

**Minutes of the Regular Meeting of the
Board of Adjustment**

**Tuesday, October 25, 2005
1:30 p.m.**

Lake Lure Municipal Center

Present: Beth Rose, Chairman
Stephen Webber
Fred Noble
Werner Maringer
Nancy McNary, Alternate

Also present: Shannon Baldwin, Community Development Administrator
Teresa Reed, Assistant Zoning Administrator
Susan Lynch, Code Enforcement Clerk, Recording Secretary
Blaine Cox, Council Liaison
Mary Ann Dotson, Board Member

Chairman Rose called the meeting to order at 1:40 p.m.

Mr. Webber moved to approve the agenda with the withdrawal of application ZA-05-02 by Mr. John Kampe. The motion was seconded by Mr. Maringer and approved unanimously.

The minutes of the regular meeting from September 27, 2005 were accepted upon a motion by Mr. Noble. The motion was seconded by Mr. Webber and approved unanimously.

Old Business:

Chairman Rose queried Stephen Webber, Fred Noble, and Werner Maringer if they would like to be reappointed to the Board of Adjustment and Lake Structure Appeals Board when their terms expire in December, 2005. All wished to be re-appointed. Chairman Rose requested Teresa to inform the Town Council that Mr. Webber, Mr. Noble, and Mr. Maringer wish to be re-appointed.

Also, Chairman Rose reminded the board that the next regular meeting for the Board of Adjustment will be November 29, 2005.

Application ZV-05-04, a continuation of meetings held on August 23, 2005 and September 27, 2005. ZV-05-04 is a request from Lyn Weaver and Joan Cashion, agents for Margaret Wellborn, to reduce the minimum lot size requirement from two acres for a lot zoned R1A to 1.25 acres. The applicant is requesting a reduction of .75 acres in lot size requirement.

The property (Tax PIN 228595, 2228594, 228593, and 230815) is located on Luther Burbank Road, Lake, Lure.

Ms. Lyn Weaver, Shannon Baldwin, Teresa Reed, Ron Wood, and Joe Koon were sworn in. Ms. Weaver reviewed with the board the particulars of the case. Mr. Webber moved the following items to be entered as exhibits: (1) Exhibit 1 is a map reflecting the non-conforming lot of record consists of three lots and a pathway. The lots are not contiguous to any other lots owned by Ms. Wellborn; (2) Exhibit 2 is the deed reflecting when the Wellborns originally purchased said property. The motion was seconded by Ms. McNary and approved unanimously.

Mr. Wood and Mr. Koon voiced their concern with variances being granted for lots of record.

Mr. Baldwin addressed the board. Owners of non-conforming lots of record ought to have a right to build on their property. By the town saying 'no, they have rendered the property useless; it is considered a taking by the town. Mr. Baldwin has appreciated working with the Board of Adjustment; the board goes by the law. Mr. Baldwin is not asking to board to resolve what may be a legislative matter. Issues presented here is setting the town up for law suits and litigation.

Mr. Maringer questioned contiguous property that is for sale. Mr. Baldwin answered the town cannot compel people to buy additional land; the town cannot force a person to use their resources to buy additional land to meet the ordinance requirement. Mr. Webber agreed with Mr. Baldwin.

Chairman Rose presented the findings of fact to the board.

FINDINGS OF FACT

Finding #1

There are extraordinary and exceptional findings pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district. **The vote was an unanimous "no".**

Finding #2

Granting of the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located. **Mr. Webber, Mr. Noble, Ms. McNary, and Mr. Maringer voted "no"; Chairman Rose voted "yes".**

Finding #3

A literal interpretation of the provisions of the zoning regulations would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. **The vote was an unanimous "no".**

Finding #4

The requested variance will be in harmony with the purpose and intent of the zoning regulations and will not be injurious to the neighborhood or to the general welfare. **Mr. Webber, Mr. Noble, Ms. McNary, and Mr. Maringer voted “no”; Chairman Rose voted “yes”.**

Finding #5

The special circumstances are not the result of the actions of the applicant. **The vote was an unanimous “no”.**

Finding #6

The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure. **The vote was an unanimous “no”**

Finding #7

The variance is not a request to permit a use of land, building, or structure which is not permitted by right or by conditional use in the district involved. **The vote was an unanimous “yes”.**

Finding #8

A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance. **The vote was an unanimous “yes”.**

Mr. Webber moved ZV-05-04 be denied based on the findings of fact. Mr. Noble seconded the motion and all were in favor.

New Business

Application CU-05-02, a request from Donald Kurant to construct a two car garage with an upstairs apartment to use as living quarters prior to building the primary residence. The property (Tax PIN 1611515) is located at Lot 37, Camp at Lurewoods, Falcon Way, Lake Lure.

Mr. Kurant was sworn in. Discussion ensued between Mr. Kurant, Mr. Baldwin, and the members of the board. A determination was made that garage apartments are not ‘conditional use’ in the R3 zone. The question arose that if a garage apartment in not conditional use, would the two buildings be considered a planned unit development. The consensus of the board was that Mr. Kurant’s request is not for a planned unit development.

Mr. Webber made the motion Application CU-05-02 be dismissed; Mr. Noble seconded the motion and all were in favor.

Public comments: None

ADJOURNMENT: Mr. Webber moved to adjourn the meeting. Mr. Noble seconded, all were in favor.

