

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday**  
**April 13, 2023**

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

MEMBERS PRESENT

Robert Williamson, Chairman  
Mary Ann McCarthy, Vice Chairman  
Clayton Rivenbark  
Marian Shiftlet  
Virginia Ward, Alternate

MEMBERS ABSENT

Ron Medlin

STAFF PRESENT

Helen Bunch, Zoning Administrator/Long Range Planner  
Dennis Rabon, Zoning Administrator  
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. Shiftlet made a motion to accept the minutes of February 9, 2023 Board of Adjustment Meeting. The motion was seconded by Mr. Rivenbark and unanimously carried.

**IV. FUNCTIONS OF THE BOARD OF ADJUSTMENT.**

Ms. McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who

administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

Ms. McCarthy said that the public hearing is not to solicit 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. 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.

Ms. McCarthy informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

**V. AGENDA AMENDMENTS.**

Ms. Bunch requested that Case 23-01S be the last case heard with all other cases to proceed in the order listed on the agenda, as the applicant was delayed.

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

The Chairman swore in and/or affirmed Helen Bunch, Dennis Rabon, Joseph Bland, Colin Macintyre, Connie Danhorn, David Tripp, as to their testimony being truthful and relevant to the respective case.

## VII. NEW BUSINESS.

- A. 23-02S Special Use  
Applicant: Norris & Tunstall Consulting Engineers, P.C.  
Location: 1320 Greenhill Road, Leland, NC 28451  
Portion of Tax Parcel that  
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).

Mr. Rabon addressed the Board. Mr. Rabon read the Staff Report (see attached).

Mr. Joseph Bland provided an opening statement, stating that there is a construction boom within Brunswick County, New Hanover County, Horry County, and other neighboring counties. Mr. Bland continued that with this understanding there is a definitive need for fill sand, construction material. Mr. Bland stated that this need is the reason for Mr. Kennedy coming forward with the mine. Mr. Bland added that the haul road will be utilizing an existing road. Mr. Bland stated that there will be a metal gate approximately 100’ off the road which will allow for the vehicle stacking that was presented in the staff report. Mr. Bland added that the gate will also limit access to the mining site. Mr. Bland stated that they will be maintaining the buffers per Department of Environmental Quality (DEQ) standards. Mr. Bland stated the intent is to abide by the ordinance for the hours of operation. Mr. Bland added that the mine will be operational on an as needed basis. Mr. Bland stated that the mine will be operated one at a time.

Chairman Williamson asked if the hours of operation would be 7:30 am -5:00 pm. Mr. Bland stated that is the hours of operation and they are aware and willing to accommodate those hours.

Chairman Williams asked if the security gate was to be 100’ back from the property line. Mr. Bland stated that the gate will be 100’ from the roadway allowing for the vehicle stacking per the ordinance.

Chairman Williamson asked if the vehicles backing up into the roads was an issue. Mr. Bland stated not really, but it has been expressed as a concern from neighbors recently, so they like to address the issue to ease the concern. Mr. Bland added that the Department of Transportation (NCDOT) does require the stacking when a driveway permit is applied for.

Chairman Williamson asked what is distance of the closest dwelling to the proposed mine. Mr. Bland stated the closest is to the West at approximately 500 feet or more away. Chairman Williamson asked if this particular house or any of the surrounding house are on well or county water. Mr. Bland stated that he believes they are on well, but he is not for certain.

Mr. Bland added that the operator stated if there were any issues with the neighboring wells that they would agree to repair the issues.

Mr. Colin Macintyre stated that he has been in the mining business for fifty (50) years. Mr. Macintyre added that that across the country silica sand is in short supply. Mr. Macintyre stated that the mines are a great need of Brunswick County. Mr. Macintyre stated that the 20-acre pit requirement is insidious making it hard on the miners. Chairman Williamson asked Ms. Bunch if the requirement was in fact a state rule. Ms. Bunch stated that the requirement was a direct result of legal action that was brought against the county many years ago and it has not changed since then.

Connie Danhorn stated that as an adjoining property owner she is in favor for the mining as the Kennedy's have been their neighbors for years. Ms. Danhorn stated the trucks were initially an issue, but they spoke to the Kennedy's and the issue was rectified.

Mr. Macintyre stated that because of the distance between the housing development and the mine, the cone of depression the mine will make is highly improbable to affect any wells.

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, "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 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 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. 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. Green Hill Road is a State Road and as such the North Carolina Department of Transportation is responsible for the maintenance of the road. The haul road leading to the mining site is the responsibility of the mine owner. 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 indicated that the applicant will comply with all requirements for the Class I Mine, including buffering and elimination of dust on the mine haul road.
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 Green Hill Road (SR 1410). Access to the site will consist of a private haul road on a 60’ access easement to the mining site. The mining operator will control dust either by irrigation or use of a water truck as needed on the haul road. A 100’ vehicle stacking area begins as one enters the site from Green Hill Road 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 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 Green Hill Road (SR 1410), 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 RR Residential 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 100 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 occur more than 20 acres. **The site plan denotes a 149.18-acre parcel with a 19.45 mine area. The tract must be subdivided to become a 19.45 acre parcel with an excavation area of 14.47 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**

## **VIII. 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 0690000301 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. 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 applicant must complete the required landscaping buffer prior to site inspection.
8. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
9. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
10. Applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
11. As agreed upon by the developer, wells of any adjacent property owner going dry will be addressed by the developer.
12. 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. Shiftlet 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. 23-03S                      Special Use Permit  
Applicant:                      Norris & Tunstall Consulting Engineers, P.C.  
Location:                        Green Hill Road, Leland, NC 28451

Portion of Tax Parcel 0690000301  
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).

Mr. Rabon addressed the Board. Mr. Rabon noted the Staff Report (attached) is similar to the previous case heard. Mr. Rabon stated the difference being the site plan denotes a 20-acre parcel with a 19.25 mine area.

Mr. Joseph Bland provided that the process outlined in the previous case would be followed in this case as well.

Chairman Williamson asked if Mr. Bland would apply all his testimony from the previous case to this hearing. Mr. Bland stated that he does.

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 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. Green Hill Road is a State Road and as such the North Carolina Department of Transportation is responsible for the maintenance of the road. The haul road leading to the mining site is the responsibility of the mine owner. 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 indicated that the applicant will comply with all requirements for the Class I Mine, including buffering and elimination of dust on the mine haul road.
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 Green Hill Road (SR 1410). Access to the site will consist of a private haul road on a 60’ access easement to the mining site. The mining operator will control dust either by irrigation or use of a water truck as needed on the haul road. 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 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 Green Hill Road (SR 1410), 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 occur more than 20 acres. **The site plan denotes a 149.18-acre parcel with a 19.25-acre mine area. The tract must be subdivided to become a 19.25-acre parcel with an excavation area of 14.47 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**

## **IX. 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 legally subdivide tax parcel 0690000301 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. 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 applicant must complete the required landscaping buffer prior to the site inspection.
8. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
9. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
10. Applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
11. As agreed upon by the developer, wells of any adjacent property owner going dry will be addressed by the developer.
12. 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. Shiftlet 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. 23-01S                      Special Use Permit  
Applicant:                      Bonnie D. Newell  
Location:                        2701 Longwood Road NW, Ash NC 28420  
   Portion of Tax Parcel 1620002409  
   Applicant requests a Special Use Permit For a “Wireless  
   Telecommunication Facility” consistent with Section  
   5.3.4.O.iii.(b)(3) of the Brunswick County Unified Development  
   Ordinance (UDO)

Ms. Bunch addressed the Board. Ms. Bunch noted that the fall certification letter provided in the agenda packet had the incorrect location (Charlotte). Ms. Bunch provided a revised fall certification letter that stated the correct location (Longwood). Ms. Bunch read the Staff Report (see attached).

Applicant Bonnie Newell provided a statement. Ms. Newell stated that she is an employee of the Berkley Group. Ms. Newell added that there is a gap in service and a number of factors contribute to this case such as pine trees and the pollen count. Ms. Newell stated that the proposed tower will accommodate wireless telecommunication and providers and other users such as fire and police. Ms. Newell stated that Table 4 (see the handout attached) shows how the signal degrades and becomes white. Ms. Newell added that the Wireless Telecommunication Facility will be tucked into the area to maximize the ongoing farming production on the property. Ms. Newell stated that the tower is meant to fall within the least part of the parcel. She added that the tower is built for the sustained winds of this region. Ms. Newell stated that the tower is designed to collapse or fall upon itself.

Vice Chairman McCarthy asked if a home is currently on the parcel. Ms. Newell stated there is a mobile home on the property that is a little over 200 feet from the tower location. Ms. Newell added that given the engineering of the tower there should be no damage to the home should something cause the tower to collapse. Ms. McCarthy asked if there was anyone living in the mobile home. Mr. David Tripp stated that the home is a rental property with tenants. Mr. Tripp approached the Board to point out the location of the mobile home and the site for the WTF on the site plan.

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, “Wireless Telecommunication 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. The applicant testified that the property owners are not opposed to the Wireless Telecommunication Facility being located on the site.
  - b. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
3. The use, “Wireless Telecommunication 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 Wireless Telecommunication Facility as a permissible use in the RR Zoning District. If Section 5.3.4.O.3.iii.(b)(3) of the UDO allows the applicant to seek a reduction in the required setbacks of the tower if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.4.O. of the UDO outlines the additional criteria for a Wireless Telecommunication Facility if approved by the Board of Adjustment through the Special Use Permit process. Setbacks for a WTF are met determined according to the underlying zoning district, plus an additional six inches of setbacks (on each side) for every one foot of tower height. The Board of Adjustment may approve reductions to this setback requirement as a part of the special use permit approval with a certification by a registered engineer that the resulting setbacks provide adequate fall area in case of a tower collapse. (This text assumes that the wireless Telecommunication Facility requires a Special use Permit, which was amended in the ordinance some years ago. Since this portion of the ordinance was not amended, Brunswick County Legal Counsel has determined that an applicant must go through the Special Use Permit process to receive a setback reduction.) The Project Engineer has certified that the resulting setbacks provide adequate fall protection.
  - 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 she is aware of all standards required by the UDO and conditions will be met.
4. The use, “Wireless Telecommunication 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.
    - b. The Engineer’s certification letter indicated that the reduced setbacks provide adequate fall area in the case of a tower collapse.
  5. The use, “Wireless Telecommunication 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 Longwood Road (SR 1321). Access to the site will consist of a private driveway on a 30’ wide non-exclusive access easement. All required improvements must be made prior to final zoning approval.
      2. **Parking and Loading:** No permanent employees are offered on the site. One (1) standard space and one (1) accessible space will be required for tower servicing.
      3. **Service Entrances and Areas:** All service vehicles will access the subject property from Longwood Road (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:** Equipment compound buffers are required. Because this is a residential area and the WTF is the principal use of the property, landscaping around the perimeter of the property will apply, as well as the compound buffer. Both must be 50’ in depth and have a vegetation that has an opacity of 0.8. Existing vegetation may suffice but must be noted on the landscape plan. If the opacity requirements cannot be met with existing vegetation, plantings must be added to meet the opacity requirements.

The required 0.8 opacity buffer and planting alternatives are as follows: 50 feet deep; 4 canopy trees, 7 understory trees and 43 shrubs per linear feet or 4 canopy trees, 10 understory trees and 17 shrubs per 100 linear feet. The buffer depth can be reduced by the addition of a fence or wall, consistent with Section 6.3.9.A.4. of the UDO. In addition, there must be a privacy screen surrounding the equipment compound. In this instance the 8' fence will consist of slats with vinyl fabric. No barbed wire may be utilized.

A compliance inspection must be conducted by the County prior to the commencement of facility operation.

10. **Effect on Adjoining Property:** There is no adverse effect on adjoining property with adequate buffering proposed next to developed properties.
  11. **Compatibility:** The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment.
  12. **Impacts on Military Installations:** The proposed Special Use is not within five (5) miles of a military installation.
- b. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.4.O. Wireless Telecommunication Facility (WTF) in the Unified Development Ordinance, specifically:
1. **Siting of a WTF is in accordance with the siting alternatives hierarchy.**  
The facility is located as self-supported lattice within a residential zoning district (RR).
  2. **The maximum height of the Freestanding WTF in the RR District is 250 feet.** The proposed facility meets this requirement.
  3. **Setbacks. Setbacks for WTFs shall be determined according to the underlying zoning district, plus an additional six inches of setback (on each side) for every one foot of tower height. The Board of Adjustment may approve reductions to this setback requirement as a part of the Special Use Permit approval with a certification by a registered engineer that the resulting setbacks provide adequate fall area in case of a "tower collapse."** Setbacks are the underlying zoning district plus 6 inches for every foot of tower height. This equates to the following setbacks for this project: Front:  $40+(250/2) = 165$  feet. Rear and both Sides –  $40 + (250/2) = 165$  feet. The applicant has asked for a setback reduction based upon the Engineers' Certification that the proposed tower will fall within a radius less than the proposed setback and that the tower is structurally sound enough to meet the equipment load requirements. The proposed setbacks: >165' on the north and west sides of the facility; 127'2" on the south side of the facility and 109'10" on the east side (front) of the facility. Note: The map in the report has been amended to reflect these numbers. The southern and eastern setbacks are based on the Engineer's Certification.
  4. **Buffers. A landscaped buffer shall surround the base of the WTF equipment compound if the proposed WTF is the principal use of the property. Per Section 6.2. Landscaping and Buffering, when a free standing non concealed WTF is in a residential district, a buffer with**

**opacity 0.8 (80%) shall be provided around the WTF equipment compound.** The applicant must revise the site plan to meet these requirements.

5. **Identification of the intended user(s) of the WTF.** Provided.
6. **A report on diligent efforts to locate based on the hierarchy established elsewhere in this section.** See report.
7. **Certification by a registered engineer that, in the event of a collapse, the proposed WTF facility has been engineered to fall in a radius of less than the provided setback.** Provided.
8. **Certification by a registered engineer or other qualified professional regarding service gaps or service expansions that are addressed by the proposed WTF (“the proposed service”) and accompanying maps and calculations.** Provided.
9. **Evidence that no existing WTF can accommodate the applicant’s proposed antenna or that use of such existing WTFs should prohibit personal wireless services in the County to be served by the proposed WTF structure.** See applicant’s report.
10. **Certification that the facility meets or exceeds applicable American National Standards Institute (ANSI) standards adopted by the FCC to protect the public from unnecessary exposure to electromagnetic radiation.** See applicant’s report.
11. **State that the proposed facility is the Least Visually Obtrusive, as defined herein, and that the proposed facility conforms with State of the Art, as defined herein, or alternatively, that State of the Art technology is unsuitable for the proposed facility.** See applicant’s report.
12. **WTF shall be constructed and maintained in conformance with all applicable building code requirements.** See applicant’s report.
13. **Applicant agrees to Good Engineering Practices and compliance with FCC regulations.** See applicant’s report.

## **X. 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 legally subdivide tax parcel 1620002409 in the manner denoted on the site plan, including the tower equipment compound and all setbacks. The special use permit is only applicable to the telecommunication facility site denoted on the site plan. The remaining parent parcel will not be a part of the Telecommunication Facility Special Use Permit.
4. 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.
5. The applicant must contact the Brunswick County Planning Department for an inspection of all improvements prior to the commencement of the use of the property.
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. Ward and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5 of the Brunswick County Unified Development Ordinance.

## **XI. STAFF REPORT.**

Ms. Bunch provided that there was currently one case for May.

## **XII. ADJOURNMENT.**

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