

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

**Tuesday, August 22, 2017
1:00 p.m.**

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

ROLL CALL

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

**Absent: David Butts
Ronald Erickson
Mark Hoek**

**Also Present: Brad Burton, Code Enforcement Coordinator
Michelle Jolley, Recording Secretary**

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Ms. Weaver made a motion seconded by Mr. Lusk to approve the minutes of the July 25, 2017 regular meeting as presented. All voted in favor.

HEARINGS

- (A) VROP-2017010, a vacation rental operating permit request from Timothy and Wendy Appleby, to operate a residential vacation rental at 103 Bald Hill Court, Lake Lure, North Carolina (Tax PIN 230273)**

Mr. Burton, Howard Avant, and Judy Avant were sworn in. Mr. Burton noted an agent authorization letter was provided to all members authorizing the Avant's to act as the property owner's agent. There were no ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. and Ms. Avant did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Julia K. Hill, through Valerie Wrobel, agent, is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental (RVR) at Luther Burbank Road, Lake Lure, North Carolina. The property is located in the R-3 residential zoning district, and there is an existing single-family dwelling on the lot.

Mr. Burton stated this request was sent to the Development Review Committee and no comments were received. He noted he received no correspondence from anyone regarding this request.

Mr. Owensby pointed out that the property card lists the property as having no bedrooms and the applicant is requesting for a two bedroom home. The Avant's conveyed that the home has two bedrooms. Mr. Burton explained the GIS system and the County registry are having some issues at this time and they are trying to get those issues fixed. Mr. Lusk mentioned that the house numbers were laying on the ground. Mr. Avant stated the house numbers are up on the house now. Mr. Lusk asked about trash receptacles and Ms. Avant stated they are located in the basement because they did not want to leave the trash outside.

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

With regard to application number VROP-2017010 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.

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

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

(B) VROP-2017011, a vacation rental operating permit request from Christopher A. Calvin, to operate a residential vacation rental at 160 Wandering Lane, Lake Lure, North Carolina (Tax PIN 218686)

Mr. Burton and Mr. Calvin 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. Calvin did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Christopher A. Calvin is requesting a vacation rental operating permit (VROP) to operate a 2-bedroom residential vacation rental (RVR) at 160 Wandering Lane, Lake Lure, North Carolina. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot.

Mr. Burton stated this request was sent to the Development Review Committee and no comments were received. He noted he received no correspondence from anyone regarding this request.

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

With regard to application number VROP-2017011 for a vacation rental operating permit to operate a residential vacation rental in the R-1 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. Owensby seconded the motion. Mr. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

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

(C) VROP-2017012, a vacation rental operating permit request from Grady S. Clinkscales, to operate a residential vacation rental at 262 Thomas Drive, Lake Lure, North Carolina (Tax PIN 220380)

Mr. Burton, and Mr. and Ms. Clinkscales 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. and Ms. Clinkscales did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Grady S. Clinkscales is requesting a vacation rental operating permit (VROP) to operate a 1- bedroom residential vacation rental (RVR) at 262 Thomas Drive, Lake Lure, North Carolina. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot.

Mr. Burton stated this request was sent to the Development Review Committee and no comments were received. He noted he received no correspondence from anyone regarding this request. He pointed out that he provided the Board with a handout from Mr. Clinkscales plumbing company certifying the sewer was found in working order.

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

With regard to application number VROP-2017012 for a vacation rental operating permit to operate a residential vacation rental in the R-1 zoning district, Mr. Stockdale 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. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

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

(D) VROP-2017013, a vacation rental operating permit request from Myles Gordon, to operate a residential vacation rental at 342 West Lake Drive, Lake Lure, North Carolina (Tax PIN 227519)

Mr. Burton, Ashley Gordon, property owner, and Joshua Guthmann, 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. Ms. Gordon and Mr. Guthmann did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Myles Gordon is requesting a vacation rental operating permit (VROP) to operate a 6-bedroom residential vacation rental (RVR) at 342 West Lake Drive North, Lake Lure, North Carolina. The property is located in the R-3 Residential zoning district, and there is an existing single-family dwelling on the lot.

Mr. Burton stated this request was sent to the Development Review Committee and no comments were received. He noted he received no correspondence from anyone regarding this request. He explained that the GIS database does not provide anything on this property at all. He stated he has visited the property and can testify there is in fact a home there. He noted a parking area has been established.

Mr. Guthmann testified that the house does have six bedrooms and Mr. Burton testified that he has been inside all six bedrooms in the home.

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

With regard to application number VROP-2017013 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. Ms. Weaver seconded the motion. Mr. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

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

(E) VROP-2017014, a vacation rental operating permit request from Melinda Knowles, to operate a residential vacation rental at 112 Neighborly Drive, Lake Lure, North Carolina (Tax PIN 1607264)

Mr. Burton and Andy Knowles, 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. Knowles did not wish to challenge the Board for cause.

Mr. Burton presented the case. He mentioned he did not get the address correct in the memo to the Board; however, it was advertised correctly. He stated that Melinda Knowles is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental (RVR) at 112 Neighborly Drive, Lake Lure, North Carolina. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot.

Mr. Burton stated this request was sent to the Development Review Committee and no comments were received. He noted he received no correspondence from anyone regarding this request.

Mr. Stockdale pointed out that the property card lists the house as having four bedrooms. Mr. Knowles stated that is incorrect; the house has only three bedrooms. Mr. Knowles noted he does not have house numbers at the street but would add those. He stated there are house numbers on the house.

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

With regard to application number VROP-2017014 for a vacation rental operating permit to operate a residential vacation rental in the R-1 residential 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. Ms. Weaver seconded the motion. Mr. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

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

(F) ZV-2017002, a 15-foot variance request from a 35' front yard zoning setback requirement for the R-4 zoning district by Mary Stroman; Doug Kelly, agent, at 197 Garner Drive in Lake Lure (Tax PIN 1644649)

Mr. Burton, Ms. Stroman, and Mr. Kelly 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. Stroman and Mr. Kelly did not wish to challenge the Board for cause.

Mr. Burton presented the case. The memo in the packet stated:

"Mary Stroman, through Doug Kelly, agent, is requesting a 15-foot variance from the Town's front yard setback requirements for an existing mixed-use structure located at 197 Garner Drive, Lake Lure, North Carolina. The property is located in the R-4 zoning district."

It is the desire of the agent, Doug Kelly, to convert this existing structure into a traditional single family dwelling through changes to the lakefront façade/roofline, and another small addition to the structure, all subject to a review for zoning compliance.

The structure was originally constructed around 1999 as a three car garage with an apartment above, apparently as a subordinate and accessory use to a home built on an adjacent parcel; with both parcels under common ownership. This remains the current configuration of the building, except that Ms. Stroman, not the adjoining property owner, is now the current owner of the parcel that is the subject of this proceeding.

The proposed conversion to a traditional single family dwelling and the requisite zoning permit required to permit the proposed additions has precipitated the applicant's solicitation of the Board for this variance to address a discovered encroachment of the structure into the front-yard setback.

The severity of the surveyed encroachment into the established front-yard setback initially set staff in motion to see if a variance had previously been issued for this structure to legitimize its location.

After much research, including a trip to an off-site storage location to view and physically sort through individual files from the 1999 era, no variance information was discovered; and, to great consternation, no record of any zoning permit for the original construction was discovered either.

Further, R-4 zoning was already established at this location in 1999. The R-4 zoning district mirrors the R-1 zoning district in that garage apartments require the granting of a Conditional Use Permit by the Board of Adjustment. There is no record of a Conditional Use Permit having been granted for this use at this location. Uses of land cannot be varied in North Carolina, and the proposed conversion to a traditional single family dwelling would remedy the current illicit and unpermitted use (garage apartment).

The public records laws of the State of North Carolina have superseded the records-retention efforts of the Rutherford County Building Inspector's office as well, and there are no records available from that agency from this time period, either. Clearly, a Certificate of Occupancy was issued for the structure as it is fully energized, occupied and functional and has been for many years."

Mr. Burton testified that he has looked extensively through all files to try and locate a Conditional Use Permit or anything on this property and has been unsuccessful. He did not feel that this is a hardship the applicant had any control over.

Mr. Kelly stated he recently spoke with one of the original builders who stated he wanted to remain anonymous. He claimed the garage received a side yard setback variance before the property was split into two parcels, which then created a front yard setback problem. Mr. Kelly stated his intention is to build out from the garages to make a single family home. He noted he plans to improve landscaping and runoff issues.

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

With regard to Case Number ZV-2017002, 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. Stockdale seconded the motion. Mr. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

The Board felt that all requirements were met and the hardship was not a result of the applicant.

NEW BUSINESS

- (A) Discuss potential meeting dates for September meeting as the Chair and CEC shall be unavailable for the regular meeting date**

Chairman Kilby explained that he and Mr. Burton would not be able to attend the September meeting date. The consensus of the Board was to meet on September 28th at 1:00 p.m. instead. Mr. Stockdale and Chairman Kilby both stated they would also not be here on that date. Chairman Kilby stated that the LSAB would also meet on September 28th.

Mr. Lusk moved to change the regular meeting date of the BOA/LSAB to September 28, 2017. Mr. Owensby seconded. Mr. Lusk, Mr. Owensby, Mr. Stockdale, Ms. Weaver, and Chairman Kilby voted in favor.

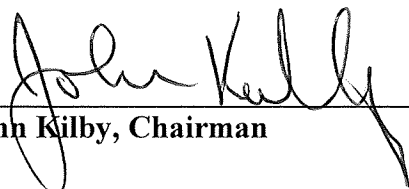
OLD BUSINESS

None

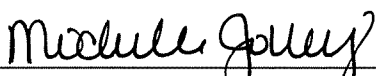
ADJOURNMENT

Ms. Weaver made a motion seconded by Mr. Owensby to adjourn the meeting. All voted in favor. The meeting was adjourned at 2:10 p.m. The next regular meeting is scheduled for Thursday, September 28, 2017 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary