



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

**Tuesday, November 19, 2013
1:00 p.m.**

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

ROLL CALL

Present: Stephen Webber, Chair
Michael Gray
John Kilby
Patricia Maringer
Melvin Owensby
David Butts, Alternate
Roger Jolly, Alternate

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

Absent: Bob Cameron, Council Liaison

Chairman Webber relayed to the Board that Lance Johnson has resigned his position on the BOA.

APPROVAL OF THE AGENDA

Ms. Spicer proposed adding item (B) under New Business; Report on the MAHEC Conditional Use Permit.

Mr. Gray made a motion to approve the agenda as amended. Ms. Maringer seconded the motion. Chairman Webber, Mr. Kilby, and Mr. Owensby were in favor.

APPROVAL OF THE MINUTES

Mr. Gray noted the word “dock” on page 2 of the minutes should be changed to “deck”. Chairman Webber noted the word “deadline” on page 6 of the minutes should be changed to “property”.

Mr. Gray made a motion seconded by Mr. Owensby to approve the minutes of the October 22, 2013 meeting as amended. Chairman Webber, Mr. Kilby, and Ms. Maringer voted in favor.

HEARINGS

(A) VROP-2013005, hearing to show cause regarding revocation of permit for failure to comply with conditions and agreements

Ms. Spicer and Thomas McKay were sworn in.

Chairman Webber pointed out Melissa Messer, authorized agent for Dr. Dunbar, emailed Ms. Spicer stating she could not be at the meeting. Ms. Spicer handed out a copy of the email to all Board members and read the email to the Board. Chairman Webber labeled the email as ‘Board Exhibit A’.

Mr. McKay stated he is acting as agent for Andrew Johnson, who is the adjoining property owner at 191 Garner Drive. He presented Chairman Webber his agent authorization letter, which Chairman Webber labeled ‘Board Exhibit B’. Mr. McKay mentioned that Mr. Johnson, his family, and his friends have taken pictures of the property and how it has been managed. He presented the pictures to Chairman Webber, who labeled the nine pictures as ‘Board Exhibit C’. He also stated he has a copy of Exclusive Mountain Properties’ Vacation Rental Agreement for 187 Garner Drive and presented it to the Board. Chairman Webber labeled the contract as ‘Board Exhibit D’. Mr. McKay stated that Mr. Johnson wants Dr. Dunbar’s property to be managed in compliance with the Town’s rules and regulations.

Ms. Maringer asked Mr. McKay if the pictures he presented of Mr. Johnson’s driveway were of Mr. Johnson’s rentals. Mr. McKay answered he thinks those are his rentals but in the past there have been times where the adjacent neighbor has used his driveway.

Ms. Spicer mentioned Dr. Dunbar called her on November 4th and asked if she was going to revoke his VROP permit. She stated she explained to him that even though the Board had approved his request, the permit had never been issued because certain conditions had not been met yet. She pointed out the conditions stated in the Order from the Board are included in the packet. She further explained to him that he would be receiving a notice and there would be a hearing. Ms. Spicer noted Dr. Dunbar indicated to her that he hired Tim Turner with WNC Surveying to do some survey work for him to try and comply with the Board’s requirement for parking, but the survey has not been completed yet. Ms. Spicer read Section 92.046(I) of the zoning regulations, which states:

Voidance of Permit. In the event of failure to comply strictly with the plans, documents, and other assurances submitted and approved with the application, or in the event of failure to comply with any conditions imposed upon the conditional use permit as provided in Section 92.046(D), the permit shall immediately become void.

Ms. Spicer also quoted from sections in 92.046(J). She mentioned according to Exclusive Mountain Properties' website, there are no rentals for the rest of the year and they have submitted in writing and verbally that they do not have any additional rentals. She then pointed out it is apparent they rented the property after the Board approved their request, but before the conditions required were met in order to get the VROP permit. She then mentioned the one time that she was on the property and spoke to the renter, she did not observe any parking violations and the occupants of the home verified they were a renter. Ms. Spicer noted Mr. Johnson was the only adjoining property owner who contacted her.

Mr. Gray asked if they have until January 7, 2014 to comply with conditions 1, 2, and 3. Ms. Spicer explained the regulations state that a vacation rental operating permit acts as a conditional use permit and also as a certificate of zoning compliance. She further explained once a conditional use permit is approved by the Board, a certificate of zoning compliance has to be approved within a set amount of time. She stated they are technically in that set amount of time, but they were not supposed to have been renting the property during that time because they did not have an approved permit. But, she mentioned this alone would not void their permit.

Chairman Webber noted they are in violation of all 4 conditions. He mentioned they are required to enact conditions 1, 2, and 3 before having any rentals. He also mentioned they are required to enact condition 4 within 100 days and they did not do that. He stated he went to look at the property earlier today and did not see any evidence that a survey was done. Mr. Owensby concurred, stating he visited the property as well and did not notice any markings or evidence that a survey was completed. Chairman Webber stated, in his opinion, they have not made any effort to comply with the conditions set forth in the order until Ms. Spicer spoke to them last month, briefed the Board on it, and scheduled a hearing for today.

Mr. Gray pointed out since the ordinance states "shall" he believes that means the permit has already been revoked, and referred this to Mr. Egan. Mr. Egan answered in Section 92.046(J) of the regulations, which states:

If at any time after a conditional use permit has been issued the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued.

Ms. Spicer stated Section 92.004(B)(6) states:

The word "shall" is mandatory.

Mr. Egan noted the Board still has to make findings of fact that the conditions have not been met and a motion to vote. Chairman Webber mentioned in Ms. Spicer's memo from October 22, 2013 that was included in the packet, she noted the conditions have not been met based on her inspection. Ms. Spicer pointed out that is correct and there are pictures included in the packet as well that were taken October 21, 2013. Ms. Spicer stated she has not been back out to the property since and has not since verified that any of these conditions have been completed other than conversations she's had with Dr. Dunbar. Chairman Webber mentioned he was at the property this morning and verified the street address has not been completed, the posts for the handrails have been placed but no rails have been added to them, and nothing has been done on the well. Mr. Gray stated the email Ms. Messer sent regarding Dr. Dunbar's property states:

"At this point, we are going to just have to concede and allow the Board to pull the current operating permit, and then reapply when all of their requirements have been met."

Mr. Egan mentioned the Board will still need to make findings of fact and make a motion.

There were no further comments so Chairman Webber closed the hearing.

During deliberations, Mr. Egan pointed out he does not believe the Board has any other choice but to revoke the permit, according to the regulations. There was no further discussion so Ms. Maringer made the following motion:

Ms. Maringer made the motion to revoke VROP-2013005, a vacation rental operating permit for 187 Garner Drive, Lake Lure, which was approved on June 25.

Ms. Maringer stated she thinks the permit should be revoked because they have not met any of the conditions.

Mr. Gray seconded. Chairman Webber, Mr. Gray, Mr. Kilby, Ms. Maringer, and Mr. Owensby all voted to revoke the permit.

Chairman Webber stated he voted to revoke the permit because the conditions have not been met and no attempt to meet the conditions, in his opinion.

VROP-2013005 was revoked.

NEW BUSINESS

(A) Board of Adjustment training for December 17, 2013

Chairman Webber reminded everyone the December meeting will be on December 17 at 1 p.m. He mentioned there will be a training session held at that meeting and asked that everyone try to attend. Ms. Spicer noted the training session will be conducted by the

Division of Community Assistance which is part of the Department of Commerce and if they cannot get everything in at the December meeting, they can always come back at our request.

Chairman Webber asked that the schedule for the new year be put on next month's agenda to be approved. Ms. Spicer asked the members of the Board to stop by her office after the meeting and pick up a copy of the update to the zoning regulations.

(B) Report on MAHEC

Ms. Spicer stated she received an email just before lunch today from MAHEC asking to change from the metal roof they were approved to have to an architectural shingled roof. She stated they are asking for the change due to potential budget shortfalls on design. She noted she does not have anymore details and just wanted to report it to the Board.

Chairman Webber asked if this would necessitate them going before the Development Review Committee and Zoning and Planning Board again. Ms. Spicer replied, in her opinion, if they stay with the same color scheme it will not significantly change the design of the building. She pointed out the conditional use standards for commercial buildings also allows asphalt shingles. Ms. Spicer noted the email stated this was the only change being proposed. She mentioned that grading and site preparation has already begun and they will have to put up a small retaining wall, but everything is going as planned.

OLD BUSINESS

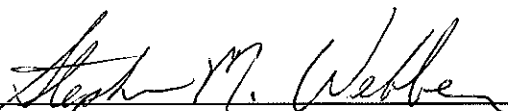
None

ADJOURNMENT

Ms. Maringer made a motion seconded by Mr. Owensby to adjourn the meeting. Chairman Webber, Mr. Gray, and Mr. Kilby were in favor.

The meeting was adjourned at 1:35 p.m. The next regular meeting is scheduled for Tuesday, December 17, 2013 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Secretary