

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**4:00 P.M., Thursday
January 12, 2023**

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

MEMBERS PRESENT

Robert Williamson, Chairman
Mary Anne McCarthy, Vice Chairman
Clayton Rivenbark
Virginia Ward

MEMBERS ABSENT

Marian Shiflet
Ron Medlin

STAFF PRESENT

Helen Bunch, Zoning Administrator
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 4:03 p.m.

II. ROLL CALL.

III. CONSIDERATION OF MINUTES.

Mr. Rivenbark made a motion to accept the minutes of August 11, 2022 Board of Adjustment Meeting. The motion was seconded by Vice Chairman McCarthy and unanimously carried.

IV. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Vice Chairman McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts,

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

Vice Chairman 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.

Vice Chairman McCarthy stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.3.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over, and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

Vice Chairman 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.

There were none.

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

The Chairman swore in and/or affirmed Helen Bunch, Garrett Davis, Jason Miller, Joseph Bland, Mark Inman, Cindy Piscitelle, Johnia McCumbee, Ricki Sellers, Sherry Davis, Gratha Daniels, Melvin Hooper, Angela Hooper, David Tripp, Katina Brown, Randy McCulloch, Sheila Grady, Beverly Hall, Sondra Wise, Laura Bryant, and Brandon Hardee as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A. 22-05V Variance
Applicant: Garrett Davis
Location: 3869 Central Avenue SW, Shallotte NC 28470
 Tax Parcel 230GB011
Applicant requests a Variance from Section 5.4.1.A of the Brunswick County Unified Development Ordinance (UDO) to construct a single-family dwelling on a legally nonconforming parcel (5,277 square foot lot) with road frontage on three sides. The resulting variances are a maximum of 15 feet from the property lines (10-foot variance) and a maximum of 16.5 feet from the rear yard property lines as opposed to 25 feet (8.5-foot variance).

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

Mr. Garrett Davis provided an opening statement, stating that he is the attorney representing the applicant, Mr. Jason Miller, who is also present.

Chairman Williamson stated that there were only four (4) members present for this hearing. Chairman Williamson added that per the rules for Variances all four (4) members would have to vote in favor of the motion for the motion to carry. Chairman Williamson asked if Mr. Davis was aware and willing to proceed with the hearing. Mr. Davis stated that he has had a conversation with his client Mr. Miller and his client is well aware and willing to proceed with the hearing.

Mr. Davis provided a binder of maps to be included in the minutes as Exhibits 1-21 for the proceedings.

Mr. Davis stated that during a hurricane in 2020 a large tree fell on Mr. Miller's home. As a result, Mr. Miller would like to build a new home on this property. Mr. Davis added the existing structure is currently standing on the property but would be removed.

Mr. Davis added that the lot is that of a peculiar shaped size and it has road frontage on three (3) sides. Mr. Davis stated that the small lot, road right-of-way frontage, and the angular nature of the lot makes the building footprint for a square home unattainable.

Mr. Miller stated the existing conditions of the current home can be seen in Exhibit 3. The current home presents as Central Avenue as the front property line. However, Mr. Miller is asking for Magnolia Street to be the new front property line for his home. Mr. Davis added that the current home is a nonconforming structure on a non-conforming lot.

Mr. Davis stated that the survey provided by Mr. Jan Dale noted that one of the lengths of Mr. Millers' property is less than sixty (60) feet. This is relevant because under the Table 4-1 of the Brunswick County Unified Development Ordinance, legally established lots existing prior to January 1, 1994 with a width of less than sixty (60) feet may reduce street side yard requirements to twelve (12) feet. Mr. Davis added that his map shows a distance of fifteen (15) feet, which is within the allowable setback.

Mr. Davis stated that Mr. Miller in accordance with the requested variance will remove the current home and replace it with a new single-story home. The home would be twenty-five (25) feet from Magnolia Street complying with the front setback and with the side yard setback to the southern neighbor. Complying with the Central Avenue street side setback. Mr. Davis added that from Exhibit 4 the hashed area is the request of the variance. Mr. Davis stated that proposed structure would not be anymore than eleven (11) feet to the property line of Lakeside right-of-way.

Mr. Miller was called to testify by Mr. Davis. Mr. Miller testified that he was the owner of the property in question. Mr. Miller stated that he acquired the property in 2000. Mr. Miller added that the map Mr. Davis provided is in fact a fair representation of what he is intending to build on the property.

Mr. Miller presented Exhibit 2 to show the damage resulted from the tree on his current home. Mr. Miller then presented Exhibit 6, the Engineering Report referencing the tree impact evaluation. Mr. Miller stated that the insurance adjuster asked for an Engineer to perform an assessment of the home. Exhibit 7 was presented which included the photos from the Engineering Report.

Mr. Davis added that since the Engineering Report is long, and it contains the engineer's seal, he would like to submit the report electronically. Mr. Miller testified that from the engineering report the photos provide evidence that the interior walls are out of plumb.

Mr. Davis included that Exhibit 8 consists of the Brunswick County property records for Mr. Miller's property. Mr. Miller testified that Exhibit 8 provides the deed in which indicates he acquired the property in 1990.

Mr. Miller provided Exhibit 9 labeled Scenario 2 which shows Central Avenue as the front. Mr. Miller testified that Magnolia Street is the preferable front for the home. He added that Magnolia Street has the better view, and the neighboring houses are all facing Magnolia Street.

Mr. Miller submitted Exhibit 10 which shows multiple homes that have been recently built in the neighborhood. Mr. Miller stated that he does not intend to build his home as large as the homes presented in Exhibit 10.

Mr. Davis submitted Exhibit 11 to the board showing the original plat as it was recorded for the Shady Rest Neighborhood. Exhibit 11 also includes the survey provided by Mr. Jan Dale.

Mr. Davis asked Mr. Miller to explain the types of homes in his neighborhood. Mr. Miller stated that the homes are of all kinds and shapes. Mr. Davis submitted Exhibit 12 showing multiple homes that are in the neighborhood.

Mr. Miller stated that after receiving the Engineering Report from the damage of Hurricane Isaias he was told he couldn't rebuild. He was told the price to rebuild would be the same if he were to build new. It was at this point when Mr. Miller contacted Mr. Davis.

Mr. Davis added that Lakeside right-of-way does not look like a street. Mr. Davis noted the survey provided by Mr. Jan Dale states "Lakeside Dr. never opened". Mr. Davis submitted Exhibit 13 taken from Brunswick County GIS. The map shows that Lakeside does not in fact appear to be a street as seen by the aerial. Mr. Miller stated from the pictures presented in Exhibit 13 that the large oak tree and fencing is what is considered Lakeside. Mr. Miller also testified that a deck was also built in what was supposed to be Lakeside.

Mr. Rivenbark asked for clarification that Mr. Miller is asking to turn the home as presented in Exhibit 4. Mr. Miller testified that he in fact does want to turn the home to face Magnolia Street.

Mr. Williamson asked if Exhibit 4 and Scenario 1 are the same. Mr. Davis stated that Exhibit 4 is the same as Scenario 1.

Ms. McCarthy asked if the fence shown in Exhibit 13 runs across the Lakeside right-of-way. Mr. Davis affirmed that it does in fact run across the Lakeside right-of-way.

Mr. Rivenbark asked if Lakeside was being used as a road. Mr. Davis stated that it is not. Lakeside is not and can not be currently used as a road due to the vegetation within the right-of-way.

Mr. Davis submitted Exhibit 15, consisting of the arguments referencing the Brunswick County findings for granting of a variance. Mr. Davis argued by showing in map form that the angles, size, and the setbacks create a hardship. Mr. Davis provided Exhibit 16 to show the hardship created. According to the map, utilizing Central Avenue as the front property line, the largest home that can be built on the property is four hundred (400) square feet. Mr. Davis added that the building envelope is thirteen hundred (1,300) square feet.

Mr. Davis provided Exhibit 17 which speaks to the Brunswick County Unified Development Ordinance encouraging the maintenance historical structures. Mr. Davis added that given the state of the home that this is not a feasible or economical option.

Mr. Davis submitted Exhibit 18 and added that this exhibit proves that the hardship is created by the lot itself. Mr. Davis added that the lot cannot be considered a through lot based on the shape of the lot and through lot requirement. Mr. Davis added that Exhibit 19 adds to the argument that the lot shape and size creates a hardship for Mr. Miller. Mr. Davis stated that the evidence shows the hardship brought about by the Brunswick County Unified Development Ordinance (UDO) shows that the hardship was not a result of actions taken by Mr. Miller as the lot was platted in the forties (40's).

Mr. Davis entered in Exhibit 20 which testifies the effective date of the Brunswick County Unified Ordinance (UDO) which was May 1, 2007.

Mr. Davis added the final factor that the requested variance is consistent with the spirit purpose and intent of the Ordinance such that public safety secured and substantial justice is achieved. Mr. Davis added that Lakeside is not a street, so a twenty-five (25) foot setback from something that is not a street does not achieve substantial justice. Mr. Davis added that the purpose of the UDO with the non-conformity section is to gradually phase out non-conformities. Mr. Davis stated that what Mr. Miller is proposing is more conforming than what currently exists on the property.

Mr. Davis surmised that the requested variance Mr. Miller is requesting is consistent with the spirit, purpose, and intent of the Ordinance. Mr. Davis added that Mr. Miller and his fiancé Ms. Hadley, who could not be in attendance, will have a newer modern home. Mr. Davis added that the home will protect the character of the established residential neighborhood. The purposed Scenario 4 will maintain orderly compatible land use and development patterns.

Chairman Williamson asked if with Exhibit 16 Scenario 4 it is possible to move the home toward Lakeside and gain some area for the home so to not need the requested variance. Mr. Davis responded that the applicant is proposing to build facing Magnolia. In the scenario in question the home is facing Central Ave. Mr. Miller is proposing Magnolia to be consistent with the existing homes in the neighborhood. Mr. Davis also added that facing the home toward Central Ave. is not ideal as that would face the home toward the woods. With the home facing Magnolia, the front would be facing the Shallotte River.

Chairman Williamson asked if the home was turned to the as shown in Scenario 1 would the home be parallel with the house to the south. Mr. Davis responded that the home would in fact be parallel to the home to the south and basically facing the same direction, toward Magnolia.

Chairman Williamson asked that the proposal shown in Scenario 1 is more conforming than the existing building. Mr. Davis affirmed that the proposed home will be more conforming than the existing structure. Mr. Davis added that the survey provided by Mr. Jan Dale shown in Exhibit 11 illustrates that fact. Mr. Davis stated that out of a seven hundred (700) square foot house, over half of it is encroaching into the setback. Mr. Davis added that the current home is not only encroaching into the Lakeside setback, but also into the Central Avenue setback as well.

Chairman Williamson asked in Scenario 1 Exhibit 4 it would seem that you are in fact needing a variance from two streets. Mr. Davis pointed out that Table 4.1 of the Brunswick County Unified Development Ordinance states a legally established lot existing prior to January 1 1994, with a width less than sixty (60) feet may reduce the street side yard setback requirement to twelve (12) feet. Mr. Davis added that based on the survey the proposed structure will not extend beyond the shown eleven (11) feet as indicated on Scenario 1 Exhibit 4.

Chairman Williamson reaffirmed that the proposal in fact does not need a variance from Central Avenue. Mr. Davis stated that from what he ascertains from his mapping knowledge, there currently isn't a need for a variance for Central Avenue.

Chairman Williamson asked Ms. Bunch for clarification on whether a variance is needed for Central Avenue. Ms. Bunch responded that if Magnolia is chosen as the front then the setback will be twenty-five (25) feet from Magnolia, twenty-five (25) feet from Lakeside, twelve (12) from Central, and the inside setback is five (5) feet. Chairman Williamson replied to ask what variance should the board be considering. Ms. Bunch stated that the variance the board should be considering is for the four (4) feet on Lakeside. Mr. Davis stated that the variance request is fourteen (14) feet from Lakeside. Ms. Bunch confirmed.

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 January 12, 2023 to consider Case Number 22-05V, submitted by Garrett Davis, a request for a variance to use the property located at 3869 Central Avenue SW in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the FINDINGS OF FACTS and draws the following Conclusions:

1. It is the Board's CONCLUSION that, unnecessary hardship will result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS of FACT:
 - a. The applicant desires to construct a single-family home on a lot fronting three (3) streets that is geometrically challenged. (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 three (3) streets, which make it double-fronted; has a challenging geometrical shape; and has less square footage than required in the Unified Development Ordinance. (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 parcel was platted in the 1940s, with the original home constructed in the 1960s, prior to the implementation of Zoning in Brunswick County. Recent storm damage has occurred to the home that the owners would like to repair. (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. Structural damage was significant enough to require the replacement of the home, which will enhance the community. (Vote:4-0)

DECISION

Mr. Rivenbark made a motion to grant the application for a fourteen (14) foot variance off Lakeside. The home will front Magnolia Street, with the required setbacks being 25' from Magnolia Street, 25' from Lakeside; 15' from Central Avenue and 5' from the inside side property line. Because the lot is angular, the setbacks will be measured at the middle point of each property line, therefore requiring the variance.

The motion was seconded by Ms. McCarthy and the motion passed unanimously.

B. 22-06S Special Use Permit
Applicant: Norris and Tunstall Consulting Engineers
Location: 5151 Whiteville Road NW, Ash NC 28420
 Portion of Tax Parcel 10200005
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. Joseph Bland, Engineer with Norris and Tunstall Consulting Engineers spoke, representing Mr. Dave Tripp, the site work contractor, and property owner Mr. Dwight D. Babson. Mr. Bland explained that due to the growth of the County, many projects that were permitted in the past couple of years are now coming out of the permitting stage with the Department of Environmental Quality (DEQ) and the North Carolina Department of Transportation (NCDOT). These projects are now going into the construction phase. With the projects entering the construction phase, the sites need fill dirt to build these projects. Mr. Bland added with that there is a large need in the County for fill material. This is the reason for the Special Use Permit request. Mr. Bland added that this hearing is the first step of the process for the mine permit. The first step is to receive a Special Use Permit from the County to allow the mining activity. The next step in the process will be to file permits with DEQ for a mining application, and as well as NCDOT for road access, and a driveway permit. Mr. Bland stated during the process all wells within one thousand (1,000) feet of the mine boundary must be identified. They will look at access with NCDOT and evaluate the roads to make sure they can handle the trucks traveling to and from the site. He continued that NCDOT can put requirements on the applicant to either bond the entire road, upgrade the road, or make other improvements in order for the permit to be approved.

Mr. Bland stated there will be a gate at the entrance of the mining site, as with all the projects. Operation will be on an as needed basis, meaning that they will not be operating the mine five (5) days a week unless there was a demand for such. Typical hours of operation are sunrise to sunset. Mr. Bland added that dust will be mitigated by watering the roads and the areas they are excavating to keep the dust down. Mr. Bland stated there is a minimum fifty (50) foot buffer for wetlands, surrounding the mine.

Ms. Ward asked of Mr. Bland to point out on the provided map specifically where the access road is to be located. Mr. Bland stated that the road is off Highway 130 (Whiteville Road).

Chairman Williamson asked if anyone wished to speak in favor or against the Special Use Permit.

Mark Inman stated that he had a concern of the well water and the mines being dug so large. Mr. Inman added that water isn't valuable until you run out of yours. His concern is that mining may potentially run private wells dry. Mr. Inman also stated that the proposed mine is in close proximity to the Waccamaw River. The concern is the potential silt migration into the river killing off the fish in the immediate area as well as downstream. Mr. Inman added the air quality is another issue that he has in regards to the dust created from the trucks that as they enter and leave the site. Lastly, Mr. Inman wanted to ensure that no explosives would be used for the mining operations.

Ms. McCarthy asked if Mr. Inman was a neighbor to the property as an adjoining property owner. Mr. Inman stated he does live in the community and that he has a property that is adjacent to the property.

Mr. Rivenbark asked what the average depth of the wells in the area of the mines. Mr. Inman responded that their well is around three hundred and seven (307) feet deep. Mr. Inman added that typically the wells are deep but there are some people in the area that have shallow wells.

Ms. Cindy Piscitelle stated that her mother has a home in front of the mining area and she has her home in the rear of the area of the proposed mine. Ms. Piscitelle stated that her concern was the location of the road leading to the mine, along with the dust that will be generated from the trucks. She said that she understood they claimed they would keep the roads wet to help keep the particulates down. Ms. Piscitelle asked how do they plan to keep the roads wet all the time to mitigate the dust. Ms. Piscitelle added that the wells were also an issue that she shared with Mr. Inman. Ms. Piscitelle stated that given the close proximity of her mom's home, she cannot breathe well, so the dust is of concern to her for that reason.

Chairman Williamson asked between the proposed access road and the house that Ms. Piscitelle is concerned with, as far as the dust, what is the distance and are there trees there or is it open land. Ms. Piscitelle responded stating there is an open field that is planted normally. Ms. Piscitelle added that there is a ditch and then next to that is the road. Ms. Piscitelle added that it might be around one hundred (100) feet.

Ms. McCarthy asked if the property actually bordered the property site itself. Ms. Piscitelle stated that the property is not directly bordering the site, instead it is off the main road of the site (Whiteville Road).

Ms. Piscitelle stated that there was mention of moving the road to accommodate her mother's property. She added that moving the road would alleviate the potential dust and traffic that would impact her mother's house. Ms. Piscitelle approached the dais to show the Board on the map she would like for the access to be considered for the mining site.

Following review of the location, it was the consensus of the Board that the applicants consider relocating the access road to within 300' of either direction.

Mr. Bland stated that the proposed depth for the mine will be a maximum of thirty-five (35) feet and that a three hundred and seven (307) foot deep well should not be impacted. Mr. Bland added that the State requires the identification of all wells within one thousand (1,000) feet of the mine. Mr. Bland stated the owners may be asked to shrink the boundary or the excavation limits down to accommodate the concerns over the wells if they should come about. Chairman Williamson asked if this occurs before the mining can be started. Mr. Bland responded yes as this is a part of the DEQ permitting process.

Chairman Williamson asked based on the distance to the mining site and the well what else would DEQ determine to consider. Mr. Bland stated the depth of the mine versus the depth of the wells in the vicinity. He continued that if there is a shallow well within fifty (50) foot of the excavation line there would be concern. But if they have a thirty (30) foot deep mine and a three hundred (300) foot well DEQ will not have any concern.

Mr. Bland responded in regards to any flooding issues, they are digging a hole which is creating storm water storage.

Mr. Bland addressed the issue with dust stating that the only way to mitigate that is to keep the ground watered and try not to operate during drought periods.

Ms. McCarthy asked for an explanation of the watering process for clarification. Mr. Bland explained that there will be water trucks that have a large tank of water with a sprayer in the rear. The trucks will open the valve to spray water over the top layer of the road to keep the dust levels down. Ms. McCarthy asked if they are to work the mines that day, is it expected that they will be watering that day. Mr. Bland responded that they would in fact be watering throughout the day if they are working that day on an as needed basis.

Ms. Ward asked how far will the pit be from the Waccamaw River. Mr. Bland stated that it would be more than fifty (50) feet, which is the requirement for the wetland setback.

Ms. Ward asked if it was possible to move the access road away from the houses. Mr. Bland stated that it was definitely possible, and that they would much rather move it as not to cause any issues with his neighbor.

Mr. Williamson asked if the runoff concern for the Waccamaw River is addressed somewhere in the process of the mining operations. Mr. Bland stated there is no outfall for the pit or the pond during construction. He continued that at the reclamation level when they decide to close the mine, grass it, they are allowed to put in a pond outfall if they wish to control the water level. It is at this point everything would be stabilized and

there would be no issues with sediment. Mr. Bland stated that there will be no actual outfall that would allow sediment laden water to leave the site. All the surrounding area around the pit is required to be sloped inward so if there is any rainfall the water will run toward the pit; not away from the pit.

Ms. McCarthy asked if the State (DEQ) sends someone to monitor the site routinely. Mr. Bland stated yes the operator is required to keep records and then State Erosion Control out of the DEQ Wilmington Regional Office along with the erosion inspections, complete the mining inspections. Mr. Bland added that the typical inspection is a surprise inspection. The operational logs, maintenance logs, and other documents are required. The inspector will ride around and note any deficiencies and corrections.

Mr. Rivenbark asked for clarification of the actual road that will be utilized for the site. Mr. Bland approached the Board with the map and pointed out where the site road is proposed to be located.

Johnia McCumbee asked approximately how many dump trucks will leave the site each day. Mr. Tripp (Proposed Pit Operator) responded that the amount of trucks leaving the site will be on an as needed basis. It could be one (1) dump truck a day, it could be one hundred (100) dump trucks a day, but it won't be the same every day. Mr. Tripp suggested that the driveway be moved away from the aforementioned property owner. He continued that he will address the dust situation with installing irrigation.

Chairman Williamson asked when you state you will install irrigation do you mean a permanent sprinkler system. Mr. Tripp stated that yes, he means to put in a pump, a well, and whatever it takes including landscaping if necessary.

Ms. Sellers asked if the mine will affect the property values for the surrounding properties. Ms. Sellers also asked what are the potential affects the mining will have on crops in the surrounding area, as her mother has farmland adjacent to the mining site.

Chairman Williamson asked Ms. Bunch if the impact on the surrounding properties were addressed in the Staff Report. Ms. Bunch responded in stating that she cannot speak to the effect on property values surrounding the mine as she is not an appraiser.

Chairman Williamson asked Ms. Sellers why she thought that the mining operation would affect the crops. Ms. Sellers stated that the area is wetland, with the pits being dug they would take away from the crops. Mr. Bland stated that in his experience he has yet to see any adjacent properties have any issues growing crops near a mine. The pit will be held off the property line a minimum of forty (40) feet, giving a natural buffer to the adjacent property. Mr. Bland added that they just completing permitting on a property off of Stone Chimney Road, called River Lakes Subdivision, approximately, five hundred (500) homes. This was about a forty (40) acre pit for a number of years, where Holden

Beach received all of the reclamation sand to rebuild the beach years ago. That property was sold and turned into a beautiful neighborhood. He continued that when this mine is complete the state requires it to be reclaimed by stocking it with fish to become a pretty lake.

Chairman Williamson asked if the hours of operation will be sunrise to sunset. Mr. Bland stated that is the typical answer they give as sunrise to sunset. In the summer they want to capitalize on the daylight and in the winter it will be eight (8) to five (5). Chairman Williamson asked if this would be five (5) days a week. Mr. Bland responded in saying that is what they will say but it is on an as needed basis.

Mr. Bland asked Ms. Bunch if she knew how many mines were in the county and then how many complaints are received from said mines. Ms. Bunch responded by stating that there are a lot of mines in the county, but as far as complaints, there are very few. Ms. Bunch added that she has not seen any complaints from mines in at least four (4) to five (5) years now, which is amazing given mining is at its height right now. Ms. Bunch stated that the complaints that would typically be heard were about the roads and the wear and tear caused by the trucks. Ms. Bunch added that those complaints would go to the North Carolina Department of Transportation (NCDOT).

Ms. Ward asked what is the estimated length of time the mine will be operational. Mr. Bland stated that given it is an as needed mine it could be completed in a year or two or it could take ten (10) years. The maximum amount of time you are allowed by the state is a ten (10) year permit. At that point in time you can apply for a renewal, they will come out and perform an evaluation and make a determination on whether to award you an extension of your permit.

Mr. Rivenbark stated that in the proposed conditions it states the operational hours are Monday – Friday from 7:30 – 5:00 pm. Mr. Bland agreed that is the correct time frame for mining operations.

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. The applicant has agreed to follow all criteria for Class I Mines outlined in Staff Report.
 - b. The mining operation will have no adverse effect per the staff Report.
 - c. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
 - d. Adequate buffering to adjacent residential properties has been provided.
 - e. Residential concerns raised by the residents were adequately addressed.
3. The use, “Class I Mining Operation,” for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance Lists Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit Process.
 - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operation if approved by the Board of Adjustment through the Special Use Permit process.
 - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
 - d. The applicant is aware of all standards required by the UDO and has agreed to comply with the standards. The applicant has submitted a driveway permit application to the North Carolina Department of Transportation and a mining application to the North Carolina Department of Environmental Quality – Division of Energy, Mineral and Land Resources.
4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. No testimony or evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.
 - b. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina as mining permits from both entities are required.
 - c. The applicant’s engineer stated that the haul road will be gravel and thus dust free. A driveway will be requested from the North Carolina Department of Transportation for access from Whiteville Road (NC 130) to the mine.

- d. 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 Whiteville Road NW (NC130). Access to the site will consist of a private haul road on a 30' access easement to the mining site. A 100' vehicle stacking area begins as one enters the site and approaches the locked gate used for site security purposes. All required improvements must be made prior to final zoning approval.
 2. **Parking and Loading:** No permanent structures or permanent employees are proposed on the site. As a result, no 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 Whiteville Road (NC 130), 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 20-acre parcel with a 16.18 mine area.**
 2. Soil or other unconsolidated material (i.e., sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use offsite. However, no further on-site processing is permitted (i.e., use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. **Applicant is aware that the use of conveyor systems, screening machines, crushing, or other mechanical equipment may not take place at this location.**
 3. The use of explosives is not permitted. **Applicant is aware that explosives cannot be used in the mining operation.**
 4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
 - a. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
 - b. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated that there will not be dewatering as defined in the UDO, therefore this requirement is not applicable.**

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.
 5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. **N/A**

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 10200005 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 depth of each excavation pit shall not exceed 35 feet if dewatering occurs.

8. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
9. Applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
10. Upon approval of the location by the staff, the applicant may relocate the proposed access road as far as possible of either direction.
11. 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.

C. 22-07S Special Use Permit
Applicant: Norris and Tunstall Consulting Engineers
Location: 5143 Whiteville Road NW, Ash NC 28420
 Portion of Tax Parcel 10200005
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 noted the Staff Report (attached) is similar to the previous case heard. Ms. Bunch stated the difference being the site plan denotes a 20-acre parcel with an 15.85 mine area.

Mr. Bland provided that the conditions regarding the previous case would be followed in this case as well. Mr. Bland added that both mines will utilize the same access entrance.

Attorney Bryan Batton asked if Mr. Bland would be adopting all his testimony from the previous case into this hearing. Mr. Bland stated that he is.

The Chairman asked if there were any comments in speaking for or against the case. There were none. The Chairman then 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. The applicant has agreed to follow all criteria for Class I Mines outlined in Staff Report.
 - b. The mining operation will have no adverse effect per the staff Report.
 - c. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
 - d. Adequate buffering to adjacent residential properties has been provided.
 - e. Residential concerns raised by the residents were adequately addressed.
3. The use, “Class I Mining Operation,” for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance Lists Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit Process.
 - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operation if approved by the Board of Adjustment through the Special Use Permit process.
 - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
 - d. The applicant is aware of all standards required by the UDO and has agreed to comply with the standards. The applicant has submitted a driveway permit application to the North Carolina Department of Transportation and a mining application to the North Carolina Department of Environmental Quality – Division of Energy, Mineral and Land Resources.
4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. No testimony or evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.

- b. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina as mining permits from both entities are required.
 - c. The applicant's engineer stated that the haul road will be gravel and thus dust free. A driveway will be requested from the North Carolina Department of Transportation for access from Whiteville Road (NC 130) to the mine.
 - d. 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 Whiteville Road NW (NC130). Access to the site will consist of a private haul road on a 30' access easement to the mining site. A 100' vehicle stacking area begins as one enters the site and approaches the locked gate used for site security purposes. All required improvements must be made prior to final zoning approval.
 - 2. **Parking and Loading:** No permanent structures or permanent employees are proposed on the site. As a result, no 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 Whiteville Road (NC 130), 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 20-acre parcel with a 16.18 mine area.**
 2. Soil or other unconsolidated material (i.e., sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use offsite. However, no further on-site processing is permitted (i.e., use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. **Applicant is aware that the use of conveyor systems, screening machines, crushing, or other mechanical equipment may not take place at this location.**
 3. The use of explosives is not permitted. **Applicant is aware that explosives cannot be used in the mining operation.**
 4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
 - a. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
 - b. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated that there will not be dewatering as defined in the UDO, therefore this requirement is not applicable.**

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.
 5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. **N/A**

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 10200005 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 depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
8. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
9. Applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
10. Upon approval of the location by the staff, the applicant may relocate the proposed access road as far as possible of either direction.
11. 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.

Mr. Rivenbark made a motion to modify the agenda so to hear Case 22-12S per the request of the applicant. The motion was seconded by Chairman Williamson and unanimously carried.

D. 22-12S	Special Use Permit
Applicant:	Norris and Tunstall Consulting Engineers
Location:	9370 Hooper Road NW, Leland, NC 28451
	Portion of Tax Parcel 01000021
	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). Ms. Bunch identified the subject property and surrounding properties on a Visual Map.

Mr. Bland provided a statement. Mr. Bland stated due to the high demand for fill dirt the need for the mine is the reason for the Special Use Permit. Mr. Bland stated the client has been in contact with NCDOT for the access to the site. NCDOT has tested and performed core samples on Hooper Road to confirm the road is adequate to support the truck load without any upgrades. Mr. Bland added that the route follows out to I-140 which was an

initial concern of NCDOT when the preliminary conversations began. Mr. Bland stated that there is a NCDOT Wetland Conservation site adjacent to the site (see provided attachments). Mr. Bland added the typical hours of operation will be 7:30 am – 5:00pm., Monday through Friday. Excavation will occur as an as needed basis and if necessary irrigation will be added for dust mitigation. Mr. Bland added the maximum depth for the mines will be 35 feet.

Ms. Ward asked for clarification on the map as to the location of the access road entrance to the mine. Mr. Bland pointed out the access road on the provided map C-1.1. Mr. Ward added the plans were updated to show the buffer was increased by around 120 feet. This is reflected in the email that was sent.

The Chairman asked if there were any more comments in speaking for or against the case.

Sherry Davis provided a statement. Ms. Davis asked why instead of adding another mine to Hooper Road, why not add a senior building or a Community Center. Ms. Davis added that there are two other mines within close proximity of Hooper Road already. Ms. Davis stated there is a mine on Blue Banks Road and there is a mine on Gooseneck Road. Ms. Davis added that the trucks that travel Hooper Road create a lot of dust, so the provisions of watering the road is not true or followed.

Gratha Daniels provided a statement. Ms. Daniels stated that she has the same concerns as others that will/have spoken about the dust. Ms. Daniels added that there are those in the community that have illnesses that the dust could potentially exacerbate. Ms. Daniels added the illnesses in the community include sarcoidosis. Ms. Daniels stated that this rare condition is prevalent in a lot of black people. Ms. Daniels stated that she is one of the people that is affected by the condition. Ms. Daniels added that there are those with asthma who live on Hooper Road as well. Ms. Daniels added there are a lot of children in the community, so safety is an issue.

Chairman Williamson asked Ms. Daniels in relation to the proposed site how far is her home. Ms. Daniels responded that she is at the end of the road, and where the mine will be located is in the middle of the road. Chairman Williamson asked Ms. Daniels if she is an adjacent property owner to the mine property. Ms. Daniels stated her daughter's property touches the mine property, while her property does not.

Chairman Williamson asked Mr. Bland to give an idea as to how far Ms. Daniels' property is located from the access road of the mine. Mr. Bland stated that her property is past the entrance so the trucks will not pass her property. Ms. Daniels said that her property is .8 miles from the access road.

Chairman Williamson asked if the trucks she is currently talking about coming from the mine. Ms. Daniels responded stating the current trucks she sees are coming from The Bluffs Planned Development.

Melvin Hooper approached the Board stating that given the statement about the road and the distance to Ms. Daniels home depends on the location of where they will be digging. Mr. Hooper stated that there are family members closer to the end of the road where the trucks come out to the main road. Mr. Williamson asked what is causing the dust. Mr. Hooper responded that it is the trucks coming from the Bluffs Planned Development.

Angela Hooper asked the procedure for the removal of the trees on the property. She asked if the trees will be burned or are they going to be hauled off-site. She added that sarcoidosis is a condition that her and her husband both have. Ms. Hooper stated that sarcoidosis is a condition that runs in the family. Ms. Hooper added that her home will be closer to the access of the proposed site, meaning the dust will be closer to her home. Ms. Hooper stated that her husband is a kidney transplant recipient, so they have to be very careful about their health. Ms. Hooper added that the safety of the children riding their backs is also an issue. Ms. Hooper stated that the trucks don't slow down on the roads when the children or adults are out on the road.

Mr. Rivenbark asked Ms. Hooper to point out on the map the distance in which their home will be in relation to the mine. Ms. Hooper stated the closest address to her parcel is 9425 Hooper Road.

Chairman Williamson asked the process for debris disposal due to the clearing of the property for mining. Mr. Tripp responded that he owns a logging company, when they remove the trees they will haul the timber to a local mill. As for the slash, the limbs, and the bushes, they will be run through a fuel chipper and haul the mulch to Georgetown South Carolina for fiber fuel. Ms. McCarthy asked for clarification that there will be no burning on-site. Mr. Tripp responded stating no burning will be on-site.

Kantina Brown stated that she recently bought a home on Hooper Road that is directly adjoining the mining property. Ms. Brown stated the Hooper Community consists of mainly family members. Ms. Brown stated the family land dates back to the 1700's. Ms. Brown added that the possible risks and damages this project may cause the community are possible sink holes, destruction of wildlife, drinking water contamination, noise pollution from heavy machinery, oil pollution, and road damage. Ms. Brown added that the home value depreciation ranges from 14.5% to 30% when a mine is within a three mile radius. Ms. Brown stated that the damage to the wells is also a concern. Ms. Brown stated that The Bluffs utilize Hooper Road as a construction entrance, so the trucks are coming and going every day. Ms. Brown added the Hooper Road is already damaged from the current trucks, adding more truck traffic to the roads will damage the road even more.

Mr. Williamson asked what else is going on with Hooper Road given the talk of the current truck situation. Ms. Brown responded that The Bluffs Planned Development have been there for over ten years, and they utilize Hooper Road as a construction entrance to avoid construction vehicles utilizing their main entrances.

Randy McCulloch testified that his property is adjoining the proposed mines. Mr. McCulloch added that he has two ponds on his property, one in the front, and one in the rear. Mr. McCulloch stated that he is concerned that with the mining that he will lose his ponds. He asked if/when that happens who will fill the large holes left behind. Mr. McCulloch stated that given the fact that he is so close to the mines he is sure that his ponds will go dry.

Sheila Grady stated that she has the same concerns that have been spoken already about the road damage due to the high volume of heavy trucks. Ms. Grady stated that the irrigation of the roads to mitigate the dust rarely happens with other mines being an example. Ms. Grady added that she is concerned with the wells drying up due to the mines. Ms. Grady asked if the wells dry up as a result of the mining activity, will they be responsible for the wells. Ms. Grady asked how long is the mining to take place and how many acres will it cover. Ms. Grady then asked once the mining is complete, how will the property be restored.

Beverly Hall stated that her property is adjoining the proposed mining property and she does in fact have a shallow well. Ms. Hall asked how many acres will the mine consist of. Ms. Hall stated that her property water level drops low now, so what is the depth of the mines. Ms. Hall added that her concern is the depth of the mines could possibly dry up the well completely. Ms. Hall stated that with the cutting down of the trees what about the wildlife. With the trees gone the wildlife will go somewhere and she is not wanting to have to fight with the wildlife on her property.

Randy McCulloch stated that Hoods Creek runs directly behind the area in which the mine is being proposed. Mr. McCulloch asked how far does the mine have to be from Hoods Creek to avoid losing the creek all together.

Mr. Bland stated that in watering the roads they will typically use a water truck to water the roads periodically. Mr. Bland added if the operator desires a more permanent solution that is not labor intensive they can put in temporary irrigation. Chairman Williamson stated that several people voiced their concerns about water levels, specifically in regards to wells and ponds. Mr. Bland stated that the wells are regulated as part of the State Mining Permit. The mine owner must locate all wells within 1,000 feet of the mine. This is limited to domestic drinking wells. Mr. Bland stated that DEQ does not regulate shallow wells utilized for irrigation. Chairman Williamson asked if the issue with the

ponds can be addressed. Mr. Bland stated that Mr. McCulloch is far away on the other side from this specific pit. Mr. Bland added that given the distance he does not believe there will be any impact on his ponds. Mr. Bland stated that Mr. McCulloch is adjacent to the overall property which is over 550 acres, but this specific pit is on the other side of Hooper Road away from his property. Mr. Williamson asked what the estimated distance Mr. McCulloch is away from the pit. Mr. Bland stated that he believes that he is several hundred feet if not more away from this pit. Chairman Williamson asked if mines generally affect wells. Mr. Bland stated that not typically, but if you are really close to a well then yes it could. Mr. Bland stated with the buffers and the location of the mines he does not foresee an issue with the wells. Chairman Williamson asked once you dig the dirt out, the pond will eventually go back to a certain level. Mr. Bland stated that the pond will return to the natural water table depending on the soil horizon. Chairman Williamson stated that a question was asked about how long the mine would be in operation. Mr. Bland stated that the mine is operated on an as needed basis, the state allows for a maximum permit time of 10 years. Mr. Bland added that if the area is excavated in less time then the mine would be closed and reclaimed, as there would be no benefit to keep it open longer. Mr. Bland added that closing the mine, reclaiming the property, and stabilizing it to get your money back from your bond is the planned process. Chairman Williamson asked when reclaiming the mine area what must be addressed. Mr. Bland stated the slopes must be 3:1 so that they are walkable and able to be mowed. Mr. Bland stated typically they identify the stocking of fish whether it be Bass, Brim, and/or Catfish, given they thrive in this area. Mr. Bland added that then the mined area must be stabilized with grass seed to avoid erosion.

Chairman Williamson pointed out there was a concern about staging. Mr. Bland stated that typically you will see staging when the trucks are being loaded. One truck will be parked being loaded, while another truck is in line waiting to be loaded. Attorney Batton asked if the staging will be on the site or will it occur on Hooper Road. Mr. Bland responded that the staging will be on-site. Chairman Williamson asked the size of the pits you are proposing are approximately how many acres. Mr. Bland stated that this mine is 8.92 acres with the reduced wetland buffer. Chairman Williamson asked ultimately how many pits will be developed on this property. Mr. Bland stated the developer is requesting 5 mines for this property for a total excavation area of approximately 60 acres. The total property is around 550 acres meaning around 10 percent of excavation area. Chairman Williamson asked would the mines be excavated one at the time. Mr. Tripp stated that the mines will be excavated one at a time. Chairman Williamson stated that the comment about wildlife is one that unfortunately nothing can be done about that. Chairman Williamson asked that if the Mr. McCulloch's pond dries up and it is determined that the cause is the mine what would be the recourse of action. Mr. Bland stated that there would need to be a conversation with the State and they will potentially require the issue be fixed. Mr. Bland added that they would possibly add a well, require the owner to fix the issue, or irrigate the pond to restore it. Mr. Rivenbark asked for clarification on Hoods Creek and the impact of the mines on it. Mr. Bland stated Hoods

Creek is far away from this particular pit. Mr. Bland added that just as the other pits, this pit will be sloped inward to avoid any discharge of sediment laden water. Ms. Ward stated that there is 500 acres and the plan is to excavate them one at a time, so in other words one will be dug, then reclaimed before you begin to work the next. Mr. Bland stated that they will work the reclamation in tandem with the start of the next mine pit.

Mr. McCulloch stated that from what he heard, if his ponds dry up then it is not the responsibility of the contractors to fix the issue. Chairman Williamson stated that was not what was stated, in fact the solution would be with the DEQ, who governs the mine.

Sandra Wise stated that she does live near the proposed mining location, and she would like to know who would be responsible for her well being she does in fact have a shallow well. Chairman Williamson asked how far she resides from the mine. Ms. Wise stated that she is less than a mile and a half from the proposed location. Ms. Wise added that her property is two lots away from the proposed mine. Ms. Wise stated that she is a bus driver that travels Northwest Road where there is currently a mine in operation. Ms. Wise added that the mine owners do not water the roads as they claim at these hearings. Ms. Wise stated the trees on Northwest Road are covered with dust to the point that they aren't even green. Ms. Wise added the mine on Blue Banks Road has dump trucks that speed through the streets without regards to traffic. Ms. Wise stated there is a pile of dirt in front of Northwest Convenience Store, where a dump truck sped through, almost turned over spilling some of its load on the road.

Mr. Tripp stated that if Mr. McCulloch's ponds were to dry up, he would put a liner in his pond and put water back in the pond. Mr. Bland added that he would also put a well down to feed the pond. If Mr. McCulloch was still unhappy he would fill the pond in for him if that is what he wanted. Mr. Tripp added that he has never left anyone in a way that was destructive to their property, and he has no intentions to do so now. Mr. Tripp stated that he has had people accuse him of drying their wells up in the past. With those cases he did put down a new well for them, better than the one they had before. Mr. Tripp stated that is what he is willing to do with this project as well. Whatever it takes to make things right with the community he is willing to do. Mr. Rivenbark asked if Mr. Tripp has any other mining operations near the area. Mr. Tripp responded by stating that he does not and he has never had a mine near the Leland area. Mr. Tripp added that he has in fact had a pit in his yard. There were no problems with the pit, none with the neighbors either.

Gratha Daniels stated that even though Mr. Tripp is trying to make a living, those with health problems are trying to stay alive.

Laura Bryant stated that Hooper Road took many years to be paved, as soon as it gets paved then the mine and developments show up. Ms. Bryant added that they do not want the mine on Hooper Road.

Brandon Hardee stated that he is friends with Mr. Tripp, but he is also his competition. Mr. Hardee added that he does the same job that Mr. Tripp does even though people believe they do not do a good job. Mr. Hardee stated that he moved into a subdivision in 2005 and started a sand mine with his father. Mr. Hardee stated that they went to a community meeting much like this one and people were unhappy about the mine. Mr. Hardee added that they said the mine would destroy the neighborhood. Within the first year the people that were against the mine came back and thanked them for fixing the roads, fixing problems they were having in the subdivision. Mr. Hardee stated that there is not a single house that didn't have a load of dirt brought in for some reason. Mr. Hardee added we have to have dirt pits to be able to progress, to be able to build homes. If we ship it in from out of state or out of the country the cost, then becomes extensive. We need to be able to truck the dirt locally. The closer the dump trucks has to travel to get to its destination is the less vehicles it passes on the highway, that makes it safer.

Sheila Grady stated that she would like for the statements Mr. Tripp made claim to about the pond and the wells would be added as a special condition.

The Chairman asked if there were any more comments in speaking for or against the Special Use Permit. There were no request to speak.

FINDINGS: Board of Adjustment Chairman Williamson closed the public hearing and proceeded to provide a summation of 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. 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 evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.
 - b. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina as mining permits from both entities are required.
 - c. The applicant’s engineer stated that the applicant would comply with all Class I Mine requirements, including buffering and elimination of dust on the mine haul road. A driveway will be requested from the North Carolina Department of Transportation for access from Hooper Road to the mine.
 - d. The applicant’s engineer indicated that the applicant will comply with all requirements for the Class I Mine.
5. The use, “Class I Mining Operation” if developed as proposed, will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
- a. The Board concurs with the Staff Report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
 1. **Circulation:** All access to the site will occur from Hooper Road (SR 1427). Access to the site will consist of a private haul road on a 30-foot access easement to the mining site. The mining operator will use a water truck to control dust as needed on the haul road. A 100’ vehicle stacking area begins as one enters the site from Hooper 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 employees parking will be required. Loading of the trucks will occur on the site. Adequate room is available for truck staging.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Hooper 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:** Project boundary buffers are required as there is like zoning. There is a requirement for a 40' setback from the excavation area to the proposed 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 activities.
 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 20-acre parcel with a 15.85 mine area.**
 2. Soil or other unconsolidated material (i.e., sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use offsite. However, no further on-site processing is permitted (i.e., use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. **Applicant is aware that the use of conveyor systems, screening machines, crushing, or other mechanical equipment may not take place at this location.**
 3. The use of explosives is not permitted. **Applicant is aware that explosives cannot be used in the mining operation.**
 4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:

- a. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
- b. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated that there will not be dewatering as defined in the UDO, therefore this requirement is not applicable.**

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

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

X. 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 01000021 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 if 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 entire haul road remains dustless in nature during its use by irrigation.
7. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
8. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
9. Applicant must reclaim the mine consistent with the State of North Carolina Mining Application Reclamation Plan.
10. The entire length of the haul road must be irrigated.
11. As agreed upon by the developer, wells of any adjacent property owners going dry will be addressed by the developer, as well as the pond located on the property of Randy McCulloch.
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 Mr. Rivenbark and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5 of the Brunswick County Unified Development Ordinance.

XI. STAFF REPORT.

No staff report was provided.

XII. ADJOURNMENT.

Chairman Williamson made a motion to adjourn due to Mr. Rivenbark leaving due to a family emergency. Without his presence, there was no longer a quorum. All other unheard cases will be tabled and heard most likely at the regularly scheduled February meeting. The motion was seconded by Ms. McCarthy and unanimously carried.