



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

**Tuesday, January 26, 2016
1:00 p.m.**

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

ROLL CALL

Present: Stephen Webber, Chair & Council Liaison
John Kilby, Vice-chair
David Butts
Ronald Erickson, Alternate
Mark Hoek, Alternate
David Lusk, Alternate
Patricia Maringer
Melvin Owensby

Absent: n/a

Also Present: Mike Egan, Community Development Attorney
Brian Gulden, Attorney for Board of Adjustment
Michelle Jolley, Recording Secretary
Joe McGuire, Attorney for Lodge on Lake Lure
Sheila Spicer, Zoning Administrator

APPROVAL OF THE AGENDA

Ms. Spicer requested adding an item under New Business to approve the 2016 meeting schedule.

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

APPROVAL OF THE MINUTES

Mr. Owensby made a motion seconded by Mr. Butts to approve the minutes of the December 15, 2015 meeting as presented. All voted in favor.

HEARINGS

(A) VROP-2015017, a vacation rental operating permit request from David Billitto with Livery Developers, LLC to operate a residential vacation rental at 2634 Memorial Highway, Lake Lure, North Carolina (Tax PIN 225218)

Ms. Spicer and Mr. Billitto were sworn in. Mr. Butts disclosed he visited the property and spoke with a lady there in regards to the reason for his visit. There were no other ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. Billitto did not wish to challenge the Board for cause.

Ms. Spicer pointed out that Mr. Billitto plans to request amending his application to ask for a 3-bedroom vacation rental with an occupancy of 8, instead of a 2-bedroom with an occupancy of 8 as noted in the packet information. Ms. Spicer then presented the case. She pointed out the packet includes a copy of the application, a parking plan, standard rental agreement, and verification from Jeanette Bosgra with Rutherford County Finance that this property has been registered with the TDA.

This request was sent to the DRC for review on January 13, 2016; Ms. Spicer stated that no comments or concerns were received. She conveyed that on January 21st, she received a call from Christy Barnes on behalf of Richard McClellan. Ms. Barnes asked how Mr. McClellan should speak about the case if he could not attend the hearing and Ms. Spicer conveyed the Board may allow a letter, email, or an agent with signed authorization. She provided Ms. Barnes with details about the request and told her to have Mr. McClellan to call or come by if he would like more information. She also mentioned she received a call on January 19th from David Efird who stated he saw the posted sign and wanted to know what it was for. Ms. Spicer told him that the property owners are requesting a Vacation Rental Operating Permit. She then noted that Mr. Billitto was provided with the Town's contract addendum by email multiple times, although it was not included in the packet.

Mr. Billitto conveyed he has a 3-bedroom home and stated his application does request approval as a 3-bedroom rental although it is not clear as written. He asked to amend his request to a 3-bedroom with an occupancy of 8. Ms. Maringer pointed out the property card lists the property as a 2-bedroom. Mr. Billitto explained the third bedroom does not have a formal closet and for tax record purposes, it could not be classified as a bedroom. Mr. Billitto asked the Board to consider allowing the request as a 3-bedroom. Mr. Butts asked for the property owner's relationship with Livery Developers. He stated he owns Livery Developers. Mr. Billitto added that the bedroom in question does contain several windows. He stated the room is large and it would be challenging to find the space to put in a closet without changing the footprint of the building. Chairman Webber explained that the Board typically only approves requests according to the property card; however, it would not affect the number of occupancy he is requesting. Therefore, he noted that Mr. Billitto would not be able to advertise the rental as a 3-bedroom but could still advertise it for an occupancy of 8. Ms. Spicer added that advertisement of a property is not covered under the Zoning Regulations. Mr. Billitto was ok with advertising as a 2-bedroom rental with an occupancy of 8.

Mr. Butts moved to amend the application to specify a 2-bedroom with an occupancy of 8. Ms. Maringer seconded the motion. Mr. Butts, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.

Mr. Butts asked if Mr. Billitto knew the regulations regarding trash receptacles and Mr. Billitto stated he was made aware today. Chairman Webber pointed out the 24-hour contact shows that his address is in Wilmington. Mr. Billitto explained that he is currently looking to purchase property in Asheville. He further explained that anytime his house is rented, he would be within an hour's distance away.

There was no further discussion, so Mr. Kilby made the following motion:

With regard to application number VROP-2015017 for a vacation rental operating permit to operate a residential vacation rental in the R-4 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 as amended.

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

The Board felt that the application was complete and all requirements were met.

(B) ZA-2016001, a petition for appeal of administrative determination from Greg T. Valainis, Phyllis V. Valainis, Lou C. Self, Martha C. Jones, Bruce M. Doolittle, and Cynthia A. Doolittle regarding the Zoning Administrator's determination that a commercial parking lot is a permitted use in an area zoned R-1 Residential. The request involved property located on Charlotte Drive, NC owned by Lodge on Lake Lure LLC and identified by Tax PIN 1642938 and Tax PIN 1642939

Chairman Webber read over the standard protocol for conducting the hearing. He asked for all those who planned to testify to stand and be sworn in. Six people were sworn in, including Sheila Spicer, Zoning Administrator. The other individuals sworn in were Cynthia Ann Doolittle, Jim Proctor, Mark Morris, Martha "Bee" Jones, and Sharlene Kyser-Kohler. Chairman Webber explained he would be recusing himself from the case due to the fact that he was seated on Town Council and voted for the Lodge on Lake Lure's conditional district rezoning request which included the off-site parking that is the subject of this hearing. Mr. Justus did not disagree with the recusal; however, he felt there should be an alternate board member seated to fill the seat.

Chairman Webber explained that Vice-chair Kilby would preside over the hearing and an alternate member would be seated on the Board. Mr. Hoek was seated as a regular member.

Vice-chair Kilby asked for disclosures. Ms. Maringer disclosed she received an email from Steven Eisenbrown asking who would be replacing her if she recused herself from the hearing. She stated she replied to Mr. Eisenbrown that she could not answer his questions in regards to the case. Mr. Hoek disclosed he previously sent a letter to Town Council stating he was in favor of the Lodge on Lake Lure's rezoning request as amended but stated he has no financial impact.

Mr. Justus asked Mr. Hoek if he still supported the Lodge project and Mr. Hoek answered yes, as approved by Town Council. Mr. Justus requested that Mr. Hoek recuse himself due to his disclosure of being in support of the Lodge case. Mr. Gulden read from the statute explaining determination of recusals. Ms. Maringer then disclosed she was originally opposed to the Lodge case but stated she later changed her mind and was ultimately in support of the project. Mr. Hoek conveyed that he would enter the hearing with an open mind but would recuse himself if the Board felt he needed to.

Mr. Kilby asked the Board to vote on whether or not they felt Mr. Hoek should be recused from the hearing. Mr. Butts, Mr. Owensby and Vice-chair Kilby voted yes. Ms. Maringer voted no. Mr. Hoek was recused from the hearing. Mr. Erickson was seated as a regular member.

Mr. Justus asked Ms. Maringer if she supported the Lodge project as it was amended and approved by Town Council and Ms. Maringer stated yes. She stated that she did not communicate her support in writing other than to Mr. Eisenbrown. Ms. Maringer stated she could make an unbiased decision. Mr. Justus asked that Ms. Maringer recuse herself from the hearing due to her support of the Lodge project. Mr. Gulden asked if other attorneys would like to question Ms. Maringer as well. Joe McGuire, representing the Lodge on Lake Lure, stated he did not have any questions for Ms. Maringer. Mr. Egan asked Ms. Maringer if she felt she could be an impartial judge on this matter. Ms. Maringer stated she takes her oath seriously. Mr. Egan added that the appeal is not for the support of the Lodge project but about the parking. Mr. Justus disagreed stating that it does matter whether or not someone supported the Lodge project.

Mr. Kilby asked the Board to vote on whether or not they felt Ms. Maringer should be recused from the hearing. Mr. Butts, and Mr. Owensby voted yes. Mr. Erickson and Vice-chair Kilby voted no. Mr. Gulden explained that there was not a majority vote and therefore the vote to recuse Ms. Maringer failed. Mr. Justus objected and felt that the alternate member should be allowed to provide their comments in support or opposition to break the tie. Mr. Gulden pointed out that the statute explains there must be a majority vote and because there was not, the vote failed. Vice-chair Kilby added that Mr. Justus' comments would be noted.

Mr. Gulden explained that the General Statutes and Town ordinances automatically grant the Town standing. He read over the statute in regards to standing and stated each board member would need to determine if they feel the requirements are met for each other person. He stated each person who requests standing would need to provide a statement as to why they feel they should be allowed standing. Mr. Justus pointed out that two of the parties of the petition to challenge the zoning determination of Ms. Spicer are present. He mentioned two people would

like to speak on the impacts the proposed parking area would have to their property. He added that the third party that was sworn in is an appraiser who would like to speak on behalf of one of the appellant's in regards to impact. The Board took a brief recess.

Cynthia Ann Doolittle, 139 Picnic Point Road, approached the Board. She explained her house in Lake Lure is her second residence to which she does not reside full time. Mr. Justus referred to the Exhibit C aerial map included in the packet in regards to the location of Ms. Doolittle's property in relation to the commercial parking for the Lodge. Ms. Doolittle pointed out that her property is at the corner of Picnic Point Road and Charlotte Drive. She stated she has 8.51 acres. She felt that the commercial parking would decrease her property values tremendously which is the reasoning behind her request for standing on the case. She conveyed that her property taxes increased substantially and she would probably sell the home and 4.5 acres of her property due to the increase. She stated they would like to keep the other 4 acres and build another home because they cannot afford to pay the taxes on what they own now. She pointed out that the Lodge is not the issue; the parking lot is. She stated she did not find out about the parking areas until December 15, 2015. Mr. McGuire asked Ms. Doolittle the distance from her second residence to the parking lots and she stated she has not measured it but it is not located very far from the parking lot. Ms. Maringer asked Ms. Doolittle about the location of her residence on her property and Ms. Doolittle stated it is located on the Charlotte Drive side. She pointed out to Ms. Maringer on the map where she would be building her second home. Mr. Gulden explained the Board would need to make a determination on whether Ms. Doolittle has standing. Mr. Justus stated he would also like to call the appraiser, Mark Morris.

Mark Morris, real estate appraiser in Asheville, NC, approached the Board. He provided the Board with his credentials and background. Mr. Justus asked if Mr. Morris conducted a study on the impact the commercial parking lot would have on Ms. Doolittle's property. Mr. Morris responded that he conducted a market study of the impact of a proximity influence, such as a parking lot. He stated the property was inspected on December 12th. He explained that the market study is not an appraisal but is an analysis of the impact of certain influences and how they may have influence on values of adjacent properties or properties in close proximity. The intended use was for presentation before the Board of Adjustment and he stated he was hired by Mr. Justus to conduct the market study. He mentioned he investigated the Doolittle tract and used the tax records information to form conclusions about the property specifics. He noted there were no surveys, soil studies, etc. provided. The Doolittle property is approximately 750-900 feet from the commercial parking and is on an 8.51 acre tract that is residentially zoned and was purchased in 2013. He stated he identified sales that suffered from some influence to obtain comparisons. One property was a condominium that was immediately adjacent from a commercial parking lot for LaStrada's Restaurant. There was a contract on that property, which did not go through. He compared that offer and list price to two other properties that sold in order to extract some conclusion as to the impact of a commercial parking lot adjacent to an improved property. He mentioned he also identified a lot sale on Neighborly Drive that did not have an adjacent parking lot but had a detrimental view impact of the dam. He compared to four other sales that were not impacted by an adverse view or influence. He stated he also identified a sales of 4.5 acres, raw land, on Memorial Highway that was a traffic/roadway influence and not a parking lot. He mentioned he compared it to two or three other properties and concluded there was some impact. He noted that in terms of scope, it was a match-pair analysis where he identified sales that had an

adverse influence to sales that did not have an influence in order to extract and make assumptions about the impact on value. The highest and best use of the subject property includes four tests. The property is residentially zoned which is deemed to be the highest and best use. The topography, the abundant road frontage, and availability of utilities are all favorable for residential development. He added that the highest and best use would be to subdivide the 8.51 acres into multiple lots, which was already indicated that this would be done. Therefore, there would be some impact for a parking lot in terms of subdivision. He noted that the raw tract of land in its entirety was the only part of the study. The opinion and concluded study results were based on the as-is value of the whole. He stated he analyzed three sets of data with and without the influence. Parking lot influence and offensive-view influence were analyzed. He stated the basic conclusion was that the impact of the proposed parking would cause significant impact of the value of 8.51 acres from the proposed parking lot for the Lodge on Lake Lure.

Ms. Maringer asked Mr. Morris if the buffer required by town regulations to go around the parking lot was included in the market study. Mr. Morris indicated that it was not. Vice-Chair Kilby asked if Mr. Morris had a dollar amount and Mr. Morris stated the scope of work did not include an appraisal; just a market study on impact of some influence. He stated he attempted to match transaction data that was immediately adjacent to a parking lot. He added there were also other adverse influences that had impact that would fall within that range and those were analyzed as well. He conveyed there were no sales immediately adjacent to a parking lot that were current to disclose. He stated he did not see that the Fire Department had any impact on the 8.51 acres.

Mr. McGuire asked if Mr. Morris had an MAI certification. Mr. Morris answered he has an SRA credential and a state general certification but stated he is not MAI certified. He reiterated that he was not asked to do an appraisal but a market study. Mr. McGuire asked the difference between the two. Mr. Morris explained that an appraisal is a conclusion of value for a specific property that has a different approach/standard applied, as opposed to a market study that looks at the influence. He stated that an appraisal and a market study are two different studies. Mr. McGuire asked if there was just one match pair analysis conducted and Mr. Morris stated yes there was just one going back three years. The property he did the study on were the condominiums adjacent to Lastrada Restaurant. The parking lot was next door to the restaurant. Mr. McGuire stated that a parking lot with a restaurant could accumulatively have a larger negative impact than just a parking lot with no other commercial activity, and Mr. Morris stated that was probable. Mr. Morris added that he did not quantify the percent of loss as part of the study; it was a conclusion based on the influence that there was a significant impact. Mr. Morris mentioned the use of the Lodge parking would probably not be as intense as a parking lot combined with a restaurant. Mr. McGuire stated the match pair analysis was not based on sale and Mr. Morris stated it was based on market data. Mr. McGuire inquired about the parking lot of the condominiums being shared with the restaurant. Mr. Morris confirmed that the parking lot is shared between the restaurant and the condominiums. He noted there was a common area vegetative buffer between the condominiums and the restaurant. He mentioned that there is a separating land tract between the commercial use and the 8.51 acres. He stated he made a determination that there would be an impact because of the parking lot. He added that there are different influences, including noise, traffic, and view, but added that a vegetative buffer would

probably have some impact. However, he felt it would be very difficult to quantify each of those impacts. Mr. Justus conveyed that this concludes the testimony for Ms. Doolittle's standing.

Ms. Maringer pointed out that, if noise from the Fire Department was not an issue, then she did not feel that noise from the parking lot should be an issue. She did not feel Ms. Doolittle has standing. Mr. Gulden explained what standing consists of and stated a person denied standing cannot appeal. He explained standing consists of any person who will suffer special damages as a result of the decision being appealed. He noted that special damages have been historically defined through case laws as damages specific to an individual and separate and apart from the damages the community as a whole might suffer. He added that the Board must consider all testimony from all parties requesting standing. Mr. Justus referred to the Mangum vs. City of Raleigh case held in the Supreme Court in regards to standing and zoning appeals that came out in the past five years. The conclusion was that standing was not to be hypersensitive and there would be a liberal approach. He explained the court allowed the parties of that case to allege that they were impacted in a unique way based on allegations. Therefore, he felt that Ms. Doolittle has a unique impact on her property based on the testimony. Mr. McGuire pointed out that Mr. Morris was an appraiser but was not hired by Ms. Doolittle to perform an appraisal of her property. He was hired by the Van Winkle Law Firm to perform a market study, which is much less thorough and extensive. He did not feel that Mr. Morris' only example conducted which included a parking lot was comparable to the Lodge parking. He stated the difference in vegetative buffer was not taken into account in the market study. He did not feel the Mangum case was comparable to the parking lot for the Lodge. He stated the law in North Carolina is that you cannot show special damages by being general. He felt that special damages had not been shown to give Ms. Doolittle standing. Mr. Justus pointed out that Ms. Doolittle and Mr. Morris provided allegations on how she would be impacted and those allegations are enough for standing. He mentioned there is no testimony in the record regarding a buffer and asked that this not be included in the current testimony. He stated they went above and beyond to provide proof for Ms. Doolittle to be allowed standing. Vice-chair Kilby called for a vote.

Mr. Butts, Mr. Erickson, Mr. Owensby, and Vice-chair Kilby voted to allow Ms. Doolittle standing in this case. Ms. Maringer was opposed. The Board granted Ms. Doolittle standing in the case.

Martha "Bee" Jones, 146 Yacht Island Drive, approached the Board. She explained she believes the additional traffic on a "seriously needy" road would impact her property. She noted that the road is one lane with a pedestrian sidewalk. She added that the road is also curvy and narrow. She conveyed she was not aware that a parking lot was approved until after December 1, 2015. Mr. Butts asked if she was opposed to the Lodge project. Ms. Jones answered she is only opposed to the traffic and not to expansion of the Lodge. Ms. Maringer asked if Ms. Jones felt that the impact of the parking lot would lessen the traffic on Charlotte Drive and Ms. Jones stated no. Ms. Jones mentioned she would rather cars be parked instead of travelling up Charlotte Drive. Ms. Maringer pointed out that Ms. Jones' property is on the other end of Charlotte Drive away from the parking lot and Ms. Jones concurred but stated she was concerned that the traffic generated on Charlotte Drive would impact ingress and egress to and from her property. She did not feel the impact of the parking would affect the value of her home. Mr. Egan asked Ms. Jones about the meeting she attended in regards to off-site parking. Ms. Jones replied that she spoke at

one of the Zoning and Planning Board meetings prior to the joint meeting in regards to traffic on Charlotte Drive and concerns she had. She stated she did not initially know the location of the parking lot.

The Board discussed standing for Ms. Jones.

Ms. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Vice-chair Kilby voted to deny Ms. Jones' standing in the case. Ms. Jones was not granted standing.

Jim Proctor, 328 Boys Camp Road, approached the Board. He noted he was the real estate broker that introduced David and Sharlene Kyser-Kohler to the property they own adjacent to the parking lot. He asked to speak on their behalf. He stated the assumption was that all property around the Kyser-Kohler's would remain residential. Mr. Egan asked Mr. Proctor if he was asking to intervene and become a party in this matter. Mr. Justus explained that Mr. Proctor is providing a blanket for Ms. Kyser-Kohler who is requesting standing. Mr. Proctor stated he could speak later in the meeting if the current discussion just involved standing. Mr. Gulden noted that Mr. Proctor could be called later as a witness.

Sharlene Kyser-Kohler, 105 Sandlewood Drive, approached the Board. She noted that she just received a letter from the Town in the mail yesterday evening that was originally sent to a previous address which she no longer owns in Florida. She stated the parking lot would be directly across the street from her property and felt it would decrease her property values. She noted that her well pump house, which feeds six families, is located directly across the street from the proposed parking lot. She expressed concerns about chemical runoff from the parking lot into the well. She mentioned that Mr. Proctor specifically relayed to her when she bought the property that it was residential district. She felt there would be a direct impact on her life due to the Lodge traffic. She noted that the Lodge already has a substantial parking lot. She expressed concerns that her property values would decrease and she would be forced to sell her property. She pointed out that she owns the pie shaped property located directly across the street from the Fire Department. Ms. Kyser-Kohler marked a "K" on Exhibit C from the packet to indicate her property location and also indicated the location of her well pump house. Ms. Kyser-Kohler noted she is a full-time resident and pointed out that the tax information has not yet been updated to reflect that her permanent address is Lake Lure. She stated she has owned the property since May 10, 2014. She conveyed that she had a really hard time selling her property in Florida because there was a parking lot next to it. She stated she has visual view of the parking lot from the back side of her home. Mr. McGuire asked Ms. Kyser-Kohler if she knew what chemical would run off from the parking lot and Ms. Kyser-Kohler replied the chemical used to create the paving of the parking lot. She stated the well pump house is well built. Mr. McGuire asked if she knew how much use the overflow lot would get and Ms. Kyser-Kohler did not know. She noted that she would allow Mr. Proctor to speak on her behalf. Mr. Gulden conveyed that Ms. Kyser-Kohler is an adjoining property owner and not an applicant on the appeal. The Board discussed standing for Ms. Kyser-Kohler.

Mr. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Vice-chair Kilby voted to allow Ms. Kyser-Kohler standing in the case.

Mr. Egan and Mr. McGuire submitted a joint Motion to Dismiss, which was accepted into the record. Mr. Egan felt it would be helpful in understanding the context of the Town's consideration to rezone the Lodge on Lake Lure from R-1 Residential to R-3 CD Resort Residential. He noted that the regulations concerning conditional districts were amended just a few years ago and stated the districts were authorized by the general statutes. He explained that they are districts with conditions voluntarily added by the applicant and approved in a legislative decision making process by Town Council. He stated that conditional district zoning results in a zoning district with its own unique set of development and design standards. Mr. Justus objected stating that Mr. Egan was providing facts that were not in the record, which he felt was a little premature given that he has not yet had the opportunity to question Ms. Spicer. Mr. Egan responded that the facts are part of the record on appeal certified by the Zoning Administrator. He stated he was trying to provide some context. He conveyed that it is clear by the record before the Board and certified by the Zoning Administrator, that there was no determination made at any point by Ms. Spicer. He explained it is beyond her administrative responsibilities to do so. He stated that Town Council made the decision to allow the off-site commercial parking area in question during approval of the Lodge on Lake Lure's conditional district rezoning request. Mr. Justus objected stating the record is not complete until the hearing is closed and mentioned he would like to question Ms. Spicer. Mr. Egan noted that the matters he was previously speaking on were included in the appeal filed by Mr. Justus on December 29th which was included in the packet. He conveyed that a determination could be made by the Board as to whether there is basis for an appeal based upon the appeal filed by Mr. Justus on behalf of his clients. He explained the Board could hear the case and make a determination or raise it as a motion for a directive verdict. He felt there was ample evidence in the agenda packet for the Board to make a decision. Mr. McGuire agreed with Mr. Egan, stating that before hearing evidence to decide an issue, it makes sense to see if there is an issue to decide. He stated the appeal is on Ms. Spicer's determination and no determination was made by Ms. Spicer. The appeal assumes that Ms. Spicer made a decision and she made no decision; therefore, there is no issue for the Board to hear.

Mr. Justus referred to the transcript he provided in his application. He stated that Ms. Spicer made the determination that a commercial parking lot would be a permitted use. He added that if Ms. Spicer would state she did not make a determination, he would formally submit a request to make a zoning ruling and they would appeal again. Mr. Egan referred to page 117 of the transcript stating that nowhere in the transcript does Ms. Spicer make a decision. He added that the email included in the packet shows Ms. Spicer only advised the Lodge on Lake Lure as to what the zoning regulations state about offsite parking and that another part of the regulations allow them to ask for those terms to be modified in the conditional district zoning process. He stated she did not decide that parking was a permitted use in a residential zoning district; that decision was made by a past Town Council when they put the language in §92.103 into the zoning regulations allowing parking to go into residential zoning districts. He pointed out that the word "decision", "decide" or "determination" is not included in the transcript provided. Mr. Justus referred to the bottom of page 117 of the transcript stating that Commissioner Moore asked a question regarding the parking lot and whether it would be allowed under the regulations. He stated it appears that Ms. Spicer's answer was "yes." He added that their understanding of that meeting was that Ms. Spicer made a determination that the ordinance would allow for a commercial offsite parking of the two parcels based on §92.103(C). He stated

the merits of §92.103(C) do not allow commercial parking on those two lots. He stated that Town Council adopts zoning regulations and it is up to the zoning administrator to interpret those regulations and decide whether something is allowed or not. He mentioned it appeared to them that Ms. Spicer stated nothing more was required and commercial parking lots would be a permitted use on those two parcels. He noted if that was incorrect, he would dismiss the case to refile if Ms. Spicer later made that call. He requested that Ms. Spicer be asked if she made a determination. Mr. Gulden clarified that the statute and the Town's ordinance states the Board of Adjustment shall hear and decide appeals of "decisions" of administrative officials charged with enforcement of the zoning or unified development ordinance. The statute defines decision. He stated a decision is defined by the statute as any final or binding order, requirement, or determination. He conveyed that this Board would have to make a determination on whether there was a decision made.

Vice-chair Kilby mentioned the Board would need to make a determination on whether or not Ms. Spicer made a binding decision based on what has been submitted in the record. Mr. McGuire pointed out that Ms. Spicer did not make a decision according to the transcript. Mr. Justus again asked if Ms. Spicer could be asked if she made a decision on allowing commercial parking on the two lots. Vice-chair Kilby felt the first thing the Board should do is satisfy the motion for dismiss. Mr. Gulden conveyed the Board needs to pay special attention to what the statute states about appeals. He added that the Board has to decide whether a decision was made in order to give this Board jurisdiction.

Ms. Maringer explained that Ms. Spicer, according to the transcript provided, answered a question asked of her about parking based on what the regulations state. She pointed out that page 118 of the transcript states it is up to the Town Council to make the decision. Mr. Butts and Mr. Owensby questioned who made the decision to allow commercial parking and if the decision was made during the original ordinances or during the conditional rezoning. Mr. Egan explained that there were two decisions. One decision was to enact the regulations which allow parking serving a commercial use to extend into a residential zoning district, and the second decision was the decision by Town Council to approve the conditional district rezoning with the list of standards and conditions that went with it. Mr. Justus stated the two parcels in question were not part of the rezoning application. He stated there was no public hearing of those two parcels to change what was allowed on them. He referred to parking in the zoning regulations, stating that the standards for off-site parking in a residential area requires that the commercial district and commercial use be adjoining. He mentioned that in order to change those standards, the ordinance would have to be amended or the property would have to be rezoned. He stated it appeared that Ms. Spicer stated to Commissioner Moore that the parcels would not have to be rezoned and Town Council could just waive it. He asked the Board to ask Ms. Spicer if she made the decision or if Town Council made the decision to allow commercial parking on those two parcels.

Mr. Erickson mentioned he was confused as to who made the decision to allow commercial parking and pointed out there were conflicting interpretations between Mr. Egan and Mr. Justus. Therefore, he stated he could not make a decision and did not feel the Board has the authority to make the determination on who determined that commercial parking was allowed on residential parcels. Ms. Maringer stated that Ms. Spicer left the decision up to the Town Council. She did

not feel the Board had the authority to hear an appeal of the Zoning Administrator's decision when there was no decision made by the Zoning Administrator. Mr. Owensby stated he was confused as well on who made the decision regarding the commercial parking lot. Vice-chair Kilby stated Ms. Spicer advised the Town Council of the Zoning Regulations so that they could make their decision. Mr. Butts referred to page 118 of the transcript and stated that according to his interpretation, he felt Ms. Spicer made a decision. Ms. Owensby agreed. Mr. Butts made the following motion:

Mr. Butts made a motion that Ms. Spicer made a decision to allow commercial parking in the two parcels identified in a residential district. Mr. Owensby seconded the motion. Mr. Erickson and Ms. Maringer voted no. Mr. Butts and Mr. Owensby voted in favor. Vice-chair Kilby voted no, stating he did not feel this Board is qualified to make the determination that Ms. Spicer made a decision.

The motion did not pass. The majority of the Board felt that Ms. Spicer did not make a decision that commercial parking was allowed on the parcels identified in a residential district.

Ms. Maringer moved to grant the motion to dismiss the case. Vice-chair Kilby seconded the motion. Mr. Butts and Mr. Owensby voted no. Mr. Erickson, Ms. Maringer and Vice-chair Kilby voted in favor.

The motion to dismiss was granted. The appeal was dismissed by a majority vote from the Board. The Board ruled that the decision that the Lodge on Lake Lure's off-site parking area is allowed on lots located in the R-1 zoning district was not a decision made by the Zoning Administrator but was in fact a decision made by Town Council; therefore, the Board of Adjustment has no jurisdiction over an appeal of that decision.

Mr. Justus had earlier submitted a certified copy of the Town of Lake Lure Zoning Regulations. Mr. Gulden suggested that it be entered as Motion to Dismiss Exhibit 1.

NEW BUSINESS

(A) Election of Officers

Mr. Kilby announced that Chairman Webber is the new Town Council Liaison and would not be running again as Chairman, but would like to stay as an active member on the Board. Mr. Erickson nominated Mr. Kilby to serve as Chairman. Mr. Owensby seconded the motion. There were no other nominations. The Board unanimously voted for Mr. Kilby to serve as Chairman.

Mr. Lusk nominated Mr. Butts to serve as Vice-chair. Mr. Erickson seconded the motion. There were no other nominations. The Board unanimously voted for Mr. Butts to serve as Vice-chair.

Ms. Spicer conveyed she would be attending the NCAZO conference and would not be able to attend the February 23rd regular meeting. She asked the Board to consider amending the 2016 meeting schedule and change the February 23rd meeting date to Wednesday, February 24th.

Mr. Butts made a motion to amend the 2016 meeting schedule to change the meeting from February 23rd to Wednesday, February 24th. Mr. Owensby seconded. Mr. Butts, Mr. Erickson, Ms. Maringer, Mr. Owensby, and Chairman Kilby voted in favor.

OLD BUSINESS

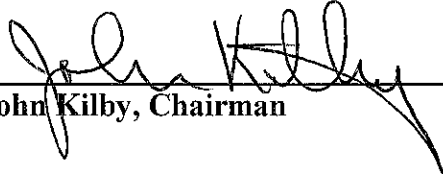
None

ADJOURNMENT

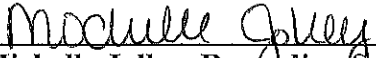
Mr. Owensby made a motion seconded by Ms. Maringer to adjourn the meeting. All voted in favor.

The meeting was adjourned at 4:45 p.m. The next regular meeting is scheduled for Tuesday, February 24, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary