

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
August 11, 2022**

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

MEMBERS PRESENT

Robert Williamson, Chairman
Mary Anne McCarthy, Vice Chairman
Marian Shiflet
Ron Medlin
Clayton Rivenbark

MEMBERS ABSENT

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Hugo Bryant Junior, Zoning Tech

OTHERS PRESENT

Phil Norris
Pamela Brower
P.Y. Sawyer

I. CALL TO ORDER.

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

II. ROLL CALL.

III. FUNCTIONS OF THE BOARD OF ADJUSTMENTS.

Vice Chair 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.

Vice Chair 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.

Vice Chair 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 3.3.9.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.

Vice Chair 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.

IV. AGENDA AMENDMENTS.

There were none.

V. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and/or affirmed Helen Bunch, Phil Norris, Pamela Brower, and P.Y. Sawyer as to their testimony being truthful and relevant to the respective case.

VI. NEW BUSINESS.

A. 22-02S	Special Use Permit
Applicant:	L.M. McLamb & Son Construction Company, Inc.
Location:	2850 Longwood Road, NW (SR1321) Ash NC 28420 Portion of Tax Parcel 16300015
	Applicant requests a Special Use Permit for a "Class I Mining Operation" consistent with Section 5.3.7.G. of the Brunswick County Unified Development Ordinance (UDO).

Ms. Bunch addressed the Board. Ms. Bunch read the Staff Report (see attached).

Mr. Phil Norris provided an opening statement, stating that he is the project engineer representing the applicant, who is also present. Mr. Norris stated that in addition to the Special Use Permit, a NCDOT Driveway Permit and NC State Mining permit will be necessary.

Mr. Norris said they have already received the NCDOT Driveway Permit and they have applied for the NC State Mining Permit. Mr. Norris said the existing mine across the street is near the end of its life and this mine will serve as a new site to replace the expiring mine.

Vice Chair McCarthy asked if there would be any dewatering at the site? Mr. Norris responded that there will be some transfer of water from one area to another, but there will be no dewatering on the site. Vice Chair McCarthy asked if there is dewatering then the allowed depth is thirty-five feet (35'), how deep will the mines go. Mr. Norris responded that the excavation would go no further than thirty-five feet. He added that if the good material is not at that depth, they still will not go any further in depth. Vice Chair McCarthy asked if the State manages the depth that is excavated? Mr. Norris responded that the State does, in fact, manage the depth. They must declare the depth to the State along with other criteria as part of the application process. Vice Chair McCarthy asked if the area where they will be excavating was recently rezoned as Rural Residential (RR). Mr. Norris responded yes; it was rezoned specifically for this purpose.

Ms. Shiflet asked of how much of the area on the site map would be taken up by the freshwater lake? Mr. Norris responded that it is a little more than 14 acres. He further stated that the total parcel will not exceed 20 acres, but the excavation area will be a little more than 14 acres.

Vic Chair McCarthy asked if anyone wished to speak in favor or against the Special Use Permit. There were no requests to speak.

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

Having heard all the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting, determined 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. The applicant has agreed to follow all criteria for Class I Mines outlined in Staff Report.
 - b. The mining operation will have no adverse effect per the Staff Report.
 - c. No expert testimony was provided or report submitted by an appraiser regarding the value of 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. The applicant is aware of all standards required by the UDO and has agreed to comply with the standards. The applicant has submitted a driveway permit application to the North Carolina Department of Transportation and a mining application to the North Carolina Department of Environmental Quality – Division of Energy, Mineral and Land Resources.

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's engineer stated that the haul road will be gravel and thus dust free. A driveway will be requested from the North Carolina Department of Transportation for access from Longwood Road NW (SR1321) to the mine.
 - d. The applicant's engineer indicated that the applicant would comply with all requirements for the Class I Mine.

5. The use, “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 NW (SR 1321). Access to the site will consist of a 20-foot minimum private gravel haul road on a 50’ access easement to the mining site. A 100’ vehicle stacking area begins as one enters the site and approaches the locked gate used for site security purposes. All required improvements must be made prior to final zoning approval.
 2. **Parking and Loading:** No permanent structures or permanent employees are proposed on the site. As a result, no employees parking will be required. Loading of the trucks will occur on the site. Adequate room is available for truck staging.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Longwood Road NW (SR 1321), 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:** Water and sewer 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 Non-Residential to R-7500 Zoning will require a 10’ deep buffer with 0.2 visual opacity. If the opacity requirements 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 with 1 canopy tree; 1 understory tree and 37 shrubs per linear feet. There is a requirement for a 40’ setback from the property line, which increases to 50’ from any wetlands on the site.

A compliance inspection must be conducted by the County prior to the commencement of mining on the site.
 10. **Effect on Adjoining Property:** There is no adverse effect on adjoining property with adequate buffering proposed next to developed properties. Proposed mining hours are Monday through Friday from 7:30 a.m. – 5:00 p.m.
 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. Class I Mining Operation in the Unified Development Ordinance, specifically:
 1. Class I Mining Operation may not occupy more than 20 acres. **The site plan denotes a 20-acre parcel with a 14.84 mine area.**
 2. Soil or other unconsolidated material (i.e., sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use offsite. 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 cannot be used in the mining operation.**
 4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
 - a. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
 - b. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated that there will not be dewatering as defined in the UDO, 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**

VII. DECISION

1. MOTION TO GRANT PERMIT

“Vice Chairman McCarthy made a motion to grant the Special Use Permit if developed as proposed and subject to the conditions imposed below as the project:

- 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.”**

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 application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 16300015 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. Specific metes and bounds information must be provided prior to the issuance of the permit along with the exact acreage resulting from the specific metes and bounds. The established parcel must be no more than 20 acres.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ) Division of Energy, Mineral and Land Resources. 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. The applicant must ensure that the haul road remains dustless in nature during its use.
7. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
8. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
9. The applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
10. If the specified conditions addressed in the 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. Rivenbark and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5 of the Brunswick County Unified Development Ordinance.

B. 22-04V Variance
Applicant: Pamela Brower
Location: 1714 Little Shallotte River Drive SW, Shallotte NC 28470
Tax Parcel 230DA030
Applicant requests a Variance from Section 5.4.1.A. of the Brunswick County Unified Development Ordinance (UDO) to allow an accessory structure (detached carport) to be located five (5) feet from the front property line as opposed to behind the front wall of the home which is 34.1 feet from the front property line; a variance of 29.1 feet is requested.

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

Ms. Brower approached the Board with pictures of the property showing the property and flags that indicated the location of the septic system on the property. Ms. Brower also pointed out that the structure does not block the mail lane or impact the view of the road. Ms. Brower stated that she and her husband moved from a neighborhood with a Homeowners Association (HOA) to a non-HOA neighborhood and were unaware that a permit was needed from the County for the carport. Ms. Brower said that they purchased a boat and the accessory structure was purchased to protect their investment.

Ms. Shiflet asked how the boat is transported to their boat dock? Ms. Brower responded by saying they utilize a boat ramp in their neighborhood.

Vice Chair McCarthy asked Ms. Brower if they did their due diligence by obtaining a survey of the property prior to the purchase of the property? Ms. Brower responded that they did not as the property had been previously surveyed. Vice Chair McCarthy asked if there was a drawing with the setbacks shown? Ms. Brower responded that they just went off the previous owner's knowledge.

Vice Chair McCarthy asked if they had a garage on the property? Ms. Brower responded in saying there is a single bay garage under their house. She clarified that the home is on stilts and they have a single garage under their home and a storage space, but the boat is too tall to fit. Vice Chair McCarthy asked if they also had driveway space in front of the garage? Ms. Brower responded yes.

Vice Chair McCarthy asked if that company poured the concrete? Ms. Brower responded that they did not. She stated that they just ordered the carport online and the company set it up on the property. Ms. Shiflet asked did the people that set up the carport also pour the concrete. Ms. Brower said a different person poured the concrete for them. Ms. Shiflet asked if the contractor that poured the concrete had any issues with not having a permit to pour the concrete? Ms. Brower said they were not aware that there was a need for a permit as they thought the HOA previously required such in their former development, not Brunswick County.

Chair Williamson asked Ms. Bunch if the Variance is denied, could it be considered a driveway. Ms. Bunch responded that it could be considered as a parking space.

Chair Williamson asked if there were any more questions for Ms. Brower. There were none.

With no further comments, the Chair asked if anymore would like to speak.

Mr. P.Y. Sawyer approached the Board stating that he is an adjacent property owner at 1704 Little Shallotte River Drive SW. Chair Williamson asked Mr. Sawyer if his home is adjacent to the property on which the carport is located. Mr. Sawyer said that it is. Mr. Sawyer said that he feels that if anyone was to take an issue with the structure it would be him as it is next to his property. Mr. Sawyer added that he feels the carport was done very professional.

Chair Williamson asked if there were any more comments regarding this case. There were none. The Chair then closed the public hearing and proceeded to provide a summation of the case. The Board discussed the worksheet and determined the following.

FINDINGS: The Board of Adjustment for Brunswick County, having held a public hearing on August 11, 2022 to consider Case Number 22-04V submitted by Pam Brower, a request for a variance to use the property located at 1714 Little Shallotte River Drive SW in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the FINDINGS OF FACTS and draws the following conclusions:

1. It is the Board's CONCLUSION that, unnecessary hardship will result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS of FACT:
 - a. No testimony was provided to the Board regarding any hardship, except that there was no place to legally park the boat due to the location of the septic system. (2 members – McCarthy and Shiflet – voted that there was no hardship; 3 members –

Medlin, Rivenbark and Williamson voted that the shape of the land and the septic location limited the ability for the boat to be stored in the rear, which was a hardship.) (Vote:3-2)

2. It is the Board's CONCLUSION that the hardship does not result from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance. This conclusion is based on the following FINDINGS of FACT:
 - a. There are issues with the shape of the subject parcel that made it a hardship for 2 Board of Adjustment Members – Rivenbark and Medlin -. Three of the members – Shiflet; McCarthy and Williamson – felt that the hardship was not a result of the conditions, but rather, a result of personal circumstances. (Vote:3-2)
3. It is the Board's CONCLUSION that the hardship does result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS of FACT:
 - a. All Board of Adjustment Members felt that the hardship does result from actions taken by the property owners. The carport was purchased and constructed without getting a permit. Once it was realized that mistakes were made, the applicant did not move forward in a timely manner to seek other options. (Vote:5-0)
4. It is the Board's CONCLUSION that the requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that the public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS of FACT:
 - a. Four members – McCarthy, Shiflet, Medlin, and Rivenbark – felt that no documentation was provided that would imply that a variance was not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice achieved. Mr. Williamson stated that part of the spirit of the ordinance is to preserve property values. (Vote:4-1)

VIII. DECISION.

The Board was reminded that for the variance to be granted 4/5 of the membership must vote to grant the variance.

1. MOTION TO GRANT/DENY PERMIT

Ms. Shiflet made a motion to deny the variance based upon the conclusions made by the Board during their deliberations.

The motion was seconded by Vice Chair McCarthy. Ms. Shiflet, Vice Chair McCarthy, and Chair Williamson voted to deny the variance. Mr. Medlin and Mr.

Rivenbark voted to approve the requested variance. The variance request was denied by a vote of 3-2. and the motion passed. Denial of this application for a variance can be appealed to Superior Court.

IX. CONSIDERATION OF MINUTES.

Ms. Shiflet made a motion to accept the minutes of March 31, 2022. The motion was seconded by Mr. Rivenbark and unanimously carried.

X. STAFF REPORT.

No staff report was provided.

XI. ADJOURNMENT.

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