

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
November 14, 2019**

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

MEMBERS PRESENT

Robert Williamson, Chairman
Alan Lewis
Virginia Ward
Ron Medlin, Alternate

MEMBERS ABSENT

Mary Ann McCarthy
Marian Shiflet

STAFF PRESENT

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

OTHERS PRESENT

Charles Spivey
Lavern Nobles
Patrick Newton
Jamie Jones
Kaye Cheers Mattingly

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:00 p.m.

II. ROLL CALL.

Ms. McCarthy and Ms. Shiflet were absent. Mr. Ron Medlin served as an Alternate.

III. CONSIDERATION OF MINUTES OF THE OCTOBER 17, 2019 MEETING.

Ms. Ward made a motion to accept the minutes of the October 17, 2019 meeting as written. The motion was seconded by Mr. Lewis and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. Ward 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. Ward 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. Ward stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.5.9.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. Ward informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

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

The Chairman swore in and or/ affirmed Helen Bunch, Charles Spivey, Lavern Nobles, Patrick Newton, Jamie Jones, and Kaye Cheers Mattingly as to their testimony being truthful and relevant to the respective case.

VII. New Business.

- A) 19-14S: Special Use Permit
Applicant: Bledsoe Enterprises, Inc.
Location: 4437 Mount Misery Road NE, Leland NC 28451
Tax Parcel Portion of 00900105
Applicant requests a Special Use Permit for a “Class I Mining Operation” consistent with Section 5.2.3 and Section 5.3.7.G of the Brunswick County Unified Development Ordinance (UDO).

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.

Property owner, Mr. Charles Spivey, addressed the Board. Mr. Spivey stated that his intention for the property is to dig a 5-acre pond for recreational purposes. Mr. Spivey continued that he wants to use the space to accommodate his large extended family for family reunions. Mr. Spivey stated that he isn't selling the dirt to get rich, he is selling the dirt to help dig the pond. He added that all the dirt will be sent to one single location offsite rather than multiple sites, and he will be applying to the State of North Carolina for a single-source pit.

Ms. Ward asked how long this process would take. Mr. Spivey responded that it should take around 6-8 months.

Mr. Williamson asked how many trucks would be in operation during operating hours. Mr. Spivey responded he is unclear on how many trucks will be in operation at a time. Mr. Spivey continued that the trucks will likely be running Monday through Friday. Mr. Williamson asked about the hours of operation. Mr. Spivey responded that the hours of operation would be 7 a.m. to 5 p.m. Mr. Spivey reiterated that work will be limited to Monday through Friday, with occasional work on Saturday if necessary.

Mr. Lavern Nobles addressed the Board. Mr. Nobles stated that he and his two sons are in the process of purchasing the property next to the site (Tax Parcel 00900107). Mr. Nobles stated that he would like to know how close the mining operation will be to the property he is in the process of purchasing. Mr. Nobles stated that there are two sand mines within the area and added that he has concerns regarding traffic and erosion.

Mr. Williamson asked Mr. Nobles if he intends to live on the property. Mr. Nobles responded yes.

Attorney Batton provided a copy of the site plan to Mr. Nobles and Mr. Lewis explained that the mining operation will take place on the opposite side of the property. Mr. Nobles stated that after seeing that the operation will be on the opposite side of the property from the property which he is working on purchasing, his concerns have been addressed.

Mr. Williamson asked Ms. Bunch to read the conditions of approval from the Staff Report.

Mr. Nobles stated that he has an additional concern. Mr. Nobles stated that there is a portion of a natural gas line that is located towards the rear of the property. Mr. Lewis pointed out that the site plan shows the easement at the rear of the property. Mr. Nobles stated that he is concerned with the sand mine being located in close proximity to the line and wanted the applicant to be aware of its presence.

With no further comments, the Chairman summarized that Mr. Spivey wants to have a "Class I Mining Operation" which is allowed within the zoning district. Mr. Williamson added that due to the size of the site and the fact that the sand is being relocated to only one (1) site, they do not need a state mining permit, but will need a permit from Brunswick County. They will, however, need to file a single-source application with the State of North Carolina. Mr. Williamson continued that the applicant testified that the intent is to develop a pond for recreational purposes. Mr. Williamson stated that the operation will take around 6-8 months with operating hours 7 a.m. to 5 p.m. Monday through Friday. He added that Mr. Nobles voiced concerns regarding the proximity of the operation to property he is looking to purchase and the location of the natural gas line at the rear of the site and how it could co-exist with the mine.

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 heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its meeting on November 14, 2019, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made.

1. A written application was submitted and complete in all respects.
2. The use, a "Class I Mining Operation", for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The 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.

- b. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
3. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Class I Mining Operation as a permissible use in the Rural Residential (RR) Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
 - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations if approved by the Board of Adjustment through the Special Use Permit process.
 - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
 - d. The applicant stated that he is aware of the County and State requirements for Class I Mining Operations and is willing to meet them.
 4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The Staff Report stated that the mining operation must include 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.
 - b. The Staff Report indicated that the haul access road to the mine must be constructed of materials of a dustless nature.
 - c. 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.
 - d. The goal of the mining operation is the creation of a 5-acre lake for family recreational use, which will have no negative affect on the health and safety of the public.
 5. 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. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
 1. **Circulation:** All access to the site will occur from Mt. Misery Road (SR 1426) via a 30-foot access easement to the

site with a 20-foot haul road developed within the parcel. The applicant will use a water truck as needed for dust control. 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:** There will be no scales or office on-site. As a result, no employee parking will be required. Loading of the trucks will occur on the site. Based upon the proposed length of the haul road, adequate room is available for truck staging.
3. **Service Entrances and Areas:** All service vehicles will access the subject property from Mt. Misery 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 will not be required for the proposed operation, as the mining site will not be manned.
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. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements. A compliance inspection must be conducted by the County prior to the commencement of mining activities.
10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as the current property owner owns the adjacent parcels.
11. **Compatibility:** The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment.

12. **Impacts on Military Installations:** the proposed Special Use is not within five (5) miles of a military installation.
- b. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance, specifically:
 1. Class I Mining Operations may not occupy more than 20 acres. **The site plan denotes a 5 acre +- parcel.**
 2. Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use off-site. However, no further on-site processing is permitted (i.e. use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. **Applicant is aware that the use of conveyor systems, screening machines, crushing, or other mechanical equipment may not take place at this location.**
 3. The use of explosives is not permitted **Applicant is aware that explosives will not be used in the mining operations.**
 4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
 - i. Must be located a minimum of 100 feet from all property lines. **Applicant has stated that dewatering will not occur on this site.**
 - ii. The depth of each excavation pit shall not exceed 35 feet. **Applicant has indicated the pit will not exceed 35.**

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

Ms. Ward made a motion to grant the Special Use Permit 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 3.5.9.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 permit application and kept on file by the Brunswick County Planning Department.
 - 3. The applicant must legally subdivide Tax Parcel 00900105 in the manner denoted on the site plan, to include the proposed excavation area for the pond and the required buffer setbacks from the property line. 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 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.
 - 5. The applicant must notify the State of North Carolina to seek a mining permit if exported materials are hauled to more than one (1) project site. A copy of the mining permit must be filed with Brunswick County Planning Department.
 - 6. Consistent with the application, mining operations will be limited to daylight hours only, Monday through Friday, and occasionally on Saturday.
 - 7. The applicant must ensure that the haul road remains dustless in nature during its use.
 - 8. The depth of each excavation pit shall not exceed 35 feet if dewatering occurs.
 - 9. The applicant must request a visual inspection of the site prior to the commencement of mining activities to ensure all requirements have been met.
 - 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. Lewis and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and as shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5. of the Brunswick County Unified Development Ordinance.

- B) 19-15V: Variance
Applicant: Patrick Newton
Location: 4734 Patrick Newton Drive SE, Southport, NC 28461
Tax Parcel 221AE049
Applicant requests six (6) variances from the Unified Development Ordinance (UDO) to allow the relocation of an outdoor advertising structure. The variances are from the following Sections of the UDO: Section 8.5.2.; 8.8.1.G.1.; 8.8.1.I.; 8.8.1.L.1.; 8.8.1.L.2.; and 8.8.1.L.3. [Note: All requested variances must be approved for the case to be approved.]

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. The applicant, Pat Newton dba Pat Newton Properties, LLC, has filed an application for the following Variances from Section 8 of the Brunswick County Unified Development Ordinance (UDO) to allow an Outdoor Advertising Structure to be relocated as follows: (1) Variance from Section 8.5.2. of the UDO to allow the double decking (stacking) of signage, as it is not allowed in the current ordinance for outdoor advertising signs; (2) Variance of 2,490 linear feet from Section 8.8.1.G.1. of the UDO to allow a non-conforming outdoor advertising structure to be relocated five hundred ten (510) linear feet from another off-premise sign as opposed to the minimum three thousand (3,000) linear feet of separation for off-premise structures required by the UDO; (3) Variance from Section 8.8.1.I. to allow the outdoor advertising structure to be located one (1) foot from the east property line and fourteen (14) feet from the west property line as opposed to the fifteen feet (15) from any property line setback required. This will equate to a 14' variance from the east property line and a 1' variance from the west; (4) Variance from Section 8.8.1.L.1., which requires 500 linear feet from the centerline of an intersection for sign placement. The proposed sign will be 26' from the intersection of Southport-Supply Road and Patrick Newton Drive, thus requiring a variance of 474 linear feet; (5) Variance from Section 8.8.1.L.2., which requires that another outdoor advertising be 150' from any existing on-premise sign. It is proposed to be 144' from the closest on-premise sign, requiring a 6' variance; (6) Variance is from Section 8.8.1.L.3.3., which requires an outdoor advertising structure to be 250' from any church. The proposed sign will be 1.5' from the church property line, which will require a variance of 248.5 linear feet. **All variances must be granted for the sign to be relocated.**

Mr. Patrick Newton addressed the Board. Mr. Newton stated that he has been working with the NCDOT since June of 2016 during the acquisition process associated with the widening project on Southport-Supply Road (NC 211). Mr. Newton stated that he owns three properties that have been impacted by this project.

Mr. Newton provided a history of the property. Mr. Newton submitted additional documentation to the Board that shows how the property was configured in when he purchased it in 1987 (Exhibit 1). Mr. Newton explained that the property in question was a part of a larger parcel that he would later subdivide. Mr. Newton added that prior to this subdivision he sold parcel 2210007001 to the Saint Peters Lutheran Church in 1999. Mr. Newton further explained that the parcel was further subdivided to create the undeveloped West Trace Subdivision. Mr. Newton continued around this time Patrick Newton Drive was created in 2001. Mr. Newton stated that he retained the parcel on which the sign was located. Mr. Newton further explained that the sign is located on a forty (40') foot wide lot next to the sixty-foot (60") right of way (Exhibits 2 and 3).

Mr. Newton stated that when the NCDOT began the acquisition process they prioritized the south side of NC 211 which included this property. Mr. Newton stated that the original sign was relocated on the property by a contractor hired by the NCDOT. The contractor applied for and received a permit to relocate the sign in early 2017, with a compliance certificate issued on 6/16/2017. In March of 2018 the owner was notified that the permit was issued in error and that a Non-Conforming Use Permit and variance are required for the sign relocation.

Mr. Newton further explained the NCDOT acquisition and relocation process. Mr. Newton added that actual work on the roadway for the NC 211 project has not been completed. Mr. Newton continued and addressed each of the requested variances. These variances are also addressed within the application.

Mr. Newton submitted Exhibit 4 to the Board with recommendations for the findings of fact associated with the Board's determination. Mr. Newton stated that this language has been taken from similar cases that have been approved by the Board. Mr. Newton also provided the Board with copies of previous meeting minutes from similar cases (Exhibit 5). Mr. Newton submitted a Memorandum of Action with NCDOT (Exhibit 6), the latest plan sheet (Exhibit 7), list of sign inspections (Exhibit 8), the certificate of compliance from when the sign was relocated (Exhibit 9), a memo from Ms. Bunch addressing sign relocations with interested parties (Exhibit 10), a letter from Ms. Bunch sent to Mr. Newton's lawyer notifying him that the relocation permit was issued in error (Exhibit 11) and the transmittal of the Nonconforming Use Certificate (Exhibit 12).

With no further comments, the Chairman summarized that Patrick Newton owns a sign on property that was partly acquired by NCDOT for the widening of NC 211, resulting in relocation of the sign. Mr. Williamson added that he has obtained a Non-Conforming Use Certificate. Mr. Williamson continued that Mr. Newton is required to obtain six (6) separate variances for the relocation of the sign.

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 19-15V, submitted by Patrick Newton, dba Pat Newton Properties, LLC a request for three (6) variances to use the property located at 4734 Patrick Newton Drive SE, Southport NC 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 use of the parcel is limited due to the size/dimension of the parcel as shown on the maps provided denoting the parcel at the meeting, as part of the case information packet provided by staff, and by the testimony of the applicant.
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 (width) of the 0.829-acre property along with limited opportunities for sign relocation on the site due to the need for the sign to be near Southport-Supply Road for advertising purposes causes the hardship.
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 widening to a four-lane structure of

NC 211 (Southport Supply Road) by the North Carolina Department of Transportation. The initial structure was constructed prior to the implementation of zoning in the unincorporated area of Brunswick County. The structure has been nonconforming for some time and has been continuously utilized and maintained since construction. While it was initially located in error before the appropriate permits were obtained, it currently has a Nonconforming Use Certificate.

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 the proposed widening of NC 211 (Southport Supply Road). Due to the size of the property, there is no area on the parcel where all requirements of the ordinance can be met without a variance, as an outdoor advertising sign must be located near the roadway to be of value.

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.

- C) 19-16S: Special Use Permit
Applicant: Jamie Jones
Location: 2811 Holden Beach Road SW, Supply, NC 28462
Tax Parcel 232HC00109
Applicant requests a Special Use Permit for a "Kennel" consistent with Section 5.2.3 and Section 5.3.5.U of the Brunswick County Unified Development Ordinance (UDO).

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.

Ms. Jamie Jones addressed the Board. Ms. Jones stated that she would like to open up a "doggy day care" and overnight facility in the at 2811 Holden Beach Road SW. Ms. Jones continued that this would serve a need in the area for those who need care opportunities for their dogs on a regular or temporary basis. Ms. Jones stated that many community members have voiced an interest in this business. Ms. Jones stated that she intends to work with a local rescue program. Ms. Jones continued that part of the space in the facility will be donated to the rescue program to allow rescue dogs to stay in the facility.

Mr. Williamson asked how many dogs will occupy the facility. Ms. Jones responded that the maximum number of dogs occupying the facility will be thirty-five (35). Ms. Jones stated that she has researched a possible minimum square footage per dog for the but has had no luck. Ms. Jones stated that they are taking a more holistic approach with the animals. Ms. Jones continued that her intention was for the dogs to be manageable by limiting the number. Ms. Jones further explained that some facilities with higher numbers of dogs may cause stress in the animals.

Mr. Williamson asked how long the dogs will be allowed outside. Mr. Jones responded that the dogs will be taken out two (2) at a time for 15-minute breaks throughout the day. Ms. Jones added that they will not have the dogs running around free outside to prevent the likelihood of injury to the animals. Ms. Jones added that her staff will undergo training to learn how to better manage the dogs.

Ms. Ward asked if the dogs would be individually separated. Ms. Jones responded that the facility will feature a “cage-free” environment. Ms. Jones explained that the initial environment will be “cage-free” with an evaluation of dogs to determine if they can stay in that kind of environment. Ms. Jones stated that there will be 24-hour care for the animals so they will never be left alone. Ms. Jones further explained that this will reduce the likelihood of barking. Ms. Jones continued that this approach is different than typical “kennels” as far as providing a “cage-free” alternative. Ms. Jones added that larger dogs will be separated from smaller dogs.

Ms. Ward asked where the staff will receive training. Ms. Jones responded that many organizations offer trainings with certification. Ms. Jones stated that she is considering two older organizations for the training. Ms. Jones added that she wants her staff to be trained properly because there will be cameras in the facility. Ms. Jones stated that she wants the customers to be able to monitor their pets while they are at the facility.

Mr. Lewis asked how the business will take care of trash. Ms. Jones stated that they will be using miniature dumpsters so that trash is picked up more frequently. Ms. Jones added that they will be using cleaning products that are safe for the dogs as well as the environment.

Ms. Kaye Cheers Mattingly addressed the Board. Ms. Cheers stated that she received notice of the proposed use in the mail. Ms. Cheers added that she owns two rental properties that are adjacent to the project site. Ms. Mattingly stated that she has a concern with the potential noise from the proposed kennel, and both of her renters are concerned as well. Ms. Mattingly is concerned that if the noise generated by the kennel causes her tenants to move then she may have a difficult time finding new tenants.

Ms. Jones responded to Ms. Mattingly's concerns. Ms. Jones stated that she has had noise issues from the neighbors at one of the rental properties across the street. Ms. Jones continued that there is often noise from motorcycles, loose dogs, police visits, etc. Ms. Jones stated that she understands the concern about noise because people are noisy.

Ms. Jones addressed the location of the kennel and stated that the kennel area is located within the back third of the building. Ms. Jones continued that she is following the UDO as far as guidance for building a six-foot (6') wall between outdoor areas where animals are kept and any property line of an adjacent residential use in a nonresidential district. Ms. Jones added that the dogs will be taken outside on the opposite side of the building from the neighboring home. Ms. Jones said that she wants to live in harmony with the neighbors.

Ms. Jones stated that the building has had many other businesses throughout the years. Ms. Jones added that she is hopeful to be able to provide a service to the community and would be happy to work with the neighbors so that there is harmony.

Mr. Williamson asked how far the kennel is from the residences in question. Ms. Jones responded that the back of the building is located around one hundred seventy feet (170') to the mobile home next door. Ms. Jones added that she would estimate that the kennel area is located approximately three hundred feet (300') from the residence across the street.

Ms. Ward asked if the concrete pad is where the dogs will be taken outside. Ms. Jones responded that yes and that it will be surrounded by a wall. Ms. Jones stated that there would be a door added for access.

Mr. Williamson asked if the building would be located between the concrete pad and the mobile home. Ms. Jones responded yes.

Mr. Williamson asked Ms. Bunch to read the conditions of approval from the Staff Report.

With no further comments, the Chairman summarized that Jamie Jones wants to operate a kennel on a CLD zoning district. Mr. Williamson continued the kennel is a facility to care for dogs during the day and overnight. Mr. Williamson stated that the business will have a maximum of 35 dogs at a time. He continued that they will be housed within a completely closed in building. Mr. Williamson added that there will be an additional enclosed outside area that features a concrete pad for the dogs to be able to go outside periodically. Mr. Williamson stated that an adjacent property owner, Ms. Kaye Cheers Mattingly, has voiced concerns in regard to noise and run-off from the waste. Mr. Williamson continued that those concerns were addressed by Ms. Jones.

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 heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its meeting on November 14, 2019, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made.

1. A written application was submitted and complete in all respects.
2. The use, “Kennel”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Testimony provided indicates that there are only two (2) residences within view of the proposed location.
 - b. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
3. The use, “Kennel”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance Lists Vehicle and Heavy Equipment Sales and Rentals as a permissible use in the CLD Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
 - b. Section 5.3.5.U. of the UDO outlines the additional criteria for Kennels approved by the Board of Adjustment through the Special Use Permit process.
 - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
 - d. The applicant testified that all standards required by the UDO would be met.
4. The use, “Kennel”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The Staff Report addresses the minimum 12 standards for all commercial development and the standards outlined for Kennels in Section 5.3.5.U. of the UDO. The applicant has agreed to meet these standards.
 - b. The applicant will have the waste regularly collected, be always equipped with interior cameras and have an employee on-site.

5. The use, a “Kennel”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
 - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
 1. **Circulation:** All access to the site will occur from Holden Beach Road (NC 130) via an existing commercial 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 space per 250 square feet of structure must be provided for the kennel. With a square footage of 2,040 square feet of space, at least 8.16 parking spaces must be provided for the kennel, with one (1) of these spaces being an accessible space. There is adequate parking area for the creation of parking spaces on the site.
 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Holden Beach 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 a septic system are available for this site.
 7. **Open Space:** There are no separate open space requirements for this site.
 8. **Environmental Protection:** The applicant must meet all applicable Federal, State and Local Government requirements.
 9. **Screening, Buffering and Landscaping:** A ten-foot (10’) Project Boundary Buffer with 0.2 visual opacity is required for the portion of the property adjacent to undeveloped MR-3200 Zoning. Existing vegetation can be used to meet buffer requirements if the vegetation is available.

10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as all adjacent parcels are vacant except for one parcel which is zoned CLD with a mobile home located on it.
11. **Compatibility:** The proposed use is permissible in the CLD Zoning District with Special Use Permit approval by the Board of Adjustment.
12. **Impacts on Military Installations:** The proposed Special Use is not within five (5) miles of a military installation.

b. **Additional Approval Criteria (Section 5.3.5.U): Veterinary Clinics, Animal Hospitals, and Kennels** shall be permitted in accordance with the use tables in Section 5.2, subject to the following:

1. In the RR district, the use shall be permitted as a limited use subject to the standards in this Section. **NA.**
2. A 300-foot separation shall be maintained between the outdoor areas where animals are kept and any property line of any adjacent residential use in a residential district. **NA.**
3. A minimum six-foot highwall shall be installed and maintained between outdoor areas where animals are kept and any property line of an adjacent residential use in a non-residential district. **Applicant is aware of this requirement.**
4. The facility shall be constructed, designed, and located on the site to minimize noise, odor, and other impacts on neighboring properties. Adequate waste disposal shall be required to maintain sanitary conditions and control odor. **Applicant is aware of this requirement.**
5. All facilities shall be licensed by the animal Health Division of the North Carolina Department of Agriculture and Consumer Services, Article 3, and all other required permits or certificates shall be acquired and maintained. **Applicant is aware of this requirement.**

c. Ms. Jones stated that she is aware of the requirements and agreed to comply with all conditions of the permit.

Ms. Ward made a motion to grant the Special Use Permit 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 3.5.9.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 permit application and kept on file by the Brunswick County Planning Department.
3. The parking spaces in the parking lot must be delineated consistent with the requirements of the UDO with at a minimum the required number of spaces for each permitted use. In addition to the standard parking spaces, accessible spaces must be provided consistent with the UDO.
4. Indicate on the site plan the location and proposed screening of the dumpster.
5. Install and maintain a six-foot fence must be between outdoor areas where animals are kept and any property line of an adjacent residential use in a non-residential area.
6. All licenses must be received prior to the opening of the business.
7. Contact the Brunswick County Planning Department to complete an on-site zoning compliance Inspection prior to the opening of the business.
8. 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. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and as shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5. of the Brunswick County Unified Development Ordinance.

VIII. Staff Report.

Ms. Bunch provided a copy of the memorandum that will be sent to the Planning Board regarding the development of a definition for a “model home”. Ms. Bunch explained that this was the result of the discussion at the last Board of Adjustment meeting. Ms. Bunch stated that she has not received any notice of appeal at this time.

IX. Adjournment.

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