

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
August 10, 2023**

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

MEMBERS PRESENT

Robert Williamson, Chairman
Clayton Rivenbark
Marian Shiflet
Ron Medlin

MEMBERS ABSENT

Mary Ann McCarthy, Vice Chairman

STAFF PRESENT

Helen Bunch, Long Range Planner
Bryan Batton, Assistant County Attorney
Hugo Bryant Junior, Zoning Tech

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:02 p.m.

II. ROLL CALL.

III. CONSIDERATION OF MINUTES.

Ms. Shiflet made a motion to approve the minutes of May 11, 2023 Board of Adjustment Meeting. The motion was seconded by Mr. Rivenbark and unanimously carried.

IV. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. Shiflet 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. Shiflet said that the public hearing is not to solicit Board 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 3.3.9.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.

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.

V. AGENDA AMENDMENTS.

Ms. Bunch stated that with four (4) of the five (5) members present, all cases could be heard. Special Use Permits require a simple majority for approval. Variances require a four-fifths majority of the Board to grant a variance. (Votes "for" divided by the total number of Board Members must be equal to or greater than 0.8). Ms. Bunch continued that all applicants had been made aware of this requirement and decided to proceed with the hearing.

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

The Chairman swore in and/or affirmed Helen Bunch, Al Potter, Howard Resnik, Brenda Skipper, Janice Danice Walker, Matthew Nichols, Allison Engebretson, Cal Morgan, Melvin Hooper, Kevin Hooper, Adam Nicholas and Tony Evans, as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A. 23-05S Special Use Permit
Applicant: Al Potter
Location: 350 Bell Swamp Connection, Winnabow, NC 28479
Tax Parcel 0970000701
Applicant requests a Special Use Permit for an “Outdoor Commercial Recreational Facility” consistent with Section 5.3.5.D. of the Brunswick County Unified Development Ordinance (UDO).

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

Mr. Potter provided an opening statement, stating that the primary reason for the Special Use Permit is for a Circus, as the prior Special Use Permit was limited to a demolition derby mud bog.

Mr. Williamson asked if the circus will be held every week. Mr. Plotter stated that there will be one event this year. Ms. Bunch added that the Special Use Permit that is being applied for if approved will allow outdoor events to occur without needing approval for each individual event. Ms. Bunch added that in the future if the use meets the Special Use Permit criteria approved upon, the Planning Department will review the specific event in conjunction with Environmental Health, NCDOT, and other departments as necessary to ensure compliance with the Special Use Permit.

Ms. Shiflet asked if there were any other events currently planned other than the circus. Mr. Plotter stated that there would be demolition derbies and mud bogs. Mr. Rivenbark stated that according to the application provided, these events have been going since 1987 under temporary permits. Ms. Bunch stated that the temporary permit was for the circus and the mud bog is an older Special Use Permit. Mr. Rivenbark asked if the special use permit being applied for today is to combine all events under one permit. Ms. Bunch stated that the application for the special use permit is in fact to combine all events under one permit.

Chairman Williamson asked if there was anyone who wished to speak for or against the case. There were no additional speakers. Chairman Williamson closed the public hearing and proceeded to provide a summation of the case. 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, “Outdoor Commercial Recreational Facility,” 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.
3. The use, “Outdoor Commercial Recreational Facility,” 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 an “Outdoor Commercial Recreation Facility” as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit Process.
 - b. All conditions to the permit required by the Board of Adjustment were agreed upon by the applicant at the meeting.
4. The use, “Outdoor Commercial Recreational Facility”, 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.
5. The use, “Outdoor Commercial Recreational Facility”, 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 Bell Swamp Connection NE. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed expansion 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:** The event parking has been in place for many years. Parking to be evaluated based upon the specific proposed event, in that some events may require additional parking based upon the number of people. Large events with 1,000 or more guests require one parking space per 4 attendees, plus the required handicapped spaces consistent with Appendix B of the Brunswick County Unified Development Ordinance.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Bell Swamp Connection (SR 1407), which is a state-maintained road.
 4. **Lighting:** Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. "Outdoor Lighting" of the UDO prior to installation. Provide an outdoor lighting plan for review and approval prior to permitting.
 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 public sewer are not available at this location. A well and septic system will be necessary for facility use.
 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:** Portions of the parcel are adjacent to vacant property. Other portions are adjacent to Residential Development. A 0.4 buffer is required adjacent to an existing residential developed property. Non-residential uses locating next to vacant property shall be required to provide a 0.2 buffer. Buffer alternatives are provided in Section 6.3.9.A.4. of the UDO. Acceptable plant types are found in Appendix A of the UDO. If the opacity requirements cannot be met with existing vegetation, plantings must be added. Provide a map that shows the buffering of the parcel and how the requirements have been met.
 10. **Effect on Adjoining Property:** The effects on adjoining property is lessened with the buffer requirements. Event time limitations on the property may be considered by the Board of Adjustment to minimize any nuisance associated with the proposed uses in the future. Similar uses have been limited as follows: "Commercial Recreation activities on-site are anticipated to take place from 12:00 p.m. – 10:00 p.m. Monday through Sunday, however, the hours may vary based on seasonal demand."
 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 5.3.5.D. Commercial Recreational Facilities and Uses in the Unified Development Ordinance, specifically:
1. All food sales shall be for customers of the Outdoor Commercial Recreational Facility. Off-site sale of food shall not be permitted. **Applicant is aware of this requirement.**

2. When located in the CP District, only one enclosed facility is allowed, not to exceed 5,000 square feet in area. Retail sales shall be limited to those directly related to the recreational activity (e.g., public or private kayak launch, sales, and rental facility). **N/A. Proposed uses located in the RR District.**

DECISION

1. MOTION TO GRANT PERMIT

“Mr. Rivenbark 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 notify the North Carolina Department of Transportation (NCDOT) of the proposed increase 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. Commercial Recreation activities on-site are anticipated to take place from 12:00 p.m. – 10:00 p.m. Monday through Sunday, however, the hours may vary based on seasonal demand.
5. The applicant must request a visual inspection of the site by the Zoning Administrator prior to the commencement of recreation activities to ensure all requirements have been met.
6. The applicant must address and resolve all Planning Department comments provided as part of the site plan review prior to issuance of any additional permits.

7. Consistent with Section 6.12.9., Loading Areas, the loading spaces shall not be located within any front, side, or rear yard. The applicant must address this prior to issuance of construction permits.
8. Utility easement vegetation must be reviewed by the Planning Department as part of the site plan review prior to issuance of any additional permits. Plantings associated with buffers cannot be located within the utility easements.
9. 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 Ms. Shiflet 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. 23-06S Special Use Permit
Applicant: CSD Engineering
Location: 911 Southport-Supply Road, Bolivia NC 28422
Tax Parcel 1850001629
Applicant requests a Special Use Permit for a “Warehouse” consistent with the Brunswick County Unified Development Ordinance (UDO).

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

Mr. Howard Resnik provided an opening statement, stating that he is a representative of CSD Engineering. Mr. Resnik added that the request for the Special Use Permit is for his client, who would like to store his personal vehicle collection within a warehouse. Ms. Shiflet stated that one of the intents of the Commercial Low Density (CLD) Zoning District is highway-oriented tourist business. She added from that intent a museum open to the public could potentially be considered. Mr. Resnik responded that the intent is not in fact to be a museum that is open to the public. Mr. Resnik added that from his conversations with the client, there are no indications that the warehouse will be open to the public at all. Ms. Bunch stated that in conversation with the applicant, it was said that if there was going to be any visitation it would be a one-on-one situation. Ms. Bunch added that these visitations would be in the spirit of showing a potential buyer one of the vehicles that the owner might be willing to sell.

Chairman Williamson asked if there was anyone who wished to speak for or against the case. There were no additional speakers. Chairman Williamson closed the public hearing

and proceeded to provide a summation of the case. 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, “Warehouse,” 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.
3. The use, “Warehouse,” 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. 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. The proposed use is permissible in the CLD Zoning District.
 - b. The Board of Adjustment was concerned that the warehouse could be opened to the public in the future. As a result the Board agreed to clarify in the conditions that the facility was a storage warehouse only and could not be utilized as a public facility or museum.
4. The use, “Warehouse,” 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). As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed new construction and provide the Brunswick County Planning Department with documentation from NCDOT stating the required site access improvements. A permit must be issued and the required improvements must be made prior to final zoning approval.
 2. **Parking and Loading:** Per Section 6.12.6.A.3. of the Brunswick County UDO, one (1) parking space per 5,000 square feet of floor area must be provided. The applicant meets this requirement.
 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. The driveway permit issued by NCDOT will include service vehicle usage.

4. **Lighting:** Outdoor lighting has not been addressed in the application submitted. Outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO. Provide an outdoor lighting plan for review and approval prior to permitting to the Planning Department.
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 is available to this site. Sewer is available via a force main. The applicant must indicate the preferred options and seek approvals from the County Departments.
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. *A Landscape Plan must be provided that fully addresses periphery buffer requirements. A twenty-foot (20’) street buffer is required fronting Southport-Supply Road. One (1) canopy tree or two (2) understory trees per one hundred (100) linear feet of road frontage are required. The applicant’s site plan meets this requirement. CLD Zoning to RR Zoning will require a project boundary buffer with 0.6 or 0.8 visual opacity, based upon the use of the property. The use of the adjacent property has not been provided to the Planning Department. Buffer alternatives are provided in Section 6.3.9.A.4. of the UDO. Acceptable plant types are found in Appendix A of the UDO. If the opacity requirements cannot be met with existing vegetation, plantings must be added. Please address and note that a compliance inspection must be conducted by the County prior to the commencement of commercial activities.*
10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as adjacent parcels on both sides of the proposed structure are commercially developed. Buffering requirements will minimize any nuisance associated with the use.
11. **Compatibility:** The proposed use is permissible in the CLD 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.

DECISION

1. MOTION TO GRANT PERMIT

“Mr. Rivenbark 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 notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from the NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
4. The applicant must address and resolve all Planning Department comments provided as part of the site plan review prior to issuance of construction permits.
5. The applicant must request a visual inspection of the site by the Planning Department prior to the commencement of activities to ensure all requirements have been met.
6. No plantings are to be located in the Utility Easements.
7. 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 Ms. Shiflet 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.

C. 23-07V Variance
 Applicant: Brenda Skipper
 Location: 3291 Malmo Loop Road NE, Leland NC 28451
 Tax Parcel 02100035
 Applicant is seeking two (2) variances from Section 5.4.2.A of the Brunswick County Unified Development Ordinance (UDO) to place

an accessory dwelling 20' from the front property line as opposed to the 25' required by the UDO (variance of 5') and a 34' rear yard (variance of 16') as opposed to the 50' rear/front yard setback required by the UDO between the primary dwelling and the accessory dwelling.

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

Ms. Skipper provided an opening statement, stating that she is asking for the two variances as she is attempting to move her daughter onto her property. Ms. Skipper added that in searching for a home in the area it was very difficult to find something in her price range. Ms. Skipper stated that her daughter has some health issues which impact her ability to work. Ms. Skipper added that her daughter is currently living in Raleigh where she does not have any family close to her. Ms. Skipper stated that the dwelling will be a home near family, allowing her to have help if needed.

Ms. Shiflet asked if the proposed singlewide will be affixed to the property and not left on the wheels. Ms. Skipper responded that the singlewide home would in fact be affixed to the property.

Chairman Williamson asked if there were any more comments in speaking for or against the case. There were none. Chairman Williamson 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 10, 2023 to consider Case Number 23-07V, submitted by Brenda Skipper, a request for a variance to use the property located at 3291 Malmo Loop Road NE 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. The applicant desires to place a single-family home on a lot fronting two (2) streets that is geometrically challenged. There is insufficient space on the parcel to comply with the setbacks of the zoning district. (Vote:4-0)
2. It is the Board's CONCLUSION that the hardship does 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. The proposed lot fronts two (2) streets and is geometrically challenged. There is insufficient square footage to place the accessory dwelling on the parcel in a manner that will meet the setback requirements. (Vote:4-0)
3. It is the Board’s CONCLUSION that the hardship does/does not 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. The original home has been on the property for many years. (Vote:4-0)
4. It is the Board’s CONCLUSION that the requested variance is 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. The allowance of the variance is not detrimental in any way. Safety is secured and justice achieved. (Vote:4-0)

DECISION

Ms. Shiflet made a motion to grant the application for 2 variances to place an accessory dwelling 20’ from the front property line as opposed to the 25’ required by the UDO and a 34’ rear yard as opposed to the 50’ rear/front setback required by the UDO between the primary dwelling and the accessory dwelling. The accessory dwelling must be made a permanent structure on the property.

The motion was seconded by Mr. Rivenbark and the motion passed unanimously.

D. 23-08S	Special Use Permit
Applicant:	Acquisition NC, LLC
Location:	9201 Hooper Hill Road NE, Leland NC 28451 Portion of Tax Parcel 01000011 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. Matthew Nichols provided an opening statement, stating he is an attorney and is representing the applicant. Mr. Nichols added that he and his team are in attendance to answer any questions.

Ms. Allison Engebretson, Project Planner, stated that the property is an undeveloped site. She continued the mine will be located in the middle of the parcel. Ms. Engebretson added that the resulting parcel will consist of 19.95 acres. Ms. Engebretson stated that there will be the required 40' landscape buffer. Ms. Engebretson added that there will be one (1) entrance into the mine from Hooper Hill Road.

Mr. Cal Morgan provided a written statement that he is a NC Certified Real Estate appraiser for JC Morgan Company. Mr. Cal Morgan read into record a letter prepared for his client (see attached) stating that the proposed use is in harmony with the area and not injurious to the area as there was not discernable difference in the property sales data and no future injury due to the addition of a buffer between the actual mining activity and property line.

Mr. Melvin Hooper provided a statement, stating that the last meeting concerning mining on Hooper Hill Road their concerns and ideas were not met. Mr. Hooper added that he understood that if the operation is compliant with all the regulations and requests, the Board could not deny them from mining. Mr. Hooper stated that his concerns with all the mining being approved on Hooper Hill Road, are that they are taking away from the community. He asked what is being put back into the community. Board of Adjustment Chairman Williamson stated regarding what the Board can provide to the community is the protection that the Brunswick County Ordinance allows them to afford for the community property owners.

Mr. Rivenbark stated that one of the conditions that applicant must adhere to states "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." Mr. Rivenbark added that if there are any violations, that is the way that the community can be protected. Mr. Hooper stated that he understood that condition but was unclear as to whom he should complain. Ms. Bunch stated that the complaint would need to complain to the Planning Department and the Zoning Administrator would investigate the complaint for the County. Ms. Bunch added for the State level the complainant would contact the State Mining Office, which is a part of Department of Environmental Quality.

Mr. Kevin Hooper approached the Board stating that he would like clarification on a comment that the mine was to include an additional 19 acres. Ms. Bunch clarified that the current parcel is larger than the 20 acres allowed in the UDO, so the parcel will have to be surveyed and divided for approval.

Mr. Adam Nicholas stated that he is the owner of the operation, and he would like to address some of the concerns that have been raised. Mr. Nicholas stated that in regard to the dust concerns, they will try to mitigate the dust with rock on the haul road along with

the water trucks. Mr. Nicholas continued that the dust doesn't come from the mine itself, rather it comes from the trucks driving on the road that have dirt on them.

Chairman Williamson asked if anyone else wished to speak in favor or against the Special Use Permit. There was no request. The Board moved to deliberation.

FINDINGS: Board of Adjustment Chairman Williamson 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. All surrounding property is zoned Rural Residential (RR), including the proposed mining site.
 - b. The applicant has proposed a wooded area in addition to the required buffer adjacent to the property boundaries around the mining area, which is consistent with adjacent properties.
 - c. Certified Appraiser Cal Morgan testified that the use would not be injurious to the value of properties in the general vicinity as his research regarding the value of properties concluded that there was no discernable difference in the sales data of properties prior to and following mining activities. His conclusion was that this was due to the buffer requirements for mining permits.
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 Long Range Planner 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. The applicant is currently in this type of business and is aware of what is needed for the safe operation of the project.
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. Concerns unrelated to specific health and safety issues were raised and addressed during the Board of Adjustment hearing. The Board of Adjustment shared with the attendees the process for addressing future concerns.
 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 Hooper Hill Road (SR 1427) via a 60’ access easement. A 50’ long gravel vehicle stacking area will begin entering the site from Hooper Hill Road to the locked gate used for site security purposes. A 20’ private dirt haul road will be constructed from the gate to the mining site. The mining operator will use a water truck to control dust as needed on the haul road. 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 employee 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 Hooper Hill Road (SR 1427), 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:** Commercial Uses adjacent to vacant property where both properties are located in the Rural Residential Zoning District require a buffer of 0.2, which equates into 10' at the periphery. Alternative Plantings to meet the required opacity is 1 canopy tree, 1 understory tree and 7 shrubs per 100 linear feet or 1 canopy tree, 2 understory trees, and 3 shrubs per 100 linear feet. A 40' setback from the excavation area to the proposed property line is required. The buffer may be part of the excavation area setback area but must be the portion of the area adjacent to the adjoining properties.
 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 8:00 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 is currently being revised to meet this requirement. A new map will be provided at the meeting. The proposed mining site is 19.95 acres.**
 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**

DECISION

1. MOTION TO GRANT PERMIT

“Ms. Shiflet 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 00600011 in the manner denoted on the site plan presented to the Board at the meeting, which is a 19.95 acre site. 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. Specifically, 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, including buffering and related plantings required to meet the visual opacity requirements.
9. 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. Medlin 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.

E. 23-09S Special Use Permit
 Applicant: Community Support Agency
 Location: 8693 Tubrose Court, Leland NC 28451
 Tax Parcel 0052A102
 Applicant requests a Special Use Permit for a “Group Care Home”
 consistent with Section 5.3.3.B. of the the Brunswick County
 Unified Development Ordinance (UDO).

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

Mr. Tony Evans stated on behalf of the applicant, Community Support Agency, that the Special Use Permit is requested to provide Group Home services to consumers from the Brunswick County area. Mr. Evans added the consumers range from the age of fourteen (14) to eighteen (18) and are referred from the Department of Juvenile Justice. Mr. Evans stated that this will be an eight (8) bed facility, staffed with a 1:3 ratio consisting of twenty-four (24) hour coverage seven (7) days a week. Mr. Evans added that the staff will include within home clinical supervision as well as a medical director and a clinical director as oversight. Ms. Shiflet asked what is the anticipated length of time that the minors will be at the facility. Mr. Evans stated the average stay is six (6) to nine (9) months. Ms. Shiflet asked what State licensing is required and has that been applied for and approved. Mr. Evans stated you must be Nationally Accredited, and the CSA does

have the accreditation. Mr. Evans added that it is necessary to apply for County licensure as well as State licensure in order to operate the facility.

Chairman Williamson asked if there was anyone who wished to speak for or against the case. There were no additional speakers. Chairman Williamson closed the public hearing and proceeded to provide a summation of the case. 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, "Group Care Home," 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 photos provided of the property confirmed that it is harmony with the area.
 - b. No expert testimony was provided, or report submitted by an appraiser regarding the value of the properties in the area.
3. The use, "Group Care Home," 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 Group Care Home as a permitted use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit Process.
 - b. The application packet submitted by the applicant was reviewed by the Long Range Planner and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
 - c. The applicant's assistant is aware of all standards required by the UDO and stated that all standards required by the UDO will be met by the applicant agency.
4. The use, "Group Care Home," 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 addresses the minimum 12 standards for all commercial development. The applicant has agreed to meet these standards.
 - b. No testimony or evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.
 - c. The applicant's assistant testified that per the court system this use is necessary in a community. He continued that around the clock supervision would be provided for the residents, which are between the ages of 14-18 years old. The residents will be referred to the home by the Department of Juvenile Justice.

5. The use, “Group Care Home,” 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 Blue Banks Loop Road and Grist Creek Wynd. While the facility is a Change of Use, the use will remain residential in nature and will not require NCDOT review for driveway accessibility.
 2. **Parking and Loading:** Three (3) parking spaces must be provided, as Section 6.12.6. of the Brunswick County Unified Development Ordinance (UDO) requires one (1) parking space per three (3) beds for group living. A total of eight (8) beds will be provided for group home residents. Site plan to be revised to reflect the location of parking on the parcel.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Tubrose Court, which is a private road.
 4. **Lighting:** No outdoor lighting is proposed with this request. Any 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. Per Section 8.7.6.B. of Article 8 Signs of the UDO, “When associated with a residential use, identification signs are not to exceed four square feet on any lot.”
 6. **Utilities:** A well and a septic system are utilized at this site.
 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:** Additional screening, buffering, and landscaping are not required as the intent is for the facility to blend in with the existing neighborhood.
 10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as the facility will operate as a residence.
 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 5.3.3.B. Group Care Home in the Unified Development Ordinance, specifically:
 1. A group care home may be no closer than one-half mile radius, measured lot line to lot line, from any existing and/or permitted facility care home, group care home, or emergency shelter. **No facilities are within ½ mile of the location of the proposed home.**

2. The home shall be operated in a manner that is compatible with the neighborhood and shall not be detrimental to adjoining properties because of traffic, noise, refuse, parking, or other activities. **Applicant is aware of this requirement.**
3. The home shall maintain a residential appearance compatible with the neighborhood. **Applicant is aware of this requirement.**
4. The home shall meet all site requirements, and all applicable housing and North Carolina Building codes requirements. **Applicant is aware of this requirement.**

DECISION

1. MOTION TO GRANT PERMIT

“Mr. Rivenbark 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. (a legible site plan will need to be submitted to the Brunswick County Planning Department to be kept on file.)
3. A minimum of three (3) parking spaces must be available for the Group Care Home on the subject parcel.
4. All Federal, State, and Local Regulations must be met prior to Group Care Home Occupancy. This includes a recheck of the existing septic system from Environmental Health and Building Permits from Brunswick County Code Administration as necessary to meet all standards.

5. The applicant must request a visual inspection of the site prior to the commencement of group care home client occupancy to ensure all requirements have been met by all parties.
6. 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 Ms. Shiflet 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.

VIII. STAFF REPORT.

Ms. Bunch provided a staff report. Ms. Bunch stated that the Board of Commissions have appointed Steve Yuhasz to serve as an Alternate for the Board of Adjustment.

IX. ADJOURNMENT.

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