



BOARD OF ADJUSTMENT MEETING MINUTES

AUGUST 13, 2009

5:30 P.M. – BOONE COUNTY COURTHOUSE

201 STATE STREET, BOONE

I. OPEN MEETING AND ROLL CALL

Robin Crabtree
Dennis Lynch
Cy Hornberg
Paul Adix
Ruth Berglund

ATTENDANCE: Dennis Lynch, Ruth Berglund, Cy Hornberg, and Paul Adix

ABSENT: Robin Crabtree

ALSO IN ATTENDANCE: Rebecca Shivvers, Brian McClain, James McClain, and Roger and April Franksain.

II. APPROVAL OF MINUTES

July 9, 2009 minutes approved as written.

III. CITIZENS COMMENTS ON ITEMS NOT ON THE AGENDA (ADDITIONS TO AGENDA)

None

IV. OPEN PUBLIC HEARING(S) AND CONSIDERATION OF APPLICATION(S)

A. Roger Franksain, Petition for Variance to allow for the reduction of the required setback for a non-commercial wind generator. (1.1 times total tower height)

Chairman Lynch questioned the total tower height.

It was stated the tower was 70ft in height.

Director Sandra Monck noted the height of 70 ft did not include the turbine.

It was stated the entire unit would be 77 ft tall.

Chairman Lynch questioned whether there were any structures on the adjoining property.

It was stated there were no structures on the adjacent properties, and that soybeans were being grown.

Chairman Lynch questioned who the surrounding property owners were.

Roger Franksain noted the neighbors were Bea Babbitt, Marty Bush, and Dwayne Frampton.

Chairman Lynch questioned the proposed location of the wind generator.

Roger Franksain stated they wanted to put the wind generator 60ft from both the south and east property boundaries.

Chairman Lynch questioned why they couldn't meet the required setback of 75'.

The installer stated this location was chosen because it was an area which was not used as yard, and because they wanted to place the turbine as far away from the trees as they could.

The installer also stated the further the turbine was from the trees the better the machine would produce.

Someone questioned which trees they wanted to stay away from.

The installer indicated they wanted to stay away from the taller trees. (Which were on the northern property boundary)

Director Sandra Monck questioned "where are the prevailing winds".

The installer stated they were out of the northwest and southwest.

Director Monck noted the location of the laterals and the septic system were not an issue, she had located the system and noted the guy-wires did not have to be 10ft from the lateral lines.

Chairman Lynch questioned whether any of the surrounding property owners had contacted the Planning and Development Department.

Director Monck stated no one had contacted the office in regards to the request.

Roger Franksain stated he had talked with the Frampton's and the Babbitt's and that neither had objected to the request. He noted each had signed agreements in regards to the variance; he believed that was all that would be required.

Director Monck questioned the absolute minimum setback, she questioned if that absolute minimum was 60'.

The installer stated the closer they could put the wind generator to the property lines in that corner the better. They said if they could go right up against the property line that would be fine, too.

Director Monck again questioned if 60ft were the absolute minimum setback.

Chairman Lynch questioned whether the proposed location was the highest spot on the property.

Franksain noted the property actually dropped in that area.

It was again stated the further the wind generator could be placed from the trees the better, and in the proposed location they would get great southwesterly winds. The northwest winds were their concern.

Chairman Lynch noted if the tower were to be moved closer to the trees, the tower height would have to increase.

The installer stated they did not have a taller system, and that the further the tower were to be placed from the trees the better the machine would produce.

The installer noted that if the tower were to fail, they generally buckle in the middle or at one of the guy points. It was stated if the tower were to come down, it was not likely that it would fall completely over. The towers are rated for 120 mph straight line winds and 140 mph gusts. It was stated it was a solid system, with very little risk of failure.

The installers again noted the further from the trees the tower could be located, the better. It was also noted 60ft from the property line was a good location because everything was flat and level there.

The installer stated he did not believe a variance of 17' would be a big deal.

Cy Hornberg questioned how far the guy-wires would be from the property boundaries.

The installer stated the guy-wires were 35ft. from the base and took up approximately 109 sq ft. It was stated there were 4 sets of guy-wires.

Cy Hornberg questioned how close the guy-wire would be from the property line.

It was noted it was 60 ft from the base, and 35ft from the property line.

Chairman Lynch questioned whether (2) variances would need to be granted.

Director Monck noted this was a property line variance. She questioned whether this was intrinsic to other types of rural properties out there in the county, or whether it was peculiar to the specific property.

Director Monck noted the proof of burden was on the applicant, and questioned what type of scientific reports they had to back up the variance request.

Chairman Lynch noted he had seen wind mills all over the country. He noted he had seen windmills sitting right directly on a 4-corner property line, and that all 4-people owned it, with houses 50' in each direction. He did not believe there was a problem with them coming down.

Chairman Lynch stated he did not have a problem granting a variance for it. He again noted the further the tower was from the south property line the taller the tower would have to become.

Discussion was again held on the height of the trees which bordered the northern property line and the height of the wind turbine.

Chairman Lynch noted the property got lower on the southern boundary, and if it were to be moved further north or closer to the trees the tower height would have to increase.

Discussion was held on wind turbulence and the direction of winds. It was stated the winds generally came out of the northwest.

Rebecca Shivvers stated she would vouch for the northwest winds, even in the summertime here, she had been getting a lot of these things coming from the northwest, and "I have a tower".

Director Monck noted a Zoning Ordinance amendment should be made pertaining to non-farm residential homes in the A-1 areas of Boone County, because this was a prevalent issue that would apply for all non-farm homes in Boone County.

She stated none of the homes in the county would meet the setback requirement of 1.1 times tower height. She stated this needed to get kicked back to the Zoning Commission so they could amend the ordinance which may require up to four (4) months.

The installer noted in most areas the Zoning laws were amended to allow an easement of the property owners for full distance to alleviate, he noted this was simple for both the county and homeowner. He stated this was what had typically been going on across the country.

Chairman Lynch stated director Monck was right and that this was not considered an agricultural use. He stated it was considered a residential use, and there was no agricultural purpose to the property.

Chairman Lynch stated if the Zoning gets changed this would be no problem. If they were considered farming people and this was an agricultural use they would have no problems passing it.

Discussion was held on the zoning of the property.

Director Monck noted the land was zoned A-1 but taxed residential. She noted it was a non-farm residence located in an A-1 district.

Chairman Lynch noted this was where the county had made a mistake.

Further discussion was held on the setback requirements for a wind turbine in an A-1 (Agricultural Conservation District), which is 1.1 times the total height of the turbine.

Chairman Lynch noted all residential properties needed to be zoned as residential, not A-1 (Agricultural Conservation District).

Director Monck questioned whether the members of the board were satisfied that sufficient evidence had been given to justify the granting of a variance.

Chairman Lynch questioned whether two (2) variances would be required, e.g. a variance for the wind turbine and a variance for the guy-wires.

Roger Franksain noted the ordinance required a 10' setback for guy-wires.

The installer noted in Dallas County, in an A-1 district a wind turbine is dealt with as a pertinent structure. "They deal with it like any other outbuilding." It was stated there had been a court case where a wind turbine customer had filed a suit against the county, and it had been determined if it were agricultural, in the county they could put up whatever they liked.

Director Monck noted the county would be seeing more and more non-ag dwellings coming into the A-1 conservation area, she stated the board members would be seeing this again and again.

Chairman Lynch noted all residential properties needed to be zoned as R-1 (residential) not A-1.

Director Monck again asked if the board members had been given sufficient evidence to substantiate the granting of a variance. She questioned if there had been enough written documentation.

The installer stated he did not have a written technical report.

Director Monck noted the board members were to base their decision off of written findings of fact.

The installer noted it was nearly impossible to quantify wind. And further stated his information was based off of experience.

Monck noted the Board of Adjustment was a Quasi Judicial board, a cross between a court of law and a town hall.

The installer questioned how documenting wind speeds could help you determine the efficiency of a turbine.

Chairman Lynch discussed the layout of the property, the lateral field was identified, and also the garden was identified. He questioned if there were any trees close by.

The installer stated there were no trees close by.

Chairman Lynch stated he was not against windmills. He noted in order to pass the variance they needed facts to justify the granting of the variance.

Further discussion was held on the property setback requirements.

Paul Adix, board member, noted the petitioner could erect the tower 77' from the property line, and not have to worry about getting a variance. Or that they could try to get a variance, get all their verbal things in order and write it down for us.

Chairman Lynch questioned whether an easement could be recorded which would allow the owner of the wind generator to access the adjacent property, similar to that which Dallas County had been doing.

Director Monck noted that was not allowed in our Ordinance or regulations.

Further discussion was held on easements.

Monck stated her recommendation, based off of facts and evidence and documentation provided by the applicant there was not sufficient at this point in time to grant a variance. She stated they could come back with written testimony and certification by an engineer.

Chairman Lynch noted the Ordinance needed to be changed.

Director Monck suggested the Board of Adjustment write a letter to the Board of Supervisors in regards to the issue.

The installer questioned the type of data which should be documented.

Director Monck noted they could use a wind indicator which would measure the direction of the wind and its speeds.

Paul Adix asked the Installer how they came up with the 6 -12 percent reduction in wind turbine efficiency if the variance was not granted.

The installer stated the information was based off of his experience. He stated the only way to get an idea of wind speed would be to put an anemometer up at the height of the turbine for 12 to 18 months.

He stated they would have to put up two anemometers, one at each location. He stated the cost of doing this would be about ½ the cost of the system. He stated economically it wasn't justifiable.

Chairman Lynch noted the installer was the expert, he stated he could give a written statement based upon his experience.

Director Monck questioned the installer's credentials.

The installer stated he had been installing wind generators for 3-years, and had been trained by the MREA, SCI, and has been participating in windmills for 3-years. He stated he had dedicated his life to this.

Chairman Lynch stated he should draft a letter to the Board of Adjustment. He told him to turn the letter into Director Monck prior to the September meeting.

Chairman Lynch questioned whether a motion needed to be made to table the request.

Director Monck stated a motion should be made to table the request until the September meeting and that someone should second the motion. This would give the applicant ample time to collect facts and documentation.

Paul Adix moved to table the petition for Variance submitted by Roger Franksain until the September meeting which would give the applicant time to collect additional information.

The installer noted they also had the option to move the location, and meet the existing setback requirements.

Paul Adix noted they could do that, and that they wanted to make it easier for everybody as we start seeing more of the windmills popping up.

Chairman Lynch stated they were setting precedence in the county.

The installer asked if the board members would like to see a presentation which he had done for the American Planning Association outlining the considerations for wind turbines and for solar panels.

Chairman Lynch noted he should give the information to Director Monck so that it could be put in packets and forwarded to the Board of Adjustment members.

Seconded by Cy Hornberg

Paul Adix—yes
Ruth Berglund—yes
Cy Hornberg—yes
Dennis Lynch—yes

Motion Carried

Chairman Lynch noted the issue had been tabled which would give the applicant more time to gather written documentation. Or, that the Franksain's could move forward and construct the tower within the required property setbacks.

V. UNFINISHED BUSINESS (OLD BUSINESS)

A. None

VI. NEW BUSINESS

A. Review Zoning basics

VII. REPORT OF ZONING ADMINISTRATOR AND DIRECTOR OF PLANNING

VIII. ADJOURNMENT

Respectfully submitted,

Wanda Cox
Secretary