

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on September 11, 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
Ruth Brummitt
Rev. Roosevelt Alson
Alvin Johnson, Jr. – Vice Chairperson

MEMBERS ABSENT

Blake Haley

STAFF PRESENT

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

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 August 14, 2014 meeting. Ms. Harvin made a motion to approve the minutes with a date correction. Ms. Brummitt seconded the motion. All present were in favor. VOTES: 7-0.

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. 20140911-1; James and Kimberly Champion (property owner), FLS, Energy, Inc. on behalf of Stagecoach Owner, LLC (applicant) – request for Conditional Use Permit to allow a solar farm.

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. Greg Ness (Assistant General Counsel for FLS Energy, Inc.), Ms. Marsha Evans (resident), Mr. Russell Smith (resident), and Mr. Lindsey Rice (resident). 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 4.99 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 4.99 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. James & Kimberly Champion own a 25 acre parcel (0375 01015) and John Bennett, Jr. and Ronald Bennett own a 200 acre parcel (0375 01001). Stagecoach Owner, LLC is to purchase 0375 01015 (in its entirety) and a portion (17 acres) of 0375 01001.
3. The property is located on the south side of Stagecoach Road across from Crowder Farm subdivision, approximately 0.6 miles west of Kelly Road.
4. The property consists of 42 +/- acres of which 26.4 acres will be the array footprint. The property currently is partly wooded with no structures.
5. The lot is currently zoned (A-R) Agricultural Residential.
6. The application requesting a conditional use permit was filed on August 20th, 2014.
7. The adjoining property owners were notified on August 26th, 2014.
8. The property was posted on August 29th, 2014.
9. The legal notice was run in the Henderson Daily Dispatch on August 27th and September 3rd, 2014.

Staff Comments

This request is for a Conditional Use Permit for a 4.99 MW solar farm. Mr. McMillen reviewed the draft Findings of Facts with the Board. Mr. McMillen recommended that the Board make the completion and recordation of a recombination survey for 0375 01015 and a portion of 0375 01001 a condition of approval. Mr. McMillen stated the applicant's site plan shows that the setback requirements will be met, tree removal will not occur within 20 feet of neighboring properties, and an eight foot high fence will be installed. Access to the site will be controlled via a keyed gate. No lighting will be installed on the site, but there is no requirement to do so. The submitted documentation did not cover anything related to groundcover and maintenance. The solar panels that would be installed are stationary and do not exceed 7.5 feet in height.

Mr. McMillen pointed out an email correspondence between the applicant and the North Carolina Department of Transportation that states the DOT does not have an issue with the project. However, a driveway permit has not yet been acquired by the applicant for the proposed site. Mr. McMillen suggested that a driveway permit be submitted before the release of a conditional use permit.

The applicant also reached out to North Carolina Department of Environment and Natural Resources, whose response indicates that the department does not have issue with the proposed project. Though, an erosion and sediment control plan would be required. Mr. McMillen suggested that before a Certificate of Occupancy is issued, the county staff must receive the NCDENR completion certificate. The applicant also completed and submitted a Phase 1 Environmental Assessment, which noted no evidence of recognizable environmental impacts from the proposed solar farm. Mr. McMillen stated that a hard surface, such as gravel, be built for the parking area.

The applicant submitted multiple applicant information and signature sheets as the proposed site is located on two different properties. Neighboring properties (notably the Crowder Farms subdivision) were sent notices of this public hearing.

Mr. Bobbitt asked Mr. McMillen to comment again on the buffer. According to the applicant's notes, they are going to have no tree removal within 20 feet of neighboring properties. However, it is important to note that the property is believed to have been clear cut in 2012. The Planning Staff needs to ensure that a buffer is there and will remain, especially as NCDOT has stated that they will require some additional cutting along the road frontage for the issuance of a driveway permit.

Ms. Harvin inquired about the road or path that traverses the subject property and whether that path will continue to be used. Mr. McMillen replied that he believed that the path will no longer be used if the solar farm is built. Mr. Jonathon Care made the point that on the survey of the 25 acre tract, the path is shown to provide access to neighboring properties. He also mentioned that the path is a private right of the neighboring properties and it is the not Board's responsibility to enforce private rights and the Board should not base a denial on that concern.

Ms. Harvin commented that the site plan does not show elevation and she could not determine the topography of the project site.

Mr. Jonathon Care said to the Board that the conditional use permit be associated with a distinct and readily identifiable piece of property which cannot be done at this time. A recombination survey is required to do that. Another concern is evidence of an interconnection permit. Mr. Care's third concern was the lack of any explicit plan in any of the supplied applicant materials of the intention to plant or fill in vegetation. His recommendation was to request these additional materials before issuing a conditional use permit.

THOSE SPEAKING FOR THE REQUEST

Greg Ness (FLS Energy, LLC) – Mr. Ness started by providing a background of FLS Energy, Inc., highlighting the company's passion for best-use practices. He also touched on the unique business model of the company in that the company typically purchases project property rather than leasing it. The company is slated to begin construction mid to late-December of 2014 with an anticipated build-out period of 3 months (March 1, 2015). FLS Energy, Inc. has already obtained commitments from various funding sources. In terms of environmental assessment, the company conducted a Phase 1 Environmental Assessment and went through the process of the State Clearinghouse Review. The State Clearinghouse Review allows each state agency to evaluate the project within the environmental parameters of the area (wildlife, soils, etc). Mr. Ness commented about not yet acquiring the E-911 address and the NCDOT driveway permit. He claimed a higher-level detailed site plan was required to progress with these items, which is currently being worked on by the company. He stated it is the intent to have a recombination survey completed of the properties, which would be completed by Friday, September 19th. Further, surveys of each individual property will be conducted for the purposes of closing on the properties.

Mr. Ness addressed several questions that were asked by the Board. In response to Ms. Harvin's question about the topography he stated that the land gently slopes toward the creek bed. With respect to the path that traverses through the property, he stated that its function was to serve as hunting access to neighboring properties. To accommodate this existing right, the path will be relocated slightly to the west.

The applicant has communicated with Duke Energy Progress to establish that interconnection is possible and correspondence was included in the application. Mr. Ness said the interconnection agreement is one of the last steps to be completed.

Mr. Ness touched on the setbacks and buffers and the company's desire to work harmoniously with the surrounding neighbors, most notably the Crowder Farms subdivision. The solar farm will have no lighting, no moving parts, and ultimately be relatively maintenance-free, which diminishes impacts on surrounding properties. For security, an 8-foot high fence with coiled barb wire will be installed. The gate will be lock and key access, but emergency personnel will have the ability to enter the site.

For groundcover, the applicant will collaborate with NCDENR to determine the best grass seed mix for this site. The amount of grass seed to be used will be approximately 5 to 6 pounds per 1,000 square feet. The applicant also hopes to hire one of the adjacent property owners to maintain the project site in terms of mowing grass and identifying any larger-type maintenance items.

Finally, Mr. Ness stated that noise pollution will be at a minimum and is barely audible at a distance beyond 10 feet. He likened the noise to the hum of a refrigerator. In terms of glare off the solar panels Mr. Ness stated that the panels have an anti-reflective coating, which increases the efficiency of capturing solar energy as well as limiting the amount of glare off the panels.

Ms. Harvin asked Mr. Ness what kinds of trees exist for buffering along the sides and rear of the property since a clear-cut took place in 2012. Mr. Ness replied that since the clear-cut took place the vegetation has grown considerably. If there are any breaks in the tree line then more trees will be planted, although there is no current plan as to how many trees will be planted or where they will be planted.

Ms. Brummitt asked about the amount of clearing that will be required to satisfy NCDOT. Mr. Ness replied that more clearing will take place but the precise amount is unknown until the site receives an E-911 address.

Mr. Bobbitt revisited the types of their trees currently on the site and growth since the clear-cut. Mr. Ness stated the trees are mostly juvenile pines and claimed an average height of approximately 15 feet. Mr. Ness requested that the Board allow him to add more concrete material to the application regarding tree planting and groundcover maintenance.

THOSE SPEAKING AGAINST THE REQUEST

Ms. Marsha Evans (Stagecoach Road property owner) – Ms. Evans stated that she is currently not in favor nor opposed to the conditional use permit but had some general questions. Her first question was about the proposed buffer width and whether the panels will be taller than the trees. Mr. Ness stated in reply that the solar panels will have a maximum height of 7.5 feet. Ms. Evans then inquired about the other solar farms that the applicant operates. Mr. Ness replied that the company does not operate any farms within Vance or Warren County and referred Ms. Evans to the FLS Energy, Inc. website for more visual information. Ms. Evans’ next question was about the impact of the solar farm on neighboring land values. Mr. Ness said it is hard to quantify the precise impact on particular properties. It is also very difficult to entirely mitigate impact on property values as the farm will still be visible. Ms. Evans also wanted to know if the farm directly provided any benefit to her, to which Mr. Ness asserted that basically anyone within a 1 mile radius would consume the electricity that the farm generates. Her final question was about the resiliency of the solar panels in severe weather, to which there was not any definite response.

Mr. Russell Smith (resident of Crowder Farms subdivision) – Mr. Smith first commented that it was his opinion the public hearing was being held at a fairly inconvenient time as other residents of Crowder Farms were unable to attend. Mr. Smith wanted to know whether the applicant had done any type of electromagnetism analysis of its solar farms. Mr. Jonathon Care told the audience that this hearing is not the opportunity for a question and answer session, rather an opportunity to provide testimony and evidence in favor or in opposition. Mr. Smith then presented a 1998 study conducted by the Centers for Disease Control and Prevention that outlines risks associated with exposure to electromagnetism. Mr. Smith’s second point was that solar farms lower property values. He presented information from the National Realtors Association’s website that states that anything to do with a power plant, power lines, or transformers lower property values by an average of 6.5%. The proximity of these features to properties was not referenced. He then stated that approximately 35% of the properties in Crowder Farms subdivision are already in foreclosure and vacant. Mr. Smith believes this vacancy rate combined with the solar farm and its components will increase vandalism in the area. Additionally, Mr. Smith believes that because a solar farm is a power plant and therefore infrastructure, this project site could become a target for terrorist acts. Finally, Mr. Smith vocalized his concern that the solar panels will displace wildlife and attract lightning.

Mr. Lindsey Rice (resident near proposed project site) – Mr. Rice expressed his opposition to the proposed solar farm and its unfavorable aesthetic impacts. He also thought the solar farm could be a potential danger to the children in the neighborhood and that an industrial area would be a more suitable location than a residential and rural area. Mr. Rice confirmed that the clear-cut left very few trees to serve as a natural buffer and minimize visibility of the farm.

BOARD DISCUSSION

Mr. Bobbitt stated that all three prior solar farms that came before the Board had to establish a natural buffer. There was then discussion that the Board did not have sufficient information to either grant or deny a conditional use permit. Mr. Bobbitt also asked if the Board could request information regarding the emission of electromagnetism. Mr. Care stated that there is nothing in Vance County’s ordinances that require such information.

DECISION:

Ms. Brummitt made a motion to continue the conditional use permit request due to insufficient evidence and delay it until the next meeting on October 9th at 4:00PM. Alvin Johnson seconded the motion. All present were in favor. VOTES: 7-0.

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