



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

**Tuesday, May 24, 2016
1:00 p.m.**

Chairman Kilby called the meeting to order at 1:02 p.m.

ROLL CALL

**Present: John Kilby, Chair
David Butts
Mark Hoek
David Lusk, Seated Alternate
Melvin Owensby
Rick Stockdale, Alternate
Lyn Weaver, Alternate
Stephen Webber, Council Liaison**

Absent: Ronald Erickson

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

APPROVAL OF THE AGENDA

Chairman Kilby proposed adding item 3(A), discussion for a special BOA meeting.

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

APPROVAL OF THE MINUTES

Chairman Kilby noted that Ms. Jolley informed him of an error in the third paragraph on page five. The zoning variance number was incorrect in the motion. The correction made changed "ZV-2016001" to "ZV-2016004" in the motion.

Mr. Butts made a motion seconded by Mr. Hoek to approve the minutes of the April 26, 2016 meeting as amended.

3 (A) Discussion for a Special BOA Meeting

Ms. Spicer explained that ZV-2016006, a request from Bruce & Julie Sutton for a variance from §92.206(L)(5) of the Zoning Regulations to allow the grade of a driveway to exceed 25% was overlooked. She asked the Board hold a special meeting to discuss the request. She noted that construction is held up until a decision is made for the variance. She stated the first possible date for the meeting would be Friday, June 3rd. If held on this date, town and state requirements would remain on schedule. She added that the notifications have already been sent and everything is ready to go if five members can be present on June 3rd. Chairman Kilby added that the time of the meeting would be 2:00 p.m. and this would be the only case.

Mr. Butts stated he would not be present at the June 3rd meeting. All other members stated they would be present at the meeting.

Mr. Butts made a motion to hold a special meeting on June 3, 2016 at 2:00 p.m. at Town Hall to hear ZV-2016006, concerning a variance request from Julie & Bruce Sutton. Mr. Hoek seconded the motion. Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

HEARINGS

(A) VROP-2016007, a vacation rental operating permit request from Melissa Messer, agent for Guiseppe & Patricia Ciulla, to operate a residential vacation rental at 131 Bald Mountain Lane, Lake Lure, North Carolina (Tax PIN 228150)

Ms. Spicer and Melissa Messer 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. Ms. Messer did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She noted the application originally requested a 5-bedroom rental, which was later amended to reduce to a 3-bedroom by email included in the packet. She stated that Melissa Messer, agent for Guiseppe & Patricia Ciulla, are requesting a Vacation Rental Operating Permit (VROP) to operate a 3-bedroom residential vacation rental. She pointed out the packet includes the application, agent authorization letter, parking plan, standard rental agreement, and verification from Jeanette Bosgra with the Tourism Development Authority (TDA) that the property has been registered with the TDA. The property is located in the CG Commercial zoning district, and there is an existing single-family dwelling on the lot. The application states the property is connected to the Town water system. However, CWS provides water for that property and the property is connected to an on-site septic system. She noted there were no comments received from neighboring property owners. She noted the request was sent to the Development Review Committee for review on May 9, 2016 and any comments received were included in the packet.

Chairman Kilby noted the boat offered with the rental is for Bald Mountain Lake and does not require a town boat permit. Ms. Messer explained she amended the application to a 3-bedroom rental because at the time the home was built, the septic system was only permitted for a 3-

bedroom. She noted the proposed occupancy was 10 for a 5-bedroom home and asked if she could keep the occupancy at 10. Ms. Spicer explained the Town's concern would be the septic system, and if 5-bedrooms were originally approved at the time of construction. She added that although the occupancy meets the number of bedrooms, it would also be a concern of the Town to approve an application for a number of bedrooms when there is not a clear showing that the number of bedrooms requested has been approved by the County. Ms. Spicer noted the occupancy would not change, only the number of bedrooms. Ms. Messer mentioned that her concern was not being able to market the rental as a 5-bedroom home. Chairman Kilby noted the Board would need verification from the County that the septic system would accommodate 5-bedrooms to approve the rental with 5-bedroom. He added that Ms. Messer could later request to amend her VROP to 5-bedrooms with the necessary verification from the County stating the septic system would support 5-bedrooms.

The Board felt that all requirements had been met. There was no further testimony, so Mr. Owensby made the following motion:

With regard to application number VROP-2016007 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.

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. Lusk seconded the motion. Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

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

(B) VROP-2016008, a vacation rental operating permit request from Richard Lundy, agent for James C. Robinson, to operate a residential vacation rental at 339 Charlotte Drive, Lake Lure, North Carolina (Tax PIN 1636262)

Ms. Spicer and Richard Lundy 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. Lundy did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Richard Lundy, agent for James C. Robinson, is requesting a VROP to operate a 4-bedroom residential vacation rental. She pointed out the packet includes the application, agent authorization letter, parking plan, standard rental

agreement with the Town's contract addendum, septic Operation Report from the Health Department, a site plan, and verification from Jeanette Bosgra that the property has been registered with the TDA. She stated the request was sent to the Development Review Committee on May 9th. She noted that the packet also includes a copy of a Septic Operations Permit stating that the home has a 4-bedroom septic system.

Ms. Spicer conveyed that she raised a concern in her comments to Mr. Lundy via email included in the packet, that the tax records show the home has 3 bedrooms. She stated the Septic Operation Report provided to her does not provide any type of verification as to the property the permit is for. She explained that Mr. Lundy conducted a little more research with the Health Department and did find an application number for the application submitted, with an attached survey of the property. Therefore, the Operation Permit provided is in fact for this property.

Ms. Spicer noted she received a call from Nancy on May 17, 2016 who stated she saw the posted sign and asked about the hearing. When she called her back, Nancy advised her that she spoke with Ms. Jolley who provided her with details on the case from the agenda. Ms. Spicer pointed out that Mr. Lundy plans to offer boat use with the rental. She conveyed that Mr. Lundy applied for a lake commercial boat license today and provided her with the application showing it had been paid. She presented the application to Chairman Kilby who labeled as 'Applicant Exhibit 1'.

Mr. Lundy conveyed the home was built as a 4-bedroom home and the records showed it as a 3-bedroom. He stated he did conduct research with the Health Department and found that it was in fact approved as a 4-bedroom home. Mr. Butts felt the application was complete and commended Mr. Lundy on conducting the research. He stated he was ok with allowing as a 4-bedroom rental. The Board discussed adding a condition that the commercial boat permit be purchased before boat rental is allowed with rental of the property.

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

With regard to application number VROP-2016008 for a vacation rental operating permit to operate a residential vacation rental in the R-1 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.

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 with a condition that the commercial boat permit be approved before boat use is allowed with rental of the property.

Mr. Hoek seconded the motion. Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

The Board felt that the application was complete and all requirements were met. Chairman Kilby explained the findings of fact and felt that all findings had been met.

(C) ZV-2016005, a request from Ed Younger with Younger, LLC for a variance from §92.040 of the Zoning Regulations for the minimum front street yard setback. The property (Tax PIN 230142) is located at 309 Ridgeway Road, Lake Lure, NC 28746

Ms. Spicer and Mr. Younger 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.

Ms. Spicer presented the case. She explained that Mr. Younger is in the process of selling his property and the buyer's attorney stated there was an issue getting the title insurance. Therefore, he recommended that a variance be obtained. Ms. Spicer noted the house was built 35 years ago and she could not definitively say that this structure was built with permits. She pointed out that Mr. Younger's agent, Sherry Tucker, was also present.

Ms. Spicer referred to the blown up copy of the survey included in the packet and explained the right-of-way lines and setbacks shown. She conveyed that the Board is only dealing with the area within 10 feet from the right-of-way line. She stated she spoke with Mr. Egan on May 9th and he advised that this is a private right-of-way and he asked for a 0 setback and anything crossing that is between Mr. Younger and the Resort. Therefore, the application is for a reduction of 10 feet from the 10 foot setback from the right-of-way line.

The existing house encroaches into the front street yard setback of 10 feet from the right-of-way line. The structure actually crosses the right-of-way line, so he is requesting a variance of 10 feet, for a setback of zero feet from the right-of-way line.

Ms. Spicer conveyed that a zoning permit was found for this property from 1984. Upon review, she found there were no plans included. There was only a one page application form and a town zoning administrator's signature approving the application at the bottom. She stated she noticed there were setbacks included on the application but felt it was the property owner feeling in the setbacks for the Resort because this was not the Town's setbacks in 1984. The application includes a statement that says if granted, they agree to all ordinances in accordance with all plans submitted. However, there was no indication that a final inspection was done. She noted the structure has been there 35 years and there have never been any problems. Now they are asking for a variance so that the Town will not come and have them tear the structure down.

She mentioned she received a call from Steve Stepline with Ashland Materials, LLC. Mr. Stepline is an adjacent property owner. She noted he called on May 18, 2016 asking about details of the variance. Ms. Spicer provided him with details of the request and he stated he had no concerns.

Ms. Spicer noted she spoke with Mr. Younger and advised him that the Board has to be able to make findings showing they would have granted the variance at the time the application was submitted. She stated that Mr. Younger included a lot about the topography of the lot and where the house was built appears to be the most logical location based on the topography. She conveyed that two letters were included in the packet from Rumbling Bald Resort. She explained that Mr. Younger had an issue years ago with the portion of the property that lies within the side yard setbacks. Therefore, a letter from Ms. Spicer from 2011 and a letter from Rumbling Bald Resort about the side yard setbacks were included, as well as a letter from Rumbling Bald Resort concerning the portions in the right-of-way.

Ms. Younger mentioned he made the mistake by not getting the variance and stated that all renovations to the home have been done and no other repairs should be needed. He noted he would like to obtain a variance before selling the property and leaving as a burden on the new property owners.

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

With regard to Case Number ZV-2016005, Mr. Hoek 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. Owensby seconded the motion.

The Board held discussion. Chairman Kilby noted the structure has been there for 35 years. He added that Ms. Spicer has had conversations with the attorney and he felt comfortable with voting in approval of the request. Mr. Owensby felt the hardship was in part to the topography of the land. Mr. Younger's testimony. Mr. Butts felt the hardship was due to the steep terrain of the lot. He felt that when the house was built it was placed in the best location due to the topography. Mr. Younger mentioned that Kim Warner, engineer, had also been out to inspect the property.. Mr. Butts asked how the new owner would make any renovations to the home with a 0 setback. Ms. Spicer explained the variance is specific to what is requested with this application. Anything further would follow under non-conforming structure requirements. She noted that a slope analysis was not done because it was not required for a variance application. She explained that if it were being requested to be built today, a slope analysis was done, and the property does fall within the scope of the Mountain & Hillside Regulations, there is a provision that allows staff to administratively reduce the front yard setback. Mr. Younger conveyed that this variance request would satisfy the title search issues.

Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

The Board felt that a hardship was demonstrated due to the steep topography of the land and the application was complete.

(D) VROP-2016004 continued, a vacation rental operating permit request from Donna Morrison to operate a residential vacation rental at 192 Hilltop Court, Lake Lure, North Carolina (Tax PIN 223186)

Ms. Spicer and Donna Morrison 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. Ms. Morrison did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Donna Morrison is requesting a VROP to operate a 1-bedroom residential vacation rental. She noted that this is the basement apartment of the house located at 190 Hilltop Court. She pointed out the packet includes the application, parking plan, standard rental agreement with the Town's contract addendum, and verification from Jeanette Bosgra that the property has been registered with the TDA. She noted there were no comments received from neighboring property owners.

Ms. Spicer noted the request was sent to the Development Review Committee for review on April 1, 2016 and there were no comments or concerns received.

Mr. Butts asked if the POA had any requirements. Ms. Spicer noted that she has had an email conversation with Joyce Bear, the president of the POA, and they are aware of Ms. Morrison's request. Mr. Owensby asked about boat rental. Ms. Spicer noted that boat use is not being requested at this point. She stated she sent out notifications to all property owners within 100 feet of Ms. Morrison's property.

Ms. Morrison stated the house is being painted this week and numbers were not put on the house yet for that reason. She stated she does not plan to rent the upstairs portion of the home because she lives there. Ms. Spicer noted the basement apartment was recently properly permitted with the Town. Ms. Morrison asked to amend her application to allow for a maximum occupancy of four instead of three. Chairman Kilby felt that maximum occupancy would be better listed on the application instead of proposed occupancy.

Mr. Butts made a motion to amend VROP-2016004 from a proposed maximum occupancy of three to a proposed maximum occupancy of four. Mr. Owensby seconded the motion. Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

Mr. Butts asked if a market name was required for the property. Ms. Spicer noted it is not required but would be kept on file. She stated the TDA offers advertisement of the rental on their website when properties are added with them.

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

With regard to application number VROP-2016004 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Mr. Hoek 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. Lusk seconded the motion. Mr. Butts, Mr. Hoek, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

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

NEW BUSINESS

(A) Consider amendment to the 2016 meeting schedule

Ms. Spicer stated she would be on vacation during the August meeting. She noted if the date were moved to the August 30th, all other dates, deadlines, and notifications could be kept the same. The Board agreed to change the schedule to August 30.

Mr. Butts made the motion to change the August 23rd BOA meeting to August 30th. Mr. Owensby seconded and all voted in favor.

(B) Liaison Report

Commissioner Webber reported that he would be out of town on June 3rd and would not be available for that special meeting.

OLD BUSINESS

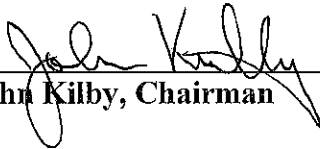
None

ADJOURNMENT

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

The meeting was adjourned at 2:20 p.m. The next regular meeting is scheduled for Tuesday, June 28, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary

