

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

**Tuesday, March 25, 2014
1:00 p.m.**

Chairman Webber called the meeting to order at 1:02 p.m.

ROLL CALL

Present: Stephen Webber, Chair
David Butts, Seated Alternate
Michael Gray (left early)
Roger Jolly, Alternate
John Kilby
Patricia Maringer
Melvin Owensby
Mark Hoek, Alternate
Bob Cameron, Council Liaison

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

Absent: Mike Egan, Community Development Attorney

Chairman Webber pointed out Mr. Gray has to leave the meeting early; therefore Mr. Butts is seated in his place.

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Ms. Maringer pointed out a typo on the third page of the minutes in the first paragraph. The word "sis" should be changed to "is".

Ms. Maringer made a motion seconded by Mr. Owensby to approve the minutes of the February 25, 2014 meeting as amended. All voted in favor.

HEARINGS

- (A) CU-2014001, a conditional use permit request from James Cain, agent for Apple Valley Villas to construct a pavilion to be used as a common amenity in the R-3 Resort Residential zoning district. The property (Tax PIN 1616507) is located on Whitney Boulevard, Lake Lure, NC 28746**

Ms. Spicer and James Cain were sworn in.

Mr. Owensby reported that he and Chairman Webber visited the property together prior to the meeting. There were no conflicts of interest reported, and Mr. Cain did not wish to challenge any seated members for cause.

Ms. Spicer presented the case. She stated the applicant is requesting a conditional use permit to construct a pavilion to be used as a picnic shelter and gathering area on their property located at 160 Whitney Boulevard for the use of property owners and their guests. The property is located in the R-3 Resort Residential zoning district. The proposed use of the structure meets the definition of a common amenity, which is a conditional use in the R-3 district. The existing building in the proposed location of the pavilion will be demolished if the request is granted.

Ms. Spicer mentioned the Development Review Committee (DRC) reviewed the application on January 23, 2014, and the minutes to that meeting are included in the packet. She pointed out one of the concerns raised during the DRC meeting was that the application and agent authorization letter are from Apple Valley Villas Condo Association, but Rutherford County tax records indicate Fairfield Communities Inc and Wyndham Vacation Resorts are the owners of the property. During that meeting Mr. Cain stated the tax records were incorrect and Ms. Spicer responded he should either address that with Rutherford County or get approval from the registered owners.

Ms. Spicer stated the Zoning and Planning Board reviewed the application on February 18, 2014 and unanimously recommended approval of the request with the condition that an evergreen vegetative buffer be required between the subject property and the bordering property in order to screen the pavilion from view of the adjacent single-family dwelling. The minutes of that meeting have also been included in the packet.

Ms. Spicer pointed out that, prior to the meeting she handed out a copy of the following items:

- 1) A letter from Diane Eckard, owner of Villa #2, stating concerns she has
- 2) An email from Tina Lawing, owner of Villa #1 and daughter of Diane Eckard
- 3) A letter from Phil Reitano, Apple Valley Villa property owner, to Diane Eckard addressing her concerns

Ms. Spicer explained the letters she mailed to adjacent property owners are only sent to the address listed in the Rutherford County GIS database, so only one owner receives the letter if there are multiple property owners.

Mr. Cain presented his case to the Board. He stated the Apple Valley Villa Association is requesting to build an open-air pavilion. He mentioned there is a structure in the same location that is currently being used for storage and for the community ice machine; they would like to remove that building and construct the pavilion. He pointed out the back portion of the pavilion will be used for storage and there will also be a small area for food prep consisting of counter space and a sink. He stated the pavilion would only be available for Apple Valley Villa owners and guests. He pointed out that all noise complaints and other concerns would be handled by Rumbling Bald Security and property management.

Ms. Maringer expressed concerns regarding the number of guests which would be allowed to use the pavilion. Mr. Cain stated the Board of Directors have mentioned they will be creating rules and regulations for the pavilion to include parking, hours, and number of guests allowed.

Mr. Cain pointed out he spoke to the Board of Directors with Apple Valley Villas regarding the evergreen screening and they all approved of it. Mr. Cain stated he contacted Rutherford County Register of Deeds Office and the Rutherford County Tax Department after the January 23, 2014 DRC meeting regarding the name listed on the tax records and they stated to him they could not find any records listing Apple Valley Villas as the owners of the property. He pointed out that Fairfield Communities went bankrupt in 1992 and there was a transaction that did not get recorded to release ownership of this property. He stated Wyndham corporate office is currently working on transferring the property name and have issued a title request.

Ms. Spicer reported she needed to take a five minute recess to speak with Mr. Cain about an issue that had just come to her attention. After the recess, Ms. Spicer reported that according to §92.030 (C) (9) of the Zoning Regulations the requested location of the pavilion does not meet the 30' setback requirement. She stated Mr. Cain felt certain they would be able to move the pavilion six feet closer to the parking area so that it will meet the setback requirement. Mr. Cain agreed to comply with the setback and amend his application to be in compliance with the regulations. Ms. Spicer stated there were no concerns raised during the DRC meeting regarding the dimensions of the pavilion; only parking and the maximum occupancy of the structure was discussed. She stated the only concern raised during the Zoning & Planning Board meeting was the potential impacts to the single-family dwelling on the adjacent property and this would be moving it further away from that property. Chairman Webber asked Mr. Cain if he was certain the Board of Directors with Apple Valley Villas would be in approval of Mr. Cain amending the application without their consent. Mr. Cain assured the Board he could make the decision on their behalf and stated they would be ok with it.

Mr. Owensby asked Mr. Cain about parking and if there would be a time frame set for use of the pavilion. Mr. Cain stated there is additional parking available and this should be sufficient. He mentioned the Board of Directors has discussed a need for a time frame for use of the pavilion, but the times have not been established yet. Mr. Butts asked if there would be a designated area at the pavilion for loading and unloading, and Mr. Cain stated no, but it would not be an issue to add a designated area for that.

Chairman Webber pointed out he thinks the parking will be limited. He asked Mr. Cain about the lighting and if it could impact the property owners nearby. Mr. Cain answered that lighting will only be inside the pavilion, fluorescent bulbs will be used, and this would not impact the neighboring property owners. He also pointed out that use of the pavilion will occur mostly during the day. Chairman Webber asked Mr. Cain what the current building at the location is being used for, and Mr. Cain stated it is currently used for storage and also has an ice machine in it for owners to use. He pointed out that alcohol is allowed but would not be sold or promoted there. He also stated the sink and counters could be used in the kitchen but cooking would be prohibited. He also stated that live bands would not be allowed. Mr. Cain mentioned the Fire Chief would determine the maximum occupancy. Mr. Kilby asked if parking has ever been an issue in the past, and Mr. Cain stated no. He also stated that noise has never been an issue either.

Chairman Webber discussed three possible conditions he is considering. These conditions included:

- 1) The pavilion including any overhangs must be a minimum of 30 feet from the adjoining property currently owned by Randolph and Melvin Logan.
- 2) An evergreen vegetative buffer must be planted between the pavilion and the adjoining single-family dwelling. This buffer shall be planted a minimum of five feet from the property boundary.
- 3) If the pavilion is used at night, it must be closed no later than 10 p.m.

Mr. Cain stated he did not have any issues with any of the three conditions. Chairman Webber explained that if the Board of Directors did not wish to move the pavilion and wanted to keep it in the same location as proposed, they would have to come back before the Board and ask for a variance. Mr. Cain agreed with all the conditions Chairman Webber discussed and requested to amend his application to reflect the revised location.

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

During deliberations, Ms. Maringer listed the following concerns she had:

- 1) The assumption that there is enough room to move the pavilion 6 feet. Chairman Webber stated this is a requirement in order to build the pavilion and if they find out they aren't able to move the pavilion, then they would not be allowed to build it. He pointed out Mr. Cain agreed to amend his application and assured the Board it would be built in compliance with the regulations.
- 2) The assumption that Apple Valley Villas will control the maximum number of guests allowed. Chairman Webber mentioned the association would control that,

and Mr. Owensby pointed out that Mr. Cain stated Rumbling Bald Security patrols everyday.

- 3) If there will be enough parking spaces to accommodate use of the pavilion and stated this was also a concern of Ms. Eckard. Chairman Webber mentioned that each condominium comes with one parking space for the owner and one extra space available for guests. He mentioned there are also four additional spaces for a total of 70 parking spaces and he feels that use of the pavilion would not impact the parking. Mr. Owensby pointed out that Mr. Cain stated there was an additional parking area for overflow.
- 4) Landscaping, noise control, lighting, and garbage. Chairman Webber commented that Mr. Cain addressed the Board about the lighting stating it would be inside the pavilion only. He mentioned that he stated earlier in the meeting the noise would be controlled by the Rumbling Bald Security or the police department. He also pointed out he had asked Mr. Cain about having the proper trash receptacles and noted the evergreen buffer would be the only landscaping added.
- 5) No loading/unloading designated areas. Chairman Webber pointed out this is not a requirement. Mr. Butts mentioned he feels the owners of the Villas should have protected parking areas so they aren't forced to park elsewhere and have to carry their belongings a good distance to get to their unit.

After discussion, Mr. Kilby made the following motion:

With regard to application number CU-2014001 for a conditional use permit to construct a pavilion to be used as a common amenity, Mr. Kilby moved the Board to find that the application is complete and that the propose use, if located and developed 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 conditional use permit in accordance with and only to the extent represented in the application and plans.

Mr. Butts seconded the motion.

Chairman Webber proposed amending the motion to add the following conditions:

- 1) The pavilion including any overhangs must be a minimum of 30 feet from the adjoining property currently owned by Randolph and Melvin Logan.**
- 2) An evergreen vegetative buffer must be planted between the pavilion and the adjoining single-family dwelling. This buffer shall be planted a minimum of five feet from the property boundary.**

3) If the pavilion is used at night, it must be closed no later than 10 p.m.

In regards to the first condition, Mr. Butts, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

In regards to the second condition, Mr. Butts, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

In regard to the third condition, Mr. Butts, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor. Mr. Kilby voted no.

In regards to the original motion as amended with the added condition, Mr. Butts, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

(B) VROP-2014003, a vacation rental operating permit request from Robin and Randy Ragans to operate a residential vacation rental at 104 Scenic View Lane, Lake Lure, North Carolina 28746 (Tax PIN 229455)

Ms. Spicer, and Melissa Messer, owner of Exclusive Mountain Properties and agent for the property owner, were sworn in.

Chairman Webber reported he and Mr. Owensby visited the property together and met Ms. Maringer as they were leaving. He pointed out they only discussed parking and turning around. There were no conflicts of interest reported, and Ms. Messer did not wish to challenge the seated members for cause.

Ms. Spicer presented the case. She stated that Exclusive Mountain Properties, agent for Robin and Randy Ragans, is requesting a vacation rental operating permit (VROP) to operate a 4-bedroom residential vacation rental at 104 Scenic View Lane. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot. She pointed out the packet includes the application, agent authorization letter authorizing Ms. Messer to act as their agent, parking plan, a receipt from Charlie Sims, a licensed plumber, certifying that the connection to the Town's sewer system is operational and free of detectable leaks, a standard vacation rental agreement with an addendum that is included with their rental agreement and the Town's contract addendum, and verification from the Rutherford County Finance Department stating that Ms. Messer has added this property to her vacation rentals. Ms. Spicer mentioned the property has an onsite private well. She stated she had no response from neighboring property owners.

Ms. Spicer stated the Development Review Committee reviewed this application on March 11, 2014, and the minutes from that meeting are included in the packet. She mentioned there were no concerns raised during that meeting. The Zoning and Planning Board review was not required due to the fact there were no proposed changes to the appearance of the building or premises.

Ms. Messer approached the Board. Ms. Maringer asked about additional lighting, and Ms. Messer pointed out there are motion detectors but no additional lighting was planned. Ms. Maringer pointed out the ramp leading down to the lake has no handrails and stated she feels this is a safety issue. Ms. Messer assured the Board that she would bring this to the homeowner's attention. Ms. Maringer then pointed out that parking is challenging. Ms. Messer stated the parking area would hold three standard sized vehicles.

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

During deliberations, Ms. Maringer mentioned her only concern was with the ramp and ingress/egress. Chairman Webber stated that Ms. Messer assured the Board she would get this taken care of. No other concerns were raised. Ms. Maringer made the following motion:

With regard to application number VROP-2014003 for a vacation rental operating permit to operate a residential vacation rental in the R-1 Residential zoning district, Ms. Maringer 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. Mr. Owensby seconded the motion. Mr. Butts, Mr. Hoek, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

(C) VROP-2014004, a vacation rental operating permit request from Scott and Michele Thompson to operate a residential vacation rental at 145 Lure Akers, Lake Lure, North Carolina 28746 (Tax PIN 1601443)

Ms. Spicer, Scott and Michele Thompson, Diane and Mike Breaker, neighboring property owner at 144 Lure Acres, and Penny Beneway, property manager, were sworn in.

Chairman Webber reported he and Mr. Owensby visited the property together. Mr. Kilby reported he and Mr. Jolly visited the property together. Mr. Butts stated he introduced himself to the property owners while visiting the property. There were no conflicts of interest reported. Mr. and Ms. Thompson as well as Mr. and Ms. Breaker did not wish to challenge the seated members for cause.

Ms. Spicer presented the case. She stated Scott and Michele Thompson are requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation

rental at 145 Lure Akers. The property is located in the R-2 Residential zoning district, and there is an existing single-family dwelling on the lot. Ms. Spicer pointed out the application documentation in the Board's packet and mentioned the application appears complete. She stated the Development Review Committee reviewed this application on March 11, 2014, and the minutes from that meeting are also included in the packet. She mentioned there were no concerns raised during the meeting. She stated Zoning and Planning Board review was not required due to the fact there were no proposed changes to the appearance of the building or premises.

Ms. Spicer pointed out Mr. and Ms. Breaker did not receive a letter notification because they recently purchased the property and were not yet listed on the Rutherford County GIS website. She stated they found out about the hearing when they noticed the poster on the property or by the ad published in the newspaper.

Ms. Thompson approached the Board. Ms. Maringer mentioned she noticed a piece of the railing on the deck was rotten and this is a safety issue. Ms. Thompson assured the Board it would be fixed.

Ms. Breaker approached the Board and stated she had a few concerns in regards to liability coverage. She reported there is a pond located on her property, which adjoins the Thompson's property, and expressed concerns with unsupervised visitors around the pond, and stated she does not want to be held liable for any incidents that may occur. She pointed out she has spoken with her attorney, and he has asked that she request a 30 day extension of this vacation rental operating permit request. She also mentioned she looked over the property deed and stated it indicates the driveway to Mr. and Ms. Thompson's property, which is located almost entirely on the Breaker's property, is for private use only, and she could not find a current deed with an easement. Chairman Webber stated they do have a title with an easement, which was included in the packet, and stated Ms. Spicer could make a copy of it for her. He relayed to her the Board could still hear the case and this would not stop her from speaking with her legal counsel and making agreements with the property owners.

Ms. Thompson stated that she could add a sign stating the pond is on private property. Chairman Webber stated the issues Ms. Breaker raised were a civil matter and suggested the Thompsons and the Breakers get together and work out the issues. Ms. Thompson and Ms. Breaker agreed with each other they could speak regarding the issues outside of the meeting and work up agreements.

Mr. Breaker expressed concerns regarding removal of snow from the shared driveway during winter months and stated he did not feel it would be his responsibility to shovel snow for the shared drive. Chairman Webber again pointed out this would be a civil matter and stated he should work this out with the Thompsons. Mr. Breaker asked who he would contact if there was an issue, and Chairman Webber stated issues should be reported to the Thompson's property manager.

Mr. Thompson assured the Board he would post a sign stating the pond is on private property. He pointed out there is also a river that runs along the property, and he would post a sign there as well.

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

During deliberations, the Board felt that all conditions had been met, and they felt the property owners would work out an agreement in regards to the concerns that were raised. Mr. Owensby made the following motion:

With regard to application number VROP-2014004 for a vacation rental operating permit to operate a residential vacation rental in the R-2 Residential zoning district, Mr. Owensby 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. Butts seconded the motion. Mr. Butts, Mr. Hoek, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

NEW BUSINESS

None

OLD BUSINESS

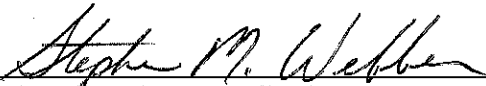
Chairman Webber asked that all Board members watch the information video Ms. Spicer emailed to everyone last month. Ms. Spicer mentioned she would email the video to everyone again. Ms. Spicer gave an update on Mountain Area Health Education Center (MAHEC) and informed the Board that construction on the building has started.

ADJOURNMENT

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

The meeting was adjourned at 3:13 p.m. The next regular meeting is scheduled for Tuesday, April 22, 2014 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Clerk