

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

**Tuesday, September 22, 2015
1:00 p.m.**

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

ROLL CALL

Present: Stephen Webber, Chair
David Butts
Ronald Erickson, Seated Alternate
Mark Hoek, Alternate
Patricia Maringer
Melvin Owensby
Bob Cameron, Council Liaison

Absent: John Kilby
David Lusk, Alternate

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

APPROVAL OF THE AGENDA

Chairman Webber conveyed that Item 4 E has been withdrawn and a variance no longer needed for that case.

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

APPROVAL OF THE MINUTES

Mr. Butts noted a couple of corrections He proposed changing June 23 to July 28 under 'Approval of the Minutes'. He also proposed changing "Lurecrest Drive" to "Charlotte Drive" under (D) on page 6.

Mr. Owensby made a motion seconded by Mr. Hoek to approve the minutes of the August 25, 2015 meeting as amended. All voted in favor.

HEARINGS

- (A) ZV-2015004 rehearing, a request from John Wagner for a variance from §92.040 of the Zoning Regulations for the minimum front street and front lake yard setbacks and the minimum lot size. The property (Tax PIN 230885) is located at 2106 Memorial Highway, Lake Lure, NC 28746**

Ms. Maringer was not seated for the rehearing due to her recusal from the original hearing.

Chairman Webber explained the case was denied at last month's meeting based on two no votes due to the application being incomplete and one Board member felt the lot size being too small should not be varied. Immediately after the hearing, Ms. Spicer was approached and asked if they could have a rehearing if the application was made complete. Chairman Webber felt they should be allowed a rehearing. Chairman Webber stated the Board would need to determine if they would accept the rehearing. He pointed out the items that were added to the packet are the geotechnical analysis, which was submitted at the last meeting, the completed attorney's Certificate of Title, three exhibits which were accepted at last month's meeting, and the plans for the carport, drawn to scale. Based on all the new information, Mr. Hoek, Mr. Butts, Mr. Erickson, Mr. Owensby, and Chairman Webber unanimously voted to grant the request for a rehearing.

Ms. Spicer, and Mr. Hinkle were sworn in. The following disclosures were made:

- Immediately after last month's meeting, Chairman Webber met with Ms. Spicer who informed him of the applicant's desire for a rehearing. He also spoke with Mr. Hoek regarding the case and later sent him an email and suggested he read over the regulations on non-conforming lots of record. He also spoke with Mr. Owensby by phone and relayed the outcomes of the hearings that Mr. Owensby missed due to leaving the meeting early. He also informed Mr. Owensby of the process for a rehearing.
- Mr. Hoek mentioned that he spoke briefly with Mr. Kilby regarding the case.
- Ms. Spicer had a conversation and email correspondence with Mr. Hinkle. She stated he has an agent authorization letter to submit to the Board for consideration of approval. This letter was later accepted as 'Applicant Exhibit 1A'. She stated that they have also received their trout buffer waiver from NCDENR.

Chairman Webber asked the Board if they felt they could reach a fair and unbiased decision and they all stated yes. The Board members did not have any other ex-parte communications or conflicts of interest to disclose. Mr. Hinkle did not wish to challenge the Board for cause.

Chairman Webber did not accept the trout buffer waiver. He stated the trout buffer waiver has no impact on the variance request. He stated this is a state requirement and is unnecessary as evidence. He explained the Board could overturn his decision with a majority vote if they felt his decision was incorrect. The Board did not wish to overturn his decision.

Ms. Spicer stated the packet includes the site plan with the location of the carport, elevation drawings for the carport, which staff has reviewed and determined it meets all requirements. The packet also includes the attorney's Certificate of Title certifying this lot is a non-conforming lot of record. This was originally two lots that were previously combined into one lot. She mentioned the only other two variances which are being requested are the minimum street front and minimum lake front setback. She read from Section 92.101(b)(2) of the zoning regulations regarding non-conforming lots of record. She stated there were no other changes from last month.

Mr. Butts and Mr. Erickson were not present at the last meeting. Chairman Webber asked if they had any questions. None of the Board members had any questions. Mr. Hinkle stated he had no other changes and has received a copy of the entire packet. The Board members had no questions for Mr. Hinkle. Mr. Hinkle had no questions for Ms. Spicer.

Chairman Webber left the hearing open during deliberations to allow the Board members to ask questions if an issue arises, before the final vote. He asked Mr. Hoek if he had any issues and Mr. Hoek stated no. Mr. Owensby did not see any issues. Both Mr. Butts and Mr. Erickson stated they did not see any issues with the request. Mr. Owensby felt there was a hardship due to topography. Chairman Webber stated the hardship is due to the lot size and the ordinance.

Mr. Owensby made the following motion:

With regard to Case Number ZV-2015004, Mr. Owensby 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, have 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. Butts seconded the motion. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Webber voted in favor.

(B) VROP-2015010, a vacation rental operating permit request from Lori Ann Loftus to operate a residential vacation rental at 140 Obrien Rd., Lake Lure, North Carolina (Tax PIN 232490)

Ms. Maringer took her regular seated position for the hearing and Mr. Hoek was no longer seated.

Ms. Spicer and Tracy McGlohon, agent for the property owner, was sworn in. There were no ex-parte communications or conflicts of interests to be disclosed. All Board members felt they could reach a fair and unbiased decision on the case. Ms. McGlohon stated she did not wish to challenge the Board for cause.

Ms. Spicer presented the staff portion of the case. She stated that the packet includes a copy of the application, the agent authorization letter, a parking plan, standard rental agreement, and verification from Jeanette Bosgra with Rutherford County Finance that Ms. Loftus has registered with the TDA. She mentioned that the request was sent to the Development Review Committee on September 8, 2015. During that meeting, Ms. Spicer commented that she sent Ms. Loftus an email referencing that her standard rental agreement did not appear to meet certain state statutes and that Ms. Loftus may want to revise that rental agreement. Ms. Loftus sent a revised standard rental agreement to replace the one in the application. Ms. McGlohon confirmed this was the revised rental agreement. Chairman Webber accepted the standard rental agreement as 'Applicant Exhibit 1'. Ms. Spicer stated she had no response from neighboring property owners.

Ms. Spicer noted that Ms. Loftus marked on page 2 of the application that there is an on-site septic system; however, she mentioned under 'Finding of Fact 2' under 'Public Health' that CWS was the provider of water and sewer. She noted that she contacted CWS on September 8, 2015 and they stated they only provide water to the property. She asked Ms. Loftus to clear that up and submit any supporting documents she may have to the Board. Ms. Spicer stated she is asking for a three bedroom rental and the property card shows the house as three bedrooms. Ms. Spicer conveyed that adequate septic facilities is one of the findings the Board has to make. Mr. Butts asked Ms. Spicer if attachment 1 was the parking plan. Ms. Spicer mentioned there are two attachments and attachment 1 is more to scale than attachment 2. She noted that attachment 2 included a GIS printout. Ms. Spicer confirmed that all parking is in the concrete driveway.

Ms. Maringer mentioned that the numbers on the mailbox are painted the same as the post itself and suggested they be displayed large and visible on the post of the property for emergency traffic. Mr. Erickson stated that the trash containers are not animal resistant and Chairman Webber pointed out this is a requirement for vacation rentals. Mr. Erickson stated he did not notice a light over the hot tub and felt this could be a safety issue. Ms. McGlohon did not think the hot tub would be included with the rental; however, Ms. Maringer stated it is included in the application. Ms. McGlohon stated she would mention this to the homeowner.

While on site, Ms. Spicer mentioned that she noticed the address did not meet town requirements and asked Ms. McGlohon to touch base with her after the meeting. Mr. Butts asked for further documentation on the septic. Ms. McGlohon did not have any further documentation; however, she stated the homeowner plans to have the septic tank pumped when she returns from vacation, the first week in October. Chairman Webber noted that documentation on the septic is not required. Ms. McGlohon explained that Ms. Loftus contacted Rutherford County Environmental Health for a copy of a septic permit and she was told they did not have one. She stated Ms. Loftus has never had any issues with the septic but plans to have it pumped to be proactive. Without documentation, Chairman Webber mentioned that he would be making an assumption that the septic is satisfactory. He felt the regulations regarding on-site septic systems should be studied for a possible change. Ms. Maringer and Mr. Butts agreed.

Mr. Butts made the following motion:

With regard to application number VROP-2015010 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Mr. Butts 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.

Ms. Maringer seconded the motion. Mr. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

The Board did not feel any conditions were needed. The Board members felt that all requirements, standards, and concerns had been addressed and met and the application was complete. Chairman Webber stated his assumption on the septic was that it was set up for a 3-bedroom and up to par.

(C) VROP-2015011, a vacation rental operating permit request from Richard Lundy, agent for Robert & Christine Rydel, to operate a residential vacation rental at 131 Youngs Mountain Drive, Lake Lure, North Carolina (Tax PIN 227069)

Ms. Spicer and Richard Lundy, with Rumbling Bald Resort and agent, were sworn in. The Board had no ex-parte communications or conflicts of interest to disclose and felt they could reach a fair and unbiased decision. Mr. Lundy did not wish to challenge any seated members for cause.

Ms. Spicer presented the case. She stated the packet includes a copy of the application, an agent authorization letter, a parking plan, a standard rental agreement, verification from Jeanette Bosgra with Rutherford County Finance that Rumbling Bald Resort has added this property to their list of vacation rentals with the TDA. She stated this application was sent to the Development Review Committee on September 8, 2015 and there was no comments or concerns. She stated there were no comments from neighboring property owners. The Board members had no questions for Ms. Spicer.

Ms. Maringer noted she saw a loose handrail on the split rail fence going down the side of the driveway that is about to fall over and should be fixed. On the upper porch, she mentioned one of the pickets is missing and needs replacing. She also pointed out that the house numbers are hidden behind a pine tree and cannot be seen from the road. Chairman Webber stated this is a part of the vacation rental requirements. Mr. Butts noted that he did not see trash receptacles. Mr. Lundy stated Rumbling Bald Resort picks up the trash and would make sure those cans are provided. Ms. Spicer noted she saw them sitting next to the parking area and Chairman Webber stated he saw one trash can and it was not an animal resistant trash can. Mr. Lundy assured the Board they will provide animal resistant cans. Chairman Webber stressed that this is a requirement of the regulations. Mr. Lundy stated he would make sure all safety issues are up to

compliance and he would make sure the trash receptacles are animal resistant. The Board had no further questions.

Ms. Maringer made the following motion:

With regard to application number VROP-2015011 for a vacation rental operating permit to operate a residential vacation rental in the R-3 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, 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. Erickson seconded the motion. Mr. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

The board members felt that all requirements, standards, and concerns had been addressed and met. The permit was granted with no conditions.

(D) ZV-2015006, a request from Sally Godehn Ellis for a variance from §92.040 of the Zoning Regulations for the minimum front lake yard setback. The property (Tax PIN 1614530) is located at 161 North Shore Drive, Lake Lure, NC 28746

Ms. Spicer, Mr. and Ms. Ellis, and Eric Kunath, builder for the project, were sworn in. Ms. Maringer disclosed that she spoke with Ms. Ellis on site but did not discuss the case. Chairman Webber stated he spoke with Ms. Ellis on site as well but did not discuss the case. The Board had no other ex-parte communications or conflicts of interests to disclose and felt they could reach a fair and unbiased decision. Ms. Ellis did not wish to challenge the Board for cause.

Ms. Spicer presented the staff portion of the case. She stated Ms. Ellis has applied for a Certificate of Zoning Compliance permit to do some major renovations to the property as well as removing part of the small portion of the deck. They would like to also add a small addition to incorporate an interior fireplace and a small roof over the entry door. A Certificate of Zoning Compliance has been issued for all other aspects of the work; therefore, some of the work is already underway. The only two portions that could not be approved were the two smaller additions which encroach into the lake front setback. The majority of the house is located in the lake front setback and they are asking for a variance. She explained that the closest point of the two additions is 19.19 feet from the shore line and the other side is 22.61 feet from the shoreline. She received emails from the two neighboring property owners in support of the variance. She read over the emails and Chairman Webber accepted the Porter letter as 'Staff Exhibit 1' and the

Cooley letter 'Staff Exhibit 2'. She received no other comments from neighboring property owners.

Mr. Butts asked if the fireplace was only for warmth in the winter and Ms. Ellis stated yes. He asked if there was any protection from the elements at the entryway and Ms. Ellis stated no. The Board had no further questions. Mr. Ellis and Mr. Kunath had nothing further to add.

Chairman Webber left the hearing open for deliberations. The Board had no issues with the request. They felt it met all standards for a variance.

Mr. Owensby made the following motion:

With regard to Case Number ZV-2015006, Mr. Owensby 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, have 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. Butts seconded the motion. Mr. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

The board members felt that the property owners should be allowed heat and protection from the elements and also water protection at the entrance of the home. Chairman Webber pointed out that the requested variance is consistent with the spirit of the regulations. Technically, this case does not meet the requirements. However, since he did not bring this up during deliberations for discussion, he voted in favor of the variance request. The variance was approved.

NEW BUSINESS

None

OLD BUSINESS

Chairman Webber conveyed that the Board members should remain professional when hearing cases and questioning applicants. He also stated that questions directed to the applicants should be specific to the request and meeting the regulations. He stated the Board may need training on questioning and what questions are relative and of concern to the case. Ms. Maringer inquired about training videos on requests that come before the Board in regards to a case where the applicant is asking for forgiveness on something that was done without permits. Ms. Spicer stated probably not since the variance request is heard the same way whether it is before construction or after. She also stated that in years past, the Board used to go through each finding and vote on each individual finding. However, the Board attorney stated this was not required. Ms. Spicer felt it would help staff to prepare the order and for the record if each finding was discussed during deliberations and details were brought out.

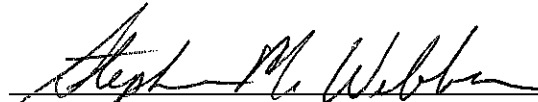
Ms. Spicer mentioned that training sessions are available and can be scheduled during a regular meeting when there is not a heavy caseload.

ADJOURNMENT

Ms. Maringer made a motion seconded by Mr. Lusk to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:31 p.m. The next regular meeting is scheduled for Tuesday, October 27, 2015 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Secretary