

**VANCE COUNTY BOARD OF ADJUSTMENTS**

The Vance County Board of Adjustments met at a regular and duly advertised meeting on November 13, 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

MEMBERS ABSENT

Phyllis Stainback  
Ruth Brummitt  
Rev. Roosevelt Alson  
Blake Haley

ALTERNATES PRESENT

Ruxton Bobbitt

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 October 9, 2014 meeting. Mr. Bobbitt made a motion to approve the minutes with the following change: removal of the word “Draft” from the Findings of Fact on page one and page four. Ms. Harvin seconded the motion. All present were in favor. VOTES: 4-0.

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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 opened for the following case:

***BOA CASE NO. 20141113-1 Frances Faye Wilson (property owner), Vicksburg Owner, LLC (applicant) – Conditional Use Permit to allow a solar farm at 2131 Vicksboro Road.***

Witnesses sworn in include Mr. Jordan McMillen and Mr. Greg Ness (Assistant General Counsel for FLS Energy, Inc.). Mr. McMillen presented the staff report and reviewed the 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. The property is located at 2131 Vicksboro Road or more specifically as tax parcel 0533-02001.
3. The property is currently owned by Frances Faye Wilson; however Vicksburg Owner, LLC is to purchase the property prior to developing the solar farm.
4. The property consists of 50 acres of which 22.4 acres will be the array footprint. The property currently is predominantly vacant with an open area on the southern half and wooded on the northern half. There is an existing 75’x75’ private family cemetery lot within the parcel with a 25 foot separate access as per plat book C-117.
5. The parcel is currently zoned agricultural residential (A-R) following a rezoning approval by the Board of Commissioners on October 6, 2014.
6. The application requesting a conditional use permit was filed on October 16, 2014.
7. The adjoining property owners were notified on October 21, 2014.
8. The property was posted on October 27, 2014.
9. The legal notice was run in the Henderson Daily Dispatch on October 29 and November 5, 2014.

### **Staff Comments**

This request is for a Conditional Use Permit for a 4.99 MW solar farm, which is considered a large-scale system in the Zoning ordinance. Mr. McMillen reviewed the draft Findings of Facts with the Board. Mr. McMillen stated the front, or southern, half of the property that fronts Vicksboro Road is open and was the former location of a mobile home park. This mobile home park closed in 2009. The back, or northern, half of the property is where the applicants are proposing to clear the land and build the solar farm.

Mr. McMillen stated there is an existing 75' x 75' family cemetery located on the front half of the property which is served by an existing easement. This existing easement will be separate from the access for the solar farm project.

The applicant plans to leave a 20' landscaped buffer in place on all sides of the property, with the east side being most significant as it abuts the Farmington subdivision. Mr. McMillen stated that the landscaping plan that the applicant submitted does seem to meet the county's requirements. Additionally, the proposed setbacks go above and beyond the county's requirements. On the back side of the property the setbacks range from 53 feet to 80 feet, the setback on the west side will be approximately 37 feet, and the setbacks on east side range from 100 feet to 144 feet.

There is a plan to install an 8' high fence with 1' of barbed wire which will allow controlled access to the site.

Mr. McMillen proceeded to go through some items of consideration that are included in the applicant's packet of submitted information. First, the driveway permit from NCDOT has been approved. The proposal is for solar arrays that are 7.5' in height. According to the site plan, all electric lines will be underground from the interconnection point onwards. However, the interconnection agreement has not been executed. Typically, this agreement cannot be executed before the issuance of a Conditional Use Permit. Mr. McMillen recommended that the execution of this agreement be a condition for the permit.

One item of concern is the existence of the septic tanks still on the property. Based on staff research, it does not appear there is an issue with the septic tanks as they are all located towards the front of the property away from the proposed site location of the solar farm. However, the concern would be where these tanks do in fact interfere with the solar farm. The main example of this case would be the driveway. The proposed driveway could quite possibly run over the existing septic tanks. After discussion with the applicant, they have agreed to conduct ground penetrating radar to determine exactly where the septic tanks are located so that they can be removed if interference occurs. Mr. McMillen suggested those radar reports be submitted to the Planning & Development Department as well as the Health Department. It is important that those septic tanks that do interfere with the project are abandoned and removed.

The last consideration would be in regards to the required clearing and grading permit. Because the applicant is proposing the clear more than 1 acre they are required to obtain an erosion control permit from the North Carolina Department of Environment & Natural Resources. Mr. McMillen wants to ensure that the county has a copy of this permit before county building permits are issued.

Mr. McMillen briefly overviewed each document in the packet submitted by the applicant.

Mr. Ruxton Bobbitt asked whether a mobile home park would be permitted under the new zoning district. Mr. McMillen replied with the explanation that mobile home parks are allowed in the Agricultural Residential district with a Conditional Use Permit.

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

*Greg Ness* (FLS Energy, LLC) – Mr. Ness started by submitted two items into evidence: a fully executed interconnection agreement and a map of the ground penetrating radar work that has been completed.

Mr. Ness proceeded to provide a background of FLS Energy, LLC and this specific project. He stated that whenever possible his company opts to buy the underlying property rather than lease it. There is a slated closing date for this particular property of November 17, 2014. The Vicksboro project is planned to be constructed concurrently with the Stagecoach solar farm project. With a late December construction start date, the solar farm project will be finished within 2-3 months.

Mr. Ness stated that after investigation it was determined that there were approximately 46 mobile home units previously located on this property. This previous use presents a difficulty for redevelopment; however, a solar farm works quite well because of the minor footprint of the solar panel posts.

Another challenge with this particular project is the family cemetery on the site. Mr. Ness has been communicating and working with the Faulkner family. FLS Energy, Inc. will help clean up the cemetery area and its access point as well as cleaning up the road.

Mr. Ness then went through the Conditional Use Permit checklist that the Board reviews with each case. He made a point to discuss the question of crime and/or theft on solar farm properties. He stated that the likelihood is very low due to the nature of the equipment that is used in such a project. In addition the way in which the site is being developed and arranged, visibility will be diminished with difficult access.

The NCDENR erosion control permit that was mentioned earlier in the hearing has been applied for, according to Mr. Ness. He hopes to receive approval by November 21, 2014.

The site plan will keep a 20' buffer of existing vegetation on the east side of the property that consists of mature pine trees and approximately 20% hardwoods. Surrounding the south and west sides of the property, the applicant plans to plant a wax myrtle buffer to bolster existing vegetation.

Mr. Ruxton Bobbitt asked whether the timber on the northern side of the property has been harvested. Mr. Ness replied that it had not yet been harvested.

Ms. Harvin asked if there is visibility through the trees as they are claimed to be mature. Ms. Harvin furthered her comment by saying she believes it would be important to extend the wax myrtle buffer around all sides of the property to account for the visibility that the mature trees enable.

Ms. Harvin also inquired about the pond on the property that seems to extend across the western boundary and whether adjacent property owners use the pond. Mr. Ness stated that within the title he is going to preserve access to the road that runs along the western and northern boundaries of the property.

Mr. Bobbitt asked whether any formal agreement has been made regarding the family cemetery. Mr. Ness' response was that he has been working with the family over the course of several months he has agreed to construct a separate access for the solar farm and help improve the conditions of the cemetery and its access point.

Mr. Bobbitt asked whether the radar work was complete and whether a definite number of septic tanks along the proposed road bed had been determined. Mr. Ness replied that between 4 and 8 have been identified.

Ms. Harvin asked if the structure near the cemetery is currently being used for any purpose. Mr. Ness said as far as he was aware it is not being used.

Mr. Jonathan Care said his concern with the executed copy of the interconnection agreement is the lack of any type of address information. There are two locations within the interconnection agreement document that reference site address and would like this information to be added to the document.

Ms. Harvin asked how often the site is inspected. Mr. Ness said it is visited monthly or bimonthly but if any interference to the system occurs the operators will know immediately.

**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:**

Mr. Bobbitt made a motion to approve the conditional use permit to allow the solar farm, provided the following conditions are met: 1) Submittal of executed copy of interconnection agreement with accurate site address referenced where appropriate; 2) Submittal of NC DENR Erosion Control Permit; 3) Final site and landscaping plan to include planting of wax myrtle trees on all sides and surrounding the solar farm in addition to other buffer provisions being utilized; and 4) Submittal of reports providing proper abandonment of septic tanks that interfere with access road and solar farm construction area. Mr. Alvin Johnson, Jr. seconded the motion. All present were in favor. VOTES: 4-0.

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