

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
September 10, 2020**

**Commissioners Chambers
David R. Sandifer Administration Building
Brunswick County Government Center
Old Ocean Highway East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman
Mary Ann McCarthy, Vice Chairman
Marian Shiflet
Ron Medlin
Virginia Ward, Alternate

MEMBERS ABSENT

Alan Lewis
Clayton Rivenbark, Alternate

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Miranda Garmenn, Zoning Technician
Justin Brantley, Project Planner

OTHERS PRESENT

Brandon Hardee

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:03 p.m.

II. ROLL CALL.

Mr. Lewis was absent. Ms. Ward served as the alternate for the meeting.

III. CONSIDERATION OF MINUTES OF THE AUGUST 13, 2020 MEETING.

Ms. Shiflet made a motion to accept the minutes of the August 13, 2020 meeting as written. The motion was seconded by Ms. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. McCarthy 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.

Ms. McCarthy said that the public hearing is not to solicit broad public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the record 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.

Ms. McCarthy 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 3.5.9.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.

Ms. McCarthy 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 Helen Bunch and Brandon Hardee as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A) 20-06S: Special Use Permit
- Applicants: Brandon Hardee and Nancy Bennett
- Location: 6431 Brenda Lane NW, Ash, NC 28420
Portion of Tax Parcel 14700007
Applicants request a Special Use Permit for a "Class I Mining Operation" consistent with Section 5.2.3 and Section 5.3.7.G of the Brunswick County Unified Development Ordinance (UDO).

Ms. Bunch addressed the Board. Ms. Bunch read the Staff Report. Ms. Bunch identified the subject property and surrounding properties on a visual map.

Applicant Brandon Hardee addressed the Board. Mr. Hardee stated that the ultimate result of this sand mine would be for the property owner to have a pond to utilize and that the property could be used for more than timber production.

Ms. Shiflet asked if the subdivision process had started. Mr. Hardee responded yes that it started simultaneously with the wetland delineation process.

Mr. Williamson asked if dewatering will occur. Mr. Hardee responded that with Class I Mining Operations, pumping water from one area of the mine to another area of the mine is not considered dewatering.

Mr. Williamson asked if the water would leave the site. Mr. Hardee reiterated the water could be pumped from one area of the mine to another area of the mine but would not leave the site.

Mr. Williamson asked what other State agencies have been involved in the project. Mr. Hardee responded the U.S. Army Corp of Engineers and North Carolina Department of Environmental Quality (NCDEQ) have already been involved.

Ms. Shiflet asked how the road would remain dustless. Mr. Hardee responded that they have water trucks constantly spraying the road and that the road currently has an asphalt base.

Mr. Williamson asked how many loads were anticipated a day to be mined. Mr. Hardee responded about 10-25.

With no further comments, the Chairman summarized that Mr. Hardee has applied for a Class I Mining Operation. The Chairman stated that a Class I Mining Operation is permissible in the RR zoning district with a Special Use Permit from the Board of Adjustment. The Chairman reiterated that at the completion of mining activities the land will be reclaimed to be a pond for the landowner's use.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

DECISION: Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its meeting on September 10, 2020, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made.

1. A written application was submitted and complete in all respects.
2. The use, “Class I Mining Operation”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Minimal impact is anticipated as adjacent parcels are like zoned.
 - b. No expert testimony was provided, or report submitted by an appraiser regarding the value of the properties.
3. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance Lists Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
 - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operation if approved by the Board of Adjustment through the Special Use Permit process.
 - c. 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 the conditions outlined in the Staff Report are met.
 - d. Mr. Hardee testified that the applicant is aware of all standards required by the UDO and they be met.
4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. No testimony or evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.
 - b. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina as mining permits from both entities are required.
 - c. The applicant stated that the haul road will be dust free via the use of a water truck or irrigation, whichever is felt to be more effective for this situation.
 - d. Applicant indicated that he understands that the project driveway must comply with NCDOT’s driveway requirements in order to ensure the safety of the traveling public and dump truck haulers.

5. The use, a “Class I Mining Operation”, 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. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
 1. **Circulation:** All access to the site will occur from Longwood Road (SR1321) via Brenda Lane NW, a named 45-foot private access easement. Brenda Lane NW will consist of a 20-foot private gravel road that will be expanded to the minim site. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to zoning approval.
 2. **Parking and Loading:** There will be no scales or office on-site. As a result, no employee parking will be required. Loading of the trucks will occur on the site. Based upon the proposed length of the haul road, adequate room is available for truck staging.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Longwood Road (SR 1321), which is a state-maintained road and Brenda Lane NW, a private road.
 4. **Lighting:** No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO prior to installation.
 5. **Signs:** Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
 6. **Utilities:** Public water and sewer are not available to the site and they will not be required for the proposed operation.
 7. **Open Space:** There are no additional open space requirements for this use.
 8. **Environmental Protection:** The applicant must meet all applicable Federal, State and Local Government requirements.
 9. **Screening, Buffering and Landscaping:** Project boundary buffers are required. RR Zoning to RR

Zoning Undeveloped will require a 10' deep buffer with 0.2 visual opacity. RR Zoning Non- Residential to RR Residential Developed will require a buffer with 0.4 visual opacity, with the depth determined by the chosen alternative as specified in Section 6.3.9.A.4. of the UDO. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements.

The required 0.2 opacity buffer and planting alternatives are as follows:

10 feet deep; 1 canopy tree, 1 understory tree and 7 shrubs per 100 linear feet; or

10 feet deep; 1 canopy tree, 2 understory trees and 3 shrubs per 100 linear feet.

The required 0.4 opacity buffer and planting alternatives are as follows:

20 feet deep; 2 canopy trees, 4 understory trees and 25 shrubs; or

20 feet deep; 2 canopy trees, 6 understory trees and 9 shrubs per 100 linear feet.

15 feet deep; 3 understory trees and 3 shrubs per 100 linear feet with a 6-foot fence; or

10 feet deep with 3 understory trees and 3 shrubs per 100 linear feet with a 6-foot high wall.

A compliance inspection must be conducted by the County prior to the commencement of mining activities.

10. **Effect on Adjoining Property:** The effect on adjoining property is varied. All the adjacent parcels with the exception of three (3) are undeveloped. The remaining 3 parcels are residential in nature but are not close to the proposed mining site. The buffering requirements will be more intensive for the 3 residential properties.
11. **Compatibility:** The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment.
12. **Impacts on Military Installations:** The proposed Special Use is not within five (5) miles of a military installation.

b. **Additional Approval Criteria (Section 5.3.7.G.): Class I Mining Operation** shall be permitted in accordance with the use tables in Section 5.2, subject to the following:

1. Class I Mining Operations may not occupy more than 20 acres. **The site plan denotes a 19.59 area parcel.**
2. Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use off-site. However, no further on-site processing is permitted (i.e. use of conveyor systems;

screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. **Applicant is aware that the use of conveyor systems, screening machines, crushing, or other mechanical equipment may not take place at this location.**

3. The use of explosives is not permitted. **Applicant is aware that explosives will not be used in the mining operations.**
4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
 - i. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
 - ii. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated that there will not be dewatering, therefore this requirement is not applicable.**

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.

5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. N/A

Ms. McCarthy made a motion to grant the Special Use Permit 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 3.5.9.B. of the Brunswick County Unified Development Ordinance with the following 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 legally subdivide Tax Parcel 14700007 in the manner denoted on the site plan. The special use permit is to only be applicable to the mining site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
5. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
6. Consistent with the application, mining operations will be limited from 8:00 a.m. – 4:30 p.m.
7. The applicant must ensure that the haul road remains dustless in nature during its use.
8. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
9. The applicant must request a visual inspection of the site by the Zoning Administrator prior to the commencement of mining activities to ensure all requirements have been met.
10. 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 Ms. Ward and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and as shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5. of the Brunswick County Unified Development Ordinance.

VIII. STAFF REPORT.

Ms. Bunch advised the Board that at this time there will not be an October 8, 2020 meeting.

IX. ADJOURNMENT.

With no further business, Ms. Shiflet made a motion to adjourn. The motion was seconded by Ms. McCarthy and unanimously carried.