

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

**Tuesday, September 23, 2014
1:00 p.m.**

Chairman Webber called the meeting to order at 1:04 p.m.

ROLL CALL

Present: Stephen Webber, Chair
David Butts, Seated Alternate
Mark Hoek, Alternate
Roger Jolly, Seated Alternate
John Kilby
Patricia Maringer
Bob Cameron, Council Liaison

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

Absent: Michael Gray
Melvin Owensby

APPROVAL OF THE AGENDA

Chairman Webber proposed adding agenda item (B) under 'New Business,' "Melvin Owensby." He also proposed amending ZV-2014004 under 'Old Business' to ZV-2014005.

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

APPROVAL OF THE MINUTES

Ms. Maringer made a motion seconded by Mr. Kilby to approve the minutes of the August 26, 2014 meeting as presented. All voted in favor.

NEW BUSINESS

(A) Discussion regarding parking plans and parking spaces for Residential Vacation Rentals

The Board asked to discuss whether or not the designation for the number of parking spaces on the vacation rental operating permits (VROP) application is necessary, since the Zoning Regulations stipulate that a site plan showing the designated parking area is the only application requirement. Ms. Spicer stated she feels the section on the application asking for the number of parking spaces is left over from a draft application that was prepared during the early stages of the residential vacation rental (RVR) regulations discussions. She pointed out that, during the study phase of the RVR regulations, a temporary use permit was proposed for RVRs, with occupancy limited to the number of available parking spaces. She speculated that the permit application was drafted at that time based upon the proposed requirements, but was never changed when later drafts removed the requirement that occupancy be limited to the number of available parking spaces. She reminded the Board that the regulations currently require that an RVR have one parking space at least 9'X18' in size; however, guests are not allowed to park outside the approved designated parking area. Chairman Webber pointed out that the regulations require that the parking plan be drawn to scale. Ms. Spicer stated she checks to make sure the parking plan is to scale when determining if each application is complete. She pointed out that a survey of the property is not required so, when a property owner does not have a survey, she assists them by printing from the Town's GIS program an aerial view that is to scale; the applicant can then outline the parking area.

Ms. Maringer asked if the Zoning Regulations prohibit parking spaces that require backing into the street. Ms. Spicer responded that Section 92.103 stipulates spaces that require backing into the street are only allowed for single and two-family dwellings.

The Board briefly discussed enforcement of parking violations at an RVR. Ms. Spicer reported that, when investigating a parking related complaint at an RVR, she is only concerned with whether or not guests are parked outside of the parking area regardless of the number of vehicles present. She stated this is based upon her interpretation of Section 92.042(F)(4), which does not address the number of vehicles but rather the location in which they are parked.

Mr. Kilby made a motion that in reviewing a vacation rental operating permit request the Board only concern themselves with the parking plan as required by the regulations. Mr. Jolly seconded. Mr. Butts, Mr. Jolly, Mr. Kilby, and Chairman Webber voted in favor. Ms. Maringer voted no.

(B) Melvin Owensby

Chairman Webber explained that Mr. Owensby was absent from August and September's meetings due to severe illness of his son. He requested that the Board excuse him from those meetings.

Ms. Maringer made a motion to excuse Melvin Owensby from the August and September meeting. Mr. Butts seconded the motion. Mr. Butts, Mr. Jolly, Mr. Kilby, Ms. Maringer, and Chairman Webber voted in favor.

HEARINGS

(A) VROP-2014025, a vacation rental operating permit request from John Chapman to operate a residential vacation rental at 144 East Wilderness Road, Lake Lure, North Carolina (Tax PIN 225727)

Ms. Spicer and Penny Benaway, agent for Mr. Chapman, were sworn in. There were no ex parte communications or conflicts of interest reported. Ms. Benaway did not wish to challenge for cause.

Ms. Spicer presented the case. She stated Mr. Chapman is requesting a vacation rental operating permit to operate a 3-bedroom residential vacation rental. She pointed out the packet includes the application, agent authorization letter authorizing Ms. Benaway to act as Mr. Chapman's agent, a parking plan, a septic Operation Permit issued by the Rutherford County Health Department in 2012, copy of the standard rental agreement with the Town's contract addendum, and verification from Rutherford County Finance that Ms. Benaway has added this to her list of rentals with the Tourism Development Authority. Ms. Spicer noted all of the information was sent to the Development Review Committee (DRC) on September 8, 2014, and there were no comments or concerns from the DRC members, besides herself. She stated she had spoken with Mr. Chapman regarding those concerns and there are notes attached to the bottom of the memo included in the packet.

Ms. Spicer noted the home was originally permitted by the Town in 2002 as a 2-bedroom home. She also noted in 2012 he upgraded his septic system, which is located on an adjacent lot, to accommodate 3-bedrooms. However, she pointed out he has never come back to the Town or gotten permits from the Rutherford County Building Inspections to increase the number of bedrooms in the home. Therefore, she stated since she is on the DRC she would not recommend supporting his request for a 3-bedroom vacation rental. She mentioned that Mr. Chapman relayed to her that the lower level would only be used for storage. She has not received any response from adjacent property owners.

Ms. Benaway affirmed that Mr. Chapman is only asking for a 2-bedroom vacation rental and the lower level would just be used for storage. Chairman Webber noted a condition could be added that Mr. Chapman could not use as a 3-bedroom rental until the proper permitting process is completed to upgrade to a 3-bedroom. Ms. Spicer agreed and added that he would need to bring her a Certificate of Occupancy from the County stating it was approved as a 3-bedroom.

Ms. Maringer asked Ms. Benaway if the lighting on the outside of the house facing the parking area is projected in a way that will not obstruct the vision of on-coming traffic.

Ms. Benaway felt that it was only pointed at the parking area but mentioned she would check and redirect the lighting if necessary.

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

With regard to amended application number VROP-2014024 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. Butts seconded the motion.

Chairman Webber proposed an amendment to the main motion to add a condition that when the owners secure a Certificate of Occupancy for a 3-bedroom home, the VROP can be upgraded to 3-bedrooms. Currently the approval is for 2-bedrooms. Ms. Maringer seconded the proposed condition. Mr. Butts, Mr. Jolly, Mr. Kilby, Ms. Maringer, and Chairman Webber voted in favor.

In regards to the amended motion, Mr. Butts, Mr. Jolly, Mr. Kilby, Ms. Maringer, and Chairman Webber voted in favor.

The permit was approved with one condition.

(B) A request from Dr. Donald Adams to amend the construction schedule for CU-2013001. The property (Tax PIN 1649548) is located at NC Highway 9, Lake Lure, NC 28746

Ms. Spicer and Tim Turner, agent for Dr. Adams, was sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. Turner did not wish to challenge the Board for cause.

Ms. Spicer presented the case to the Board. She stated the BOA granted a conditional use permit on July 23, 2013 to Dr. Adams to construct a dental clinic on his property. She mentioned that part of his application was a construction schedule outlining projected dates for various stages of the construction project, with completion estimated for February 1, 2014. She noted Section 92.046(H) of the Zoning Regulations requires that

construction approved pursuant to a conditional use permit must be completed in accordance with the construction schedule submitted and approved by the BOA; failure to do so is considered a violation of the permit unless the construction schedule is extended by amending the permit. She further stated the Board may extend the construction schedule only upon finding that delays in construction are the result of circumstances beyond the applicant's control. She pointed out the packet includes a letter from Dr. Adams asking for a three year extension.

Ms. Spicer stated she did a final inspection earlier today at the MAHEC site and everything has been completed on the bulleted section of his construction schedule except for the last two bullets. She noted that DOT made an exception and is not requiring a turning lane put in until another business goes in.

Mr. Turner added that a little more paving needs to be done but the customer parking area has been finished. Chairman Webber asked when the original plan was submitted and Ms. Spicer answered February 1, 2014. Chairman Webber stated the request for a three year extension would be starting as of that date. Mr. Turner agreed this would be satisfactory. Mr. Turner explained that Dr. Adams has paid out of pocket for all the work except for a loan he received for the building. He mentioned that since the area was only appraised at \$12,000, he was not able to secure the loan at that time and this is why he is requesting an extension. Chairman Webber stated this would meet the requirements because the delay in construction was a result of circumstances beyond Dr. Adam's control. He then asked Mr. Turner if he would rather have a three year extension from the date of the Order and Mr. Turner stated yes.

There was no further discussion so the hearing was closed.

Mr. Kilby made the motion to grant Dr. Adams a three year extension from the date of the Order. Ms. Maringer seconded. Mr. Butts, Mr. Jolly, Mr. Kilby, Ms. Maringer, and Chairman Webber voted in favor.

The request for a three year extension was granted.

(C) ZV-2014004, a request from Paul VanWormer, agent for Joseph Cogburn, Sr., for a variance from Section 92.040 of the Zoning Regulations for the minimum front (street) yard setback. The property (Tax PIN 1611176) is located at 111 Linden Place, Lake Lure, NC 28746

Ms. Spicer and Paul VanWormer, agent for Mr. Cogburn, was sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. VanWormer did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated she was first contacted by a real estate agent in Charlotte who was representing a potential buyer who stated a survey was done which revealed that the house was built in the current setback. She mentioned that Mr.

VanWormer came into the Town Hall, went through years of documents trying to determine if a variance was ever issued for this property, but was unable to find anything. She stated she then searched through the Town's storage building but was unable to find any record that the Town ever issued a permit. She noted she's narrowed it down that the house was built sometime between 2005 and 2007. She stated she contacted Rutherford County Building Inspections who stated they did not have any records on this property. Ms. Spicer pointed out she spoke with Shannon Baldwin, Community Development Director, who had been working on the Town boundaries map. He stated to her that that property has always been in the Town limits. Ms. Spicer mentioned she also looked over some of the old zoning maps which shows the property is in the Town limits. Therefore, she stated the property would have needed a permit and one was not obtained. She then researched whether or not a variance would have been required and discovered that it would have required a greater variance then than it would have today because the setback requirements have changed. She stated they would need to apply for a variance of the current setbacks before getting a Certificate of Zoning Compliance. Ms. Spicer requested that, if the Board feels it is warranted, to make it a condition of the variance, if granted, that a Certificate of Zoning Compliance be required.

Ms. Spicer stated she received a call on September 12 from James Eldridge asking for the details of the hearing. After hearing the details, she stated he had no concerns.

Chairman Webber mentioned the survey shows the deck is in the side yard setback. Ms. Spicer noted the setbacks shown on the survey are Rumbling Bald Resort's setbacks, not the Town's. She stated the deck does not encroach onto the Town's setbacks. She stated it is her understanding that the property owner has went to the ACC to get the required variances they need from them.

Mr. Kilby stipulated that the center of the road, as shown on the survey, cannot be the actual center of the road. Chairman Webber stated yes, it is the surveyed center of the road. Ms. Spicer noted that the current setbacks are measured from the center of the right-of-way. She pointed out that if the Mountain & Hillside Development Regulations apply to a lot, it permits staff to give administrative setback reductions in the front yard setback if there are topographic concerns showing that the best place to build is closer to the road. Chairman Webber asked if the variance requested is "as built" and Mr. VanWormer stated yes.

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

With regard to Case Number ZV-2014005, Ms. Maringer moved 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, she moved the Board to grant the requested variance in accordance with and only to the extent represented by the application. Mr. Jolly seconded the motion. Mr. Butts, Mr. Jolly, Mr. Kilby, Ms. Maringer, and Chairman Webber voted in favor.

OLD BUSINESS

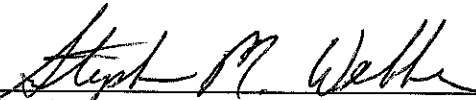
None

ADJOURNMENT

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

The meeting was adjourned at 2:02 p.m. The next regular meeting is scheduled for Tuesday, October 28, 2014 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Clerk