

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

**Tuesday, October 21, 2014
1:00 p.m.**

Chairman Webber called the meeting to order at 1:03 p.m.

ROLL CALL

Present: Stephen Webber, Chair
David Butts, Alternate
Michael Gray
John Kilby
Patricia Maringer
Melvin Owensby
Bob Cameron, Council Liaison

Also Present: Michelle Jolley, Recording Clerk
Sheila Spicer, Zoning Administrator

Absent: Mark Hoek, Alternate
Roger Jolley, Alternate

APPROVAL OF THE AGENDA

Ms. Maringer made a motion to approve the agenda as presented. Mr. Gray seconded the motion. All voted in favor.

APPROVAL OF THE MINUTES

Ms. Maringer proposed a change on page three in the fifth paragraph of the minutes to remove "she also" which was typed twice. She also proposed changing the next meeting date on page seven of the minutes to "October 28."

Mr. Owensby made a motion seconded by Mr. Gray to approve the minutes of the September 23, 2014 meeting as amended. All voted in favor.

HEARINGS

(A) VROP-2014027, a vacation rental operating permit request from Valerie Wrobel, agent for Mary Lou Sawyer, to operate a residential vacation rental at 1915 Buffalo Shoals Road, Lake Lure, North Carolina (Tax PIN 1630473)

Ms. Spicer and Ms. Wrobel were sworn in. Mr. Gray mentioned he has had financial dealings with Ms. Wrobel but he would be able to make an unbiased decision. There was no other ex parte communications or conflicts of interest reported. Ms. Wrobel did not wish to challenge for cause.

Ms. Spicer presented the case. She stated Ms. Wrobel is requesting a 2-bedroom vacation rental. She pointed out the packet includes an application, an agent authorization letter, parking plan, a copy of the Septic Operation Permit issued by the Rutherford County Health Department in 2003, a standard rental agreement, and verification from Jeanette Bosgra with the Rutherford County Finance that this property has been registered with the Tourism Development Authority. However, Ms. Spicer noted that a copy of the Town's addendum was not included but there are copies of that addendum on file from other vacation rentals Ms. Wrobel has. She stated the request was sent to the Development Review Committee on October 1, 2014 and there were no responses or concerns.

Ms. Maringer pointed out the permit issued by the Rutherford County Health Department did not have a signature and asked Ms. Spicer if this was common. Ms. Spicer stated no. Ms. Spicer gave a brief history on the property. She stated the septic tank was put in to accommodate the house and the garage apartment but the house was never built. She noted the Rutherford County Health Department is aware that there is a dwelling unit there.

Ms. Wrobel pointed out there are two living areas but it will only be rented as one unit. She felt that because the property is secluded it should not be a disruption to anyone. She noted she manages another one of Ms. Sawyer's properties and stated that she is a good property owner who maintains her properties very well.

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

Ms. Maringer stated she did not see any outside lighting. Chairman Webber mentioned the only lighting he saw was some recessed canned lights but this would not affect neighbors as there are no neighbors close by.

With regard to application number VROP-2014027 for a vacation rental operating permit to operate a residential vacation rental in the R-1 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. Mr. Owensby seconded. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

(B) A request from Cliff Carden to amend VROP-2014015 to allow the use of a boat on Lake Lure at a residential vacation rental. The property (Tax PIN 1649957) is located at 222 Ridge Road, Lake Lure, NC 28746

Ms. Spicer was sworn in.

Chairman Webber announced that Mr. Carden suddenly could not attend the meeting and he apologized for his absence. He explained that, in accordance with the bylaws, if the property owner is not present the Board has the option of postponing or dismissing the case. He mentioned considering the request is only for an amendment to allow a boat to a vacation rental permit that has already been approved, the Board could also entertain a motion as an exception to the bylaws to go forward with the case.

Mr. Gray moved that the Board proceed with VROP-2014015 without the property owner being present. Mr. Kilby seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

Ms. Spicer presented the case. She stated there is a letter in the packet that describes the type of boat Mr. Carden is proposing. She noted he is aware that it will require a commercial license and commercial permits from the Town. She pointed out the deadline to apply for a commercial boat license for 2015 is October 31, 2014 and Mr. Carden is aware of this deadline. She stated that Mr. Carden apologized for not being able to attend and was concerned if the case was not heard today it could potentially hurt his chances of getting a commercial boat license for 2015. She pointed out he has been in contact with Linda Ward, Customer Service Supervisor, and is aware of and understands the process. She mentioned she could make a note to be sure and get a copy of his approved commercial license once he gets that.

Ms. Maringer pointed out the application for a commercial boat license has not yet been submitted and questioned whether the Board could approve his request without that. Ms. Spicer noted that one of the requirements in the regulations for a vacation rental operating permit is that proof of a valid town commercial boat license is part of the contents of the application if a boat rental is offered. However, she mentioned this is not possible in some cases due to the fact that commercial boat license applications are only reviewed one time per year. Mr. Gray asked that Commissioner Cameron bring this issue to the

Town Council for discussion. Mr. Kilby felt the Board could use common sense in this situation. Chairman Webber noted the property has already been approved for a vacation rental operating permit, and the boat is one that is allowed to be permitted on the lake. Chairman Webber suggested adding a condition that Mr. Carden provide Ms. Spicer with a copy of the commercial license once it has been approved.

Mr. Gray moved that the Board approve the application of Cliff Carden to amend vacation rental operating permit number VROP-2014015 to allow the use of a boat on Lake Lure subject to the following condition: *Copy of a valid commercial license presented to the Zoning Administrator before getting approval for a boat rental.*

Ms. Maringer seconded the motion with the condition. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

(C) ZV-2014006, a request from John & Betsy McKee for a variance from Section 92.040 of the Zoning Regulations for the minimum front (street) yard setback. The property (Tax PIN 232100) is located at 228 Picnic Point Road, Lake Lure, NC 28746

Ms. Spicer and Ms. McKee were sworn in. There were no conflicts of interest or ex parte communications reported. Ms. McKee did not wish to challenge any Board members for cause.

Ms. Spicer presented the case. She stated Mr. and Ms. McKee hired a contractor, Ken Stephan, who had done work for them in the past. She mentioned that Mr. Stephan contacted her in 2012 regarding additional work that the McKee's wanted to do. She stated it was at that time it was discovered there was a roof built over an existing deck that did not have a Certificate of Zoning Compliance from the Town. She gave an overview of the background information, which was included on the Memo in the packet. She explained that she previously conveyed to David Lloyd, Mr. and Ms. McKee's attorney, that the only variance required is for the portion of the structure that encroaches into the front yard setback, but upon further review she felt a variance is also required for the 0.35 foot portion that encroaches into the side yard setback. Therefore, she stated staff recommends that the application be amended to include the side yard setback variance request. Chairman Webber explained that no matter the outcome of the hearing, the deck will not be affected and he felt the Board should not spend a lot of time discussing the deck. He stated the roof is the issue, not the deck.

Mr. Lloyd and Ms. McKee approached the Board. He clarified that of the 2.55 feet of encroachment, only about 1 foot of that is the roof. He stated the deck is about 1.6 feet into the setback and there is a roof overhang that is another 10 – 12 inches. He stated it was not discovered that there was any issue with encroachment until 2012 when the property owners attempted to get permits from the Town for other work. He mentioned they then had a survey done in 2012 which did show encroachment by the deck and the roof. He noted that Mr. Stephan framed the roof at the time he built the deck and another contractor came and put up the materials for the roof. He pointed out the homeowners

had assumed that Mr. Stephan's original permit in 2008 from the Town included the deck and the roof but later learned that it did not include the roof. He noted that the McKee's lot is significantly smaller and more steeply sloped in relation to other lots in the area. He also noted the house was built in the 1950's before the setback regulations. He stated in 2008 the property owners initially considered putting the deck on the back of the house but it would have encroached into the side yard setbacks. He then decided to wrap the deck around the corner to stay within the setback lines, and it was the property owner's belief that Mr. Stephan obtained all the permits he needed from the Town.

Mr. Lloyd presented the Board with two aerial photos. One was a photo from 2005 which showed the house without the deck, and the other photo was from 2009 showing the house with the deck. He also presented two other photos showing the house with the deck. Chairman Webber labeled the photos as 'Applicant Exhibit 1.' He stated the property owners did not know they were out of compliance with the regulations and felt requiring removal of the roof would place an unreasonable burden on the property owners.

Chairman Webber asked Ms. McKee if she had asked Mr. Stephan to build a deck in the beginning and she stated no she had asked for a covered porch. She mentioned she trusted him as her contractor and did not realize he asked for permits from the Town for a deck. Chairman Webber made a correction to Mr. Lloyd's statement that the roof covering the deck extends 2.55 feet into the setbacks. He also mentioned it extends .35 feet into the side setbacks on the side also. He noted if the variance is approved it will include the entire structure, but if the variance is denied it will not affect the deck because the Town already approved the deck without a foundation survey and chose not to revoke the Certificate of Occupancy. Mr. Gray asked if the roof was built at the same time as the deck. Mr. Lloyd responded that Mr. Stephan had completed the deck and then began the framing for the roof. Several months later, he stated another contractor put the roof surface on. Chairman McKay asked Ms. Spicer if, when she went to the property and inspected to determine the issuance of a Certificate of Occupancy, she noticed a roof. Ms. Spicer answered she does not have a recollection of that specific inspection; however, the Certificate of Occupancy that was issued plainly states that it was for the plans that were previously approved. She stated the plans that were approved do not show a roof and the plans approved by Rutherford County Building Inspections did not include a roof, noting it was for a deck. She pointed out Mr. Stephan referred to a deck in the variance and permitting applications he submitted. Therefore, she stated, this would mean if there was a roof on the structure at the time of inspection, two separate inspectors would have missed it and issued a Certificate of Occupancy for a deck. Chairman Webber conveyed the burden of proof lies on the applicant and the applicant, Mr. Stephan, was not there to testify. Mr. Lloyd stated there has been no complaints from the neighboring property owners and mentioned the encroachment occurred without the fault of the property owners and without their knowledge.

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

During deliberations, Mr. Owensby felt that since Mr. Stephan was the applicant, the hardship was a direct result of his actions. Ms. Maringer felt that removal of 2.55 feet of the roof would create a hardship for the homeowner. Chairman Webber agreed stating that removal of any of it would create a financial hardship to the homeowners but the reason for the hardship was because the roof was built without a permit. He pointed out that if the variance is denied, they could not get a Certificate of Zoning Compliance, which would mean the entire roof would have to be removed. Ms. Maringer stated she did not feel this was a direct result of the actions of the property owners because they were not aware the licensed contractor did not get the permits for the roof. Mr. Kilby mentioned there was no evidence available that the roof was or was not there at the time the permit was granted; therefore, he stated he could not make a decision against the request based on the testimony he has heard. Chairman Webber conveyed that common sense would be to vote for the variance request because it does not extend any further into the front yard setback than the existing structure, it is well blocked from view of adjoining properties and does not obstruct views, and the Town does not stand to gain anything by denying the variance and requiring the homeowners to tear down the roof. He mentioned the Town has already chosen to not revoke the Certificate of Occupancy on the deck, which is in the side and front yard setbacks. He believed the Town made an error in not requiring a foundation survey and felt that this meets the requirements for granting a variance.

With regard to Case Number ZV-2014006, Mr. Kilby move the Board to find that the applicants have demonstrated that 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 moved the Board to grant the requested variance in accordance with and only to the extent represented by the application. Mr. Gray seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

The variance was granted.

(D) ZV-2014007, a request from Constance Waldrep for a variance from Section 92.040 of the Zoning Regulations for the minimum side yard setback. The property (Tax PIN 231030) is located at 241 Picnic Point Road, Lake Lure, NC 28746

Ms. Spicer, Ben and Constance Waldrep, and Darryl Sims, contractor for the applicant, were sworn in. Chairman Webber mentioned he visited the property and spoke with Ms. Waldrep about one of the buildings on the survey. There were no other conflicts of interest or ex parte communications reported. Mr. Waldrep did not wish to challenge any Board members for cause.

Ms. Spicer presented the staff portion of the case. She stated Mr. Sims submitted a Certificate of Zoning Compliance application for approval of a master bedroom addition to Ms. Waldrep's house and the application showed that the addition would encroach into

the side yard setback on the south side of the property. She pointed out the application includes the plans and survey. She noted that Garrett Humphries, the adjacent property owner who owns the property on the side that the encroachment is on, contacted her to state that he was not opposed but would not be able to attend the meeting. She mentioned he sent her an email which was included in the packet. She stated she has not had any response from other property owners.

Ms. Maringer asked Ms. Spicer what is encroaching in the left front corner, per Mr. Humphries' email. Ms. Spicer responded that he may be referring to the overhang of the existing structure, which she stated may not be shown on the survey included in the application. Chairman Webber noted the overhang of the two accessory buildings already encroach. Ms. Spicer noted the addition is proposing a 12 inch overhang and she did not believe this is shown on the existing house. She mentioned the existing house may have a 12 inch overhang and if it does that may encroach in the side yard setbacks.

Mr. Waldrep presented his case. He pointed out the steps leading down to the basement are located outside which is dangerous in the winter months. He mentioned part of what is being proposed will cover those steps. He conveyed that some of the rooms in the house are extremely small and stated he would like to increase the size of the kitchen, extend the closet in the existing bedroom and add a more usable bathroom. He pointed out they explored different options for adding an addition to the house and the only option they felt it could be done without offsetting the house would be to add straight off the back of the house. Ms. Spicer noted that only the small corner of the proposed master bedroom that encroaches into the setback is what requires a variance.

Mr. Gray asked Mr. Waldrep if he could build a second level instead. Chairman Webber added that he would have room to add steps for another level without a variance. Mr. Waldrep stated no he is not considering moving up and pointed out one of the rooms has a cathedral ceiling.

Chairman Webber asked Mr. Waldrep if the current rooms meet the minimum building standards. Mr. Sims answered that the current bathroom on the main floor does not meet the minimum building standards and mentioned there is a code for that but he did not have that information with him. Ms. Maringer asked Mr. Sims if he had a copy of the current floor plan and Mr. Sims stated yes. Ms. Spicer handed Ms. Maringer a copy of the existing floor plan that was submitted with the Certificate of Zoning Compliance application. Chairman Webber labeled the handout as 'Staff Exhibit 1.' Chairman Webber felt that the current bathroom not meeting the minimum building standards creates a hardship for the property owners. Ms. Maringer stated she is unsure that the size of the addition proposed is the minimum needed based on the hardship. Chairman Webber asked if Mr. Waldrep could get by with a smaller addition. Mr. Sims pointed out that even if they shrunk it down 15 feet they would still have to come back and ask for a variance. Mr. Kilby pointed out that Mr. Waldrep had mentioned he wanted to keep the addition proportionate to the rest of the house.

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

During deliberations, Chairman Webber stated he feels the hardships are not common to the general public. Brief discussion held. Mr. Owensby made the following motion:

With regard to Case Number ZV-2014007, Mr. Owensby move the Board to find that the applicants have demonstrated that 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 moved the Board to grant the requested variance in accordance with and only to the extent represented by the application. Mr. Gray seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

The Board felt the requirements had been met. The variance was granted with no conditions.

(E) ZV-2014008, a request from William Brumbach for a variance from Section 92.040 of the Zoning Regulations for the minimum front (lake) yard setback. The property (Tax PIN 222061) is located at 205 Allen Drive, Lake Lure, NC 28746

Ms. Spicer, Mr. and Ms. Brumbach, and Darryl Sims, contractor for the applicant, were sworn in. Ms. Maringer mentioned she visited the property and met with the property owners but did not discuss the case. Chairman Webber stated he did discuss with Ms. Brumbach the administrative process for the hearing. There was no other ex parte communications or conflicts of interest reported. Mr. Brumbach did not wish to challenge any Board members for cause.

Ms. Spicer presented the case. She stated Mr. Sims submitted a Certificate of Zoning Compliance application for approval of an addition and new deck at Mr. and Ms. Brumbach's home. She mentioned the survey indicates the property qualifies for a front yard setback exception on both the front street yard setback and the front lake yard setback; however, the proposed deck encroaches into the reduced setback on the lake side. She stated it also encroaches a little over 6 feet into the 25 foot trout buffer and she made Clint Calhoun, Environmental Management Officer, aware of this. She stated Mr. Calhoun sent her an email stating that it appears from the pictures she sent him and the proposed plans, the only disturbance in the trout buffer would be the posts of the deck and no waiver of the state would be required for that. Chairman Webber labeled the email as "Staff Exhibit 1." Discussion ensued regarding the trout buffer. Ms. Spicer stated she has had no response from adjacent property owners. She noted the letter she sent to Mark and Linda Erickson was returned. She stated that Millie Loud, who lives two doors down from Mr. and Ms. Brumbach, came by her office and reviewed the plans with no comments or concerns.

Chairman Webber asked if the deck would be covered and Mr. Brumbach stated no. Ms. Maringer asked Mr. Brumbach if the porch and upper deck were already enclosed upon

purchasing the property and Mr. Brumbach states yes. Mr. Kilby asked if there is currently access to the other floor inside and Mr. Brumbach stated no. Chairman Webber pointed out inside stairs would not require a variance. Chairman Webber asked Mr. Brumbach if there was a problem with the size of the rooms. Mr. Brumbach answered that the bedrooms, bathrooms, and the kitchen are very small. Mr. Sims added that the main bathroom does not meet the minimum building standards. Ms. Maringer pointed out the only thing that requires a variance is the deck.

Mr. Brumbach mentioned the addition of the steps is going to significantly reduce the size of the porch and therefore they are requesting a variance for a new deck so they can continue to have enough space to enjoy the view of the lake.

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

During deliberations, Chairman Webber mentioned his only concern was whether it would encroach into the trout buffer. He stated he could justify voting no for the variance when following the findings. Ms. Maringer stated she has a problem with the unnecessary hardship resulting from the strict application of the regulations. Mr. Gray made the following motion:

With regard to Case Number ZV-2014008, Mr. Gray move the Board to find that the applicants have demonstrated that 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 moved the Board to grant the requested variance in accordance with and only to the extent represented by the application. Mr. Kilby seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby voted in favor of the motion.

Prior to Chairman Webber's vote, he asked the Board for clarification on the justification for each member's vote for the purpose of the Order. Ms. Maringer stated the unnecessary hardship does not result from the strict application of the regulations and this was the one she had a problem with. Chairman Webber felt that the hardship did result from actions taken by the applicant because the applicant stated the hardship was not being able to build the deck which does result from their actions. Mr. Gray disagreed stating the hardship results from not being able to enjoy the structure they purchased which he did not feel was personal. Chairman Webber read that, "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship." Chairman conveyed that what he needed was specific rationale for the Order as to why the Board members voted in favor. Ms. Maringer stated she has a problem with the fact the variance request is for personal enjoyment; however, she stated the Board does try to help regulate full enjoyment of property. Mr. Kilby stated he voted in favor due to the facts he heard during the applicant's presentation. Chairman Webber pointed out that he needs the findings of fact and the conclusions of law for the Order because the Order has to specify those facts that meet the requirements for the law. Mr. Kilby stated he felt that the property owners

have a hardship. Mr. Gray mentioned he did not believe the zoning regulations were intended to keep those structures built before the regulations from being able to modify for their use. Discussion continued.

Chairman Webber voted in favor of the variance.

The variance was granted with no conditions.

NEW BUSINESS

Chairman Webber pointed out that Mr. Owensby and Mr. Gray's term will expire in December and asked if they would like to be considered for reappointment. Both members stated yes. Chairman Webber stated he would forward their request for reappointment to Town Council.

OLD BUSINESS

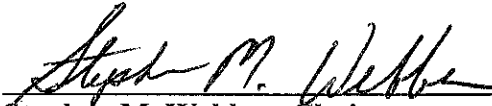
There was an informal discussion on an Order and what is needed to draft an Order.

ADJOURNMENT

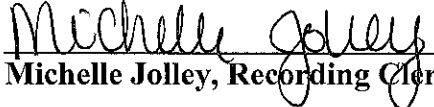
Mr. Kilby made a motion seconded by Mr. Owensby to adjourn the meeting. All voted in favor.

The meeting was adjourned at 3:15 p.m. The next regular meeting is scheduled for Tuesday, November 18, 2014 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Clerk