

**GUILFORD COUNTY
PLANNING AND DEVELOPMENT**

**BOARD OF ADJUSTMENT MEETING MINUTES
Old Guilford County Courthouse
Carolyn Q. Coleman Conference Room
301 W. Market St, Greensboro, NC 27401**

July 11, 2023**Regular Meeting****6:00 PM**

The Guilford County Board of Adjustment met in regular session on July 11, 2023, in the Old Guilford County Courthouse, Carolyn Q. Coleman Conference Room, 301 W. Market Street, North Carolina, 27401, commencing at 6:00 p.m.

Chair Ditra Miller called the meeting to order.

Ditra Miller announced that for tonight's hearing, there are only four (4) members present, which is the minimum required to hear the variance request. Therefore, she asked attorney Matthews if the applicants wish to proceed with the request or would they rather postpone the request to a time when there are five (5) members present?

Attorney La-Deidre Matthews, Fox, Rothschild, 101 N. Tryon Street in Charlotte, NC, spoke with her client and they responded that they would like to proceed with the request tonight.

A. Roll Call

The following Board members were in attendance in person for this meeting:

Ditra Miller, Chair; Willie Johnson, Vice Chair; Franklin Havens, and Cory Randolph

The following Board members were not in attendance at this meeting:

Carey Campbell

The following staff members were in attendance in-person for this meeting:

J. Leslie Bell, Planning & Development Director and Aaron Calloway, Planner I; Andrea Leslie-Fite, Guilford County Attorney; Matthew Mason, Deputy County Attorney

B. Agenda Amendments

Leslie Bell stated that there were no amendments to the Agenda this evening.

C. Approval of Minutes: February 7, 2023

Mr. Randolph moved approval of the February 7, 2023 meeting minutes, as submitted, seconded by Mr. Johnson. The Board voted 2-0-2 in favor of the motion. (Ayes: Johnson and Havens. Nays: None. Abstained: Miller and Randolph.)

D. Rules and Procedures

Chair Miller explained the Rules of Procedure followed by the Guilford County Board of Adjustment.

E. Old Business

None

F. New Business**Evidentiary Hearing Item(s)**

Swearing in of staff and those speaking on the case.

Case #23-06-BOA-00005**1984 Mt. Hope Church Road, Liberty, NC 27298**

JH Stewart Family, LLC and West River Solar, LLC are requesting variances from Section 4.2.1 – Table B, which requires a minimum side yard setback of 15 feet and a minimum rear yard setback of 30 feet in an Agricultural (AG) district and Section 6.2.D – Table 6-2-2 which requires a non-residential use adjacent to an AG zoning district to install a Type C planting yard (minimum width of 25 feet) for two sites along the internal boundaries of constituent parcels for Special Use Permit Case #21-05-GCPL-04192 (multiple parcels, two owners, one common development project).

Site 1: The internal boundary only of parcels 120662 and 116799

Parcel 120662 - 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of landscape buffer requirements.

Parcel 116799 - 30-foot variance to allow minimum rear yard setbacks of 0 feet and the elimination of landscape buffer requirements.

Site 2: The internal boundary only of parcels 116805 and 116807

Parcel 116805 - 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of landscape buffer requirements.

Parcel 116807 - 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of landscape buffer requirements.

The parcels are located in Jefferson Township at 1413 Stewart Mill Road and 1890, 1942, and 1984 Mt. Hope Church Road, respectively, comprising 327.18 acres and are zoned AG, Agricultural. **(APPROVED – NO CONDITIONS)**

Aaron Calloway stated that he was presenting Case #23-06-BOA-00005 located at 1984 Mt. Hope Church Road, Liberty, NC. JH Stewart Family, LLC and West River Solar, LLC are requesting variances from Section 4.2.1 – Table B, which requires a minimum side yard setback of 15 feet and a minimum rear yard setback of 30 feet in an AG district and Section 6.2.D – Table 6-2-2 which requires non-residential uses adjacent to an AG zoning district to install a Type C planting yard for two sites along the internal boundaries of constituent parcels for Special Use Permit Case #21-05-GCPL-04192 (multiple parcels, two owners, one common development project). Site 1 is the internal boundary only of parcels 120662 and 116799. For parcel 120662, the request is for a 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of landscape buffer requirements. For parcel 116799, the request is for a 30-foot variance to allow minimum rear yard setbacks of 0 feet and the elimination of landscape buffer requirements. Site 2 is the internal boundary only of parcels 116805 and 116807. For parcel 116805, the request is for a 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of the landscape buffer requirements. For parcel 116807, the request is for a 15-foot variance to allow minimum side yard setbacks of 0 feet and the elimination of landscape buffer requirements. The parcels are located in Jefferson Township at 1413 Stewart Mill Road and 1890, 1942, and 1984 Mt. Hope Church Road and are zoned AG, Agricultural. All the surrounding development is either rural residential or undeveloped and wooded. The properties are located in the Lake Mackintosh water supply watershed in the general watershed area. The properties are also located in the Jordan Lake Watershed and are, therefore, subject to the Jordan Lake Riparian Buffer Rules. The Jordan Lake Riparian Buffer Rules include 50-foot buffers on both sides of the stream that begin at the top of the bank and extend outward, totaling 100 feet plus the width of the channel. The buffered area is protected by the Jordan Lake Rules. Table 9.1.6, in the Table of Uses, in the Guilford County UDO dictate what can be done within the riparian buffer. There are multiple buffered streams throughout the properties including streams on parcels 116807, 116805, 116804, 120643, and 120662. There are additional non-buffered streams that have been located on the property but are not protected by the Jordan Lake riparian buffer rules. All jurisdictional features are subject to the State and US Army Corps of Engineers regulations. There is a regulated floodplain on parcels 116805, 116804, 116799, and 120662. There are also mapped wetlands on parcel 116805. The date of the application was June 5th, 2023, and letters were sent out June 28th, 2023, and the date the signs were posted was June 28th, 2023.

Attending tonight's meeting is Teresa Andrews, Stormwater Administrator, of the Guilford County Watershed/Stormwater Program. She will be glad to answer potential questions concerning this request.

Photographs of the parcels were shown for the Board members' review and were included in the members' packets.

Chair Miller asked if there was anyone wishing to speak in favor of this request.

Attorney La-Deidre Matthews, Fox, Rothschild, 101 N. Tryon Street in Charlotte, NC, representing the applicant was previously sworn in and stated that the applicant is West River Solar and joined by Latham Grimes, who is the CEO of Oakhurst Energy, as there are a number of businesses, engineering firms and entities that come together for the goal of the solar farm. Mr. Grimes is here to answer any questions that the Board members may have. She asked Mr. Grimes to come up as she wanted to ask him some questions concerning the request.

Latham Grimes, 600 Lakeshore Lane, Chapel Hill, NC, was previously sworn in.

Attorney Matthews asked Mr. Grimes to describe his educational background. Mr. Grimes stated that he had an Undergraduate degree from UNC, a Law degree from UNC, and he is currently the CEO of Oakhurst Energy, which is a small North Carolina-based utility scale solar development company. In response to further questions, Mr. Grimes stated that he has been with Oakhurst for about 4 years. He has been working in solar energy in NC for about 12 years and was the General Counsel of Stratasolar, which is Chapel Hill-based and did a lot of solar projects through the state. He then formed a small company, where they do site development and work on utility scale solar projects up through the point of the beginning of construction. At Strata, they were fully integrated, so they would develop the project, build them, finance them, own and operate them for the long-haul, and so Strata is the company that put NC on the map, in terms of doing solar. For the last 6 years he has primarily been focused on just the land use and development and working with landowners, zoning utilities on the interconnection process. When a project is ready, he would partner with someone that would build and operate it for the long-haul. He is also involved in a small part for operations and maintenance. He has been directly a part of approximately well over 100 projects over the past several years.

Attorney Matthews asked that Mr. Grimes be tendered as an expert in utility scale solar farm development in North Carolina. She added that binders have been provided to each Board member for their review and it includes materials and evidence in support of the variances before the Board today. She explained that this request seems to be very complex, but in reality, in a practical manner it is much more simple, dealing with one large tract of land, which is 470 acres and one common project that is currently underway and that is the solar farm. The solar farm has been in the works for approximately 6 years now. Original Special Use Permits (SUP) were issued in 2018 and in 2021, some property was added, and modifications were made to those original SUPs, which was one single SUP granted in 2021. In the same year, West River Solar began making significant financial expenditures and incurred contractual obligations in furtherance of the development of the solar farm. Thus far, the applicant has spent over \$20M in furtherance of the project. Under the Case Law and well-established land use principles in NC, the applicant has a Common Law vested right to complete the solar farm, according to that 2021 Special Use Permit. The question this evening is not about whether the solar farm will or will not be constructed. The applicant has a legal right to complete the development and has made efforts towards that construction, rather

the questions is whether the applicant will be able to construct the solar farm with or without the presence of the undue hardships.

The variances will impact less than 2 acres of the 470-acre site and these are all internal, so there is no evidence that they impact any property owners, other than the two (2) that own the site. She quoted the State Statutes that are relevant to quasi-judicial decisions, specifically variances. Site plans and exhibits also were included in the binders provided for the Board members' review. Wetlands also were addressed by photos in the binder, as well as all the proposed buffers that meet or exceed the applicable UDO regulations.

There is a hardship that results from conditions that are peculiar to the property, such as location, size or topography. Some of the acres are lost to environmental features, wetlands, buffers, and topography and the Duke Energy transmission lines. Setbacks and vegetative buffers are intended to separate different uses, owned by different owners who have no common interest. Here, there are different owners, but they have joined together in a common project for a common purpose. Granting a variance presents no threat to public safety because the internal setbacks do not impact property owners, other than the applicants. There already are significant buffers and setbacks along the perimeter of the property and those will remain unchanged. It is their position that no person or landowner is benefitted by these internal setbacks and buffers, but on the other hand, strict enforcement of the requirements will be detrimental to the applicants.

Attorney Matthews asked that the binders be accepted into evidence.

Mr. Randolph asked for clarification as to what is Duke Energy's commitment with respect to the power that is going to be regenerated from this solar farm. Attorney Matthews stated that Mr. Grimes would be better versed to addressing that question.

Layton Grimes returned to the speaker's stand and stated that Duke Energy sponsors a program that allows companies, universities, and the military that want to purchase and procure green energy to do so. NC is a regulated monopoly, and it is not legal for this facility to sell power directly to Duke University. Duke Energy facilitates that sell. All the power that is sold to Duke Energy is then resold to Duke University and other types of companies, cities, etc. The City of Charlotte, Wal-Mart, Bank of America, the City of Durham has entered into this type of arrangement. This is a way to facilitate green energy purchase for end-users. All the power would be credited to Duke University for the green attributes. There are three projects through Duke University that would fulfill their needs. Any kind of corporation that is trying to make a zero-carbon commitment would do a study to determine their entire load and off-set that in that same year with a certain amount of power. Based on those projections, this project is trying to fill that need for Duke University. There is no minimum commitment, per se. All solar arrangements in NC are called "buy all-sell all", and the facility can only produce so much energy. In response to a question, Mr. Grimes indicated that the wetlands have been delineated by vendors that work with the Corps of Engineers. He does not know if

they have a Regional office in Greensboro, but the wetlands map would be verified by the Corps, called a delineated map. Those maps are good for five years.

Attorney Matthews stated that there is a representative from the Stormwater Section that would like to speak.

Teresa Andrews, Guilford County Watershed/Stormwater Section stated that, generally speaking, there is a private consultant that would go out to perform a determination and submit that to the Corps of Engineers for verification. The Corps office is located in Raleigh, NC, and the County's point of contact is David Bailey. It is her understanding that there are no plans to impact any of the wetlands, so they don't need to do any mitigation. She further stated that the Corps already did their verification and they have given their "thumbs-up".

Mr. Randolph asked what was the life-span for this solar farm use? Mr. Grimes responded that usually there is a lifespan of approximately 35 years. The panels that are installed are warranted for 25 years, at 80% production. As an example, at day-one there are 100 units. Twenty-Five (25) years later there is still a warranty that they are going to be producing 80 units. It is a slow degradation, over time. Realistically, given coal plants going away, potential natural gas plants going away, the need for green renewable sources of power, this facility will probably be here for 50 years or longer. At the point when the panels and equipment become more efficient, then this facility will likely be re-powered and upgraded. If the facility should go away, its steel, aluminum, copper wires, posts driven into the ground, you could pull it out and farm it the next day. There would be demand for other uses for this particular site.

Chair Miller asked if there was anyone wishing to speak in opposition to the request or had further questions concerning the request.

Sandy Dowdy, an adjacent property owner, was previously sworn and stated that she realized the solar farm was going to be developed, so she was not actually opposed to the request. She just wanted to know if anyone has given any consideration to the wind shear that will be caused by the lack of large trees and buffering around the site. She has experienced loss of some of her trees due to winds and storms. She owned and operated a nursery with many different types of trees, shrubs and bushes and there have been occasions when she lost some of her inventory because of wind shear.

Mr. Randolph stated that the Guilford County Board of Adjustment, having held a meeting on July 11, 2023, to consider **Case #23-06-BOA-00005 1984 Mt. Hope Church Road submitted by J.H. Stewart family, Limited Partnership and West River Solar LLC.**, and **Case #21-05-GCPL-04192**, a request for variance to use the properties located at 1413 Stewart Mill Road and 1942, 1984 Mount Hope Church Road, being tax parcels # 120662, 116799, 116805 and 116807, in a manner not permissible under the minimum terms of the Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following finds of facts and draws the following conclusions:

- 1) It is the Board's conclusion that unnecessary hardship **will** result from the strict application of the Ordinance, it shall not be necessary to demonstrate that in the absence of a variance, no reasonable use can be made of the property; this conclusion is based on the following FINDINGS OF FACT: The strict application of the variance was intended to apply to separation of properties of which the current use, as a solar farm, do not apply.
- 2) It is the Board's conclusion that the hardship **does** result from conditions that are peculiar to the properties such as location, size, topography, hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis of granting the variance. This conclusion is based on the following FINDINGS OF FACT: That the property has wetlands and sloping topography which impacts the usable space of the property, and in combination with the buffers, would reduce the effective use of the property as a solar farm.
- 3) It is the Board's conclusion that the hardship **does not** result from the actions taken by the applicants or the property owners. The act of purchasing property with knowledge that the circumstances exist that may justify the granting of a variance and shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT: The topography and the wetlands and other land configuration existed at the time that the property owner came into ownership of the property.
- 4) It is the Board's conclusion that the requested variances **are** consistent with the spirit, purpose, and intent of the Ordinance, so that public safety is secured, substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: The solar farm is adjacent to other properties that will also be subject to the solar farm. It is an effective use of the property as a solar farm to provide renewal energy and resources to the public, and as a result of the solar farm, there is no material impact to adjoining neighbors due to the external buffer that is required under the Special Use Permit.

Therefore, on the basis of the foregoing, it is ordered that the application for a variance be granted, subject to compliance with all local, state and federal laws.

Mr. Johnson seconded the motion. The Board voted unanimously, 4-0 in favor of the motion. (Ayes: Miller, Johnson, Havens and Randolph. Nays: None.)

Chair Miller announced that the variance has been granted, unanimously.

G. Other Business

None

H. Adjournment

There being no further business before the Board, the meeting adjourned at 7:27 p.m.

The next meeting of the Board of Adjustment is scheduled for August 1, 2023