

BOARD OF ZONING APPEALS  
November 1, 2010  
MEETING MINUTES

Present: Chair John Bradshaw, Members Gifford Childs, Linda Russell, Kim Cash, Goffrey Miles, and Alternate Ron Moyer

Staff: Fred Boger, Planning Director, and Wanda Staton, Secretary

Call to Order: Mr. Bradshaw called the meeting to order at 7:30 P. M. with a welcome to the applicants.

Minutes of August 2, 2010 – Ms. Cash made a motion to approve the minutes as presented, Ms. Russell provided the second, and motion passed 5-0.

Variance #2010-004 – Small Wind Energy System – Barton Biggs

Mr. Boger reported that Mr. Barton Briggs, represented by Dan Boyle, Central Virginia Wind Energy, is appealing the Zoning Administrator's denial of a zoning permit to install a 130 foot guyed lattice small wind energy system tower on his property located at 4026 River Road, Faber, Virginia. The property is further identified as Tax Map #23-A, Parcel 4.

On August 20, 2010, Mr. Barton Biggs submitted an application for a zoning permit for a small wind energy system tower. After reviewing the application, Mr. Biggs was informed that the permit could not be approved for the following reasons:

1. The maximum tower height permitted is 100 feet. The proposed height of your system is 130 feet. The height needs to be reduced to 100 feet.
2. The lattice tower is supported by tower guyed wires. Our ordinance requires the tower to be self supporting. The tower needs to be redesigned to be a self-supporting tower.
3. There is no information (drawings) on the blade design. This information is required.
4. No information has been submitted on the color of the small wind energy system.
5. Proof of adequate liability insurance for the small wind energy system must be provided.
6. The tower design does not show how it will not be accessible to the public for a minimum height of 12 feet.

Mr. Boyle stated in the application the reasons for the appeals are:

1. "Section 20-7-6b allows guyed wires for radio towers; we are appealing the definition of wind turbine towers only including freestanding lattice and monopoles."

20-7-6b. A design plan showing the Communication Tower, base, and the foundations for all guy-line anchors and support structures, all proposed auxiliary buildings and any other proposed improvements, including the utilities connections within and to the proposed site.

2. "Section 22-4-2C. We are also appealing the Maximum height of 100', we recommend using 20-8-1 for Class III communication towers in order to take full advantage of federal and state tax

dollars by installing the wind turbine at the optimum height on the property, which entails the turbine to be installed above the tree canopy and our trees in VA are very tall and cause turbulence to wind turbines installed just above the canopy.”

#### 22-4 Permitted Use

- (2) Height: The maximum height of a small wind energy system shall be:
- (a) Parcels 1-2 acres in size: Maximum tower height – 45 feet
  - (b) Parcels greater than 2 acres and less than 5 acres in size: Maximum tower height – 60 feet
  - (c) Parcels 5 acres or greater in size: Maximum tower height – 100 feet
  - (d) Building-mounted small wind energy system: Maximum height – 15 feet above point of attachment to the building or above the roof deck where the system is placed.

20-8-1 Standards of Height. Any Communication Tower over ninety-five (95) feet and to a maximum height of one hundred thirty (130) feet shall require a Class III permit from the Nelson County Board of Supervisors.

Mr. Boyle also stated “the hardship imposed by the current ordinance is the fact that a properly sited turbine must be at the highest point on a resident’s property without affecting neighbors. Because the highest installation site on Mr. Biggs’ property is a tree canopy, the tower height must be above the trees an amount high enough to extend beyond the turbulence created by such a canopy. Mr. Biggs is approved for the state wind incentive and Central Virginia Wind Energy, a certified master installer with the state, is required to install this wind turbine to a state standard, which requires a height appropriate to the property. The higher a tower is erected, the higher the costs associated with such towers. The wind turbine is only rated at 10kW, which is 10kWs under the maximum allowed in the Nelson County ordinance. This unit will supply 1/3 of the power the Biggs’ residence uses on average. It is not a commercial application, the higher the wind turbine is installed, the better the wind resource is available, decreasing the return on investment.”

Mr. Boyle further stated that 4026 River Road has a tree canopy at its highest elevation. This topographic condition requires a variance in order to maintain the integrity of the canopy and take full advantage of said property’s wind resource.

Staff has reviewed this petition and has the following comments:

1. The Petitioner is using a provision of the Communication Tower Ordinance to justify the use of guyed wires on a wind turbine tower. The use of guyed wires on these towers was carefully reviewed and considered by both the Planning Commission and Board of Supervisors when developing the Small Wind Energy Ordinance. It was decided that the wind turbine tower must be self-supporting with no guyed wires. This is a design requirement for these towers and any change to this requirement will require an amendment to the Zoning Ordinance.

Bergey Windpower Co. has a self-supporting lattice tower that can be used for this wind turbine.

2. The Planning Commission and Board of Supervisors discussed at length the height of a small wind energy tower. The purpose of the Small Wind Energy Ordinance is to provide

standards whereby small wind energy systems can be permitted in all zoning districts as a permitted use. These standards are uniform as all properties are subject to the height requirements. If there is a hardship with the height requirements, it is shared by all property owners in Nelson County, not just by Mr. Biggs. Therefore a variance in this case should not be granted.

3. There are large open areas on the subject property where a 100 foot self-supporting lattice tower could be located without a variance. The maximum 100 height requirement falls with the tower height range (100-120 ft) recommended by Bergey Windpower Co. The County cannot guarantee adequate wind to run a turbine at its ideal output. If the height requirements are not adequate for wind turbines in the County, then the Planning Commission and Board of Supervisors should be provided with the wind data for the entire County and a request made for an amendment to the Zoning Ordinance, not a variance.

Mr. Dan Boyle with Central Virginia Wind Energy was sworn in by Mr. Bradshaw. He stated that they are appealing the guyed wires of the tower as well as the maximum height of 100 feet for the tower. He also wished to amend the application now requesting a tower height of 140' instead of 130', because when they did the balloon test they encountered 100' trees. Bergy is the type of tower he wants to install. It is a 10 kilowatt version with a 10 year warranty. They expect to get about 1000 kilowatt hours per month. He gave a quick review of the State and Federal renewable wind energy incentives.

Mr. Boyle described why there was a hardship with the property. The state incentive program requires the wind turbine must be installed at the highest point of the property. Mr. Biggs, property owner, has 100 feet tall trees on his property. Mr. Boyle stated that the average return on investment of a small wind turbine is less than 20 years.

Ms. Cash stated that the issue is that they want to see a much taller tower on the tallest part of the property. Mr. Boyle stated that was correct. The applicant wants to see a tower on the tallest portion of the property.

Ms. Russell asked if there was any open space on the property where you could place a tower that would meet the requirements. Mr. Boyle replied that the applicant could expect to lose 588 kilowatt hours per month installing in a field that is 100 feet lower than the proposed site. Mr. Bradshaw stated that it seemed to him that you would get some turbulence from the trees on the upper side of the mountain. Mr. Boyle stated that you will get some turbulence. Mr. Boyle also stated that Virginia is a hard state to site wind turbines in.

Mr. Barton Biggs was sworn in by Mr. Bradshaw. Mr. Biggs stated that there were a few points he wanted to emphasize. He did not understand why his hardship cannot be shared by others in the county in order to qualify for a variance. The guyed wires at the proposed location in the woods would not be visible. Mr. Bradshaw stated that if you go to Truslow's Lane the property in question is visible. He asked if there would be a fence around the guyed wires. Mr. Biggs stated that he had not planned on any fencing. He said the tower would be inaccessible to the public by use of a ladder that slides up above the height that someone could reach.

Mr. Boger stated that if the applicant amends the application it would have to readvertised.

The public hearing was opened.

Mr. Bradshaw stated that a letter had been received and asked Wanda Staton to read the letter from Katherine M. Daniels, 2724 Alston Drive, Atlanta, Georgia.

The public hearing was closed.

Ms. Cash stated that she supports small wind energy systems. Any action taken by this board will set a precedent. If the Board of Zoning Appeals decides it has the authority to grant a height variance then a precedent has been set. She felt that Mr. Biggs misunderstood the term hardship because the ordinance requires that the hardship must be unique to your property.

Ms. Russell stated that she is very uncomfortable granting a 40% variance. In view of the uniqueness of Mr. Biggs property, this should go back to the Planning Commission to consider regulations for properties with unusually high densely vegetative canopies. She didn't think that a variance is appropriate. As far as guyed wires are concerned she firmly believes that self-supporting towers are the way to go. She does not support this variance as requested.

Mr. Childs stated that he cannot support the variance on the height because it is too great.

Mr. Biggs asked if the BZA could approve or disapprove the entire variance or could it be partially approved. Mr. Bradshaw stated that it would either be approved or not approved.

Ms. Cash stated that it comes down to whether the Board of Zoning Appeals can even grant a variance or whether the ordinance should be revised. She feels that the BZA doesn't have the authority to change the height of a tower.

Mr. Boger stated that he felt it should go back to the Planning Commission.

Mr. Biggs asked would it qualify as a hardship, the fact that, the state rebate runs out this spring. The use of wind energy is not financially feasible without this state incentive.

Mr. Miles asked when the state rebate would expire and Mr. Biggs answered he believed it was May 2011.

Mr. Bradshaw suggested to Mr. Biggs that he consider withdrawing the application. It is possible that some changes could be made within the next 60 days and then he could reapply before his deadline.

Mr. Boger stated that when the ordinance was crafted there were only one or two companies in this area. Mr. Boyle seems to have much more information that would be useful during reexamination of this ordinance.

Mr. Biggs stated that he wanted to withdraw his application.

Ms. Linda Russell made a motion to recommend that the Planning Commission readdress the height issues in relation to the wind energy ordinance at their next meeting. Second was provided by Mr. Miles and motion passed 5-0.

Variance #2010-005 – Melvin Lawhorne

Mr. Boger reported that Mr. Melvin Lawhorne is appealing the Zoning Administrator's violation notice of September 28th and is requesting variances to keep a travel trailer on his property located on Crabtree Falls Highway and identified as Tax Map 26-A, Parcel 22.

The subject property is zoned Agricultural, A-1. Mr. Lawhorne is requesting the following variances:

1. Section 4-11-1 Temporary placement of a travel trailer not to exceed three (3) years and temporary occupancy not to exceed thirty (30) consecutive days at any one time. A zoning permit will not be issued until a septic tank has been installed. The required septic system has not been installed.
2. Section 4-3-1a Front yard: Minimum of seventy-five (75) feet from the center of the road or fifty (50) feet from the edge of the right-of-way, whichever is the greater distance. The travel trailer is located approximately 52 feet from the center of Crabtree Falls Highway.

On May 27, 2010, Mr. Lawhorne provided the Planning Director with a written statement that the travel trailer would not be on the property more than 10 days at a time. It would be transported in and out of the property as needed. With this understanding, an electrical permit was issued for an electrical meter to be installed on the property. The travel trailer was not removed periodically from the property as agreed to on May 27th resulting in the Notice Zoning Violation.

Mr. Lawhorne stated in his application that the travel trailer was not permanently occupied and was for seasonal use. He also stated that Bell Septic was paid to dispose of waste from the 50 gallon holding tank. He would like to set the camper there for a fixed amount of time.

The subject property is approximately .17 acres (7,405.2 sq. ft.) in size. Mr. Lawhorne stated that he was not able to move the camper back due to the small lot. He also stated that there are no complaints from an adjoining property owner.

Mr. Boger stated that the office has received 3 letters in opposition to Mr. Lawhorne leaving his camper on the property. Mr. Anderson also an adjoining property owner called the office and stated he had no problem with the camper staying there. The BZA has been very consistent in denying these types of requests.

Mr. Lawhorne was sworn in by Mr. Bradshaw. Mr. Lawhorne showed pictures of the property. He stated that he should have never signed the paper at the Planning and Zoning office stating he would remove trailer every 10 days. He stated that he did ask the Planning and Zoning Office if he could put a camper on his property and he was told it was the only thing he could put there. He stated that he keeps the property clean and has had the self-contained unit pumped twice this

year and has only been there three times this year to use the camper. He stated that adjoining property owner, Mr. Anderson, enjoys them coming up there because he is 90 years old and feels safe when they are there. He has nowhere else to put the camper. He doesn't have enough land where the camper is sitting to install a septic system and that is why he is having it pumped by Bells Septic. He inherited the land and purchased the camper. Ms. Cash asked if he didn't understand when he signed the agreement that he had to pull the camper off the property after 10 days and then could bring it back for 10 days. Mr. Lawhorne said he did understand but that he hadn't realized how dangerous it was to pull the camper in and out of the road on Rt. 56.

Mr. Bradshaw opened the Public Hearing.

Board of Supervisors' Member, Tommy Bruguere, stated that Mr. Lawhorne's land is a non-conforming piece of property and feels the best suited use is for a camper trailer. It is not large enough to put a septic system. He has already had it pumped by Bells Septic System service. If a variance is granted, Mr. Lawhorne could submit proof to the Planning Director each time the tank is emptied. He has improved the land and he is paying taxes on it.

Public hearing was closed.

Mr. Childs stated that he feels the Board would be in big trouble if the variance were approved after denying so many cases just like this one.

Ms. Russell stated that she felt Mr. Lawhorne has good intentions, and he would have it pumped out as required but the trailer could be sold to someone else and they may not be as conscientious as Mr. Lawhorne and she was very concerned that it is right next to a creek and the land is a very small lot and feels it is an inappropriate place for a travel trailer.

Ms. Cash stated she agrees with Mr. Childs in that the Board has been incredibly consistent in requiring others to install septic systems or move the trailer and she would not support this application.

Mr. Miles stated that he agrees with Ms. Cash. He feels it is hard to tell one person they can do something and someone else that they can't.

Mr. Childs made a motion to deny the request for both the septic and variance for the front yard setback based on the fact that there is no demonstration of hardship based on our definition of hardship. Ms. Russell provided the second and motion passed 5-0.

Mr. Lawhorne asked how long he had before he had to move the camper. Mr. Boger stated he will have 30 days to move the camper. Mr. Lawhorne asked if he could move it back after 30 days and Mr. Boger stated he could and that it has to be moved every 10 days. Mr. Boger stated he would talk to the county attorney and would get back to Mr. Lawhorne. Mr. Bruguere stated that he could move the camper every 10 days and he must leave the camper off the property for 10 before he could move it back for 10 days.

Mr. Bradshaw stated that Mr. Boger would need some time to verify the requirements and would then contact Mr. Lawhorne within two weeks.

Other Business – None

Adjournment

At 9:30 o'clock P.M., Mr. Bradshaw declared the meeting adjourned.

Next meeting – December 6, 2010

Respectfully submitted,

Wanda L. Staton  
BZA Secretary