

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on June 11, 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
Alvin Johnson, Jr.
Blake Haley

ALTERNATES PRESENT

Ruxton Bobbitt

MEMBERS ABSENT

Rev. Roosevelt Alston

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 May 14, 2015 meeting. Ms. Harvin made a motion to approve the minutes with the following changes:

1. On page 3, change Ms. Stainback to Ms. Brummitt, referring to the question about groundcover at the site.
2. On page 4, under Tom Hester’s testimony, change Ms. Bobbitt to Ms. Brummitt.
3. On page 5, in the first full paragraph, the second sentence should read “Mr. Price stated he wanted all acreage that is not developed for solar panels...”
4. On page 6, in the fifth paragraph, the last sentence should read “Ms. Stainback replied that she thought all property boundaries...”
5. On page 7, under Staff Comments, remove the word ‘whether.’

Ms. Brummitt seconded the motion. All present were in favor. VOTES: 7-0.

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 opened for the following case: ***BOA CASE NO. 20150611-1; Flat Rock United Methodist Church (property owner), Tarheel Woodcrafters, Inc. (applicant) – Variance front setback from 50 feet to 11.4 feet at 2560 Satterwhite Point Road. (Tax Parcel 0609 02013).***

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. David Robinson, Dennis Edwards, and Dennis Hodge. 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 50 feet to 11.4 feet to allow construction of a 12’ x 24’ shed.

Findings of Fact

1. The property is owned by Flat Rock United Methodist Church.
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 50 to 11.4 feet.
3. The lot is located at 2560 Satterwhite Point Road (tax parcel 0609 02013).
4. The lot consists of 1.59 acres.
5. The lot is currently zoned O-I (Office Institutional).
6. The lot currently consists of a church building, storage shed, car shed, and playground.
7. The application requesting the variance was filed on May 14, 2015.
8. The adjoining property owners were notified on May 27, 2015.
9. The property was posted on May 27, 2015.

10. The legal notice was run on May 28, 2015 and June 4, 2015.

Staff Comments

Mr. Robinson stated that the applicant is proposing to construct a 12' x 24' shed on a concrete pad. The purpose of the shed is for food preparation to supplement the church's kitchen. The shed will connect to the northeast corner of the church building where the existing kitchen is located. Once constructed, the edge of the shed will be approximately 11.4 feet from the Mabry Mill Road right of way. There is a concrete wall separating the existing parking off Mabry Mill and the proposed location of the shed.

Mr. Robinson stated that this property falls within the Anderson-Creek watershed. In the overlay zone in which the property is located there is a maximum 24% built-upon area restriction. Per Cawthorne's Surveying letter, currently there is a 59% built-upon area. If this variance request is approved, the applicant will be required to take the project to the Watershed Review Board to seek a special nonresidential intensity allocation to allow the increase in impervious surface.

Mr. Bobbitt asked if any traffic count studies were available for Mabry Mill Road. Mr. Robinson stated if such studies have been conducted, he is unaware of them.

THOSE SPEAKING FOR THE REQUEST

Dennis Edwards (Tarheel Woodcrafters, applicant) – Mr. Edwards stated that the proposed shed would be located behind a retaining wall, separating the Mabry Mill off street parking. The shed will be used for food preparation and cooking.

Mr. Bobbitt asked if the retaining wall is flush with the ground where the proposed shed would be located. Mr. Edwards replied that the retaining wall is approximately 3 feet high from the parking area and church grounds. Mr. Bobbitt asked if this shed will be used on any particular days.

Mr. Haley asked if the shed will enclosed with walls. Mr. Edwards responded that the shed will be open.

Dennis Hodge (Flat Rock Baptist Church representative, property owner) – Mr. Hodge explained that the church wants this shed for food events. He said there are no regularly scheduled events where this shed will be used, only on special occasions. He continued to say that there has been several times where it has rained when they have been cooking outside the kitchen door and have had to bring everything inside. They currently do not have any covered areas abutting the church where they can cook and prepare food.

Ms. Harvin asked if the shed will resemble a porch. Mr. Hodge said it will be an open lean-to type shed attached to the church building. He confirmed there is a parking area between the shed and Mabry Mill Road.

Ms. Stainback asked if the parking area that separates Mabry Mill and the proposed shed location is used often. Mr. Hodge said it is used mostly on Sundays.

Mr. Bobbitt asked if the grills under the shed will be portable or fixed. Mr. Hodge said only permanent grills would be stored under the shed.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

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 Cheatham Mabry side of the property from 50 feet to 11 feet to allow the placement of an open air shed. Mr. Johnson seconded the motion. VOTES: 7-0.

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 reopened 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 Keith Billy, Ronnie Perkinson, Mildred Henderson. Witnesses previously 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 May 29, 2015.
8. The property was posted on May 29, 2015.
9. The Board of Adjustment opened the hearing and heard testimony from staff, the applicant, and affected individuals at the May 14, 2015 hearing. The Board voted to table the hearing to allow the applicant to revise the site plan for consideration of screening and buffering concerns.

Staff Comments

Mr. Robinson provided an update on the staff report for the conditional use permit request. Mr. Robinson stated that all testimony and evidence at the May 14th hearing, including the findings of fact and staff report, carries over to this hearing.

Mr. Robinson confirmed that the Board voted to table the case to allow the applicant to revise the site plan. Specifically, the Board asked the applicant to look at utilizing existing vegetation as a buffer. Since that hearing, the applicant has visited the site and conducted a shade analysis. The landscaping plan now features a planted buffer along Glebe Road, west of the driveway entrance as well as along Kelly Road from the intersection with Glebe Road north to where the array footprint ends. This buffer planting consists of two staggered rows of evergreen understory trees planted at a height of 6 feet. For every 100 feet, there are 3 staggered crape myrtle trees grouped together. Additionally, the plan shows a row of evergreen understory shrubs (planted at a height of 30 inches) in front of the understory trees and crape myrtles. The applicant proposes to plant a mixture of NC upland meadow mix all throughout the street yard within the 50’ setback area. A minimum of 50’ of existing vegetation will serve as screening on Glebe Road east of the driveway entrance. A minimum of 35’ of existing vegetation will serve as screening along the length of the eastern and northern property boundaries.

According to the applicant, there are restraints on the rear of the site that prevents them from shifting the array footprint north. Leaving the large pines along the road will throw significant shadows onto the array footprint. Evidence supporting this claim is a shade analysis showing the throw of shadows throughout the year from October through March. The applicant claims these shadows will make a

significant portion of the arrays unproductive and inefficient. Additionally, the understory trees along the road frontages are mostly deciduous so during the colder months of the year the screening will not be effective.

The applicant has submitted a NCDENR erosion and sedimentation control permit to staff since the May 14th hearing. The applicant has also changed the location of the interconnection service poles. The site plan now shows the service poles being located to the north of the creek in the northwestern corner of the property.

Staff would like assurance from the applicant that the proposed planted buffer allows enough space for the plantings to grow healthfully without any significant chance of overcrowding and competition for resources.

Staff would also suggest that the submittal of the executed pages of the interconnection agreement with the utility be a condition of the release of the conditional use permit.

THOSE SPEAKING FOR THE REQUEST

David York (Attorney, Smith Moore Leatherwood LLP) – Mr. York confirmed that he and Mr. Kevin Gorman visited the site immediately following the May 14th hearing and met with several of the surrounding property owners. They discussed various areas where tree conservation was practical and feasible.

Mr. York wanted to confirm that the property appraisal testimony from Mr. Hester at the May 14th was adequately in the record. Mr. York then called on Mr. Gorman to provide an overview of the changes to the site plan.

Kevin Gorman (Project Manager, Bloc Design, PLLC) – Mr. Gorman stated that he looked at where existing vegetation could be used for buffering. He incorporated that where possible and also enhanced the proposed buffer plantings.

Mr. York asked Mr. Gorman to comment on the clustering of the plantings and whether the density is such that it will not endanger the health or viability of the plant material. Mr. Gorman confirmed that they increased the planting area from 30 feet wide to 50 feet wide, which provides more than enough space for the revised plantings.

Mr. Gorman continued that they included flowering material in the revised buffer to break up the monotony of the evergreen plantings.

Mr. Gorman submitted illustrations of the site with proposed plantings in place. Mr. Bobbitt asked how long it would take for the plantings to reach maturity shown in illustrations. Mr. Gorman said that the illustration reflects growth after a five year time period.

Ms. Harvin asked about the groundcover within the site. Mr. Gorman replied that it would be a mix consisting of Bahia grass, Bermuda, clover, and buckwheat.

Mr. York asked Mr. Gorman if the proposed buffer plantings provide more robust screening than the existing hardwoods and tall pine trees on the site. Mr. Gorman said the proposed buffer will screen the use of the site better than the existing vegetation.

Ms. Stainback sought clarification concerning the location of the driveway relative to Jason Reavis' house. Mr. Gorman said the new driveway will be located to the east of the existing driveway, due to sight distance requirements.

Mr. Bobbitt asked if the intent is to purchase or lease the property for the proposed use. He also asked if the applicants foresee abandonment of these farms after a 15 or 20 year lease. Mr. York replied that it is his understanding that the property will be bought from the current landowners but a lease arrangement will be in place between a property owner and operator. He also stated that the salvage value of the material on the farm far exceed the cost of removal.

Mr. York also stated that he would be willing to accept the installation of a drip irrigation system for the buffer plantings as a condition of approval.

THOSE SPEAKING AGAINST THE REQUEST

Ronnie Perkinson (Property owner, 4201 Glebe Road) – Mr. Perkinson stated that there is a gully in the middle of the subject property. Additionally, Mr. Perkinson stated that he does not believe the soil is suitable for the proposed buffer plantings.

Mr. Perkinson asked that the Board require a 100 foot setback. He also requested that a \$1,000,000 bond be placed on the company to ensure removal of infrastructure at the end of the life of the solar farm.

Mildred Henderson (Property owner, 3156 Kelly Road) – Ms. Henderson echoed Mr. Perkinson's comment concerning the unproductive nature of the proposed site's soil. She said the tobacco that was planted there 36 years ago did not produce. She does not believe that the buffer plantings will be able to grow given the quality of the soil. She also said did not believe that the solar farm fit within the community.

John Price (Property owner, 3775 Glebe Road) – Mr. Price asked the Board to consider a 100 foot setback. He also asked that the existing vegetation within the 100 foot setback remain.

Mr. Price also had a concern that there will be runoff from the solar farm which would be damaging to the local waterways.

Mr. Jordan McMillen stated that any conditions that are made as part of the conditional use permit have to be reasonable within the zoning ordinance. He continued to say Vance County has regulations that the Board has to work within.

Mr. Gorman addressed some of the comments made by adjacent property owners. In terms of the topography of the site, Mr. Gorman said that the locations of the arrays were based on the elevation.

Ms. Harvin asked if the applicant has completed soil analyses on other projects. Mr. Gorman stated that he has and the tests typically determine the pH of the soil. Ms. Harvin asked if soil is ever replaced on project sites. Mr. Gorman said that they cannot plant landscaping in muck. He said that there is vegetation growing out there now so there should not be any issue with the specified buffer plantings.

Mr. Bobbitt asked Mr. Gorman to explain how skimmer basins work. Mr. Gorman explained how the skimmer basins are put in place and that they have to remain in place until NC DENR determines that adequate groundcover is present on the site. Mr. Bobbitt asked how often NC DENR visits sites. Mr. Gorman said it depends on how many projects they have going on at any given time, but that a self-inspection report is now available.

Mr. York asked Mr. Gorman whether the impervious surface resulting from a residential development substantially exceed the impervious surface of the proposed solar farm. Mr. Gorman stated there would only be a slight increase in impervious surface with the solar farm and it would be much less than a residential development.

Ms. Stainback asked where existing vegetation will remain on eastern boundary of the site. Mr. Gorman explained that approximately 35 feet of existing vegetation will remain, with a timbered area separating

the solar farm and the existing vegetation which will be used as a shade buffer. The vegetation in the shade buffer will have to be managed over time.

Mr. York concluded by saying he objects to any opposing testimony relating to the impact of this proposed use on property values. NC General Statutes 160A 393 prohibits a person from giving opinion about scientific, technical, or other specialized subjects; specifically, that the use of a property in a particular way would affect values of other properties unless the person testifying is in fact an expert in the subject. Mr. York continued to say that the Board has not heard any competent evidence that this use would be harmful to property values in this area, is unsafe, or cause detriment to the public welfare.

Ms. Stainback asked if the applicant looked at using existing vegetation for the screening and buffering requirements. Mr. York confirmed that they had and that the results of the shadow study indicate that using existing vegetation would make a significant portion of the array unproductive.

Mr. Jonathan Care reminded the Board that anything that was presented as hearsay is not under consideration and anything that was offered that wasn't entered as evidence is not under consideration as well.

BOARD DISCUSSION

Ms. Stainback asked staff what would be the fine per day if the plants do not reach the required height. Mr. McMillen stated that the buffer plantings have to reach a height of 8 feet within three years. The applicant has proposed material that will be planted at 6 feet. If the plants do not reach the required 8 feet, they will be subject to a \$100 per day fine as outlined in the zoning ordinance. Mr. Care stated that the applicant will have to meet and maintain the required height.

Chair Shaw proceeded to go through the conditional use permit checklist.

Ms. Harvin stated that she is not convinced that any solar farm is in harmony with the surrounding area. However, she believes the solar developers are making a strong effort to provide appearance conditions that will help the harmony of the development.

Mr. Johnson made a motion to deny the request for the conditional use permit. Ms. Harvin asked on what grounds is that motion made. Mr. Shaw stated that you must go through the findings and provide specific reasons to deny the request.

Mr. Haley asked if the Board felt as though the applicant has addressed the concerns that arose in the May 14th hearing. Ms. Harvin stated she believes the applicant has made a strong effort to increase screening's robustness, except on the east side. Ms. Harvin asked the applicant to address the concern of the eastern boundary's buffer. Mr. Gorman clarified that there would be a 35' buffer consisting of existing vegetation along the eastern boundary.

Mr. Bobbitt said it is tough to make a decision given the opposition to the proposed project. However, the Board must use an ordinance with regulations. The Board has to decide whether the proposed project and the evidence that was presented meet the criteria in the ordinance.

DECISION: Mr. Bobbitt made a motion to approve the conditional use permit request. Included in this motion are the conditions that the applicant submits the executed pages of the interconnection agreement to county staff, install a drip irrigation system to water buffer plantings, and establish groundcover to prevent water runoff within the site. Ms. Brummitt seconded the motion. VOTES: 7-0.

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