

Minutes
Regular Meeting of the Florence County Board of Zoning Appeals
Tuesday, June 19, 2018 at 6:30 p.m.
County Complex, Council Chambers, Room 803
180 N. Irby St., Florence, South Carolina 29501

The Florence County Planning Department staff posted the agenda for the meeting on the information boards at the main entrance and the back entrance of the County Complex and on the information board in the lobby of the Planning and Building Inspection Department building.

The agenda was also mailed to the media.

I. Call to Order

Chairman Toney Moore, called the meeting to order at 6:30 p.m.

II. Attendance:

Board Members Present: Toney Moore, Chairman
Brian Casey
Daniel Jackson
Craig Floyd
James Cooper, Jr.
Kenneth E. McAllister

Board Members Absent: Bryant Hollowell, Vice-Chairman
Brenda Deas

Staff Present: Mr. J. Shawn Brashear, Planning Director
Derrick Singletary, Senior Planner
Lisa M. Becoat, Secretary

Public Attendance: See sign-in sheet on file at the Florence County Planning Department.

III. Review and motion of the minutes:

- **Meeting of May 15, 2018**

Motion to approve - Mr. Craig Floyd / Second – Mr. Brian Casey / Minutes of May 15, 2018 meeting unanimously approved 6 to 0.

IV. Public Hearings:

BZA#2018-04

A variance request by Bani Solar, LLC from requirements of Article III, Section 30-114.2(3) and Section 30-114(7)(b)(1) of the Florence County Zoning Ordinance (“Setback Requirement”) requiring a 50’ setback surrounding the property lines shown on Florence County Tax Map Number 00044, Block 03, Parcels 031 and 032.

Mr. J. Shawn Brashear presented the staff report to the Board. (Copy of the staff report available at the Florence County Planning Department) Mr. Brashear additionally informed the board that there had been one telephone inquiry regarding the posted signs about the variance request; and staff provided an explanation that a solar farm may be going on the property and the inquirer was satisfied with the response provided by Planning and Building Staff. Staff’s recommendation would be for the families to reestablish a single parcel versus two parcels per the original agreed upon lease agreement.

There were questions and discussion by the Board. Bani Solar is the project name for the Solar Farm. We are unaware if the parcels have a Federal Land Track Number on them. This project could be handled in a different manner instead of the board handling it. It appears that if the parcels were recombined into one parcel with the owner Bani Solar, LLC or a different name, it would solve the issue of the variance request; it appears to be the most efficient and legal way to handle the request.

Mr. Brashear responded to the Board and explained that they are being asked to pretend that the property line between two pieces of property does not exist because it is a development farm. The ordinance says that you must have a 50 foot setback from the property line. They applicant is asking the Board for a variance from the requirements to place setbacks along the property lines. So basically, if you grant the appeal you remove the property line. If you move the property line then the variance issue does not exist and the property owners work out the legal issues of the solar farm with their attorney if something should occur.

There was further discussion by the Board.

Chairman Toney Moore inquired if there was any public who desired to speak in favor of the requested variance request.

Ms. Olesya Pavlenko, Esq., attorney for Southern Current, was present and spoke in favor of the requested variance. She presented a power point presentation (Copy of the Southern Current, Bani Solar, LLC, presentation report available at the Florence County Planning Department). She provided a brief background of Southern Current, who they are, there geographic footprint and what they do. She explained that the project for Bani Solar was one parcel of land before and is now two parcels of land. One parcel is 18 acres and the other is 16 acres. One is owned by James Graham and the other is by Charles Graham. Currently, both of the parcels are owned by the estate of Charles Graham but evidently will be owned by James and Charles. The project is a 2 MW solar farm that is presently leased under Charles Graham’s name that passed away last year. The lease was originally signed in 2015 and is old so it had to be re-signed because it was outdated. There is an interconnection agreement with Duke and the environmental due diligence phase I, NEPA and the wetland reports have been completed. Based on the present site plan for Charlie Graham’s proposed solar farm, a variance is unique in many ways. First because it was one parcel, the title records up to March of 2018 showed one parcel and taxes paid by Charles under tax map number 00044-03-018. Our outside attorneys conduct our title searches for properties and the records they located on line at the Tax Accessor’s website still shows even today that the property is still under one tax map number. So we were unaware that the parcel of property had been split into two parcels. It is also clear that the heirs of the property had no idea that when they split the

property, it would create a different rule and setback requirement which brings us here today. There is no road in between the properties, which would split them in half and both parcels are of a narrow nature. Also, all the approvals from DHEC, SCDOT, Duke Energy and Army Corps of Engineers have been obtained. There are also some natural buffers on the site, a pond, stream and several non-jurisdictional ditches, which make it harder to do things with this land when you have all of these features. It is a single solar system in an unzoned area where solar systems are allowed. Setback requirements would make it very hard on the land owners and on Southern Current and creates and unnecessary hardship in developing this property for the landowners. David Brueck is our licensed Engineer for Southern Current and is here today and can answer any questions regarding site plan details, utility scale and other specific questions.

Mr. David Brueck, licensed and bonded Electrical Engineer for Southern Current, was present and spoke in favor of the requested variance. He designs and submits all documents that go to Duke Energy for their approval for the solar farms at Southern Current. The system is made up of solar panels that are mounted on a structure that are electrically combined together, hooks into series, then paralleled as they feed into inverters that are turned into AC and then combined into electrical distribution panels; which then feed into paramount transformers that steps up Dukes voltage and then interconnects. It is considered one generating system and if split up is considered two separate systems. The approval to interconnect this farm is for one system and not two systems. Everything from mechanical to electrical makes it extremely difficult to split this system up and Duke would not allow it. Southern Current would not be able to move forward with the project if we had to split it and also meet the setbacks.

Ms. Olesya Pavlenko indicated that they have one lease for one parcel of land which no longer exists because the parcels have now been separated. Southern Current only learned about a month ago about the split of the property, that is when they submitted the request for variance. Southern Current was still under the understanding that they had one parcel of land and one landowner. If the variance request is granted and after the meeting for the two parcels, Southern Current will have to amend the lease and make two leases or amend the lease and have two separate owners. The lease is still considered to be valid because it is under the legal description of that parcel. We will have to change the parcels numbers on the lease, but the lease was previously recorded with the County at the register of deeds back in 2015. The parcel area whether under two parcels or one is still under a valid lease with Southern Current. There is an initial twenty (20) years lease with an option for another twenty (20) years, so possibly a forty (40) year lease, so the property is currently under lien and neither party can sell as the lien will follow the property. The lease can always be changed with the two owners, but it is a valid lease even if ownership changes, the lease is still good and valid. There are also decommissioning agreements, so that once the system is done 20 or 40 years from now, Southern Current, will come in and take everything out and make the land ready for farming just like it was prior to the placing of a solar system that agreement was signed with the owners today. It is completed for everyone and is definitely required. The solar system does not have any adverse impact on health, safety or the general welfare of the public. Vegetative buffers will also be installed based on county ordinance and those setbacks.

There was further discussion by the Board.

There is another legal way to avoid the need for the variance request, but Southern Current cannot force the land owners to merge the two parcels back into one parcel. There are also time restraints to having the solar farm in place based on Duke Energy's approval of the project. The lease hold is for the entire 23 acre parcel of land. Duke Energy and DOT is not concerned about whether the project is one parcel of land or two parcels. They just want to make sure that the system is in place, in the correct location and without the huge setback in the middle of the solar farm system.

Mrs. Darlene Graham the daughter-in-law of Mr. Charles Graham and married to James Graham was present and spoke in favor of the requested variance. She stated that her father-in-law purchased the land many years ago for his sons. They live on one end of the property and Charles Graham and his family lives on the other. Mr. Graham was a smart business man and when Southern Current came to him, the project did peak his interests. During his life he was excited about the project and kept up with its status. He was excited about the project for himself and for their futures. There are no qualms about them wanting to go through with the project. Her father-in-law additionally wanted the property divided so that each of his sons would have a portion of the land. He also wanted them to carry on the project not only for themselves but also for their children if the agreement superseded them. They want the project to come to fruition for their deceased loved one. They intend to carry on as much as they can as to what their father in law wanted for the family. They are all in agreement of the project moving forward. They have lived on the property for over thirty years. The lease on the property was paid last year.

There was further discussion by the Board.

Ms. Olesya Pavlenko responded that the twenty years would start at the ground breaking. Once building and construction starts that is when the rent will begin. Contingency payments or pre-development payments have been paid but those are not rent payments. Rent will begin in August or September once the project begins and based on the lease agreement. If the board agrees to the variance today, the lease would have to be amended but legally nothing else would change. The heirs are still bound by the lease that their father signed; and would be able to enjoy the solar system for twenty years or up to forty years.

There was further discussion by the Board.

Mr. James Graham the son of Mr. Charles Graham was present and spoke in favor of the requested variance. He indicated that the land belonged to his father and when the land was divided his brother Tony (Charles) had agreed to continue with the solar farm. They never considered or thought about the system as one or two. They do not want to go against their father's wishes and put the land back together as one. His father wanted the land divided between the two brothers. The ditch line is very close to the property line and if the solar panels continue on, it is still just one field.

There was further discussion by the Board.

Mr. James Graham responded with a question of how is it so difficult to make a decision when the outcome will be the same result whether the parcel is one or two. Their attorney is not against the brothers re-combining the property, he is just following through with their deceased father's wishes. As it is just him and his brother, their father wanted the property separated so each could make decisions for their own children concerning any shares of the land. The contract has already been done and they did not know that the property would have been divided so soon. The process with the solar farm has been going on for about five (5) years. If their dad had not passed away the solar farm most likely would have already been completed.

There was further discussion by the Board.

Mr. James Graham responded that they have a time limit upon them now and if Southern Current has to go back and redo things Duke Energy could kick everything back and their family would be out of the opportunity to participate in the project.

There was further discussion by the Board.

Mr. Charles Graham the son of Mr. Charles Graham was present and spoke in favor of the requested variance. He indicated that he lives on the North end of the property. That their dad did not include them in the meetings regarding the solar farm but did discuss and provide a summary to them after his meetings. On his death bed he looked at both him and his brother and asked them to promise him that if something were to happen to either of them and they could not keep their portion of the property and had to sell it that they would offer it to each other first.. Now, this is not in writing but it was a verbal promise that they made to him. If the properties were recombined as the Board is suggesting and there is a desire to sell a parcel; the agreement would prevent selling any portion of the parcel.

There was further discussion by the Board.

Mr. Charles Graham responded that if he did sell the property then his rights would be given up and the lease would be between his brother and any John Doe. If we disagree with the Board and decide not to re-combine the property and the Board does not grant the variance, this would kill our solar project. Whatever we have to do to make this solar farm happen is what is going to be done, it is not the families desire to go against our father's wishes.

There was further discussion by the Board.

There was no public in appearance to speak in opposition of the requested variance.

There was discussion by the Board.

The recommendations and four findings of fact by the Board were as follows:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property:

Finding: The property was a single parcel known by Florence County TMS Number 00044-03-018 (Original Parcel). The Original Parcel was under the lease between the Applicant and Charlie M. Graham, Jr. dated August 19, 2015, the notice was made public and recorded in Florence County ROD Office. Upon Charlie M. Graham Jr. recent death the parcel was subdivided by his heirs, whom were unaware that this would affect the ability to develop a solar facility on their property. Before the parcel subdivision, applicant already submitted applications for zoning, SC Department of Transportation (SCDOT) and SC Department of Health and Environmental Control (SCDHEC) under Original Parcel. The layout and/or structural and constructional plans with the Original Parcel were submitted and approved by Duke Energy Progress, and currently under review with SCDHEC and SCDOT. The division of the parcel triggers the Setback Requirement that restricts the redevelopment of the properties as desired by the Landowner. Both parcels are of narrow nature and neither parcel on its own is large enough to develop a 2 MW AC solar facility.

The Setback Requirement between two parcels will create an unnecessary hardship and would prevent the development of the solar project, and most likely any use of the property beyond an agricultural use.

The Board was concerned that the extraordinary and exceptional conditions existed because the family separated the one original parcel into two parcels thus violating the original lease agreement for the solar farm system.

b. These conditions do not generally apply to the other property in the vicinity:

Finding: The parcel as one was chosen and approved by Duke Energy Progress LLC for the development of a 2 MW AC solar facility based on the utility distribution system analysis, the location of the interconnection grid, electrical wiring and substation. Such conditions do not generally apply to other properties within the vicinity because of the unique nature of this property and the need to find an ideal location approved by the utility.

c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property:

Finding: The strict application of the Article III Section 30-114.2(3) of the Florence County Zoning Ordinance to the Charlie M. Graham Jr., properties would effectively prohibit and unreasonably restrict the utilization of the Properties as a solar facility. PV Solar systems may appear as if they are separated into groups and/or sections, however they are as connected and intertwined as one mechanism. The physical connections may be over-head and/or underground. Adding or removing any group or section would cause the remaining system to have decreased functionality. The nature of the Solar Facility is based on linier conduct wiring runs which cannot be divided by the setback, fence, etc.

The Board was concerned that the strict application of the ordinance concerning setbacks existed due to the families separation of the one original parcel into two parcels, thus unknowingly and unreasonable restricting the utilization of the property and possible violated the original lease agreement for the solar farm system.

d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Finding: Because of the nature of the solar energy technology (no air or noise pollution) and the low amount of maintenance required of such projects, there will be no discernible effects on traffic in the area, and otherwise, the authorization of a variance will not be of substantial detriment to adjacent property or to the public good. Conversely, solar projects such as the one proposed have a positive impact to adjacent property and the public good. The Project will have no adverse impact on the health, safety or welfare of Florence County, the surrounding neighborhood or the general public. In addition, if required by the ordinance or suggested by the county officials, Bani Solar will install a best-in-class vegetative buffer. In addition to increasing the aesthetic value of the Project, such buffer is intended to prevent the Project from harming the character of the district.

Motion - Mr. Daniel Jackson made a motion that the variance be deferred/tabled until such time that the applicant and the heirs decide how they want to handle their property. This will allow time to either bring the variance request back to BZA and/or re-combine the property where the property is joined as joint title holders without a line separating the property into two parcels of land which is most favorable to the present signed leased agreement for the proposed solar farm system. / Mr. Brian Casey seconded the motion. The motion was unanimously approved with a vote of 6 to 0 to defer/table said variance request to allow time for the applicant and the heirs to decide how they want to handle their property for the proposed leased solar farm system.

V. Other Business:

None

VI. Adjournment

Chairman Toney Moore inquired of the Board and Staff if there was any other business, there being none, the meeting was adjourned at 7:36 p.m.

Lisa M. Becoat, Secretary

Approved by:

J. Shawn Brashear, Planning Director

*These minutes reflect only actions taken and do not represent a true verbatim transcript of the meeting.