

**MINUTES**

**ZONING BOARD OF ADJUSTMENT**

**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday  
July 9, 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  
Marian Shiflet  
Virginia Ward, Alternate

MEMBERS ABSENT

Alan Lewis  
Ron Medlin

STAFF PRESENT

Kirstie Dixon, Planning Director  
Bryan Batton, Assistant County Attorney  
Brandon Hackney, Project Planner  
Justin Brantley, Project Planner

OTHERS PRESENT

Phillip Norris  
Angela Adams

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:00 p.m.

II. ROLL CALL.

Mr. Lewis and Mr. Medlin were absent.

III. CONSIDERATION OF MINUTES OF THE DECEMBER 12, 2019 MEETING.

Ms. Shiflet made a motion to accept the minutes of the December 12, 2019 meeting as written. The motion was seconded by Ms. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

Ms. Dixon stated that there were two (2) changes to the agenda. Variance cases 20-01V and 20-05V have been postponed to the August 13, 2020 meeting due to the lack of a full board in attendance.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. Shiflet stated 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. Shiflet stated 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. Shiflet 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. Shiflet 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 Brandon Hackney, Phillip Norris, and Angela Adams as to their testimony being truthful and relevant to the respective case.

VII. New Business.

- A) 20-02S: Special Use Permit  
Applicants: Brandon Hardee, Jason Benton and Jessica Benton  
Location: 921 Pea Landing Road NW, Ash, NC 28420  
Portion of Tax Parcel 1940000602  
Applicant requests 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).

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

Project Engineer Phillip Norris, of Norris and Tunstall Consulting Engineers, P.C. addressed the Board. Mr. Norris stated that his firm has been working with Staff to ensure that the layout of the proposed sand mine meets the pertinent County requirements. Mr. Norris continued that he has reached out to the North Carolina Department of Transportation (NCDOT) to acquire a driveway permit. Mr. Norris added that the state mining permit is currently being prepared. He continued that multiple State agencies will be reviewing the project and will examine access to the site as well as environmental concerns. Mr. Norris stated that after the mining project is complete the mining area will be reclaimed with a lake stocked with fish.

Mr. Norris explained that as part of the mining permit process the applicant is required to post a bond for the project with the State so that the State can reclaim the land if necessary. Mr. Norris added that this is a safeguard for this type of activity. Mr. Norris reiterated that his firm has provided all the relevant information in the application to meet the requirements of the UDO.

Ms. Shiflet asked how much of a bond will be required by the State. Mr. Norris responded that the amount is based on a formula that looks factors such as types of materials mined, maintenance, road access and has not yet been determined. Mr. Norris stated that the amount would be substantial to ensure that the mine may be properly reclaimed.

Mr. Williamson asked Mr. Norris to speak to the concern of impacts of the mining operation on the wells of adjoining properties. Mr. Norris responded that the State requires it to be demonstrated that the depth to be mined will not adversely affect the adjacent properties. Wells within 1000 feet of the excavation area must be monitored. Mr. Norris added that there are no wells within close proximity to have an impact.

Mr. Williamson asked if there was water available at the site. Mr. Norris stated that there is County water available on Pea Landing Road.

Mr. Williamson asked Mr. Hackney to read the conditions of approval from the Staff Report (attached).

With no further comments, the Chairman summarized that Mr. Norris testified that the site plan meets all requirements of the Unified Development Ordinance and that the required driveway permit and state mining permit are being pursued.

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 July 9, 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. Norris 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.
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 Pea Landing Road (SR 1304) via a 45-foot access easement to the site with a 20-foot haul road developed within the parcel. 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 final 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 Pea Landing Road, which is a state-maintained 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, however, neither will be required for the proposed operation.
  7. **Open Space:** There are no separate 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 which will be 10' in depth. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements. RR Zoning to RR Zoning Existing Residentially Developed project boundary buffers will require a buffer with 0.4 visual opacity, which will be 20' in depth, unless the depth is reduced by adding a 6-foot fence or 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 minimal as adjacent parcels are like-zoned.
  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 15.13-acre project area (parcel to be created).**
  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 1940000602 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 provide a 45' access easement from Pea Landing Road to the subdivided Tax Parcel, with a 20' haul road for mine activities once on site.
5. 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.
6. The applicant must notify the North Carolina Department access improvements are warranted. Required improvements must be made prior to final zoning approval.
7. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. Monday through Friday.
8. The applicant must ensure that the haul road remains dustless in nature during its use.
9. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
10. 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.
11. 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 Mr. Williamson 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.

B) 20-03S: Special Use Permit  
 Applicant: Randy Hardee and Shawn Lennon  
 Location: 692 Southport-Supply Road SE, Bolivia, NC 28422  
 Portions of Tax Parcels 16800115 & 1680011501  
 Applicant requests 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).

Mr. Hackney addressed the Board. Mr. Hackney read the Staff Report (attached). Mr. Hackney identified the subject property and surrounding properties on a visual map.

Mr. Norris addressed the Board. Mr. Norris stated his firm, Norris and Tunstall Consulting Engineers, have prepared the site plan included in the application. Mr. Norris added that this request is to expand current mining activities. Mr. Norris clarified that this would be the fourth excavation pit on-site. Mr. Norris stated that the current Mining Permit will be updated for the property if the project is approved.

Mr. Norris stated that the existing entrance to the property to Southport-Supply Road (NC 211) has been approved by the NCDOT. Mr. Norris continued that his firm has worked with staff to ensure that the plan follows the requirements of the UDO. A survey of wetlands has been performed, with these features having 50' buffers from mining activities. Mr. Norris added that the appropriate buffers and access to the site will be provided.

Ms. Shiflet asked Mr. Norris to explain the meaning of the dotted areas on the site plan. Mr. Norris explained that the dotted areas represent wetlands. Mr. Norris stated that the site has not received any complaints to his knowledge. Mr. Norris reiterated that this proposal is for an expansion of activities currently taking place on-site.

Mr. Williamson asked Mr. Hackney to read the conditions of approval from the Staff Report.

With no further comments, the Chairman summarized that Staff provided a Staff Report and stated that the use of a "Class I Mining Operation" is permissible, provided specific criteria and conditions are met. Mr. Norris testified that the plan meets the requirements of the Unified Development Ordinance (UDO) and will also meet State mining requirements.

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 July 9, 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, a "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. The Staff Report states that this is a rural area, with the surrounding property zoned Rural Residential. As such, the proposed use is in harmony with the area.

- b. Project Engineer Phil Norris testified that active mining was currently taking place around the subject parcels with a separate mining permit.
  - c. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
3. The use, a “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 a 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 Operations 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. The applicant is aware of the County and State requirements for Class I Mining Operations as this is his business interest and is willing to meet them.
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. The Staff report stated that the mining operation must be setback a minimum of 40 feet from the property line, with a minimum 10’ of buffer at 0.2 visual opacity surrounding the subject site. Buffer materials may include natural vegetation or plantings as required by the UDO.
  - b. The Staff report indicated that the haul access road to the mine must be constructed of materials of a dustless nature.
  - c. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina, as a Mining Permit from both entities is required.
  - d. The Project Engineer testified that this is a continuation of an existing use adjacent to the site.
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 Southport-Supply Road (NC 211) via a 60-foot access easement to the site with a 20-foot haul road developed within the parcel. 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 final 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 Southport-Supply Road (NC 211), which is a state-maintained 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 this site, however, neither will be required for the proposed operation.
  7. **Open Space:** There are no separate 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 to R-7500 Undeveloped will require a 10' deep buffer with 0.2 visual opacity. RR Zoning to CLD Zoning Undeveloped will require a 10' deep buffer 0.2 visual opacity. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity

requirements. 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 minimal as adjacent parcels are like-zoned and are currently undeveloped (have mining permits) and will require a minimum 10' deep buffer planted at a 0.2 visual opacity.
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. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance, specifically:

1. Class I Mining Operations may not occupy more than 20 acres. **The site plan denotes a 10.81-acre project area (parcel to be created).**
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. Shiflet 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 portions of Tax Parcels 16800115 & 1680011501 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 provide a 30' access easement from Southport-Supply Road (NC 211) to the subdivided Tax Parcel, with a minimum 20' haul road for mines 4A and 4B.
  5. 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.
  6. The applicant must notify the North Carolina Department access improvements are warranted. Required improvements must be made prior to final zoning approval.
  7. Consistent with the application, mining operations will be limited from 7:30 a.m. – 5:00 p.m. Monday through Friday.

8. The applicant must ensure that the haul road remains dustless in nature during its use. Applicant has indicated that the mining operation will use a water truck to control dust along the haul road.
9. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs. N/A as the applicant does not plan to dewater.
10. 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.
11. 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. McCarthy 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.

- C) 20-04S: Special Use Permit  
 Applicant: Michael S. Adams  
 Location: 5400 Alligator Road, Ash, NC 28420  
 Tax Parcel 1170004901  
 Applicant requests a Special Use Permit for a “Garage Service and/or Automobile Repair” consistent with Section 5.2.3 and Section 5.3.5.T of the Brunswick County Unified Development Ordinance (UDO).

Mr. Hackney addressed the Board. Mr. Hackney read the Staff Report (attached). Mr. Hackney identified the subject property and surrounding properties on a visual map.

Ms. Angela Adams, wife of Applicant Michael Adams, addressed the Board. Ms. Adams stated that the plan is to open a repair business for four-wheelers such as All-Terrain-Vehicles (ATV’s) and Utility Terrain Vehicles (UTVs) [In the UDO, this use falls under the “Garage Service and/or Automobile Repair” use.] Ms. Adams added that they will be contacting NCDOT regarding the driveway permit. Ms. Adams stated that they do not plan to have outdoor storage and plan to limit activities to the garage building. Ms. Adams stated that there is a pre-existing restroom in the building.

Mr. Williams asked Ms. Adams to clarify that they will not be servicing automobiles. Ms. Adams responded that is correct. They will be servicing ATVs and UTVs per her testimony.

Ms. Shiflet asked when will the permit process begin for the NCDOT Driveway Permit process. Ms. Adams stated that they recently became aware of the requirement and will begin the process tomorrow.

Ms. McCarthy asked Ms. Adams to clarify that there is an existing bathroom. Ms. Adams responded yes. Ms. McCarthy asked how many ATVs can be worked on at a time. Ms. Adams responded that up to six (6) may be worked on at a time.

Ms. McCarthy asked if they applicants had any questions. Ms. Adams stated that they need further guidance on meeting the buffer requirements. Mr. Williamson told Ms. Adams to reach out to Staff for more information.

Ms. Shiflet asked how the applicants came up with the name “Swamp Donkey Garage”. Ms. Adams responded that the term refers to off-road vehicles and the name stuck.

Mr. Williamson asked Mr. Hackney to read the conditions of approval from the Staff Report.

With no further comments, the Chairman summarized that Staff indicated that the use of “Garage Service and/or Automobile Repair” is permissible, provided conditions and requirements outlined in the Staff Report are met. Ms. Adams testified that the necessary requirements will be met.

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 July 9, 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, “Garage Services and/or Automobile Repair”, 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. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
  - b. Properties in the general vicinity of the proposed business are like zoned. The area is very rural and largely agricultural in nature.

3. The use, “Garage Services and/or Automobile Repair”, 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 Garage Services and/or Automobile Repair as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.5.T. of the UDO outlines the additional criteria for Garage Services and /or Automobile Repair 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. The applicant testified that all standards required by the UDO would be met.
4. The use, “Garage Services and/or Automobile Repair”, 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. Based on the testimony of Angela Adams, wife of Michael Adams, existing structures are on site that will allow the repairs to be completed inside the garage utilizing a total of three (3) bays and a bathroom.
5. The use, “Garage Services and/or Automobile Repair”, 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 Alligator Road (SR 1339) via an existing residential driveway developed within the parcel. 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 final zoning approval.

2. **Parking and Loading:** A minimum of seven (7) standard and one (1) accessible parking space must be provided, based upon the square footage of the garage, retail and storage space within the proposed structure.
3. **Service Entrances and Areas:** All service vehicles will access the subject property from Alligator Road, which is a state-maintained 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 structure that will be utilized as the office for the building. The proposed repair shop has an existing restroom. The restroom will be evaluated as a part of the Change of Use process.
7. **Open Spaces:** There are no separate 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 and a street buffer are required. RR Zoning to RR Zoning Undeveloped will require a 10' deep buffer with 0.2 visual opacity. RR Zoning to RR Zoning Existing Residentially Developed will require a buffer with 0.4 visual opacity, which will be 20' in depth, unless the depth is reduced by adding a six-foot fence or wall. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements. The front yard will require a twenty-foot (20') street yard with one (1) canopy tree or two (2) understory trees per one hundred linear feet (100') of street frontage.
10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as one (1) adjacent parcel is residentially developed, which will require a 20' deep buffer planted at 0.4 visual opacity. The remaining parcels will require a minimum of a 10' deep buffer planted at 0.2 visual opacity except for those across

Alligator Road, which will be buffered by a 20' deep street buffer.

**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 5.3.5.T.): Garage Service and/or Automobile Repair**

Vehicle service and garages shall be permitted in accordance with the use tables in Section 5.2. subject to the following:

1. Fuel pumps shall be at least 15 feet from property lines.  
**N/A**
2. Any repair, servicing, maintenance or other work on vehicles shall be conducted within an enclosed structure or behind an opaque fence or wall. **Applicant must address this issue on the site plan.**
3. However, outdoor storage may be permitted in conformance with Section 6.22, Outdoor Display and Storage, when located in a designated area behind a 100% wall or fence. Said area shall be identified on all site plans. **Applicant must address this issue on the site plan.**
4. Storage of customer vehicles, vehicles with expired tags, unlicensed vehicles, junk vehicles, or any vehicle not used in the conduct of business operations (Tow trucks for example) for 15 days or more shall be prohibited. **Applicant is aware of this requirement.**

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 and Community Development Department.
3. 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.
4. Provide a Landscaping Plan that addresses the requirements for periphery buffers and front yard buffers for “Garage Service and/or Automobile Repair” as well as requirements for landscaping outlined in Section 6.12.10.
5. Applicant must submit a Change of Use application to the County for review.
6. Address in detail on the site plan the location size and screening of the “Outdoor Display and Storage” area to be utilized for the work on and storage of vehicles.
7. The applicant must request a visual inspection of the site by the Zoning Administrator prior to the commencement of “Garage Service and/or Automobile Repair” activities to ensure all requirements have been met.
8. 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 Mr. Williamson 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. Dixon stated that the Brunswick County Planning Board will be discussing a proposed text amendment for model homes which is partly a result of a previous Board of Adjustment case. Ms. Dixon also stated that the next Board of Adjustment meeting is scheduled for August 13<sup>th</sup>, 2020. There are currently two (2) cases that will be heard.

Mr. Batton provided updates for Board of Adjustment cases 19-07A and 19-17S. These decisions have been appealed to Superior Court by the applicants after the decision of the Board of Adjustment.

IX. Adjournment.

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