



Minutes of the Special Meeting of the Board of Adjustment

**Tuesday, May 9, 2017
1:00 p.m.**

Chairman Kilby called the meeting to order at 1:05 p.m.

ROLL CALL

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

Absent: Mark Hoek
Rick Stockdale, Alternate
Lyn Weaver, Alternate

Also Present: Brad Burton, Code Enforcement Coordinator
Clint Calhoun, Erosion Control Officer
Michelle Jolley, Recording Secretary
Tony Konsul, Regional Manager for CWS
Bryce Mendenhall, VP of Operations for CWS
Gary Peacock, Area Manager for CWS
Kurt Wright, Professional Engineer with SDG Engineering

APPROVAL OF THE AGENDA

Chairman Kilby asked to approve the minutes of the April 25, 2017 meeting at the next scheduled meeting in June.

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

HEARINGS

(A) CU-2017002, a conditional use permit request from Carolina Water Service, Inc. of NC, owners, to expand and operate public utility buildings and facilities at 185 Whitney Blvd., Lake Lure, North Carolina (Tax PIN 1611495)

Mr. Burton, Bryce Mendenhall, VP of Operations for CWS, Tony Konsul, Regional Manager, Gary Peacock, Area Manager, Kurt Wright, Professional Engineer with SDG Engineering, and Commissioner Webber was 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. Mendenhall did not wish to challenge the Board for cause.

Mr. Burton pointed out that he distributed two handouts, a memo from Shannon Baldwin with the Planning Board, and a diagram showing proposed layouts. Mr. Burton stated that the proposed layouts are all compliant with the Zoning Regulations. He further stated that the Planning Board gave their approval at the special called meeting this morning with no concerns or proposed conditions. He read from the memo, which stated:

Carolina Water Service Inc. of North Carolina (hereafter "CWS"), has made application for a Conditional Use Permit to expand and operate public utility buildings and facilities on their parcel located at 185 Whitney Blvd, Lake Lure, North Carolina (Tax PIN 1611495). This location is also referred to by CWS as "Well #8."

The parcel is zoned R3 and public utility buildings and facilities are allowed in this district, with conditions, upon the granting of a Conditional Use Permit by the Town.

The conditions, as required by the Ordinance, are:

Public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:

- (a) All buildings shall be located at least 35 feet from any lot line.*
- (b) Fences and/or other appropriate safety devices are installed to protect the public safety and welfare.*
- (c) No vehicles or equipment are stored, maintained or repaired on the premises.*
- (d) All structures are in keeping with the residential character of the neighborhood.*
- (e) Adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.*

It shall be the applicant's responsibility to address these conditions to the satisfaction of the Board of Adjustment.

The current CWS facility has been in operation at this location since 1985. The Town of Lake Lure has required a Conditional Use Permit to locate public utilities buildings and facilities in the R3 zoning district since 1979. It is most likely that the current operation was located outside of the Town limits, and was either annexed into the Town sometime between 1985 and 1992, giving the facility the status of a pre-existing/non-conforming use of land.

The permit is sought as CWS has to mitigate an ongoing condition with Well #8, as is specified in the applicant's attached memorandum. These mitigation efforts will require the construction of a new water treatment facility to be located over the existing well head and a new 15,000 gallon backwash storage tank. The expansion efforts of the facility trigger the requirement of the Conditional Use permit to legitimize the preexisting/ non-conforming use of the land and the subsequent expansion efforts.

This parcel is also located in the Bill's Creek Special Flood Hazard Area zone AE. Mr. Clint Calhoun, the town floodplain administrator, will be dealing with this aspect of the project.

This request was sent to the Development Review Committee for review on April 28, 2017, and members of the Planning and Zoning Board on the same date.

Mr. Burton pointed out he has had no comments or concerns from anyone regarding this matter and noted it was properly noticed. The layout designs provided are compliant with all zoning regulations. He stated there was a determination that this would need a Conditional Use permit. While visiting the property, it was discovered that the proposed tank location per the plans lie within the special flood hazard area. Acknowledging this situation, the applicants hired a professional engineer who conducted a survey of the property and a flood study. These efforts generated the regulatory compliant design layouts provided.

Mr. Calhoun mentioned that the original site plan showed that a portion of the tank was proposed to be located in a designated non-encroachment area, which is not permitted without successfully completing a flood study resulting in a "no-rise" certificate. After informing the CWS team, they discussed alternatives and how to mitigate that concern. The design layouts they provided depicts the structures outside of the non-encroachment area and are compliant with regulations.

Commissioner Webber read from an email he received from Larry Czajkoski, a citizen of Rumbling Bald Resort. In the email, Mr. Czajkoski voiced his concern on how he is impacted by the elevated radium levels from well #8. He conveyed his approval for the improvement to the facility.

Mr. Mendenhall stated that the increased radium level exceeds the contaminate level allowed. He noted that their regular quarterly testing showed an increase in radium levels leaving them in violation. He noted that they have not yet received a violation letter from the State. They have notified all impacted residents. He pointed out that they are currently operating in compliance but would like to move forward with permanently addressing the fluctuating radium level for well #8. He noted that they held a community meeting and no concerns were raised. He conveyed that the treatment process will not fit into the current facilities there. From a public safety standpoint, all work is off the roadway and nothing should be an eyesore. They want to alleviate any public safety concerns and be in compliance with all EPA standards. He stated they would like to go with layout design #2, which is the layout design staff suggested as well. The new facility will be a block, tan building that will blend in well with the surroundings. They are protected with a cattle gate and know of no vandalism that has ever taken place there in the past.

Chairman Kilby asked for the total number of wells. Mr. Mendenhall noted there are four, but well #8 is the only one which is failing. He stated all wells go into a combined system, which services all residents in Rumbling Bald Resort. Mr. Burton pointed out that staff has requested a preference for layout #2 due to the placement of the tank perpendicular to the road. He asked that the Board allow staff administrative authority for leeway in site placement and design, as long as everything remains in compliance of all regulations. Mr. Butts asked about exterior lighting. Mr. Mendenhall noted there will be a flood light on the outside of the building. He also noted there will be no noise or odor emitted. Mr. Butts suggested that that all requirements are met regarding exterior lighting. Chairman Kilby felt that the vegetative buffer was sufficient there. Mr. Butts felt that a condition could be applied to allow staff administrative leeway as long as it falls within existing zoning and floodplain regulation requirements. Chairman Kilby accepted the handout as 'Staff Exhibit 1'.

Chairman Kilby closed the hearing.

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

With regard to application number CU-2017002 for a conditional use permit to operate public utility buildings and facility at 185 Whitney Boulevard in Lake Lure, NC, Mr. Butts moved the Board to find that the application is complete and that the proposed use, if located and developed 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 conditional use permit in accordance with and only to the extent represented in the application and plans with the condition that town staff be able to alter site plan as long as proposed changes be in compliance with applicable regulations. Mr. Owensby seconded the motion with the condition. Mr. Butts, Mr. Erickson, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor of the motion with the condition.

The Board felt the application was complete, all standards were met, and public safety concerns would be alleviated.

NEW BUSINESS

Chairman Kilby pointed out there would be no items for the regular BOA meeting this month. However, there would be an LSAB meeting on May 23rd at 1:30 p.m.

OLD BUSINESS

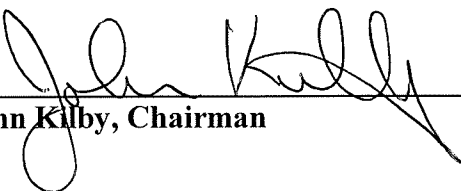
None

ADJOURNMENT

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

The meeting was adjourned at 1:46 p.m. The next regular meeting is scheduled for Tuesday, June 27, 2017 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary