

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on August 14, 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
Blake Haley

ALTERNATES PRESENT

Ruxton Bobbitt – Alternate #1 –
Replaced Ruth Brummitt

MEMBERS ABSENT

Ruth Brummitt
Alvin Johnson, Jr. – Vice Chairperson
Rev. Roosevelt Alston

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney
David Robinson, Planner

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the May 8, 2014 meeting. Ms. Harvin made a motion to approve the minutes with one correction. Mr. Bobbitt seconded said motion and all present were in favor. VOTES: 5-0.

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. 20140508-2; Claude T. Jackson (property owner), ESA Henderson NC, LLC (applicant) – request for Conditional Use Permit to allow a solar farm.

Chairperson Shaw stated that all witnesses were sworn in during the tabled May 8, 2014 meeting. Witnesses sworn in include Mr. McMillen and Mr. Craig Livingston (Senior Project Developer for ESA Renewables, LLC). Chairperson 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 Conditional Use Permit 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”.

DRAFT Findings of Fact

1. The request is for a conditional use permit to allow a 10 MW solar farm on a parcel zoned (L-I) Light Industrial.
2. Claude T. Jackson is the property owner. The property is to be leased by ESA Henderson NC, LLC.
3. The property is located directly behind 325 Bearpond Road, but access will be from Facet Road; Property more specifically identified as tax parcel 0224 02021.
4. The property consists of 68 +/- acres of which 35.7 acres will be the array footprint area with 35.3 acres as open space. The property currently is wooded with no structures.
5. The lot is currently zoned (LI) Light Industrial.
6. The application requesting a conditional use permit was filed on February 28, 2014.
7. The adjoining property owners were notified on April 25, 2014
8. The property was posted on April 25, 2014.
9. The legal notice was run on April 23, and April 30, 2014.
10. The Board of Adjustment opened the hearing and heard testimony from staff and the senior project manager at the May 8, 2014 meeting. Upon reviewing the submitted application, the board tabled the matter to allow additional information to be submitted in accordance with the concerns noted.

Staff Comments

The request for a Conditional Use Permit is for a 10 MW solar farm. Mr. McMillen reviewed the draft Findings of Facts with the board. Mr. McMillen stated the many of the items that the staff had issues with previously have been addressed and staff have had the opportunity to review newly submitted materials. Mr. McMillen explained that the plans now call for a fence height of 8 feet and a buffer of trees will be in place around all four sides of the site instead of hedges. No details have been submitted regarding lighting of the project area, but the ordinance does not require lighting. Additionally, there is nothing that addresses groundcover and groundcover maintenance. Mr. McMillen suggested that it may be important to be aware of the long-term maintenance of the groundcover.

Mr. McMillen pointed out that there are other solar farms in the vicinity, with the closest one being 0.5 miles away on Martin Creek Road in the City of Henderson's ETJ. Another solar farm is located 0.85 miles on Bearpond Road. Neither the county's ordinance nor the state's model ordinance requires any separation between solar farms.

The solar panels will not incorporate any moving parts and the maximum height will be 8 feet. The closest structure to the solar farm would be 300 feet, which is the Bearpond Fire Department building.

Mr. McMillen discussed the initial concerns from the tabled May 8, 2014 meeting item by item with the Board. The applicant was made aware that an 8 foot fence around the project site is required and Mr. McMillen recommended that the Board make that a condition of approval. Also there was an issue with the site plan in terms of not showing an existing stream or pond. The applicant has revised the site plan to reflect the location of the stream/pond as well as a 50 foot buffer as this site is located within the Tar-Pamlico River Basin. The applicant has revised the setbacks to meet the 75 foot setback requirement in the front and the rear and 25 feet on the side. The site plan now illustrates additional landscaping and buffer details that will exist on the site. The NCDOT driveway permit was received by Mr. McMillen on August 7, 2014. As far as the applicant working with NC DENR, they have started the process but it has not been finalized. Mr. McMillen put forth a recommendation to the Board that before the county issues a Certificate of Occupancy that the Planning & Development department have the NC DENR Certificate of Completion in hand. The one item that has not been received by staff is the interconnection agreement, which is another item that should be a condition. However, the interconnection point is now shown on the site plan as well as the underground utilities.

Mr. Bobbitt inquired about the NC DENR certification process. Mr. McMillen explained that NC DENR will oversee everything related to stream buffers. NC DENR will examine the construction progress at various stages and issue the certification at the end of construction.

Ms. Stainback inquired about the houses on Bearpond Road and whether the residents will be able to see the solar panels. Mr. McMillen stated that it is difficult to say with any certainty whether the solar farm will be visible through the buffer. However, he stated that the buffer would consist of existing trees which will result in a more substantial buffer from the beginning; more so than if the buffer had to grow from the ground up. Ms. Stainback also inquired about visibility from US 1 to which Mr. McMillen responded that it would really depend on the elevation of the roadway relative to the property. Ms. Stainback then sought confirmation on the distance between the solar farm and the Bearpond Fire Department. One last comment made by Ms. Stainback brought up a discrepancy between the GIS map and the site plan regarding ownership and parcel numbers of property to the northeast of the project area. It was questioned whether the solar farm would also be located on parcel ID 0224 02026 as that ID was also listed somewhere on the application. Jonathon Care stated this discrepancy was one that he wanted clarification on as well. Mr. Care suspected that the surveyor's ownership information for the site plan was out of date.

THOSE SPEAKING FOR THE REQUEST

Craig Livingston (ESA Renewables, LLC) – Mr. Livingston stated that he believed issues associated with site plan have been addressed. In regards to parcel 0224 02026, Mr. Livingston stated that parcel is not part of ESA's lease or project plans. He welcomed any staff questions or concerns.

Ms. Harvin asked about plans regarding lighting and groundcover on the site. Mr. Livingston stated there would not be any lighting but there would be infrared cameras for security purposes. ESA's plan for groundcover is to recycle some of the cleared trees in the form of wood chips as partial groundcover. The remaining areas will be covered with grass and the applicant plans to hire local maintenance crews to come in and mow the grass.

Mr. Haley inquired about the 10 ft. wide cart path, its intended purpose, and frequency of use. Mr. Livingston's response was that it was to examine the fencing for any damage as well as maintenance of the solar farm. It would be traveled by a Gator Truck three or four times a year. Mr. Haley also commented that he believed the cart path should be moved as it appeared to intrude on the buffer and setback areas. Mr. Livingston said that would be done.

Mr. Bobbitt asked whether there would be lighting or separate fencing around the interconnection point. Mr. Livingston stated that the interconnection point will be maintained by the utility company to the utility company's standards.

The applicant will cover the parking area in gravel and establish grass in the stream buffer.

Jonathon Care questioned the applicant as to the reason the interconnection agreement with the utility company has not yet been acquired. The applicant has submitted the request and the feasibility and impact study is currently underway and is expected to be returned within the next 30 days. The applicant is also in the process with NC DENR to acquire the erosion control permit.

The applicant stated that the anticipated construction start date is the end of November 2014 with construction taking place for a month and a half to two months, depending on weather.

Mr. Haley asked whether the type of vegetation comprising the buffer would meet the ordinance's requirements. Jonathon Care stated that the buffer is a continuing requirement and must be maintained for the duration of the conditional use. Mr. Haley also revisited the question of the cart path and setbacks to which Mr. McMillen stated that setbacks only apply to structures. Mr. McMillen said that the proposal of the cart path, buffer, and setbacks meets the county's requirements.

Mr. McMillen explained to the Board that NC DENR is responsible for governing all areas within the stream buffer. Whether the applicant must leave the area within the buffer alone or plant grass will be up to that agency. However, the buffer is a continuing requirement and the county will ensure that it is maintained.

Jonathon Care requested that parcel number 0224 02026 be removed from the application before any conditional use permit is issued.

THOSE SPEAKING AGAINST THE REQUEST

None present

BOARD DISCUSSION

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

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 operation 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 issue the conditional use permit, provided that the requirements listed in the staff report are met, including: the permit is issued for tax parcel 0224 02021 and not 0224 02026, a 8 ft. fence is constructed around the property, the certificate of completion from NC DENR is submitted to staff prior to issuance of the local certificate of occupancy, and the interconnection agreement is submitted prior to issuance of conditional use permit. In addition, the findings of facts are finalized as presented. Ms. Harvin seconded said motion and all present were in favor. VOTES: 5-0.

Chairperson Shaw declared the public hearing closed.

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