



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

**Tuesday, August 30, 2016
1:00 p.m.**

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

ROLL CALL

**Present: John Kilby, Chair
Ronald Erickson
David Lusk, Seated Alternate
Melvin Owensby
Lyn Weaver, Seated Alternate
Stephen Webber, Council Liaison**

**Absent: David Butts
Mark Hoek
Rick Stockdale, Alternate**

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

APPROVAL OF THE AGENDA

Mr. Erickson made a motion to approve the agenda as presented. Ms. Weaver seconded the motion. All voted in favor.

APPROVAL OF THE MINUTES

Ms. Weaver made a motion seconded by Mr. Owensby to approve the minutes of the June 28, 2016 meeting as presented.

Chairman Kilby explained the quasi-judicial procedures for the meeting for all members present.

HEARINGS

(A) VROP-2016012, a vacation rental operating permit request from Steve Dailey with Lure of the Mountain LLC to operate a residential vacation rental at 283 Sugarbush Point, Lake Lure, North Carolina (Tax PIN 1616708)

Ms. Spicer and Mr. Dailey 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. Dailey did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Steve Dailey with Lure of the Mountain LLC is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom plus a bunk room vacation rental. The property is located in the R-1 Residential zoning district. This request was sent to the Development Review Committee for review on August 9, 2016 and there were no concerns raised. The packet includes the application, parking plan, standard rental agreement including the Town's contract addendum, and verification from Jeanette Bosgra with Rutherford County Tourism Development Authority that the property has been added to their list of rentals. She pointed out that the property card reflects the new GIS site and shows the home as a 3-bedroom.

Ms. Spicer conveyed she spoke with Steve Dailey on July 28th while he was in the office preparing his application. He asked her about the parking plan he had drawn and if it was sufficient. He also asked if he could label a fourth bedroom which he is calling a bunk room. He conveyed that the house is on septic, but he did not know how many bedrooms the septic was rated for. Ms. Spicer explained she would conduct research once his permits were submitted, which would include researching septic information and the number of bedrooms per the tax records. Mr. Dailey stated he would just request a 3-bedroom rental. He asked her about registration with the TDA and she provided him the contact information for Jeanette Bosgra.

Ms. Spicer noted she did conduct research on this property and located the original zoning permit, ZP-98-45 and LDP-98-43, but noted there were no floor plans to indicate how many bedrooms the house was originally approved for. She also mentioned she was unable to locate a copy of the original septic permit. If the Board approves the application as submitted, her interpretation is that the permit would be approved as a 4-bedroom rental and she felt the Board should clarify how many bedrooms they would be allowing.

Mr. Dailey pointed out that he also owns the property which abuts this property. Mr. Erickson noted the garbage enclosure needs repair. Mr. Dailey conveyed he would be building two trash receptacle enclosures that are animal resistant. Mr. Owensby asked if Mr. Dailey would be ok with only allowing the home as a 3-bedroom rental and Mr. Dailey replied yes. Chairman Kilby noted a 3-bedroom would change the maximum occupancy to 10. Ms. Spicer explained that Mr. Dailey would need to amend the original application to reflect this change. She stated that staff would not recommend approving the application with a bunk room. Mr. Dailey asked to amend the occupancy total to 10 and the maximum number of bedrooms to three on his original application.

Mr. Owensby made a motion to amend the application to reflect a maximum occupancy of 10 and a maximum number of bedrooms to three. Mr. Lusk seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

Mr. Dailey noted the house is under renovations for 2-3 weeks.

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

With regard to application number VROP-2016012 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.

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. Lusk seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

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

(B) VROP-2016013, a vacation rental operating permit request from Richard Lundy, agent for Michael & Melanie Vatter, to operate a residential vacation rental at 220 Dogwood Drive, Lake Lure, North Carolina (Tax PIN 1616569)

Ms. Spicer and Mr. Lundy were sworn in. Ms. Weaver and Mr. Owensby disclosed that they spoke with Mr. Lundy earlier 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. Mr. Lundy did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Richard Lundy, agent for Michael & Melanie Vatter, is requesting a VROP to operate a 3-bedroom vacation rental. The property is located in the R-3 Resort-Residential zoning district. The request was sent to the Development Review Committee on August 9, 2016 and there were no concerns raised. The packet includes the application, agent authorization letter, deed recorded with Rutherford County Register of Deeds showing that the Vatter's have purchased the property, parking plan, standard rental agreement with the Town's contract addendum, and verification from Jeanette Bosgra with Rutherford County Tourism Development Authority that the property has been registered with their list of rentals. She stated she has not received any notification from neighboring property owners.

Mr. Erickson pointed out that the house numbers posted are dirty and cannot be read. Mr. Lundy noted these would be replaced. Mr. Lusk mentioned that a huge pile of mulch was left outside and also noted that mesh was laying outside on the walkway. Mr. Lundy conveyed that renovations will be done outside and these issues would be addressed.

There was no further testimony, so Ms. Weavers made the following motion:

With regard to application number VROP-2016013 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Ms. Weaver 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, she 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. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

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

(C) ZV-2016007, a request from Michael Keaton for a variance from §92.040 of the Zoning Regulations for the minimum front street yard setback and the minimum lot area. The property (Tax PIN 223832) is located at 291 Chimney Cliffs Drive, Lake Lure, NC 28746

Ms. Spicer and Mr. Keaton 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. Keaton did not wish to challenge the Board for cause.

Ms. Spicer pointed out that the application shows the required front yard setback is 25.24 feet, reduced to 20.24, and reduced by 10 feet. She clarified that the applicant is only asking for a five foot variance. Chairman Kilby noted the application should be amended.

Ms. Weaver requested to amend the application to reduce the minimum foot street yard setback by five feet, instead of 10 feet. Mr. Lusk seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

Ms. Spicer presented the case. She stated that Michael Keaton applied for a Certificate of Zoning Compliance Permit to remove the existing mobile home and replace it with a single-family dwelling to be constructed on-site. The lot is a nonconforming lot of record, and the proposed

house will be located in the front street yard setback, so a variance is required in order to issue the Certificate of Compliance Permit.

The property is located in the R-2 zoning district; the front street yard setback is 35 feet from the center of the right-of-way for Chimney Cliffs Drive. However, the property in question qualifies for a front yard setback exception as specified in §92.131 of the Zoning Regulations. The reduced front street yard setback for this property is 25.24 feet. The closest point from the center of the right-of-way to the proposed house is 20.24 feet; therefore, a variance of five feet is required. The minimum lot size in the R-2 zoning district for a parcel used for a single-family dwelling is 14,000 square feet. Mr. Keaton's lot is 10,023.90 square feet in size; therefore, a variance of 3,976.10 is required. Included in the packet is an Attorney's Certificate of Title certifying that the lot is a nonconforming lot of record and meets all of the requirements of the Zoning Regulations for a minimum lot size variance.

Ms. Spicer reported that on August 16, Louise Cavany called stating she received a letter and asked for details on the case. Ms. Spicer noted she provided her with the details. She stated she spoke with Steve Harrelson on August 16 asking for details about the case. She emailed him plans that same day and had other discussions with him via email regarding the case. She noted she also sent Mr. Harrelson construction drawings. He also had questions regarding the final height of the structure. Ms. Spicer mentioned the Certificate of Zoning Compliance application has not yet been completed. She has not received final elevation drawings and therefore cannot make the determination that it meets the maximum height requirements. She spoke with Mr. Keaton at length and he assured her that it would meet the maximum height requirements and he would submit the final foundation plan. He expressed concerns with losing the view of the lake. He asked if he needed an attorney and Ms. Spicer relayed to him that would be up to him. She did provide him with a copy of the file.

Ms. Spicer noted she received a call from Charles Schmidt on August 17 asking for details of the case, to which she provided him with. She received a call from Morris Murphy on August 18th. He asked about the case and she provided him with the details. She reported that Eric Kunath and Charles Schmidt came by her office on August 18th. She showed them the file and gave them copies of the existing and proposed site plans. They discussed the front yard setback exception and Mr. Schmidt stated he would be at the hearing. Mr. Kunath stated he had no further concerns. Ms. Spicer mentioned she received an email from Ms. Jolley on August 22 stating she received an email from Lynn VanVleet asking for information on the case. Ms. Jolley read from the memo and Ms. VanVleet stated she was ok with the request and would be at the meeting.

Ms. Spicer pointed out the packet contains a copy of the application, the attorney's Certificate of Title, copy of the deed, pictures of the existing structure, the existing and proposed site plan, and construction drawings. Chairman Kilby mentioned possible applying a condition that the height elevation plans be provided. Ms. Spicer noted it would be a requirement either way.

Mr. Keaton stated that his intention is to remove the existing mobile home and replaced with a retirement home. He mentioned he does not yet have the elevations. If the front setback is approved, he stated he would be putting together more detailed drawings and elevation drawings. Mr. Erickson noted the rear elevation indicates a 28' height from grade; however, grade is down

about 10 or 12 feet, which would mean about 40'. Mr. Keaton stated the architect's estimate was about 37' at the highest point, but below the average height requirement of 35'.

Mr. Lusk made the following motion:

With regard to Case Number ZV-2016007, Mr. Lusk 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.

Ms. Weaver seconded the motion.

The Board felt that the neighborhood would benefit with the removal of the existing mobile home and that a hardship results from the slope of the land in the back yard.

Mr. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

(D) ZV-2016008, a request from Karilea and Kevin Rhea with Yacht Island LLC for a variance from §92.040 of the Zoning Regulations for the minimum front lake yard setback. The property (Tax PIN 229809) is located at 104 Yacht Island Drive, Lake Lure, NC 28746

Ms. Spicer, Mr. and Ms. Rhea, and Vince Wigman, architect, were sworn in. Mr. Lusk disclosed he worked with Mr. Wigman in the past, but it would not have any bearing on his decision. Chairman Kilby disclosed that he wrote the insurance for the Rhea's but would not be a conflict of interest. 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. and Ms. Rhea did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Karilea and Kevin Rhea with Yacht Island LLC applied for a Certificate of Zoning Compliance Permit to renovate and remodel their house. The work will include a new second story, a new lakefront porch and deck, and a new street side porch and entry. Construction of a new garage is also proposed. The new covered porch on the lake side of the home will be located in the front yard setback; therefore, a variance is required in order to issue the Certificate of Zoning Compliance.

The property is located in the R-1 zoning district; the front lake yard setback is 35 feet from the shoreline. The closest point from the shoreline to the proposed porch is 22 feet; therefore, a variance of 13 feet is required. The plans include an uncovered deck extending out from the covered porch; however, the proposed height will not exceed 30 inches from the finished grade. Structures 30 inches tall or less as measured from the finished grade are allowed in a setback per the definition for "Yard" in §92.005 of the Zoning Regulations, so no variance is required for the uncovered deck as shown on the plans. She noted they are still working on approvals for the

existing septic system before receiving their Certificate of Zoning Compliance Permit. She noted she has not had any calls or concerns from neighboring property owners.

Ms. Spicer explained they cannot get a new septic system on a different portion of this lot because there is no place they can get an approval for it. They can only make improvements that allows them to use the existing septic system and the plan they submitted was due to this difficulty. They have also been working with Mr. Calhoun regarding their flood plain development and land disturbance permits.

Mr. Erickson asked about the trout buffer regulations. Ms. Spicer noted this Board cannot give a variance for that but noted Mr. Calhoun has been working with them on the Town's requirements and the trout buffer requirements. She added that the septic systems inspection was included in the packet, but was not from the County Health Department. Vince Mansy from Rutherford County Environmental Health does have that inspection on file. She believes they hope to expand their sewer system and are working with the neighbors.

Mr. Wigman conveyed that they are trying to stay out of the trout buffer as best they can. He noted the added 3' is for the roof overhang. He stated the basement is well above the flood elevation but the corner of that building touches the floodplain. Mr. Wigman noted the property owners would be meeting with Vince Mansy later today regarding the sewer issue. Mr. Owensby asked about the red flags at the property. Ms. Rhea explained that Vince Mansy wanted to see the location of the garage so they put down flags to show that the garage would not be within 5' of the septic.

Mr. Owensby made the following motion:

With regard to Case Number ZV-2016008, 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. Lusk seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, Ms. Weaver, and Chairman Kilby voted in favor.

Mr. Erickson felt a hardship would be to apply current regulations to a home that was built before the regulations were in place. Ms. Weaver felt this would be an asset to the property. Chairman Kilby felt this would be an improvement to the property. The Board felt that a hardship was demonstrated and the application was complete.

NEW BUSINESS

(A) Liaison Report

Commissioner Webber noted there was nothing new to report.

OLD BUSINESS

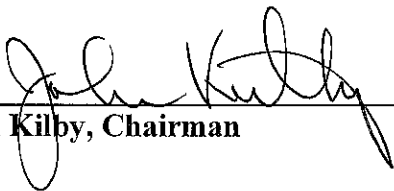
None

ADJOURNMENT

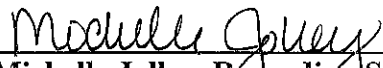
Ms. Weaver made a motion seconded by Mr. Lusk to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:11 p.m. The next regular meeting is scheduled for Tuesday, September 27, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary