

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

**6:00 P.M., Thursday**  
**July 14, 2016**

**Commissioner's Chambers**  
**David R. Sandifer Admin. Bldg.**  
**Brunswick County Government Center**  
**Old US 17 East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman  
Virginia Ward, Vice Chairman  
Robert Cruse  
Mary Ann McCarthy  
Clayton O. Rivenbark, Alternate

MEMBERS ABSENT

Jervie Babson

STAFF PRESENT

Helen Bunch, Zoning Administrator  
Bryan Batton, Assistant County Attorney  
Kyna Bryant-Hardy, Office Assistant

OTHERS PRESENT

Wendy Scarborough  
Todd Vires  
George Crane  
Gary Brown  
Brigit Flora

Michael Prunty  
Mark Stocks  
Jeffrey Gizzi  
Dawn Horne

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:01 p.m.

II. ROLL CALL.

Board of Adjustment Member Jervie Babson passed away on July 7, 2016. Mr. Clayton O. Rivenbark served as an Alternate.

III. CONSIDERATION OF MINUTES OF THE JUNE 9, 2016 MEETING.

Mr. Rivenbark made a motion to accept the minutes of the June 9, 2016 meeting as written. The motion was seconded by the Chairman and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mrs. Ward explained 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.

Mrs. Ward 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 records 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.

Mrs. Ward 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.

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

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

The Chairman swore in Ms. Helen Bunch, Ms. Wendy Scarborough, Mr. Michael Prunty, Mr. Todd Vires, Mr. Mark Stocks, Mr. George Crane, Mr. Jeffrey Gizzi, Mr. Gary Brown, Mrs. Dawn Horne and Mrs. Brigit Flora as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A). 16-04S Special Use Permit  
Applicant: Wendy Scarborough  
Location: 4650 Maple Hill Road SW, Shallotte NC 28470  
Tax Parcel 2130005112  
Applicant requests a Special Use Permit to locate a Kennel per Sections 5.2.3. and 5.3.5.U. of the Brunswick County Unified Development Ordinance (UDO).

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She stated that the applicant, Wendy Scarborough, requests to operate a Kennel as a home occupation on the subject parcel. She further stated that the proposed will be located on Tax Parcel 2130005112, also known as 4650 Maple Hill Road SW. She identified the subject property and surrounding properties on a map displayed on an overhead projector. She continued that the Brunswick County Future Land Use Plan designates the subject parcel as Low Density Residential. She stated the proposed use is only permissible in the NC Zoning District with Special Use Permit approval by the Brunswick County Board of Adjustment. Ms. Bunch proceeded to discuss the twelve (12) review factors (e.g., circulation; parking and loading; service entrances and areas; lighting; signs; utilities; open space; environmental protection; screening, buffering, and landscaping; effects on adjoining property; compatibility; and impacts on military installations) associated with the subject parcel. She stated that all access to the site will occur from Maple Hill Road (SR 1207). She further stated that a revised driveway permit may be required. She continued that the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed use and provide the Brunswick County Planning Department with documentation from NCDOT stating improvements will or will not be necessary. Ms. Bunch stated that per Section 6.12.6.A. of the Brunswick County Unified Development Ordinance (UDO), one (1) parking space per 250 square feet of enclosed area plus two (2) parking spaces for the dwelling unit are required. She stated that a total of three (3) parking spaces are required. She further stated that adequate parking space is available on site. Ms. Bunch stated that any new outdoor lighting must meet the lighting requirements stated in Section 6.9. "Outdoor Lighting" of the UDO prior to the installation. She said the applicant plans to use the existing light fixtures that were initially installed on the home. She stated that any signage must meet the requirements of Section 5.4.4.E. of the UDO prior to installation. She further stated that one (1) sign is permitted and that such sign to be no larger than 3 square feet of commercial quality and design and shall be limited to the business name and address only. She continued that signage is a separate permitting

process. Ms. Bunch stated that water is provided by Brunswick County and that the home is on a septic system for wastewater. She stated that there are no open space requirements for this use. She further stated that the applicant must meet all applicable Federal, State and Local Government requirements. Ms. Bunch stated that the parcel is surrounded by like zoning on three (3) sides. She stated that there is adjacent residential development within the Town of Shallotte's Planning Jurisdiction to the rear of the property line. She further stated that the buffer requirements for this specific use are more stringent than the typical requirements and will be addressed below. Ms. Bunch stated that the effect on adjoining property is lessened by the buffer requirements. She stated that the proposed use is permissible in the NC Zoning District with Special Use Permit approval by the Board of Adjustment. She further stated that the proposed use is not within five (5) miles of a military installation.

Ms. Bunch stated that there are additional approval criteria for this use outlined in Section 5.3.5.U., Kennel of the Brunswick County Unified Development Ordinance (UDO). She stated that Kennels shall be permitted in accordance with the use tables in Section 5.2., subject to the following 1). In the RR district, the use shall be permitted as a limited use subject to the standards in this Section. She said that this requirement is not applicable as the parcel is not located in the RR Zoning District. She stated that 2). A 300-foot separation shall be maintained between the outdoor areas where animals are kept and any property line of any adjacent residential use in a residential district. She said that per the applicant's May 23, 2016 response to Zoning Administrator Helen Bunch, there is more than a 350' heavily wooded separation. She continued that the Board of Adjustment tabled the request based on information received at the hearing from neighbors that this may not be the case. Ms. Bunch stated that the applicant has provided a revised site plan indicating that the new proposed location will be more than 350' from the residential zoning district. She further stated that 3). A minimum six-foot high wall shall be installed and maintained between outdoor areas where animals are kept and any property line of an adjacent residential use in a non-residential district. She said there is no wall, but rather an 8' solid wood privacy fence and that while the property is like zoned, to the east and west there are residences. She continued that per the ordinance, a wall must be installed and maintained between outdoor areas where animals are kept and any property line of an adjacent residential use. Ms. Bunch stated that 4). The facility shall be constructed, designed, and located on the site to minimize noise, odor, and other impacts on neighboring properties. She said that adequate waste disposal shall be required to maintain sanitary conditions and control odor. She stated that per the applicant's response, the animals will be in a designated area inside the home with the exception of play time, during which they will be muzzled. She continued that the waste will be picked up during every outside bathroom break and play time with the animals, throughout each day and will be disposed of properly with a Doggy Dooley Waste Disposal System. Ms. Bunch stated that 5). With the exception of kennels, all facilities shall be licensed by the Animal Health Division of the North Carolina Department of Agriculture and Consumer Services, Article 3, and all other required permits of certificates shall be acquired and maintained. She concluded that the proposed use is a kennel, therefore licensing requirements are not applicable.

Mr. Bryan Batton, Brunswick County Assistant County Attorney asked Mrs. Virginia Ward

if she reviewed the minutes of the June 9, 2016 meeting sufficient enough to render a decision in this previously tabled case? Mrs. Ward replied, yes.

Ms. Wendy Scarborough addressed the Board. Ms. Scarborough stated that she contacted Mr. Rick Tompkins of Tompkins Land Surveying, P.A., and was provided a survey of their property and determined the location of the survey markers on the property. She stated that she reviewed the survey map and compared it to the information provided on the Brunswick County Geographic Information System (GIS) website. She further stated that they determined that the distance between the existing fenced area and the adjacent residential use is approximately 125'. Ms. Scarborough stated that they are now proposing to locate an outdoor fenced area in front of the home. She stated that the proposed fenced area will be approximately 335' from the adjacent residential district. She further stated that the dogs will be kept in a 12' x 13' room inside of her home and that the dogs will never be left unsupervised when allowed outside in the proposed fence area. She continued that Mr. Michael Prunty is available to provide testimony on the matter.

The Chairman asked Ms. Scarborough if the dogs will be allowed to enter and exit the home into the fenced area at their own will? Ms. Scarborough replied no that the dogs will not have free access to the outside area. She stated that they will be supervised at all times. The Chairman asked Ms. Scarborough how many dogs she is proposing to board? Ms. Scarborough stated that she is proposing to provide care to approximately six (6) sighthound dogs. The Chairman asked Ms. Scarborough the distance from the proposed fence area to the property lines? Ms. Scarborough stated that Mr. Michael Prunty can answer that question.

Mr. Michael Prunty, property owner, addressed the Board. Mr. Prunty stated that the proposed fence area is located approximately 150' from the left side property line and 20' from the right side property line. He stated that the proposed fence will be located approximately 335' from the rear property line. He further stated that the revised site plan was not to scale.

Attorney Batton reminded the Board that they requested from the applicant an as-built survey from a North Carolina Licensed Land Surveyor showing the home with fences and setback dimensions. He stated that he did not feel that it was truly an issue if the Board chooses to accept the revised site plan provided by the applicant. He further stated that the Mr. Prunty testified that the revised site plan was not to scale and the Board may need to add some conditions regarding the proposed fence location as the site plan may need to be approved by Planning Staff.

Ms. Bunch interjected that in this particular case, a permit is not required for a fence therefore the site plan will not have to be approved. She stated that Planning Staff will need to verify that the fence is not constructed on the property lines and the distance to the residential district. She further stated that the site plan as submitted is acceptable.

The Chairman asked Ms. Scarborough if the proposed conditions required to receive the Special Use Permit are acceptable and will be met? Ms. Scarborough replied, yes.

With no further comments, Mr. Cruse summarized that the applicant, Wendy Scarborough, requests to operate a Kennel as a home occupation on the subject parcel. He stated that the proposed use is only permissible in the NC Zoning District with Special Use Permit approval by the Brunswick County Board of Adjustment. He further stated that applicant provided a revised site plan and testified that a new fenced area will be constructed in the front of her home for the animals that is at least 300' from the property line of any adjacent residential use in a residential district. Mr. Cruse stated that the applicant testified that the animals will never be left unattended. He further stated that Ms. Bunch stated that the revised site plan is acceptable. The Chairman asked if there were any comments to the summation? There was one.

Mr. Todd Vires, neighboring property owner, addressed the Board. Mr. Vires stated that he understood from the previous meeting that the animals cannot be housed 300' from the property line of any adjacent residential use in a residential district. He stated that the applicant has not addressed how animal waste will be disposed. He further stated that he is concerned about the number of dogs that will be allowed for the proposed Kennel. He continued that there are a number of concerns that have yet to be addressed by the applicant.

The Chairman asked Ms. Bunch if there will be any inspections of the subject parcel to determine the fence is erected in the proper place? Ms. Bunch stated that when the applicant notifies Staff that the proposed fence has been erected an inspection will be performed to ensure the fence is in the proper place. She stated that Staff can go to the subject parcel and confirm the proposed fence area is in the proper place prior to erection of the fence if the applicant prefers. She further stated that after the final inspection of the site is complete then Staff will issue authorization for the Kennel to begin operation to the applicant.

The Chairman stated that if the Special Use Permit is granted then the Board can limit the number of animals housed on the subject parcel. He stated that the applicant stated at the previous meeting and submitted with her packet that the Doggie Dooley system to dispose of animal waste will be utilized.

Ms. Bunch stated that the Board can require that the Doggie Dooley waste disposal system or something comparable be utilized to dispose of animal waste.

Mr. Vires asked Ms. Bunch if Brunswick County had a limit as to the number of animals kept in a home at any given time? Ms. Bunch stated that the applicant is seeking a Special Use Permit to board animals owned by other people as a Kennel. She stated that the applicant could own multiple dogs and not need a Special Use Permit, as there was no limit to the number of animals one can own.

Ms. Scarborough re-addressed the Board. She stated that the Doggie Dooley system is comparable to a human septic system. She said that an enzyme is placed into the system to break down the waste. She further stated that she is proposing to board sighthound dogs, which are quiet breed. She continued that she owns two (2) dogs and proposes to board up to six (6) dogs.

With no further comments, Ms. Bunch read the conditions of approval of the Special Use Permit:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the Special Use Permit application and kept on file by the Brunswick County Planning Department.
3. The applicant must install a 6' wall between the outdoor area and the eastern property line as shown on the revised site plan.
4. If the specified conditions addressed in this Special Use Permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another Special Use Permit and receiving their approval can the use be again permitted.

She stated that if approved, this development shall have a vested right for a period of three (3) years and a two (2) year extension may be requested by the applicant to the Brunswick County Board of Adjustment.

The Board discussed the worksheet and determined the following:

**Application No.** 16-04S

**Applicant:** Wendy Scarborough

**Property Location:** 4650 Maple Hill Road SW, Shallotte NC 28470

**Parcel Number:** 2130005112

**Zoning District:** Neighborhood Commercial (NC)

**Land Use Classification:** Low Density Residential

**Surrounding Zoning North:** Shallotte-Residential, South: NC, East: NC, West: NC

**Proposed Use of Property:** "Kennel"

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**FINDINGS OF FACT**

Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting, determined that application is complete / incomplete and finds:

I. WHETHER THE PROPOSED USE IS IN HARMONY WITH THE AREA AND NOT SUBSTANTIALLY INJURIOUS TO THE VALUE OF PROPERTIES IN THE GENERAL VICINITY:

- Yes
- No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your Findings:

No evidence or testimony was provided with regard to property values. The revised proposed outdoor area where the animals will be kept is at least 300' from the property line of any adjacent residential use in a residential district.

II. WHETHER THE USE IS IN CONFORMANCE WITH ALL SPECIAL REQUIREMENTS APPLICABLE TO THE USE:

- Yes
- No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your finding:

Section 5.2.3. of the Brunswick County Unified Development Ordinance (UDO) lists a Kennel as a permissible use in the NC Zoning District if approved by the Board of Adjustment through the Special Use Permit process. Section 5.3.5.U. of the UDO outlines the additional criteria for a "Kennel", if approved by the Board of Adjustment through the Special Use Permit process. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met. The applicant testified at the Board of Adjustment Meeting that all of the conditions required to receive the Special Use Permit are acceptable and will be met.

III. WHETHER THE USE, IF DEVELOPED AS PROPOSED, WILL NOT ADVERSELY AFFECT THE HEALTH AND SAFETY OF THE PUBLIC:

- Yes
- No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your findings:

The applicant testified that a dog disposal system will be installed to control animal waste.

IV. WHETHER THE USE, IF DEVELOPED AS PROPOSED, WILL ADEQUATELY ADDRESS THE TWELVE (12) REVIEW FACTORS IDENTIFIED IN SECTION 3.3.9.B. OF THE BRUNSWICK COUNTY UNIFIED DEVELOPMENT ORDINANCE:

- Yes
- No

State the sworn testimony and evidence presented at the hearing of this matter upon which you base your finding:

The use, a Kennel, 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 (UDO) and the additional review criteria denoted in Section 5.3.5.U. of the Unified Development Ordinance, based upon the submitted Staff Report and requested conditions made by Staff as part of the report.

V. DECISION:

Mr. Cruse made a motion to Grant the Special Use Permit “because the proposed use if developed as proposed and subject to the conditions imposed below:

- a. will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,
- b. will be in conformance with all special requirements applicable to the use,
- c. will not adversely affect the health and safety of the public, and
- d. will adequately address the twelve (12) review factors identified in Section 3.3.9.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 permit application and kept on file by the Brunswick County Planning and Community Development Department;
3. The applicant must install a 6’ wall between the outdoor area and the eastern property line as shown on the revised site plan;

4. The applicant is limited to a maximum of six (6) animals for boarding at any time;
5. The dog waste system must be installed on the parcel consistent with the plans submitted to the Brunswick County Board of Adjustment;
6. The provided site plan is accepted by the Board of Adjustment in lieu of a survey of the property that was requested at the June 9, 2016 Board of Adjustment meeting; and
7. If the specified conditions addressed in this Special Use Permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another Special Use Permit and receiving their approval can the use be again permitted.

The motion was seconded by Mr. Rivenbark and unanimously carried. Mrs. Ward asked the Chairman if the Board was going to impose conditions as to the number of dogs allowed to be boarded? The Chairman replied, yes. After a brief discussion, Mr. Rivenbark made a motion to allow the applicant to board six (6) animals and not limit the number of personal animals to a specific number. This was inserted into the project conditions. The motion was seconded by Mr. Cruse and unanimously carried.

- B). 16-07V      Variance  
 Applicant:    Mark A. Stocks  
 Location:      2750 Long Bay Drive, Southport NC 28461  
Tax Parcel 235FE010

Applicant requests a Variance from the Article 5 Section B(4)(a) of the Town of St. James Flood Damage Prevention Ordinance to allow a Residential Structure with an elevation of 12.0 feet above sea level for human habitation as opposed to the 13.0 feet required by the Ordinance.

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She stated that the applicant, Mark A. Stocks, has filed an application for a Variance from Article 5 Section B(4)(a) of the Town of St. James Flood Damage Prevention Ordinance. She further stated that the ordinance states “Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor: (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises...” She continued that the application is requesting to use the area at an elevation of 12.0 feet above sea level for human habitation as opposed to the 13.0 feet required by the ordinance. Ms. Bunch stated that a public hearing was duly noticed as a sign was posted on the subject parcel and adjoining property owners were notified of the meeting. She stated that Jeffrey W. and Julie A. Gizzi are the

owners of the property located at 2750 Long Bay Drive, Southport NC 28461. She further stated that the subject property contains 0.168 acres in total, is zoned R-7500 and is in the AE Flood Zone. Ms. Bunch stated that Crane Building Company, Inc. was issued Building Permit Number 2015007396 on September 30, 2015 to construct a single family residence at 2750 Long Bay Drive. She stated that Article 5, Section B(4)(a) of the Town of St. James Flood Damage Prevention Ordinance, which states “Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor: (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises...” She further stated that that it was established at the time of permitting that the structure must have a Base Flood Elevation of 11.0 feet. With the two (2) foot freeboard required by the Ordinance, the habitable portions of the structure must be 13.0 feet above sea level (Regulatory Flood Protection Elevation). Ms. Bunch stated that the Brunswick County Code Administration checks the building elevation as part of the plan review and at final inspection. She stated that the approved Elevation Certificate provided by the surveyor at the time of application submittal stated that “Owner/Contractor proposes to construct a three (3) Story Frame Dwelling upon slab on grade foundation with garage, storage and elevator would be located on the first floor.” The top of the bottom floor (including basement, crawlspace or enclosure floor) is shown on the Elevation Certificate at 12.0 feet. She further stated that the base flood elevation is established through the Federal Emergency Management Agency (FEMA) issued Flood Insurance Rate Map. On these maps, the special flood hazard areas and the risk premium zones applicable to the community are delineated. Ms. Bunch stated that the freeboard is the height added to the base flood elevation by the adopted Flood Ordinance which establishes the “Regulatory Flood Protection Elevation”. She said this is the design elevation for the building. She stated that the purpose in the freeboard is to allow for fluctuations in the flood height calculated for a selected size flood condition and to assist Brunswick County in earning discounts to our flood insurance rates if we participate in the Community Rating System that is offered by FEMA. She further stated that the cost of not having a two-foot freeboard could be as much as an additional \$1000 per year to a homeowner’s flood insurance premium, per FEMA, who regulates flood insurance. She continued that Brunswick County added this safety measure to the flood prevention ordinance to help homeowners save money on flood insurance. She said this can impact the County as a whole; not just individual parcels that would not be compliant. Ms. Bunch stated that at the time of final inspection, Code Administration determined that habitable space was constructed at an elevation of less than 13’. She stated that the base flood elevation for this area in the new draft flood maps currently under review increase the base flood elevation in this area to 12’. She said that when added to the freeboard, it is likely that future habitable areas would need to be a minimum of 14’ above sea level. She further stated that Section E(9)(d) of the Flood Damage Prevention Ordinance indicates that variance requests shall be made prior to development permit approval.

Mr. Mark A. Stocks, North Carolina Licensed Land Surveyor, addressed the Board. Mr. Stocks stated that he is requesting a Variance from the two (2) foot freeboard requirement of the St. James Flood Damage Prevention Ordinance. He stated that the Variance would allow for the lower level of the single family dwelling to remain as constructed with a

garage with flood vents, entry foyer, elevator, laundry room, mechanical room, bathroom and recreation room at an elevation of 12.1'. He further stated that the effective Base Flood Elevation of the subject parcel is 11'. Mr. Stocks stated that the intent of freeboard is to allow for unforeseen problems with construction, datum errors and changes in base flood elevations. He said that freeboard is not to be used as a "zero tolerance" regulating height. He stated that he has been actively working in all of the surrounding flood zone jurisdictions for a number of years. He further stated that some of the neighboring jurisdictions have only the base plus one (1) foot of freeboard requirement. Mr. Stocks stated that an error occurred when he inadvertently used old datum to calculate the flood elevation. He stated that the error was not realized until construction was complete and he received a call from the builder, George Crane, that a neighboring house was constructed at a higher elevation than the subject dwelling. He further stated that he went to the subject parcel and discovered that the house was indeed constructed at a lower elevation. Mr. Stocks stated that he is aware of the pending change to the proposed Flood Insurance Rate Map by the Federal Emergency Management Agency (FEMA). He stated that the proposed maps will remove parcels from flood zones that are in areas known to flood. He further stated that the single family dwelling is complete and the homeowner is ready to move into the home.

The Chairman asked Mr. Stocks what will need to be done to bring the home into compliance with the Flood Damage Prevention Ordinance? Mr. Stocks stated that the lower level of the home will need to be up-fitted to bring the home into compliance. He stated that the ceiling height will need to be raised to meet the habitable space requirements of the Town of St. James Flood Damage Prevention Ordinance. The Chairman asked Mr. Stocks the ceiling height of the lower level? Mr. Stocks stated that the ceiling height of the lower level is eight (8) feet. He stated that the home was designed, engineered and constructed to meet the North Carolina Building Code. He further stated that he is requesting a Variance from the freeboard requirement of the St. James Flood Prevention Ordinance. He continued that it would be a hardship to the property owner to remove the non-compliant ground flood elements within the home.

Mrs. McCarthy asked Ms. Bunch when the freeboard requirement was adopted? Ms. Bunch reminded the Board that the subject parcel is in the Town of St. James Planning and Zoning Jurisdiction. She stated that the Town of St. James entered into an agreement with Brunswick County in 2006 to enforce the town's Flood Damage Prevention Ordinance, and the Ordinance was already in place.

Mrs. McCarthy asked Mr. Stocks when it was decided to construct a garage, entry foyer, elevator, laundry room, mechanical room, bathroom and recreation room on the lower floor as the elevation certificate issued by him states that only a garage, storage and elevator will be located on the first floor? Mr. Stocks stated that the builder, Mr. George Crane of Crane Building Company, Inc., would be the person to answer that question. Mrs. McCarthy asked Mr. Stocks how the house was constructed at a lower level when the elevation certificate states that the base flood elevation is 11'? Mr. Stocks reiterated that he used incorrect datum to perform the initial benchmark. He stated that if the older datum was still being used to determine the base flood elevation, the home would be at the correct height. He stated that the first floor is above the base flood elevation however it does not meet the

two (2) foot freeboard requirement of the St. James Flood Damage Prevention Ordinance. He continued that flood vents have been installed in the garage area per the requirements of the North Carolina Building Code.

The Chairman asked Mr. Stocks what would have to be removed from the first floor of the home if the Variance request is denied? Mr. Stocks stated that if the Variance request is denied the first level would have to be up-fitted with flood resistant material. He stated that the elevator, electrical and mechanical equipment have been installed and meet North Carolina Building Code. He further stated that the first floor and ceiling levels would have to be elevated to be considered habitable space per the Town of St. James Flood Damage Prevention Ordinance. Mr. Stocks stated that the home is 39.5' in height, with 40' being the maximum building height in the Town of St. James.

Mrs. Ward asked Mr. Stocks what would have to be changed in the home to meet the Town of St. James Flood Damage Prevention Ordinance? Mr. Stocks stated that in addition to the sheet rock walls, the flooring would have to be replaced with engineered flooring. He stated that the homeowner would have to remove the bathroom, recreation and laundry rooms and use the space as parking only. He further stated that the floor layout plans for the home changed several times during construction and that it would be of great expense to the homeowner to make changes now that home is complete.

Mr. George Crane, of Crane Building Company, Inc., addressed the Board. Mr. Crane stated that the garage was constructed below the freeboard requirement and flood vents were installed as required by the North Carolina Building Code. He stated that he had Mr. Stocks mark the elevations prior to the foundation being installed. He further stated that it was determined that the proposed slab flooring would be at an elevation of 13' which would include the base flood of eleven (11) feet plus the two (2) foot of freeboard required by the ordinance. Mr. Crane stated that forty-five (45) days after construction began, a neighboring house began construction and that is when they discovered that an error had occurred, as the neighboring house was at a higher elevation than the subject home. He stated that Mr. Stocks has been his surveyor of record for over ten (10) years and that he has constructed numerous homes in the Town of St. James without issues. He further stated that as a precaution elevations are taken through the various phases of construction to ensure the home meets height and flood requirements. He concluded that the home is complete and the Variance request is needed to receive a Certificate of Occupancy (CO) for the homeowner.

Mrs. McCarthy asked Mr. Crane if conditioned space was proposed on the first level of the home at the time of permitting? Mr. Crane stated that he was unsure if the plans submitted to the Town of St. James and the County indicated that the first level of the home would have conditioned space. He stated that he does not have the plans with him to review and that he would not have submitted plans with conditioned space if the flood requirements could not be met. He further stated that he is very familiar with the freeboard requirements of the St. James Flood Damage Prevention Ordinance.

The Chairman asked Mr. Crane what would have to be done to the home to bring it into compliance with the Town of St. James Flood Damage Prevention Ordinance? Mr. Crane

stated that the home would have to be lifted to approximately 12". He continued that there is not enough head space to add a one (1) foot step in each of the rooms (i.e., bathroom, recreation and laundry rooms) on the first floor of the home in order to get the proper ceiling height as required in the North Carolina Building Code. He stated that the home was constructed at to 39.5' and that 40' is the maximum building height in the Town of St. James. He further stated that the Variance appears to be the only option.

Mrs. McCarthy asked Mr. Crane if the home was constructed on an elevated slab? Mr. Crane replied, yes. Mrs. McCarthy asked Mr. Crane if a Certificate of Occupancy (CO) has been issued for the subject home? Mr. Crane stated that all final inspections have been performed and approved. He continued that the Certificate of Occupancy is dependent upon the outcome of the Variance request. He further stated that if the Variance request is denied, the washer, dryer, tub, sink and toilet must be removed in order to become compliant. He continued that the walls were already spray foamed so that there would be no future issues with the insulation. Mr. Crane stated that the elevator equipment was located on the top floor of the home and that electrical and mechanical equipment was installed above the 13' flood elevation. He further stated that the entry foyer would remain as is.

Mr. Jeffrey Gizzi, property owner, addressed the Board. Mr. Gizzi stated that he is a licensed plumber contractor and that it would be very difficult to relocate the laundry and bathroom areas to the upper levels of the home. He stated that they are requesting relief from the Flood Damage Prevention Ordinance for the home to remain as it was constructed. He further stated that they do not have space in the upper levels to install the laundry and bathroom. He continued that they need the laundry, bath and recreation rooms on the first floor level for his grandchildren.

The Chairman asked Mr. Gizzi the amount of heated square footage in the home excluding the first floor level? Mr. Gizzi stated that the home is approximately 3,000 square feet in total. He stated that they would be losing approximately 400 square feet if they have to remove the rooms on the first floor.

Mr. Gary Brown, Administrator for the Town of St. James, addressed the Board. Mr. Brown stated that in his experience that Variance requests are normally granted when the actions are not a result of the actions of the applicant. He stated that testimony was provided that there was an error that occurred in the beginning stages of construction. Mr. Brown stated that plans submitted to the Town of St. James for review and approval did not contain laundry, bath and recreation rooms on the first floor level of the home. He stated that the applicant has yet to receive approval for those rooms from the Town. He further stated that if the applicant had submitted revised plans to the Town, the error may have been caught prior to completion of the home. Mr. Brown stated that the home could not be lifted as it would then be in violation of the height limitation outlined in the Town of St. James Development Ordinance. He stated that when persons desire to construct in the Town of St. James Planning Jurisdiction, they first go to the Architectural Review Board. He continued that once the Architectural Review Board grants approval then the plans are formally submitted to the Town for review. Mr. Brown stated that the Town reviews the plans to ensure that they are in compliance with the Town of St. James Unified Development

Ordinance. He stated that proposed building elevations and setback measurements are checked. He further stated that for parcels in the flood zones, the plans are reviewed to ensure they meet flood requirements and that fully enclosed areas of new construction and substantially improved structures, which are below the lowest floor are not designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Mr. Brown stated that once review by the Town is complete then a Certificate of Zoning Compliance is issued so that Brunswick County can issue building permits and perform inspections as part of an agreement between the County and Town. He stated that if a modification is made to the approved plans, depending on the nature of the modification, plans are resubmitted to the Architectural Review Board. He further stated that all modified plans should be resubmitted to the Town, no matter the size of the modification, and that a revised Certificate of Zoning Compliance would be issued for permitting by the Town of St. James.

Mrs. Dawn Horne, Interim Chief Building Inspector for Brunswick County, addressed the Board. Mrs. Horne stated that on June 22, 2016 she attended a meeting with the County Manager and Mr. Stocks. She stated that after that meeting Mr. Stocks met with her in her office to discuss the matter. She further stated they reviewed the submitted construction plans and that she did not remember the bathroom, recreation and laundry rooms being on the first floor level of the plans. She continued that she did not bring the construction plans with her to the meeting as she felt they would not be needed.

Attorney Batton pulled up the submitted construction plans on a computer and allowed Mrs. Horne to review them.

Mrs. Horne stated that the construction plans indicate that a garage, entry foyer, elevator, laundry room, mechanical room, bathroom and recreation room will be constructed on the first floor of the home.

Mrs. McCarthy asked Mrs. Horne when the construction plans were submitted to Brunswick County? Mrs. Horne stated that she was unsure of the exact date the plans were submitted.

Ms. Bunch interjected that building permit 2015007396 was issued to Crane building Company, Inc. on September 30, 2015 to construct a single family residence on the subject parcel.

Mr. Brown reviewed the plans on the computer and stated that the plans presented were not the same plans submitted to the Town of St. James.

Mrs. McCarthy asked Ms. Bunch if page 2 of the Staff Report is correct in stating that a three (3) story frame dwelling upon slab on grade foundation with garage, storage and elevator would be located on the first floor? Ms. Bunch stated that information was taken from the Elevation Certificate provided by the surveyor at the time the application was submitted to Brunswick County. She stated that the top of the bottom floor (including basement, crawlspace or enclosure floor) is shown on page 2 of the Elevation Certificate at 12.0 feet.

Mrs. McCarthy asked Mrs. Horne if Brunswick County Code Administration reviews construction plans and elevation certificates prior to issuance of a building permit? Mrs. Horne replied, yes. Mrs. McCarthy asked Mrs. Horne if a building permit would be issued if a discrepancy was discovered in the paperwork? Mrs. Horne stated that a building permit would not be issued if a discrepancy was discovered in the paperwork. She stated that in this particular case the paperwork is correct. She further stated that the error was made out in the field by the surveyor.

A brief recess was called so that the Board, Staff and all parties involved could review the electronic construction plans.

The Chairman asked Mr. Crane if he submitted the electronic construction plans to Brunswick County? Mr. Crane replied, yes. The Chairman asked Mr. Crane if construction plans were submitted to the Town of St. James? Mr. Crane replied, yes. The Chairman asked Mr. Crane if the same set construction plans were submitted to both the Town of St. James and Brunswick County? Mr. Crane stated that modified plans were submitted to Brunswick County. He stated that the modifications included the conditioned space of a laundry, bath and recreation rooms on the first floor level. He further stated that he has never submitted interior modified construction plans to the Town of St. James. He continued that he submits modified construction plans to the Architectural Review Board when the exterior of the home changes. The Chairman asked Mr. Crane why were the construction plans modified? Mr. Crane stated that the base floor elevation of the floor was to be 13' which would allow for conditioned space. He stated that the homeowner wanted to utilize the space of the home wisely and it was decided to locate the laundry, bath and recreation rooms on the first floor level. The Chairman asked Mr. Crane if there was a set of construction plans indicating the laundry room would be on an upper level of the home? Mr. Crane replied, yes.

Mr. Brown readdressed the Board. Mr. Brown stated that the Certificate of Zoning Compliance issued by the Town of St. James is not consistent with the construction plans Mr. Crane submitted to the County. He stated that when construction plans are modified the contractor is to submit those changes to the Town of St. James for review and approval.

Mr. Stocks readdressed the Board. Mr. Stocks stated that he does not agree with the purpose of freeboard stated tonight. He stated that it is his understanding that datum will be changing in the next 3 to 4 years that will change the elevations of Brunswick County.

Mrs. Brigit Flora, Storm Water Engineer for Brunswick County and a Certified Floodplain Manager, addressed the Board. Mrs. Flora stated that per the St. James Flood Prevention Damage Ordinance, "The freeboard means the height added to the base flood elevation to account for the many unknown factors that can contribute to flood heights greater than the height calculated for selective site floods and floodway conditions such as wave action and bridge openings and the hydrologic effect of urbanization of the watershed." She stated that the base flood elevation is established through the Federal Emergency Management Agency (FEMA) issued Flood Insurance Rate map. She further stated that on these maps, the

special flood hazard areas and the risk premium zones applicable to the community are delineated. Mrs. Flora stated that the purpose of freeboard is to allow for fluctuations in the flood height calculated for a selected size flood condition and to assist Brunswick County in earning discounts to our flood insurance rates if we participate in the Community Rating System that is offered by FEMA. She stated that the cost of not having a two (2) foot freeboard could be as much as an additional \$1000 per year to a homeowner's flood insurance premium, per FEMA, who regulates flood insurance. She further stated that this safety measure is added to the flood damage prevention ordinance to help homeowners save money on flood insurance. She continued that this can impact the County as a whole; not just individual parcels that would not be compliant. Mrs. Flora stated that FEMA regularly looks at the Brunswick County Flood program, performs field visits and keeps track of all flood variance requests. She stated that FEMA reviews submitted elevation certificates and if they notice a trend toward more variances, the discount could be withdrawn.

With no further comments, the Chairman summarized that the applicant, Mark A. Stocks, requests a Variance from Article 5 Section B(4)(a) of the Town of St. James Flood Damage Prevention Ordinance for the subject parcel. He stated that the applicant admitted that he used the older datum on the flood elevation calculations, instead of the datum currently in effect. He further stated that testimony provided by George Crane, the contractor, that the structure is one (1) foot higher than the 11' base flood elevation required for structures in this flood area. He continued that the contractor testified that flood vents have been placed in the garage area. The Chairman stated that testimony was provided that the removal of the habitable space would be a hardship for the homeowner. He stated that the contractor testified that plans presented to the Town of St. James for approval were altered before they were forwarded to Brunswick County for review and approval. He further stated that the plans were changed to place a laundry room, bathroom and recreation room on the ground floor. He continued that testimony was provided that there is insufficient ceiling height on the ground floor to raise the floor to meet the requirements and still leave sufficient room to have a habitable ceiling height. The Chairman stated that testimony was provided by Brigit Flora, Storm Water Engineer for Brunswick County and a Certified Floodplain Manager, in regards to the purpose of freeboard and the potential affects to the County by FEMA. The Chairman asked if there were any comments to the summation? There were none.

The Board discussed the worksheet and determined the following:

1. It is the Board's CONCLUSION that the issuance of the Variance will not make the structure in violation of other Federal, State, or Local laws, regulations, or ordinances. This conclusion is based on the following FINDINGS OF FACT:

No evidence or testimony was presented to the Board of any other Federal, State, or Local laws, regulations or ordinances in which the structure did not comply.

2. It is the Board's CONCLUSION that the issuance of the Variance will not result in any increase in flood levels during the base flood discharge. This conclusion is based on the following FINDINGS OF FACT:

The structure is one (1) foot higher than the 11' base flood elevation required for structures in this flood area. The contractor has placed flood vents in the garage area to accommodate potential flooding.

3. It is the Board's CONCLUSION that the Variance is the minimum necessary, considering the flood hazard, to afford relief. This conclusion is based on the following FINDINGS OF FACT:

The removal of the habitable space would be a hardship for the homeowner.

4. It is the Board's CONCLUSION that a showing of good and sufficient cause both has and has not been provided. This conclusion is based on the following FINDINGS OF FACT:

Good and sufficient cause has been provided, as the contractor built the structure at the elevation shot by the surveyor. The contractor was under the assumption that the structure was constructed at the correct elevation.

Good and sufficient cause has not been provided as the plans presented to the Town of St. James for approval were altered before they were forwarded to Brunswick County for review and approval. The plans were changed to place the laundry on the ground floor. Had the plans not been changed there would be no hardship. The surveyor admitted that he used the older data on the flood elevation calculations, instead of the datum currently in effect.

5. It is the Board's CONCLUSION that failure to grant the Variance will and will not result in exceptional hardship. This conclusion is based on the following FINDINGS OF FACT:

Failure to grant the variance will result in exceptional hardship as the home is currently constructed at the maximum height for the zoning district and related setbacks, and therefore cannot be raised. In addition, there is insufficient ceiling height on the ground floor to raise the floor to meet the requirements and still leave sufficient room to have a habitable ceiling height.

Failure to grant the variance will not result in exceptional hardship. Moving the laundry room is not a hardship, as the original plans showed it to be on the upper level of the home. The home is habitable without the additional space on the ground

floor. Removal of the bathroom fixtures and washer/dryer is not an exceptional hardship, as the home is habitable.

6. It is the Board's CONCLUSION that granting the Variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances. This conclusion is based on the following FINDINGS OF FACT:

No testimony was provided to the contrary. It will be a hardship to the property owner to remove the non-compliant ground flood elements within the home. The proposed floor will exceed the base flood elevation of 11 feet. Flood vents have been placed in the garage area.

On the basis of all the foregoing, Mrs. Ward made a motion to grant the Variance request. Mr. Cruse seconded the motion. The motion was carried four (4) "Yes" and one (1) "No" with the no vote being Mr. Rivenbark.

#### VIII. STAFF REPORT.

There was none.

#### IX. ADJOURNMENT.

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