

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

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

None

STAFF PRESENT

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

OTHERS PRESENT

David Stanley

I. CALL TO ORDER.

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

II. ROLL CALL.

Mr. Clayton O. Rivenbark served as an Alternate.

III. CONSIDERATION OF MINUTES OF THE JULY 14, 2016 MEETING.

Mr. Rivenbark made a motion to accept the minutes of the July 14, 2016 meeting as written. The motion was seconded by Mrs. Ward 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 and Mr. David Stanley as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A). 16-08S Special Use Permit
Applicant: Brunswick County Health Services
Location: 35 Courthouse Drive NE, Bolivia NC 28422
Tax Parcel 13900059
Applicant requests a Special Use Permit for an “Outdoor Sales or Display Area, Other than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals” (Food Trucks) consistent with Sections 5.2.3. and 5.3.5.K. 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, Brunswick County Health Services, proposes to allow “Outdoor Sales or Display Area, Other than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals” (Food Trucks) on the subject parcel. She further stated that the proposed will be located on Tax Parcel 13900059, also known as 35 Courthouse Drive NE. 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 RR 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 Old Ocean Highway (Business US 17). She further stated that the existing driveway permit will support the additional accessory use. Ms. Bunch stated that the vehicles will be parked in six (6) 9’ x 25’ spaces adjacent to the sidewalk at 35 Courthouse Drive. She said that the food truck sales windows will face the sidewalk, keeping the customers away from vehicular traffic. She stated that service entrances and areas are not applicable to this use. She further stated that no additional lighting will be required, as the current governmental campus lighting will be utilized. Ms. Bunch stated that any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. She said signage is a separate permitting process. She stated that each truck will be self-contained. She further stated that Brunswick County will provide water and sewer services for the customers within the adjacent buildings located on the campus. She continued that there are no separate open space requirements for this use. Ms. Bunch stated that the applicant must meet all applicable Federal, State and Local Government requirements. She stated that existing screening, buffering and landscaping of the parcel at the peripheral boundary of the parcel is sufficient. She further stated that the effect on adjoining property is minimal as food sales are already ongoing at this location. She continued that this is simply the addition of mobile units, as opposed to a permanent location within a structure. Ms. Bunch stated that the proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment. She stated that the proposed Special 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.K., Outdoor Sales or Display Areas, Other than Mobile and Modular Sales Lots, and Vehicle and Heavy Equipment Sales, Service and Rentals. Those criteria are 1). The outdoor display area shall be located on the same property as the primary sales or rental area and shall be shown on an approved site plan. She said that this requirement is not applicable. Ms. Bunch stated that 2). A transition area shall be established along any side of the property where a permanent outdoor sales or display area abuts or is across the street from a residential use or residential zoning district in a manner that is consistent with one of the alternatives in the table (attached). She stated that a transition area is in place with the periphery property buffers for Tax Parcel 13900059. Ms. Bunch stated that 3). The merchandise shall not be located in any buffer area. She said that the applicant meets this requirement. She stated that 4). Permanent sales or display areas shall not block sidewalks or parking areas, and may not impede vehicular or pedestrian traffic. She said that the applicant meets this requirement and that on the days that the food trucks will be permitted, parking will not be allowed in the immediate area. She continued that sufficient sidewalks for pedestrian traffic are already in place. Ms. Bunch stated that 5). Permanent outdoor sales or display areas may not be located in any required parking space. She stated that this will be a temporary outdoor sales and display that will be set-up at a specific time on the morning of the event and removed from the site at the close of the event. She further stated that on the days that this event will take place, those parking spaces will be blocked to prohibit the public from using them. She continued that this will not impact parking at the Governmental Center, as the total parking spaces remaining at the Center exceed the parking requirements outlined in the Unified Development Ordinance. Ms. Bunch stated that 6). Adequate public restrooms and/or toilet facilities in accordance with the requirements of the International Building Code with North Carolina Amendments apply. She stated that the facilities available to the public in buildings throughout the campus will be used and are adequate.

Mr. David Stanley, Executive Director of Brunswick County Health and Human Services, addressed the Board. Mr. Stanley stated that his department is requesting a Special Use Permit to allow an Outdoor Sales or Display Areas, Other than Mobile and Modular Sales Lots, and Vehicle and Heavy Equipment Sales, Service and Rentals on the subject parcel. He stated that the request is in response to numerous concerns from citizens and members of the court system to provide alternative food options at the governmental center. He further stated that the Brunswick County Commissioners have agreed to allow food trucks to be located on the subject parcel for a trial basis for the next six (6) months. Mr. Stanley stated that they are proposing to allow three (3) food truck vendors on the subject parcel. He stated that vendors will be located on the subject parcel on the busiest days, which has been determined to be traffic court days. He further stated that the success of the trial basis will determine if the event will be held on more days. He continued that all of the conditions required to receive the Special Use Permit are acceptable and will be met.

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. 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.

Mrs. McCarthy asked Ms. Bunch if the Board of Adjustment should limit the Special Use for a temporary basis? Ms. Bunch stated that she would like the Board to consider the Special Use on a permanent basis. She stated that if the applicant would like to try the venture on a temporary basis then they can do so, however if they are successful then the permit would allow them to carry on without returning to the Board.

The Chairman asked Mr. Stanley who will regulate the food trucks? Mr. Stanley stated that applications from potential vendors will be submitted to Brunswick County Health Services Department. He stated that they are proposing to allow three (3) vendors at a given time on a rotating schedule. The Chairman asked Mr. Stanley if there will be any effect on the existing cafeteria? Mr. Stanley replied no, that the proposed should alleviate some of the traffic in the cafeteria on busy court days.

With no further comments, the Chairman summarized that the applicant, Brunswick County Health Services, requests a Special Use Permit to allow Outdoor Sales or Display Area, Other than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals (Food Trucks) on the subject parcel. He stated that per the Staff Report there is adequate space at the proposed location for both the food trucks and pedestrians. He further stated that testimony provided was that the food truck sales windows will face the sidewalk, away from the vehicular traffic in the immediate area. The Chairman stated that the Staff Report indicated that adequate restroom facilities are available to the patrons throughout the governmental complex. He further stated that the applicant testified at the that all of the conditions required to receive the Special Use Permit are acceptable and will be met. The Chairman asked if there were any comments to the summation? There were none.

The Board discussed the worksheet and determined the following:

Application No. 16-08S

Applicant: Brunswick County Health Services

Property Location: 35 Courthouse Drive NE, Bolivia NC 28422

Parcel Number: 13900059

Zoning District: Rural Residential (RR)

Land Use Classification: Low Density Residential

Surrounding Zoning: North: R-7500; Town of Bolivia, South: R-7500, East: Town of Bolivia, West: RR

Proposed Use of Property: “Outdoor Sales or Display Area, Other than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals (Food Trucks)”

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 proposed location currently houses the cafeteria. The addition of food trucks will allow for additional options in food choices. Per the Staff Report there is adequate space at the proposed location for both the food trucks and pedestrians. Adequate buffers from adjacent properties are already in place.

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 lists Outdoor Sales or Display Areas, Other Than Mobile and Modular

Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals (Mobile Food Trucks) as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process. Section 5.3.5.K. of the UDO outlines the additional criteria for Outdoor Sales or Display Areas, Other Than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals (Mobile Food Trucks) 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 of 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:

No expert testimony or evidence was provided that the use will adversely affect the health and safety of the public. The applicant testified that the food truck sales windows will face the sidewalk, away from the vehicular traffic in the immediate area. The staff report indicated that adequate restroom facilities are available to the patrons throughout the governmental complex.

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, Outdoor Sales or Display Areas, Other Than Mobile and Modular Home Sales Lots, and Vehicle and Heavy Equipment Sales and Rentals (Mobile Food Trucks), 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 and the additional review criteria denoted in Section 5.3.5.K. of the Unified Development Ordinance, based upon the submitted Staff Report and requested conditions made by Staff as part of the report.

V. DECISION:

Mrs. McCarthy 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; and
- 3. 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.

VIII. STAFF REPORT.

There was none.

IX. ADJOURNMENT.

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