

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on September 10, 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
Ruth Brummitt
Alvin Johnson, Jr.
Phyllis Stainback – Vice Chairperson
Blake Haley

MEMBERS ABSENT

Agnes Harvin

ALTERNATES PRESENT

Ruxton Bobbitt

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the August 13, 2015 meeting. Ms. Stainback made a motion to approve the minutes as presented. Ms. Brummitt seconded the motion. All present were in favor. VOTES: 6-0.

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. 20150910-1; Margaret & Robert Shearin (property owners & applicants) – Conditional Use Permit to allow a vehicle repair garage to be located within the AR zoning district at 324 Greystone Road (Tax Parcel 0615A02008).***

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Ms. Margaret Shearin, and Mr. Donald Shearin. Mr. McMillen presented the staff report and reviewed the draft findings of facts as follows:

Description of Variance Request:

The applicant is requesting a conditional use permit to allow an auto/truck repair facility to be located within the Agricultural Residential zoning district.

Findings of Fact

1. The request is for a conditional use permit to allow an auto/truck repair facility to be located within the Agricultural Residential zoning district.
2. The property is owned by Margaret & Robert Shearin and is identified as 324 Greystone Road or more specifically as tax parcel 0615A02008.
3. The property consists of 1.056 acres as per survey recorded in Plat Book Y487 and has previously been rezoned from R-30 to AR zoning which was approved by the Board of Commissioners on September 8, 2014.
4. The application requesting the variance was filed on August 13, 2015.
5. The adjoining property owners were notified on August 28, 2015.
6. The property was posted on August 28, 2015.

Staff Comments

Mr. McMillen stated that the applicant is proposing to utilize an existing metal building as an automotive repair facility. Previously the applicant requested and the commissioners approved a rezoning from R-30 (low density residential) to AR (agricultural residential) which allows an automotive repair facility with a conditional use permit.

While this area is characterized as a mix of residential and agricultural property, it is located within an area that consists of single family homes fronting along Greystone road with agricultural land directly behind the homes. In the interest of safety to children and adjacent property owners, the zoning ordinance requires outdoor storage to maintain a buffer that conceals the materials from public view. It is not clear

from the site plan where the motor vehicles will be stored and it is recommended that this be included on any final site plan approved. The applicants do propose to plant Leyland Cypress or Crypomeria which are fast growing evergreen trees to serve as a concealing buffer. It is reasonable to believe that the proposed plantings planted at 4-5 feet tall will provide the necessary screening on the front (western) and side (southern) sides of the property.

Additionally, the zoning ordinance and other county ordinances place a limit to the number of Junk (inoperable, dismantled, or abandoned) vehicles that are allowed on any one property. Currently the limit is 4 such vehicles with commercial garages over 2 acres allowed an additional 6 vehicles totaling 10 on any one property. Because of the size of this property being less than 2 acres, the repair facility would be limited to 4 such vehicles at any one time. It will be important that the applicants are aware of this and that they turn over their inventory within a reasonable timeframe to meet this requirement.

Ms. Stainback questioned whether the vehicle limit included other vehicles on the property beyond those being worked on. Mr. McMillen responded that 4 vehicles refers to junk vehicles. Mr. Bobbitt questioned whether the county had an enforcement officer that would be available to assist with enforcing the requirement. Mr. McMillen responded that the county does have an enforcement officer available for this purpose. The board discussed whether more than 1 driveway would be permitted on this property. Mr. McMillen responded that it may be beneficial to have the two driveways as one would be used for residential purposes and the other would be used for the commercial use. He mentioned further that DOT typically would allow more than 1 driveway as long as they meet DOT separation requirements.

The board discussed whether landscaping would be necessary surrounding the entire property. Mr. McMillen responded that the ordinance would consider the surrounding properties as residential and therefore it would make sense to have a buffer on all sides of the commercial use.

THOSE SPEAKING FOR THE REQUEST

Margaret Shearin, (applicant) – Ms. Shearin addressed the board and mentioned that they would not like to have a buffer between the house and the business due to safety and security reasons. She mentioned that her grandson lives in the mobile home which is located on the same property as the garage. She mentioned that the vehicles would be stored on the left side of the driveway behind the trees that would be planted along the front.

Mr. Shaw questioned the number of vehicles that would be on the property at one time.

Mr. Donald Shearin (business operator) addressed the board and mentioned that he typically has 8 and as many as 15 vehicles on the property at a single time. The board raised a concern with vehicles being left on the property and questioned the procedure and timing that the applicant would use prior to taking possession of vehicles which are not picked up by the customer. Mr. Donald Shearin responded that he gives 30 days for payment and then moves the vehicles to an offsite storage yard.

Ms. Brummitt questioned whether a turnaround would be provided. Mr. Shearin responded that the turnaround would be provided on the left side of the access driveway. Mr. Bobbitt questioned whether the business also repairs large trucks. Mr. Shearin responded that he does repair trucks, however typically the businesses that own the trucks do not leave them on site even if they cannot be fixed.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Mr. Shaw went through the conditional use permit check-list with the board and entertained a motion. The board was made aware that a current violation exists as this business was opened without a permit. As a result of this they do not want to have the conditional use permit issued until the buffers are planted

and until the property meets the conditions as imposed by the board and until the property conforms to the zoning regulations.

The board questioned the applicant as to the length of time that the business has been in operation. They responded that it has been in business for 2 years and that they received the violation approximately 1 year ago. During the past year they have gone through the rezoning process and have been working with their attorney to bring the property into compliance.

Ms. Stainback questioned whether the applicant has received any complaints from the neighbors. Ms. Shearin responded that they have not received any complaints and that approximately 4 other businesses are located in close proximity along this road.

DECISION: Mr. Johnson made a motion to approve the conditional use permit subject to receiving a revised site plan that includes the vehicle storage area, a turnaround to prevent vehicles from backing into the roadway, and revisions showing plantings surrounding the entire property while leaving a 10 foot setback from the right-of-way for the plantings when they are mature. Additionally a NDOT driveway permit must be submitted. The motion included to approve the findings of facts as presented. Mr. Bobbitt seconded the motion. VOTES: 6-0.

Chairperson Shaw introduced the next 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. 20150910-2; Ronald E. & Nancy Stainback (property owners); Entropy Solar Integrators, LLC(applicant) – Conditional Use Permit to allow a 5 MW Solar farm at 541 Chestnut Street, Middleburg (Tax Parcel 0610 01001 & 0610 01010).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Matthew Braswell, Jon Davis and Joshua Stokes. Mr. McMillen presented the staff report and reviewed the draft findings of facts as follows:

Description of Variance 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 and (L-I) Light Industrial.
2. The property is owned by Ronald E. and Nancy Stainback.
3. The property is located at 541 Chestnut Street, Henderson, NC 27537.
4. A recombination plat has been submitted to recombine tax parcels 0610 01001 and 0610 01010. The plat has been approved by planning as of 7/31/2015, but has not been recorded to date.
5. Upon completion of the recombination, the property will consist of approximately 169 acres with approximately 32 acres consisting of the array footprint.
6. The site is currently used for agriculture and is cleared for the most part. The property does consist of 2 ponds which will remain undisturbed.
7. A completed application requesting a conditional use permit was filed on August 19, 2015.
8. The adjoining property owners were notified on August 28, 2015.
9. The property was posted on August 28, 2015.

Staff Comments

Mr. McMillen stated that the requesting a conditional use permit to construct a 5 MW solar farm. Currently the property consists of two separate tax parcels (0610 01001 and 06101010) which would be recombined into 1 parcel consisting of approximately 169 acres. As a result of each parcel being zoned differently, the property will be split zoned between Light Industrial (LI) and Agricultural Residential (AR) once the recombination is completed. The majority of the solar farm will be located within the

portion zoned LI. Staff has already approved the recombination plat, but to our knowledge it has not been recorded yet. Staff recommends requiring the recombination to be recorded as a condition of approval. It is also important to note that other light industrial property is located on the eastern and western sides of the property with US 1/158 bordering to the North. The location of the solar arrays is directly outside of the Town of Middleburg limits and a physical address of 541 Chestnut Street, Henderson, NC 27537 has been assigned for this project.

As proposed, the solar farm project area would be leased from the current property owner and would cover approximately 32 acres. The site plan calls for an 8 ft. fence with 3 strands of barbed wire. A 30' wide planted, vegetative buffer is proposed on the northern, eastern and western sides of the solar farm consisting of double staggered plantings of Nellie Stevens Holly. The plantings will be planted at an initial height of 4 feet and appear to be in line with the zoning ordinance requirements for buffer plantings.

The site plan shows the solar arrays being setback 100 feet on all sides. As of the submittal date for this CUP permit the project appears to meet the setback requirements. Any changes to the zoning ordinance after the submittal date would not apply to this project.

The property will be accessed via an existing driveway from the Former Middleburg High Dollar Warehouse and therefore NCDOT is not requiring a driveway permit. An email confirming this is included within the staff report materials. Additionally the applicants have submitted the letter of approval from NCDENR for the erosion and sedimentation control plan and have submitted proof that an interconnection agreement is in process. It would be recommended that staff receive the signature pages for the interconnection agreement as a condition of approval.

Mr. Bobbitt questioned how the property would be accessed and whether an easement was necessary from Chestnut Street through the neighboring property to the solar farm. Mr. McMillen responded that it does appear that legal access would be necessary through the Middleburg High Dollar Warehouse parcel to the east of the Solar Farm and recommended that the board take this up with the applicant and ensure that this is completed within a recorded survey.

THOSE SPEAKING FOR THE REQUEST

Matthew Braswell – 3500 Gateway Blvd., Morrisville NC - (Consultant for Applicant) – Mr. Braswell addressed the access to the property stating that it would be through the neighboring warehouse property and the applicant was willing to consider adding an easement in this location if it is added as a condition.

Joshua Stokes – 55 Tucker Lumber Road, Henderson, NC - (Citizen living next to solar farm property). Mr. Stokes addressed the board and questioned how the solar farm would affect his property.

Jon Davis - 101 Europa Lane, Chapel Hill, NC - (Representative for Entropy Solar and property owners). Mr. Davis responded that there should not be any direct impact and asked whether there were any specific concerns. Mr. Stokes questioned whether this would affect his property values. Mr. Davis responded that they have reviewed studies from NC State suggesting that there should not be any negative affect on property values. He mentioned that nothing was being put on the property that should affect the property values one way or the other.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Mr. Shaw went through the conditional use permit check-list with the board and entertained a motion.

DECISION: Mr. Bobbitt made a motion to approve the conditional use permit subject to the recordation of the recombination plat, submittal of an executed interconnection agreement, and submittal of an

easement for access to the property from Chestnut Street. Included in this approval is to include the staff comments and to approve the findings of facts as presented. Ms. Brummitt seconded the motion. VOTES: 6-0.

Chairperson Shaw introduced the next case explaining the order of business and gave an opportunity for board members to express any conflicts. Mr. Care mentioned that he has done work on other matters with the property owner and he has looked over the lease for the solar farm and wanted to inform the board. The board noted this and did not believe this would cause a conflict. Mr. Shaw declared the hearing opened for the following case:

BOA CASE NO. 20150910-3; Claude Jackson (property owners); ESA Henderson NC, LLC & ESA Henderson 2, LLC (applicants) – Variance request to reduce the separation distance requirement between conditional uses. (Tax Parcel 0224 02021).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen and Javier Latre. Mr. McMillen presented the staff report and reviewed the draft findings of facts as follows:

Description of Variance Request:

The applicant is requesting a variance from section 6.10 of the zoning ordinance which requires a separation of 1,000 feet between conditional uses listed within the section inclusive of solar farms.

Findings of Fact

1. The applicants were previously issued a conditional use permit with conditions to construct a 10 MW solar farm on tax parcel 0224 02021. The conditions were not met within 1 year of approval causing the CUP to expire.
2. The applicants revised their site plan and have divided the farm into 2 separate solar farm entities due to environmental issues (i.e. wetlands, beaver habitat) discovered on the property.
3. The applicants are requesting a variance from the 1,000 foot separation requirement within section 6.10 of the zoning ordinance between certain conditional uses.
4. The property is owned by Claude T. Jackson and the applicants are ESA Henderson NC, LLC & ESA Henderson 2, LLC.
5. The property is located directly behind 325 Bearpond Road, but access will be from Facet Road; Property more specifically identified as tax parcel 0224 02021.
6. The property consists of 68 +/- acres.
7. The lot is currently zoned (LI) Light Industrial.
8. The application requesting a variance was filed on August 13, 2015.
9. The adjoining property owners were notified on August 28, 2015.
10. The property was posted on August 28, 2015.

Staff Comments

Mr. McMillen stated that the applicant previously applied for and was granted a conditional use permit on 8/14/2014 with conditions for a single 10 MW solar farm to be located on property owned by Claude Jackson. The conditions of approval included that the permit was issued only for parcel 0224 02021 and not 0224 02026, an 8 foot fence was to be constructed, an interconnection agreement was to be submitted and the appropriate NC DENR permits were to be submitted regarding the existing streams on the property. Due to a lengthy DENR review period the conditions were not met within 1 year and the conditional use issuance has expired. Additionally because of the NCDENR analysis locating wetlands and a beaver habitat on the property the applicants have divided the project into 2 separate solar farms (one 5 MW and one 2 MW) which would be accessed using a single driveway. While the farms appear as 1 solar farm, they would technically be separate farms operated by separate LLC entities and therefore would fall under the 1,000 foot separation requirement for certain conditional uses including solar farms. The applicants are requesting a variance to eliminate the separation distance and allow the solar farms to be located on adjoining parcels.

The property is zoned Light Industrial and is surrounded mostly by other industrial and commercial

property. As a result of this, the visual impact is not as great as it could be with residential property next door. With the exception of a mobile home park owned by the same property owner to the west of the property, no other residential property is located within 1,000 feet of the subject property. The applicant believes that approval of the variance will allow them to consolidate the location of the farm within the property to cut down on the visual impact of neighboring properties.

The board previously approved a 10 MW solar farm for this property which would be reduced to 2 separate farms totaling 7 MW. Due to a shared access point and its location within the LI zoning district it is reasonable to consider this request. If the variance is approved the applicants would be returning with 2 separate submittals for the solar farms.

Mr. Bobbitt questioned at what point staff would approve a revision to a conditional use permit in house. Mr. McMillen responded that minor revisions that do not significantly change the footprint of the use could be handled without additional board approval, however in this case the conditional use permit has expired and therefore the board would be required to rehear the conditional use case for both solar farms if the variance is approved.

THOSE SPEAKING FOR THE REQUEST

Javier Latre (Chief Technical Officer for ESA Renewables on behalf of applicant) – Mr. Latre addressed the board and explained that they are currently working designing the landscaping buffer and if approved for the variance will be back for 2 conditional use permits at a later time. He explained that 95% of the site has been photographed and is covered with approximately 8 year old trees with an average height of 55 feet.

The board questioned whether official information has been received from DENR establishing the wetland area. Mr. McMillen responded that this has been confirmed and he has worked with the applicant to determine the location for the dividing line between the parcels. Currently the plan is to have the dividing line run down the center of the wetland area which will allow adequate setbacks and buffers on the rear of the 1st farm and the front of the 2nd farm.

Mr. Haley questioned why the farm was not reduced in size initially instead of having the board consider the larger 10 MW farm for the first conditional use permit. Mr. Latre explained that the information from Duke Energy Progress allowing the 10MW farm was expected to be returned after the initial conditional use permit approval. When Duke Energy responded, the rules were changed for larger farms causing a longer approval process. Because of this, the solar developer decided to divide the farms into 2 separate smaller farms under 5 MW each. It is anticipated that this arrangement will be approved by Duke Energy by the end of 2015.

THOSE SPEAKING AGAINST THE REQUEST

None

BOARD DISCUSSION

Mr. Shaw went through the variance checklist with the board and entertained a motion.

DECISION: Mr. Bobbitt made a motion to issue the variance eliminating the separate distance between the 2 proposed solar farms and to approve the findings of fact as presented. Ms. Brummitt seconded the motion. VOTES: 6-0.

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