

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on December 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
Phyllis Stainback – Vice Chairperson
Blake Haley
Agnes Harvin

ALTERNATES PRESENT

Ruxton Bobbitt

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney

MEMBERS ABSENT

Alvin Johnson, Jr.

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the October 15, 2015 meeting. Ms. Brummitt made a motion to approve the minutes with corrections as noted. Ms. Harvin 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 and explained that both cases will be handled together within a single staff report and quasi-judicial hearing:

BOA CASE NO. 20151015-1; Claude Jackson (property owner); ESA Henderson NC, LLC (Applicants) – Conditional Use Permit to allow a 5 MW Solar farm along Facet Road (Tax Parcel 0224 02021 & 0224 02026).

BOA CASE NO. 20151015-2; Claude Jackson (property owner); ESA Henderson 2, LLC (Applicants) – Conditional Use Permit to allow a 2 MW Solar farm along Facet Road (Tax Parcel 0224 02021 & 0224 02026).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. Javier Latre, and Ms. Erma Hayes. Mr. McMillen 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 and 2 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 (ESA Henderson NC, LLC) solar farm and a 2 MW (ESA Henderson 2, LLC) solar farm on a parcel zoned (LI) Light Industrial. The parcel will be subdivided prior to issuance of a conditional use permit.
2. The property is owned by Claude Jackson.
3. The property is located at 1454 Facet Road (ESA Henderson NC, LLC) and 1444 Facet Road (ESA Henderson 2, LLC) or more specifically as tax parcel ID 0224 02021.
4. The property consists of 71.4 acres of which would be divided into a 43.16 acre parcel containing a 5 MW solar farm and divided into a 28.25 acre parcel containing a 2 MW solar farm.
5. The majority of the property is wooded.
6. The application previously was approved for a variance allowing the separation distance between two solar farms of 1,000 to be removed. This is due to the solar farms being directly adjacent once the lot is subdivided.
7. The application requesting a conditional use permit was filed on October 13, 2015.
8. The adjoining property owners were notified on November 25, 2015.
9. The property was posted on November 30, 2015.

Staff Comments

Mr. McMillen stated that the board previously approved a conditional use permit for a 10 MW solar farm on 8/14/2014 which expired after 12 months of inactivity. Since this time, it was necessary to split the solar farm into two separate solar farms (one 5 MW and one 2 MW). The board previously approved a variance on 9/17/2015 to allow these two solar farms to be within 1,000 feet of each other. The applications being considered as a part of this submittal are for two separate conditional use permits for each of the 2 solar farms. Both applications are combined within this single staff report and action can be taken together as long as both applicants are identified within the action.

ESA Henderson NC, LLC is the applicant proposing to construct a 5 MW solar farm on 43 acres on the rear of the property and ESA Henderson 2, LLC proposes to construct a 2 MW solar farm on 28 acres on the front of the property adjacent to Facet Road. Each of the properties would be leased from the property owner, Claude Jackson and each farm would share an entrance and have separate addresses. An NCDOT driveway permit and E-911 addresses have all been obtained and submitted to staff. A condition of approval should be the finalization of the subdivision survey creating tracts 1 and 2. Prior to finalizing building inspections, each address will need to be posted at the main entrance along Facet Road.

Overall the property is gentle and rolling in terrain with a low point running through the property where the wetlands and blue line stream are located. The property slopes up from the stream to Facet Road and slopes up as you travel along Facet Road from North to South to the intersection with Bearpond Road. Each of the solar farms show 100 foot front setbacks and 50 foot side setbacks in accordance with the revised solar farm regulations. It does not appear that the 100 foot buffer extends from the proposed 30 foot access easement extending across the front of tract 2. This will need to be corrected on the site plan. The site plan does show an 8 ft. fence topped with barb wire. The site plan also shows use of existing vegetation for the most part as a vegetative buffer which will be supplemented as needed with 1 evergreen tree and 18 evergreen shrubs per 100 linear feet within a 20 foot screening area. As per the ordinance the entire width of the screening area would need to be a minimum of 30 feet wide and no details are provided as to the specific extent of new plantings vs. existing vegetation. Also, from reviewing the planting layout on the site plan, it does not appear that the shrubs will meet the minimum 8 foot height requirement. Staff would recommend using existing vegetation to the greatest extent possible and when new plantings are necessary a denser planting of trees to ensure an adequate screening is created. Pictures of the existing vegetation are included to show the condition/height of the existing vegetation.

The solar panels will have no moving parts and will have a relatively low profile with a height of less than 10 feet (ordinance requires less than 25 feet). The project area will be approximately 300 ft. from the nearest structure (Bearpond Vol. Fire Department building) and the solar panels will be approximately 550 feet from the building.

Mr. Shaw pointed out that the plans show a secondary temporary construction access through the neighboring property to the west. The board discussed the need for a valid construction easement if this is to be used as a secondary access during construction.

Mr. Bobbitt questioned whether the ordinance requires a 100 buffer between the solar farms. Mr. McMillen responded that a 100 foot setback is required for each farm with a 30 foot landscaping within this area.

Ms. Harvin questioned why the original solar farm was broken into 2 separate farms from the original 10 MW proposal. Mr. McMillen responded that it was his understanding that due to wetland restrictions on the property as well as time constraints with the Duke Energy Interconnection agreement, the applicant chose to divide the larger farm into 2 separate farms under 5 MW each. Mr. McMillen mentioned that the applicant may be able to provide additional details on this.

THOSE SPEAKING FOR THE REQUEST

Javier Latre - (Representative for ESA Renewables). Mr. Latre addressed the board and informed the board that the decision to divide the solar farm into two smaller farms was a result of the lengthy Duke Energy review associated with farms over 5 MW. As a result the farms were divided into smaller separate applications.

Mr. Bobbitt questioned whether the solar panel technology utilized will be the most advanced. Mr. Latre responded that the technology is continually improving over time, however the technology utilized for a single farm is affected by the ability to efficiently produce solar panels at that time. As a result of this, the efficiency of the panels on site will reduce slightly each year. Mr. Latre mentioned that the invertors used on site are the best technology and most up to date as of the install date.

Mr. Bobbitt questioned whether the applicant was willing to submit the required items mentioned within the staff report. Mr. Latre responded that they are willing to provide these items if required. Mr. Haley pointed out that the board typically has an appraisal indicating no impact on surrounding properties.

Mr. Bobbitt questioned the timeframe for the start of construction. Mr. Latre responded that they anticipate receiving approval from Duke Energy in February 2016 with construction to begin by summer 2016 and being complete for both farms by the end of 2016.

Ms. Brummitt questioned whether the panels would cause any glare onto US 1 Bypass. Mr. Latre responded that the existing landscaping should prevent any glare, but does not have a report on hand to address this. The board discussed the need for receiving a glare analysis to determine that no glare will be present on neighboring properties or the neighboring highway.

Ms. Harvin questioned whether a contract has been finalized for maintenance of the buffers. Mr. Latre responded that they intend to use a local landscaper. The board discussed the need for receiving a contract or similar document to ensure that the buffer will be maintained. Mr. Latre mentioned that the intention is to use 50 feet of existing vegetation and then to provide 25 foot of new vegetation where needed. Mr. Bobbitt questioned whether a screened buffer is required between the two farms. Mr. McMillen responded that the evergreen buffer would be required on the outside of each farm and would not be required between the farms.

Mr. Latre summarized by mentioning that the solar farm would be located in a good area surrounded by industrial property and in close proximity to a substation.

OTHER INTERESTED INDIVIDUALS OR THOSE SPEAKING AGAINST THE REQUEST

Ms. Erma Hayes – 127 Bearpond Road (neighboring property owner) addressed the board and mentioned that she lives next to the proposed solar farm and behind the former manufacturing facility located at 175 Bearpond Road. She presented a concern with the solar farm being in close proximity to her home. The board reviewed the aerial photography and made note that significant woodland appears to be present between the solar farm and Mr. Hayes property.

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 findings of facts and to issue the conditional use permit for ESA Henderson and ESA Henderson 2 solar farms based upon the items being provided in the staff review inclusive of the following conditions.

1. Show evidence that a valid construction easement has been created and recorded through the adjoining property; reflect easement on property survey and record the easement document.
2. Finalize and record survey creating 2 lots; one for each of the solar farms. Survey must indicate construction easement area which will be recorded in separate easement agreement as well.

3. Submittal of revised site plan matching the recorded survey that indicates a corrected setback of 100 feet next to the 30 foot wide access easement and showing a revised construction staging area to be in the northeast corner of the property. Revised site plan must also correct the width of the buffer plantings from 20 feet to 30 feet and include vegetation within the entire 30 foot buffer when new plantings are utilized. Existing vegetation is encouraged to the maximum extent possible, however when new vegetation is used it must provide a minimum of a consistent 30 foot wide evergreen screening at 8 foot tall within 3 years of final zoning approval. Revised site plan must indicate a 50 foot non-encroachment/non-disturbance area surrounding the stream on the property.
4. Submittal of an appraisal indicating no impact on surrounding property values.
5. Submittal of a glare analysis showing no impact to neighboring areas/properties or neighboring highway;
6. Submittal of evidence indicating a landscaping maintenance contract is in place.
7. Submittal of evidence indicating Erosion and Sedimentation Control plan approval.
8. Submittal of an executed interconnection agreement; pages identifying solar farm and signature page will suffice for the entire agreement.
9. All materials, construction equipment and vehicles are to be located outside of right-of-way and will be subject to a \$100 per day fine if located within the right-of-ways.
10. Prior to final inspections approval, both addresses (1444 and 1454 Facet Road) must be posted at the site entrance.

Ms. Harvin seconded the motion. VOTES: 6-0.

Mr. McMillen presented the schedule of meetings for calendar year 2016 and asked that the board go on record in adopting the schedule of meetings.

Mr. Shaw asked for a review of the meeting schedule. Ms. Harvin made a motion to approve the meeting schedule for 2016. Ms. Brummitt seconded the motion. VOTES: 6-0.

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