

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on October 9, 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
Alvin Johnson, Jr. – Vice Chairperson
Agnes Harvin
Phyllis Stainback
Ruth Brummitt
Rev. Roosevelt Alson
Blake Haley

MEMBERS ABSENT

None

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney

ALTERNATES PRESENT

None

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the September 11, 2014 meeting. Mr. Johnson made a motion to approve the minutes with a date correction. Ms. Harvin 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 reopened 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.

Witnesses previously 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 if any other individuals would like to be sworn in, which included Ms. Margaret Smith and Mr. Clarence Williamson. 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”.

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 to purchase 0375 01015 (25 acres) and a portion (16.875 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 41.87 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.
10. The Board of Adjustment opened the hearing and heard testimony from staff, the public, and the Assistant General Counsel for FLS, Energy, Inc. at the September 11, 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

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 stated that since the September 11, 2014 meeting an address has been issued for the project site: 1835 Stagecoach Road. The proposed recombined property would comprise of 41.87 acres with a solar panel footprint of 26.4 acres.

Additional information has been submitted from the applicant. FLS Energy, LLC submitted a letter and packet on August 24, 2014 with this additional information. As mentioned, the address has been assigned since the previous meeting. The applicants have also submitted a preliminary recombination survey as well as legal descriptions of these areas. The plat had not yet been recorded but Mr. McMillen strongly advised that the recordation of that plat be a condition of approval.

Another item that was submitted was a landscape plan, which shows a 20 foot vegetative buffer on the side and the rear of the property and a 50 foot vegetative buffer on the front of the property. Mr. McMillen pointed out to the board the photos of the property taken by staff. The applicant's plan is to plant canopy trees, understory vegetation, and shrubbery. Mr. McMillen stated that the applicant's proposed vegetative buffer would more than comply with the county's standards.

The next few items included in the additional information submitted since the last meeting was a scientific paper on electromagnetic fields and radiation, a release agreement from the property owner of the private drive that leads from Stagecoach Road to the back of the proposed project site, and a topographic map to depict drainage. Mr. McMillen also stated that the template for the interconnection agreement was provided, but not executed. The reason the agreement has not yet been executed is because it involves a significant fee. As such, Mr. McMillen stated that the submission of this executed agreement should be a condition of the Board's approval. Another thing that the staff would like to see as a condition of approval is the submission of an erosion control permit from NCDENR.

Mr. McMillen acknowledged that a driveway permit from NCDOT was ready to be issued but due to technical difficulties it could not be issued before sending out the Board's information packets. However, since the mailing of those packets, Mr. McMillen has received the driveway permit

Ms. Harvin sought clarification on the stream buffer shown on the site plan. Mr. McMillen explained that in the Roanoke Basin (where the project site is located) there are different, and less stringent, requirements than the Tar-Pamlico basin.

THOSE SPEAKING FOR THE REQUEST

Greg Ness (FLS Energy, LLC) – Mr. Ness started by submitting two items into evidence: the NCDOT driveway permit and an improved survey that better shows the buffer along the stream located on the property. Mr. Ness proceeded to provide a background of FLS Energy, LLC and the project. He addressed some of the concerns put forth by the public at the September 11 meeting. In terms of health and safety, Mr. Ness stated that his company always employs best practices, operates by the 2014 National Electric Code, and will install an 8 ft. fence with additional barbed wire. FLS Energy, LLC hires a third-party engineer to verify the safety aspects of the project which is beyond what is designed and reviewed internally. Mr. Ness continued by saying that the materials inherent in the project are glass and galvanized steel; no gases, liquids, no moving parts, and no exposed live wires. In regards to crime, Mr. Ness stated that the project site has more than substantial protective measures, warning signs throughout the facility, and substantial setbacks and buffers in place.

Mr. Ness reiterated Mr. McMillen's comment on the interconnection agreement and went into more detail about the process and why the agreement has not yet been executed.

Mr. Ness went through the application and answered each question about how the proposed project will meet or exceed county standards. One notable mention is that Mr. Ness stated there is really no current evidence to suggest that solar farms have a negative effect on neighboring residential property values. Mr. Ness pointed to a related study that shows solar panels located on houses or nearby actually increase property values.

In response to a question related to watering the vegetation, Mr. Ness has contacted two landscaping companies who are willing to provide annual letters to FLS Energy, LLC stating the condition of the plants and that they have been properly watered. On top of this, drought-resistant species will be chosen do not require an excess of water.

Ms. Brummit asked if there was going to be an 8 foot fence and lighting. Mr. Ness responded that there would be a fence but no lighting.

Ms. Harvin asked where construction workers' trucks and vehicles will be staged during construction. Mr. Ness responded that they will own the entire parcel and there is enough open space on the property to allow for parking. Ms. Harvin followed up with a question pertaining to the landscape plan where "Guilford County" was labeled. Mr. Ness apologized and said that was a typo, that the notes and statements would be implemented and Vance County, and the only reason Guilford County was labeled is because FLS Energy, LLC has used the landscaping company in Guilford County previously.

Ms. Brummit posed a question to Mr. Ness about the revision dates listed on the survey. Mr. Ness explained that the surveyors had a difficult time locating water in the streambed and the surveying company had to visit the site multiple times.

Mr. Care asked if the full length of the stream of the property will be shown on the development plan. Mr. Care recommended that the inclusion of the full length of the stream and the buffer be included on a revised development plan.

Mr. Clarence Williamson who owns property to the back/south of the proposed site said he was in agreement with the proposed solar farm. However, Mr. Williamson stated that he used the access easement that was released but had alternate ways of accessing his essentially land-locked piece of property.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Mr. Shaw closed the hearing and went through the Conditional Use Permit check-list and the Findings of Fact with the board. Mr. Shaw entertained a motion with stated conditions.

DECISION:

Ms. Brummit made a motion to approve the conditional use permit to allow the solar farm, provided that the recombination plat is recorded, the interconnection agreement is executed, and the erosion control permit from NCDENR is submitted along with an updated development plan. Ms. Harvin seconded the motion. All present were in favor. VOTES: 7-0.

Chairperson Shaw introduced the second case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing reopened for the following case:

BOA CASE NO. 20141009-1; King & Chelisa Perry (property owner & applicant) – request for variance from the minimum setback (section 3.2.3) requirement to reduce the side setback from 20 feet to 10 to allow construction of an attached carport.

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen and Mr. King Perry.

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 to allow construction of an attached carport.

Findings of Fact

1. The property is owned by King & Chelisa Perry.
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. The lot is located within the Carolina Woods Subdivision and is located at 276 Carolina Woods Drive (tax parcel 0410G01059).
4. The lot consists of 0.69 acres according to plat book V-778.
5. The lot currently consists of a single family dwelling and two smaller accessory structures.
6. The lot is currently zoned R-30 (Residential Low Density).
7. Due to the home location on the property as well as the septic tank and lines location, there is limited room for placement of the carport on the rear of the property.
8. The application requesting the variance was filed on September 3, 2014.
9. The adjoining property owners were notified on September 22, 2014.
10. The property was posted on September 25, 2014.
11. The legal notice was run on September 24 and October 1, 2014.

Staff Comments

The applicant is proposing to construct a carport that is 34 ft. x 32 ft. The applicants' desire is to attach it to their existing single family home. There is an existing concrete slab/driveway that is located on the property where the carport is to be co-located. The applicants want adequate cover and protection over this existing area. The current plan has the carport located approximately 10 ft. from the property line but would remain greater than or equal to 50 feet from the house to the west.

The home is located approximately 100 feet from the right of way. The zoning ordinance requires that accessory structures be located in the side or rear yard and in this instance there is limited space to meet that standard. As such, staff believes this request to be reasonable. The proposal would not increase the built-upon area because of the existing concrete slab.

Ms. Harvin asked if the carport would be enclosed like a garage or open. Mr. McMillen stated it was his understanding that the carport would be open.

THOSE SPEAKING FOR THE REQUEST

Mr. Perry explained to the Board that he and his wife are looking to build a carport. He restated the variance request of reducing the side setback by 10 feet from 20 feet to 10 feet. Mr. Perry said that there is limited space on his property to place the carport due to arrangement of features. He also said that he has talked to his neighbors and none of them have any issues.

Mr. Haley asked Mr. Perry if it was going to be a stick built car port. Mr. Perry replied that it was going to be an attached, stick built carport that is open on all sides and has the same relative roof pitch as the single family home. He also responded that no rooms will be incorporated into the carport. Mr. Care asked Mr. Perry if he purchased or built the single family home. Mr. Perry answered that he bought the house in 2003. He also stated the Al Foster, the original developer, had no issue.

Mr. Care pointed out that restrictive covenants operate outside the realm of what the Board of Adjustment considers and that compliance is a totally separate issue. The Board should only work within the confines of the zoning ordinance.

Mr. Haley asked Mr. McMillen if the proposed variance will still meet the impervious surface standard to which Mr. McMillen answered yes.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Mr. Shaw went through the variance check-list and entertained motions. Mr. Johnson made a motion to approve the variance. Ms. Brummitt seconded the motion. Mr. Shaw stated that the Findings of Facts are included with the motion. All present were in favor. VOTES: 7-0. Mr. Shaw closed the hearing.

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