

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on March 21, 2013 at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

Blake Haley –Chairperson
Agnes Harvin – Vice Chairperson
Ruth Brummitt
Thomas Shaw
Rev. Roosevelt Alston

MEMBERS ABSENT

Phyllis Stainback
Alvin Johnson, Jr.

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney

ALTERNATES PRESENT

Ruxtin Bobbitt – Alternate #1 – replaced
Phyllis Stainback

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Chairperson Haley introduced the first case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing open.

BOA CASE NO. 20130321-1; Carolyn P. Adcock (owner), BearPond Solar Center, LLC (applicants) – Conditional Use Permit to allow Solar Farm

Chairperson Haley asked Mr. McMillen to present the staff report. Mr. McMillen presented the staff report:

The applicant is requesting a conditional use permit to allow construction of a 4.99 MW solar farm on land to be leased. Mr. McMillen reviewed the draft findings of fact as follows:

- 1. The request is for a conditional use permit to allow a 4.99 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. Carolyn P. Adcock is the property owner. The property is to be leased by BearPond Solar Center, LLC.
3. The property is located directly behind 1589 Bearpond Road; more specifically identified as tax parcel 0546 04021.
4. The property consists of 100 acres of which 40 acres will be the project area with the solar array footprint of 29 acres. The property includes an existing single family dwelling.
5. The lot is currently zoned (A-R) Agricultural Residential.
6. The application requesting a conditional use permit was filed on 02/15/2013.
7. The adjoining property owners were notified on March 1, and March 4, 2013.
8. The property was posted on March 1, 2013.
9. The legal notice was run on March 12, and March 19, 2013.

Staff Comments

The applicant is requesting a conditional use permit to construct a 4.99MW solar farm. As proposed, the solar farm project area would be leased from the current property owner would cover approximately 40 acres. It is proposed to be enclosed by a 6 ft. fence with exterior security lighting located at least every 10 ft. along the perimeter. (Ordinance requires 8 ft. fencing). The solar panels will have no moving parts and will have a relatively low profile with a maximum height of 8 feet (ordinance requires less than 25 ft). The project area will be a minimum of 300 ft. from any dwelling unit, will have a minimum 30 ft. buffer on the side and rear of the property and will have a 100 ft. minimum buffer surrounding an existing pond on the property. (Ordinance requires 35 ft. rear setback). Due to the setback location, the solar farm should have minimal visual impacts.

As per the zoning ordinance, screening shall be provided on all sides that front residential uses. For the most part, existing vegetated buffers surround the area, and the property is surrounded by similar A-R zoning. There may be the need to include additional buffers in the southwestern corner of the project area

to separate it from the residences located on the same property to the south. Due to this being on the same property, input from the property owner may be necessary to make this determination. Any screening required shall be a compact evergreen hedge or other type of evergreen foliage reaching a height of at least (8) feet within 3 years. Overall, this development appears to have little impact on surrounding areas due to the large distance between the project area and existing dwellings.

In terms of location, the property is surrounded by A-R zoning on all sides with 1 residentially zoned parcel in the southeastern corner of the property. It appears that existing buffers are in place surrounding the residentially zoned parcel to the southwest.

Mr. McMillen mentioned that the use is an eligible conditional use and with a few changes to the rear setback, it appears that the development would meet the ordinance requirements.

Ms. Harvin questioned the reasoning for overhead poles being that the ordinance requires underground electrical lines. Mr. McMillen responded that the overhead poles would be installed by the utility company outside of the footprint of the project area and would be prior to the connection point between the public utility and the solar farm. He mentioned that this may be an appropriate question for the applicant as well.

### **THOSE SPEAKING FOR THE REQUEST**

*Mr. Andrew Foukal* (Director of Operations for HelioSage – Sole Member of Bear Pond Road, LLC) presented background and experience on HelioSage as the company overseeing the project. He reviewed the detailed process that is followed for site identification prior to approaching property owners. He explained that they are planning to lease up to 50 acres from the current property owner on a portion of the property that is not visible from the public right-of-way. He explained that there would be a 300 foot separation from an existing dwelling on the property and a separation of 800 feet to the nearest dwelling on an adjoining property.

He further explained that NC DENR does not consider the solar array surface as an impervious surface and therefore the amount of impervious surface is limited to an equipment pad and roads within the site. He mentioned that an 8 foot fence is possible and will be made as a change to the current plan which calls for a 6 foot security fence.

In answering Ms. Harvin's previous question regarding underground utilities, Mr. Foukal confirmed that Progress Energy would have two overhead poles installed and owned by the utility. He mentioned that due to that fact that the poles would be before the connection point to the solar farm, it does not appear that there would be any issues relating to the ordinance provision for underground utilities beyond the utility connection. Mr. Foukal also confirmed that a 35 ft. buffer would be acceptable on the rear of the property as a condition.

Mr. Foukal reviewed the conditional use permit requirements – He explained from the safety standpoint, the solar farm would be surrounded by a security fence, and that it will follow national and state electrical code requirements. In terms of any health issues, the solar farm will produce energy that will be compatible to the voltage that is currently run along existing roadways. In terms of maintaining surrounding property values, Mr. Foukal explained that no evidence exists to suggest that solar farms will affect property values either negatively or positively while providing additional clean energy. In terms of being in harmony with the general area, Mr. Foukal reiterated that there will be no aesthetic or acoustic impacts and that a good portion of the vegetated buffer is existing.

Mr. Care questioned whether an interconnection agreement is completed. Mr. Foukal requested this to be added as a condition as they are waiting on Board of Adjustment approval prior to fully executing the interconnection agreement.

Mr. Haley questioned whether a DOT driveway permit had been obtained. Mr. Foukal responded that this process has started, but could be added as a condition to be completed in short order following board of adjustment approval. Mr. Haley questioned the number of dwellings that could be offset by the energy produced at the solar farm. Mr. Foukal responded that this project is a 5 MWac project which should produce approximately 9 million KWh per year which could offset approximately 1,000 homes.

Mr. Shaw questioned maintenance of the site. Mr. Foukal responded that an operations and maintenance contract would be created to handle weeds and vegetative growths while an electrical contractor will be contracted with to maintain the system. In addition the system will be monitored remotely.

**THOSE SPEAKING AGAINST THE REQUEST**

None present

*Chairperson Haley declared the public hearing closed.*

**BOARD DISCUSSION**

The Board reviewed the conditional use permit check sheet as follows (Chair Haley verbally read each for the board to review):

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.
2. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health or safety.
3. The use or development complies with all required regulations of the Zoning Ordinance and all applicable specific conditions and specifications.
4. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of adjoining or abutting property, or that the use is a public necessity;
5. The use or development will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the County.

**DECISION:**

Mr. Bobbitt made a motion to grant the conditional use permit subject to the following conditions: (1) the inclusion of a 35 ft. rear setback (2) submittal of executed interconnection agreement (3) revision of fence height to 8 ft. (4) Submittal of NC DOT driveway permit. Included in this is the approval of the findings of facts as presented. Ms. Harvin seconded said motion and all present were in favor. VOTES: 6-0.

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Chair Haley introduced the second case and declared the public hearing open.

**BOA CASE NO. 20130321-2; Abdo Saleh, Inc. (owner), Abdo Saleh (applicant) – Conditional Use Permit to allow a used auto sales business**

Chair Haley asked Mr. McMillen to present the staff report. Mr. McMillen presented the staff report as follows: The applicant is requesting a conditional use permit to allow a used auto sales business. A used vehicle sales use is listed as needing a conditional use permit within the A-R zoning. Mr. McMillen reviewed the draft findings of fact as follows:

1. The request is for a conditional use permit to allow a used auto sales business on a parcel zoned (A-R) Agricultural Residential.
2. Abdo Saleh, Inc. is the property owner.
3. The property is located along Warrenton Road; more specifically identified as Lot 5 coming out of parcel 0525-02006. The new parcel number is yet to be assigned by the tax office.
4. The property consists of 1.125 acres, is located directly adjacent to an existing convenience store and is currently vacant. The lot has been used as a residential lot with a mobile home present in the past.
5. The lot is currently zoned (A-R) Agricultural Residential.
6. As per the table of permitted uses, used vehicle sales are permitted within the A-R zoning with issuance of a conditional use permit by the Board of Adjustment.
7. The application requesting a conditional use permit was filed on 02/20/2013.

8. The adjoining property owners were notified on March 4, 2013.
9. The property was posted on March 1, 2013.
10. The legal notice was run on March 12, and March 19, 2013.

#### Staff Comments

The staff presented the following comments: The applicant is requesting a conditional use permit to allow a used auto sales business. The use of the property on the A-R zoning is listed as eligible for a conditional use and subject to Board of Adjustment consideration. The proposal would involve constructing a 20'x16' (320 sq. ft.) office as well as an area for the vehicles to be parked. The Department of Transportation has approved a driveway permit for the prospective business requiring a concrete drive with adequate turning radius to extend 25 ft. into the property from the edge of pavement (See site plan).

While the business would be located on land zoned A-R, it is located near a crossroads that currently does include other commercial uses in the form of 2 convenience stores. With a defined entrance and exit, the traffic safety concern could be minimized. Also in regard to safety, it would be advisable that lighting be included that specifically directs light away from adjacent property and roadways and only onto the site. Because of the surrounding agricultural land to the rear and residential use to the side, it would be necessary to include screening and buffer. As per the zoning ordinance this should be of the evergreen variety reaching a height of 8 feet within 3 years. A fence and plantings or landscaping combination could suffice as long as it separates the business use from the residential uses while enhancing the value of surrounding properties. Thus far no proposals have been given for signage, but this is something that may need to be explored with the applicant. If any signage is included, it would need to be approved and permitted separately. It appears that the use would meet the setback requirements of 50ft. on the front, 25 ft. on the side, and 35 ft. on the rear. This would include the area where the cars are parked and may require additional detail on the site plan to determine a specific area for the vehicles. The applicant has been made aware that this business would simply be sales and no repairs or uses that could have greater environmental impacts. Mr. McMillen added that the ordinance would require 1 parking space per 15 vehicles present for a used auto sales business.

Mr. Bobbitt questioned whether there would be an issue with approving a project without a detailed site plan. Mr. McMillen responded that conditionally approved items can be verified at the staff level, but if there are several items missing it would be at the board's discretion as to when they would require additional detail or turn down a proposal.

Ms. Harvin questioned when the sign detail would be necessary. Mr. McMillen responded that a stand-alone sign permit would not require a conditional use permit, but when a part of a larger development proposal, it would be necessary to have that information at this stage of the process.

Mr. Care questioned whether the actual owner of property (a representative of Abdo Saleh, Inc.) had signed the application and mentioned that this would be necessary.

Ms. Harvin questioned whether the proposal exceeds the impervious surface coverage requirements. Mr. McMillen mentioned that details have not been provided for the ground material where the vehicles for sale would be located and that the site plan does not include any of that information. Ms. Harvin questioned as to why the conditional use permit application included the words rezoning. Mr. McMillen responded that his understanding was that a rezoning was not being requested as that would not be handled by the Board of Adjustment. It appears to be an error made by the applicant on the application.

#### **THOSE SPEAKING FOR THE REQUEST**

*Abdo*, (unsure of full name - representing for Abdo Saleh, Inc) presented a revised site plan for the development. He explained that a mobile home was on the property previously and that a driveway permit had been obtained from NCDOT for the used auto sales business.

He mentioned that he does not anticipate any environmental issues and that as proposed it will look nicer than it does currently increasing values of the surrounding properties. He mentioned that gravel would be used for where the vehicles would be located. He further mentioned that a maximum of 30 cars would be present at any one time.

Ms. Harvin questioned whether any lighting would be present. He responded that lighting would be present on the property. Ms. Harvin questioned whether there was any information to present to the board on lighting. In response it was mentioned that 1 light pole would be in the front of the property with 1 light pole being located in the rear of the property.

Ms. Brummitt questioned whether a septic tank was necessary. Abdo responded that an existing septic tank is present. Mr. Haley questioned whether the property was to include a fence. Abdo responded that a fence would be put up to separate the property from the commercial property next door. The board also pointed out that proper signatures from the Abdo Saleh corporation would be necessary on the application.

The board confirmed with the applicant that the intent of the application was to obtain a conditional use permit and not to receive a rezoning.

#### **THOSE SPEAKING AGAINST THE REQUEST**

*Jimmie Jeffries*, (wife owns adjacent property) addressed the board. Mr. Jeffries stated that the property conditions have gone downhill since its purchase in 2009. In addition, he mentioned that an exposed septic system is present on the property following the removal of the previous mobile home. Mr. Jeffries presented several photos to the board showing the blighted condition of the property. Additionally, he mentioned the area is very dangerous in terms of traffic with the two roads coming together in close proximity to the proposed development. He explained that the overall condition of the property has lowered property values in the area and requested the proposal to be denied.

*Dean Overton*, neighboring property owner, addressed the board. He mentioned that additional commercial development has the potential to create further environmental problems beyond having 2 service/gas stations in the area.

*Laverne Jeffries*, neighboring property owner, addressed the board. She mentioned the overall blighted condition of the property and the potential for the auto sales business to be similar in nature.

*Francis Ellington*, neighboring property owner, addressed the board. She commented on the existing trash present on the property and the need for cleaning the area up. She further mentioned the potential for the auto business to be managed in a similar nature to the surrounding lots owned by the same property owner.

*Margaret Ellington*, neighboring property owner, addressed the board. She mentioned that several individuals walk up and down the road currently and more commercial development has the potential to increase this as well as increase the general safety issues in the area

*Archie Taylor*, District 2 Commissioner and property owner within the area, addressed the board. He mentioned that the evidence provided by the applicant does not fully meet the burden of proof for issuance of a conditional use permit. Mr. Taylor reviewed concerns he has with the proposed use meeting the requirement of being in harmony with the surrounding area. He explained that the agricultural character of the existing zoning is not compatible with the commercial nature of the proposal. He further mentioned that the proposal as outlined by the applicant has not been shown to maintain or enhance the value of adjoining or abutting property. He further mentioned that drug use and crime activity is relatively high within the area and additional development of this nature has the potential to add to that. He reiterated that the applicant has not fully complied with the requirements for obtaining a conditional use permit.

*Jimmie Jeffries, Jr.* addressed the board. He mentioned that if the applicant is having trouble with break-ins currently, the collection of used auto sales may bring the potential for more crime to the area. He further mentioned that it appears there are several issues in need of being clarified before approval should be given.

**REBUTTAL**

*Abdo*, responded that high crime has caused break-ins within an existing storage building on site. For this reason and not because of neglect of the property, the building doors are left open to reduce theft. He mentioned that a quality auto business will help reduce some of the crime and drug activity in the area.

*Chairperson Brummitt* declared the public hearing closed.

**BOARD DISCUSSION**

Ms. Harvin mentioned several items that are inadequate including: lack of details on the site plan, lack of proper signatures on the application, presence of a new site plan submitted on the day of the hearing, and others. Ms. Brummitt questioned whether another ordinance was in place in the county that may be able to address some of the trash issues currently on site. Mr. Bobbitt mentioned that much of the testimony presented by the opponents are issues that may not be able to be addressed by the Board of Adjustment.

**DECISION:**

Mr. Bobbitt made a motion to deny the application based upon the lack of proper information and evidence submitted and to allow the applicant to resubmit at a later time subject to having the proper information and evidence. Ms. Harvin seconded said motion and all present were in favor. VOTES: 6-0.  
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**ADJOURNMENT:** There being no further business, Chair Haley declared the meeting adjourned.