

**VANCE COUNTY BOARD OF ADJUSTMENTS**

The Vance County Board of Adjustments met at a regular and duly advertised meeting on May 8, 2014 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

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

MEMBERS ABSENT

Alvin Johnson, Jr. – Vice Chairperson

STAFF PRESENT

Jordan McMillen, Planning Director  
Jonathan Care, County Attorney

ALTERNATES PRESENT

Ruxton Bobbitt – Alternate #1 –  
Replaced Blake Haley

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the April 10, 2014 meeting. Ms. Harvin made a motion to approve the minutes with corrections noted by Ms. Stainback. Ms. Brummitt seconded said motion and all present were in favor. VOTES: 7-0.

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Chairperson Shaw 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 for the following case:

***BOA CASE NO. 20140508-1; Secret Sand, LLC (property owner), Secret Sand, LLC (applicant) – Variance side setback from 20 feet to 10 feet along northwest property boundary.***

Chairperson Shaw swore in Mr. McMillen and Mr. Mike Satterwhite (Attorney representing applicant), Mr. Scott Dennis (Associate with Stainback, Satterwhite, and Zollicoffer, PLLC), Mr. Allen Boyd (member manager for Secret Sands, LLC – applicant and property owner), and Mr. Brian Paynter (General Contractor – Cornerstone General Contracting). Chair Shaw then asked Mr. McMillen to present the staff report. Mr. McMillen presented the staff report and reviewed the DRAFT findings of facts as follows:

**Description of Variance Request:**

The applicant is requesting a variance from the minimum setback (section 3.2.3) requirement to reduce the side setback from 20 feet to 10 feet. The variance will allow construction of a planned dwelling and attached garage that will replace the existing structure.

**DRAFT Findings of Fact**

1. The property is owned by Secret Sand, LLC.
2. The request is for a variance from section 3.2.3 of the zoning ordinance to allow a reduction of the side setback from 20 to 10 feet.
3. According to Plat Book Y- 342 the lot consists of 1.303 acres.
4. The lot currently consists of a dwelling which will be removed and replaced with a larger dwelling.
5. The property is located at 325 Pine Trail and is identified as tax parcel 0361C04001.
6. The lot is currently zoned R-30 (Residential Low Density).
7. The application requesting the variance was filed on April 11, 2014.
8. The adjoining property owners were notified on April 25, 2014.
9. The property was posted on April 25, 2014.
10. The legal notice was run on April 23, and April 30, 2014.

**Staff Comments**

The applicant is proposing to replace an existing dwelling built in the 1950s with a larger single family

dwelling that would include a basement and an attached garage. The property abuts the U.S. Corp of Engineers land surrounding Kerr Lake and is situated in a neighborhood where the homes are built on the side of the property closest to the lake. As a result of this, the proposed dwelling appears consistent with the character and placement of homes within the neighborhood.

Additionally, it is apparent that the shape of the lot is a large determinant in the need for the variance. This particular lot is shaped as a flag lot with the skinnier building area portion (roughly 111 feet across) on the lake side. Also, due to the topography, it appears that suitable sites for a primary and repair septic fields are located on the road side of the property away from the lake.

In considering this request, it is important to note that the NC general statutes have changed slightly regarding the criteria for granting a variance. Mr. McMillen pointed to the last page of the agenda packet for the revised criteria.

Mr. Bobbitt questioned the distance from the neighboring home (Caudle property) to the newly proposed structure. In reviewing the site plan the board determined that this appeared to be at least 25 feet of separation.

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

*Mr. Mike Satterwhite* (Stainback, Satterwhite & Zollicoffer, PLLC - Attorney representing applicant) addressed the board and introduced those that were present including the applicant/owner, general contractor and a new associate with his law firm. He explained that Mr. Boyd is a member manager for Secret Sands, LLC and has signed the application on behalf of the LLC. He clarified that his understanding is that the application and all attachments are already a part of the record.

He mentioned that the property is located at 325 Pine Trail and was acquired by Secret Sands, LLC on October 4, 2013 as reflected in Deed Book 1269 Page 476. A survey of the property is reflected on Plat Book Y-342. He pointed out that the cottage that was present on the property has already been removed and therefore the property is currently vacant. He also mentioned that the existing well as shown on the plat will need to be abandoned with a new well to be constructed on the property.

Mr. Satterwhite summarized the request asking for a reduction in the side setback from 20 feet to 10 feet on the northwest side of the property. He mentioned that affidavits from the surrounding property owners were included in the application submittal for consideration. He further mentioned that the general statutes changed on October 1, 2013 which made changes to the standards for granting variances. He then reviewed the revised standards and provided arguments as follows: (1) He pointed out that an unnecessary hardship would be created if the variance was not granted. Specifically due to the varying elevations and gullies on the property, there are limited locations for the proposed home to be located. Further an existing driveway on the right (or eastern) side of the property negates the ability to shift the home further to the east and away from the property line in question. As such it is felt that an unnecessary hardship would be created if the variance were not granted. (2) He pointed out that the topography as well as the flag shape of the lot supports the idea that the hardship is a result of conditions peculiar to the property. (3) He pointed out that the hardship was not self-created when the property was purchased (4) He referred to the included affidavits from neighbors to support the idea that the request appears consistent with the spirit, purpose, and intent of the ordinance. He reasoned further that the variance will allow the development to be consistent with surrounding property and if it were not granted the home location would be different from the surrounding properties and therefore would not be consistent with the character of the area.

Mr. Bobbitt questioned the future pool location relative to the Caudle home next door. He questioned the approximate distance between the two. Mr. Paynter (Contractor) responded that this would be approximately 30 feet of separation between the future pool and the neighboring home. Mr. Bobbitt also questioned whether the 10 foot setback is needed for the entire length of the proposed dwelling or just for

the fireplace area. Mr. Paynter responded that the fireplace extends approximately 2 feet out from the home and that would be the point at which the setback would be 10 feet.

**THOSE SPEAKING AGAINST THE REQUEST**

None present

**BOARD DISCUSSION**

The Board reviewed the variance check sheet as follows (Chair Shaw verbally read each for the board to review): A variance may be granted by the Board if evidence that is presented by the applicant persuades the Board to reach the following conclusions:

1. The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**DECISION:**

Ms. Brummitt made a motion to approve the variance request, to include the staff comments within the minutes and to finalize the findings of facts as presented.

Ms. Stainback seconded said motion and all present were in favor. VOTES: 7-0.

*Chairperson Shaw declared the public hearing closed.*

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Chairperson Shaw introduced the second case explaining the order of business, gave an opportunity for board members to express any conflicts. Mr. Jonathan Care (County Attorney) informed the board that he is not involved in this project, but has represented the property owner (Mr. Claude Jackson) on previous real estate dealings. The board took no issue with this. Mr. Shaw declared the public hearing open for the following case:

***BOA CASE NO. 20140508-2; Claude T. Jackson (property owner), ESA Henderson NC, LLC (applicant) – Conditional Use Permit to allow a solar farm.***

Chairperson Shaw swore in Mr. McMillen and Mr. Craig Livingston (Senior Project Developer for ESA Renewables, LLC). Chair Shaw then asked Mr. McMillen to present the staff report. Mr. McMillen presented the staff report and reviewed the DRAFT findings of facts as follows:

**Description of Variance Request:**

The applicant is requesting a conditional use permit to allow construction of a 10 MW solar farm under the use category of “Solar Energy System, Large Scale”.

Mr. McMillen began reviewing the staff comments and made the board aware that there were several initial concerns that would require additional detailed information to be provided. He summarized the concerns as follows:

1. The application mentions a 6 foot fence but the site plan mentions an 8 foot fence.
2. The existing site plan does not appear to account for an existing recognized stream and pond on the property and it does not show the accurate property boundaries.
3. Setbacks are shown as 30 feet, but must be as follows in Light industrial zoning district (front – 75 feet, side – 25 feet, and rear – 75 feet).
4. No details are provided for landscaping or how buffer and groundcover will be accomplished or

maintained.

5. A driveway permit will need submitted prior to any final zoning approval.
6. Additional details need provided on land to be cleared and evidence of NCDENR involvement needs to be provided. Staff would recommend requiring a NCDENR certificate of completion prior to issuance of the local certificate of occupancy.
7. The interconnection agreement will need to be submitted (or evidence that it has been executed).
8. The interconnection point will need to be shown on the site plan and information needs provided to confirm compliance with ordinance regarding underground utilities.

Mr. Care asked Mr. McMillen how situations have been handled in the past where a significant amount of outstanding issues/deliverables are present. Mr. McMillen responded that putting off the decision would be an option to allow additional information to be submitted. Mr. Care and Mr. Haley also recommended that future site plans should not be labeled as a conceptual drawing, but rather a finalized site plan.

**THOSE SPEAKING FOR THE REQUEST**

Mr. Craig Livingston (Senior Project Manager) addressed the board and briefly reviewed the proposal stating that the request was for a 10 MW solar farm that would involve leasing land from Mr. Claude Jackson. He requested that the board allow the project to proceed forward with certain conditions. He further stated that the existing vegetation should allow for adequate buffers around the site and stated that a sophisticated environmental analysis and engineering will need to take place that will involve expending significant funds on the front end. Because of this expense, he requested a concurrence from the board that would allow this to begin.

Mr. Care (County Attorney) responded that the board would not be in a position to provide a general consensus, but is only in position to grant or deny an application after sufficient information is provided to do so. Mr. Livingston questioned whether the application could be withdrawn to prevent a negative vote. Mr. Care asked Mr. Livingston if he would be amenable to a continuance that would allow time for the additional information to be provided.

**DECISION:**

Mr. Bobbitt made a motion to table the matter until the applicant is ready to present the full application request.

Ms. Stainback seconded said motion and all present were in favor. VOTES: 7-0.

*Chairperson Shaw continued the public hearing closed.*

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**ADJOURNMENT:** There being no further business, Chair Shaw declared the meeting adjourned.