



BOARD OF ADJUSTMENT

CAMERON TABOR
Chairman

THERESA DOZIER
Vice-Chairman

BOARD OF ADJUSTMENT

C SHAY BALLANCE
DONNA MCCLLOUD
MICHAEL PAINTER
DAVID PALMER
VIVIAN SIMPSON

Currituck County
Board of Adjustment Agenda
Historic Currituck County Courthouse
August 8, 2013, 7:00 p.m.

7:00 p.m.

CALL TO ORDER

- A. Roll Call
- B. Announce Quorum Being Met
- C. Approval of Agenda
- D. Ask for Disqualifications

Item 1

Approval of July 11, 2013 minutes

OLD BUSINESS:

Item 2

BOA 13-05 CHRISTOPHER SUSKO: Appeal of administrator's determination that all vehicle maintenance associated with the non-accessory home occupation for a limousine/taxi service be behind the fence/gate. The property is located at 102 North Sea Breeze, Tax Map 76, Parcel 80B, Fruitville Township.

NEW BUSINESS:

Item 3

BOA 13-06 GREEN ACRES LAND DEVELOPMENT: Appeal of administrator's decision that the discharge of water from the mine and removal of stock pile material is considered mining activities. The property is located at 7177 Caratoke Hwy, Tax Map 109, Parcels 61 & 61A, Poplar Branch Township.

Item 4

ANNOUNCEMENTS

Item 5

ADJOINMENT

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
July 11, 2013**

REGULAR MEETING

The Currituck County Board of Adjustment met on July 11, 2013 at 7:00 p.m. in the Historic Currituck County Courthouse. The following members were present: David Palmer, Cameron Tabor, Michael Painter, Vivian Simpson, Donna McCloud, and C. Shay Balance. Theresa Dozier was absent. Brad Schuler, Planner; Stacey Smith, Code Enforcement Officer/Board of Adjustment Clerk; and Ben Gallop, Board of Adjustment Attorney; were also present.

Mr. Tabor called the meeting to order and announced a quorum have been met with four regular members and one alternate member.

Mr. Tabor asked if there were any changes to the agenda.

Mr. Schuler stated the applicant for item three has requested to continuance to due to family emergency.

David Palmer motioned to approve the agenda. Michael Painter 2nd the motion and the motion passed unanimously.

Item 2: Approval of June 13, 2013 Minutes

David Palmer motioned to approve the June 13, 2013 minutes with no changes. Shay Balance 2nd the motion and the motion passed unanimously.

Item 3: BOA 13-05 CHRISTOPHER SUSKO: Appeal of administrator's determination that all vehicle maintenance associated with the non-accessory home occupation for a limousine/taxi service be behind the fence/gate. The property is located at 102 North Sea Breeze, Tax Map 76, Parcel 80B, Fruitville Township.

Michael Palmer motioned to grant the continuance to the next meeting. Shy Balance 2nd the motion and the motion passed unanimously.

ADJOURNMENT

There being no further business to discuss Cameron Tabor motioned for adjournment. Vivian Simpson 2nd the motion and the motion passed unanimously. The meeting adjourned at 7:12 pm

Respectfully Submitted,

Stacey Smith

Code Enforcement Officer/BOA Clerk



Currituck County

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
252-232-3055 FAX 252-232-3026

MEMORANDUM

To: Board of Adjustment
From: Planning Staff
Date: July 3, 2013
Re: BOA 13-05 Susko Appeal

Chris Susko is appealing the administrator determination that all vehicle maintenance associated with his non-accessory home occupation for a limousine/taxi service must be behind the fence/gate shown on the approved site plan.

The Board of Adjustment issued a conditional use permit to Mr. Susko on April 11, 2011 to operate a limousine/taxi service at his residence at 102 Seabreeze Lane N in Knotts Island. Additional conditions were placed on the permit including:

“6. The two vehicles associated with the business shall be stored in the back yard as indicated on the site plan.”

Originally staff interpreted this condition to allow for minor maintenance to be conducted outside of the fenced/gated area due to it being short term in nature. However, that interpretation changed after reviewing the audio recording from the August 11, 2011 BOA meeting as requested by an adjoining property owner. At the August 11, 2011 meeting, Mr. Susko requested modifications to his conditional use permit including to not install the fence/gate from his house to the fence along the property line.

In the audio recording of the meeting, Richard Black of 108 Seabreeze Lane N stated his concerns regarding maintenance of the vehicles and that the vehicle should be maintained behind the fence and gate. Mr. Bryan Bass, Chairman of the BOA, also stated the concern of a neighboring property owner was the visible maintenance of the vehicles including changing oil and washing and that it should adhere to the original condition of storing the vehicles in the back yard. Staff believes it was the intent of the Board to have all maintenance occur behind the fence/gate in the area designated for the limo parking as shown on the approved site plan.

The County submits the following attachments:

- Attachment 1: Letter of Determination dated May 21, 2013 from Brad Schuler, Planner I.
- Attachment 2: Appeal application.
- Attachment 3: Approved site plan.
- Attachment 4: Conditional use permit issued April 11, 2011.
- Attachment 5: The minutes of the modification request from the August 11, 2011 BOA meeting.
- Attachment 6: CD of audio recording:
 - Track 1: Beginning of agenda items.
 - Track 2: Richard Black concerns over maintenance of vehicles.
 - Track 3: Bryan Bass' summary.



COUNTY OF CURRITUCK

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
Telephone (252) 232-3055 / Fax (252) 232-3026

May 21, 2013

Todd Whitehead
104 Sea Breeze North
Knotts Island, NC 27950

Christopher Susko
102 Sea Breeze North
Knotts Island, NC 27950

Re: Letter of Determination

Dear Mr. Whitehead and Mr. Susko,

After further review of the audio file of August 11, 2011 Board of Adjustment (BOA) meeting per Mr. Whitehead's request, we make the following determinations regarding Conditional Use Permit BOA 11-05 issued to Christopher Susko to allow a non-accessory home occupation for a limousine/taxi service:

- All maintenance including service and washing of the two vehicles associated with the limousine/taxi service shall be performed behind the fence/gate in the area designated for the limo parking as shown on the approved site plan.
- The fence in question meets the fencing maintenance standards in Section 5.3.8 of the Unified Development Ordinance (UDO). The fence is not leaning more than ten degrees.
- Any future landscaping that needs to be replaced must meet the current standards of the UDO including a minimum planting size of two caliper inches or height of eight feet for canopy trees.

Mr. Bryan Bass, Chairman of the BOA at the time of the meeting, in speaking about the proposed amendments to the conditional use permit as requested by Mr. Susko, stated that the concern of a neighboring property owner was the visible maintenance of the vehicles including changing oil and washing and that it should adhere to the original condition of storing the vehicles in the back yard. Staff believes it was the intent of the Board to have all maintenance occur behind the fence/gate in the area designated for the limo parking as shown on the approved site plan.

Again, staff will continue to work with Mr. Susko as he replaces the dead landscaping and gate. Shall he not complete the work within a reasonable time frame, we will seek alternate enforcement measures. It is our ultimate goal to achieve compliance with the UDO and conditional use permit.

The above determinations can be appealed to the Board of Adjustment within 30 days of receipt of this letter.

Please let me know if you have any questions and/or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Schuler". The signature is written in a cursive style with a large initial "B" and "S".

Brad Schuler
Planner I



Appeal Application

OFFICIAL USE ONLY:
 Case Number: 13-05
 Date Filed: 6-6-13
 Gate Keeper: Sds
 Amount Paid: \$150.00

Contact Information

APPLICANT: Christopher Susko PROPERTY OWNER: SAME
 Name: Christopher Susko Name: SAME
 Address: 102 Sea Breeze N Address: _____
 Telephone: (757)-647-7000 Telephone: _____
 E-Mail Address: eroticstylelimos@cox.net E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: _____

Property Information

Physical Street Address: 102 Sea Breeze N
 Location: Knotts Island
 Parcel Identification Number(s): 0076-000-080B-1000

Statement of Error, or Improper Decision or Interpretation

I wish to appeal a: Decision or Interpretation Notice of Violation

The determination being dated 05/21/2013

Grounds for appeal

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

I was believed that I could wash the vehicles
associated with the business on my drive pad and
not behind the gate It is impossible to wash a
vehicle that is parked next to another. I would
understand if only one vehicle could be cleaned at a time.

Please include all related support materials with the application.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. All information submitted and required as part of this application process shall become public record.

Christopher J Susko 05/21/13
 Appellant/Applicant Date



COUNTY OF CURRITUCK

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
Telephone (252) 232-3055 / Fax (252) 232-3026

May 15, 2013

Todd Whitehead
104 Sea Breeze North
Knotts Island, NC 27950

Re: Citizen Complaint

Dear Mr. Whitehead,

On May 14, 2013 the county inspected the property at 102 Sea Breeze North, Knotts Island. After further review of the Conditional Use Permit BOA 11-05 issued to Christopher Susko to allow a non-accessory home occupation for a limousine/taxi service we have determined the following:

- The fence in question meets the fencing maintenance standards in Section 5.3.8 of the Unified Development Ordinance (UDO). The fence is not leaning more than ten degrees.
- The two vehicles associated with the business shall be stored in the back yard as indicated on the approved site plan; however, temporary washing and servicing of such vehicles are not required to be performed behind the gate.
- Any future landscaping that needs to be replaced must meet the current standards of the UDO including a minimum planting size of 2 caliper inches for canopy trees.

Further, Mr. Susko indicated that the gate is going to be replaced with a lighter PVC fence in the near future. Mr. Susko will inform us of the construction period and we will allow him a reasonable amount of time for construction.

In conclusion we find no current violation(s) and will continue to work with Mr. Susko as we do with all businesses/citizens of Currituck County to ensure compliance with the UDO.

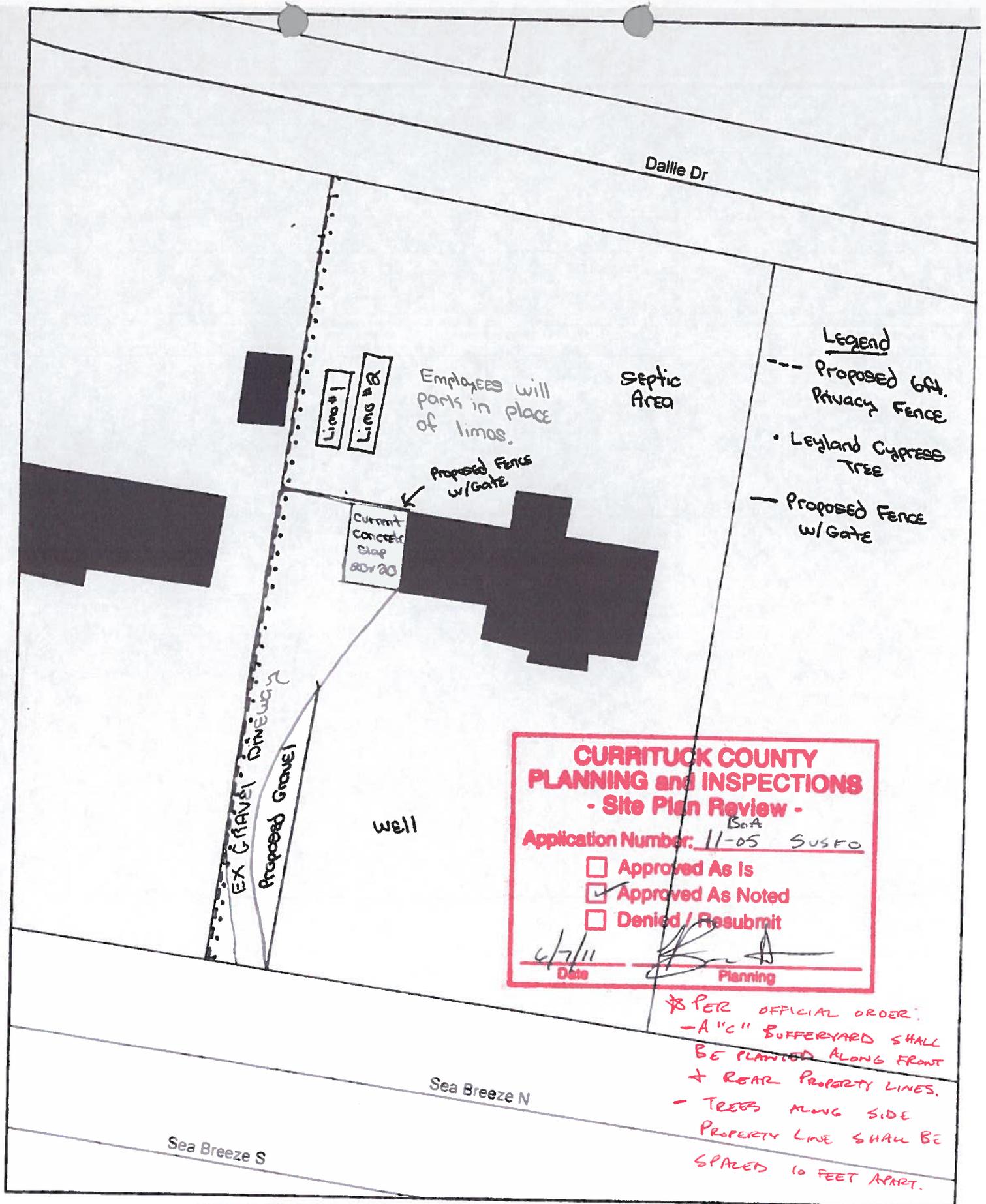
Please let me know if you have any questions and/or concerns regarding this matter.

Sincerely,

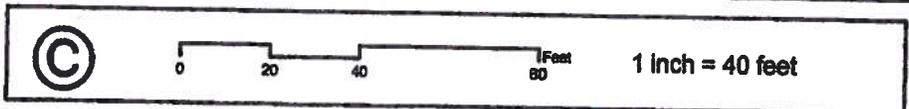
Stacey Smith
Code Enforcement Officer

CC: Christopher Susko

Attachment #2
6 of 13



Attachment #3
7 of 13



* 9/7/11 - APPLICANT INSTALLING 7-8 OAKS ALONG WESTERN PROPERTY LINE INSTEAD OF BUFFERING (w/fence) ^{SHOULD NOT HAVE BEEN}

**CURRITUCK COUNTY BOARD OF ADJUSTMENT
CONDITIONAL USE PERMIT GRANTED**

Date Filed June 17, 2011

The Board of Adjustment met on April 14, 2011 to consider BOA 11-05
CHRISTOPHER SUSKO: Conditional use permit to allow a non-accessory home
occupation for a limousine/taxi service located at 102 Seabreeze Lane N in Knotts
Island, 0076-000-080B-0000, Fruitville Township.

Having heard all of the evidence and arguments presented at the hearing, the Board makes the following FINDINGS OF FACTS and CONCLUSIONS with regard to the criteria contained in the Currituck County UDO for considering the applicant's Conditional Use permit application:

- (a) **The application is complete.**
 - 1. The application is complete.

- (b) **The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."**
 - 1. The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."

- (c) **The conditions proposed meet or exceed the minimum requirements of this ordinance.**
 - 1. Section 3.5.9 B of the UDO places special requirements on Taxi Services located in the A District. One of those requirements is that the use does not disturb or intrude on the residential character of the surrounding neighborhood. The use can meet this requirement with the required buffering and if certain conditions are placed on the permit limiting the hours of operation of the business.

- (d) **The conditional use will not endanger the public health or safety.**
 - 1. The proposed use should have no impact on public health or safety.

- (e) **The conditional use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.**
 - 1. The property is located on a 0.92 acre lot in a small subdivision off Woodleigh Road in Knotts Island. There are residential lots surrounding the property with single family dwellings to the north, west, and south. Proper conditions need to be placed on the permit, including buffering of the vehicles from adjacent single family dwellings, and limiting the hours of operation, in order for the business to be in harmony in the residential area it is located.

2. The surrounding land uses include:
 - a. North: SFD/vacant lot Zone: A
 - b. South: SFD Zone: A
 - c. East: Vacant lot Zone: A
 - d. West: SFD Zone: A

(f) The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.

1. The 2006 Land Use Plan classifies this property as Limited Service within the Knotts Island – Gibbs Woods Area subarea. The purpose of the Limited Services Area is to provide for primarily residential development at low densities. Efforts should be made in these areas to protect farmland, preserve open space, and to provide for a sense of “community”. Commercial development should also protect and preserve the community in scale, architectural style, materials, landscaping, and site design.

(g) The conditional use will not exceed the county’s ability to provide adequate public facilities.

1. The proposed use will not exceed the county's ability to provide adequate public facilities.

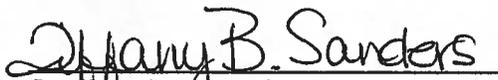
THEREFORE, IT IS ORDERED that the applicant’s Conditional Use Permit is hereby GRANTED with the following reasonable conditions:

1. The business shall have hours of operation from 8am to 9pm.
2. A “C” bufferyard shall be planted along the front and rear property lines.
3. The fencing proposed along the western property line can be shortened as to not extend into the front or side yard of the property and the proposed buffering along the western property can be reduced to a “C” bufferyard provided an affidavit with the adjoining neighbor is signed and notarized. If the affidavit can not be signed, the proposed fence shall be installed as illustrated on the site plan with the trees being spaced 10 feet apart.
4. Any office/business indoor space must be less than 10% of the total square footage of the residence.
5. No handling, including storage, of flammable and/or combustible fuels for commercial operations may occur on site.
6. The two vehicles associated with the business shall be stored in the back yard as indicated on the site plan.
7. The site plan shall be updated to show employee parking.
8. All improvements to the site shall be installed within 60 days.

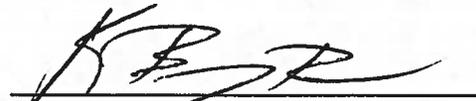
Currituck County has caused this permit to be issued in its name and the property owner(s) of the property above described. This conditional use permit together with all its conditions is binding on the current owner(s) and their successors in interest. No work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on them and their successors in interest.

COUNTY OF CURRITUCK

Ordered this 14th day of April, 2011



Staff to the Board



Board of Adjustment Chairman

Mr. Bass asked how long would it take him to complete the work that was required when the original conditional use permit was granted.

Mr. Susko stated he could provide a bond for the trees within a week if necessary.

Mr. Bass questioned the time frame for the completion of the fence.

Mr. Susko said it would take 30 days.

Mr. Palmer asked about the requirement for the trees and there location.

Mr. Schuler stated the trees weren't to serve as a buffer for the fence and there was no requirement in the ordinance for which side the trees should go on.

Mr. Bass asked if the violations were corrected would the appellant then be in compliance with the original conditional use permit.

Mr. Schuler stated yes.

Mr. Palmer questioned the appeal and amendments to the conditional use permit.

Mr. Gallop explained they were different cases to be heard separately.

Mr. Bass moved to close the public hearing. Ms. Dozier seconded the motion and the motion passed unanimously.

ACTION

Mr. Conner moved to uphold the administrator's decision that conditional use permit 11-05 was in violation. Mr. Ferebee seconded the motion and the motion passed unanimously.

OLD BUSINESS

BOA 11-05 CHRISTOPHER SUSKO: Conditional use permit to allow a non-accessory home occupation for a limousine/taxi service located at 102 Seabreeze Lane N in Knotts Island, 0076-000-080B-0000, Fruitville Township.

DISCUSSION

Ms. Susko stated he didn't not feel the gate was necessary since the bufferyard had been changed from a "C" to an "A".

Mr. Bass asked about the requirement for the gate.

Mr. Schuler said the original site plan that was approved showed a gate from the house to the fence and the limousines were to be parked behind the gate. He stated Mr. Susko was also asking to change his hours of operation.

Mr. Susko stated his ideal hours of operation from 6 am to Midnight. He also stated since he lives at the property he should be able to not be subject to those hours because there are times when he is no longer conducting business but will still be driving the limousine.

Mr. Bass questioned the current hours of operation. He asked what days would he like to extend the hours of operation as previously mentioned.

Mr. Susko stated 8 am to 9 pm every day of the week. He said he would like to have extended hours on Friday and Saturday with the other days of the week remaining the same as they were. He said that the only people that come to his house are the drivers, he does not have customers come to his house.

Mr. Palmer questioned the request for the change to the fence requirement.

Mr. Bass explained the changes that were being requested.

Mr. Schuler said there was also a request to park the limousines on the current driveway and not be required to park them behind a fence.

Mr. Palmer asked about the location of the trees.

Mr. Schuler stated they were required to be planted along the front and rear property line as well as on the side with the fence.

Mr. Gallop asked if the new site plan showed the tree alignment the same as the previous site plan.

Mr. Schuler stated since he was choosing to plant larger trees there were less trees than on the original plan but it still met the bufferyard requirement.

Mr. Whitehead stated his opinion in regards to the hours of operation. He said there was a parking pad required in addition to the gate on the fence.

Mr. Schuler stated a parking pad was not required. The use was a non-accessory home occupation and parking pads are not required for residential driveways.

Ms. Smith reviewed the minutes from the April 2011 meeting in regards to the parking pad.

Ms. Tammy Susko commented on the hours of operation. She stated that the limousines were no louder than a regular car. She said due to her work schedule she

doesn't get home until after 12 am and there would be no way to tell if it was her personal car or a limousine.

Ms. Penny Muller stated she was a driver for Mr. Susko. She stated she was opposed to the gate requirement because it was hard to get a limousine in and out of a small area.

Mr. Riggs stated his opinion about a parking pad and how that could create negative drainage onto the neighboring properties.

Mr. Richard Black stated he was three properties down from Mr. Susko's property. He explained his concerns with the limousine business in a residential neighborhood.

Mr. Susko stated that since the installation of the fence he has had more opposition from his neighbors about the fence rather than the business itself. He explained the reason for installing fence in the way it was installed. He questioned if Currituck County had a noise ordinance. He stated there were other vehicles in the neighborhood that were louder than his limousines.

Ms. Smith said a noise ordinance was implemented by the Sheriff's department.

Mr. Bass questioned if there was a requirement to which two vehicles could be on the property.

Mr. Schuler stated he was allowed to have two work related vehicles on his property and which two was not specified.

Mr. Bass moved to close the public hearing. Mr. Conner seconded the motion and the motion passed unanimously.

ACTION

Mr. Bass moved to amend the hours of operation for conditional use permit 11-05 to Sunday through Thursday 8 am to 9 pm, and Friday through Sat 7 am-11 pm while all the other original conditions remained unchanged. Mr. Conner seconded the motion and the motion passed unanimously.

The Board discussed the time frame for the work to be completed.

Mr. Conner moved to allow 30 days for all work to be completed. Mr. Ferebee seconded the motion and the motion passed unanimously.



Currituck County

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
252-232-3055 FAX 252-232-3026

MEMORANDUM

To: Board of Adjustment
From: Planning Staff
Date: July 31, 2013
Re: BOA 13-06 Green Acres Land Development Appeal

Green Acres Land Development is appealing the administrator's decision that the discharge of water from the mine and removal of stock pile material is considered mining activities and requires a use permit. The property is located at 7177 Caratoke Hwy in Jarvisburg, Tax Map 109, Parcels 61 & 61A.

A special use permit was issued to Green Acres Land Development on August 19, 2002 to operate a sand mine. The permit was valid for ten years which has expired therefore they are operating without proper permits.

In Chapter 10, Unified Development Ordinance (UDO) defines an Extractive Industry as:

"Extractive Industry

A use involving on-site extraction of surface or subsurface mineral products or natural resources. Typical uses are quarries, borrow pits, sand and gravel operations, mining, and soil mining. Specifically excluded from this use is grading and removal of dirt associated with an approved site plan or subdivision or excavations associated with, and for the improvement of, a bona fide agricultural use."

The County observed operation of the extractive industry on May 9, 2013 and May 21, 2013

The County submits the following:

- 1) Attachment 1: Notice of Violation dated May 24, 2013.
- 2) Attachment 2: Pictures of the violations taken on May 9, 2013 & May 21, 2013.



COUNTY OF CURRITUCK
Code Enforcement Program
153 Courthouse Road, Suite 110
Currituck, NC 27929
(252) 232-6027

NOTICE OF VIOLATION #
V13-14

Green Acres Land Development
PO Box 332
Powells Point, NC 27966

Violation Date: May 24, 2013	Inspection Date: May 21, 2013
Property Address: 7177 Caratoke Hwy	PIN #: 0109-000-0061-0000 & 0109-000-061A-0000
Violation Description:	
The discharge of water from the mine and removal of stock pile material is considered mining activities and requires a use permit. The Green Acres Conditional Use Permit expired on November 22, 2012 therefore you are operating without proper county permits.	
Compliance Request:	UDO Code Reference:
Stop all mining activities until such time a use permit has been obtained from the county.	Subsection 4.1.2: Use Table & Subsection 4.2.5.A: Extractive Industry
	Required Compliance Date: June 10, 2012



Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.

If you wish to appeal this decision, you have ten (10) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Community Development Department.





Elliott Consulting

PO Box 112
Aydlett, North Carolina 27916
Phone: 252-339-9021

▶ **Currituck County Planning and Community
Development**

Board of Adjustment
Code Enforcement Program
153 Courthouse Road
Suite 110
Currituck, North Carolina 27929

To whom it may concern:

I am writing this as an agent for Jeffrey A. Newbern, Sr., owner of Green Acres Land Development Sand Mine, NCDENR Permit #27-47, located at 7717 Caratoke Highway, Jarvisburg, NC in Currituck County. Upon an inspection of the Green Acres Sand Mine on May 21, 2013 by Mrs. Stacey Smith of the Currituck County Code Enforcement Program, Mr. Newbern was issued a Notice of Violation to stop mining activities until a Use Permit has been obtained, with a required compliance date of June 10, 2013.

Mr. Newbern has filed an application on May 23, 2013 for a Currituck County Use Permit to conduct sand mining, which is in process of review now. Mr. Newbern would suffer severe financial hardship if cessation of dewatering was required before the Use Permit was approved, and he is anticipating approval of the application for the permit within a short time. Mr. Newbern is hereby requesting the Currituck County Board of Adjustment to allow him to maintain dewatering activities in the mine until the Use Permit has been approved.

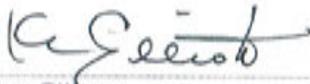
Mr. Newbern also believes the Notice of Violation was issued in error for two reasons regarding the definition of mining activity by the NC Mining Act of 1971. Details of his reasons are attached to the appeal application.

Mr. Newbern is currently in full compliance with permit requirements from the NCDENR Division of Energy, Mineral and Land Resources and the Division of Water Quality, and he has received no previous violations from the NCDENR or Currituck County Planning since he began mining in 2002. A current mining map is included with this appeal application.

On April 18, 2013 a community meeting regarding the Use Permit application was held by Green Acres Land Development with adjacent landowners to Green Acres Sand Mine to allow the landowners to address Mr. Newbern with concerns about the sand mine and ground water levels in the area. At this time Mr. Newbern has met with all but one of the attendees and has successfully helped them with their concerns and addressed any issues they had.

Mr. Newbern appreciates the cooperation of the members of the Board of Adjustment and requests that they allow him to maintain dewatering activities and removal of stockpiled materials in the Green Acres Mine for the short time until the Use Permit has been approved.

Thank you,



Ken Elliott
Elliott Consulting
06/5/2013



Appeal Review Process

Pre-Application
Conference
(optional)

Submit
Notice of Appeal

Assemble
Record of Appeal

Staff Review and
Report

Schedule
Hearing

Public
Notification

Board of
Adjustment
Hearing /
Decision

Notice of
Decision

Appeal

Contact Information

Currituck County
Planning and Community Development
153 Courthouse Road, Suite 110
Currituck, NC 27929

Phone: 252.232.3055
Fax: 252.232.3026

Website: <http://www.co.currituck.nc.us/planning-community-development.cfm>

Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet within thirty days of the date of the interpretation or decision being appealed, or within ten days of the date of the notice of violation being appealed. A complete application packet consists of the following:

- Complete Currituck County Appeal Application.
- Application Fee (\$150).

On receiving an application, staff shall determine whether the application is complete or incomplete. A complete application contains all the information and materials listed above, and is in sufficient detail to evaluate and prepare a staff report. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination within the thirty or ten day appeal window.

Step 2: Staff Review and Action

After accepting the appeal application, staff shall review it and prepare a written report. Staff shall transmit the appeal and the record of material considered by the decision-maker in making the decision or interpretation, including but not limited to the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision. These materials, plus the Land Use Plan, Unified Development Ordinance (UDO), and any other relevant adopted plan, shall constitute the record of the appeal.

Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure the public hearing is scheduled for a regularly scheduled Board of Adjustment meeting or a meeting specially called for by the Board of Adjustment. The required public hearing with the Board of Adjustment shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

The application shall meet the following public notification requirements:

- **Published Notice**
Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

- **Mailed Notice***
Staff shall be responsible for preparing and mailing a written notice between 10 and 25 days before the public hearing. Notice shall be mailed to:
 - All owners of the land subject to the application;
 - The applicant, if different from the land owner;
 - All owners of land within 200 feet of the property lines of land subject to the application (including owners of land located outside the county) whose address is known by reference to the latest ad valorem tax records; and
 - Commanders of military bases located within five miles of the subject application when the development proposal affects the type of uses allowed.
- **Posted Notice***
At least 10 days before the public hearing, posted notice shall be made by staff. A sign shall be placed in a conspicuous location as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.

*Mailed and Posted notification are required only in cases where the appeal pertains to a specific parcel of land.

Step 4: Public Hearing Procedures, and Decision-Making Body Review and Decision

Staff will present the application and staff report to the Board of Adjustment. The applicant must attend the public hearing to present evidence and answer any questions the board or public may have about the application. The Board of Adjustment shall conduct a quasi-judicial hearing that is subject to procedural rules set forth by the courts including having all persons who intend to present evidence to the board be sworn. Quasi-judicial public hearings are subject to the following:

- **Opportunity to Present Testimony and Evidence**
Any affected party shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of the applicant and the applicant's representatives and county staff and county staff's representatives. At the discretion of the person chairing the body conducting the public hearing, an affected party may be granted an opportunity to ask questions of any other member of the public who has testified at the hearing.
- **Not Bound by Rules of Evidence**
Except as otherwise provided in the North Carolina General Statutes, the board is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The board may consider all testimony and evidence it deems competent and material to the application under consideration.
- **Cross Examination**
Any inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness. No re-direct or re-cross shall be allowed unless requested by the applicant, and affected party, or the county – who shall state the desired area of inquiry – and the request is approved by the person chairing the body conducting the hearing. If re-direct or re-cross is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination.
- **Ex Parte Communication**
Ex parte communication between an applicant or an affected party and a member of the board reviewing or making a decision on the application is prohibited, and must be disclosed during the public hearing, if it concurs.

The Board of Adjustment shall decide on the application base solely on the record of the appeal, as supplemented by arguments presented at the public hearing. The decision shall be one of the following:

- Affirmation of the decision or interpretation (in whole or in part);
- Modification of the decision or interpretation (in whole or in part); or
- Reversal of the decision or interpretation (in whole or in part).

A vote to reverse or modify a decision or interpretation shall require a four/fifths majority of Board of Adjustment members present and voting.

In deciding on the appeal application, the board is limited to the following determinations, which shall be based on clear and substantial evidence in the record:

- The decision-maker did not make an error or correctly applied the standards of the UDO in making the decision or interpretation;
- The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
- The decision-maker made the decision based on a standard not contained in the UDO or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in the UDO was applied; or
- The decision-maker made an error in applying a standard or measuring a standard.

Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.

The Board of Adjustment shall not hear any evidence or make any decision based on hardships or special conditions. Such matters may only be considered in the context of an application for a variance or use permit.

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Appeal Application

OFFICIAL USE ONLY:

Case Number: _____
Date Filed: _____
Gate Keeper: _____
Amount Paid: _____

Contact Information**APPLICANT:**Name: Jeffrey A. Newbern, Sr.Address: PO Box 332Powell's Point, NC 27966Telephone: (252) 491-2121E-Mail Address: galanddev@embarqmail.com**PROPERTY OWNER:**Name: Jeffrey A. Newbern, Sr.Address: PO Box 332Powell's Point, NC 27966Telephone: (252) 491-2121E-Mail Address: galanddev@embarqmail.comLEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: SAME**Property Information**Physical Street Address: 7177 Caratoke Highway, Jarvisburg, NCLocation: 0.5 mi south of Jarvisburg, NC Post Office on east side of Caratoke Highway (US 158).Parcel Identification Number(s): 0109-000-0061-0000 & 0109-000-061A-000**Statement of Error, or Improper Decision or Interpretation**I wish to appeal a: Decision or Interpretation Notice of ViolationThe determination being dated 05/24/2013 (Violation Date).**Grounds for appeal**

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

Please see attached document.

Please include all related support materials with the application.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. All information submitted and required as part of this application process shall become public record.

Appellant/Applicant

June 5, 2013

Date

Grounds for appeal (from page 5)

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

1: Per Article 7 of the N.C. Mining Act of 1971, 74-49(7b), mining is defined as "any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter **from their original location**". Mr. Newbern submits that removal of previously excavated soil materials from stockpiled locations does not fit the definition of mining since excavation has ceased for some time at Green Acres Sand Mine and stockpiles currently being removed are not in the original location of the soil materials.

2: Dewatering is not mentioned in Article 7 as part of the definition of general mining.

3: Mr. Newbern has filed an application on May 23, 2013 for a Currituck County Use Permit to conduct sand mining, which is in process of review now. Mr. Newbern would suffer severe financial hardship if cessation of dewatering was required before the Use Permit was approved, and he is anticipating approval of the application for a Use Permit within a short time. Mr. Newbern is hereby requesting the Currituck County Board of Adjustment to allow him to maintain dewatering activities and removal of stockpiled materials in the mine until the Use Permit has been approved.

Appeal Submittal Checklist

Staff will use the following checklist to determine the completeness of your application. Only complete applications will be accepted.

Appeal Submittal Checklist

Date Received: _____

BOA Date: _____

Project Name: Green Acres Land Development Sand Mine

Applicant/Property Owner: Jeffrey A. Newbern, Sr. / Green Acres Land Development, Inc.

Appeal Submittal Checklist		
1	Complete Appeal application	
2	Application fee (\$150)	
3	All related support materials/evidence.	
4	10 hard copies of ALL documents	
5	1 PDF digital copy of all plans AND documents (ex. Compact Disk – e-mail not acceptable)	

For Staff Only

Pre-application Conference (optional)

Pre-application Conference was held on _____ and the following people were present:

Comments

Article 7.
The Mining Act of 1971.

§ 74-49. Definitions.

Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

- (1) "Affected land" means the surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.
- (1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (2) "Borrow pit" means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.
- (3) "Commission" means the North Carolina Mining and Energy Commission created by G.S. 143B-293.1.
- (4) "Department" means the Department of Environment and Natural Resources. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or an employee of the Department designated by the Secretary.
- (5) "Land" shall include submerged lands underlying any river, stream, lake, sound, or other body of water and shall specifically include, among others, estuarine and tidal lands.
- (6) "Minerals" means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.
- (7) "Mining" means:
 - a. The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter.
 - b. Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location.
 - c. The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use."Mining" does not include:
 - a. Those aspects of deep mining not having significant effect on the surface, where the affected land does not exceed one acre in area.
 - b. Mining operations where the affected land does not exceed one acre in area.
 - c. Plants engaged in processing minerals produced elsewhere and whose refuse does not affect more than one acre of land.
 - d. Excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining.

- e. Removal of overburden and mining of limited amounts of any ores or mineral solids when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that no ores or mineral solids removed during exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business, and provided further that the affected land resulting from any exploratory excavation does not exceed one acre in area.
- f. Excavation or grading where all of the following apply:
 - 1. The excavation or grading is conducted to provide soil or other unconsolidated material to be used without further processing for a single off-site construction project for which an erosion and sedimentation control plan has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
 - 2. The affected land, including nonpublic access roads, does not exceed five acres.
 - 3. The excavation or grading is completed within one year.
 - 4. The excavation or grading does not involve blasting, the removal of material from rivers or streams, the disposal of off-site waste on the affected land, or the surface disposal of groundwater beyond the affected land.
 - 5. The excavation or grading is not in violation of any local ordinance.
 - 6. An erosion and sedimentation control plan for the excavation or grading has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
- (8) "Neighboring" means in close proximity, in the immediate vicinity, or in actual contact.
- (9) "Operator" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, engaged in mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.
- (10) "Overburden" means the earth, rock, and other materials that lie above the natural deposit of minerals.
- (10a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (11) "Peak" means overburden removed from its natural position and deposited elsewhere in the shape of conical piles or projecting points.
- (12) "Reclamation" means the reasonable rehabilitation of the affected land for useful purposes, and the protection of the natural resources of the surrounding area. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish on a continuing basis the vegetative cover, soil stability, water conditions and safety conditions appropriate to the area.

- (13) "Reclamation plan" means the operator's written proposal as required and approved by the Department for reclamation of the affected land, which shall include but not be limited to:
- a. Proposed practices to protect adjacent surface resources;
 - b. Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
 - c. Manner and type of revegetation or other surface treatment of the affected areas;
 - d. Method of prevention or elimination of conditions that will be hazardous to animal or fish life in or adjacent to the area;
 - e. Method of compliance with State air and water pollution laws;
 - f. Method of rehabilitation of settling ponds;
 - g. Method of control of contaminants and disposal of mining refuse;
 - h. Method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
 - i. Maps and other supporting documents as may be reasonably required by the Department; and
 - j. A time schedule that meets the requirements of G.S. 74-53.
- (14) "Refuse" means all waste soil, rock, mineral, scrap, tailings, slimes, and other material directly connected with the mining, cleaning, and preparation of substances mined and shall include all waste materials deposited on or in the permit area from other sources.
- (15) "Ridge" means overburden removed from its natural position and deposited elsewhere in the shape of a long, narrow elevation.
- (16) "Spoil bank" means a deposit of excavated overburden or refuse.
- (16a) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (17) "Termination of mining" means cessation of mining operations with intent not to resume, or cessation of mining operations as a result of expiration or revocation of the permit of the operator. Whenever the Department shall have reason to believe that a mining operation has terminated, the Department shall give the operator written notice of its intention to declare the operation terminated, and the operator shall have an opportunity to appear within 30 days and present evidence that the operation is continuing; where the Department finds that the evidence is satisfactory, the Department shall not declare the mining operation terminated. (1971, c. 545, s. 4; 1973, c. 1262, ss. 33, 86; 1977, c. 771, s. 4; c. 845, s. 1; 1989, c. 727, s. 218(13); 1993 (Reg. Sess., 1994), c. 568, s. 1; 1997-443, s. 11A.119(a); 1999-82, s. 1; 2002-165, s. 2.1; 2012-143, s. 1(d).)



COUNTY OF CURRITUCK
 Code Enforcement Program
 153 Courthouse Road, Suite 110
 Currituck, NC 27929
 (252) 232-6027

NOTICE OF VIOLATION #
 V13-14

Green Acres Land Development
 PO Box 332
 Powells Point, NC 27966

Violation Date: May 24, 2013	Inspection Date: May 21, 2013
Property Address: 7177 Caratoke Hwy	PIN #: 0109-000-0061-0000 & 0109-000-061A-0000
Violation Description:	
<p>The discharge of water from the mine and removal of stock pile material is considered mining activities and requires a use permit. The Green Acres Conditional Use Permit expired on November 22, 2012 therefore you are operating without proper county permits.</p>	
Compliance Request:	UDO Code Reference:
Stop all mining activities until such time a use permit has been obtained from the county.	Subsection 4.1.2: Use Table & Subsection 4.2.5.A: Extractive Industry
	Required Compliance Date:
	June 10, 2012

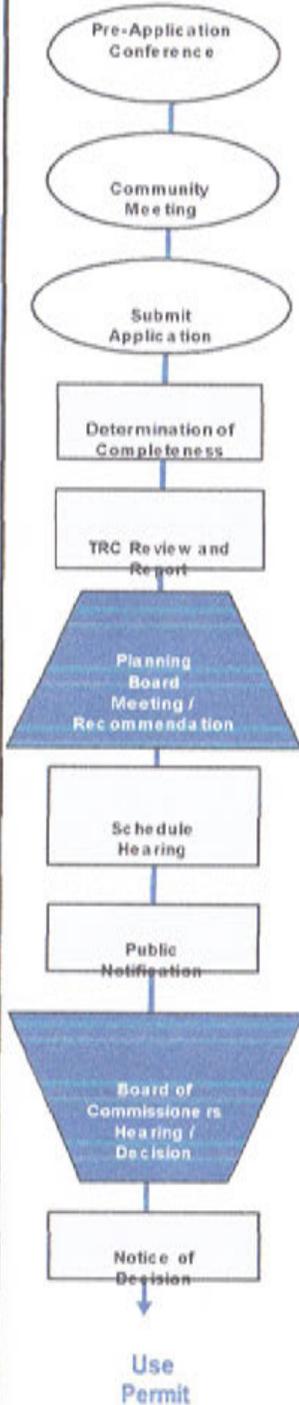


Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.

If you wish to appeal this decision, you have ten (10) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Community Development Department.



Use Permit Review Process



Contact Information

Currituck County
 Planning and Community Development
 153 Courthouse Road, Suite 110
 Currituck, NC 27929

Phone: 252.232.3055
 Fax: 252.232.3026

Website: <http://www.co.currituck.nc.us/planning-community-development.cfm>

Step 1: Pre-application Conference

The purpose of a pre-application conference is to provide an opportunity for the applicant to determine the submittal requirements and the procedures and standards applicable to an anticipated development application. A pre-application conference is also intended to provide an opportunity for county staff to become familiar with, and offer the applicant preliminary comments about, the scope, features, and impacts of the proposed development, as it relates to the standards in the Unified Development Ordinance (UDO).

The applicant shall submit conceptual drawings that show the location, general layout, and main elements of the development to be proposed as part of the application to the Planning and Community Development Department at least three business days before the pre-application conference.

Step 2: Community Meeting

The purpose of the community meeting is to inform owners and occupants of nearby lands about the application for a use permit that is going to be reviewed under the UDO, and to provide the applicant an opportunity to hear comments and concerns about the application as a means of resolving conflicts and outstanding issues, where possible.

Community meetings are opportunities for informal communication between applicants and the owners and occupants of nearby lands, and other residents who may be affected by the application.

The community meeting shall comply with the following procedures:

- o **Time and Place**
 - The meeting shall be held at a place that is convenient and accessible to neighbors residing in close proximity to the land subject to the proposed use permit application.
- o **Notification**
 - Mailed Notice
 - The applicant shall mail notice of the meeting a minimum of ten days in advance of the meeting to the Planning Director and to:
 - i. All owners of the land subject to the application;
 - ii. All owners of land within 200 feet of the property lines of land subject to the application (including owners of land located outside the county) whose address is known by reference to the latest ad valorem tax records; and
 - iii. Commanders of military bases located within five miles of the subject application when the development proposal affects the type of uses allowed.

- Posted Notice
 - The applicant shall post notice of the community meeting on the land subject to the application for at least ten days before the date fixed for the meeting, in a form established by the Planning Director. Signs used for posted notice shall have a minimum size of six square feet per side.
- Notice Content
 - The notice shall state the time and place of the meeting and general nature of the use permit application.
- **Conduct of Meeting**

At the meeting, the applicant shall explain the development proposal and application, inform attendees about the application review process, respond to question and concerns neighbors raise about the application, and propose ways to resolve conflicts and concerns.
- **Staff Attendance**

County staff shall attend the meeting for purpose of advising attendees about the applicable provisions of the UDO and the land use plan, but shall not serve as facilitators or become involved in discussions about the use permit application.
- **Written Summary of Community Meeting**

The applicant shall prepare a written summary of the meeting that includes a list of meeting attendees, a summary of attendee comments, discuss issues related to the use permit application, and any other information the applicants deems appropriate. The meeting summary shall be included with the application materials and be made available to the public for inspection.
- **Response to Summary**

Any person attending the community meeting may submit a written response to the applicant's meeting summary to the Planning Director within 30 days after the application is determined complete. The response may state their understanding of attendee comments, discuss issues related to the development proposal, and include any other information they deem appropriate. All written responses to the applicant's summary of the community meeting shall be transmitted to the applicant, included with the application materials, and made available to for public inspection.

Step 3: Application Submittal and Acceptance

The applicant must submit a complete application packet on or before the application submittal date. A complete application packet consists of the following:

- Completed Currituck County Use Permit Application.
- Application Fee (\$150)
- Written Summary of Community Meeting.
- Site plan drawn to scale, if applicable. The plan shall include the items listed in the use permit design standards checklist.
- Landscape plan drawn to scale, if applicable. The plan shall include the items listed in the use permit plan design standards checklist.
- Exterior lighting plan drawn to scale, if applicable. The plan shall include the items listed in the use permit design standards checklist.
- Stormwater plan drawn to scale, if applicable. The plan shall include the items in the use permit design standards checklist.
- *Architectural elevations illustrating the design and character of the proposed structures, if applicable.*
- ARHS Construction Improvements Permit, if applicable.
- NCDENR, DWQ stormwater permit application (if 10,000sf or more of built upon area).
- NCDENR, Land Quality, Erosion and Sedimentation Control permit application (if one acre or more of land disturbance).
- NCDOT Street and Driveway Access Permit Application and Encroachment Agreement, if applicable.
- Number of Copies Submitted:
 - 5 Copies of conceptual site plans
 - 5 Hard copies of ALL documents
 - 1 PDF digital copy (ex. Compact Disk – e-mail not acceptable) of all plans AND documents

On receiving an application, staff shall, within ten business days, determine whether the application is complete or incomplete. A complete application contains all the information and materials listed above, and is in sufficient detail to evaluate and determine whether it complies with appropriate review standards. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination. Failure to resubmit a complete application within 45 calendar days after being determined incomplete will result in the application being considered withdrawn.

Step 4: Staff Review and Action

Once an application is determined complete, it will be distributed to the Technical Review Committee (TRC). TRC shall review the application, prepare a staff report, and provide a recommendation on the application. The staff report may identify and recommend conditions of approval addressing how compliance deficiencies might be corrected and adverse effects of the application might be mitigated.

Step 5: Advisory Body Review and Recommendation

After the TRC prepares a staff report and provides a recommendation on the application, staff shall schedule the application for a public meeting with the Planning Board. At the public meeting, the Planning Board shall consider the application, relevant support materials, staff report, and any public comments. It shall then recommend approval, approval subject to additional conditions, or denial, and clearly state that factors considered in making the recommendation. The Planning Board shall provide a recommendation on an application it reviews within two months from the date of its initial meeting to consider the application.

Step 6: Public Hearing Scheduling and Public Notification

After the Planning Board provides a recommendation on the application, staff shall ensure that the public hearing on it is scheduled for a regularly scheduled Board of Commissioners meeting or a meeting specially called for by the Board of Commissioners. The required public hearing with the Board of Commissioners shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

The application shall meet the following public notification requirements:

o **Published Notice**

Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

o **Mailed Notice**

Staff shall be responsible for preparing and mailing a written notice between 10 and 25 days before the public hearing. Notice shall be mailed to:

- All owners of the land subject to the application;
- The applicant, if different from the land owner;
- All owners of land within 200 feet of the property lines of land subject to the application (including owners of land located outside the county) whose address is known by reference to the latest ad valorem tax records; and
- Commanders of military bases located within five miles of the subject application when the development proposal affects the type of uses allowed.

o **Posted Notice**

At least 10 days before the public hearing, posted notice shall be made by staff. A sign shall be placed in a conspicuous location as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.

Step 7: Public Hearing Procedures, and Decision-Making Body Review and Decision

The applicant must be in attendance at the public hearing. During the public hearing, the Planning Director will present the staff report and any review body findings and recommendation to the Board. The applicant will then have the opportunity to present any information they deem appropriate. The burden of demonstrating that an application complies with applicable review and approval standards of the UDO is on the applicant. The public may be permitted to speak in accordance with the Board of Commissioners rules of procedure, or at their discretion, as appropriate, in support of or in opposition to the application. The applicant and Planning Director may respond to any comments, documents, or materials presented.

The Board of Commissioners shall make one of the following decisions on the application:

- o Adoption of the use permit;
- o Adoption of the use permit subject to conditions or approval;
- o Denial of the use permit; or
- o Remand of the use permit application back to the Planning Board for further consideration.

The Board of Commissioners may attach additional conditions of approval, including timing limits on residential building lots or units available for occupancy, to assure adequate public facilities remain sufficient to serve the development.

A use permit shall be approved on a finding the applicant demonstrates the proposed use will:

- o Not endanger the public health or safety;
- o Not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located;
- o Be in conformity with the Land Use Plan or other officially adopted plan; and
- o Not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.



Use Permit Application

OFFICIAL USE ONLY:

Case Number: _____
Date Filed: _____
Gate Keeper: _____
Amount Paid: _____

Contact Information

APPLICANT:

Name: Jeffrey A. Newbern, Sr.
Address: PO Box 67, Harbinger, NC 27941

Telephone: 252-491-2121

E-Mail Address: galanddev@embarqmail.com

PROPERTY OWNER:

Name: Jeffrey A. Newbern, Sr.
Address: POB 67, Harbinger, NC 27941

Telephone: 252-491-2121

E-Mail Address: galanddev@embarqmail.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: SAME

Property Information

Physical Street Address: 7177 Caratoke Highway, Jarvisburg, NC

Location: 0.5 mi south of Jarvisburg, NC Post Office on East Side of Caratoke Highway (US 158).

Parcel Identification Number(s): 010900000810000, 0109000061A0000

Total Parcel(s) Acreage: 58.77 acres

Existing Land Use of Property: Sand Mine Operation, Agriculture

Request

Project Name: Green Acres Land Development Sand Mine (Renewal of Existing SUP)

Proposed Use of the Property: Sand Mine Operation

Deed Book/Page Number and/or Plat Cabinet/Slide Number: Book 602, page 392; Book 602, page 388

Total square footage of land disturbance activity: 1,150,855.2 sqft (26.42 acres)

Total lot coverage: 26.42 acres

Total vehicular use area: 3.83 acres

Existing gross floor area: _____

Proposed gross floor area: _____

Community Meeting

Date Meeting Held: April 18, 2013

Meeting Location: Powell's Point Senior Center
Caratoke Highway, Powell's Point, NC 27966

Purpose of Special Use Permit and Project Narrative (please provide on additional paper if needed): _____

Renewal of existing Sand Mine Operation SUP (narrative attached).

The applicant shall provide a response to the each one of the following issues. The Board of Commissioners must provide specific findings of fact based on the evidence submitted. All findings shall be made in the affirmative for the Board of Commissioners to issue the special use permit.

- A. The use will not endanger the public health or safety.

The area proposed will not be subject to any hazardous waste, measures are taken to protect surrounding area for water quality & quantity by the measurement of groundwater levels in perimeter test wells; paved roadbed has been installed to eliminate dust from the access road to the excavation area; screening buffers have been installed to provide a visual barrier for the site with signs to warn of trespassing.

- B. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

The parcel of land that will be used for the special use permit renewal is approximately 58.77 acres in size. The immediate area has a large amount of agricultural property near the proposed site. The proposed site is a substantially large enough parcel to accommodate an excavation of this size. As increased development escalates in the county, property values should increase in value in the future. Future plans for this property include possible future home-sites to be placed surrounding the excavated pond similar to the neighboring Meadow Lakes subdivision.

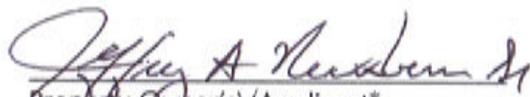
- C. The use will be in conformity with the Land Use Plan or other officially adopted plan.

The permit conforms with the Land Use Plan by the fact that it meets all County and State requirements regarding setbacks, and it is a permissible project in a Zone A (agriculture) property.

- D. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

The use will not produce any additional burden on schools, fire & rescue, law enforcement or other public facilities due to the nature of the proposed permit itself. The remaining pond will be available to local volunteer fire departments as an emergency water source as needed.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.


Property Owner(s)/Applicant*

May 21, 2013

Date

*NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.

Use Permit Design Standards Checklist

The table below depicts the design standards of the use permit application. Please make sure to include all applicable listed items to ensure all appropriate standards are reviewed.

Use Permit Design Standards Checklist

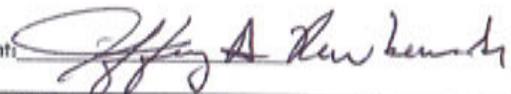
Date Received: _____

TRC Date: _____

Project Name: Green Acres Land Development Sand Mine

Applicant/Property Owner: Jeffrey A. Newbern, Sr.

Site Plan Design Standards Checklist	
General	
1	Property owner name, address, phone number, and e-mail address.
2	Site address and parcel identification number.
3	North arrow and scale to be 1" = 100' or larger.
4	Vicinity map showing property's general location in relation to streets, railroads, and waterways.
5	Existing zoning classification and zoning setback lines of the property.
6	Scaled drawing showing existing and proposed site features : Properties lines, acreage, adjacent use types, streets (right-of-ways), easements, buildings and accessory structures (including square feet and use), parking layout, vehicular use areas, driveways (including opposing driveways), loading spaces, refuse collection facilities (dumpsters), outdoor storage areas, ground based utility equipment, fences and walls, and sidewalks and pedestrian circulation. And location and size of existing and proposed infrastructure : Water mains (including water taps), water meter details, backflow prevention details, wells, sewer mains or on-site septic systems (including repair area), electrical service, fire hydrants, detail of fire apparatus access to buildings, and of any other public utility within all adjacent public right-of-ways and easements.
7	Approximate location of all designated Areas of Environmental Concern or other such areas which are environmentally sensitive on the property, such as Maritime Forest, CAMA, 404, or 401 wetlands as defined by the appropriate agency.
8	Sight distance triangles.
9	Proposed common areas, open space set-asides, and required buffers.
Landscape Plan	
10	All existing and proposed planting areas and vegetation that will be used to comply with the landscaping requirements, including the species, caliper, and spacing of all vegetation.
11	Existing and proposed physical barriers to be used to comply with the bufferyard and screening requirements.
12	Heritage tree inventory and proposed tree protection zones.
13	Adjoining property lines, zoning, and names and address of adjoining property owners.
Exterior Lighting Plan	
14	Location, height, and type of all proposed exterior lighting including but not limited to site, street, building, and security lighting.
15	Footcandle measurements of the entire site including lot lines, or light fixture documentation when minimal lighting is proposed.
Stormwater Management Plan	
16	Location of storm drainage patterns, BMP's and drainage infrastructure intended to serve the development.

17	Stormwater narrative report with supporting calculations.	
18	Topographic plan that indicates location and elevation changes above or below natural grade (shown in one foot intervals) within the past six months.	
19	Area of land disturbing activity and sedimentation and erosion control plan.	
20	<p>The following certificate:</p> <p>I, <u>Jeffrey A. Newbern, Sr.</u>, owner, do hereby certify that I will develop the property in accordance with the approved plans which will be constructed or maintained so that surface waters from such development are not unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties. In addition, the development will be constructed or maintained so that it will not unreasonably impede the natural flow of water from higher or adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties.</p> <p>Date: <u>May 21, 2013</u> Owner/Agent: </p>	

Architectural Elevations

21	Architectural drawings and/or sketches illustrating the design, character, height, and materials of the proposed buildings.	
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Flood Damage Prevention, if Applicable

22	Proposed elevation of all structures and utilities.	
23	<p>Location, dimensions, and use of:</p> <p>Development and disturbance, existing and proposed structures and utility systems grading and pavement areas, fill materials, storage areas, drainage facilities, and other development.</p>	
24	Boundary of Special Flood Hazard Area (SFHA), floodway, Coastal Barrier Resource System (CBRS) Area, water course relocation, or a statement that the entire lot is within a specific SFHA.	
25	Flood zone designation as determined on the County's Flood Insurance Rate Maps (FIRM).	
26	Design Flood Elevation (Base Flood Elevation plus one foot freeboard).	
27	Plans and/or details for the protection of public facilities and utilities (sewer, gas, electrical, and water systems) from inundation of flood waters up to Design Flood Elevation.	
28	<p>Water course alteration or relocation:</p> <p>Description of alteration or relocation, report on effects of proposed project on the flood carrying capacity of the water course, and effects to properties located up and downstream.</p>	
29	Fill – plans for non-structural fill (if being utilized in VE zone).	

Use Permit Submittal Checklist

Staff will use the following checklist to determine the completeness of your application within ten business days of submittal. Please make sure all of the listed items are included. Staff shall not process an application for further review until it is determined to be complete.

Use Permit Submittal Checklist

Date Received: _____

TRC Date: _____

Project Name: Green Acres Land Development Sand Mine

Applicant/Property Owner: Jeffrey A. Newbern, Sr., President, Green Acres Land Development, Inc.

Use Permit Submittal Checklist	
1	Complete Use Permit application
2	Application fee (\$150)
3	Community meeting written summary
4	Site plan, if applicable
5	Landscape plan, if applicable
6	Exterior lighting plan, if applicable
7	Stormwater management plan, if applicable
8	Architectural elevations, if applicable
9	ARHS Construction Improvements Permit, if applicable
10	NCDENR, DWQ stormwater permit application (if 10,000sf or more of built upon area).
11	NCDENR, Land Quality, Erosion and Sedimentation Control permit application (if one acre or more of land disturbance).
12	NCDOT Street and Driveway Access Permit Application and Encroachment Agreement, if applicable
13	5 copies of plans
14	5 hard copies of ALL documents
15	1 PDF digital copy of all plans AND documents (ex. Compact Disk – e-mail not acceptable)

For Staff Only

Pre-application Conference

Pre-application Conference was held on _____ and the following people were present:

Comments

