

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

**6:00 P.M., Thursday
December 13, 2018**

**Second Floor Conference/Training Room
David R. Sandifer Administration Building
Brunswick County Government Center
Old Ocean Highway East, Bolivia**

- I. Call to Order.
- II. Roll Call.
- III. Consideration of Minutes of the October 29, 2018 Meeting.
- IV. Agenda Amendments.
- V. New Business.
 - A). 18-18S Special Use Permit
Applicant: Brunswick Christian Recovery Center, Inc.
Location: 1401 Ash-Little River Road NW (SR 1300), Ash NC 28420
Tax Parcel 2090003401
Applicant requests a Special Use Permit from Section 5.2.3. and Section 5.3.3.B. of the Brunswick County Unified Development Ordinance (UD) for a Group Home.
 - B). 18-19S Appeal of Staff Decision
Applicant: Timothy Rife
Location: 1032 Wilma Avenue SW, Supply NC 28462
Tax Parcel 184OC026
Applicant is appealing a decision made by the Zoning Administrator to remove a camper that the applicant has placed on a vacant adjacent parcel.
- VI. Staff Report.
- VII. Election of Officers.
- VIII. Adjournment.

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

**4:30 P.M., Thursday
October 29, 2018**

**Training Room, Second Floor
David R. Sandifer Administration Building
Brunswick County Government Center
Old Ocean Highway East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman
Robert Cruse
Alan Lewis
Ron Medlin, Alternate
Clayton Rivenbark, Alternate

MEMBERS ABSENT

Virginia Ward, Vice Chairman
Mary Ann McCarthy

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Brandon Hackney, Project Planner

OTHERS PRESENT

Doug Noble
Attorney Craig Justice
Randy Hardee
Phil Norris
Steven Shepard
Michael Freeman
Conrad Benton
Lisa Shepard
Harriot Locklear
George Merant
Pamela Wagoner
Brandon Hardee

Sue Fowler
Audrey Yeager
Attorney Matthew Nichols
Kathy Kincer
Kim Simmons
Johana McCumbee
Belinda Benz
Gene Simmons
Dennis Bloyer
Greg Yeager
Bonnie Simmons

I. CALL TO ORDER.

The Chairman called the meeting to order at 4:42 p.m.

II. SWEARING IN OF BOARD MEMBER ALAN LEWIS.

Mr. Batton swore in Mr. Alan Lewis as a member of the Brunswick County Board of Adjustment.

III. ROLL CALL.

Ms. Virginia Ward and Ms. Mary Ann McCarthy were absent. Mr. Ron Medlin and Mr. Clayton Rivenbark served as Alternates.

IV. CONSIDERATION OF MINUTES OF THE JUNE 28, 2018 MEETING.

Mr. Cruse made a motion to accept the minutes of the June 28, 2018 meeting as written. The motion was seconded by Mr. Rivenbark and unanimously carried.

V. AGENDA AMENDMENTS.

There were none.

VI. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mr. Cruse 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.

Mr. Cruse 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.

Mr. Cruse 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.

Mr. Cruse 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.

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

The Chairman swore in and/or affirmed Doug Noble, Attorney Craig Justice, Randy Hardee, Phil Norris, Steven Shepard, Michael Freeman, Conrad Benton, Lisa Shepard, Harriot Locklear, George Merant, Pamela Wagoner, Brandon Hardee, Sue Fowler, Audrey Yeager, Attorney Matthew Nichols, Kathy Kincer, Kim Simmons, Johana McCumbee, Belinda Benz, Gene Simmons, Dennis Bloyer, Greg Yeager and Bonnie Simmons as to their testimony being truthful and relevant to the respective case.

VIII. New Business.

- A). 18-10V Variance
Applicant: Lamar Florida, LLC
Location: 4758-4798 Southport-Supply Road SE (NC 211), Southport NC 28461
Tax Parcel 20400036
Applicant requests two (2) Variances from Section 8.8.1.G.1. of the Brunswick County Unified Development Ordinance (UDO) to place an outdoor advertising sign 2,698 linear feet south of an existing outdoor advertising sign and 2,596 linear feet north of an existing outdoor advertising sign as opposed to the 3,000 linear feet of separation from each outdoor advertising sign required by the UDO. [All variances are required for the sign to be relocated].

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Doug Noble, representing Lamar Florida, LLC, addressed the board. Mr. Noble stated that the North Carolina Department of Transportation (NCDOT) required that the existing outdoor advertising sign be relocated further from the right-of-way due to the addition of two (2) lanes to NC 211 (Southport-Supply Road SE). He stated that relocating this sign would not meet the distance requirement in the Brunswick County

Unified Development Ordinance (UDO). He stated that a variance is being requested to move the sign away from the right-of-way, without increasing its nonconformity.

Mr. Williamson wanted clarification that the variance is being requested due to the sign being on property that NCDOT currently has purchased due to the road widening. Mr. Noble stated that was correct.

Attorney Craig Justice, representing Lamar Florida, LLC stated that the variance reflects the same type of variance heard by the Board on June 28, 2018, which was approved, for the same circumstances involving the road widening of NC 211 (Southport-Supply Road SE). He further stated that the request is less of a nonconformity than the approved variances in June.

With no further comments, the Chairman summarized that Lamar Florida, LLC owns an outdoor advertising sign that must be relocated as the NCDOT purchased a portion of the property for right-of-way purposes to make improvements on the highway. He stated that Ms. Bunch explained that the sign is currently nonconforming, but at the time it was constructed it was conforming. He stated that for Lamar Florida LLC would have to be granted (2) two variances, one for 302 linear feet to allow approximately 2,698 feet of separation between signs and the other for 404 linear feet to allow approximately 2,596 feet of separation between signs.

The Board discussed the worksheet and determined the following:

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:

The action of the North Carolina Department of Transportation (NCDOT) to take the property for the widening of NC 211 (Southport-Supply Road SE) has created the need to remove the sign. Per the testimony of Attorney Craig Justice, representing Lamar Florida LLC., the request is to simply move the sign further back from the right-of-way to accommodate the construction. The proposed distance between the signs will remain the same. If the sign is not relocated, there will be unnecessary hardship to Lamar Florida, LLC.

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:

The location of the current sign in the path of the proposed NCDOT right-of-way has forced the relocation of the sign to a different place on the parcel.

3. It is the Board's CONCLUSION that the hardship does not result from the actions taken by the applicant or the property owner by a vote of 3-2. 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:

The applicant did not choose to sell the property or move the sign. The decision of NCDOT to expand the right-of-way for Southport-Supply Road SE (NC211) at this location caused the hardship.

4. It is the Board's CONCLUSION that the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

No testimony was provided regarding public safety. The applicant did not ask to have his land taken. The chosen location requires the least variance possible, as the sign is simply being moved back further from the existing right-of-way.

On the basis of all the foregoing, Mr. Rivenbark made a motion to grant the Variance. The motion was seconded by Mr. Cruise and unanimously carried.

- B). 18-11V Variance
Applicant: Lamar Florida, LLC
Location: 4800-4816 Southport-Supply Road SE (NC 211), Southport NC 28461
Tax Parcel 2210006304
Applicant requests a Variance from Section 8.8.1.G.1. of the Brunswick County Unified Development Ordinance (UDO) to place an outdoor advertising sign 554 linear feet from an existing outdoor advertising sign as opposed to the 3,000 linear feet of separation required by the UDO; and a Variance from Section 8.8.1.L.1. of the UDO to place the sign 340' from the center line of an intersection as opposed to the 500 feet from the center line of an intersection required by the Ordinance. [All variances are required for the sign to be relocated].

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Doug Noble stated that this request is very similar to the previous request, which is to move the sign perpendicular, away from the right-of-way.

The Chairman asked Ms. Bunch if three or two variances are needed. Ms. Bunch clarified that two variances are required.

Attorney Craig Justice, representing Lamar Florida, LLC stated that the request is the same as before in that the sign will be moved further back onto the parcel.

Mr. Batton asked if the sign would be constructed better than the current sign on the property? Mr. Noble stated that they would be built more durable and to current International Building Code with North Carolina Amendments. Mr. Williamson asked why the sign was so close to the intersection? Attorney Justice responded that the sign had to remain on the subject parcel.

With no further comments, the Chairman summarized that Lamar Florida, LLC requests to move an outdoor advertising sign because NCDOT has purchased the land on which the sign is currently located. He stated that the sign complied with the minimum requirements when it was constructed. He said the relocation requires (2) two variances. One is a variance of 160 feet from the centerline of the intersection to allow the structure to be approximately 340 feet from the centerline and the second is a variance of 2,446 feet to allow the structure to have approximately 554 feet of separation between signs.

The Board discussed the worksheet and determined the following:

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:

The action of the North Carolina Department of Transportation (NCDOT) to take the property for the widening of NC 211 (Southport-Supply Road SE) has created the need to remove the sign. Per the testimony of Attorney Craig Justice, representing Lamar Florida, LLC, the request is to simply move the sign further back from the right-of-way to accommodate the construction. The proposed distance between the signs will remain the same. If the sign is not relocated, there will be unnecessary hardship to Lamar Florida, LLC.

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:

The location of the current sign in the path of the proposed NCDOT right-of-way has forced the relocation of the sign to a different place on the parcel.

3. It is the Board's CONCLUSION that the hardship does result from the actions taken by the applicant or the property owner by a vote of 3-2. 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:

The applicant did not choose to sell the property or move the sign. The decision of NCDOT to expand the right-of-way for Southport-Supply Road SE at this location caused the hardship.

4. It is the Board's CONCLUSION that the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

No testimony was provided regarding public safety. The applicant did not ask to have his land taken. The chosen location requires the least variance possible, as the sign is being moved back further from the existing right-of-way.

On the basis of all the foregoing, Mr. Rivenbark made a motion to Grant the Variance with the special conditions mentioned. The motion was seconded by Mr. Lewis and was unanimously carried.

- C). 18-12S Special Use Permit
Applicant: Randy Hardee
Location: 700 Southport-Supply Road, Bolivia NC 28422
Portions of Tax Parcels 16800115 and 1680011501
Applicant requests a Special Use Permit from Section 5.2.3 and Section 5.3.7.G. of the Brunswick County Unified Development Ordinance (UDO) for a Class I Mining Operation.

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Randy Hardee addressed the Board stating that he intends to mine sand that would be used to build house pads. He continued that the excavation will not exceed 20-30 feet deep. He said explosives or rock crushing would not be used in the mining operation.

The Chairman asked Mr. Hardee his anticipated hours of operation? Mr. Hardee replied that the hours of operation will be dawn to dusk.

Project Engineer Phil Norris of Norris and Tunstall Consulting Engineers addressed the Board. Mr. Norris stated that he prepared the plans and application for Mr. Hardee and worked very closely with staff to comply with the requirements of the UDO. He continued that a State Mining Permit has been submitted, along with a NCDOT Driveway Permit. He stated that the wetlands have been surveyed and flagged on the property. He continued that the buffer and setbacks have been taken into consideration when determining the mine location.

With no further comments, Ms. Bunch read the proposed conditions of approval for 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 application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 0560005101 in the manner denoted on the site plan. The special use 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.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
7. The applicant must ensure that the haul road remains dustless in nature during its use.
8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10' project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.
9. The depth of each excavation pit shall not exceed 35 feet.
10. The applicant must utilize quiet running pumps to pump water from one mining pit to another.
11. 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.

Ms. Bunch 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.

With no further comments, the Chairman summarized that the applicant, Mr. Randy Hardee, wishes to operate a Class I Mine located at 700 Southport-Supply Road, Bolivia NC. He stated that the hours of operation will be 7 a.m. to 6 p.m. and no explosives or other machinery will be utilized on site for mining purposes. He continued that Mr. Norris explained that a Mining Permit has been submitted to the State, as well as with a driveway

permit with NCDOT for driveway access to the parcel. He stated that the wetlands have been surveyed and flagged, and provisions will be made to protect those wetlands.

The Chairman asked if there were any comments to the summation? Mr. Rivenbark asked Mr. Hardee if he agreed with the hours of operation included in the proposed conditions? Mr. Hardee stated that the hours of operation were acceptable.

The Board discussed the worksheet and determined the following:

Application No. 18-12S

Applicant: Randy Hardee

Property Location: 700 Southport-Supply Road, Bolivia NC 28422

Parcel Number: Portion of 16800115 and 1680011501

Zoning District: Rural Residential (RR)

Surrounding Zoning: North: R-7500; South: R-7500; East: RR & R-7500; West: CLD.

Proposed Use of Property: “Class I Mining Operation”

FINDINGS OF FACT

Having heard all 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:

The Staff Report states that this is a rural area, with the surrounding property zoned Rural Residential. As such, the proposed use is in harmony with the area. No expert testimony was provided, or report(s) submitted by an appraiser regarding the value of properties.

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 a 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. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations 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 that he will meet the requirements for Class I Mining outlined in the ordinance.

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 Staff Report stated that the mining operation must be setback a minimum of 40 feet from the property line, with a minimum 10' of buffer at 0.2 visual opacity surrounding the subject site. Buffer materials may include natural vegetation or plantings as required by the UDO. The Staff Report indicated that the haul access road to the mine must be constructed of materials of a dustless nature. The Staff Report indicated that there will be project regulation by both Brunswick County and the State of North Carolina, as a Mining Permit from both entities is required. The applicant stated that he will meet all requirements.

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, "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. The Board concurs with the

Staff Report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance.

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,” with the following 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 0560005101 in the manner denoted on the site plan. The special use 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.
 4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ) 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. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
 7. The applicant must ensure that the haul road remains dustless in nature during its use.
 8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10’ project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the

opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.

- 9. The depth of each excavation pit shall not exceed 35 feet.**
- 10. The applicant must utilize quiet running pumps to pump water from one mining pit to another.**
- 11. 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.

- D). 18-13S Special Use Permit
Applicant: Randy Hardee
Location: 720 Southport-Supply Road SE, Bolivia NC 28422
 Portion of Tax Parcel 1680011501
 Applicant requests a Special Use Permit from Section 5.2.3 and
 Section 5.3.7.G. of the Brunswick County Unified Development
 Ordinance (UDO) for a Class I Mining Operation.

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Phil Norris of Norris and Tunstall Consulting Engineers stated that a reclamation bond will be posted for each mining application. The applicant must follow the reclamation plan submitted as part of the application and slope the banks, plant trees, and stock fish, with the result being a lake. He stated that the applicant must post the bond which is a substantial cost so that the site is not left unfinished.

Attorney Bryan Batton asked Mr. Randy Hardee if everything stated in the previous hearing [Case 18-12S] applies to this request as well? Mr. Hardee stated yes.

With no further comments, Ms. Bunch read the proposed conditions for 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 application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 1680011501 in the manner denoted on the site plan. The special use 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.

4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 provide a 30' access easement to the parcel for the hauling road from Southport-Supply Road SE. The applicant must have the necessary permits from the North Carolina Department of Transportation to access Southport-Supply Road SE. Required improvements must be made prior to final zoning approval.
6. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
7. The applicant must ensure that the haul road remains dustless in nature during its use.
8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10' project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.
9. If dewatering does occur, the depth of each excavation pit shall not exceed 35 feet.
10. 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.

Ms. Bunch 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.

With no further comments, the Chairman summarized that the applicant is requesting to operate a Class I Mine located at 720 Southport-Supply Road SE, Bolivia NC. He stated that the applicant understands the conditions and criteria he must meet to operate with both the County and the State. He stated that Mr. Norris explained that there is a reclamation bond that will ensure that the property is back to a satisfactory state once the mining is complete. He stated that the wetlands have been surveyed and flagged, and provisions will be made to protect those.

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. 18-13S

Applicant: Randy Hardee

Property Location: 720 Southport-Supply Road SE, Bolivia NC 28422

Parcel Number: Portion of 1680011501

Zoning District: Rural Residential (RR)

Surrounding Zoning: North: R-7500, South: R-7500, East: RR & R-7500, West: RR

Proposed Use of Property: “Class I Mining Operation”

FINDINGS OF FACT

Having heard all 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:

The Staff Report states that this is a rural area, with the surrounding property zoned Rural Residential. As such, the proposed use is in harmony with the area. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.

- 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 a 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. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations 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.

- 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 Staff Report stated that the mining operation must be setback a minimum of 40 feet from the property line, with a minimum 10' of buffer at 0.2 visual opacity surrounding the subject site. Buffer materials may include natural vegetation or plantings as required by the UDO. The Staff Report indicated that the haul access road to the mine must be constructed of materials of a dustless nature. The Staff Report indicated that there will be project regulation by both Brunswick County and the State of North Carolina, as a Mining Permit from both entities is required. There were no comments made regarding the health and safety of the public as it relates to this mining activity.

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 "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. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance

V. DECISION:

Mr. Rivenbark 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," with the following 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 0560005101 in the manner denoted on the site plan. The special use 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.**
4. **The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 provide a 30' access easement to the parcel for the hauling road from Southport-Supply Road SE. The applicant must have the necessary permits from the North Carolina Department of Transportation to access Southport-Supply Road SE. Required improvements must be made prior to final zoning approval.**
6. **Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.**
7. **The applicant must ensure that the haul road remains dustless in nature during its use.**
8. **The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10' project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.**
9. **If dewatering does occur, the depth of each excavation pit shall not exceed 35 feet.**
10. **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. Medlin and unanimously carried.

- E). 18-14S Special Use Permit
Applicant: Randy Hardee
Location: 740 Southport-Supply Road SE, Bolivia NC 28422
Portion of Tax Parcel 1680011501
Applicant requests a Special Use Permit from Section 5.2.3 and Section 5.3.7.G. of the Brunswick County Unified Development Ordinance (UDO) for a Class I Mining Operation.

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

The Chairman asked Mr. Phil Norris, Norris and Tunstall Consulting Engineers, if there is anything to be said that is different from this application than cases 18-12S and 18-13S? Mr. Norris stated that it is the same testimony.

The Chairman asked Mr. Randy Hardee if there is anything to be said that is different from this application than cases 18-12S and 18-13S? Mr. Hardee stated that it is the same testimony.

With no further comments, Ms. Bunch read the proposed 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 application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 1680011501 in the manner denoted on the site plan. The special use 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.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 provide a 30' access easement to the parcel for the hauling road from Southport-Supply Road SE. The applicant must have the necessary permits from the North Carolina Department of Transportation to access Southport-Supply Road SE. Required improvements must be made prior to final zoning approval.
6. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
7. The applicant must ensure that the haul road remains dustless in nature during its use.
8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10' project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.

- 9. If dewatering does occur, the depth of each excavation pit shall not exceed 35 feet.
- 10. 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.

Ms. Bunch 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.

With no further comments, the Chairman summarized that the applicant is requesting to operate a Class I Mine located at 740 Southport-Supply Road SE, Bolivia NC. He stated that the applicant understands the County and State requirements and criteria he must meet to operate the facility.

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. 18-14S

Applicant: Randy Hardee

Property Location: 740 Southport-Supply Road SE, Bolivia NC 28422

Parcel Number: Portion of 1680011501

Zoning District: Rural Residential (RR)

Surrounding Zoning: North: R-7500, South: R-7500, East: RR & R-7500, West: RR

Proposed Use of Property: “Class I Mining Operation”

FINDINGS OF FACT

Having heard all 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:

The Staff Report states that this is a rural area, with the surrounding property zoned Rural Residential. As such, the proposed use is in harmony with the area. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.

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 a 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. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations 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.

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 Staff Report stated that the mining operation must be setback a minimum of 40 feet from the property line, with a minimum 10' of buffer at 0.2 visual opacity surrounding the subject site. Buffer materials may include natural vegetation or plantings as required by the UDO. The Staff Report indicated that the haul access road to the mine must be constructed of materials of a dustless nature. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina, as a Mining Permit from both entities is required. There were no comments made regarding the health and safety of the public as it relates to this mining activity.

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 “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. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance

V. DECISION:

Mr. Lewis 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,” with the following 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 1680011501 in the manner denoted on the site plan. The special use 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.**
 4. **The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 provide a 30’ access easement to the parcel for the hauling road from Southport-Supply Road SE. The applicant must have the necessary permits from the North Carolina Department of**

- Transportation to access Southport-Supply Road SE. Required improvements must be made prior to final zoning approval.**
- 6. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.**
 - 7. The applicant must ensure that the haul road remains dustless in nature during its use.**
 - 8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 10' project boundary buffer. The buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.**
 - 9. If dewatering does occur, the depth of each excavation pit shall not exceed 35 feet.**
 - 10. 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. Medlin and unanimously carried.

F). 18-15S Special Use Permit
 Applicant: L.M. McLamb & Son
 Location: 6250 Best Farm Road NE, Leland NC 28451
 Portion of Tax Parcel 0690001007
 Applicant requests a Special Use Permit from Section 5.2.3 and
 Section 5.3.7.G. of the Brunswick County Unified Development
 Ordinance (UDO) for a Class I Mining Operation.

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Michael Freeman addressed the Board, stating that he not only represents L.M. McLamb and Son, but that he is also the subject parcel owner. He stated that he recently built a house on the property and that his long-term goal is to have a horse farm on the property. He continued that he has an erosion control permit to dig a 2-acre lake to expand the existing lake to a 10-12-acre lake for residential use. He stated that he has construction projects in Leland, where the sand will be used as structural material. He continued that there will be no rock mining or blasting. He stated that the first pond is 25 feet, so he plans to expand at the same depth, which shouldn't interfere with any wells or groundwater.

Mr. Phil Norris of Norris and Tunstall Consulting Engineers addressed the Board on behalf of the applicant. He stated that there are wetlands on the property which have been delineated. He stated he has worked close with staff to ensure that the proposed plans

comply with the minimum UDO requirements. Mr. Norris stated that an application has been submitted to the State and this permit also requires a reclamation bond.

Ms. Bunch clarified that she spoke with NCDOT about the driveway application and they indicated a permit for connection to Town Creek Road will be required because of the road maintenance problems typically associated with mining activities. Mr. Norris said they will comply with NCDOT minimum requirements.

Mr. Conrad Benton addressed the Board stating that he never received a notice of the meeting. He continued that it will decrease property values and stated that he is worried the wells will go dry. He also stated that he was concerned about the amount of dirt currently on Town Creek Road SE.

The Chairman clarified that the notices were only sent to adjacent property owners, however, a sign was posted on the property.

Mr. Steven Shepard stated that he is concerned about the wells running dry. He was concerned about effects from drinking county water and would prefer not to convert. The Chairman asked Mr. Shepard how far he lived from the subject parcel? Mr. Shepard replied 0.3 miles.

Ms. Lisa Shepard stated that she does not have a problem with ponds, but she was concerned that more mines will take place. She is also concerned with having to convert to county water.

The Chairman explained that the ordinance is in place to protect property.

Ms. Shepard stated she is worried that Mr. Freeman will expand to other properties in the area. The Chairman stated that the Board cannot make any decisions based upon other pieces of property. Ms. Shepard stated that she is concerned about the large trucks and damaging that the road. The Chairman stated that the road is maintained by the State of North Carolina.

Ms. Harriot Locklear stated that she is concerned about the truck traffic and the safety of senior citizens in the community.

Mr. Phil Norris stated that a permit was issued by the State for a single source offsite pit to carry sand from one specific site to another. Mr. Norris stated that dewatering is not allowed by the ordinance and is written so that the water table cannot be artificially lowered. He also mentioned that a pond is allowed on the property without any permits; the only difference with this permit is to haul the sand off the property. He continued that a reclamation bond is required with this permit.

Mr. Alan Lewis asked about the topography of the land surrounding the property and if there was a tremendous difference in elevation within a third of a mile? Mr. Norris stated that immediately behind the mining area designated wetlands exist. Mr. Lewis stated that

he is aware of the influence of digging ponds on surrounding property and the effect on wells is a truncated pyramid, as the deeper you dig, the further out it applies, but is usually at a ratio of two to one. He stated that digging down 25 feet will not lower the water table 200 feet away. He stated that it goes up at approximately a 45° angle.

Mr. Ron Medlin asked the proposed time table for the project? Mr. Freeman stated that the mining process will take a couple of years, as it is being hauled to one single source. He stated that he is not sure whether he would like to continue and grow the lake in the future. Mr. Freeman stated that his well is 80 feet from the pond and has no concern of his well running dry.

Mr. Conrad Benton asked if he can be guaranteed that his well will not run dry?

Mr. George Merant stated that his son and daughter live on his property and have a 25 foot well just over the hill from the proposed site. He asked if the applicant will be able to provide water if his well runs dry? He stated that he is less than a quarter mile from the subject property.

The Chairman asked Ms. Bunch what happens if the wells run dry because of the mine? Ms. Bunch stated that if anyone is having problems with wells, they should contact the State.

Mr. Rivenbark reiterated that a pond can be dug on the property legally with no permits required, the only distinguishing factor is if the dirt will be transported off the property. In this instance, dirt is being removed from the site, so this is considered mining.

Ms. Pamela Wagoner asked if there is a way to get the records of the permits? She stated she has concerns with contamination of the ground water. She stated that the Army Corp of Engineers constructed a ditch and culvert system which has been damaged, causing water on the road. Ms. Bunch stated that once permits are of record, copies can be obtained from the State.

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 application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 0690001007 in the manner denoted on the site plan. The special use 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.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 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. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
7. The applicant must ensure that the haul road remains dustless in nature during its use, as indicated in Note 7 of the project site plan.
8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 15' street buffer at 0.2 visual opacity requirement and 10' project boundary buffer. The project boundary buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.
9. The depth of each excavation pit shall not exceed 35 feet, if dewatering occurs.
10. 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.

Ms. Bunch 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.

With no further comments, the Chairman summarized that the applicant, L.M. McLamb, desires to operate a Class I Mine located at 6250 Best Farm Road NE, Leland NC. He stated that it is allowable by the UDO in this zoning district. He continued that the applicant testified that he is willing to meet the conditions imposed by the State and County. He stated that there are wetlands on the property which have been delineated and protected. He continued that there will be a reclamation bond to require the owner to return the pit to a suitable appearance after the mining operation is complete. He stated that there are concerns from the surrounding property owners about how the wells will be affected, and it is noted that there will be no dewatering and the maximum depth is 35 feet if dewatering occurs. He also stated that if there is an issue with the wells, affected parties can contact the State and they will investigate and test the issue. He stated that the other concern is the impact on the road. He continued that the applicant will have to obtain a driveway permit from the State. Ms. Bunch testified that the State considers the impact of mining traffic onto state-maintained roads.

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. 18-15S

Applicant: L.M. McLamb & Son

Property Location: 6250 Best Farm Road NE, Leland NC 28451

Parcel Number: Portion of 0690001007

Zoning District: Rural Residential (RR)

Surrounding Zoning: North: RR South: RR East: RR West: RR

Proposed Use of Property: “Class I Mining Operation”

FINDINGS OF FACT

Having heard all 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:

The Staff Report states that this is a rural area, with the surrounding property zoned Rural Residential. As such, the proposed use is in harmony with the area. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.

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 a 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.

Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations 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 stated that he is aware of the County and State requirements for Class I Mining Operations and is willing to meet them.

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 Staff Report stated that the mining operation must be setback a minimum of 40 feet from the property line, with a minimum 10' of buffer at 0.2 visual opacity surrounding the subject site. Buffer materials may include natural vegetation or plantings as required by the UDO. The Staff Report indicated that the haul access road to the mine must be constructed of materials of a dustless nature. The Staff Report indicated that there will be regulation of the project by both Brunswick County and the State of North Carolina, as a Mining Permit from both entities is required. There were no comments made regarding the health and safety of the public as it relates to this mining activity.

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 "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. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance

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,” with the following 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 0690001007 in the manner denoted on the site plan. The special use 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.
4. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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 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. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m. on Monday through Friday only.
7. The applicant must ensure that the haul road remains dustless in nature during its use, as indicated in Note 7 of the project site plan.
8. The applicant must provide to the Brunswick County Planning Department a Landscape Plan for the 15’ street buffer at 0.2 visual opacity requirement and 10’ project boundary buffer. The project boundary buffer must meet the 0.2 visual opacity requirement. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the requirements.
9. The depth of each excavation pit shall not exceed 35 feet, if dewatering occurs.
10. 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. Medlin and unanimously carried.

- G). 18-16S Special Use Permit
Applicant: Brandon Hardee
Location: 6376 Ludlum Road, Ash NC 28420
Portion of Tax Parcel 16300016
Applicant requests a Special Use Permit from Section 5.2.3 and Section 5.3.7.G. of the Brunswick County Unified Development Ordinance (UDO) for a Class I Mining Operation.

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Brandon Hardee stated that he is requesting permission to construct a Sand Mine to haul offsite soil for residential and commercial construction. He stated that traffic generated will depend on demand, however, he typically averages hauling 30 loads per day. The Chairman asked if the sand from the pit will solely be used for his projects? Mr. Hardee stated that he may sell to others as well.

The Chairman asked Mr. Hardee the proposed hours of operation? Mr. Hardee replied that his hours of operation will be 7:00 a.m. to 5:30 p.m. Monday through Friday.

The Chairman asked Mr. Hardee if he has applied for a State Mining Permit or a North Carolina Department of Transportation driveway permit. Mr. Hardee replied that he has applied for both.

Mr. Phil Norris of Norris and Tunstall Consulting Engineers stated that there are some wetlands on the site which have been delineated to assure they will not be adversely impacted by the project. He stated that he has worked closely with staff to assure compliance with the UDO. He stated that a reclamation bond is required for the mining operation and the result will be a lake on the property.

Ms. Sue Fowler asked the average hours of operation, indicating her concern that the applicant can operate outside of those hours. Assistant County Attorney Bryan Batton replied that the applicant would have to comply with the hours stated within the conditions on the permit and he would be in violation if he does not do so.

Ms. Audrey Yeager stated that the map included in the notice has an error regarding her property. She stated that the map labels her property as undeveloped, but there has been a residence on the property since 1973. The Chairman stated that the Board recognizes that there are two houses on that piece of property.

Attorney Matthew Nichols stated that he is representing Kathy Kincer, who owns property at 6355 Ludlum Rd. He stated that he is also representing Adam and Kim Simmons who reside adjacent to the mine at 2561 Whiteville Rd. He stated that there is an error with the Staff Report, which states that there is only one residential property adjacent to the proposed sand mine, and that both of his clients are directly adjacent to property, so he asked for clarification. He stated that he has copies of his client's deeds for the record. Mr. Nichols passed out exhibits to the Board. He stated that number two (2) in the criteria for special use permits, is whether the request is in conformance with the special use requirements applicable to the use. He stated that he would contend that it is not. He read criteria under 5.3 Mining Operations Class I. He stated that it does not speak about parcels or parts of parcels, but rather it talks about the mining operations. He read the definition of the mining operation in the UDO, which states that the 'affected land area' should be no greater than 20 acres. He stated that the total project area exceeds 30 acres. He stated that the two items are all on one parcel, roughly a 12 acre mine, directly adjacent to the other mine.

The Chairman asked Ms. Bunch to address the comment of exceeding 30 acres. Ms. Bunch stated that one of the conditions is that the parcel will have to be subdivided to meet the 20-acre maximum Class I Mining Permit requirement. She stated that it will be subdivided as it is shown on the map as mining area 1 and mining area 2.

Attorney Nichols stated that he would strongly disagree. He stated that his client received a notice in the mail regarding the State mining permit and that he proposes to mine 26.42 acres on the property. He stated that under that reasoning the applicant could carve out unlimited areas. He asked that why the ordinance uses the language "affected land"? He handed out the North Carolina Statute of the State Mining Act. Reading from Chapter 74, he stated that the definition doesn't speak about parcels, it speaks about affected land. He exhibited photographs of his clients' houses and the surrounding area and the proposed haul road.

The Chairman asked Mr. Hardee why the mining application states 26.2 acres? Mr. Hardee responded that when a permit is applied with the State, the entire area can be applied, however the County set the restrictions of the size of 20 acres. The pit will have to be separated and cannot become one pit. The Chairman asked how exactly it will be divided. Mr. Hardee replied that it will be divided in half, with the buffer in between the two.

The Chairman asked Ms. Bunch if the buffer areas would be included as a part of the affected land? Ms. Bunch replied that the buffer area is included in the tract, so the maximum of 20 acres includes the buffer. The Chairman stated that the definition is the affected land is the surface area of the land that is mined. The Chairman stated that it seems that the buffer area wouldn't be included as a part of the affected land. Ms. Bunch stated that she would defer to the attorney. Attorney Batton stated that there does seem to be a discrepancy between the use of 20 acres within the different sections. He stated that he believes the more restrictive is the definition located in definition section of the UDO, stating that the affected area, while 5.3.7.G states the area overall cannot be over 20 acres.

The Chairman clarified that the affected area cannot include anything outside the piece of property. Mr. Batton stated that by complying with the definition on 5.3.7.G and limiting the 20 acres to also include buffers, it will automatically comply with the definition which is limiting the affected area to 20 acres.

Attorney Nichols stated that he would respectfully disagree with the interpretation, that affected land under the State Statute means that the surface area of land associated with the mining activity, so that the soil is exposed to accelerated erosion. Mr. Lewis stated that he would argue that a buffer area which is not disturbed would not be considered under that State Statute as affected land. Attorney Nichols replied that under that theory, what is to stop someone from subdividing an unlimited amount of sand mines across a large tract of land? The Chairman stated that the difference is that the ponds cannot be connected and that there must be a buffer between the ponds, so instead of having one 100-acre pit, it could conceivably be many smaller pits, but maintain land between them. Attorney Nichols stated that he would respectfully disagree and contend that you must scratch the surface to see what is happening here and that he has broken the parcel into two and does not think that is consistent with his reading of the ordinance and the State Statute. The Chairman asked Ms. Bunch if mines could be larger in other zoning districts? Ms. Bunch replied that Class II Mines have no acreage, but it includes quarrying which is only allowed in the more restrictive zoning districts. The Chairman stated that these limitations put some control over mining, so larger operation would be in an appropriate area, but you could have smaller operations in certain areas. Attorney Nichols stated that Ms. Bunch mentioned the land-use plan lists this area as low-density residential and that in the CAMA plan, low-density residential states that inappropriate uses would be commercial uses and industrial uses. He stated that he would consider this operation as an industrial use in the Use Table of the UDO. He stated that there is a section in the code that speaks about looking to the future land use plan for guidance and the land use decisions. He stated that the future land use plan is very extensive as to what is allowed in the Rural Residential district and that he would like to point that out for the Board's consideration. Mr. Batton asked if it was Attorney Nichols' opinion that Chapter 74 of the State Statute also applies to the County permit or if they are two separate processes? Attorney Nichols responded that it is two separate processes, but the ordinance requires a copy of the approved State permit prior to the operation, so clearly there is a link, where you must have both, but there are separate processes and separate criteria. He stated that he finds it interesting and telling that the ordinance definition uses that same language as the State Statute referring to affected land, and do not speak in terms of being able to subdivide parcels to create an exemption beyond the 20 acres.

The Chairman asked for clarification of the Land Use Plan regarding inappropriate uses in commercial and industrial operations? Ms. Bunch stated that Class I Mining operations are a permitted use in RR zoning district. Ms. Bunch stated that the RR district is a mixed-use zoning district; not just residential. She stated that looking through the Table of Permitted Uses, there are residential and commercial uses that are permitted in the RR district, for example, a convenience store is a permitted use in the RR zoning district. The Chairman stated that he understands that it is permitted in the UDO, but it seems to be a bit of a conflict. Attorney Batton stated that planning staff's long-term goal is to update the Land

Use plan due to all the changes in the county since the adoption of the plan. The Chairman confirmed that the bottom line is that they are concerned with the UDO. Attorney Batton agreed. Attorney Nichols stated that in the Table of Permitted Uses, mining is classified under industrial, resource extraction.

Ms. Kathy Kincer stated that the criteria for the special use permit indicates the harmony of the area is not substantially injurious to the value of the property in the general vicinity. She pointed out her property on the map and stated that her property directly touches the parcel for the proposed sand mine. She was concerned about the noise associated with trucks traveling beside her house. She stated that her daughter is a college student who studies, she currently works out of town but when she is in town, she must sleep during the day for her job. She stated that she doesn't agree that this operation is in harmony with the area because the area is all residential and there are no stores. She asked about the driveway buffer, that is only buffer along the perimeter of the property and not along the haul road. She is also concerned about the dust that will accumulate from the trucks along the haul road. She stated that one of the adjoining neighbors has respiratory issues where he cannot cough, so any dust will be a detriment to the health of that child and anyone else who has breathing issues within the community. She stated that the staff report reads that the adjoining properties are undeveloped and asked for clarification of undeveloped property. Mr. Lewis stated that he would say undeveloped means that it is not improved and vacant. Ms. Bunch clarified that where the subject parcel is adjacent to a developed parcel, a 20-foot buffer would be required and where a vacant/undeveloped parcel is adjacent, a 10-foot buffer is required. Ms. Bunch stated that the easement does not require a buffer because it is not part of the subject parcel. She stated that the ordinance does not require a buffer along the haul road, but the Board of Adjustment could add it as a condition. Ms. Kincer stated that she is concerned about her well. She stated that she had an appraisal done two weeks prior and she is very concerned about the resale of her house.

Mr. Hardee stated that the if he violates dust control his permit will be revoked. He stated that he spoke with Ms. Kincer prior to the meeting about the haul road and stated he offered to construct a berm. The Chairman asked what size berm he would install? Mr. Hardee stated that his trucks are 10-11 feet tall, so he would build a berm to cover the trucks. He stated that Ms. Kincer told him that the berm would not satisfy her concerns. Attorney Nichols asked if Mr. Hardee has any license as a real estate appraiser, to which Mr. Hardee stated no.

Ms. Kim Simmons stated that since the easement is being used for the mining, it should be included in the mining activity, and that the parcel of the easement should be included in the mining activity. She stated that the haul road will be going directly behind her property. She asked for the buffer standard being that her property is so close to the subject parcel and how tall the berm is required to be. The Chairman stated that he doesn't believe there is a requirement. She asked what the applicant is going to do to protect her home from the dust?. The Chairman reiterated that if the dust is not controlled, the permit can be revoked. The Chairman stated that Ms. Simmons would need to contact the State if there are any violations of the permit identified. Ms. Bunch stated that if there is dust from that road;, interested parties should to call the Planning Staff who will contact the

operator of the sand mine. Ms. Simmons stated if she documents the dust by pictures or videos, what would be done. Ms. Bunch stated she would give the applicant a chance to correct the violation and if not rectified, the permit will be revoked. Ms. Simmons stated that she has three kids, one of which has cerebral palsy, chronic respiratory issues, epileptic, restrictive airway disease, and other ailments. She stated that because her house is directly adjacent to the operation and haul road, she will not be able to go outside with her son. She stated that her son cannot cough up dust particles that are blown onto their property. She stated that if the haul road is too long. Mr. Hardee stated that he may use a dustless material, like 57 stone, so that there will be no dust. He stated that he would construct the berm if needed. Ms. Simmons stated that she would not have built her house where she did if she knew there was going to be a sand mine behind her house. She stated that Mr. Hardee has not tried to contact her at all to notify her of his proposal. She stated that her son must have treatments to maintain the health of his lungs and passed around his medical records. She stated that this operation will affect her son's life. She stated that the Board's Decision could be life or death for her son, and that her son already has enough complications as it is.

Ms. Johana McCumbee stated that she is speaking on behalf of Doerce McCumbee and Belinda Benz. She was concerned with the noise pollution, air pollution, water supply, traffic, and health issues. She stated that a neighbor, David Smith, has respiratory issues and seizures. She was concerned that the trucks may trigger a seizure. She stated that the dust will be detrimental to his respiratory issues. She stated that Belinda's husband has respiratory issues and worried about his quality of life. She was also concerned about the water supply and dewatering. She was also concerned with traffic and the access of the haul road.

Ms. Belinda Benz stated that she is concerned with the beekeeper down the road and black bears. She was concerned about the mosquitoes that will breed in the proposed pit.

Mr. Gene Simmons stated that he would not have built his children's house if he knew there was going to be a sand mine behind the property. He stated that the applicant can find land elsewhere to initiate a mining operation.

Ms. Sue Fowler stated that she has chronic back pain and sleeps at all hours and will not be able to tolerate the noise. She also claims she has chronic migraines which will also be impacted by the noise.

Mr. Rivenbark asked if the area is wooded. Mr. Hardee stated that the timber has been cut and has grown since.

Mr. Dennis Bloyer stated that he did not receive notice of the meeting. It was determined that he is not an adjacent property owner.

Attorney Matthew Nichols stated that he would contend that the easement is a function of the operation. He also stated that he would contend that the ordinance requires that the request be denied over the arguments stated previously, on the basis that the project

exceeds twenty acres. He also stated that there must be evidence that the request is not going to be injurious to the value of the property of the general vicinity. He continued that the applicant showed no competent evidence of that and that the burden is put on the applicant and he should provide material evidence that the request will not substantially hinder the value of the surrounding properties. He continued that there is more than substantial evidence for the Board to conclude that health and safety requirements are not met with this proposal and the circumstances.

Mr. Greg Yeager asked what provisions are being made to ensure that the adjacent property owners are being made whole financially with regards to property value due to the operation of the mine? He also asked if there is a storm water plan, bureau of mining operation plan, environmental impact study, traffic impact analysis, and end use program? He asked the Board to consider the children in the area and the people with disabilities that live nearby.

Mr. Phil Norris stated that the storm water plan is not required because impervious surface is created, although the State requires erosion control permitting. Mr. Norris stated that he is submitting an application to NCDOT for a driveway permit, and they will determine if any road improvements are needed.

Mr. Hardee added that the result would be a pond and that a reclamation bond is to be put in place to assure that it will be put back to a safe condition.

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 legally subdivide Tax Parcel 16300016 in the manner denoted on the site plan. The special use 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.
4. Identify on the Site Plan both Whiteville Road and NC 130.
5. The applicant must provide a 30' access easement to the subdivided, Tax Parcel 16300016, with a 20' haul road.
6. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environmental Quality (DEQ). 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.

7. 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.
8. Consistent with the application, mining operations will be limited from 7:00 a.m. – 6:00 p.m.
9. The applicant must ensure that the haul road remains dustless in nature during its use, as indicated in Note 7 on the project site plan.
10. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
11. The applicant must request a visual inspection of the site prior to the commencement of mining activities to insure all requirements have been met.
12. 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.

Ms. Bunch 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.

Attorney Batton stated as a reminder, people who are not qualified as witnesses cannot testify as to property values, traffic impacts, environmental impacts, etc.

With no further comments, the Chairman summarized that the applicant, Brandon Hardee, has applied for a Class I mining permit at 6376 Ludlum Road NW, Ash, NC. He stated that the request is allowed in the zoning district and that the applicant is aware of the restrictions and criteria that he must meet and has indicated that he would be willing to meet those conditions. He stated that he heard several people with concerns about the impact that the activity will have on the community. He stated that the biggest concern is the dust created by the trucks on the haul road connected to Ludlum Road NW. He stated there are people in the community that have respiratory issues and there is a concern that this will be a problem to those people. He stated that a buffer is not required for the haul road and that the applicant stated that he is willing to construct a berm, however one of the neighbors stated that would not satisfy them. He stated there was also a concern about the potential truck noise traveling down the haul road which is close to some of the houses. He stated that there are concerns of the impact on the surrounding wells. He stated that while the impact the mine would have on the property values of surrounding properties

was mentioned, but there was no expert testimony presented to substantiate the concerns expressed.

Mr. Steven Shepard stated that he has concerns about the children that live in the area.

Ms. Bonnie Simmons stated that she's concerned for the disabled children.

Mr. Gene Simmons reiterated that the proximity of the house is very close to the haul road.

Ms. Kim Simmons asked if the applicant knew that her family would be directly impacted by the operation?

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. 18-16S

Applicant: Brandon Hardee

Property Location: 6376 Ludlum Road NW, Ash NC 28420

Parcel Number: 16300016

Zoning District: Rural Residential (RR)

Surrounding Zoning: North: RR South: RR & R-7500 East: RR West: RR & R-7500

Proposed Use of Property: "Class I Mining Operation"

FINDINGS OF FACT

Having heard all 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:

The submitted site plan shows that the access to the proposed mine, a dirt haul road, is near the residences located in the immediate area. The neighborhood residents stated that trucks travelling the haul road will add traffic and dust to a formerly quiet area. As such, the proposed use is not in harmony with the area. No expert testimony was provided or was a report submitted by an appraiser regarding the value of properties.

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 a 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. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations if approved by the Board of Adjustment through the Special Use Permit process. Based upon the testimony received at the meeting from the neighborhood and specifically the two (2) residential homeowners, the Board finds that the proposed use is not in conformance with Criteria 10, the "Effect on Adjoining Property". Increased truck traffic on the proposed haul road will create dust, which will be detrimental to the special needs residents in the area.

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 Board stated that testimony provided from property owners indicated that there were individuals in the immediate community and more specifically on the adjoining property with special needs that would be adversely impacted by the dust that the truck traffic on the access/haul road will generate. As a result, it is the Board's finding that the proposed use will have an adverse effect on the adjoining property.

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 Board does not concur with the staff report as it relates to the “Effect on Adjoining Property”. The major concern is the location of the proposed haul road to be used to access the mine. Per the testimony provided at the hearing, there are special needs residents immediately adjacent to the subject parcel that will be impacted due to the dust that the truck traffic will bring. The applicant is not proposing any type of screening that would buffer both the noise from the use and contain the dust.

V. DECISION

Based upon the findings made by the Board, a motion was made by Mr. Cruse, seconded by Mr. Lewis and unanimously carried to deny the Special Use Permit because the proposed use, if developed as proposed:

- a) Will not be in harmony with the area and not substantially injurious to the value of properties in the general vicinity, and
- b) Will not be in conformance with all special requirements applicable to the use, and
- c) Will adversely affect the health and safety of the public and
- d) Does not adequately address the twelve (12) review factors identified in Section 3.3.9.b. of the Brunswick County Unified Development Ordinance.

H). 18-17S Special Use Permit
Applicant: Brandon Hardee
Location: 6380 Ludlum Road NW, Ash NC 28420
Portion of Tax Parcel 16300016
Applicant requests a Special Use Permit from Section 5.2.3 and Section 5.3.7.G. of the Brunswick County Unified Development Ordinance (UDO) for a Class I Mining Operation.

Mr. Brandon Hardee asked to approach the Board. Mr. Hardee stated that he would like to withdraw his application. Chairman Williamson accepted the withdrawal of the request.

IX. STAFF REPORT.

Ms. Bunch stated that there is no staff report.

X. ADJOURNMENT.

With no further business, Mr. Medlin made a motion to adjourn. The motion was seconded by Mr. Cruse and unanimously carried.



Use/operations of introductory campus

Brunswick Christian Recovery Center will be using the proposed site located at 1401 Ash-Little River Rd NW, Ash, NC 28420 as what will be considered, and furthermore referred to as the introductory campus. The introductory campus will be used simultaneously with the current recovery center campus and program. The introductory campus's primary function will be to house an additional 13 residents that are attending the Brunswick Christian Recovery Center 16 week program. The residents attending the program will be transported into the current recovery center campus every morning to attend the normal program operations and meetings. They will then, (after program functions has ceased for the day) be transported back to the introductory campus to retire. All BCRC business will be conducted at the current recovery center campus and no additional building is foreseen to take place at the introductory campus site.

Brunswick County Board of Adjustment Special Use Request Case 18-18S

CO-COUNTY JURISDICTION

CO-RR

20800008

20900060

2090003511

20900034

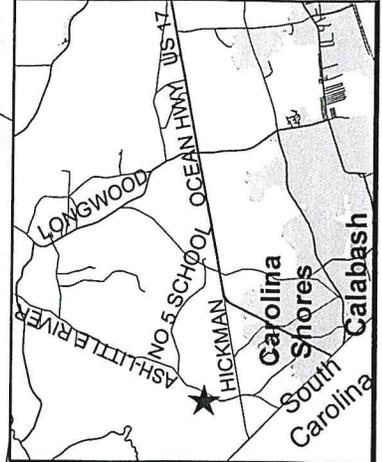
2090003404

2090003405

CO-R-7500

Project Site
Parcel #2090003401

ASH-LITTLE RIVER RD NW
SR 1300



CASE 18-18S

ADJACENT PROPERTY OWNER(S)

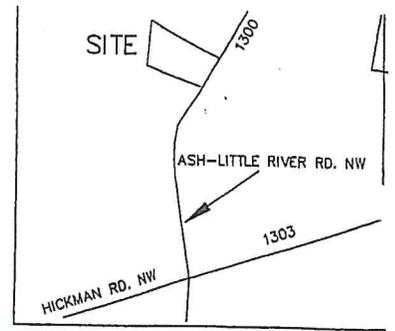
PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
2090003511	NORRIS FRANK M TRUSTEE	17220 RIVER ISLE CIRCLE	JACKSONVILLE	FL	32226
2090003404	FALCON RETREAT LLC	1461 ASH LITTLE RIVER RD	ASH	NC	28420
208000008	FALCON RETREAT LLC	1461 ASH LITTLE RIVER RD	ASH	NC	28420
209000060	FALCON RETREAT LLC	1461 ASH LITTLE RIVER RD	ASH	NC	28420
209000034	THOMAS JACKIE C	1404 ASH LITTLE RIVER RD NW	ASH	NC	28420-1714
2090003405	NORRIS JOHN P ETUX SANDRA F (LT)	1424 ASH-LITTLE RIVER RD	ASH	NC	28420

OWNER(S)

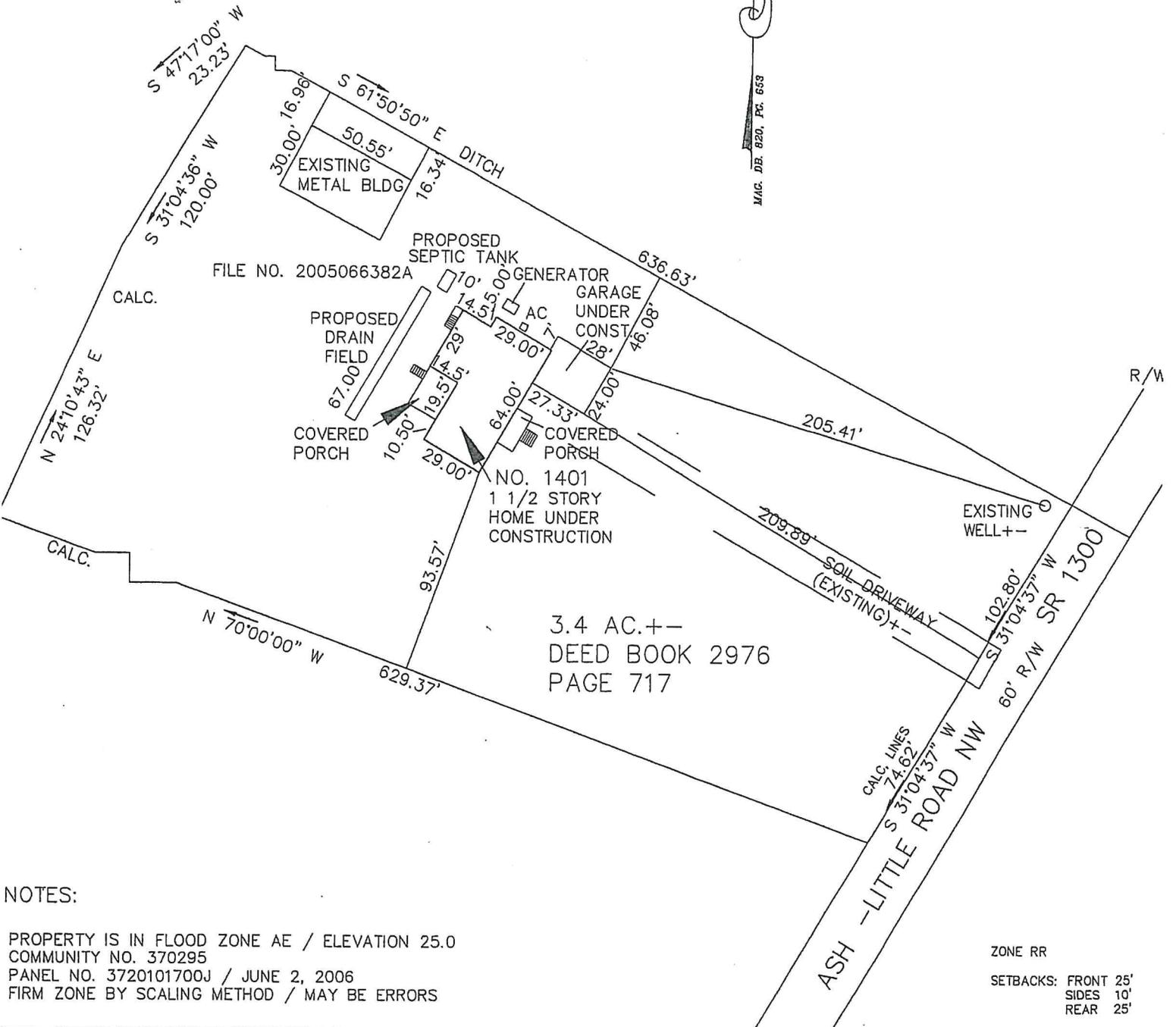
PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
2090003401	RAY STEPHEN K ETUX REBECCA G	1401 ASH LITTLE RIVER RD	ASH	NC	28420-1715

APPLICANT(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
2090003401	BRUNSWICK CHRISTIAN RECOVERY CENTER	PO BOX 3041	SHALLOTTE	NC	28459



VICINITY MAP NTS



NOTES:

PROPERTY IS IN FLOOD ZONE AE / ELEVATION 25.0
 COMMUNITY NO. 370295
 PANEL NO. 3720101700J / JUNE 2, 2006
 FIRM ZONE BY SCALING METHOD / MAY BE ERRORS

ZONE RR
 SETBACKS: FRONT 25'
 SIDES 10'
 REAR 25'

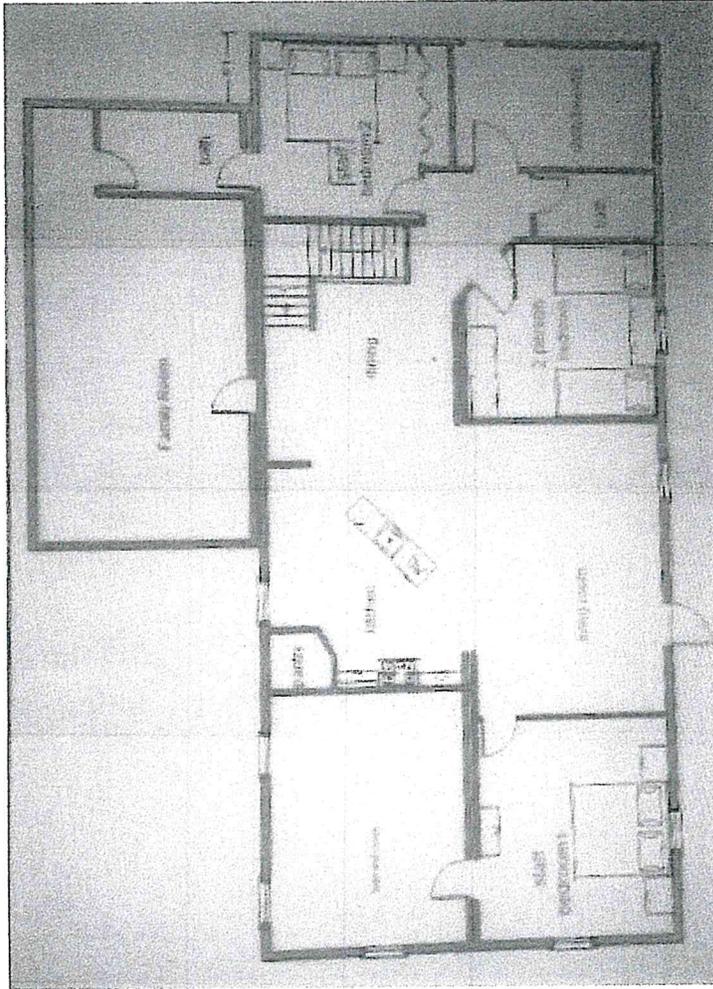


CONSTRUCTION SURVEY FOR
STEPHEN K. RAY

OF
 LAND RECORDED IN DB 2976, PG 717
 REF: DEED BOOK 327, PAGE 588

TAX PARCEL 2090003401

SCALE	1" = 50'
TOWNSHIP	SHALLOTTE
COUNTY	BRUNSWICK
STATE	N.C.
TOWN	



**BRUNSWICK COUNTY BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
STAFF REPORT**

December 13, 2018

Application No. 18-18S

Applicant: Brunswick Christian Recovery Center, Inc.

Property Location: 1401 Ash-Little River Road NW (SR 1300), Ash NC 28420

Parcel Number: 2090003401

Zoning District: Rural Low Density Residential (RR)

Intent: "The Rural Low Density Residential District is intended to accommodate nonresidential agricultural uses and low density residential development, as well as limited nonresidential uses that are supportive of the County's traditional agricultural orientation including farming, silviculture operations and related activities. Development in this District should rely predominantly on individual wells and septic tank systems for domestic water supply and sewage disposal, respectively, although clustered residential development served by public water and wastewater systems may be allowed."

Surrounding Zoning: **North:** RR **South:** RR
 East: RR **West:** RR

Proposed Use of Property: Group Care Home

The application was submitted to the Brunswick County Planning Department on November 15, 2018.

The Brunswick Christian Recovery Center, Inc. proposes to open a "Group Care Home" at the above referenced location. The Brunswick County Future Land Use Plan designates the subject parcel as Low Density Residential (LDR). The proposed use is only permissible in the RR Zoning District with Special Use Permit approval by the Brunswick County Board of Adjustment.

Approval Criteria – Section 3.3.9.B:

- 1. Circulation:** All access to the site will occur from Ash-Little River Road NW (SR 1300). The existing driveway permit will support the use.

2. **Parking and Loading:** One (1) parking space per three (3) beds is required. Thirteen (13) residents are proposed, requiring a minimum of five (5) parking spaces. There is enough room for the required parking located on the 3.298-acre parcel.
3. **Service Entrances and Areas:** N/A
4. **Lighting:** No additional lighting will be required. Current outdoor lighting will be utilized.
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:** An existing septic system and well are located on-site. The septic system will require a recheck prior to the change of use.
7. **Open Space:** There are no separate open space requirements for this use.
8. **Environmental Protection:** The applicant must meet all applicable Federal, State and Local Government requirements.
9. **Screening, Buffering and Landscaping:** A 0.2 opacity buffer will be required around the periphery of the property. Existing screening, buffering and landscaping of the parcel at the peripheral may be sufficient. If, at the time of inspection, the opacity requirement cannot be met with existing plants, additional plantings will be requested.
10. **Effect on Adjoining Property:** The effect on the adjoining property is minimal as the surrounding property is residential and rural in nature.
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.

Additional Approval Criteria (5.3.3.B.)

1. A group care home may be no closer than one-half mile radius, measured lot line to lot line, from any existing and/or permitted family care home, group care home, or emergency shelter. **There is no family care home, group care home or emergency shelter within a one-half mile radius of the proposed facility.**
2. The home shall be operated in a manner that is compatible with the neighborhood and shall not be detrimental to adjoining properties as a result of traffic, noise, refuse, parking or other activities. **Structure will be used for sleeping and meal purposes only. The residents will be transported each morning to the current recovery campus for normal program operations and meetings.**
3. The home shall maintain a residential appearance compatible with the neighborhood. **Home currently has a residential appearance and is proposed to remain the same.**
4. The home shall meet all State requirements, and all applicable housing and International Building Code with North Carolina Amendments requirements. **Applicant will be made aware of this and it will be one of the conditions of approval.**

Conditions:

If approved, this development shall have a vested right for a period of three years. A two-year extension may be requested by the applicant to the Brunswick County Board of Adjustment.

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 site plan must be amended to include a ten foot (10') deep, 0.2 opacity buffer around the periphery of the property. Existing screening, buffering and landscaping of the parcel at the peripheral may be sufficient. If, at the time of inspection, the opacity requirement cannot be met with existing plants, additional plantings will be required.
4. The home shall meet all State requirements, and all applicable housing and International Building Code with North Carolina Amendments requirements.
5. 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.

**BRUNSWICK COUNTY
SPECIAL USE PERMIT
FINDINGS OF FACT WORKSHEET**

Application No. 18-18S

Applicant: Brunswick Christian Recovery Center, Inc.

Property Location: 1401 Ash-Little River Road, Ash NC 28420

Zoning District: RR **Land Use Classification:** Low Density Residential

Surrounding Zoning: North: RR, South: RR, East: RR, West: RR

Proposed Use of Property: Group Care Home

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 finding:

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:

**BRUNSWICK COUNTY
SPECIAL USE PERMIT
FINDINGS OF FACT WORKSHEET**

Application No. 18-18S

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 finding:

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:

V. DECISION:

1. MOTION TO GRANT PERMIT:

“I move that we GRANT the special exception 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.”**

**BRUNSWICK COUNTY
SPECIAL USE PERMIT
FINDINGS OF FACT WORKSHEET**

2. MOTION TO DENY PERMIT: (state all that are applicable)

“I move that we DENY the special exception permit because the proposed use, if developed as proposed:

- a) **will not be in harmony with the area and not substantially injurious to the value of properties in the general vicinity, and/or**
- b) **will not be in conformance with all special requirements applicable to the use, and/or**
- c) **will adversely affect the health and safety of the public, and/or**
- d) **does not adequately address the twelve (12) review factors identified in Section 3.3.9.B. of the Brunswick County Unified Development Ordinance.”**

CONDITIONS:

- 1. That the development shall proceed in conformity with all plans and design features submitted as part of the special use permit application and kept on file by the Brunswick County Planning Department.
- 2. That the development of the parcel(s) shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance.
- 3. That 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.
- 4. _____

- 5. _____

- 6. _____

Internal Use Only
Application No. 18-19 A
Date Received 11-8-18
Fee \$125

Receipt # 023674

COUNTY OF BRUNSWICK

NOTICE OF APPEAL TO BOARD OF ADJUSTMENT

Applicant Timothy Rife Owner Christian Hastbeck
Address 1036 Wilma Ave. Supply, NC 28162 Address PO Box 1081 Charlotte, NC 28409
Telephone (H) 910-431-3101 Telephone (H) (0) 910-754-6541
Relationship of Applicant to Owner Buyer
Property Street Address 1036 Wilma Ave, Supply, NC 28162
Tax Map # 18400020 Lot Dimensions 240.83 Zoning Residential
183.69
68150

I (Timothy Rife) hereby appeal to the Brunswick County Board of Adjustment

from the following adverse decision, order, requirement or determination of the Brunswick County Zoning Administrator.

In the space provided below or on the back of this form, please describe in detail, the background of your case and the specific nature of your appeal.

I bought both for the space to store recreational vehicles (Boat, etc). My wife's home is located in small and wooded. Can store camper on side or in back. Placement of septic tank other side has large wooded area. Under special circumstances we are asking for permission to store camper on empty lot.

I certify that all the information provided by me in this Notice of Appeal is accurate to the best of my knowledge, information, and belief.

11-8-18
Date

Tim Rife
Signature of Appellant

Brunswick County Board of Adjustment Appeal of Decision Case 18-19A

CO-COUNTY JURISDICTION

CO-RR

SONJA ST SW

STONE CHIMNEY RD SW
SR 1115

EDGARWOOD WAY SW

MARY LOU LN SW

CO-RR

WILMA AVE SW

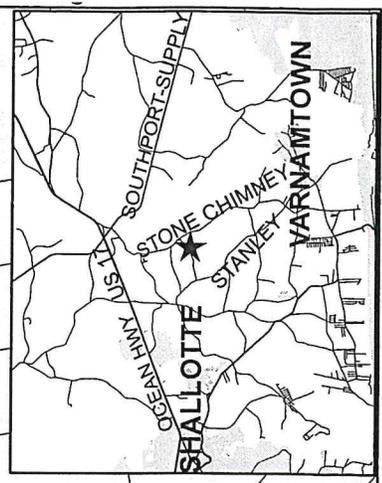
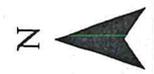
184OB068

184OC027

184OC025

SEA WIND CT SW

Project Site
Parcel #184OC026



CASE 18-19A

ADJACENT PROPERTY OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
1840B068	ANDERSON TIMMY RAY	12 HIGHLAND AVE SW	CONCORD	NC	28027-6972
1840C027	STONE CHIMNEY PROPERTIES LLC	PO BOX 1081	SHALLOTTE	NC	28459
1840C025	STONE CHIMNEY PROPERTIES LLC	PO BOX 1081	SHALLOTTE	NC	28459

OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
1840C026	STONE CHIMNEY PROPERTIES LLC	PO BOX 1081	SHALLOTTE	NC	28459

APPLICANT(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
1840C026	TIMOTHY RIFE	1036 WILMA AVE	SUPPLY	NC	28462

**BRUNSWICK COUNTY BOARD OF ADJUSTMENT
APPEAL OF STAFF DECISION
STAFF REPORT**

December 13, 2018

Application No. 18-19A
Applicant: Timothy Rife
Property Location: 1032 Wilma Avenue SW, Supply NC 28462
Parcel Number: 184OC026
Zoning District: RR (Rural Low Density Residential)
Surrounding Zoning **North:** RR **South:** RR
East: RR **West:** RR

Proposed Use of Property: Camper Site/Camper Storage

The application was submitted to the Brunswick County Planning Department on November 8, 2018.

Appeal: The applicant requests to appeal a staff decision made by the Brunswick County Planning Department to remove a set up/stored camper at 1032 Wilma Avenue SW.

Relevant Information

- A public hearing was duly noticed as a sign was posted on the subject parcel and adjoining property owners were notified of the meeting.
- Timothy Rife is the owner of the camper located at 1032 Wilma Avenue SW.
- Stone Chimney Properties, LLC is the owner of Tax Parcel 184OC026, the parcel on which the camper is located. Christian Haslbeck is the manager of the LLC according to documents filed with the North Carolina Secretary of State.
- On July 26, 2018, a camper was observed on Tax Parcel 184OC026 and reported to Code Enforcement.
- The subject property contains 0.432 acres in total, it is zoned Rural Low Density Residential (RR) and it is part of the Edgarwood Subdivision.
- Land uses surrounding the subject property consist of single family residential homes.

- The Brunswick County Land Use Plan designates this parcel as Low Density Residential (LDR).
- The Brunswick County Unified Development Ordinance (UDO) defines a **camper** as follows:

“A folding structure manufactured of metal, wood, canvas, plastic, or other materials, or any combination thereof, mounted on wheels and designed for travel, recreation, or vacation use. A camper is not designed or intended to be used as a permanent dwelling. Campers may also include the following:

 - (a) *Travel trailer*: A vehicular, portable structure built on chassis, designed to be towed by a self-propelled vehicle for use for travel, recreation, or vacation purposes. A travel trailer is not designed or meant to be used as a permanent dwelling.
 - (b) *Recreational Vehicle*: A self-propelled vehicle or portable structure mounted on such a vehicle designed as temporary dwelling for travel, recreation, and vacation.
 - (c) *Tent*: A portable shelter of canvas, plastic, or skins stretched over a supporting framework of poles with skins stretched over a supporting framework of poles with ropes and pegs.”
- This parcel is zoned Rural Low Density Residential (RR). Neither Section 5.1.2.A. Use Interpretation – Residential Uses/Household Living nor the Household Use Grouping of Section 5.2.3. Permitted Use Table of the UDO lists a camper as a principal use or an accessory use under this grouping. Instead, a campground is listed in Section 5.1.7.A. Use Interpretation - Outdoor Lodging and the Outdoor Lodging Use Grouping of Section 5.2.3. Permitted Use Table.
- A **camper space** is defined in the Brunswick County UDO as follows:

“A plot of land within a campground designed for the accommodation of one camper or tent.”
- Section 5.4.2.F. of the UDO reinforces that campers may not be used as an accessory dwelling (e.g. allowing visitors to “camp” in one’s yard). It reads:

“Use of a travel trailer or recreational vehicle (RV) as an accessory dwelling shall be prohibited within a Residential district or on property devoted to residential use. No RV or travel trailer shall be permanently connected to public or private utilities.” The subject parcel is within the Edgarwood Subdivision, which is residential in nature.
- While Section 5.2.3. Permitted Uses of the Brunswick County Unified Development Ordinance allows a Commercial Self-Service Storage Facility in the RR Zoning District with limitations, the subject parcel is within the Edgarwood Subdivision, which is residential in nature.

- On August 9, 2018 a Notice of Violation was mailed to the property owner from Code Enforcement (Case 6116) asking that the camper be removed from the parcel within 10 days of receipt of the notice.
- On August 17, 2018 the letter was returned, indicating an incorrect mailing address. New letters were mailed out on that date.
- On August 28, 2018 property owner Christian Haslbeck contacted the department, stating that he was the owner of Stone Chimney Properties, LLC. Mr. Haslbeck continued that he was owner-financing the property to Timothy Rife, who owned the camper on the subject parcel.
- On August 29, 2018 Mr. Haslbeck indicated that his deed restrictions stated that this property could have a camper on it. Our research shows that the deed restrictions terminated on December 31, 2000.
- On November 8, 2018 a Notice of Appeal was filed by Timothy Rife regarding the determination to remove the camper.
- A survey of our records does not indicate that a campground has been approved for this area. As such, campers could not be occupied for the purposes of camping. The use of the property is a residential subdivision. A camper may be stored on a parcel where the owner has a primary structure on their parcel and is simply parking their personal camper on the parcel until they proceed on their next camping trip.
- There is no primary structure currently located on this parcel.

**COUNTY OF BRUNSWICK
ORDER INTERPRETING THE
UNIFIED DEVELOPMENT ORDINANCE (UDO)**

The Board of Adjustment for the County of Brunswick, having held a public hearing on **December 13, 2018** to consider **Application Number 18-19A (Tax Parcel 184OC026)** submitted by **Timothy Rife**, a request for an interpretation of:

**Appendix (formerly Article 12) Camper Definition and Section 5.4.2.F.
of the Unified Development Ordinance**

Insofar as the Ordinance affects the removal of a camper presently located at 1032 Wilma Avenue, Supply NC 28462, having heard all of the evidence and arguments presented at the hearing, the Brunswick County Board of Adjustment makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. **There was substantial evidence in the record to show the following FACT(S):**

2. (a) **The resolution of this case depends on the interpretation of the Ordinance language as applied to the foregoing facts. It is the Board's CONCLUSION that the following sections of this Ordinance, as applied to those facts, shall be interpreted as follows:** _____

- (b) **The resolution of this case depends solely on an interpretation of the Ordinance language, without regard to the particular facts of this case. Therefore, it is the Board's CONCLUSION that the following sections or provisions of the Ordinance shall in this case and hereafter be interpreted as follows:** _____

THEREFORE, IT IS ORDERED that the decision of the Zoning Administrator is hereby

Affirmed

Reversed

Modified as follows: _____

In addition, IT IS FURTHER ORDERED that the following action be taken:

Ordered this the 13th day of December 2018.

Robert J. Williamson, Chairman

Secretary _____