

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

**Wednesday, July 23, 2014
1:00 p.m.**

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

ROLL CALL

Present: Stephen Webber, Chair
 Mark Hoek, Seated Alternate
 Roger Jolly, Seated Alternate
 John Kilby
 Melvin Owensby
 Bob Cameron, Council Liaison

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

Absent: David Butts, Alternate
 Michael Gray
 Patricia Maringer

APPROVAL OF THE AGENDA

Mr. Owensby made a motion to approve the agenda as presented. Mr. Jolly seconded the motion. All voted in favor.

APPROVAL OF THE MINUTES

Chairman Webber proposed a change on page 7 of the minutes next to the last paragraph. He stated he voted in favor of the amendment and the minutes should be changed to reflect that.

Mr. Kilby made a motion seconded by Mr. Hoek to approve the minutes of the June 24, 2014 meeting as amended. All voted in favor.

HEARINGS

(A) VROP-2014021, a vacation rental operating permit request from Duke and Kimberly Chang to operate a residential vacation rental at 2051 Buffalo Creek Road, Lake Lure, North Carolina (Tax PIN 232386)

Ms. Spicer, Penny Beneway, agent for Mr. and Ms. Chang, and John and Doretta Gillott, adjoining property owners, were sworn in. Chairman Webber pointed out the Mayor had told him he received a call from the adjoining property owner, John Gillott. He mentioned Mr. Gillott had concerns and he relayed to him that he could attend the BOA meeting and express his concerns. Chairman Webber also pointed out he visited the property this morning. There were no additional ex parte communications or conflicts of interest reported. Ms. Beneway did not wish to challenge for cause.

Mr. Gillott approached the Board and asked to be granted party status.

Ms. Spicer reported she did not receive an agent authorization letter from the Changs to authorize Ms. Beneway to act as their agent. She stated she received an email from them but it did not include the authorization letter. Chairman Webber mentioned to Ms. Beneway that she had to have the authorization letter in order to represent them. Ms. Beneway stated she would attempt to get the agent authorization letter and have it before the end of the meeting.

Chairman Webber proposed continuing the case to the last hearing on the agenda while Ms. Beneway attempts to get an agent authorization letter from the Changs. The Board unanimously agreed to continue the case.

(B) VROP-2014022, a vacation rental operating permit request from Anne Blackwell to operate a residential vacation rental at 373 Tryon Bay Circle, Lake Lure, North Carolina (Tax PIN 221536)

Ms. Spicer, Patricia Cole, Anne Blackwell's daughter, and Sharon Ryan, agent, were sworn in.

There were no ex parte communications or conflicts of interest reported. Ms. Cole and Ms. Ryan did not object to the Board hearing the case.

Ms. Spicer presented the case to the Board. She stated Ms. Blackwell is requesting a vacation rental operating permit to operate a 4-bedroom residential vacation rental. She pointed out the application is in Ms. Blackwell's name. She stated Ms. Cole has a Power of Attorney, and a copy of that is included in the packet. She also pointed out the packet includes an agent authorization letter from Ms. Blackwell authorizing Ms. Ryan and Ms. Cole to act as her agent, an application, a parking plan, a sewer certification from CNL Plumbing that the connection to the Town's sewer is operational and free of detectable leaks, standard rental agreement, and confirmation from Jeanette Bosgra with Rutherford County Finance that this property has been added to Ms. Ryan's list of rentals with the TDA. She stated she sent a letter to the adjoining property owner, Carolyn Lawson, but

incorrectly identified the property address for the case. She reported she did have email communication with Mr. Cole and Ms. Ryan and stated they have been in contact with the adjoining property owner. She mentioned she posted a sign at the property regarding the upcoming case on July 3, 2014 and there was also an ad posted in the local newspaper. She mentioned she had been out of the office for an extended period of time and the adjoining property owners could have possibly called and spoken with another Town employee, but stated she has not spoken to an adjoining property owner regarding the case. She pointed out she has had no comments or concerns from the Development Review Committee.

Ms. Cole confirmed she spoke with Ms. Lawson about their plans and Ms. Lawson had no concerns, other than the fact the letter had the wrong address. She stated Ms. Lawson was made aware of today's proceedings and the fact it pertains to her property.

Chairman Webber asked if there was proof that the tap fee was paid to the Town and Ms. Spicer stated no, she did not get confirmation of that. Chairman Webber asked Ms. Cole if a boat is being offered with the rental and Ms. Cole stated they would like to offer a canoe with the rental but they have not purchased the commercial permit or license yet. She mentioned she wanted to make sure the VROP was approved first before buying a canoe. Ms. Spicer noted that in a previous hearing, a condition was simply added to the motion requiring a valid commercial boat license be submitted to the Zoning Administrator before offering boat use with the rental.

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

With regard to application number VROP-2014022 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. Hoek seconded.

Chairman Webber proposed a condition that no boat will be offered for availability with the rental until a valid commercial boat license is submitted to the Zoning Administrator. Mr. Owensby seconded. Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor of the proposed condition.

In regards to the main motion, Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor.

The VROP was granted with the one condition noted.

(C) VROP-2014023, a vacation rental operating permit request from Michael and Gwen Meguiar to operate a residential vacation rental at 304 Holmstead Drive, Lake Lure, North Carolina (Tax PIN 1640764)

Ms. Spicer and Ms. Meguiar were sworn in.

Ms. Spicer noted that Ms. Meguiar is not listed on the deed and Mr. Meguiar emailed her an agent authorization letter authorizing Ms. Meguiar to act on his behalf. Ms. Spicer presented the letter to Chairman Webber who labeled it 'Applicant Exhibit 1.'

Mr. Jolly reported his son-in-law built their house, but this would not influence his decision. Ms. Spicer stated the Certificate of Occupancy has already been issued. There were no other ex parte communications or conflicts of interest reported. Ms. Meguiar did not wish to challenge the Board for cause.

Ms. Spicer presented the staff portion of the case. She stated a Certificate of Occupancy was issued a few weeks ago. She pointed out that one of the things included in the packet, which is part of the application, is certification from the plumber who installed the new sewer line. She stated that Mr. and Ms. Meguiar are requesting a vacation rental operating permit to operate a 6-bedroom vacation rental in the R-1D Residential zoning district, and there is an existing single-family dwelling on the lot. She mentioned the house plans that were approved by the Town were for a 6-bedroom home, which is not included yet on the Rutherford County property card since it is a new home. She pointed out the packet includes a completed application, a parking plan, the standard rental agreement which includes the Town's addendum, and verification from Jeanette Bosgra with Rutherford County Finance that Ms. Meguiar has registered with the TDA. She again mentioned she had been out of the office for an extended period of time and the adjoining property owners could have possibly called and spoken with another Town employee, but stated she has not spoken to an adjoining property owner regarding the case. She pointed out she has had no comments or concerns from the Development Review Committee.

Ms. Meguiar noted they have three kayaks that they'd like to offer with the vacation rental. She stated she has purchased the commercial license and the commercial boat permits. Chairman Webber stated she has to provide proof of that but that could be a condition.

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

With regard to application number VROP-2014023 for a vacation rental operating permit to operate a residential vacation rental in the R-1D zoning district Mr. Jolly

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 and subject to the following condition:

Proof of a valid commercial boat license shall be submitted to the Zoning Administrator before a boat can be offered for availability with the vacation rental.

Mr. Owensby seconded. Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor.

The VROP was granted with the one condition noted.

- (A) VROP-2014021 continued, a vacation rental operating permit request from Duke and Kimberly Chang to operate a residential vacation rental at 2051 Buffalo Creek Road, Lake Lure, North Carolina (Tax PIN 232386)

Ms. Beneway reported Mr. Chang was getting on an airplane and was not able to send the agent authorization letter at this time. She stated he had told her that he sent Ms. Spicer an email and Ms. Spicer stated this is something that is not typically accepted without an original signature. Ms. Spicer noted there have been numerous email correspondences with Mr. Chang and herself. She noted Mr. Chang has always copied Ms. Beneway to the emails, she has had several conversations with Ms. Beneway by phone, and it has always been implied to her that Ms. Beneway is his agent. She pointed out she did not request an agent authorization letter because Mr. Chang never indicated to her that he would not be present at this hearing. Chairman Webber asked the Board if they would be ok with accepting the email from Mr. Chang to hear the case, and imposing a condition that Ms. Beneway provide a signed agent authorization letter prior to use of the rental. The Board unanimously agreed.

Ms. Beneway reported she has a copy of the vacation rental agreement that has both her signature and Mr. Chang's signature on it. She provided a copy of the vacation rental agreement to Chairman Webber, who labeled it 'Applicant Exhibit 1.' Ms. Spicer provided Chairman Webber a copy of the email from Mr. Chang, and he labeled it 'Applicant Exhibit 2.' Chairman Webber pointed out there is nothing in the zoning regulations regarding agent authorization letters, but it has been the advice of the attorney in the past to have a letter with a signature. Chairman Webber mentioned the two

documents together, plus the application that Mr. Chang signed, would suffice to convey the intent of the applicant that Ms. Beneway is his agent.

Chairman Webber made a motion that the two exhibits, coupled with the application, adequately reflects Ms. Beneway as the agent for the applicant. Mr. Kilby seconded the motion. Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor.

Mr. Gillott again requested party status. Chairman Webber asked Mr. Gillott how the outcome of the case would affect him differently in kind than it would the general public. Mr. Gillott answered he is the only adjoining property owner that would be impacted by the permit and he feels he should be allowed standing in the case. He reported he has concerns with the septic system as well. He mentioned the septic system was approved by the Health Department for a maximum of six people. He reported he has a letter from the Rutherford County Health Department which reflects this.

Chairman Webber stated he is not opposed to granting Mr. Gillott party status because he is an adjoining property owner. He stated Mr. Gillott would not be able to appeal the decision of the Board if he is not granted party status. Mr. Owensby asked if the Gillott's live on the property year-round and Mr. Gillott stated they live there about seven or eight months out of the year.

Ms. Gillott mentioned they have owned the property for 40 years and their house was built about seven years ago. She pointed out they are concerned with the peace and quiet at their property if the vacation rental operating permit is approved. She reported one incident when they discovered a fence that was placed about 10' onto their property by the builder of the home at 2051 Buffalo Creek Road when he listed the property for sale. As a result, she stated they had a survey conducted which showed the property boundaries and the fence being partially located on their property. She also stated the two properties cannot be differentiated by the trees because the trees were cleared on part of their property by the builder of the property at 2051 Buffalo Creek Road and the first homeowner. Chairman Webber pointed out that both these incidents would be a civil matter between the property owners and explained she should notify the police with civil matters.

Chairman Webber made a motion to grant party status to John and Doretta Gillott. Mr. Jolly seconded the motion. Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor.

Ms. Spicer presented the case. She stated that Duke and Kimberly Chang are requesting a vacation rental operating permit to operate a 3-bedroom residential vacation rental in the R-3 Resort Residential zoning district. She pointed out the packet includes an application, a parking plan, a copy of the most recent deed which is filed with the Rutherford County Register of Deeds Office since the property information from Rutherford County GIS did not list the Chang's as owners, a copy of Ms. Beneway's standard rental agreement, and verification from Jeanette Bosgra with Rutherford County Finance that Ms. Beneway has

added this property to her list of rentals with the TDA. She again mentioned she had been out of the office for an extended period of time and the adjoining property owners could have possibly called and spoken with another Town employee, but stated she has not spoken to an adjoining property owner regarding the case. She pointed out she has had no comments or concerns from the Development Review Committee. Ms. Spicer pointed out to Ms. Beneway that she did not include the Town's contract addendum, which is a requirement by the zoning regulations.

Mr. Gillott stated he did not wish to challenge the Board from hearing the case.

Ms. Beneway relayed that she does manage the number of people on the property and if there are more than there is supposed to be, they will be asked to vacate the premises. Chairman Webber pointed out the only outside lighting attached to the home is the porch light. He stated he did notice a yard light with three fixtures on it and recommended using yellow lights in the outdoor lamp because it has less impact on neighbors and is more subdued. He also mentioned there were flood light fixtures going down the steps towards the creek and cautioned that the lights be fixed in a way that does not have impact on neighboring properties or traffic. He also mentioned the garbage receptacle was rotted and recommended maintenance on it.

Chairman Webber explained that the regulations allow two occupants per bedroom, plus four. Therefore, the proposed occupancy in the application is in compliance with the regulations. He then asked Ms. Beneway if they have any kind of noise regulations and she stated they impose a quiet time after 9:00 p.m. She also stated she gives her consent to the neighbors to call her at any time if there are problems or concerns. Chairman Webber asked about the septic tank. Ms. Spicer pointed out that, according to the application, the septic tank was inspected on April 21, 2014 with no issues detected. Chairman Webber mentioned the property card shows there are three bedrooms and four bathrooms.

Mr. Gillott approached the Board stating he is opposed to the issuance of a vacation rental operating permit for this property. He provided an email to Chairman Webber from the Rutherford County Health Department, which Chairman Webber labeled 'Opposition Exhibit 1.' Mr. Gillott pointed out that the application is allowing up to 10 occupants and the Health Department's letter states the septic system is designed for a maximum of six people and this is a concern he has. He stressed that his concerns are with the septic system not being adequate for the maximum number of occupancy allowed, renters trespassing onto his property because there is no delineation between the two properties, the owner of the property being several hours away, and concerned with losing the quiet enjoyment of his property. Therefore, he asked that the application be denied. Mr. Kilby asked Mr. Gillott how he would feel if the permit were granted for six occupants and Mr. Gillott answered he would feel better with the permit allowing only up to six people rather than ten. Chairman Webber explained to Mr. Gillott that vacation rentals are a permitted use in all zoning districts. Discussion was held regarding the proposed occupancy.

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

During deliberations, the Board discussed the findings in Section 92.046 of the Zoning Regulations, and the consensus was all of them had been met.

With regard to application number VROP-2014021 for a vacation rental operating permit to operate a residential vacation rental in the R-3 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. Hoek seconded. Mr. Hoek, Mr. Jolly, Mr. Kilby, Mr. Owensby, and Chairman Webber voted in favor.

Chairman Webber explained that since the Gillott's were granted party status they have the right to appeal. He advised them that, should they choose to appeal the Board's decision, the appeal must be filed with Rutherford County Superior Court within 30 days of receipt of the order.

NEW BUSINESS

Mr. Kilby asked if a spouse's name is not listed on a property deed, is a letter of authorization required for the person not listed to represent their spouse. Ms. Spicer mentioned under NC law they would probably still have legal rights to do so. Chairman Webber asked to put this on the agenda under Old Business for a legal opinion next time Mr. Egan is present.

OLD BUSINESS

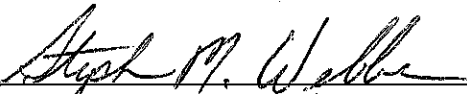
Ms. Spicer presented an update on Dr. Adams' Conditional Use permit for a dental clinic. She stated that Dr. Adams' construction schedule states the office should be completed by this point and construction has not even begun because of financing issues. She mentioned she called Dr. Adams to ask that he send a revised construction schedule to the Board, but was unable to get in touch with him prior to the deadline for this meeting because he was out of town. Ms. Spicer noted she gave him the deadline for the August meeting.

ADJOURNMENT

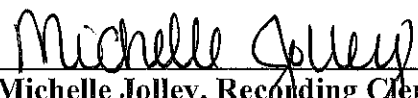
Mr. Kilby made a motion seconded by Mr. Jolly to adjourn the meeting. All voted in favor.

The meeting was adjourned at 3:15 p.m. The next regular meeting is scheduled for Tuesday, August 26, 2014 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Clerk