines and the increased efficiency of longer blades. The Applicant does not have control over the change in technology or the market availability of wind turbines, and as discussed above, the Applicant explored alternative options to meet the Zoning Code height requirements. In effect, a denial of the requested variance will not allow the Project to be constructed. It is also respectfully submitted that even if the requested variance is viewed as self-created, this is not a dispositive factor and the self-created nature of the variance must generally be considered through the lens of the impact the variance will have if it is granted, which, as noted above, is minimal.

Conclusion

It is respectfully submitted that the benefit of the proposed variance to the Applicant outweighs any detriment to the neighborhood and community. When evaluating the five factors, the requested area variance should be granted. Finally, the ZBA, "in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community," pursuant to General City Law § 81 (b)(4)(c). In conclusion, the requested variance is the minimum variance necessary to construct the Project.

Please do not hesitate to contact me if there are any questions or concerns.

Respectfully submitted,

By:  _____

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