



Incorporated 1927

Town of Lake Lure

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Minutes of the Regular meeting of the Board of Adjustment

Wednesday, July 25, 2012
1:00 p.m.

Chairman Webber called the meeting to order at 1:05 p.m.

ROLL CALL

Present: Stephen Webber, Chairman
Michael Gray, Alternate
Betty Johnson
Lance Johnson, Seated Alternate
Patricia Maringer, (entered late)
Melvin Owensby, Alternate
John Moore, Interim Council Liaison

Also Present: Mike Egan, Community Development Attorney
Sheila Spicer, Zoning Administrator, Recording Secretary

Absent: John Kilby
Vicki Smith
Bob Cameron, Council Liaison

APPROVAL OF THE AGENDA

Mr. Johnson made a motion to approve the agenda as presented. Ms. Johnson seconded the motion and all were in favor.

APPROVAL OF THE MINUTES

Mr. Gray made a motion seconded by Mr. Owensby to approve the minutes of the June 26, 2012 meeting as presented. The motion passed unanimously.

NEW BUSINESS

(A) Training Discussion

Mr. Egan discussed ethical considerations with the Board. He pointed out that the United States Constitution protects citizens' rights to due process, and while state provisions

provide few guidelines, they do state that Board of Adjustment members shall not take part in undisclosed ex parte communications or participate in hearings in which they have already formed a fixed opinion. He reiterated that ex parte communications do not automatically disqualify a member from hearing a case unless they fail to disclose that communication at the start of the hearing. He mentioned that disclosing any ex parte communication provides the opportunity for cross examination and rebuttal testimony.

Mr. Egan advised the Board that close familial relationships or financial interest in a case are automatic reasons for a Board member to recuse themselves from a hearing. He stated that parties in the case have the opportunity to challenge a particular member if they do not recuse themselves, at which time the Board would have to vote whether or not to excuse that member. He pointed out that recusing oneself or being excused is not personal; it is merely a means to ensure a fair and impartial hearing. He also cautioned members to not use the ability to recuse themselves as a tool to not hear cases they simply do not want to be seated on.

Chairman Webber questioned what constitutes a close familial relationship. Mr. Egan responded that, while a spouse or direct descendant of the applicant qualifies, a third cousin that is rarely seen would not. Mr. Gray asked if speaking to a property owner while visiting the site prior to the hearing qualifies as an ex parte communication; Mr. Egan responded that it does. Mr. Johnson asked for clarification on the procedure if a Board member chooses not to recuse themselves. Mr. Egan responded that, if that member were challenged by any of the parties in interest, it would then be up to the Board to vote on whether or not to excuse that member. He pointed out that the courts will not allow a party to challenge a member on appeal if they did not challenge that member on information disclosed at the Board of Adjustment hearing. He also stated that, upon voting whether or not to excuse a particular member, each Board member should explain their reasoning for their vote. Mr. Egan advised that a recused or excused member leave the room for the duration of the hearing.

Chairman Webber stated that, in a previous case, he had ruled that a medical condition of a property owner was a hardship necessitating a variance. He asked if this was a proper hardship. Mr. Egan responded that, while a hardship runs with the land regardless of the property owner, the Zoning Regulations do not preclude granting a variance upon the hardship of the property owner.

HEARINGS

- (A) VROP-2012011, a vacation rental operating permit request from Robert Sellie to operate a residential vacation rental at 289 Cameron Lane, Lake Lure North Carolina (Tax PIN 1642193).**

Ms. Spicer and Mr. Sellie were sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. Sellie did

not challenge any of the Board members seated for the hearing.

Ms. Spicer gave an overview of the request. She stated that Mr. Sellie is requesting a vacation rental operating permit to operate a two bedroom residential vacation rental. She pointed out that the property is split zoned R-1 Residential and CG-Commercial General, but the existing single-family dwelling is located in the R-1 portion of the lot. She mentioned that the Development Review Committee reviewed the request on July 2, 2012, and the minutes to that meeting are included in the Board's packet. She also mentioned that, since no changes were proposed to the appearance of the building or premises, Zoning and Planning Board review was not required.

Chairman Webber asked Mr. Sellie if he had chosen a marketing name for the property. Mr. Sellie responded that he had not. Mr. Gray asked if the adjacent homes are vacation rentals, as well. Mr. Sellie responded that one is currently a residential vacation rental, and the other is currently occupied by the owner. Mr. Gray asked how long Mr. Sellie has owned the property; Mr. Sellie stated he has owned it for approximately one year. Mr. Gray then asked if the residence has been rented short-term in the past; Mr. Sellie responded that he did not know.

Chairman Webber closed the public hearing, and the Board began deliberations by reviewing the findings of fact. Chairman Webber suggested adding a condition that the designated parking area must be better defined.

After a brief discussion, Ms. Maringer made a motion that a condition be added to the permit that the parking area be outlined. Mr. Gray seconded the condition and all were in favor.

The Board then discussed at length the fact that no documentation had been provided regarding the existing septic system on the property.

Mr. Gray made a motion, seconded by Ms. Johnson, to reopen the public hearing. The motion passed unanimously.

Chairman Webber asked Mr. Sellie if he had received a septic permit when he purchased the property. Mr. Sellie responded that he had not. Ms. Spicer reported that, based on conversations she had with Rutherford County Building Inspection, the number of bedrooms listed on the Rutherford County property information sheet included in the Board's packet is the number of bedrooms approved by Building Inspections at the time the structure was completed, and they would have only approved that if the septic system supported that number of bedrooms. She pointed out that the property information sheet for Mr. Sellie's property indicates there are two bedrooms in the structure, which means Rutherford County Building Inspections must have verified at the time the structure was built that the septic system was approved for a two bedroom structure. After a brief discussion, she also pointed out that the standard septic permit issued by the Rutherford County Environmental Health Department includes instructions that septic systems should be pumped every three to five years. Mr. Sellie testified that he has never had his

septic tank pumped at his primary residence, and it continues to function without any complications. Chairman Webber asked if Mr. Sellie knew where the septic tank for the existing system on the property is; Mr. Sellie responded that he did not. Ms. Johnson asked if there had been any problems with the system in the past; Mr. Sellie responded he has stayed at the property on weekends and has had no problems.

Chairman Webber closed the public hearing. After another discussion regarding the septic system, Mr. Gray mentioned that, if they require supporting documentation regarding the adequacy of the septic system in this case, the Board would need to require it in all future cases involving residential vacation rentals utilizing private septic systems. Chairman Webber enquired of Mr. Egan if this was correct. Mr. Egan responded that, while each request is weighed on its own merit, the Board needs to be as consistent as possible.

With regard to application number VROP-2012011 for a vacation rental operating permit to operate a residential vacation rental in the R-1 Residential zoning district, Mr. Johnson moved the Board to find that the application is complete and that the proposed use, if operated according to the application and any conditions attached hereto, meets the following standards: (1) it will not materially endanger the public health or safety; (2) it will not substantially injure the value of adjoining or abutting property; (3) it will meet all standards and requirements specified in the regulations of the Town; (4) it will be in harmony with the neighborhood character and in general conformity with applicable elements of the Comprehensive Plan; and (5) satisfactory provision and arrangement has been made for those matters specified in §92.046(D) of the Zoning Regulations of the Town of Lake Lure.

Accordingly, he further moved the Board to grant the requested vacation rental operating permit in accordance with and only to the extent represented in the application and plans and subject to the condition that the external limits of the parking area will be bordered or outlined by landscape timbers or similar materials. Mr. Gray seconded the motion and all were in favor.

As justification for granting the permit, the Board members pointed out that the requirements of the regulations have been met, the use is compatible with the neighborhood, and all concerns have been addressed with the added condition.

(B) VROP-2012012, a vacation rental operating permit request from Karen Cabaniss to operate a residential vacation rental at 151 Conroy, Lake Lure North Carolina (Tax PIN 226477).

Ms. Spicer and Scott Burrell, agent for the applicant, were sworn in.

Chairman Webber stated he saw Ms. Spicer at the site when he visited the property prior to the hearing, at which time they briefly discussed the retaining wall to the parking area. Ms. Maringer stated she asked an audience member during the break prior to the hearing if he had visited the site. There were no other ex parte communications reported by the

Board and no conflicts of interest mentioned. Mr. Burrell indicated he did not wish to challenge any of the Board members seated for the hearing.

Ms. Spicer gave an overview of the request. She stated that Ms. Cabaniss is requesting a vacation rental operating permit to operate a three bedroom residential vacation rental in the R-1 Residential zoning district. She mentioned that the Development Review Committee reviewed the request on July 2, 2012, and the minutes to that meeting are included in the Board's packet. She also mentioned that, since no changes were proposed to the appearance of the building or premises, Zoning and Planning Board review was not required. Ms. Spicer stated that Mr. Burrell had an updated site plan indicating the designated parking area, and she asked that this be included as a part of the record. Mr. Burrell distributed the parking plan, and Chairman Webber accepted this as Applicant's Exhibit A. Ms. Spicer also pointed out that page two of the vacation rental operating permit had inadvertently been excluded from the Board's packet, but she stated the application indicated the property is served by an individual well and town sewer.

Addressing Mr. Burrell, Ms. Maringer pointed out that the application indicates the requested maximum occupancy is eight persons, while the Zoning Regulations allow for a maximum occupancy of ten persons for a three bedroom residential vacation rental. Mr. Johnson asked if there was any documentation indicating the residence can accommodate a three bedroom residence. Ms. Spicer pointed out that the Rutherford County property information sheet indicates the structure is a four bedroom residence. After a brief discussion, Mr. Burrell requested that the application be amended to request a maximum occupancy of ten persons.

Mr. Johnson made a motion seconded by Mr. Gray to amend VROP-2012012 to allow a maximum occupancy of ten persons. The motion was approved unanimously.

Chairman Webber mentioned that, while visiting the site, he had noticed the private drive accessing the property was in poor condition. He pointed out that one of the findings the Board is required to make for conditional use permits is that adequate provisions for ingress and egress have been addressed to protect public safety. He also stated that the poured concrete retaining wall supporting part of the designated parking area has several large fractures, and expressed concern over the safety for allowing the number of vehicle parking spaces designated on the application. Mr. Burrell responded that allowing parking for four vehicles would be safer for the proposed occupancy requested. After a lengthy discussion by the Board concerning the burden of requiring one property owner to approve a private drive that accesses multiple properties, the Board suggested the possibility of adding a condition to the permit that the drive be enhanced to improve vehicular access. Upon questions concerning the safety of renters using the deck on the boathouse, Mr. Burrell assured the Board that a no diving sign would be placed on the deck.

There was no further testimony, so Chairman Webber closed the public hearing.

With regard to application number VROP-2012011 for a vacation rental operating permit to operate a residential vacation rental in the R-1 Residential zoning district, Mr. Gray moved the Board to find that the application is complete and that the proposed use, if operated according to the application and any conditions attached hereto, meets the following standards: (1) it will not materially endanger the public health or safety; (2) it will not substantially injure the value of adjoining or abutting property; (3) it will meet all standards and requirements specified in the regulations of the Town; (4) it will be in harmony with the neighborhood character and in general conformity with applicable elements of the Comprehensive Plan; and (5) satisfactory provision and arrangement has been made for those matters specified in §92.046(D) of the Zoning Regulations of the Town of Lake Lure.

Accordingly, he further moved the Board to grant the requested vacation rental operating permit in accordance with and only to the extent represented in the application and plans and subject to the following conditions:

1. The road must be repaired to smooth out the road surface and eliminate potholes, and maintain that road condition thereafter.
2. No more than 4 vehicles are allowed on the property when the property is rented.

Ms. Johnson seconded the motion and all were in favor.

As justification for granting the permit, the Board members pointed out that the requirements of the regulations have been met, the use is compatible with the neighborhood, and all concerns have been addressed with the added conditions.

OLD BUSINESS

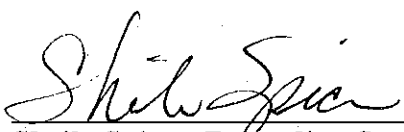
None

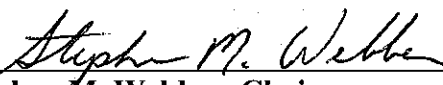
ADJOURNMENT

Mr. Johnson made a motion seconded by Mr. Gray to adjourn the meeting. All were in favor.

The meeting was adjourned at 3:25 p.m. The next regular meeting is scheduled for Tuesday, August 28, 2012 at 1:00 p.m.

ATTEST:


Sheila Spicer, Recording Secretary


Stephen M. Webber, Chairman