

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on March 12, 2015 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
Rev. Roosevelt Alston
Ruth Brummitt

MEMBERS ABSENT

Alvin Johnson, Jr.
Phyllis Stainback – Vice Chairperson
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 February 12, 2015 meeting. Ms. Harvin made a motion to approve the minutes with the change. Ms. Brummitt seconded the motion. 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 re-opened for the following case:

BOA CASE NO. 20150212-1 James D. Goldston, Jr. (property owner), Vance Solar 1, LLC (applicant) – Conditional Use Permit to allow a solar farm on Raleigh Road, tax parcel ID 0456 03015

Witnesses previously sworn in include Mr. Jordan McMillen, Mr. David Robinson, and Mr. David York (Attorney representing Vance Solar 1, LLC). Chairperson Shaw asked if any other individuals would like to be sworn in, which included Kevin Gorman (Project Manager, Bloc Design, PLLC), Thomas Hester (MAI, CCIM, Hester & Company) and Richard Moretz (Cypress Creek Renewables). Mr. Robinson presented staff report and reviewed the draft findings of facts as follow:

Description of Conditional Use Permit Request:

The applicant is requesting a conditional use permit to allow construction of a 5 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 5 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. The property is owned by James D. Goldston, Jr.
3. The property is located on the north side of Raleigh Road approximately ¾ of a mile southwest of Peter Gill Road.
4. The property consists of 58 +/- acres of which approximately 24 acres will be the array footprint.
5. The majority of the property is wooded and the applicant plans to clear 29 acres.
6. The application requesting a conditional use permit was filed on January 21, 2015.
7. The adjoining property owners were notified on January 23, 2015.
8. The property was posted on January 29, 2015.
9. The legal notice was run in the Henderson Daily Dispatch on February 3, 2015 and February 10, 2015.
10. The Board of Adjustment opened the hearing and heard testimony from staff at the February 12, 2015 meeting. Upon the staff’s recommendation, 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 5 MW solar farm. Mr. Robinson reviewed the draft Findings of Facts with the Board. He stated a discrepancy on the site plan – the notated section indicates

a 8' chain link fence with barbed wire but the labeling of the fence shows a 6' chain link fence with barbed wire. Mr. Robinson asked that the applicants respond and ensure that the fence will total 8' in height. He went on to describe the planned buffering around the site, which is composed of a 30' planted buffer along Raleigh Road, the Cheatham property to the south, and along the Wedge Stone Mobile Home Park. The landscaping plan specifies that this buffer will be composed of an evergreen understory tree that will be 6' at the time of planting in addition to an evergreen shrub. Mr. Robinson said it appeared that existing vegetation will act as screening along the western and northern properties. He continued to say that staff believed this existing vegetation would provide adequate screening as no development exists within several hundred feet of these northern and western property boundaries.

Mr. Robinson highlighted the presence of Mill Creek and one of its tributaries on the property. The site plan shows a 50' vegetative buffer on each side of these water bodies. Mr. Robinson explained that NC DENR would be doing a full review of the project and its impact on the creek and its tributary when the applicant applies for its erosion and sedimentation control permit. A Vance County clearing and grading permit would also be required. Mr. Robinson recommended that a copy of the DENR permit be submitted to staff before releasing a conditional use permit. He continued to say that a copy of the NC DOT driveway permit be received as well. Mr. Robinson stated it was his understanding that the driveway permit had recently been approved, but staff has not yet received a copy. In terms of the interconnection agreement with Duke Energy Progress, Mr. Robinson said that the applicants have applied for it and are waiting for the cost estimation stage to be completed and the agreement to be drafted and executed. He recommended that the executed pages of the agreement be submitted before issuing the conditional use permit. The E-911 site address has been finalized and issued. The site's address will be 5588 Raleigh Road, Kittrell.

Mr. Robinson requested clarification regarding an old, abandoned structure located approximately 80 feet from Raleigh Road. Based on the site plan, the project's temporary construction laydown and staging area is placed where this structure is currently located. Demolition of this structure would require a \$55 Vance County demolition permit.

Mr. Robinson also commented on an existing power line easement running parallel to Raleigh Road at the front of the Goldston property. After speaking with Duke Energy, Mr. Robinson stated that the project would not impede on the easement so long as safety precautions are taken to not damage or interfere with the distribution line.

Mr. Robinson concluded staff comments by suggesting possible conditions for approval. He said that fencing should be around the entire perimeter of the site and should be 8' in height. Staff would also like to see copies of the executed pages of the interconnection agreement with Duke Energy Progress, NC DOT driveway permit, and NC DENR Erosion and Sedimentation Control permit. Mr. Robinson also suggested that the planted buffer on the southern side of the Goldston property be extended along the property boundary to screen that entire side of the project.

Mr. Bobbitt asked whether the zoning ordinance addresses construction parking. Mr. Robinson thought that DOT would regulate traffic safety but was unsure whether the ordinance specifically addresses construction parking. Ms. Harvin asked if parking guidelines could be incorporated into a condition for approval. Mr. Robinson said that it could.

THOSE SPEAKING FOR THE REQUEST

David York (Attorney, Smith Moore Leatherwood) – Mr. York requested to ask questions to the various witnesses regarding details of the proposed project so that sufficient evidence is presented into the record. Mr. York also presented written evidence to the Board. The written evidence was comprised of two affidavits summarizing witnesses' testimony. Chairperson Shaw asked if there was anyone who objected to the written evidence. The Board then admitted the evidence.

Mr. York asked to offer Mr. Kevin Gorman (Landscape Architect and Site Designer, Block Design, PLLC) as an expert in landscape matters and solar farm project design. Mr. York proceeded to ask Mr. Gorman a series of leading questions related to his expertise and the details of the proposed solar farm. Mr. Gorman also clarified that the fencing around the project site would total 8' in height and apologized for the error. Mr. York asked Mr. Gorman what options exist to make the buffer more robust. Mr. Gorman said that it would be possible to increase the density of the evergreen understory tree from 6 trees per 100 feet to 10 per 100 feet in an effort to provide better screening. Additionally, Mr. Gorman commented that the topography falls away to the north and west, making the solar panels less visible from the adjacent residential uses. Mr. Bobbitt asked whether it was possible to use existing vegetation as a buffer. Mr. Gorman said that 60-70 foot trees create too much shade and would reduce the array footprint too drastically. Mr. Gorman also stated that per Mr. Robinson's recommendation, they will extend the planted buffer along the southern boundary further west to the location of the sediment basin at the southwest corner of the project site. Mr. Bobbitt asked about the growth rate of the evergreen understory tree specified on the site plan. Mr. Gorman said growth rate depends on conditions, but you could expect something in the range of 15-18" per year. He continued to say that no permanent irrigation or water infrastructure is proposed for the site.

Ms. Harvin asked about the landscaping underneath the solar panels and whether alfalfa would in fact be used. Mr. Gorman said that it would not be alfalfa, but rather some kind of permanent Bermuda or Bermuda blend.

Mr. Gorman explained that if they move the construction fencing to the north there should be adequate space for parking outside of the right of way.

Ms. Harvin asked if permanent lighting would be installed at the site. Mr. Gorman stated they are not proposing any permanent lighting.

Mr. York introduced Mr. Thomas Hester (MAI, CCIM, Hester & Company) and asked to offer Mr. Hester as an expert in property values. Mr. York proceeded to ask Mr. Hester a series of leading questions related to his expertise and the effect of solar farms on property values. Mr. Hester affirmed that conducted a match-pair analysis that found this project would not have any negative effect on surrounding property values. Mr. Bobbitt asked at what point do the number of solar farms begin to have an effect on property values. Mr. Bobbitt put his question into different terms by asking when is one solar farm too many. Mr. Hester said at this point no one really knows the answer to that question. It was Mr. Hester's opinion that he does not believe solar farms affect property values; the only effect is visual and the response to that visual. Mr. Hester also said that when a solar farm is built on a piece of property, that in effect takes one property off the market and means less competition for others trying to sell land. Mr. Bobbitt asked if the rush to get solar farms approved will continue after the law changes regarding the mandate for power utility companies to purchase energy that is generated on solar farms. Mr. Gorman said solar farm projects may slow down some but won't go away. He also said that the existing electrical grid can only handle so much power and it is cost prohibitive for solar farm companies to upgrade the grid network. The result is that solar farms can't be built all over the place because the grid has to be able to handle the power that is generated.

Mr. Bobbitt asked if any toxins are released when/if panels deteriorate. Mr. Gorman responded by saying no components of the solar panel are toxic.

Mr. York next called on Richard Moretz (Cypress Creek Renewables). Mr. York asked Mr. Moretz who will be responsible for maintaining the landscaping at the site. Mr. Moretz stated that Cypress Creek Renewables will be responsible for maintaining and operating the solar farm.

THOSE SPEAKING AGAINST THE REQUEST

Chris Cheatham (Raleigh Road property owner) – Mr. Cheatham stated he would not be opposed to the project if the buffer width was increased to 100 feet. He did not believe the proposed 30’ would be sufficient to screen the solar farm from view.

BOARD DISCUSSION

Ms. Harvin wanted to know the width of buffers in previous solar farm projects. Mr. McMillen stated that there has been a range of widths, but for each request the Board is to determine what is adequate in terms of buffer width. Mr. Shaw asked Mr. McMillen specifically what the ordinance requires for buffers. Mr. McMillen said that the ordinance requires that the buffer reach a height of 8 feet within 3 years and the Board is to determine the width of the buffer to provide sufficient screening. Mr. Gorman offered a different option for buffer composition; rather than planting an understory tree and a shrub, they could plant two offset rows of understory trees. The Board believed this option to provide more robust screening.

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

DECISION: Mr. Bobbitt made a motion to approve the draft findings of fact and grant the applicants a conditional use permit contingent upon the following: 1) Entire perimeter fencing must be at least 8 feet in height, 2) A copy of the executed pages of the interconnection agreement is submitted, 3) A copy of the NC DENR erosion and sedimentation control permit is submitted, 4) A copy of the NC DOT driveway permit is submitted, 5) The 30’ buffer on the south side of the property be extended to the edge of the clearing in the southwest corner of project site, 6) Construction parking is contained outside of the right of way, 7) The planted buffer be composed of two, offset rows of evergreen understory trees (10 per 100’). Ms. Harvin seconded the motion. All present were in favor. VOTES: 5-0.

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