

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

**6:00 P.M., Thursday
September 12, 2019**

**Commissioners Chambers
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 August 22, 2019 Meeting.
- IV. Agenda Amendments.
- V. Old Business.
 - A). 19-06V Variance
Applicant: Grey Outdoor, LLC
Location: 4846 Southport-Supply Road SE, Southport, NC 28461
Tax Parcel 205PA001
Applicant requests two (2) Variances from the Brunswick County Unified Development Ordinance (UDO). The first variance is from Section 8.8.1.G.1. to allow a non-conforming outdoor advertising structure to be relocated one hundred sixty-five (165) linear feet from another outdoor advertising sign as opposed to the minimum three thousand (3,000) linear feet of separation for outdoor advertising structures required. The second variance is from Section 8.8.1.I. to allow a non-conforming outdoor advertising structure to be relocated five (5) feet from the left side property line as opposed to the minimum fifteen (15) feet as required.
 - B). 19-11S Special Use Permit
Applicant: Sylvain Goulet
Location: 2558 Maco Road NE, Leland, NC 28451
Tax Parcels 02700032 & 02700033
Applicant requests a Special Use Permit consistent with Section 5.2.3. and Section 5.3.5.S. of the Unified Development Ordinance (UDO) to allow "Vehicle and Heavy Equipment Sales and Rentals".

VI. New Business.

- A). 19-12A Appeal of Decision
Applicant: James R. Todd/Brunswick Plantation Property Owners Association
Location: 252 S. Middleton Drive, Calabash, NC 28467
Tax Parcel 210IA058
Applicant is appealing an interpretation of the Brunswick County Unified Development Ordinance that Caw Caw Land Corporation can operate a model home, subject to the conditions and requirements outlined in the June 25, 2019 letter to Caw Caw Land Corporation.

VII. Staff Report.

VIII. Adjournment.

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

6:00 P.M., Thursday
August 22, 2019

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

MEMBERS PRESENT

Robert Williamson, Chairman
Mary Ann McCarthy
Marian Shiflet
Virginia Ward
Alan Lewis

MEMBERS ABSENT

None

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Justin Brantley, Project Planner

OTHERS PRESENT

Scott Dutton, ATMC

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:02 p.m.

II. ROLL CALL.

There were no members absent.

III. CONSIDERATION OF MINUTES OF THE JULY 11, 2019 MEETING.

Ms. Shiflet made a motion to accept the minutes of the July 11, 2019 meeting as written. The motion was seconded by Ms. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

Ms. Bunch requested to move the Election of Officers to the end of the meeting.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

Ms. McCarthy said that the public hearing is not to solicit broad public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the record by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

Ms. McCarthy stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.5.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

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

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

The Chairman swore in and or/ affirmed Helen Bunch and Scott Dutton as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

A) 19-13V: Variance
Applicant: Atlantic Telephone Membership Corporation (ATMC)
Location: 101 Town Creek Road NE, Leland, NC 28451
Tax Parcel 0700004602
Applicant requests three (3) Variances from Section 5.3.4.M. and Section 4.4.4.A. of the Brunswick County Unified Development Ordinance (UDO) for the construction of a minor utility equipment facility. The first

variance request is to allow the facility to be located 34.7' from the front property line as opposed to the 40' required by the Ordinance. The second variance request is to allow the facility to be located 16' from the right-side property line as opposed to the required 30' from the right-side property line. The third variance request is to allow the facility to be located 29.4' from the street side property line as opposed to the 50' required by the Ordinance.

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

Mr. Scott Dutton, representative of Atlantic Telephone Membership Corporation (ATMC), addressed the Board. Mr. Dutton stated that the site has been used since the 1980's and over the years has become a critical convergence point for communication infrastructure. Mr. Dutton stated that the main reason for the request is above ground damage and loss to the facility from Hurricane Florence. Mr. Dutton added that it would be easier to replace the equipment and structure onsite than to rebuild at another location because it is an established convergence point.

Mr. Dutton stated that the intent is to permanently replace the former network and communications facility in a manner to also help prevent future outages and loss of critical services. Mr. Dutton added that an improvement to the site will include an elevated platform for the equipment cabinet and backup power. Mr. Dutton continued that as a result of Hurricane Florence, there is currently a lack of reliable facilities within that area of the County, which can affect recovery efforts associated with future incidents.

Mr. Dutton stated that the strict application of the ordinance in regard to structure setbacks would prevent the reestablishment of the telecommunication equipment site resulting in a hardship for ATMC. Mr. Dutton added that the hardship also results from conditions peculiar to the property, specifically the size of the parcel (0.123 acres). Mr. Dutton stated that most of the properties that ATMC has used over the years are very small. Mr. Dutton stated that the hardship does not result from actions taken by ATMC.

Mr. Williamson asked about the height of the current fence on site. Mr. Dutton responded that he thinks the fencing is seven feet (7') in height. Mr. Williamson asked about the height of the changes to the site. Mr. Dutton responded that a twelve-foot (12') platform will be added to the site and the equipment would be an additional six feet (6'). Mr. Williamson asked about the height of the equipment currently on the site. Mr. Dutton responded currently the structure on site is around six feet (6') in height. Mr. Dutton

added that the original building on the site was around fourteen feet (14') in height.

Mr. Williamson asked what took so long to get this site restored. Mr. Dutton responded that it took significant time to evaluate the issue and seek options.

Mr. Williamson asked if these improvements are not made to the site, could it negatively impact 911 Communications. Mr. Dutton responded, yes, it could negatively impact 911 Communications under the right circumstances.

Ms. Shiflet asked if the existing building would be removed, with a new building put in its place. Mr. Dutton responded that the platform and equipment will replace the existing structure and will take less space on the site compared to the previous building.

Ms. Ward asked if the fencing will appear residential in its aesthetics. Mr. Dutton responded that ATMC could make that change if necessary.

Mr. Williamson asked what the site is referred to as. Mr. Dutton responded that it is a telecommunications equipment site. [Note that per the Brunswick County Unified Development Ordinance (UDO) the use is categorized as a "Minor Utility Equipment Facility."]

With no further comments, the Chairman summarized that Atlantic Telephone Membership Corporation is requesting three variances for a telecommunications equipment site. The variances are being requested as a result of damage to the site during Hurricane Florence that requires the replacement of some equipment. Mr. Williamson stated that it would be impractical to move all of the equipment to another site because the site serves multiple communication lines. Mr. Williamson stated that two (2) of the variances are for the 2 road frontages and the third variance is for a side setback. Mr. Williamson added that improvements to the site would ensure the safety of the 911 Communications System for the future.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

DECISION: Having held a public hearing to consider Case Number 19-13V, submitted by Atlantic Telephone Membership Corporation (ATMC), a request for three (3) variances to use the property located at 101 Town Creek Road NE, Leland NC 28451 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACTS** and draws the following Conclusions:

1. It is the Board's **CONCLUSION** that, unnecessary hardship will result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following **FINDINGS of FACT**: The site is the location of critical communications equipment necessary for the Brunswick County 911 Center and the Leland area of Brunswick County. The underground equipment cannot be easily relocated, and Brunswick County is currently in the hurricane season, making the need to have communications equipment capabilities even more vital.
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 grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: The size of the property (0.123 acres) causes the hardship, as a platform is needed to keep the equipment above potential floodwaters, coupled with the fact that the underground equipment is still in intact and usable.
3. It is the Board's **CONCLUSION** that the hardship does not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following **FINDINGS OF FACT**: The hardship is a result of the actions of Hurricane Florence. The equipment was installed prior to the enactment of zoning in Brunswick County. The location of the equipment met the standards in effect for the project at that time.
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**: The Staff Report indicated that the hardship was a result of an Act of God (Hurricane). Due to the size of the property, here is no area on the parcel where both the necessary platform and equipment will meet the structural setback requirements.

THEREFORE, on the basis of all foregoing, IT IS ORDERED that the application for the VARIANCE be GRANTED, as motioned by Ms. Ward, seconded by Mr. Lewis and unanimously carried.

VIII. STAFF REPORT.

Ms. Bunch stated that next month's meeting will likely include a minimum of three cases. Ms. Bunch also provided an update regarding the previous recommendation by the Board of Adjustment for the Planning Board to consider amending the UDO for the setback of accessory structures to be consistent with residential setbacks for primary structures. Ms. Bunch stated that this change has been adopted by the Board of County Commissioners.

Mr. Williamson asked Ms. Bunch if the Board could consider changing the meeting time from 6:00 P.M. to 5:30 P.M. Mr. Batton stated that it may be a problem for participants who get off of work at 5:00 P.M. Mr. Batton added that it is up to the Board to decide. Mr. Williamson stated that the Board will think about it and possibly consider the change in the future.

IX. ELECTION OF OFFICERS.

Ms. McCarthy nominated Mr. Williamson for the position of Chairman. The motion was seconded by Ms. Ward. Mr. Lewis motioned to close nominations. The motion was seconded by Ms. Shiflet. The Board unanimously approved Mr. Williamson as Chairman.

Ms. Ward nominated Ms. McCarthy for the position of Vice-Chairman. The nomination was seconded by Mr. Williamson. The Board unanimously approved Ms. McCarthy as Vice-Chairman.

X. ADJOURNMENT.

With no further business, Ms. Shiflet made a motion to adjourn. The motion was seconded by Mr. Williamson and unanimously carried.

For Office Use Only
File# 19-06V
(Initial Ap.)

COUNTY OF BRUNSWICK

ZONING BOARD OF ADJUSTMENT

Variance Application Form

Application Number 19-06V Date 4-11-2019
Application Fee \$100.00 Receipt # 023831

Applicant Grey Outdoor, LLC Owner Haywood Equity Group Ltd Partnershi
c/o Ralph Dickson
Address P O Box 1591 Address P.O. Box 458
Wrightsville Beach NC 28480 Gastonia NC 28053-0458
Telephone 910-620-5168 Telephone 704-868-6893

Relationship of Applicant to Owner Lessee + Lessor

Property Street Address 4846 Southport Supply Rd Southport NC 28461
Plant Bk 0004 Pg 0098

Tax Map # 208711652937 Block n/a Lot n/a

Lot Dimensions 162 x 221 ft. Square Footage 35,802 Zoning C-LD

REQUEST FOR A VARIANCE

PURPOSE OF VARIANCE - A variance is the official allowance of a variation from the requirements of the County Zoning Ordinance or other development regulations. An applicant for a variance must demonstrate that there are some valid reasons which create the need for a variance. These reasons cannot be strictly economic, but must generally involve some physical problem with the subject property which will not allow it to be developed in a reasonable manner if the development regulations are followed literally. The reasons must be peculiar to the property and cannot be a result of the owners own actions.

BOARD OF ADJUSTMENT - The Board of Adjustment, or BOA, is the official board which considers requests for variances. The BOA receives sworn testimony at its meetings and issues decisions on variance requests based on this testimony. It is the responsibility of each applicant for a variance to attend the BOA meeting and present sworn testimony in support of the request.

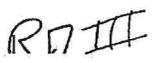
REASON FOR THE REQUEST FOR A VARIANCE - Explain in your own words why you are requesting a variance. Make sure you clearly indicate the problem(s) you have in complying with the County development regulations. (Attach additional sheets if necessary.)

- We are looking to relocate and replace an existing 12x28 ft billboard sign at 4846 Southport Supply Rd. The property has been taken and purchased by the state for a widening project. We would like to relocate the existing sign on private property outside of the right of way. The existing regulations would preclude the relocation of the sign structure we would like to put the same size sign in place of the existing sign. The sign was built before 2000 and is an existing non-conforming sign due to spacing from other signs.

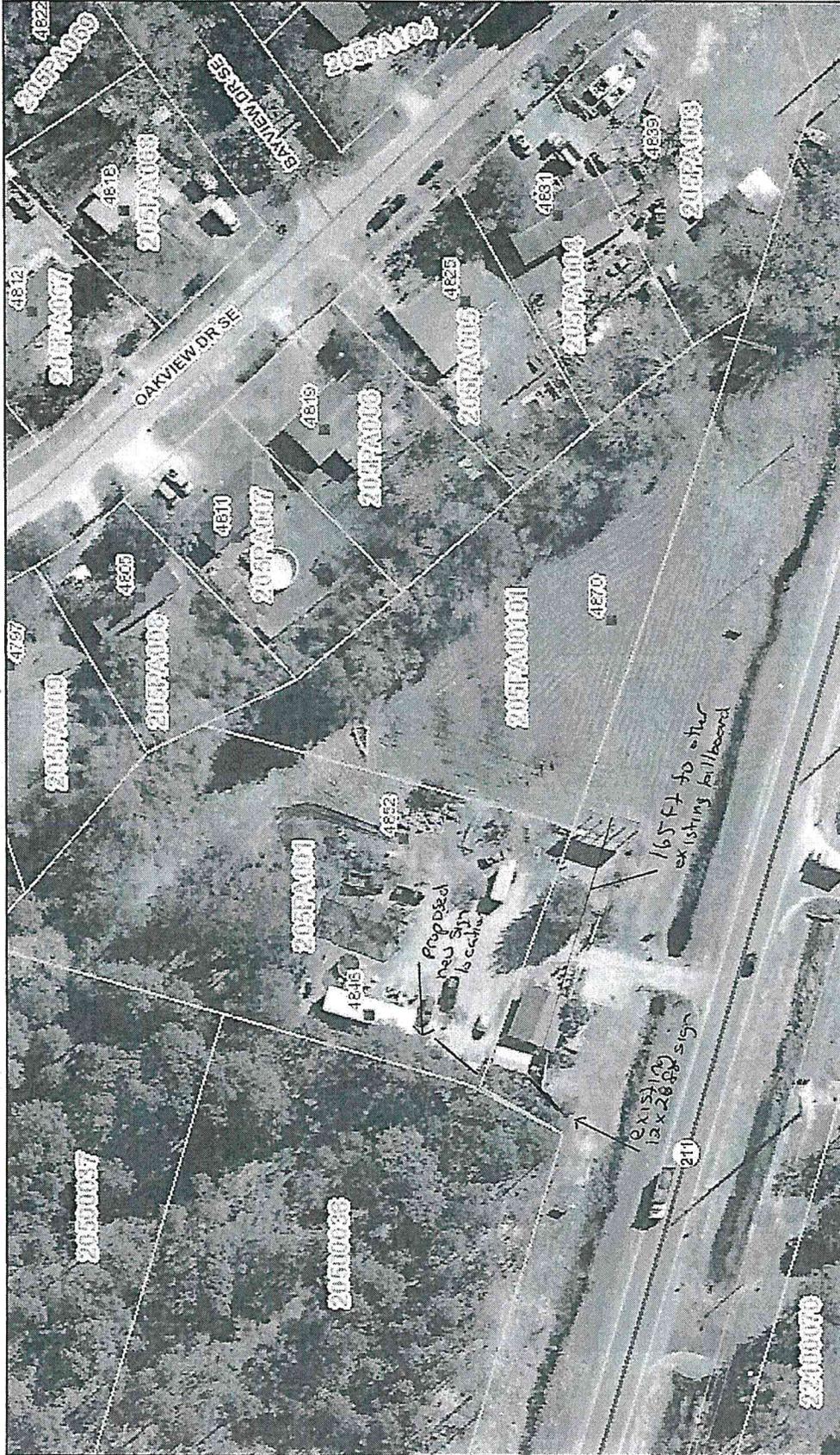
- ATTACH PLOT PLAN DESCRIBING VARIANCE REQUEST
- PROVIDE 1 ORIGINAL AND 12 COPIES OF ALL ATTACHMENTS TO BE INCLUDED AS PART OF THE APPLICATION DOCUMENT.
- APPROPRIATE FEE MUST ACCOMPANY ALL APPLICATIONS.
- REPRESENTATION IS REQUIRED AT ALL BOARD MEETINGS.

4-11-19
Date


Signature of Applicant

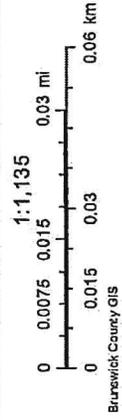

Signature of Property Owner

Brunswick County GIS Data Viewer



4/11/2019, 3:24:49 PM

- Addresses
- US Hwy
- NC Hwy
- Interstate
- State Road
- Minor
- Parcels
- State Road
- Condo
- Parcel



CASE 19-06V

ADJACENT PROPERTY OWNER(S)

ARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
05PA00101	PAT NEWTON PROPERTIES LLC	POST OFFICE BOX 3292	CARY	NC	27519
05PA008	STAMEY JAMES G ETUX	PO BOX 10	POLKVILLE	NC	28136
05PA009	BROWNSON HUGH R ETUX HELENE M	11324 FARLIN ST	LOS ANGELES	CA	90049
2100066	MILLIKEN PROPERTIES LIMITED PARTNER	PO BOX 2267	SHALLOTTE	NC	28459
2100070	ST PETERS LUTHERAN CHURCH	4843 SOUTHPORT-SUPPLY RD	SOUTHPORT	NC	28461
05PA007	HODGE RUBY LOIS	4811 OAKVIEW DR	SOUTHPORT	NC	28461
0500038	HAYWOOD EQUITY GROUP LTD PARTNERSHIP	PO BOX 458	GASTONIA	NC	28053-0458
0500037	HAYWOOD EQUITY GROUP LTD PARTNERSHIP	PO BOX 458	GASTONIA	NC	28053-0458
05PA010	HARRINGTON SHIRLEY P	1025 USREY RD	LILESVILLE	NC	28091-6014

OWNER(S)

ARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
05PA001	HAYWOOD EQUITY GROUP LTD PARTNERSHIP	PO BOX 458	GASTONIA	NC	28053-0458

APPLICANT(S)

ARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
	Grey Outdoor, LLC	PO BOX 1591	WRIGHTSVILLE BEACH	NC	28480

Brunswick County Planning

Variance

Case 19-06V

CO=COUNTY JURISDICTION

20500037

CO-CLD

20500038

CO-R-7500

LONGVIEW DR SE

BAYVIEW DR SE

OAKVIEW DR SE

205PA010

205PA009

205PA008

205PA007

205PA00101

SOUTHPORT-SUPPLY RD SE

PATRICK NEWTON DR SE

22100070

22100066

WEST TRACE DR SE

Project Site
Parcel #205PA001



NC 211

Brunswick County Planning Variance Case 19-06V

CO=COUNTY JURISDICTION

20500037

20500038

205PA010

205PA009

205PA008

205PA007

205PA050

205PA0101

SOUTHPORT-SUPPLY RD SE

PATRICK NEWTON DR SE

2050007

LONGVIEW DR SE

EMVIEW DR SE

OAKVIEW DR SE

WEST TRACE DR SE



Project Site
Parcel #205PA001

NC-211





Brunswick County Planning Department
P.O. Box 249
75 Courthouse Drive N.E., Bldg I
Bolivia, NC 28422

NONCONFORMING USE CERTIFICATE NU 19-02

This document is for the purpose of legally establishing a nonconforming use as outlined in Section 10.5. of the Brunswick County Unified Development Ordinance (UDO). "A nonconforming sign is a sign that was legally established subject to a lawfully issued permit in compliance with the applicable laws and ordinance in effect on the date of construction, but by reason of its size, height, location, design, or construction is no longer in compliance with the requirements".

Tax Parcel Number of Requested Parcel: 205PA001

Physical Address of Subject Parcel: 4846 Southport-Supply Road

Existing Nonconforming Use: Outdoor Advertising Sign

Petitioner's Name and Mailing Address: Grey Outdoor, LLC PO Box 1591
Wrightsville Beach NC 28480

Property Owner's Name and Mailing Address: Same as above.

Copy of Map of Requested Parcel (*to be attached to the request*).

***** FOR OFFICE USE ONLY *****

Based upon the review of the information provided above, a Nonconforming Use Certificate is hereby issued as follows:

Nonconforming Use: Outdoor Advertising Sign

Date Nonconforming Use is to be Discontinued: Indefinitely, per the terms and limitations of the Brunswick County Unified Development Ordinance

Authorized County Official: Helen Evans Bunch, Zoning Administrator

Date of Authorization: June 25, 2019

To Whom it may Concern,

I Grey Vick Owner of Grey Outdoor LLC authorize Guy Williamson to represent Grey Outdoor LLC for permitting and hearings in North & South Carolina. Specifically for the Board of Adjustment in Brunswick County NC

Grey Vick

Grey Vick

**BRUNSWICK COUNTY BOARD OF ADJUSTMENT
VARIANCE
STAFF REPORT**

September 12, 2019

Application No. 19-06V
Applicant: Grey Outdoor, LLC
Property Location: 4846 Southport-Supply Road SE, Southport NC 28461
Parcel Number: 205PA001
Zoning District: Commercial Low Density (CLD)
Surrounding Zoning **North:** CLD & R-7500 **South:** CLD
 East: CLD & R-7500 **West:** CLD

Proposed Use of Property: Outdoor Advertising Structure

The application was submitted to the Brunswick County Planning Department on April 11, 2019.

The applicant, Grey Outdoor, LLC, has filed an application for two (2) Variances from the Brunswick County Unified Development Ordinance (UDO). The first variance is from Section 8.8.1.G.1., to allow an Outdoor Advertising Structure to be relocated one hundred sixty-five (165) linear feet from another Outdoor Advertising Structure as opposed to the minimum three thousand (3,000) linear feet of separation for Outdoor Advertising Structures as required. The second variance is from Section 8.8.1.I., to allow a side yard of five feet (5') from the left side of the property as opposed to the minimum fifteen-foot (15') side yard setback required by the UDO. **The Variance must be granted for the sign to be relocated.**

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.
- Haywood Equity Group Ltd Partnership is the owner of the property located at 4846 Southport-Supply Road SE, Southport NC.
- The subject property contains 1acre in total and is currently zoned Commercial Low Density (CLD).
- The structure was constructed prior to the implementation of zoning in the unincorporated area of Brunswick County. The structure has been continuously utilized and maintained since construction.

- Nonconforming Use Certificate NU 19-02 was issued for the subject Outdoor Advertising Sign by the Brunswick County Zoning Administrator on June 25, 2019 (See attached).
- The North Carolina Department of Transportation (NCDOT) is in the process of land acquisition for the widening of NC 211 (Southport-Supply Road) from River Road to Midway Road. The project requires the removal of the nonconforming sign from its current location.
- Section 10.5.3.A.2. of the Brunswick County Unified Development Ordinance (UDO) states that “Nonconforming signs may not be moved on the site or relocated to another site, except in conformance with the ordinance”.
- The applicant proposes to relocate the Outdoor Advertising Sign approximately one hundred sixty-five (165) feet west from an existing Outdoor Advertising Sign. Per Section 8.8.1.G.1. of the UDO, the minimum sign separation is 3,000 linear feet.
- The separation requirements for Outdoor Advertising Signs were amended from 2,000 linear feet to 3,000 linear feet in 2015.
- The applicant proposes to locate the sign five feet (5’) from the left side property line as opposed to the fifteen feet (15’) required by the UDO.
- The applicant will need all the following variances to relocate the outdoor advertising structure at the proposed location.
 - 2,835 linear foot variance to allow approximately 165 feet of separation between two (2) outdoor advertising signs.
 - 10 foot side yard variance in order to increase the side yard setback, thus bringing it more into compliance than the current nonconforming sign.

BRUNSWICK COUNTY BOARD OF ADJUSTMENT

ORDER GRANTING/DENYING A VARIANCE

The Board of Adjustment for Brunswick County, having held a public hearing on September 12, 2019 to consider Case Number 19-06V, submitted by Gray Outdoor, LLC, a request for a variance to use the property located at 4846 Southport-Supply Road, in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that, unnecessary hardship (will/will not) 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:

2. It is the Board's CONCLUSION that the hardship (does/does not) 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:

3. It is the Board's CONCLUSION that the hardship (does/does not) result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board's CONCLUSION that the requested variance (is/is not) 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:

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be (GRANTED/DENIED) subject to the following:

**COUNTY OF BRUNSWICK
ZONING BOARD OF ADJUSTMENT**

For Office Use Only
File# 19-118

Special Use Permit Application Form

Application Number 19-118 Date 6/20/19
Application Fee \$250.00 Receipt # 0 23800
Date of Meeting 8/01/2019 Application Deadline 7-11-19

Applicant Sylvain Goulet Owner Sylvain Goulet
Address 2562 MACO RD Address 2562 MACO RD NE
Leland NC Leland NC
Telephone (L) (C) 774-581-8959 Telephone (L) (C) 774-581-8959
Relationship of Applicant to Owner SAME
Property Street Address 2558 2562 MACO RD NE Leland NC
Tax Map # 02700032 + 02700033 Parcel Zoning Designation CO-RR
Proposed Use of Property Used CAR Dealer Vehicle and Heavy Equipment
SALES and Rentals

PLEASE ENCLOSE WITH APPLICATION:

1. A **detailed statement of all proposed uses** of the property (Attach separate sheet).
2. **Site plan** showing all buildings, outdoor facilities, parking lots, all signs, proposed lighting, sanitation facilities, and utilities. (Attach separate sheet.) Site plan must include dimensions of parcel of land dimensions of existing structures and/or proposed structures including setbacks, i.e., distance from adjacent properties.
3. Detailed plan for any amplification or other entertainment equipment located outdoors.
4. In the space below, please indicate how the proposed project will or will not substantially injure the value of adjoining or abutting property.

5. Other information and documents, as requested.

- **APPROPRIATE FEE MUST ACCOMPANY ALL APPLICATIONS.**
- **PROVIDE 1 ORIGINAL OF ALL ATTACHMENTS TO BE INCLUDED AS PART OF THE APPLICATION DOCUMENT. ADDITIONAL COPIES WILL BE REQUESTED ONCE THE APPLICATION HAS BEEN REVIEWED BY STAFF.**

REPRESENTATION IS REQUIRED AT ALL BOARD MEETINGS

6/20/19
Date

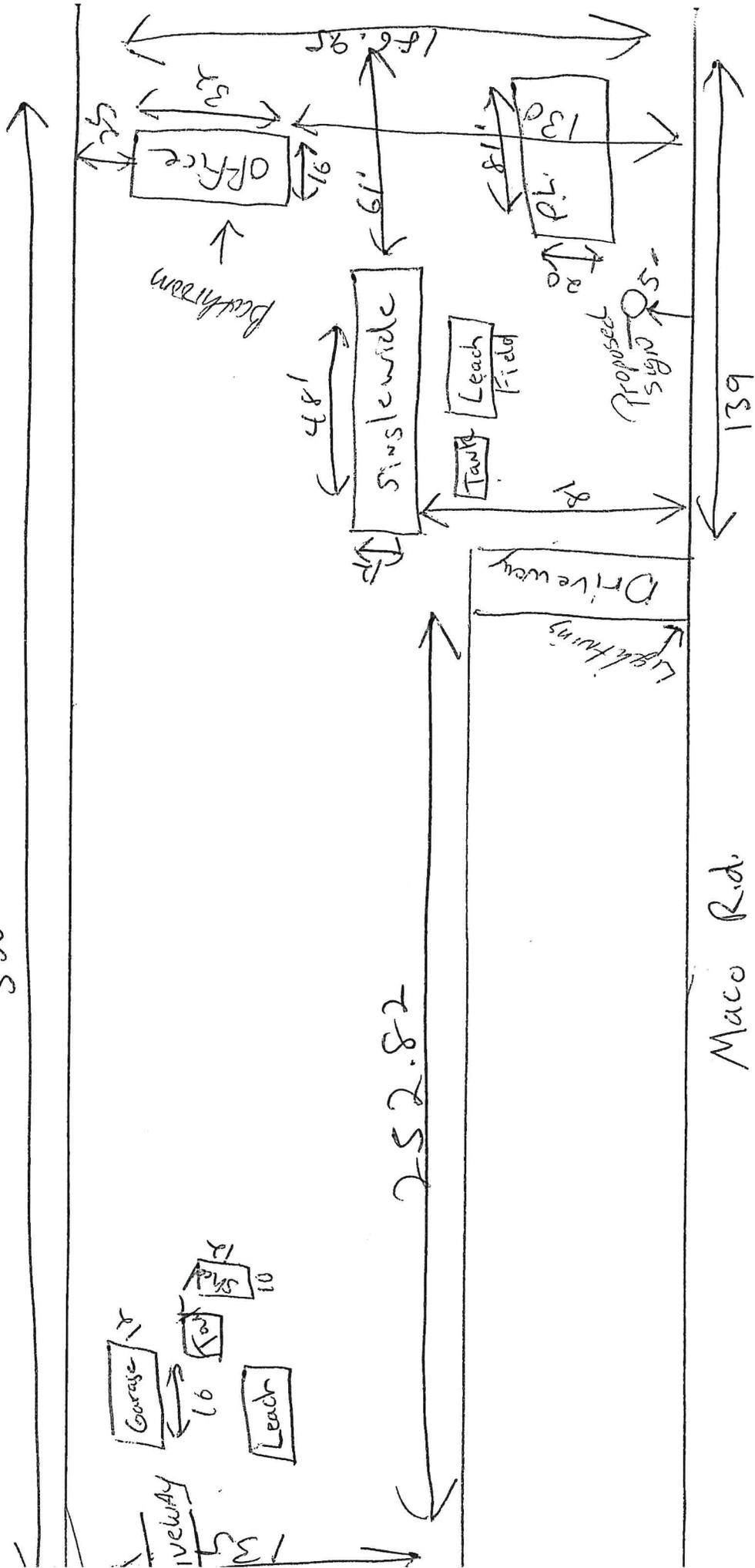
[Signature]
Signature of Applicant

[Signature]
Signature of Property Owner

330

252.82

Maco R.d.



CASE 19-11S

ADJACENT PROPERTY OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
02700038	PELLOM ALENE HRS	3997 INDIAN MANOR DRIVE	STONE MOUNTAIN	GA	30083
02700031	MISSIONARY BAPTIST CHURCH	3200 MACO RD NE	LELAND	NC	28451
0270003401	KING GEORGE W ETUX	2550 MACO RD NE	LELAND	NC	28451-8663
02700025	NIXON RUSSELL ETUX	7738 JAMES WAY NE	LELAND	NC	28451-8010
0270002502	KNOX BLANCHIE L AND	6558 NEW GROUND TRL NE	LELAND	NC	28451-9315
0270002503	KNOX LEO ET	2629 MACO RD NE	LELAND	NC	28451-7801

OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
02700032	GOULET SYLVAIN	2562 MACO RD NE	LELAND	NC	28451
02700033	ABBOTT KATHLEEN OATES	2201 E LAKE SHORE DRIVE	WILMINGTON	NC	28401

APPLICANT(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
02700032	GOULET SYLVAIN	2562 MACO RD NE	LELAND	NC	28451

Brunswick County Board of Adjustment Special Use Permit Case 19-11S

CO-COUNTY JURISDICTION

MACO RD NE NC 87

02700038

02700025

02700025

02700025

0270002502

ALSTON TRL NE

CO-RR

CO-RR

PELLOM-WRIGHT LN NE

02700031

02700032

02700032

0270003401

CO-RR

02700038

Project Site
Parcels #02700032 & #02700033

NC 87

PELLOM-WRIGHT LN NE

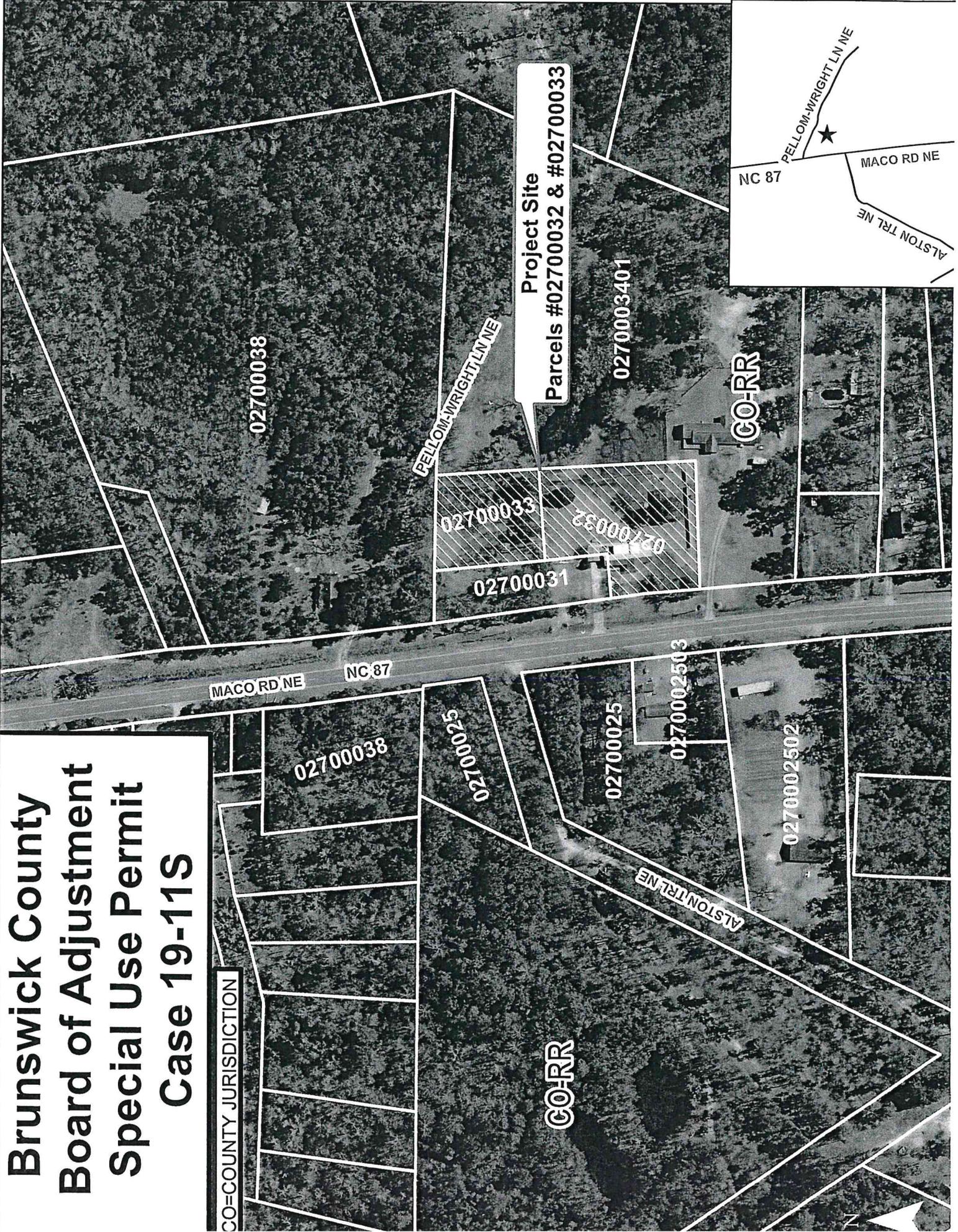
MACO RD NE

ALSTON TRL NE

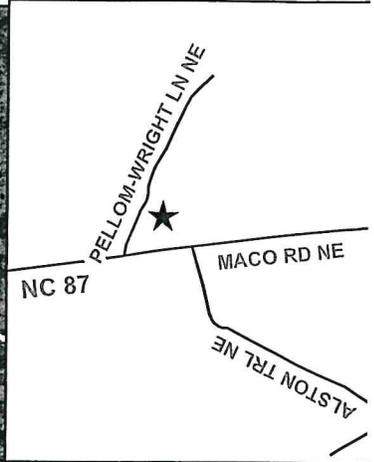


Brunswick County Board of Adjustment Special Use Permit Case 19-11S

CO=COUNTY JURISDICTION



Project Site
Parcels #02700032 & #02700033



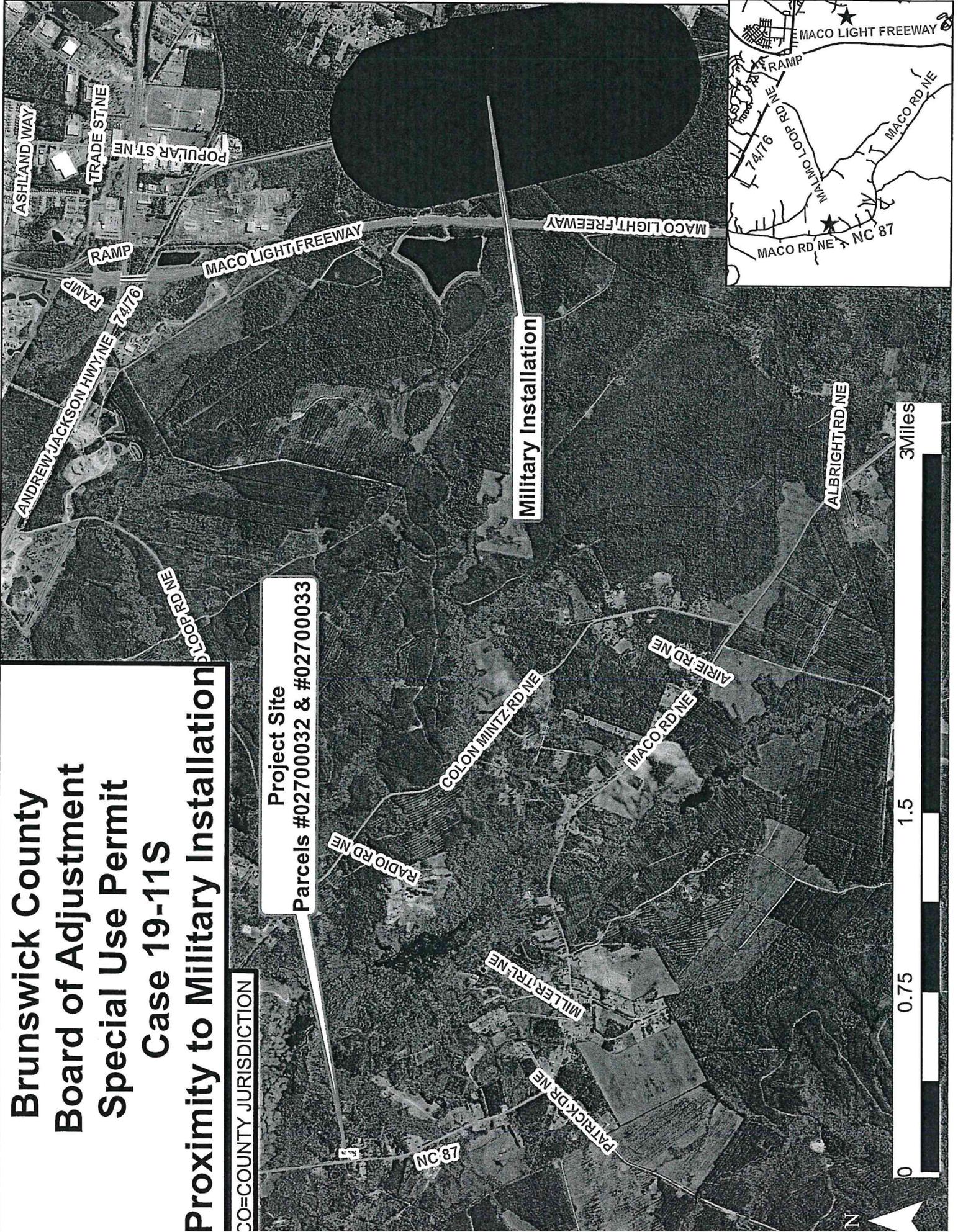
Brunswick County Board of Adjustment Special Use Permit Case 19-11S

Proximity to Military Installation

CO=COUNTY JURISDICTION

Project Site
Parcels #02700032 & #02700033

Military Installation



3 Miles

1.5

0.75

0

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

September 12, 2019

Application No. 19-11S

Applicant: Sylvain Goulet

Property Location: 2558 Maco Road NE. Leland, NC 28451

Parcel Number: 02700032 & 02700033

Zoning District: Rural Low Density Residential (RR)

Intent: “This 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: “Vehicle and Heavy Equipment Sales and Rentals”

The application was submitted to the Brunswick County Planning Department on June 20, 2019.

Sylvain Goulet proposes to open a business for “Vehicle and Heavy Equipment Sales and Rentals” at the above referenced location. The Brunswick County Future Land Use Plan designates the subject parcel as Low Density Residential. The proposed use is permissible in the Rural Low Density Residential (RR) Zoning District with Special Use Permit approval by the Brunswick County Board of Adjustment.

Approval Criteria – Section 3.5.9.B:

1. **Circulation:** All access to the site will occur from Maco Road (NC 87) via an existing residential driveway developed within the parcel. As a condition of approval, 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.

2. **Parking and Loading:** A minimum of one (1) standard and one (1) accessible parking space must be provided.
3. **Service Entrances and Areas:** All service vehicles will access the subject property from Maco Road, which is a state-maintained road.
4. **Lighting:** No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. "Outdoor Lighting" of the UDO prior to installation.
5. **Signs:** Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
6. **Utilities:** Public water and sewer are not available to this site. The existing septic and well must be rechecked to ascertain its utilization for the vehicle sales office and the home.
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:** Project boundary buffers are required. RR Zoning to RR Zoning Undeveloped will require a 10' deep buffer with 0.2 visual opacity. RR Zoning to RR Zoning Existing Residentially Developed will require a buffer with 0.4 visual opacity, which will be 20' in depth, unless the depth is reduced by adding a six-foot fence or wall. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements. The front yard will require a twenty-foot (20') street yard with one (1) canopy tree or two (2) understory trees per one hundred linear feet (100') of street frontage. Landscaping requirements per Section 5.3.5.S. of the UDO.
10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as two (2) parcels are residentially developed, which will require a 20' deep buffer planted at 0.4 visual opacity. The remaining parcels will require a minimum of a 10' deep buffer planted at 0.2 visual opacity.
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 within five (5) miles of a military installation.

Additional Approval Criteria (Section 5.3.5.S.): Vehicle and Heavy Equipment Sales and Rentals

Vehicle sales, leasing, and rentals shall be permitted in accordance with the use tables in Section 5.2, subject to the following:

1. Automobile and light truck sales and rentals are permitted as an Accessory Use to a Vehicle Wrecking, Junk or Salvage Yard only in the I-G Zoning District. **N/A**
2. Junked or inoperable vehicles/heavy equipment shall not be on the premises unless such is within an enclosed building or screened area. **Applicant is aware of this requirement.**

3. Vehicle or equipment repairs made on-site shall be subject to the same restrictions under Section 5.3.5.T, Vehicle Service and Garage. **N/A- Vehicle Sales only.**
4. Adequate on-site area shall exist for the loading and unloading of vehicles from car carriers to ensure that no such loading or unloading occurs in any public right of way. **Applicant to denote proposed area on the site plan.**
5. Vehicle sales, leasing, and rental facilities shall meet the following landscaping standards rather than those of Section 6.12.10, Vehicular Use Area Landscaping:
 - i. Trees shall be planted at the rate of one tree per 75 linear feet, and shrubs at the rate of one shrub per ten linear feet of display area. **Applicant to address as part of Landscaping Plan.**
 - ii. Plants may be grouped together, provided that at least 250 square feet of contiguous growing area, not encroached upon by impervious surfaces, surrounds each planted tree. **Applicant to address as part of Landscaping Plan.**
 - iii. Project boundary buffers shall be provided as required by Section 6.3.9, Plantings required in paragraphs i. and ii. above may not be counted towards the project boundary planting requirements. **Applicant to address as part of Landscaping Plan.**
6. The provisions of Section 6.22, Outdoor Display, shall not apply. **Applicant is aware of this issue.**
7. Vehicles may not be located in any required yard or buffer area, even for temporary display purposes. **Applicant is aware of this requirement.**
8. Permanent vehicle sales areas may not be located in any required parking spaces. **Applicant is aware of this requirement.**
9. Vehicle sales or display areas may not block sidewalks or parking areas and may not impede vehicular or pedestrian traffic. **Applicant is aware of this requirement.**
10. Adequate lighting shall be provided in conformance with Section 6.9, Outdoor Lighting. **Applicant is aware of this requirement.**
11. Aircraft and boat sales and rentals are permitted as an Accessory Use to an aircraft or boat manufacturing facility only in the I-G Zoning District. **N/A**

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 permit application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally combine Tax Parcels 02700032 & 02700033 in the manner denoted on the site plan.

4. Identify on the Site Plan Maco Road and NC 87.
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. Provide Grading and Stormwater Plans for this project. In addition, revise the Site Plan to be consistent with the comments outlined in the July 31, 2019 email, including the height of the proposed structure, all setback requirements, traffic and circulation information, refuse collection location, type of fencing, height of fence and diagram of fence.
7. Provide a Landscaping Plan that addresses the requirements for periphery buffers; front yard buffers; parking lots and for "Vehicle and Heavy Equipment Sales and Rentals" as well as requirements for landscaping outlined in Section 6.12.10.
8. Provide Building Facade drawings consistent with Section 6.8 of the UDO.
9. Address Outdoor Lighting per Section 6.9. of the UDO.
10. The applicant must request a visual inspection of the site prior to the commencement of "Vehicle and Heavy Equipment Sales and Rentals" activities to insure all requirements have been met.
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.

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

Application No. 19-11S

Applicant: Sylvian Goulet

Property Location: 2558 Maco Road NE, Leland NC 28451

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

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

Proposed Use of Property: Vehicle and Heavy Equipment Sales and Rentals

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. 19-09S

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. _____

APPENDIX A

Please describe in detail, the background of your case and the specific nature of your appeal.

Brunswick Plantation Property Owners Association, Inc. ("Association") is appealing the June 25, 2019 administrative determination ("Determination") of the Brunswick County Planning Department (the "Planning Department") determining that Caw Caw Land Corporation ("Caw Caw") can operate a "Model Home" as a residential use on the property located at 252 S. Middleton Dr., Calabash, NC 28467 (the "Property") subject to several conditions and requirements (as copy of the Determination is attached). The Property is within an R-6000 zoning district, and a Model Home is not a permitted residential use in that district, regardless of the conditions imposed on the use.

The Association has standing to bring this appeal in its own capacity and on behalf of the interests of the owners that it represents. The Association is a community owners association that represents owners and individuals living in the area immediately affected by the Model Home purportedly permitted by the Planning Department's Determination. If allowed, the Model Home use will cause special damages to these owners. These special damages will include increased noise, traffic, parking problems, and a decrease in property values for owners in the vicinity of the use. These owners have standing to appeal individually as a result of those special damages, and, as their representative, so does the Association. In addition, the Determination purports to require several modifications to the Property (e.g. construction of a six (6) foot fence, enlargement of on-site parking) that contravene the Association's land use covenants. Those covenants restrict the Property to residential use unless several additional criteria—including compliance with all applicable zoning requirements—are met. If it remains in force, the Determination will prevent the Association from fulfilling its fiduciary obligation to its members to enforce the covenants applicable to the Property.

The Association is required to file this appeal within thirty (30) days of having actual or constructive notice of the Determination, and, in any event, is filing within thirty (30) days of the Determination itself.

In the Determination, the Planning Department claimed that "Brunswick County allows a model home as a residential use." This is not accurate. There is no "Model Home" use in the Brunswick County Unified Development Ordinance (the "UDO"). Section 5.2.1 of the UDO provides that "Any use not specifically listed in this chapter is expressly prohibited, unless the Planning Director determines . . . that the use is similar to a permitted individual use or permitted group of uses as listed in this article." The Property cannot be operated as a Model Home without a determination that the Model Home is similar to a permitted use in the R-6000 district. That decision is not left solely to the discretion of the Planning Department. Instead, there are specific criteria in Section 5.2.1(D) of the UDO to compare a proposed, not-listed use to an existing use:

- 1) The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
- 2) The relative amount of site area or floor space and equipment devoted to the activity;
- 3) Relative amounts of sales from each activity;
- 4) The customer type for each activity;
- 5) The relative number of employees in each activity;
- 6) Hours of operation;
- 7) Building and site arrangement;
- 8) Types of vehicles used and their parking requirements;
- 9) The relative number of vehicle trips generated;
- 10) Signs;
- 11) How the use is advertised;
- 12) The likely impact on surrounding properties;
- 13) Whether the activity is likely to be found independent of the other activities on the site.

Section 5.1.2(A)-(B) of the UDO lists the permitted residential uses in all districts. These uses are divided into Household Living and Group Living. To be permissible under the UDO, the Model Home use must, subject to the criteria identified above, be similar enough to one of the identified uses to be a permitted use in the R-6000 zoning district. It is not.

The Model Home would be the only use on the Property requiring it to qualify as a Principal Use under the UDO. The options for Household Living Principle Uses are: (i) Congregate care facility; (ii) Mobile home; (iii) Multifamily (including apartments and retirement center apartments); (iv) Residential occupancy of a dwelling unit by a household on a month-to-month or longer basis; (v) Single-family detached or other recognized house; (vi) Upper-story residential; or (vii) Family care home. Group Living adds several additional uses, none of which are applicable here. Several of these uses are completely inappropriate for comparison to the Model Home (i.e. congregate care facility, mobile homes, multifamily, residential occupancy of a dwelling unit, upper-story residential, and family care home), which leaves Single-family detached house as the sole option for favorable comparison.

The Model Home is not similar enough to the Single-family home use to qualify as a principle use in a residential district. While the structures of both are similar, a Model Home has no residents, is commercially oriented, requires non-resident employees to occupy the site during standard business hours, and allows "work stations" within the Property as part of the principle use of the site. None of these would be permitted at a Single-family use without at least some additional qualification as a Home Occupation; which is an accessory use and cannot exist without an attendant principle use. Ultimately, the only qualification for the Model Home is that it physically looks like a Single-family home. The physical structure of the Model Home cannot control; a law firm using a historic home as an office is not a single-family, and the Model Home is not a residential use in any common sense meaning of the phrase.

The Single-family house use cannot, and does not, encompass any structure just because it could otherwise serve as a family-occupied dwelling. The UDO requires an examination of the actual behavior within the structure, and an accurate examination of those criteria comparing a non-listed use with an existing use demonstrates that the Model Home is not currently a permitted use in the R-6000 zoning district. The Association respectfully requests the Board of

Adjustment to reverse the Determination and deny the use of the Property as a Model Home.



Brunswick County Planning Department

P.O. Box 249

75 Courthouse Drive N.E., Bldg I

Bolivia NC 28422

June 25, 2019

Caw Caw Land Corporation
c/o Attorney Matthew Nichols
3205 Randall Parkway, Suite 104
Wilmington, NC 28403

Re: 252 S. Middleton Drive – Appeal to Board of Adjustment

Thank you for your email dated June 20, 2019 outlining the proposed use for the model home at 252 S. Middleton Drive. Respectfully, a sales office is a commercial use and will not be allowed in the residential area. Brunswick County allows a model home as a residential use. Below I have outlined the conditions regarding the extent to which the model home may be used and still retain the residential character.

1. As there have been frequent complaints and safety concerns raised related to on-street parking impacts, Brunswick County will agree to the installation of a new driveway along South Middleton Drive and a corresponding parking area with eight spaces. The parking shall be consistent with the design standards outlined in Section 6.12.5 of the Brunswick County U.D.O. The use of these spaces will be limited to employees and sales agents.
2. Installation of a six-foot wooden privacy fence along the rear (Western) property line of the model home. The finished side of the fence shall face outwards.
3. Installation of a six-foot wooden privacy fence from the rear property corner toward South Middleton Drive, along the inside property line to a point even with the rear of the model home. This is to effectively screen the proposed parking area. The finished side of the fence shall face outwards.
4. Associated with the parking in the rear, there will need to be landscaping along South Middleton Drive to screen the parking lot from view.
5. Brunswick County does not agree to the installation of a new vehicle turnaround space contiguous to the existing drive way.
6. An employee presence is typical at a model home. To that end, Brunswick County will allow for two full-time regularly scheduled employees on site during standard business hours (8:30 am to 5:00 pm). Other personnel shall also be permitted to be on site at various times throughout the day on a limited basis for business associated with clients/prospective clients.
7. With regard to landscaping, in addition to item four above, there will need to be landscaping along the new fencing with 3 understory trees and three shrubs per 100 linear feet.

8. There shall be no on-street parking associated with the use of the model home. In addition, street signage shall be placed indicating that on-street parking is prohibited.
9. There shall be no events or gatherings held in the model home other than open houses.
10. There is currently one sign on site for the model home. Customary model home signage for a temporary nature indicating an open house or an agent on duty shall also be allowed. No additional sales signage in any form will be permitted.
11. There shall be no more than three work stations in the model home.

Brunswick County Planning appreciates the opportunity to work with you prior to the appeal hearing. Should you wish to cancel the pending appeal based on the criteria above, please do so in writing by the close of business on Wednesday, June 26, 2019.

Sincerely,

Helen Evans Bunch, CZO
Zoning Administrator

/heb
Cc:

CASE 19-12A

ADJACENT PROPERTY OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
210/A070	TRUEMAN LARRY D ET MILAGROS	380 BIRCHRIDGE DRIVE	KERNERSVILLE	NC	27284
210/A072	LEWIS GREGORY W ET DIANE L	251 S MIDDLETON DR NW	CALABASH	NC	28467
210/A014	HELF TODD	8979 MARSHVIEW LANE	SUNSET BEACH	NC	28468
210/A059	STATHOS GEORGE GUS ETUX JANETTA A	262 S MIDDLETON DRIVE NW	CALABASH	NC	28467
210/A060	FULFORD PAUL D ETUX AMY P	89 GRAYSON AVE	EAST EARL	PA	17519
210/A071	WAWRO ARDETH L ETALS	4836 NORRISVILLE RD	WHITE HALL	MD	21161-9679
210/A057	ESSEX HOMES SOUTHEAST INC	13000 S TRYON ST # F205	CHARLOTTE	NC	28278-7652
210/A073	HARRIS ROY L III	628 COVINGTON DR NW	CALABASH	NC	28467-1892

OWNER(S)

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
210/A058	CAW CAW LAND CORP	380 BRUNSWICK DR NW	CALABASH	NC	28467-2377

APPLICANT(S)

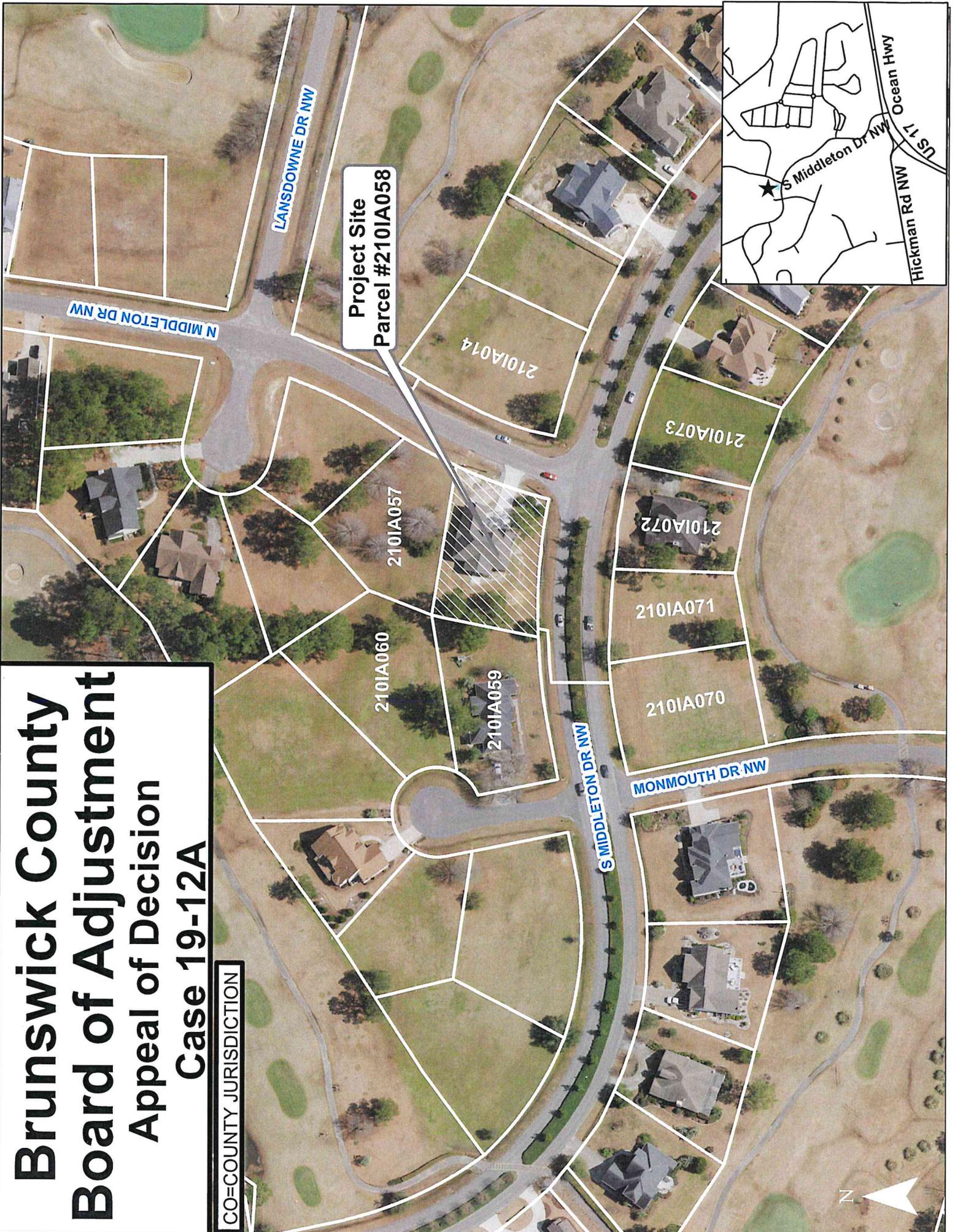
PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
	JAMES R TODD	127 RACINE DR.	Wilmington	NC	28403

P.O.A.

PARCEL ID	NAME	ADDRESS	CITY	STATE	ZIP
	Jon Trainor (President)	jontrainor1948@icloud.com			

Brunswick County Board of Adjustment Appeal of Decision Case 19-12A

CO-COUNTY JURISDICTION



Project Site
Parcel #210IA058



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

September 12, 2019

Application No. 19-12A

Applicant: James R. Todd for Brunswick Plantation Property Owners Association, Incorporated

Property Location: 252 South Middleton Drive, Calabash NC 28467

Parcel Number: 210IA058

Zoning District: SBR-6000 (High Density Site Built Residential)

Surrounding Zoning **North:** SBR-6000 **South:** SBR-6000
 East: SBR-6000 **West:** SBR-6000

Proposed Use of Property: Model Home

The application was submitted to the Brunswick County Planning Department on July 25, 2019.

Appeal: The applicant is appealing an interpretation of the Brunswick County Unified Development Ordinance that Caw Caw Land Corporation can operate a model home at 252 S. Middleton Drive, subject to the conditions and requirements outlined in the June 25, 2019 letter to Caw Caw land Corporation.

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.
- Caw Caw Land Corporation is the owner of the home located at 252 South Middleton Drive.
- Caw Caw Land Corporation is the owner of Tax Parcel 210IA058, the parcel on which the home is located. Mason H. Anderson is the President of Caw Caw Land Corporation per documents filed with the North Carolina Secretary of State.
- On February 12, 2019, an e-mail was sent to the Zoning Administrator stating that a single-family home located at 252 South Middleton Drive (Tax Parcel 210IA058) was in the process of being converted into a professional office space.
- The subject property contains 0.41 acres in total. It is zoned High Density Site Built Residential (SBR-6000) and it is within a platted residential section of the Brunswick Plantation Planned Development.
- The Brunswick County Land Use Plan designates this parcel as Low Density Residential (LDR).

- Land uses surrounding the subject property consist of single-family residential homes.
- Correspondence was sent to Mr. Anderson on March 15, 2019 stating that it is staff's interpretation that this relocated use is a sales office as opposed to a model home. Anderson was asked to relocate the sales office into a commercial area of the Brunswick Plantation Planned Development. A Change of Use Permit Application was provided for the owner to complete. The County asked that all activities at the address cease and that no additional construction on the parcel take place until this matter is resolved.
- On March 19, 2019 Mr. Anderson filed Application 451478 for a Change of Use (see attached). Per the application, the used was to be changed from a single-family home to a sales office/model home.
- The Planning Department was contacted on April 5, 2019 by Mr. Phil Norris on behalf of the owner(s). It was stated that "if the determination is made for the use as a model home sales location, Mr. Anderson would like to withdraw the Change of Use Application previously submitted.
- On April 10, 2019 correspondence was sent to Mr. Anderson and Mr. Norris regarding the commercial activity taking place. With the additional information provided in the Change of Use Application, our interpretation was that the activity proposed for this location is a sales office and more intensive than a model home.
- Staff defined a model home as "a term for a 'display' version of a home within a new development or new section of development that is furnished and decorated to show to prospective buyers the living space and features of homes that are available. An office may be provided within the home or with the garage for staff housing the model. Model homes are available for purchase and are typically at a location only for the time during which the section is being developed".
- Staff defined a sales office as "the office of a company responsible for selling its goods or services. The expanded hours of operation proposed (8:00 a.m. – 5:00 p.m.), broaden usage of the structure for business purposes as opposed to display purposes, and the increase in vehicular and pedestrian traffic moves the use from residential to commercial".
- Two options were offered for Caw Caw Land Development to have a sales office at this location: (1) If you do not agree with the interpretation of the use, you may appeal the interpretation to the Brunswick County Board of Adjustment. If the Board of Adjustment determines that the proposed use meets the definition of a model home, the residential designation of the parcel will remain. Activities conducted in the structure would be limited to those that are consistent with the model home definition. If the Board determines that the proposed use meets the definition of a sales office, the Brunswick Plantation Master Plan would require modification by the Brunswick County Planning Board for the commercial use; or (2) Request a modification of the Brunswick Plantation Master Plan to change 252 South Middleton Drive from residential to commercial. This would require a Neighborhood Meeting that meets all the neighborhood meeting requirements outlined in the UDO and an updated Master Site Plan for Brunswick Plantation Planned Development.
- On May 6, 2019 a Notice of Appeal to the Board of Adjustment was filed with the Brunswick County Planning Department.
- On May 22, 2019 the applicant's attorney (Matthew A. Nichols) requested to continue the hearing for the appeal from the Board of Adjustment's June 13, 2019

Meeting until the Board's July 11, 2019 meeting. "The purpose of this continuance request is to allow my clients additional time to discuss this matter with County Staff in an effort to resolve this matter if possible."

- On June 17, 2019 Attorney Nichols, the Assistant County Attorney and the Zoning Administrator met.
- On June 20, 2019 Attorney Nichols proposed a "settlement".
- On June 25, 2019 Brunswick County outlined the conditions regarding the extent to which the model home may be used and still retain the residential character (see attached). The correspondence went on to state that if they wished to cancel the pending appeal based upon the criteria provided, such must be done by the close of business on Wednesday, June 26th.
- On July 5, 2019 the appeal was withdrawn by the applicant.
- On July 24, 2019 correspondence was sent advising the applicant that full compliance with the conditions outlined in the June 25, 2019 correspondence is required within 30 days of the date of the withdrawal of the appeal, except for Item 4, which must be fully compliant within 60 days of the date of the withdrawal of the appeal, or the applicant will be in violation of the Brunswick County UDO.
- On July 25, 2019 James R. Todd filed an application for the Brunswick Plantation Property Owners Association, Inc. to appeal an interpretation of the Brunswick County UDO that Caw Caw Land Corporation can operate a model home at 252 S. Middleton Drive, subject to the conditions and requirements outlined in the June 25, 2019 letter to Caw Caw Land Corporation.

**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 **September 12, 2019** to consider **Application Number 19-12A (Tax Parcel 210IA058)** submitted by **James R. Todd on behalf of the Brunswick Plantation Property Owners Association, Inc.**, a request for an interpretation of:

The Brunswick County Unified Development that Caw Caw Land Corporation can operate a model home at 252 S. Middleton Drive, subject to the conditions and requirements outlined in the June 25, 2019 letter to Caw Caw Land Corporation from Brunswick County Planning.

Insofar as the Ordinance affects the use of a single-family dwelling presently located at 252 S. Middleton Drive, Calabash NC 28467, 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 12th day of September, 2019.

Robert J. Williamson, Chairman

Secretary _____