



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

**Wednesday, February 24, 2016
1:00 p.m.**

Chairman Kilby called the meeting to order at 1:25 p.m.

ROLL CALL

Present: John Kilby, Chair
Ronald Erickson, Seated Alternate
Mark Hoek, Alternate
David Lusk, Seated Alternate
Melvin Owensby
Stephen Webber, serving as Board Member and Council Liaison

Absent: David Butts

Also Present: Brian Gulden, attorney for the Board
Michelle Jolley, Recording Secretary
Joe McGuire, attorney for the Lodge
Sheila Spicer, Zoning Administrator

APPROVAL OF THE AGENDA

Chairman Kilby requested amending the agenda to add, *Approval of Proposed Order for ZA-2016001*, to be discussed after approval of the minutes. Mr. Webber requested adding *Liaison Report* under New Business.

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

APPROVAL OF THE MINUTES

Mr. Gulden conveyed that all seated members would vote on the approval of the minutes, even though some may not have been seated at that meeting. He also conveyed that the Order would be voted on and approved as form only, and if the facts and decisions were as the Board members remembered.

Mr. Owensby made a motion seconded by Mr. Erickson to approve the minutes of the January 26, 2015 meeting as presented. All voted in favor.

Approval of Proposed Order for ZA-2016001

Mr. Gulden explained that only members which were present during the appeal case at the last meeting would give their comments and vote on the Order. Ms. Spicer mentioned that staff and Mike Egan have both reviewed the Order. She mentioned they spoke about a few changes, mainly spelling. She stated she did question Sharlene Kyser-Kohler being referred to as the appellant; however, Mr. Egan was comfortable with it. Mr. Gulden did not feel Ms. Kyser-Kohler should be shown as the appellant since she did not file a formal appeal. Mr. McGuire agreed and stated he could make changes to the Order and send to Ms. Spicer by email. Ms. Spicer noted that the final Town Council vote referenced in the order as December 15, 2016 was not until December 22. Mr. McGuire stated he would make that change as well.

Mr. Owensby made a motion to approve the form of the Order, with the edits documented by Mr. McGuire. Mr. Erickson seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor.

HEARINGS

(A) VROP-2016001, a vacation rental operating permit request from Robert F. Freeman to operate a residential vacation rental at 133 Dogwood Drive, Lake Lure, North Carolina (Tax PIN 1616566)

Ms. Spicer and Bill McKay, Lake Country Vacation Rentals and agent for the property owner, were sworn in. There were no ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. McKay did not wish to challenge the Board for cause. Ms. Spicer presented a letter from the property owner to the Board authorizing Mr. McKay to act as agent for the property owner. Chairman Kilby accepted the letter as 'Applicant Exhibit A'.

Ms. Spicer presented the case. She stated that Robert Freeman is requesting a Vacation Rental Operating Permit (VROP) to operate a 6-bedroom residential vacation rental (RVR). She stated the property is not directly connect to the Town sewer, but is connected through Carolina Water Systems (CWS). She pointed out that the packet includes the application, certificate from a certified plumber that the sewer connection is operational and free of detectable leaks, standard rental agreement, and verification from Jeanette Bosgra with the Tourism Development Authority (TDA) that the property has been registered with the TDA. She stated the request was sent to the Development Review Committee (DRC) for review on February 3, 2016 and the only comment was from Linda Ward, Customer Service Supervisor, stating that the property is not connected to town sewer.

Mr. Erickson pointed out that the tax records indicate the house has five bedrooms. Mr. Webber mentioned the Board generally only approves up to the number of bedrooms indicated by the tax records. He added that it would not affect the occupancy. Mr. McKay noted that the office was

converted to a bedroom but was not updated with the county tax records. He stated he would like to amend his application to a 5-bedroom rental with the same amount of occupancy.

Mr. Webber made a motion to amend the application to a 5-bedroom vacation rental. Mr. Erickson seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor.

Mr. Erickson asked if the trash was placed by the road. Mr. McKay stated he would have a pen built for the trash receptacles located up at the road. He would also make sure the trash bins are animal resistant.

There was no further testimony, so Mr. Owensby made the following motion:

With regard to application number VROP-2016001 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Mr. Owensby moved the Board to find that the application is complete and that the proposed use, if operated according to the application and any conditions attached hereto, meets the following standards: (1) it will not materially endanger the public health or safety; (2) it will not substantially injure the value of adjoining or abutting property; (3) it will meet all standards and requirements specified in the regulations of the Town; (4) it will be in harmony with the neighborhood character and in general conformity with applicable elements of the Comprehensive Plan; and (5) satisfactory provision and arrangement has been made for those matters specified in §92.046(D) of the Zoning Regulations of the Town of Lake Lure 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, as amended. Mr. Erickson seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor.

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

(B) VROP-2016002, a vacation rental operating permit request from Kenneth & Jean Frick to operate a residential vacation rental at 321 Holmes Road, Lake Lure, North Carolina (Tax PIN 230700)

Ms. Spicer and Sharon Ryan, Distinctive Mountain Lodging, were sworn in. Mr. Lusk disclosed he met with Mr. Frick on site and discussed the need for hand rails on the front steps. Ms. Ryan mentioned she suggested those to Mr. Frick as well who stated he would look into it. Mr. Erickson disclosed he visited the property and met Mr. Frick while there but the case was not discussed. There were no other ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Ms. Ryan did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Kenneth and Jean Frick are requesting a VROP to operate a 6-bedroom RVR. She pointed out that the packet includes an application, agent authorization letter authorizing Sharon Ryan to act as their agent, certification from C&L

Plumbing that the sewer system is operational and free of detectable leaks, a standard rental agreement with a contract addendum, and verification from Jeanette Bosgra with Rutherford County Tourism Development Authority that the property has been registered with the TDA. She also stated that email discussion between Sharon Ryan and herself about occupancy and the use of two kayaks was also included in the packet. She noted that Ms. Jolley informed her that Mr. Frick did purchase his 2016 lake commercial license and commercial boat permits. She mentioned the parking plan was included as an insert. The Development Review Committee reviewed this request on February 3, 2016 and the only comment was from Linda Ward who verified the property is on town sewer and the account is up-to-date.

Mr. Webber pointed out that the tax records show the property has five bedrooms. Ms. Ryan asked to amend her original application to indicate a 5-bedroom vacation rental.

Mr. Webber made a motion to amend the original application to a 5-bedroom vacation rental. Mr. Owensby seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor.

Mr. Erickson asked if the address was displayed on the building and Ms. Ryan stated yes and it's also displayed at the top of the driveway. Ms. Ryan noted the commercial license for 2016 was paid for and commercial boat permits were purchased for the two kayaks. Mr. Webber pointed out the bushes were so intrusive that it made it hard to see when pulling out into the road. He recommended trimming the bushes back. Mr. Owensby mentioned concerns with no railings on the steps and on the deck. He felt it should be a condition to meet county building codes. Mr. Lusk stated he spoke with Mr. Frick on site who stated he would consider the railings. The Board discussed making a condition to add the railings. Mr. Webber noted that public safety is a determination of the Board. Mr. Erickson felt a condition was needed. Mr. Kilby conveyed he did not feel it is the Board's purpose to ensure property owners meet county building requirements and felt it could lead to liability issues. Mr. Gulden stated a general condition could be applied if the Board felt a need for one. Discussion ensued. Ms. Spicer referred to G.S. 92.042 (A)(4) regarding town inspection and compliance. Ms. Ryan mentioned she spoke with Mr. Frick regarding the need for railings and stated it would be addressed.

There was no further testimony, so Mr. Erickson made the following motion:

With regard to application number VROP-2016002 for a vacation rental operating permit to operate a residential vacation rental in the R-1 zoning district, Mr. Erickson 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 as amended. Mr. Owensby seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor

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

(C) VROP-2016003, a vacation rental operating permit request from Language Services LLC to operate a residential vacation rental at 119 Water Pointe Drive, Lake Lure, North Carolina (Tax PIN 1616562)

Ms. Spicer and Bill McKay were sworn in. Mr. Erickson disclosed he met Dale Shields on site but did not discuss the case. Mr. Owensby disclosed he spoke with Mr. McKay during the recess but did not discuss the case. 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. McKay did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Michael and Susan Batten with Language Services LLC are requesting a VROP to operate a 4-bedroom RVR. She noted the number of bedrooms listed in the memo in the application was not correct. She pointed out that the packet includes an application, agent authorization letter authorizing Mr. McKay to act as their agent, a site plan, certification from C&L Plumbing that the sewer connection is operational and free of detectable leaks, and verification from Jeanette Bosgra with Rutherford County Tourism Development Authority that the property has been registered with the TDA. She mentioned that the sewer is not connected directly to the Town; the property is connected to CWS.

The Development Review Committee reviewed this request on February 3, 2016 and the only comment was from Linda Ward verifying that the sewer connection was through CWS.

Mr. Owensby pointed out that the tax records indicate the property as a three bedroom. Ms. Spicer stated the occupancy would not be affected. Mr. Erickson asked when the pavement for the parking area would be installed. Mr. McKay stated he spoke with Vic Knight about the paving who was hopeful to have the parking area paved very soon, weather permitting. Mr. Webber pointed out that the number of parking spaces was not necessary; the only requirement is for adequate parking. Ms. Spicer noted the parking plan provided was from Vic Knight. Mr. Erickson stated he was concerned with the parking area because of the location of the manhole. Mr. McKay pointed out that the manhole is well to the left of the parking area. It would not be in the driveway.

Mr. Owensby made a motion to amend the application to a 3-bedroom vacation rental. Mr. Webber seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor

There was no further testimony, so Mr. Lusk made the following motion:

With regard to application number VROP-2016003 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Mr. Lusk 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 as amended. Mr. Owensby seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor

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

(D) ZV-2016001, a request from Ruby Elizabeth (Beth) Coleman Branyon for a variance from §92.040 of the Zoning Regulations for the minimum front street yard setback. The property (Tax PIN 222874) is located at 217 Luther Burbank Drive, Lake Lure, NC 28746

Ms. Spicer and Ms. Branyon were sworn in. Mr. Owensby disclosed he visited the property and spoke with Ms. Branyon but did not discuss the case. There were no other ex-parte communications or conflicts of interest to disclose. Ms. Branyon did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Joey and Beth Branyon applied through their contractor, William Conner, for a Certificate of Zoning Compliance Permit (CZC) to make improvements to their home. The CZC, permit number ZP-2015048, was approved by Ms. Spicer on August 5, 2015. She performed a final inspection on October 22, 2015, at which time it became apparent that she had issued the CZC in error due to the fact that she had overlooked the request to enlarge the front porch, which was clearly shown on the plans submitted. It was also clear that the existing porch encroached into the front street yard setback; therefore, any extension of the porch should not have been approved without a variance. Mr. Conner was notified that his CZC had been issued in error, and a variance was required in order for the porch extension to remain.

The property is located in the R-1 zoning district. The front street yard setback is 35 feet from the center of the street right-of-way. The new porch extension with overhang is only 21.39 feet from the center of the street right-of-way. Therefore, Mr. and Ms. Branyon are requesting a variance of 13.61 feet from the front street yard setback.

Ms. Spicer noted that Mr. Conner submitted a signed letter to her, which she read to the Board. Chairman Kilby accepted the letter as "Applicant Exhibit 1". Mr. Branyon pointed out that their reasoning for the variance request was to minimize further water damage to the door threshold.

He stated he would also like to add gutters to move water away from the house. Ms. Spicer noted there was no covering originally at the front entrance. Mr. Webber conveyed the house was built in 1928 and he felt the variance would be well justified. He stated proper water runoff is important to protect the home from damage and that this would constitute as their hardship. Ms. Spicer noted there would be no issues for the property owners to add gutters. Mr. Branyon conveyed the gutters would be added to the side of the house, not the front.

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

With regard to Case Number ZV-2016001, 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. Webber seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Mr. Webber, and Chairman Kilby voted in favor

NEW BUSINESS

Mr. Webber asked that a liaison report be added to the agenda under 'New Business' each month. He pointed out that Ms. Spicer provided all members with the amendments to the Zoning Regulations. He conveyed to the Board that Ms. Maringer has resigned. He stated there were a couple of things in Ms. Maringer's resignation letter that caused him concern. Discussion ensued.

Chairman Kilby asked Ms. Spicer if there was a way that the bedroom issue with the application and the tax records not coinciding could be resolved before the meeting dates. Ms. Spicer stated there is currently nothing in the regulations stating she cannot accept an application listing more bedrooms than is listed on the tax records. She mentioned she could bring it to the applicant's attention and allow them to change the number of requested bedrooms if they would like. The Board held discussion.

Ms. Spicer conveyed that the School of Government has 10 different webinars that the Board could set aside a half a day (25-30 minutes each session) for training, if they would like.

Mr. Kilby noted to the Board that a lawsuit has been filed against the Town but would not affect the BOA. Ms. Spicer stated the Order was signed today and would be placed in the mail the next day. Once the Order is mailed, they have 33 days to appeal the decision.

OLD BUSINESS

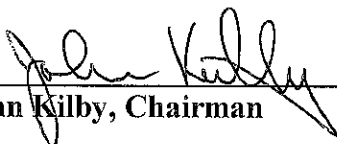
None

ADJOURNMENT

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

The meeting was adjourned at 3:09 p.m. The next regular meeting is scheduled for Tuesday, March 22, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary