

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on May 14, 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
Ruth Brummitt
Phyllis Stainback – Vice Chairperson
Rev. Roosevelt Alston

ALTERNATES PRESENT

MEMBERS ABSENT

Alvin Johnson, Jr.
Blake Haley
Ruxton Bobbitt (Alternate)

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 April 9, 2015 meeting. Ms. Harvin made a motion to approve the minutes. Ms. Brummitt seconded the motion. All present were in favor. VOTES: 5-0.

Chairperson Shaw introduced the first case explaining the order of business and gave an opportunity for board members to express any conflicts. Mr. Shaw declared the hearing open for the following case: ***BOA CASE NO. 20150514-1; Sallie Ann Hildenbrand, Charles Davis, Virginia Craven, and Frederick Smith (property owners), Kelly Solar, LLC (applicant) – Conditional Use Permit to allow a solar farm at 3335 Glebe Road (Tax Parcel 0381 01001).***

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. David Robinson, Mr. David York, Mr. Kevin Gorman, Mr. Tom Hester, Mr. John Price, Mr. Lee Wade, Ms. Sandra Reavis, and Mr. Preston Hargrove. Mr. Robinson 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 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 Sallie Ann Hildenbrand, Charles Davis, Virginia Craven, and Frederick Smith.
3. The property is located at 3335 Glebe Road, on the northeast corner of Kelly Road and Glebe Road.
4. The property consists of 60.4 acres of which approximately 31 acres will be the array footprint.
5. The majority of the property is wooded and the applicant plans to clear 41 acres.
6. The application requesting a conditional use permit was filed on April 1, 2015.
7. The adjoining property owners were notified on April 24, 2015.
8. The property was posted on April 27, 2015.
9. The legal notice was run in the Henderson Daily Dispatch on April 29, 2015 and May 6, 2015.

Staff Comments

Mr. Robinson stated that the applicants plan to lease the property from the owners for the solar project. The site plan calls for an 8’ fence surrounding the perimeter fence, including 3 strands of barbed wire. However, in the statement of justification the applicant notes a 6’ fence. Staff would like clarification to ensure that an 8’ fence is what is actually proposed. A 30’ wide planted vegetative buffer is proposed to extend north along Kelly Road from the intersection to the point where the array footprint stops. A 30’ planted buffer is also proposed along the entire southern property boundary along Glebe Road. The

buffer is composed of two staggered rows of evergreen understory trees – Nellie Stevens Holly and Yaupon Holly, both being planted at 6' in height. Existing vegetation will serve as screening around the additional sections of the property's perimeter. Because this property is located on a corner lot, both the northern and eastern road frontages necessitate rear setback requirements of 35 feet. As such, these sides need to reflect this requirement. The majority of the properties surrounding this site are zoned A-R, however there are a few residentially zoned and occupied properties to the north of the site, as well as across the road on Kelly Road and Glebe Road.

Mr. Robinson confirmed that both the NC DOT driveway permit and E-911 address have been issued. The applicant has applied for the interconnection agreement with Duke Energy Progress. A stream runs across the northwestern corner of the property, which requires a 100' wide buffer, 50' on each side. This buffer is shown on the site plan. The applicant anticipated receiving the NC DENR Erosion and Sedimentation Control permit prior to the hearing. They hoped that should they receive the permit, they would be in a position to present it to the Board as evidence.

Mr. Robinson noted on the site plan the location of the temporary construction entrance and permanent site access on Glebe Road, being approximately 780' east of the intersection of Kelly and Glebe Roads. The applicant also notes that all construction parking will be located outside of the Glebe Road right of way.

There is an abandoned barn and outhouse on the site, which the applicant states will be demolished. No details have been provided on the type of groundcover that will be utilized or who will manage the groundcover within the site.

Mr. Robinson reiterated some important points. He asked for clarification concerning the fence height discrepancy and requested that the northern and eastern property boundaries reflect the rear setback requirements of 35'.

Mr. Robinson asked that the Board consider site specific features, specifically regarding screening and buffering requirements. Mr. Robinson reviewed several photographs of the site with the Board. He pointed out the dense understory trees among the tall planted pine trees. He also showed a photograph that depicted the difference in elevation between the pavement on Kelly Road and the property's western boundary. Mr. Robinson stated that at the north of the site, there is essentially a natural berm that is 6-7' higher than the roadway. This height diminishes to road level as you approach the Kelly and Glebe Road intersection from the north.

Ms. Harvin asked if staff believed the site would remain concealed using existing vegetation as screening with the existing deciduous trees losing their leaves during the colder months of the year. Mr. Robinson stated that the types of trees currently present on the site appear to be both deciduous and evergreen. He stated that with the deciduous foliage currently on the trees, the interior of the property is concealed very well. However, given the time of year and uncertainty concerning the particular tree species on the site, it is difficult to gauge how well existing vegetation would screen the proposed use when the deciduous leaves fall. Ms. Harvin stated that she believes it would be pretty open during the winter time. She followed up with another question inquiring about construction parking. Mr. Robinson stated that the construction entrance and permanent access are the same and that the applicant plans to use part of the staging area within the site for construction parking.

Mr. Robinson also requested clarification from the applicant on the subject of the 30' buffer. He wanted to ensure that the vegetation, at maturity, will actually be 30' wide. Ms. Harvin sought a definition for 'street yard,' to which Mr. Robinson stated he understood it to mean the planted buffer area.

Mr. Robinson concluded by recommending several conditions should the Board move to approve the conditional use permit request. Firstly, the executed pages of the interconnection agreement with Duke Energy Progress are submitted prior to releasing the permit. Secondly, a copy of the NC DENR permit is

submitted to staff prior to releasing the permit. Mr. Robinson requested that with any motion, the Board include the Findings of Fact.

THOSE SPEAKING FOR THE REQUEST

David York (Attorney, Smith Moore Leatherwood LLP) – Mr. York introduced the individuals representing the applicant and quickly addressed the fence height discrepancy. He confirmed that the proposal should have reflected an 8' high fence. He offered up affidavits to the Board in support of the expert witness testimonies.

Mr. York called on Mr. Gorman as his first witness.

Kevin Gorman (Project Manager, Bloc Design, PLLC) – Mr. Gorman provided his name, address, background and relation to the proposed project. He is the landscape engineer who developed the site plan for this project. Mr. York asked Mr. Gorman a series of questions related to zoning and land use details of the proposed project. He commented on the NC DENR permit and stated that he has not yet received the actual permit, but Scott Sink of the NC DENR Division of Land Resources has provided a preliminary, unofficial approval of the sedimentation and erosion control plan. Mr. York asked if the improvements of the property are already proposed to be set back at least 35' from the northern and eastern property boundaries, despite the setback labeling on the site plan. Mr. Gorman responded in the affirmative and stated he will correct the labeling on a revised site plan.

Ms. Stainback asked about the type of groundcover that will be utilized at the site. Mr. Gorman responded that the groundcover shown on the sedimentation and erosion control plan is a mix of bahiagrass, buckwheat, and clover. Ms. Harvin asked about the percentages of each type of grass, with buckwheat being a concern. Mr. Gorman stated that the buckwheat will be a small percentage of the makeup and is used primarily for bee habitat and pollination purposes.

Mr. Gorman provided detail about the proposed buffer. There are two rows of evergreen understory trees planted 10 feet on center, which he claimed to be pretty dense. Ms. Harvin asked how full the Nellie Stevens becomes as it matures. Mr. Gorman said it is one of the more wide species of hollies which will grow to 15-20' tall. The choice of vegetation is dictated by the need to be conscious of vegetation height and shade considerations on the west, south, and east sides of the project site. He stated that smaller, understory evergreen trees have been found to be more effective at screening uses than taller canopy trees.

Ms. Harvin asked about the existing vegetation that is to remain along Kelly Road north of the planted vegetation. She asked how wide the existing vegetation will be between Kelly Road and the service poles. Mr. Gorman said there is no set distance, but it is nearly 50 feet between the right of way and the service poles. Ms. Harvin asked about the reasoning behind having these lines above ground stretched between poles. Mr. Gorman explained that where the lines disconnect from the energy generation infrastructure, Duke Energy Progress requires the interconnection to be above ground. All electrical infrastructure within the site is contained underground. Ms. Harvin continued to question the location of the service poles, as they are located directly across the street from an occupied dwelling on Kelly Road. Mr. Gorman said it would be possible to place these poles farther back off the right of way.

Ms. Harvin asked whether the vegetation in the northwestern corner of the property will remain and not be timbered for the life of the lease. Mr. Gorman stated the pine trees will remain. She also asked for an explanation of the timber to be removed along the wetland for a shade buffer. Mr. Gorman stated that it is considered a jurisdictional wetland and is not directly part of the creek and as such does not require the 100 ft. buffer (50 ft. on each side). He said they are permitted to clear vegetation but are not permitted to do any type of grubbing.

Ms. Stainback sought clarification regarding the panel height. Mr. Gorman said they are approximately 9-10' as measured on the back side of the panel and approximately 30 inches on the front side. Ms.

Stainback voiced a concern over water runoff. Mr. Gorman said the drainage patterns will remain exactly the same as they are now. There will be 7-8 sedimentation basins on the site that have been designed and approved by NC DENR. These basins will have to remain until NC DENR is convinced there is enough groundcover across the whole facility.

Ms. Brummitt asked who will perform the maintenance on the groundcover and screening. Mr. Gorman said Cypress Creek Renewables will have their own contract with a local landscape company to perform maintenance.

Mr. York asked what the increase of impervious surface would be if the proposed solar farm was constructed. Mr. Gorman said the increase of impervious surface would be approximately 2-3%. This increase comes from the concrete inverter pads, which are 500-600 sq. feet per pad, and the gravel entrance.

Ms. Harvin asked whether groundcover will be included and planted in the street yard screening vegetation. Mr. Gorman said that they have used an upland meadow seed mix in previous projects and he can include this component in the landscaping plan. This mix includes grasses and wildflowers. She asked whether NC DOT have mowed this growth in other projects. Mr. Gorman stated that because the groundcover will be planted within the property lines, away from the ROW, it is unlikely that the groundcover will be included in the swath of area that is mowed. Further, in previous projects they have placed signs along the ROW to help prevent the mowing of this groundcover.

Ms. Stainback voiced a concern regarding the timbering of trees and potential damage to the soils when removed. Mr. Gorman stated that it would take several weeks to harvest the timber. Sedimentation basins must be built and approved by NC DENR before any improvements to the property can be done.

Tom Hester (Appraiser and Broker, Hester & Company) – Mr. York asked Mr. Hester a series of questions related to Mr. Hester's professional experience and expertise in land appraisals. Mr. Hester also attested to his familiarity with solar farms and their potential effects on surrounding real estate. This familiarity also includes the proposed solar farm at 3335 Glebe Road. Mr. Hester confirmed he has visited over 20 solar farms in the state and most solar farms are located in areas used primarily for agricultural and residential uses. Mr. Hester stated that, in his professional opinion, the proposed solar farm will not substantially hinder the value of adjoining and abutting property.

Ms. Bobbitt asked if Mr. Hester had submitted a report to the Board previously. He responded that he had. Ms. Bobbitt asked if this report on the table has been updated since the last report that was submitted. Mr. Hester stated the information presented is very similar, but he tries to update the data on a weekly basis as he visits additional solar farms.

Ms. Stainback asked Mr. Hester to explain a matched pair analysis. Mr. Hester explained that it is similar to an appraisal report in that it looks at similar properties that have been sold recently. A matched pair analysis uses various comparisons to isolate and adjust for different characteristics to match the properties as closely as possible. In this case, the characteristic he is trying to isolate is the presence of a solar farm next to a property. He then determines whether being next to a solar farm results in a lower sale price. He found through his research that being next to a solar farm does not have an effect on the sale price of a property.

THOSE SPEAKING AGAINST THE REQUEST

John Price (Property owner near proposed solar farm) – Mr. Price requested that the Board impose restrictions preventing the applicant from completely removing existing vegetation on project site. He stated that the conditional use permit request involved a solar array footprint of 31 acres. He requested that all 29 acres of the remaining acreage of the property be left undisturbed, particularly along Kelly and Glebe Roads and adjoining property boundaries. Mr. Price submitted photographs of the existing solar farm on Stagecoach Road. He then quoted from a Henderson Daily Dispatch article published on April

28, 2015 entitled “Committee Debates Distance between County Solar Farms.” He concluded by saying that the owners of this property do not live in the community.

Ms. Harvin sought clarification regarding Mr. Price’s request. Mr. Price stated he wanted all acreage that directly developed for solar panels to be left undisturbed and to utilize the area in the middle of the property. Ms. Harvin replied that middle portion of the property is jurisdictional wetland and cannot be utilized for development. She continued to say that the applicants appear to be utilizing the only available space and there is not enough space on the parcel to significantly reconfigure the footprint.

Lee Wade (Glebe Road property owner) – Mr. Wade expressed his opinion that he did not believe the solar farm, as proposed, would be adequately screened. He stated solar farms are not pleasant to look at when driving past them. He continued to say that with wildlife that utilizes the habitat on the property and the presence of the creek, he doesn’t believe anything should be placed on the property.

Sandra Reavis (Glebe Road property owner) – Ms. Reavis stated that she was concerned about the aesthetics of the solar farm. She thought the proposed planted vegetation would take years to grow before providing concealment of the farm. Her request is to keep the existing vegetation in place. She stated that she did not want to look outside her window and see a solar farm.

Preston Hargrove (Kelly Road property owner) – Mr. Hargrove stated that the proposed location of the service poles would be in front of his home. He said he did not want to look at service poles and power lines.

Mr. Robinson touched on the earlier discussion of moving the power poles farther back into the property away from the Kelly Road right of way. He asked that the Board vocalize explicitly whether they would like to see this on a revised site plan. He also asked the applicants to comment on the minimum width of existing vegetation along the eastern property boundary as well as how wide the planted vegetation will be after three years.

BOARD DISCUSSION

Ms. Harvin asked if it would be possible to ask the applicants to change the buffer width to 100’ along Kelly and Glebe Roads. Mr. Robinson questioned whether that would decrease the array footprint significantly enough that it would make the project economically infeasible.

Mr. York proposed to keep a 50’ undisturbed buffer from the driveway access west to the property line. Ms. Harvin asked if they would lose those panels in that corner of the property. Mr. York affirmed that they would. Mr. Gorman explained that for every foot of tree height, solar panels must be located four feet away due to shade buffering needs. For example, if the average tree height was 30’ then the arrays must be located approximately 120’ away from the tree line. This guideline is especially critical on the south side, but is also true on the east and west sides as well. He continued to say if one panel is shaded then the whole string of panels does not produce electricity. Ms. Harvin asked if the applicants could place panels anywhere else on the property. Mr. Gorman said they are currently using all available space and if there was anywhere else on the property where the array would be practical, they would have utilized that space for additional panels.

Ms. Harvin asked what the minimum sized farm could be to accommodate the use of existing vegetation. Mr. Gorman said that the current proposal is already at a smaller scale than typical and increasing the buffer to 100 feet would no longer make the project viable.

Mr. McMillen stated that if the Board has some specific parameters or conditions related to the buffer, then he recommend that the Board set those parameters and let the applicants go back to the drawing board and make revisions to the site plan.

Mr. Gorman asked what the buffer requirements would be if this property was developed for a single family home. Mr. McMillen stated that there would be no buffer requirements because it is not a separate type of use.

Ms. Harvin stated she did not believe 30' of existing woodland would be adequate to screen the use, especially since a large portion of the existing vegetation is composed of deciduous species which will lose their leaves in the wintertime.

Ms. Stainback wanted the Board to visit the site to review the vegetation characteristics of the site.

Mr. York and Mr. Care suggested that the Board discuss what they would like to see in a revised site plan so the Board, staff, applicants, and affected parties all understand what is desired.

Ms. Harvin suggested that the hearing be continued and requested that the Board's consideration of solar farms include use of natural vegetation, if deemed an adequate buffer. She also requested that a 100 foot buffer be utilized along road frontages and adjacent to residential properties. Ms. Stainback replied that she though all property boundaries, in terms of buffers and setbacks, should be treated equally.

Mr. McMillen stated that the zoning ordinance requires immediate concealment of the use if existing vegetation is used as a buffer. He added that a 100' buffer might be excessive. However, he said that it is up to the Board to determine what buffer width is adequate to conceal the use. Mr. McMillen continued to say that it may be appropriate for the applicant to provide you with a width of existing vegetation that would conceal the use, based on the type and density of the vegetation that is on the site.

DECISION: Ms. Harvin made a motion to continue the hearing and requested that the applicant try to use existing vegetation for buffering. Included in this motion is the request for the applicant to determine what width of existing vegetation would be adequate to conceal the solar farm. Ms. Brummitt seconded the motion. VOTES: 5-0.

Chairperson Shaw introduced the second case explaining the order of business and gave an opportunity for board members to express any conflicts. Mr. Shaw declared the hearing opened for the following case:

BOA CASE NO. 20150514-2; Tamara Martin (property owner), Yates Homes Roxboro (applicant) – Variance front setback from 30 feet to 16 feet at 230 Kerr Lake Road (Tax Parcel 0600A05016).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. David Robinson, Tamara Martin, and Mr. Ricky Evans. Mr. Robinson presented the staff report and reviewed the draft findings of facts as follows:

Description of Variance Request:

The applicant is requesting a variance from the minimum setback (section 3.2.3) requirement to reduce the front setback from 30 feet to 16 feet to allow placement of a modular home.

Findings of Fact

1. The property is owned by Tamara Martin.
2. The request is for a variance from section 3.2.3 of the zoning ordinance to allow a reduction of the front setback from 30 to 16 feet.
3. The lot is located at 230 Kerr Lake Road (tax parcel 0600A05016), which is just outside the W.E. Neathery Estates subdivision.
4. The lot consists of 0.53 acres.
5. The lot is currently zoned R-30 (Residential Low Density).
6. The lot consisted of a single family dwelling and one small shed; a demolition permit was issued for the dwelling in December 2014 due to inhabitable/undesirable condition.

7. The application requesting the variance was filed on April 9, 2015.
8. The adjoining property owners were notified on April 24, 2015.
9. The property was posted on April 27, 2015.
10. The legal notice was ran on April 29, 2015 and May 6, 2015.

Staff Comments

Mr. Robinson stated that the applicant is proposing to replace a single family dwelling with a 27' x 60' modular home. The home will be located in a similar location as the previous dwelling, but rotated to face Kerr Lake Road. The applicant will continue to use the existing driveway off of Kerr Lake Road.

Mr. Robinson explained that the property owner purchased this property in November 2014. At the time of purchase, the owner said that condition of the home had deteriorated beyond repair. This deterioration prompted the property owner to obtain a demolition permit for the dwelling in December 2014, with the intention of replacing the dwelling with a new modular home.

The overall acreage, unusual dimensions, overhead power lines, and the septic system present difficulty in meeting all required setbacks. Mr. Robinson stated that the property owner has worked with her parents who own the lot to the north to reconfigure the lot to comply with the northern side setback.

Mr. Robinson recommended that should the Board wish to approve this variance request, that a condition be placed on the variance requiring the property owner to record the recombination plat and the deed that conveyed the recombined pieces of the two lots.

Ms. Harvin questioned whether the proposed dwelling actually faces Kerr Lake Road. Mr. Robinson responded that the dwelling is oriented more towards Kerr Lake Road than the private drive.

Ms. Stainback asked whether if this proposed location is the most compliant location on the lot. Mr. Robinson stated that given the information that has been presented, staff believes the proposed location is the most compliant and the applicant has worked to meet as many dimensional standards as possible.

THOSE SPEAKING FOR THE REQUEST

Tamara Martin (property owner) – Ms. Martin explained the hardship presented to her in being unable to replace the existing inhabitable structure due to the lot's dimensions and location of the septic system.

Ms. Harvin asked Ms. Martin to confirm the location of the existing driveway.

Ms. Stainback asked if the proposed modular home is comparable in size to the homes in the rest of the neighborhood. Ms. Martin replied that the home is comparable.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Ms. Stainback commented on the fact there was previously a home on the lot and the proposed modular home is not significantly bigger in size and is more compliant than the previous dwelling.

Mr. Shaw went through the variance check-list with the board and entertained a motion.

DECISION: Ms. Stainback made a motion to approve the variance request for a reduction in the front setback on the south side of the property from 30 feet to 16 feet to allow the placement of a modular home, subject to the recordation of the recombination plat and deed. Ms. Harvin seconded the motion.

VOTES: 5-0.

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