

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on February 11, 2016 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
Agnes Harvin
Blake Haley

MEMBERS ABSENT

Alvin Johnson, Jr.

ALTERNATES PRESENT

Ruxton Bobbitt

STAFF PRESENT

Jordan McMillen, Planning Director
Amy Sandidge, Planner
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 January 14, 2016 meeting. Mr. Bobbitt made a motion to approve the minutes as presented. 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: **BOA CASE NO. 20160211-1; Carver Investments (property owner); Dave Carver (Applicant) – Variance to reduce the separation requirements between a well and septic system (Tax Parcel 0579 01042).**

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen and Ed Reeves. 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 the separation requirement of 100 feet between the well and septic system as per section 3.2 D 4 of the zoning ordinance. The property is located on a cul-de-sac and due to lot configurations the adjoining lots have well and septic locations that impact this site.

Findings of Fact

1. The property is owned by Carver Investments.
2. The request is for a variance from section 3.2.D4 of the zoning ordinance to allow a reduction in the setback requirements separating a well and a septic system from 100 feet to 50 feet for lot 5.
3. The lot consists of 0.69 acres according to plat Y-587.
4. The property is located west of Diane Lane and immediately north of Buchanan Road and is identified as tax parcel 0579 01042.
5. The lot is currently zoned R-30 (Residential Low Density) and is vacant.
6. The application requesting the variance was filed on January 15, 2016.
7. The adjoining property owners were notified on January 27, 2016.
8. The property was posted on January 29, 2016.

Staff Comments

Mr. McMillen stated the property is a lot of record which would be allowed to be developed. The property was platted and recorded in 1998 (PB V-757) prior to zoning and then was refiled in PB Y-587 to reflect a change in the road name from Heron Cove to Still Water Lane. The applicant has requested reducing the well/septic separation from 100 to 50 feet and the Health Department has already approved this reduced distance. A variance will be required to use it with current regulations. Property is zoned R-30 and is vacant.

Mr. Bobbitt asked if water was available to this property and Mr. McMillen indicated Vance County

water was not available in this area.

Ms. Harvin asked for the exact location to be better clarified and staff indicated the site plan in her packet that was printed in color showed the location in detail.

Jonathan Care commented that the property was owned by three separate entities and that only one of these owners had signed the application. He indicated that the application would need to be signed by all owners.

THOSE SPEAKING FOR THE REQUEST

Ed Reeves came forward indicating the owners had asked him to help them develop the property. Mr. Reeves indicated they had tried several configurations to try to meet the setbacks but the shape of this specific lot made meeting this requirement impossible. He also indicated that there were two additional lots outside of this subdivision that also affected the location of the septic on the lot in question. Mr. Reeves indicated the lots would be sold with covenants clearly defining where the new owners would be allowed to place their well and septic.

Mr. Bobbitt asked if Warren County provided water in this area and Mr. Reeves explained that the water lines did not continue down Buchanan Road to Stillwater Lane beyond County Line Park Road.

Dave Carver was sworn in and spoke about his ownership as a joint tenant in common with two other individuals. Mr. Carver indicated he would have no problem getting the signatures of the other owners.

Mr. Bobbitt asked if they could approve the request on the condition that the application be signed by the additional two owners. Mr. Care indicated that would be acceptable.

BOARD DISCUSSION

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

DECISION

Mr. Bobbitt made a motion to approve the request and finalize the findings of fact with a condition that the application be signed by all current owners. Ms. Harvin seconded the motion. VOTES: 6-0

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 20160211-2; Joyce Duke (property owner); Sunlight Partners, LLC (Applicant) – Conditional Use Permit to allow a 5 MW solar farm at 6372 NC Hwy 39 South (Tax Parcel 0550 01015 & 0550 01015A).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. Michael Wallace, Mr. Tommy Cleveland, Mr. Mike Fox and Mr. Richard Kirkland. 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 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 Ms. Joyce Duke.
3. The property is located at 6372 NC Hwy 39 South and includes area within two parcels (Tax parcels 0550 01015 and 0550 01015A). The parcels are to be reconfigured and a proposed recombination plat is included in the application materials.
4. Both parcels together consist of 71 acres of which approximately 24 acres will be the array footprint.
5. The majority of the property is open with portions of existing woodland on the eastern, western

- and northwestern sides. The applicant plans to clear approximately 11.8 acres.
6. The property was rezoned from R-30 to A-R on December 7, 2015. A solar farm is an eligible conditional use within the A-R zoning district.
 7. The application requesting a conditional use permit was filed on August 24, 2015.
 8. The adjoining property owners were notified on January 27, 2016.
 9. The property was posted on January 29, 2016.

Staff Comments

The applicant is requesting a conditional use permit to construct a 5 MW solar farm. As proposed, the solar farm project area would be leased from the current property owner and cover approximately 24 acres. The site plan calls for an 8 ft. security fence with 3 strands of barbed wire. No exterior lighting is proposed for the site.

The property is relatively flat with an open area in the middle and existing vegetation on the eastern, western and northwestern sides of the property. The applicant intends to clear approximately 11.8 acres of woodland which would be located within the fenced area. There does not appear to be any blue-line streams within the solar farm area. The site plan shows use of existing vegetation on all sides with a 50 foot planted buffer along the north and the south in areas to fill in gaps in the existing vegetation. The proposed buffer would consist of staggered vegetation consisting of 2 rows of shrubs/bushes, 1 row of evergreen understory trees, and 1 row of evergreen canopy trees. The shrubs will be species expected to reach a minimum height of 8 feet with a minimum spread of 6 feet within 3 years. The understory trees will be planted a minimum of 4 feet and the canopy trees will be a minimum of 8 feet at planting.

The applicant has obtained an e-911 address (6372 NC Hwy 39 South) and has received NCDENR approval of the erosion and sedimentation plan. The applicant has not submitted an NCDOT driveway permit, but has begun the process of applying for a driveway permit. The applicant has applied for the interconnection agreement with Duke Energy Progress and the point of interconnection to electric grid is shown on the site plan near the site entrance. All electric lines from the interconnection point will be underground.

Overall the site plan appears to meet the county's setback requirements of 100 feet on the front and 50 feet on the sides for all equipment and fences. The solar panels will have no moving parts and will have a relatively low profile with a height of 12 feet (ordinance requires less than 25 feet).

The solar panels will have no moving parts and will have a relatively low profile with a height of 12 feet (ordinance requires less than 25 feet).

Mr. McMillen indicated that the site plan did not show the proposed reconfiguration of the parcel to meet 1,000 foot separation requirement between a solar farm located to the north along NC 39 South. He suggested a condition of approval should be the finalization and recordation of the included survey. He also noted that no construction staging or materials storage area is shown on the site plan and the Board should consider adding a condition that all materials, vehicles and activity will be outside of the right-of-way. The executed pages of the interconnection agreement with Duke Energy Progress and the finalized driveway permit are also needed to be submitted prior to releasing conditional use permit.

Mr. Care asked if the survey for the lot subdivision was complete and Mr. McMillen indicated that it was not. Mr. Care said that in previous cases the Board had required all lot divisions to be complete before taking action.

Ms. Harvin asked if staff was recommending moving forward and Mr. McMillen stated that the Board had the option to continue or move forward with conditions. He also stated that in the past the Board had required projects to be complete before moving forward. Mr. Care stated that it was his opinion that the Board should stay consistent and that the drawing as was submitted was not a formal submittal. Mr. Haley agreed stating that the site plan as submitted does not address the separation issue.

THOSE SPEAKING FOR THE REQUEST

Mike Fox – Tuggle Duggings Attorneys at law, 100 N. Greene St., Ste. 600, Greensboro, NC 27401 - (Attorney representing Applicant) – Mr. Fox presented a packet of information and requested that it be included as evidence. He then provided a summary of the various items included within the information. Mr. Fox stated that a sealed survey from a licensed surveyor in NC did show the proposed lot division and that the Board could move forward with that submittal and take action on the CUP. He stated he was fine with the condition that this division be completed. Mr. Shaw asked if they had a drawing of the proposed lot division with the array footprint drawn on it so the Board could see the setbacks and general location and Mr. Fox indicated he did not. Mr. Care replied that one of the items the Board looks for is the setbacks to boundary lines and they did not have such a plan to review. Mr. Fox indicated they were trying to save time by not going through a subdivision review prior to approval. Mr. Care stated he was not comfortable advising the board to move forward without more defined plans.

BOARD DISCUSSION

The Board decided they would prefer to see the lot subdivision process started; Mr. Care said that they did not need a fully recorded map to move forward. Mr. Care also stated that Ms. Duke would need to sign off on the lot division as well. Ms. Harvin indicated she wanted to clearly see where the construction staging zone would be located.

DECISION: Ms. Harvin made a motion to continue this application until additional details were provided by the applicant. 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. Ruxton Bobbitt removed himself from the case due to conflict of interest. Mr. Shaw declared the hearing opened for the following:

BOA CASE NO. 20160211-3; Claude and Nancy Bobbitt (property owner); Sunlight Partners, LLC (Applicant) – Conditional Use Permit to allow a 5 MW solar farm at 2431 Gillburg Road (Tax Parcel 0464 03001).

Chairperson Shaw swore in witnesses. Witnesses sworn in include Mr. Jordan McMillen, Mr. Mike Fox, Mr. Michael Wallace, Mr. Tommy Cleveland, & Mr. Richard Kirkland. 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 4 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 4 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. The property was rezoned from R-30 to A-R on December 7, 2015. A solar farm is an eligible conditional use within the A-R zoning district.
3. The property is owned by Claude & Nancy Bobbitt.
4. The property is located at 2431 Gillburg Road or more specifically as tax parcel 0464 03001.
5. The parcel consists of 48 acres of which approximately 21 acres will be the array footprint. The majority of the property is open with minimal clearing planned.
6. The application requesting a conditional use permit was filed on August 24, 2015.
7. The adjoining property owners were notified on January 27, 2016.
8. The property was posted on January 29, 2016.

Staff Comments

Mr. McMillen stated that the applicant is requesting a conditional use permit to construct a 4 MW solar farm. As proposed, the solar farm project area would be leased from the current property owner and

cover approximately 21 acres. The site plan calls for an 8 ft. security fence with 3 strands of barbed wire and no exterior lighting is proposed for the site. The solar panels will have no moving parts and will have a maximum height of 12 feet.

The applicant intends to plant a buffer on the western side bordering Gillburg Road, on the southern side bordering Julian Smith Road and on the eastern side adjoining the Bobbitt Village Mobile Home Park. The proposed buffer would consist of staggered vegetation consisting of 2 rows of shrubs/bushes, 1 row of evergreen understory trees, and 1 row of evergreen canopy trees. The shrubs will be species expected to reach a minimum height of 8 feet with a minimum spread of 6 feet within 3 years and would be raised on a 2 foot berm. The understory trees will be planted a minimum of 4 feet and the canopy trees will be a minimum of 8 feet at planting. Staff would recommend discussing the berm height with the applicant and looking into the potential for a higher berm. Additionally, staff would recommend discussing the planting height of the understory trees to ensure that adequate screening is present to avoid glare from the beginning of operation. Staff has a concern with glare potential as there is a roadway on the south side of the property which is lower in elevation than the solar array area. Additionally the roadway running north and south along the solar farm is slightly higher than the solar array and causes potential for glare as well. Staff believes there is the potential for a safety concern and would recommend ensuring the screening is adequate in terms of density and height from the beginning to screen the solar farm. If the board sees fit, additional analysis or studies may be necessary to ensure that glare will not be an issue for the traveling public.

The applicant has obtained an e-911 address (2431 Gillburg Road) and has received NCDENR approval of the erosion and sedimentation plan. The applicant has not submitted an NCDOT driveway permit, but has begun the process of applying for a driveway permit. The applicant has applied for the interconnection agreement with Duke Energy Progress and the point of interconnection to the electric grid is shown on the site plan near the site entrance. All electric lines from the interconnection point will be underground.

Overall the site plan appears to meet the county's setback requirements of 100 feet on the front and 50 feet on the sides for all equipment and fences. In many areas along Gillburg Road and Julian Smith Road the setback is shown as 101 feet. Due to this, it will be necessary for the applicant to ensure that the entire fence remains outside of the setback area during construction.

Mr. Shaw asked for clarification on the MW size of the solar farm, noting that the drawings stated 4MW and the application states 5MW. Mr. McMillen advised the Board to clarify that information with the applicant.

Ms. Harvin asked if staff knew what size of berm was needed to eliminate glare. Mr. McMillen suggested a berm higher than two feet would be more efficient at glare reduction but they could discuss that further with applicant.

Mr. Care advised the Board to ask the design engineer if the landscape plan was at planting or three years out.

THOSE SPEAKING FOR THE REQUEST

Mike Fox – Tuggle Duggings Attorney at law, 100 N. Greene St., Ste. 600, Greensboro, NC 27401 - (Attorney representing Applicant) – Mr. Fox presented a packet of information and requested that it be included as evidence. He then provided a brief summary of the various items included within the information.

Michael Wallace, PE – Sunlight Partners, 27 Pearl Street, Portland, ME - (applicant) addressed the board and provided a summary of the site plan. Mr. Wallace stated that the landscape plan was shown as planted and suggested the Board place a condition that the staff inspect the planting as it was being installed to

verify it meets approval. He stated that the berm could be changed based on what the Board felt was best for this site to achieve complete screening.

Ms. Harvin requested that the plants be amended to evergreen shrubs and the applicant agreed.

He stated that they are willing to work with staff to ensure the evergreen buffer is adequate. He stated the most stringent buffer requirements in the state were from the City of Durham and they had designed this site based on their requirements. He stated that they planned to hire a local landscape company to maintain and manage the mowing and upkeep of the plants. He stated that any dead plants would be replaced.

He clarified for Mr. Haley that the site was a 4MW and not a 5MW.

Mr. Shaw asked who was responsible for maintaining the powerline ROW and Mr. Wallace said they would maintain but that Duke Energy Process would have access.

Mr. Haley inquired about the staging area and Mr. Wallace stated no parking on the road would take place.

Mr. Shaw asked if all the dirt for the berm would be hauled in and that was confirmed.

Ms. Stainback asked if any of the metals would leach into the ground and disturb the ground for future farming and the applicant indicated no Zinc was to be used in his materials.

Tommy Cleveland, PE – 4141 Laurel Hills, Raleigh NC - (Engineer/solar expert on behalf of applicant) addressed the board and stated that in his professional opinion he does not believe there are any health or safety concerns from this system in this location. He concluded that the likelihood of glare from the site would be at the extreme east/west side immediately at sunrise/sunset. He stated the panels absorb over 90% of the sunlight therefore creating very minimal glare.

Mr. Haley asked if the height of the panels would change the glare and Mr. Cleveland indicated the height would not directly affect glare.

Richard Kirkland (State Certified General Appraiser and MAI Appraiser) addressed the board and stated that in his professional opinion he did not believe the solar farm in this location will have a negative impact on surrounding property values and that it is a harmonious use.

Mr. Fox went over the checklist to show the project met all the guidelines.

OTHER INTERESTED INDIVIDUALS OR 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. Ms. Harvin inquired about the 101' setback and Mr. Wallace just wanted to verify they were meeting and exceeding the setback.

DECISION: Ms. Harvin made a motion to approve the findings of facts with a correction changing 5 MW to 4MW and to approve the conditional use permit subject to the following conditions: (1) the berm would be two feet in height with a six foot evergreen shrub at planting with submittal of a landscape management plan (2) submittal of executed interconnection agreement (3) all materials, construction equipment and vehicles are to be located outside of the right-of-way and shown on plans (4) submittal of finalized driveway permit. Ms. Brummitt seconded the motion. VOTES: 5-0.

Nomination and election of the 2016 officers

Ms Stainback nominated Mr. Shaw for the Chairman. Ms. Harvin seconded this motion. Vote: 5-0

Ms. Harvin nominated Ms. Stainback as the Vice-Chairperson. Ms. Brummitt seconded this motion. Vote: 5-0.

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