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Town of Lake Lure

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Minutes of the Regular meeting of the Board of Adjustment

**Tuesday, November 27, 2012
1:00 p.m.**

Chairman Webber called the meeting to order at 1:00 p.m.

ROLL CALL

Present: Stephen Webber, Chairman
Betty Johnson
Lance Johnson, Alternate (dismissed early)
John Kilby
Patricia Maringer
Melvin Owensby, Seated Alternate
Bob Cameron, Council Liaison

Also Present: Clint Calhoun, Lake Structures Administrator
Mike Egan, Community Development Attorney
Sheila Spicer, Zoning Administrator, Recording Secretary

Absent: Michael Gray, Alternate
Vicki Smith

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Ms. Maringer made a motion seconded by Mr. Owensby to approve the minutes of the October 23, 2012 meeting as presented. The motion passed unanimously.

HEARINGS

- (A) VROP-2012016, a vacation rental operating permit request from Tracy McGlohon, agent for David & Marcie Reimer to operate a residential vacation rental at 125 Raptor Court, Lake Lure, North Carolina (Tax PIN 230268)

Ms. Spicer and Ms. McGlohon were sworn in.

There were no conflicts of interest reported. Chairman Webber reported that he and Mr. Owensby rode together to visit the property earlier in the day. He also reported he spoke to Mr. Egan prior to the meeting regarding the letter included in the Board's packet authorizing Ms. McGlohon to act as the agent for the property owners. Ms. McGlohon did not challenge any of the Board members seated.

Ms. Spicer presented an overview of the case. She stated the property owners are requesting a vacation rental operating permit (VROP) to operate a 3 bedroom residential vacation rental in the R-3 Resort Residential zoning district. She pointed out the Board's packet includes a parking plan, standard rental agreement, and verification that the property has been registered with the Rutherford County Tourism Development Authority. She also stated the septic improvement permit issued by Rutherford County Environmental Health was included as well as a statement from Ruth Sams with Rutherford County Building Inspections that a building permit was issued to a previous owner of the property for a three-bedroom single-family house on March 13, 2000 that received a final inspection on May 17, 2001. Ms. Spicer reported the Development Review Committee (DRC) reviewed this request on October 23, 2012, and the minutes to that meeting are also included in the Board's packet. Chairman Webber asked if there had been any response from the neighboring property owners. Ms. Spicer reported she has had conversations with neighboring property owners regarding the cases before the Board; however, her notes on these conversations are saved on the Town's computer network which was experiencing technical difficulties. She stated she was therefore unable to retrieve those notes prior to the meeting. She pointed out that letters were sent to the two adjacent property owners, and she did not recall having a conversation with either of them. There were no neighboring property owners present at the hearing.

Chairman Webber pointed out that the agent authorization letter submitted with the application is signed by Stefanie Newman, but there was no information provided indicating she is the property owner. He mentioned that the Rutherford County GIS information in the packet only lists David and Marcie Reimer as owners. Ms. McGlohon testified she was the real estate agent that sold the property to Mr. and Ms. Reimer and Ms. Newman and her husband Daniel Newman. She verified that Ms. Newman is in fact one of the owners and is her contact regarding the rental of the property.

Mr. Owensby asked if a carbon monoxide detector had been installed in the home. Ms. McGlohon responded in the affirmative. Ms. Johnson asked if the home had been rented before. Ms. McGlohon stated it had not. Chairman Webber asked if Ms. McGlohon had read the report of the DRC meeting. Ms. McGlohon reviewed the report in the packet and stated all of the items had been addressed except for the fact that she will begin keeping a maintenance log for the smoke and carbon monoxide detectors.

There was no further testimony, so Chairman Webber closed the public hearing. During discussion, the Board members indicated there were no concerns regarding Ms.

Newman's ownership of the property and authority to grant Ms. McGlohon agent authorization.

With regard to application number VROP-2012016 for a vacation rental operating permit to operate a residential vacation rental in the R-3 Resort Residential zoning district, Mr. Kilby 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. Ms. Johnson seconded the motion. The motion passed unanimously.

(B) VROP-2012017, a vacation rental operating permit request from Valerie Wrobel, agent for Mary Lou Sawyer to operate a residential vacation rental at 108 Sunset Cove Road, Lake Lure, North Carolina (Tax PIN 1638018)

Ms. Spicer and Ms. Wrobel were sworn in. Donald Hinton and Esther Kirk, adjacent property owners, were also sworn in.

Chairman Webber reported he and Mr. Owensby rode together to visit the property earlier in the day. There were no other ex parte communications reported and all of the members stated they had no conflicts of interest. Ms. Wrobel did not challenge any of the members seated.

Ms. Spicer presented an overview of the case. She stated the property owners are requesting a vacation rental operating permit (VROP) to operate a 3 bedroom residential vacation rental in the R-1 Residential zoning district. She pointed out the Board's packet includes a parking plan, standard rental agreement, and verification that the property has been registered with the Rutherford County Tourism Development Authority. She also stated the septic operation permit issued by Rutherford County Environmental Health for the property and a receipt indicating the septic tank was recently pumped were also included with the application. Ms. Spicer reported the Development Review Committee (DRC) reviewed this request on November 8, 2012, and the minutes to that meeting are also included in the Board's packet. Ms. Spicer stated Ms. Wrobel did not have an agent authorization letter from the property owner at the time the packets were sent out but has indicated she has one with her. Chairman Webber accepted the letter as Applicant Exhibit A. Ms. Spicer also distributed an email she received prior to the hearing from Nancy McNary who owns property on Sunset Cove Road expressing concerns about parking and

the steepness of the driveway if vehicles have to back out. Ms. Wrobel did not object to the email, so Chairman Webber accepted it as Town Exhibit 1.

Ms. Wrobel testified that her company is very strict about ensuring renters park only in the designated parking areas of the individual rental property and do not block the street. She also mentioned she has a large parking lot at her office for renters to use for overflow parking. She stated she has no control over parking problems that have occurred in the past but assured the Board she will strive to ensure there are no problems at this location in the future. Ms. Wrobel reported she had a licensed contractor inspect the home, and it was deemed to be in safe condition. She stated she has also ensured smoke detectors and a carbon monoxide detector are installed in the home.

Ms. Maringer asked if Ms. Wrobel has attempted to park four vehicles, the number of parking spaces requested on the application, at the property. She expressed concerns over the steepness of the driveway. Ms. Wrobel stated she had not, but the contractor had that many vehicles parked there at one time when he had crews working at the property. She also stated she put in the rental description that a four-wheel drive vehicle would be needed to park in the lower driveway during inclement winter weather; however, her vehicle hasn't had a problem using the driveway. Ms. Johnson stated she doesn't have a four-wheel drive vehicle and had no difficulties on the driveway when she visited the site prior to the hearing. Ms. Maringer stated she is still concerned guests will park in the street. Ms. Wrobel again assured the Board she would make it very clear to renters that parking in the street is not allowed and would be enforced. Chairman Webber also voiced concerns that larger vehicles would have difficulty turning around in the lower portion of the driveway and would therefore have to back out into the street. He stated he does not feel that it can be done safely. Ms. Wrobel agreed the steepness of the driveway warrants concern. Ms. Johnson asked if Ms. Wrobel had considered posting signs on the property regarding parking requirements. Ms. Spicer pointed out that the Zoning Regulations have specific requirements for signs posted at a residential vacation rental (RVR) in the R-1 zoning district. She stated incidental signs are allowed on the property, but there can be nothing on them advertising the fact the property is a RVR.

Mr. Hinton testified he lives on Sunset Cove Road and feels the upper parking area adjacent to the street indicated on the parking plan is not large enough for longer vehicles to park without extending into the road. He also stated there would be problems turning around in the lower portion of the driveway if more than one vehicle was parked there. He stated backing out into the street in that location is dangerous. He pointed out there are ten houses on Sunset Cove Road beyond this property, and serious consideration should be given to safe parking. He also mentioned that the pavement at the lower portion of the driveway was cracked and recently repaved. Mr. Kilby asked if there had been any problems in the past with vehicles parked in the lower parking area. Mr. Hinton responded there had not, but there have only been permanent residents there before. Ms. Maringer asked if Mr. Hinton had ever seen vehicles parked in the street at this location. He responded he had not but has only seen one vehicle at a time parked in the upper parking area.

Ms. Kirk testified she owns a home on Sunset Cove Road and expressed concerns about vehicles parked in the upper parking area blocking the road due to the fact that the parking area is very shallow. She stated she is a volunteer emergency medical technician where she lives full-time, and cars blocking the street are a safety concern when they block emergency access to neighboring properties. Ms. Maringer asked if she has ever seen the street blocked at this location. Ms. Kirk responded she had not, but she has only seen one vehicle parked in the upper parking area in the past. She also pointed out that the upper parking area has been reconfigured, and the barriers are now closer to the street than they were in the past. Ms. Wrobel agreed that larger vehicles would have to use the lower parking area at the bottom of the driveway. Chairman Webber asked how renters would be notified of that. Ms. Wrobel responded it would be communicated in the rental information for the property. Chairman Webber asked if Ms. Wrobel felt two vehicles could be parked in the upper parking area without extending into the street. Ms. Wrobel responded that two smaller vehicles would safely fit in the upper parking area. Chairman Webber asked what size vehicle Ms. Wrobel felt could be parked in the lower parking area. Ms. Wrobel responded it could accommodate any size vehicle except recreational vehicles or anything being towed behind another vehicle. She stated two vehicles can park side by side in the lower parking area and turn around in the third parking space or back out of the driveway. She reminded she also has additional parking available at her office. Ms. Maringer asked if any consideration had been given to installing traffic mirrors to increase visibility for vehicles backing out of the driveway. Ms. Wrobel responded that it has not been discussed, but she doesn't feel there would be any problem with that. Mr. Kilby pointed out that many areas in Town have limited parking available, and many homes have driveways that are as steep as Ms. Sawyer's or worse.

Chairman Webber pointed out that the parking plan submitted with the application indicates the upper parking area extends beyond the boundaries of the property. Ms. Wrobel stated she used the Rutherford County GIS aerial photography for the parking plan which does not accurately show the location of the property boundaries. She assured the Board the upper parking area is entirely on Ms. Sawyer's property, and she would be willing to submit a survey attesting to that fact.

Mr. Kilby asked if there would be any problems incurred if the Board did not reach a decision at the hearing. Ms. Wrobel responded there would be a financial loss if there was a delay in being able to rent the property. She reiterated she has no control over parking issues that may have occurred in the past. Mr. Kilby asked if the DRC members had discussed any parking concerns. Ms. Spicer responded they had not and pointed out the Town has regulations concerning parking in the street.

Chairman Webber asked if Ms. Wrobel had addressed the comments made during the DRC meeting. She responded she had.

There was no further testimony, so Chairman Webber closed the public hearing. During deliberations, the Board discussed limiting the number of vehicles that could be parked in either parking area, requiring signs regarding parking requirements on the property, and posting traffic mirrors to increase visibility at the top of the driveway. As an alternative to

limiting the number of vehicles that can park in the upper parking area, the Board discussed imposing a condition that no vehicles can extend beyond the parking area into the street. They also discussed requiring a survey to verify the upper parking area does not extend beyond the property boundaries.

With regard to application number VROP-2012017 for a vacation rental operating permit to operate a residential vacation rental in the R-1 Residential zoning district, Ms. 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, she 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. No vehicles may extend beyond the parking areas into the road.**
- 2. The applicant must present to the Zoning Administrator a boundary survey of the property, and all parking will be confined within those boundaries.**
- 3. No more than two vehicles may be parked in the lower parking area during the times the property is used as a residential vacation rental.**

Ms. Maringer seconded the motion. Ms. Johnson, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor of the motion; Mr. Kilby was opposed due to the fact that he did not feel there should be a limit on the number of vehicles parked in the lower parking area.

(C) ZV-2012008, a request by Roger D. Jolly for a variance from Section 92.040 of the Zoning Regulations for the minimum lot width at the building site of 100 feet to 58 feet for a variance of 42 feet, the minimum front (street) yard setback of 40 feet to 14 feet for a variance of 26 feet, the minimum front (lake) yard setback of 35 feet to 2.75 feet for a variance of 32.25 feet, and the minimum side yard setback of 12 feet to 0 feet for a variance of 12 feet. The property (Tax PIN 222968) is located at 102 Havaners Point Circle, Lake Lure, NC 28746

Mr. Calhoun, Ms. Spicer, and Mr. Jolly were sworn in. Kim Warner, project engineer, and Donald Beam, an adjacent property owner, were also sworn in.

Chairman Webber reported that he and Mr. Owensby rode together to visit the property earlier in the day. He stated Board member Lance Johnson was working at the property

when they arrived but, when he pointed out this constituted a quorum, Mr. Johnson left. Mr. Kilby mentioned Mr. Jolly had asked him in the past about variance procedures, but he told Mr. Jolly to speak to Ms. Spicer or visit the Town website for information. There were no other ex parte communications reported, and all of the members stated they had no conflicts of interest. Mr. Jolly did not challenge any of the members seated.

Ms. Spicer gave an overview of the case. She stated Mr. Jolly applied for a certificate of zoning compliance (CZC) to enclose a portion of his structure under the existing roof overhang to provide interior access from the upper level of the home to the lower level. He also wants to extend the existing upper and lower decks on the lakefront portion of the property. She stated all of these areas are located in the required setbacks, so a variance is needed before the CZC can be approved. Ms Spicer distributed an email with attached letter from Marta Jones, an adjacent property owner, expressing concerns regarding the impact the proposed work will have on access to a manhole located under Mr. Jolly's residence that services several of the homes in the neighborhood. Ms. Spicer reported she had presented Mr. Jolly with a copy of the email and letter prior to the hearing.

Mr. Jolly addressed the Board and presented thirteen photographs of his property and dwelling. Chairman Webber accepted these photographs as Applicant's Exhibits 1-13. Mr. Jolly stated he purchased the property in 1998 as a second home. He pointed out that the adjacent structures are only three and twelve feet from his residence, which is not unusual in the neighborhood. He stated he has rented the property short-term and tried to sell the property, but he and his new wife would now like to use it as their full-time residence. He reported the structure has three levels, with the street front level being the main level. Mr. Jolly pointed out the only way to access the lower level of the structure is via a set of stairs located on the outside of the home under the existing roof overhang. He wants to provide interior access to the downstairs and has explored all options; however, there is no way to construct stairs to the downstairs in the existing interior portion of the dwelling. He stated his engineer and general contractor have confirmed this. He would therefore like to enclose around the existing steps to the downstairs and install a new doorway on the main level. Mr. Jolly mentioned that a pervious owner used the downstairs as a mother-in-law suite, which has a bedroom, bathroom, and kitchenette. He stated the structure was built prior to the adoption of the Zoning Regulations and covers almost the entire property. He pointed out that none of the residences on Haveners Point Circle are conforming structures. Mr. Jolly testified that the existing upper and lower decks on the lakefront portion of the dwelling are leaning and in need of repairs, and he would also like to enlarge them to make them more functional since they are currently only large enough to accommodate two chairs. He pointed out he can't add deck space on the side of the property due to the fact that it would extend across the property line.

Mr. Owensby mentioned the existing seawall appears to be leaning and asked if consideration had been given to the impact additional decking would have on the wall. Mr. Jolly assured the Board it would be engineered and built in a safe manner. Mr. Kilby pointed out the wall is simply a retaining wall, not a seawall, if the water does not come all the way to the wall.

Ms. Johnson asked what portion of the dwelling accesses the upper deck. Mr. Jolly responded it is accessed by the bedroom in the main level of the home. Ms. Johnson asked if enlarging the decks would impact the adjacent property owner. Mr. Jolly responded he didn't feel it would. Ms. Maringer asked if the proposed catwalk leading from the deck to the rooftop deck on the boathouse would impact the adjacent property owner. Ms. Spicer pointed out that a variance is not required for the catwalk and is therefore not part of the variance request. Mr. Jolly testified his neighbors have told him they have no concerns regarding the proposed construction.

Ms. Johnson asked if the new construction would block access to the manhole under the structure. Mr. Jolly pointed out the door to the area the manhole is in is under the existing deck, which would not change if the request is granted. He also stated he would probably have a better door to that area installed during the construction project. Mr. Jolly expressed surprise that Ms. Jones would voice concerns over access to the manhole since she is the only property owner connected to the manhole that does not contribute to the maintenance costs.

Chairman Webber asked if the fence shown on the plans along the property line where the existing stairs leading to the lower level are located will be removed. Mr. Jolly confirmed that it would be removed to the edge of the house. Chairman Webber also asked if there will be any changes made to the stairs that lead from the street to the lake on the opposite side of the dwelling along the Davis property line. Mr. Warner testified that the landing at the end of the stairs near the lake had to be elevated, so he designed a safe transition that will be uncovered. He also stated the leaning retaining wall near the lake will be removed and replaced; however, the support posts for new decks will not sit on the retaining wall due to the cantilever design of the decks.

Mr. Beam addressed the Board and stated he is not opposed to Mr. Jolly's request, but he does have questions after reviewing the proposed plans. He submitted three photographs, accepted as Beam Exhibits A-C, of the access to the manhole. Chairman Webber asked if Mr. Jolly could guarantee that access to the manhole would not be obstructed. Mr. Jolly assured the access would not be changed and reminded that his residence is connected to the manhole, as well. Mr. Kilby asked if access to the manhole is referenced in the deeds to the properties that utilize it. Mr. Beam stated he did not know, but Mr. Jolly stated his realtor at time of purchase mentioned the manhole access, so he feels certain it is referenced in the deeds. Mr. Egan pointed out that access to the manhole is a property rights issue, but the Board has already received testimony that the proposed work will not affect the access.

Mr. Beam testified he had concerns about water drainage if the existing stairs to the lower level are enclosed; he wondered if enclosing the stairs would turn water runoff onto his property. He presented six more photographs of the property accepted as Beam Exhibit D-I. Mr. Jolly stated some of the existing water runoff comes from the road sloping towards the existing railroad ties in front of Mr. Beam's property; however, he is willing to work with Mr. Beam to address any runoff issues that may exist. Mr. Beam proposed installing a catch basin on his property to channel the water runoff to a more desirable

location. He also expressed concerns about the leaning retaining wall and presented a photograph of the wall accepted as Beam Exhibit J showing what he stated is fill dirt behind the wall. Chairman Webber mentioned that the retaining wall has already been discussed, and Mr. Warner has testified it will be taken care of. Mr. Beam then expressed concerns about construction workers on the project crossing the property line and getting hurt on his property creating a liability issue for him. Mr. Kilby pointed out the general contractor should be able to provide a certificate of insurance to handle any insurance concerns.

Ms. Maringer questioned whether or not the proposed work would impact the trout riparian buffer. Mr. Calhoun testified that, while there is not much of an existing vegetative buffer, the proposed work will not affect what is there. Ms. Maringer then questioned if the proposed water runoff will be piped into the lake. Mr. Calhoun responded that, unless there is no other alternative, water runoff cannot be piped directly into the lake.

There was extensive discussion regarding the water runoff between Mr. Jolly and Mr. Beam's property. Mr. Warner assured the Board the current conditions would be, if anything, improved due to the proposed construction since the existing drainage ditch will be enclosed. Upon questioning, he further clarified that the existing conditions will not be worsened due to the fact that the existing drainage ditch will be duplicated in the new design. Testimony revealed that Mr. Beam and Mr. Jolly felt they could work together to resolve any issues that may arise concerning drainage issues. Mr. Egan also pointed out that Mr. Beam has rights under law to address any affects water runoff may have on his property as a result of construction. Chairman Webber also reminded that, as the Erosion Control Officer, Mr. Calhoun is responsible for enforcing erosion control issues in Town limits. Mr. Calhoun agreed that, even if an erosion control permit is not required, he can meet with the property owners onsite to ensure all concerns are addressed. He also stated he could go on the final inspection with Ms. Spicer at the end pf the construction project to ensure all Town requirements are met prior to a certificate of occupancy being issued.

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

With regard to case number ZV-2012008 for a variance from Section 92.040 of the Zoning Regulations, Mr. Kilby moved the Board to find (a) owing to special conditions, a literal enforcement of the provisions of the regulation(s) will result in practical difficulty or unnecessary hardship, (b) in the granting of the variance the spirit of the Zoning Regulations shall be observed, the public safety and welfare secured, and substantial justice done, and (c) the conditions specified in §92.085(C)(1) exist. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Owensby seconded the motion, and all members were in favor.

In support of the request, the Board members cited the fact that the conditions for granting a variance had been met, the applicant would not have reasonable use of his

property without the variance, granting the variance would afford the applicant the same rights enjoyed by other property owners in the neighborhood, and there are exceptionable conditions particular to Mr. Jolly's property that are not experienced by other properties in the R-1 zoning district. It was also pointed out that water runoff conditions currently experienced by Mr. Jolly and Mr. Beam could be addressed and alleviated during the construction process.

NEW BUSINESS

(A) Training Discussion

Mr. Kilby made a motion seconded by Mr. Owensby to postpone the training session to next month's meeting. The motion passed unanimously.

(B) Approve 2013 Schedule of Meetings

Mr. Kilby made a motion seconded by Ms. Maringer to approve the 2013 schedule of meetings as presented. The motion passed unanimously.

OLD BUSINESS

Chairman Webber stated it was brought to his attention that, at the last Board meeting, Board members asked questions during a hearing and other Board members answered the questions instead of allowing the applicant to answer. He reminded the members they should not present testimony. He apologized if he had done this in the past.

ADJOURNMENT

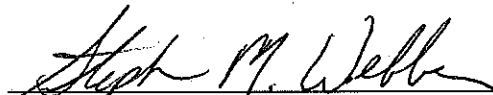
Mr. Owensby made a motion seconded by Ms. Johnson to adjourn the meeting. All were in favor.

The meeting was adjourned at 4:38 p.m. The next regular meeting is scheduled for Tuesday, December 18, 2012 at 1:00 p.m.

ATTEST:



Sheila Spicer, Recording Secretary



Stephen M. Webber, Chairman