

MINUTES
ZONING BOARD OF ADJUSTMENT
BRUNSWICK COUNTY, N.C.

6:00 P.M., Thursday
February 8, 2018

Commissioner's Chambers
David R. Sandifer Admin. Bldg.
Brunswick County Government Center
Old US 17 East, Bolivia

MEMBERS PRESENT

Robert Williamson, Chairman
Virginia Ward, Vice Chairman
Mary Ann McCarthy
Ron Medlin, Alternate
Clayton Rivenbark, Alternate

MEMBERS ABSENT

Robert Cruse

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Kyna Bryant-Hardy, Office Assistant

OTHERS PRESENT

Louis Iannone
Jeremy Spaeth

Marc Tucker, Attorney-At-Law
Richard Kirkland

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:15 p.m.

II. ROLL CALL.

Mr. Robert Cruse was absent and there is a vacancy on the Board. Mr. Ron Medlin and Mr. Clayton Rivenbark served as Alternates.

III. CONSIDERATION OF MINUTES OF THE AUGUST 10, 2017 MEETING.

Mrs. McCarthy made a motion to accept the minutes of the August 10, 2017 meeting as written. The motion was seconded by Mr. Rivenbark and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Vice Chairperson Ward explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

The Vice Chairperson said that the public hearing is not to solicit board public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the records by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

The Vice Chairperson stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.3.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

The Vice Chairperson informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

VI. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and/or affirmed Ms. Helen Bunch, Mr. Louis Iannone, Mr. Jeremy Spaeth and Mr. Richard Kirkland as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A). 17-06S Special Use Permit
Applicant: BEMC Storage 1 Farm, LLC
Location: 850 Cedar Grove Road, Supply NC 28462
Tax Parcel 20000059
Applicant requests a Special Use Permit for a “Solar Farm” consistent with Section 5.2.3. and 5.3.4.Q. of the Brunswick County Unified Development Ordinance.

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Louis Iannone, Developer for Strata Solar, addressed the Board. Mr. Iannone stated that he has been employed by Strata Solar for approximately five (5) years and that the proposed is his thirtieth (30) project with the company and sixty-fifth (65) in his career. He stated that Mr. Marc Tucker, Attorney with Smith Moore Leatherwood Attorneys-At-Law, will represent the applicant. He further stated that Mr. Jeremy Spaeth, Engineer with Strata Solar and Mr. Richard Kirkland, with Kirkland Appraisals, LLC will provide testimony regarding the proposed. He concluded by thanking the Board for their attention to this matter.

Attorney Marc Tucker addressed the Board. Attorney stated that he is with Smith Moore Leatherwood Attorneys-At-Law of Raleigh, North Carolina and is representing BEMC Storage, LLC. He stated that the proposed Solar Farm will be located on a portion of Tax Parcel 20000059. He said that the subject parcel contains approximately seventeen (17) acres and that the solar farm will constructed on approximately five (5) acres, with the remainder of the parcel left vacant. He further stated that the subject parcels and adjoining parcels are undeveloped.

Attorney Tucker called Mr. Jeremy Spaeth to testify. He asked Mr. Spaeth to provide the Board with his background information. Mr. Jeremy Spaeth, Engineer with Strata Solar, addressed the Board. Mr. Spaeth stated that he is a Professional Engineer licensed in both Wisconsin and North Carolina. He stated that he has been employed by Strata Solar for approximately two (2) years. He further stated that he is an expert in civil engineering. Attorney Tucker asked Mr. Spaeth to identify the access road on the site plan provided in Exhibit A? Mr. Spaeth stated that the access road will be located via a 50’ access and utility easement off of Cedar Grove Road (SR 1125). Attorney Tucker

asked Mr. Spaeth to identify the tree line on the site plan? Mr. Spaeth identified the tree line on the site plan and stated that solar panels will be placed in the center of the property, approximately 150 feet from property lines and 500 feet from Cedar Grove Road. He stated that tree line will remain in its current state and that there will be no adverse impacts on the environment (i.e., streams, wetlands, etc.). He further stated that the applicant will apply and obtain all necessary Local, State and Federal permits and that the proposed will be located within 250' of a fire hydrant in case of a fire. Attorney Tucker asked Mr. Spaeth if he heard the Staff Report read by Ms. Bunch and if he was in agreement with the report? Mr. Spaeth replied yes that he heard the Staff Report read by Ms. Bunch and is agreement with her findings. Attorney Tucker asked Mr. Spaeth if the submitted site plan is in conformity with the UDO? Mr. Spaeth replied yes that the site plan meets the requirements of the UDO. Attorney Tucker asked Mr. Spaeth if the proposed Solar Farm will adversely affect the health and safety of the public? Mr. Spaeth replied no, that the proposed will have no adverse impacts on the health and safety of the public. Attorney Tucker asked Mr. Spaeth if the proposed will meet the twelve (12) review factors identified in Section 3.5.9.B. of the UDO? Mr. Spaeth replied yes that the proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the UDO. Attorney Tucker asked Mr. Spaeth if he signed an affidavit consistent with the testimony provided? Mr. Spaeth replied yes. Attorney Tucker asked that the affidavit be included as part of Exhibit A.

Mr. Rivenbark asked Mr. Spaeth if the required driveway will be outside of the utility easement since it has to be constructed to support the weight of a fire truck? Mr. Spaeth replied yes that a gravel 20' driveway will be constructed offset of the utility easement.

Mrs. McCarthy asked Mr. Spaeth the design life plan of the proposed solar farm? Mr. Spaeth stated that the life span is around 25 years. He stated that if the farm continues after that time period then panels will likely be removed and replaced. He further stated that 95% of solar panel equipment can be recycled and repurposed into new panels. Mr. Spaeth stated that panels typically do not stop working but degrade over time. He stated that after 25 years, if the utility decides to close the solar farm, the site will be decommissioned and the land will be restored to its natural current state to the fullest extent possible.

Mrs. McCarthy asked Mr. Iannone if there is an agreement with the land owner to return the land to its current state as part of the end of life plan? Mr. Iannone stated that they are purchasing the land and that they legally record decommissioning agreements with jurisdictions as part of the process. He stated that they have provided a decommissioning plan to Ms. Bunch as part of the application process. He further stated that the agreement ensures that at the end of the project life the site would be restored to its natural state to the fullest extent possible.

Mrs. McCarthy asked Mr. Spaeth if any parts of the equipment are toxic? Mr. Spaeth replied no that there are no toxic features to solar farms. He stated that the majority of the panels are silicone based and have non-reflective coatings. He said that the EPA has performed testing on panels and found that they contain no harmful toxins. He further

stated that due to the lack of toxins, panels can be discarded at landfills and recycling centers.

Attorney Tucker called Mr. Richard Kirkland to testify. Mr. Kirkland stated that he is with Kirkland Appraisals, LLC and has been a state certified appraiser for over 20 years. He stated that he regularly appraises agriculture, residential and commercial properties. He further stated that he also conducts impact studies on solid waste facilities, water towers, billboards, wastewater treatment plants and solar farms. Mr. Kirkland stated that he has studied the impacts of solar farms over the past seven (7) years and that will be the focus of his testimony. He stated that he has evaluated approximately four hundred (400) solar farms and their surrounding uses to determine impacts on property values. He further stated that the subject parcel is a typical location for a solar farm, as it is in an undeveloped area with surrounding residential uses. Mr. Kirkland stated that he has compared similar sized solar farms with adjoining property sales and determined that the proposed would have no negative impacts on land values. He stated that the proposed is in harmony with the surrounding area. He further stated that he has submitted an impact study as part of Exhibit A regarding twenty-five (25) similar projects. He concluded by stating that in his professional opinion the solar farm proposed at the subject parcel will not substantially injure the value of adjoining or abutting properties.

Attorney Tucker asked Mr. Kirkland if in his professional opinion will the proposed be in harmony with the surrounding area? Mr. Kirkland replied yes that the proposed use is in harmony with the area which it is located. Attorney Tucker asked Mr. Kirkland if there will be any negative impacts on the values of adjoining or abutting properties? Mr. Kirkland replied no that the proposed will not substantially injure the value of adjoining or abutting properties. Attorney Tucker asked Mr. Kirkland if he signed an affidavit consistent with the testimony provided with an impact study? Mr. Kirkland replied yes. Attorney Tucker asked that the affidavit and impact study be included as part of Exhibit A.

With no further comments, Ms. Bunch read the conditions of approval of the Special Use Permit:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the Special Use Permit application and kept on file by the Brunswick County Planning Department.
3. The applicant must comply with all requirements specific to the use as outlined in Section 5.3.4.Q. of the Brunswick County UDO.
4. Include all adjacent parcels on the site plan, providing the Tax Parcel Number.
5. Indicate on the site plan the platted property lines and dimensions of the parcel.
6. Provide a Heritage Tree Survey consistent with Section 6.1.3. of the Brunswick County Unified Development Ordinance (UDO).
7. Indicate on the site plan the size and location of the nearest water line and the location of the nearest fire hydrant.

8. Note the 50' access/utility easement. The driveway must be constructed in such a manner that the weight of a fire truck can be supported, with a dustless surface and 20' drive aisle. Please address this on the site plan.
9. Provide a completed North Carolina Department of Transportation (NCDOT) Driveway Application that is ready for approval by the Brunswick County Planning Department for submittal to NCDOT prior to permitting.
10. Address on the site plan the off-street parking space size and drive aisle width.
11. Submit a decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) addressing the following prior to the issuance of any permits:
 - a. Defined conditions upon which decommissioning will be initiated (i.e. end of land lease, no power production for 12 months, etc.).
 - b. Removal of all non-utility owned equipment, conduit, structures, fencing, roads and foundations.
 - c. Restoration of property to condition prior to development of the Solar Farm.
 - d. Timeframe for completion of decommissioning activities, not to exceed one year.
 - e. Description and copy of any lease or any other agreement with landowner regarding decommissioning.
 - f. Name and address of person or party responsible for decommissioning.
 - g. Plans and schedule for updating this decommissioning plan.
 - h. Recordation of the Decommissioning Plan with the Brunswick County Register of Deeds.
12. The applicant must comply with all Federal, State and Local requirements related to this use, including Brunswick County Storm Water Permit and compliance with the current edition of the International Building Code with North Carolina Amendments.
13. If the specified conditions addressed in this Special Use Permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another Special Use Permit and receiving their approval can the use be again permitted.

She stated that if approved, this development shall have a vested right for a period of three (3) years and a two (2) year extension may be requested by the applicant to the Brunswick County Board of Adjustment.

With no further comments, the Chairman summarized that the applicant, BEMC Storage Farm, LLC, proposed to develop a Solar Farm on the subject parcel. He stated that Ms. Bunch read the Staff Report that explained the approval criteria for this proposed use, which is permissible and the use will have minimal impact on the surrounding properties. He further stated that the Project Engineer testified that the proposed use will meet the requirements of the UDO. The Chairman stated that the Project Engineer also testified with regards to information from the EPA on the safety of solar panels. He stated that the appraiser testified that the proposed use is in harmony with surrounding properties and will not substantially injure the values of adjoining and abutting properties. The Chairman asked if there were any comments to the summation? There were none

The Board discussed the worksheet and determined the following:

Application No. 17-06S

Applicant: BEMC Storage 1 Farm, LLC

Property Location: 850 Cedar Grove Road, Supply NC 28462

Parcel Number: 20000059

Zoning District: Rural Residential (RR)

Land Use Classification: Low Density Residential

Surrounding Zoning: North: RR, South: RR, East: RR, West: RR

Proposed Use of Property: “Solar Farm”

FINDINGS OF FACT

Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting, determined that application is complete / incomplete and finds:

- I. WHETHER THE PROPOSED USE IS IN HARMONY WITH THE AREA AND NOT SUBSTANTIALLY INJURIOUS TO THE VALUE OF PROPERTIES IN THE GENERAL VICINITY:
 - Yes
 - No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your Findings:

The impact study provided by Kirkland Appraisals, LLC, submitted by the applicant states that based on the data and analysis in the report, it is the author’s professional opinion that “the solar farm proposed at the subject property will not substantially injure the value of adjoining or abutting property and that the proposed use is in harmony with the area in which it is located”. The photos of the site placed into record by staff show the surrounding area as being rural in nature.

II. WHETHER THE USE IS IN CONFORMANCE WITH ALL SPECIAL REQUIREMENTS APPLICABLE TO THE USE:

Yes

No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your finding:

Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Solar Farm as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process. Section 5.3.4.Q. of the UDO outlines the additional criteria for Solar Farms if approved by the Board of Adjustment through the Special Use Permit process. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all of the conditions outlined in the Staff Report are met. The Project Engineer testified that he was aware of the UDO requirements and the requirements would be met by the project.

III. WHETHER THE USE, IF DEVELOPED AS PROPOSED, WILL NOT ADVERSELY AFFECT THE HEALTH AND SAFETY OF THE PUBLIC:

Yes

No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your findings:

The Project Engineer provided testimony with regard to information from the EPA on the safety of the solar panels. The applicant testified that the solar panels will have non-reflective coatings, as required by the UDO.

IV. WHETHER THE USE, IF DEVELOPED AS PROPOSED, WILL ADEQUATELY ADDRESS THE TWELVE (12) REVIEW FACTORS IDENTIFIED IN SECTION 3.3.9.B. OF THE BRUNSWICK COUNTY UNIFIED DEVELOPMENT ORDINANCE:

Yes

No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your finding:

The use, a "Solar Farm", if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. The Board concurs

with the staff report which outlines the additional review factors as stated in Section 5.3.4.Q. for Solar Farms in the Unified Development Ordinance.

V. DECISION:

Mrs. Ward made a motion to Grant the Special Use Permit “because the proposed use if developed as proposed and subject to the conditions imposed below:

- a. will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,**
- b. will be in conformance with all special requirements applicable to the use,**
- c. will not adversely affect the health and safety of the public, and**
- d. will adequately address the twelve (12) review factors identified in Section 3.3.9.B. of the Brunswick County Unified Development Ordinance.”**

CONDITIONS:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the Special Use Permit application and kept on file by the Brunswick County Planning Department.
3. The applicant must comply with all requirements specific to the use as outlined in Section 5.3.4.Q. of the Brunswick County UDO.
4. Include all adjacent parcels on the site plan, providing the Tax Parcel Number.
5. Indicate on the site plan the platted property lines and dimensions of the parcel.
6. Provide a Heritage Tree Survey consistent with Section 6.1.3. of the Brunswick County Unified Development Ordinance (UDO).
7. Indicate on the site plan the size and location of the nearest water line and the location of the nearest fire hydrant.
8. Note the 50’ access/utility easement. The driveway must be constructed in such a manner that the weight of a fire truck can be supported, with a dustless surface and 20’ drive aisle. Please address this on the site plan.
9. Provide a completed North Carolina Department of Transportation (NCDOT) Driveway Application that is ready for approval by the Brunswick County Planning Department for submittal to NCDOT prior to permitting.

10. Address on the site plan the off-street parking space size and drive aisle width.
11. Submit a decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) addressing the following prior to the issuance of any permits:
 - a. Defined conditions upon which decommissioning will be initiated (i.e. end of land lease, no power production for 12 months, etc.).
 - b. Removal of all non-utility owned equipment, conduit, structures, fencing, roads and foundations.
 - c. Restoration of property to condition prior to development of the Solar Farm.
 - d. Timeframe for completion of decommissioning activities, not to exceed one year.
 - e. Description and copy of any lease or any other agreement with landowner regarding decommissioning.
 - f. Name and address of person or party responsible for decommissioning.
 - g. Plans and schedule for updating this decommissioning plan.
 - h. Recordation of the Decommissioning Plan with the Brunswick County Register of Deeds.
12. The applicant must comply with all Federal, State and Local requirements related to this use, including Brunswick County Storm Water Permit and compliance with the current edition of the International Building Code with North Carolina Amendments.
13. If the specified conditions addressed in this Special Use Permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another Special Use Permit and receiving their approval can the use be again permitted.

The motion was seconded by Mr. Rivenbark and unanimously carried.

VIII. ELECTION OF OFFICERS.

Mrs. McCarthy nominated Mr. Robert Williamson as Chairman of the Brunswick County Board of Adjustment. The motion was seconded by Mr. Rivenbark and unanimously carried.

Mrs. McCarthy nominated Mrs. Virginia Ward as Vice Chairperson of the Brunswick County Board of Adjustment. The motion was seconded by Mr. Williamson and unanimously carried.

IX. STAFF REPORT.

Ms. Bunch addressed the Board. She stated that the 2018 project submittal and meeting schedule was provided in the Board packet. She further stated that the Board was provided with the latest edition of the Board of Adjustment Handbook. She concluded that in the next few months the Board will be presented with some training from the Institute of Government.

X. ADJOURNMENT.

With no further business, Mrs. Ward made a motion to adjourn. The motion was seconded by Mr. Medlin and unanimously carried.