

**Minutes of the Regular meeting of the
Board of Adjustment**

**Tuesday, October 22, 2013
1:00 p.m.**

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

ROLL CALL

Present: Stephen Webber, Chairman
David Butts, Alternate
Michael Gray
Roger Jolly, Seated Alternate
John Kilby
Melvin Owensby
Bob Cameron, Council Liaison

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

Absent: Patricia Maringer

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Mr. Kilby made a motion seconded by Mr. Gray to approve the minutes of the September 24, 2013 meeting as presented. The motion passed unanimously.

HEARINGS

- (A) ZV-2013006 a request from Rick Bracey for a variance from Section 92.040 of the Zoning Regulations for the minimum front (street) yard setback. The

property (Tax PIN 226728) is located at 113 Summer Rest Drive, Lake Lure, NC 28746

Ms. Spicer and Mr. Bracey were sworn in.

Mr. Owensby, Chairman Webber, Mr. Kilby, and Mr. Jolly stated they met Mr. Bracey while at his property but did not discuss the case. There were no conflicts of interests reported. Mr. Bracey did not wish to challenge Board members for cause.

Ms. Spicer presented an overview of the case. She stated Rick Bracey has applied for a certificate of zoning compliance for a new deck constructed on his property at 113 Summer Rest Drive. The property is bordered on the south by an unnamed street right-of-way as shown on a subdivision plat for Lake View Estates recorded in the Rutherford County Register of Deeds office in Plat Book 7 Page 72. She stated Mr. Bracey's deck is within the 40 foot setback for the unnamed street right-of-way; therefore, a variance from the front (street) yard setback is required by Section 92.040 of the regulations is necessary. Ms. Spicer mentioned that Mr. Bracey was granted a variance for the existing dwelling on his property in 2000. Information has been included in the packet regarding that variance, case # ZV-06-20; that variance has no bearing on the current request, so no information has been included in the packet. However, the file was available at the hearing. Ms. Spicer pointed out the packet includes a copy of the original subdivision plat from the Rutherford County plat book files, which shows the portion in-between Mr. Bracey's property line and the property across the gravel drive. She mentioned it is an unnamed right-of-way and stated the definitions in the zoning regulations stipulate that the setback line is measured from the center line of the right-of-way. She noted in 2000, the acting zoning administrator Lee Jensen ruled that it was a street front right-of-way and stated she feels that was a correct assessment. Ms. Spicer stated she did not receive any calls from adjoining property owners.

Chairman Webber asked Ms. Spicer about the right-of-way and Ms. Spicer showed him a printout from Rutherford County GIS which shows that Mr. Bracey owns the right-of-way. Chairman Webber asked to keep the handout as part of the file and labeled it as 'Board Exhibit 1'.

Ms. Spicer commented the packet also includes a copy of the original survey by Scott Walker that was submitted with Mr. Bracey's 2000 variance file. She stated that on this survey Mr. Walker identifies the area between Mr. Bracey's front property line and the property line across the soiled roadway as a right-of-way. Ms. Spicer noted on the newest survey by Robert Butler it is identified as a gravel drive and not a right-of-way. She mentioned that using the information provided in the 2000 variance file and the recorded subdivision plats, it is a platted right-of-way. She stated according to the definition in the regulations the street front setback is to be measured from the right-of-way line.

Mr. Bracey presented his case. He stated he would like to increase the size of his porch because it is too small. Mr. Kilby asked how far from the right-of-way Mr. Bracey would be, if approved. Chairman Webber answered he would be 20.5 feet from the center of the

right-of-way. Mr. Kilby then asked how far from the property line that would be. Ms. Spicer replied according to the survey it is 4.8 feet. Chairman Webber added, for clarification, the 40 foot requirement is from the center line of the right-of-way. He further stated Mr. Bracey's overhang would be 19.5 feet from his house or 20.5 feet from the center line to the edge of the deck, if approved. Discussion held.

Chairman Webber stated the location of the house on the current survey provided, in comparison to the survey submitted in 2000, appears to show that the house is not in the same location it was proposed to be. Mr. Bracey commented the house had to be redesigned and moved forward.

Mr. Jolly pointed out the two surveys appear to be different. He stated one survey shows four corners and the other survey only shows three. Mr. Bracey mentioned there have been issues with surveys in the past and the survey has been redone twice.

Chairman Webber asked Mr. Bracey why he changed his plans according to how they were presented in his original diagrams in 2000 and Mr. Bracey stated it was too small. Chairman Webber commented a proper survey that shows the location of the house with regard to the property line and center line was not included in the packet. He pointed out there were several inconsistencies between the two surveys. He noted the survey that was originally submitted in 2004 and 'Board Exhibit 1' are in sync. Discussion held on the surveys.

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

During deliberations, Mr. Kilby stated he believes the deck is inside the property line and that was his main concern. Mr. Egan pointed out Finding #6 regarding reasonable use has come out of the ordinance and is no longer applicable. Chairman Webber mentioned that hardships were not discussed during the hearing. He commented that the necessity for the variance is based on the property owner's actions, due to having a stop work order on the deck. He pointed out if the variance is approved, Mr. Bracey would not be allowed to do anything different with the length or width of the deck than what he has now. No conditions were proposed.

After deliberations, Mr. Gray made the following motion:

With regard to case number ZV-2013006, Mr. Gray moved the Board to find the applicants have demonstrated the unnecessary hardship would result from carrying out the strict letter of §92.040 of the Zoning Regulations and further has demonstrated compliance with the standards for granting a variance contained in §92.088 of such regulations. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application.

Mr. Kilby seconded. Mr. Owensby, Mr. Gray, and Mr. Jolly voted in favor. Chairman Webber voted no.

Chairman Webber mentioned he does not think the hardship results from conditions that are peculiar to the property. He stated it is not based on the location, the size, or the topography and he believes the hardship necessitating the variance was a result of the applicant's actions.

(B) ZV-2013007 a request from Robert Manners & Mary Buckley for a variance from Section 92.040 of the Zoning Regulations for the minimum front (street) yard setback. The property (Tax PIN 1619264) is located at Sugarbush Point, Lake Lure, NC 28746

Ms. Spicer, Mr. Manners, and Ms. Buckley were sworn in.

Mr. Kilby stated he visited the property with Mr. Jolly but there were no discussions held with anyone. There were no conflicts of interests reported. Mr. Manners and Ms. Buckley did not wish to challenge the Board for cause.

Robert Manners and Mary Buckley have applied for a certificate of zoning compliance to construct a new single family dwelling on their property located on Sugarbush Point Drive. The property is bordered on the south by Sugarbush Point Drive and on the north by Deer Trail. While the portion of Deer Trail that borders the property has not been constructed, there is an existing right-of-way as shown on Plat Book 10 Page 15 recorded in the Rutherford County Register of Deeds office. Mr. Manners and Ms. Buckley are seeking permission to construct a portion of their dwelling within the 40 foot setback for Deer Trail; therefore, a variance from the front (street) yard setback as required by Section 92.040 of the regulations is necessary.

Ms. Spicer presented an overview of the case. She stated Mr. Manners and Ms. Buckley's contractor, Phillip Todd Moss, came to her awhile back with a survey, performed by Nathan Odom in 2009, about a new proposed single family dwelling that showed setback lines. Ms. Spicer mentioned Mr. Odom showed the setback line on the north side of the property as a rear yard setback and she does not agree with this. She pointed out the packet includes printouts from the plat book of two different subdivision plats. One is a subdivision plat of Sugarbush Point that shows Mr. Manners and Ms. Buckley's lot when it was originally platted in 1988 and a subdivision plat of the Lake Lure Village Resort that shows Deer Trail as the back bordering line for Mr. Manners and Ms. Buckley's property. Ms. Spicer stated after reviewing the plats, she told Mr. Moss her determination was the rear lot line is a street front line and has a street front setback of 40 feet from the center line of the right-of-way. She pointed out the packet includes plans that show the latest survey with the proposed house site, and construction plans for a house. She noted that the construction plans state they are plans for Rob DeLoach because the plans Mr. Moss had brought in had his drawings all over them which made them hard to read. She noted the plans included for Rob DeLoach is the exact same house. Ms. Spicer mentioned she has not been contacted by the Lake Lure Village Resort, the adjoining property owner.

Mr. Manners presented his case to the Board. He stated he wants to build a small two bedroom, two bathroom house and only needs the variance for the porches. Chairman Webber asked Mr. Manners if he agreed the DeLoach plans were the exact same plans as his house and Mr. Manners stated they are. Ms. Spicer noted it is a mirror image of their house. Mr. Kilby asked for clarification on the position of the house. Mr. Manners answered the front of the house will be facing Sugarbush Point Drive. Mr. Kilby then asked if the setback issue is due to the decks on the back of the house and Mr. Manners confirmed. Mr. Kilby asked where Deer Run Trail is on the survey and Mr. Manners stated it is next to his property line but does not show on the survey.

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

No conditions were proposed so Mr. Kilby made the following motion:

With regard to case number ZV-2013007, Mr. Kilby moved the Board to find the applicants have demonstrated the unnecessary hardship would result from carrying out the strict letter of §92.040 of the Zoning Regulations and further has demonstrated compliance with the standards for granting a variance contained in §92.088 of such regulations. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application.

Chairman Webber pointed out this property is unique because it is bordered by two street rights-of-way and it is a very narrow lot. He stated there is only one area that is suited to build on because of the steep terrain.

Mr. Owensby seconded and all voted in favor.

NEW BUSINESS

(A) Reminder of November 19th & December 17th meeting dates

Chairman Webber reminded the Board the meeting dates for November and December were moved up to November 19th and December 17th.

OLD BUSINESS

(A) Status of VROP-2013005 Dunbar case

Ms. Spicer discussed a memo she handed out to the Board members regarding the Dunbar case from the June 25, 2013 meeting. She pointed out a condition was set that they had to come back within 100 days from the date of the order, which was signed on July 8, with a parking plan based on an accurate survey outlining the parking area and showing it is entirely on their property. October 16, 2013 was the 100 day deadline. Ms. Spicer mentioned she received a letter this morning, October 22, from Melissa Messer, authorized agent for Dr. Dunbar, with an update. Ms. Spicer stated Ms. Messer relayed to

her that Dr. Dunbar had been in contact with an engineer to provide a design that will allow him to have parking completely on his property but Ms. Messer did not have access to that design for this meeting. Ms. Spicer stated Ms. Messer asked for an extension of the deadline in her email to bring those plans to the Board. Ms. Spicer noted that §92.046 (J) of the Zoning Regulations states that if the Board makes the finding that any of the conditions have not been met, the permit is revoked and the use can no longer continue. She noted Ms. Messer's email was attached to the memo.

Ms. Spicer stated she visited the site on October 21, 2013 and took photographs, which were attached to the memo. She noted there has been no change to the street address sign, which was one of the conditions. She then noted construction has begun, but not completed, on handrails leading down to the lake, which was another condition set. The last condition was to fix the area around the well. Ms. Spicer stated Ms. Messer wrote in her email that they have contacted the company that installed the well but nothing has been done to the well yet. Ms. Spicer pointed out the regulations state that a vacation rental operating permit can act as a certificate of zoning compliance and for a conditional use permit you have to get a certificate of zoning compliance within six months. She mentioned the vacation rental operating permit has not been issued because the first three conditions have not been met yet, but they have six months to do that and that six month timeframe has not elapsed yet. Ms. Spicer mentioned Ms. Messer also noted there are no rentals scheduled for the property and Ms. Spicer included a printout from their website which confirms the property is not reserved throughout the remainder of this year or into January, 2014. Ms. Spicer mentioned Dr. Dunbar and Exclusive Mountain Properties received and signed for their order, which was mailed to them July 8, 2013. Discussion ensued.

Chairman Webber asked Ms. Spicer if she could recall if Ms. Messer was allowed to choose how long she had to meet the conditions imposed or if the Board made that decision. He stated he usually asks but Ms. Spicer and Mr. Egan could not recall. Chairman Webber asked Mr. Egan if an extension is allowed, would a notice have to be published to have that hearing. Mr. Egan replied the Board retains jurisdiction over this matter and he believes the Board could allow for an extension as requested. He stated ideally a hearing would be held in which Ms. Messer would be present to testify for the record to have a factual basis in order to make a decision, but he thinks it could be done without that. Mr. Egan pointed out there have been violations by renting as a vacation rental without a permit, but this is a separate issue. He further stated if the Board decides to grant an extension, they could add that it cannot be rented as a vacation rental since the vacation rental operating permit has not yet been granted until the conditions have been met. Mr. Egan recommended the Board allow the applicant to be given a hearing and an opportunity to give testimony at the next month's meeting.

Ms. Spicer noted she reviewed the Dunbar case in the minutes and stated there was no mention of the 100 day deadline until after the hearing was closed. Ms. Spicer then stated there was no mention in the order that they could not rent their property until the conditions were met. Chairman Webber mentioned they cannot legally rent the property until they have a vacation rental operating permit. Discussion held.

Mr. Kilby suggested the Board make a condition that the property cannot be rented until the conditions have been met. Ms. Spicer noted that §92.046 (G) states:

A conditional use permit issued in accordance with this section shall expire if the certificate of zoning compliance for such use is not obtained by the applicant within six (6) months from the date of the decision.

Ms. Spicer asked if the date of the decision would be June 25, the date the Board approved it, or July 8, when the order was signed. Mr. Egan replied it should be when the order was signed. Ms. Spicer pointed out that six months from the date the order was signed would be around January 8, 2014 and they do not show any rentals between now and then.

Mr. Gray suggested the Board schedule a revocation hearing to show cause why the permit shouldn't be revoked.

Mr. Kilby made the motion to schedule a revocation hearing for VROP-2013005 at the next meeting on November 19, 2013. Mr. Owensby seconded and all were in favor.

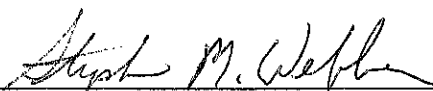
Mr. Kilby suggested there be a consequence for anyone renting a property as a vacation rental that does not have a vacation rental operating permit. Mr. Spicer noted there has been a suggestion by the Town Manager that a letter be drafted to all vacation rental operating permit holders as a friendly reminder of the operational requirements. She stated she could ask to include a reminder that operating without a vacation rental operating permit is a violation. She discussed to the Board how the process works for notice of zoning violations.

ADJOURNMENT

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

The meeting was adjourned at 3:10 p.m. The next regular meeting is scheduled for Tuesday, November 19, 2013 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chairman



Michelle Jolley, Recording Secretary