

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
October 17, 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
Brandon Hackney, Project Planner

I. CALL TO ORDER.

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

II. ROLL CALL.

The Chairman stated that all members were present.

III. CONSIDERATION OF MINUTES OF THE SEPTEMBER 12, 2019 MEETING.

Ms. Ward made a motion to accept the minutes of the September 19th, 2019 meeting as written. The motion was seconded by Ms. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

Chairman Williamson asked Ms. Bunch if there were any agenda amendments. Ms. Bunch stated that there were none.

V. OLD 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.

The Chairman read the agenda description of case 19-12A, an appeal from James R. Todd/ Brunswick Plantation Property Owners Association. He stated that the applicant is appealing an interpretation of the Brunswick County Unified Development Ordinance (UDO) 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.

The Chairman stated that the public hearing portion of the meeting has been concluded and due to the length of the meeting, the meeting was continued to this meeting. He stated that the purpose of this meeting is to make a decision based on the evidence heard at the September 12th, 2019 meeting.

Brunswick County Assistant Attorney Bryan Batton stated that he will give a timeline of what was heard in the last meeting. He continued that this case was an appeal of a zoning interpretation letter from Ms. Bunch. The appeal was filed by the property owners association, but the letter was directed to the developer. He stated that testimony was heard from the developer, property owners association, and citizens. Mr. Batton continued that the case was tabled until today's date for deliberation and a decision. He stated that the appeal itself, in his interpretation, is two-fold: (1) it challenged the ability to have a model home as a permitted use within a residential area; (2) and it appealed the staff decision letter directly and the conditions within the letter.

Mr. Batton stated that this Board in an appeal of a staff decision, has the power to reverse the decision, affirm the decision, or modify the decision based on evidence presented. He stated unlike variances or special use permits, the appeal of a staff decision requires a majority of three-fifths of the Board membership where the others are four-fifths.

The Chairman stated that the board members will work through the worksheet, then make a decision. He stated that the findings of facts will be listed based upon the evidence that was heard at the hearing. Following deliberation by the Board, the following decision was made by the Board.

DECISION:

Having held a hearing on September 12, 2019 and continuing until October 17, 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, an appeal of the adverse decision relating to:

Staff interpretation of the Brunswick County Unified Development Ordinance (UDO) 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.

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 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):**
 - The subject parcel is used as a sales office at present and not as a model home.
 - The staff decision to define a model home was necessary, as it was not defined in the UDO.
 - The June 25, 2019 correspondence to the Caw Caw Land Corporation outlining the conditions was agreed to by the developer.
 - The Property Owners Association (POA) appealed the interpretation of staff stating what was allowed was not of a residential use.
 - The June 25, 2019 correspondence clearly stated that a sales office was not to be operated at this location.
 - The POA objected to the staff conditions, as what was described was not a “residential use”. A sales office is a commercial use.

2. **(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:**
 - A sales office is a commercial use and will not be allowed in residential areas.
 - Brunswick County allows a model home as a residential use.

- As the Brunswick County Unified Development Ordinance does not define a model home, the Board is therefore modifying the June 25, 2019 letter to the property owner as stated herein.
- A model home may be used under the following conditions and still retain its residential character.
 - No parking lots or additional driveways are permitted.
 - No vehicle turnaround space contiguous to the existing driveway may be installed.
 - 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 a.m. to 5:00 p.m.) 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.
 - There shall be no events or gatherings held in the model home other than open houses.
 - Only customary model home signage of a temporary nature indicating an open house or an agent on duty shall be allowed. No additional sales signage in any form will be permitted.
 - There will be no more than two workstations in the model home.

THEREFORE, IT IS ORDERED that the decision of the Zoning Administrator is modified as motioned by Ms. Shiflet, seconded by Ms. McCarthy and unanimously carried.

The Chairman reiterated that due to the fact of there not being a definition of a “model home” in the ordinance, staff made the decision that model homes are allowed under certain conditions.

The Chairman stated that Option B of Question 2 on the worksheet states that the Board will go with the interpretation of the ordinance language without regards to the particular facts of this case. He asked if any board member would like to provide comments on the letter to be provided to the Planning Board regarding the development of a definition in the UDO for a “model home.”

Ms. McCarthy stated that the June 25th, 2019 correspondence letter clearly outlined the differences between a model home and a sales office. She continued that the language is not currently in the Unified Development Ordinance and should be a part of the ordinance.

The Chairman recommended going through each condition within the June 25th letter to Caw Caw Land Corporation to determine if it should be left as is, be modified, or be removed. Following much discussion among Board members, it was recommended that correspondence be sent to the Brunswick County Planning Board to request the term “model home” be included in the definition section of the UDO and that consideration be given to the following definition and limitations:

A **model home** (AKA show home) is 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 within the garage for staff hosting the model. Model homes are available for purchase and are typically at a location for the time during which the section is being developed.

Recommended conditions/limitations for the use include the following:

1. The model home is considered a residential use and must maintain the residential character of the community.
2. A separate parking lot is not allowed for a model home. Parking is to take place within the existing driveway, with no vehicle turnaround space contiguous to the driveway.
3. An employee presence is typical at a model home. Brunswick County will allow for two full-time regularly scheduled employees on site during standard business hours (8:30 a.m. to 5:00 p.m.). 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.
4. There shall be no events or gatherings held in the model home other than open houses.
5. Customary model home signage for a temporary nature indicating an open house or an agent on duty shall be allowed, such as what is commonly called a “sandwich board”. No permanent sales signage in any form is permitted.
6. There shall be no more than two (2) workstations in the model home.

The Chairman asked if there is any other further action that needs to be taken. Ms. Shiflet stated that she would like to know the timeframe for which the decision can be appealed, and if so, what is the next process. Mr. Batton stated that the decision may be appealed to Superior Court within thirty days from the date of the decision. Ms. McCarthy asked if the thirty days would start from ‘tomorrow’s date.’ Mr. Batton responded that is correct, it would start from ‘tomorrow’s date’. The Chairman asked if another revised letter would

be issued to the developer. Mr. Batton stated that the Chairman would sign a letter based upon the Board's decision and that the date would become effective on the date the letter is delivered. The Chairman asked if someone could appeal the decision. Mr. Batton stated that any appeal will be made to Superior Court.

Mr. Batton asked for a motion to affirm model homes in a residential area and to modify the conditions as stated. Ms. Ward motioned to send the proposed model home definition and recommended conditions to the Planning Board for consideration, Ms. Shiflet seconded the motion which was unanimously carried.

Mr. Batton stated that correspondence will be sent to the property owner (Mason Anderson/Caw Caw Land Corporation) and to the appellant, which was the Brunswick Plantation Property Owners Association.

VI. STAFF REPORT.

Ms. Bunch stated that the next meeting will be held November 14th. As of today, there are two cases and possibly a third case.

VII. ADJOURNMENT.

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