



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

**Tuesday, March 23, 2021
1:00 p.m.**

This meeting was held digitally over Zoom.

The Vice Chairman called the meeting to order at 1:09pm

ROLL CALL

Present:

**Wyn Hardy
Neil Gurney, Vice Chairman
Scott Doster- Alternate
Greg Gardner
Al Joyner
Patrick Bryant, Council Liaison
Kimberly Sayles- Alternate**

**Absent: Melvin Owensby, Chairman
Betty Ross- Alternate**

**Also Present: Mitchell Anderson, Assistant Community Development Director
Mike Williams, Development and Environment Review Specialist
Sha'Linda Pruitt, Recording Secretary**

APPROVAL OF THE AGENDA

Vice Chairman Gurney asked for a motion to approve the agenda. Mr. Hardy made a motion to approve the agenda and Mr. Joyner made the second. All voted in favor.

APPROVAL OF THE MINUTES

Vice Chairman Gurney asked for a motion to accept the minutes as amended. Mr. Gardner made the motion to approve and Mr. Hardy made the second. All voted in favor.

NEW BUSINESS

(a) Hearings

1. CU-2021001, a conditional use permit request for the use of an existing commercial building as a vehicle rental service within the CG Commercial General Zoning District by Robert Rothrock at 2564 Memorial Hwy Lane, Lake Lure, North Carolina (Parcel Number 1604850).

All parties were sworn in who wished to testify.

The Vice Chairman asked if anyone has any ex-parte communications with the applicants? No board member had any previous discussions concerning this case. Mr. Wynn noted that he recently spoke to Hope Wittmer the owner of the property however no discussion of this case took place.

Staff began presentations.

Robert Rothrock is requesting a conditional use permit for the use of a unit within an existing commercial building as a vehicle rental service within the CG Commercial General Zoning District at 2564 Memorial Hwy Lane, Lake Lure, North Carolina (Parcel Number 1604850).

Additional Information for the Board:

- 1) The current commercial structure is 6,000 sf containing 4 units.
The current parking lot contains 32 parking spaces, including one handicap accessible space. The main ingress and egress to this commercial facilities parking area is off of Memorial Hwy, and a secondary ingress and egress off of Harris Rd. The parking lot is also connected to the adjacent parcel's parking area, which is serviced by another ingress and egress point from Memorial Hwy.
- 2) Mr. Rothrock has provided a complete application, and to-scale plans. This unit is serviced by the Town's sewer and water system. These documents are included in the meeting packet.

Mr. Gurney asked does the landlord have any restrictions on parking? Mr. Gurney then stated that management of the parking space was not an issue that Town would be involved in. That would be between the landlord and the business operator.

Mr. Rothrock stated that there have been many talks with the landlord and we are all of the same page concerning parking.

The Board unanimously agreed to postpone this discussion and will resume for deliberations on 3/24/2021.

2. ZV-2021001, a 9.5' variance request from a 10' side yard zoning setback requirement for the R-1 zoning district by Andrew and Sara Koch at 147 Tryon Bay Circle in Lake Lure, N.C. (Tax PIN 232595).

All parties were sworn in.

The Vice Chairman asked if anyone has any ex-parte communications with the applicants? No board member had any previous discussions concerning this case. The applicant did not wish to challenge.

Mr. Anderson began the staff presentation.

This matter came before the Lake Lure Board of Adjustment on March 23rd and 24th, 2021 on the application of Andrew and Sara Koch. Mr. and Mrs. Koch requested a 9.5 foot setback variance from a 10 foot side yard setback required for the R-1 zoning district resulting in a 0.5 foot side yard setback for the property located at 147 Tryon Bay Circle in Lake Lure, N.C. The property tax pin is 232595.

Andrew and Sara Koch are requesting a variance for the reconstruction of a deck onto their current residence located at 147 Tryon Bay Circle in Lake Lure, N.C. (Tax PIN 232595). This property is located in the R-1 Residential Zoning District.

- 1) The variance request is to reduce the side yard setback from the required 10' to 0.5', for a variance of 9.5'.
- 2) The pre-existing non-conforming structure located at 147 Tryon Bay Circle was built prior to the zoning regulations being adopted.
- 3) Unpermitted work to rebuild decks was in progress at this location and a stop work order was issued on 1/19/21. On 1/21/21, a permit was issued for the construction of a deck however, the

3) There is an existing commercial center sign on the property.

A prior building permit that was issued for the interior design however that application was pulled and closed.

Pursuant to §92.046(B)(2) this request requires review by the Development Review Committee and the Zoning and Planning Board for comments. They did not recommend any additions for the applicant but did recommend that the request be approved.

The board asked for clarity of the commercial use. Staff explained that for the purpose of the conditional use permit it does address automobile and or boat sales lots for the retail sale of new and used automobiles and or boats but excluding wholesale sales lots of any description and vehicle fix-up shops in the current zoning regulations statute.

Mr. Hardy asked about the prior issues with use of water and sewer for this property. Has this been addressed?

Mr. Anderson stated that no issues have been reported to him but that Mr. David Arrowood our Public Works director is also a part of the Development Review Committee and he did not address any known issues relating to sewer for this case.

Mr. Joyner asked whether there are any indications of how many of the 32 parking spaces will be dedicated to this particular business?

Mr. Anderson stated that there was no accurate way to project how many spaces will or will not be used by the business in the future as of now. Currently there are plenty of spaces available for this business and as their business increases the subject of adequate parking can be revisited.

Mr. Joyner pointed out that since the zoning regulations exclude fix up shops, will there be some level of provisions set up for repairs?

The floor was opened for the applicant to testify.

Mr. Rothrock explained that the business features late model jeep wranglers from 2018-2020 soft top, our purpose is for entertainment. Any repairs would be conducted off site not of the property. We are starting out with two jeeps and seeing where things go from there.

Mr. Rothrock explained that his application is for the use of one of four units of existing Commercial Center (unit 2564/ former bank space / 1,330 sq ft) as indoor retail sales of Jeep-branded and similarly-related clothing, gifts, accessories and rental office for hourly or daily Jeep vehicles, with rental vehicle(s) parked out of doors in existing, paved parking lot.

builder wishes to build the deck back in its original location. As the original deck was voluntarily removed, the new deck must comply with current setback requirements or request a variance from the setback.

4) The applicant has provided a complete application with to-scale plans.

The deck was removed prior to the submission of the application.

Mr. Doster asked if any neighbors had filed any complaints. Mr. Anderson stated that concerns were expressed to him from one neighbor concerning the recent survey that was conducted more so than of the location of the deck. Mr. Anderson referred the customer to this hearing being about the setback not the survey.

Vice Chairman Gurney asked about the original location of the setback. Mr. Anderson provided clarity. The current site plan reflects the location of the setback.

Mr. Joyner asked if the deck built on someone else's property? Mr. Anderson stated no but that it is located very closely.

The current structure was built before the existing regulations. The entire house is built in the setback.

Josh Bustamante of BG Construction Group spoke in regards to the development and necessity of the variance request. The deck had was in extremely poor condition and was pulling away from the house. Based on our research we didn't feel that we needed to have a permit to remove the deck. We were conducting work on the lower deck and in order to safely completely that work the upper deck had to be removed. It was barely latched on and hanging off by up to 3 inches from the wall in some places.

Mr. Gurney, asked the staff if the deck hadn't been taken off what is the normal course of action that the applicant would have taken seeing that it is non-conforming.

Mr. Anderson stated that normally a site inspection and the replacement or repair of the deck prior to removal the deck would have had to be permitted. They could never expand the deck but would have to place the new deck in the prior location.

When we purchased the house in November the property came with a warning sign as not to go out onto the deck. I have small children and elderly parents and not having a safe secured deck creates a hardship for the family.

Mr. Doster asked should we include the home inspections in the packet since Mr. Bustamante provided testimony? The members discussed and decided to include the home inspection.

The Board unanimously agreed to postpone this discussion and will resume for deliberations on 3/24/2021.

OLD BUSINESS

None

RECESS

The Chairman asked for a motion to recess the meeting. Mr. Gardner made a motion to recess the meeting until March 24th at 1:00 p.m. Mr. Doster seconded and all voted in favor. Meeting recessed at 1:44 pm

Minutes of the Reconvened Regular Meeting of the Board of Adjustment

**Wednesday, March 24, 2021
1:00 p.m.**

This meeting was held digitally over Zoom.

The Vice Chairman called the meeting to order at 1:06pm

Vice Chairman Gurney asked for a motion to open the cases continued from March 23, 2021. Mr. Hardy gave the motion and Mr. Joyner gave the second all voted in favor to begin the continuance.

ROLL CALL

Present:

**Wyn Hardy
Neil Gurney, Vice Chairman
Scott Doster- Alternate
Greg Gardner
Al Joyner
Patrick Bryant, Council Liaison
Kimberly Sayles- Alternate**

Absent: Melvin Owensby, Chairman
Betty Ross- Alternate

Also Present: Mitchell Anderson, Assistant Community Development Director
Mike Williams, Development and Environment Review Specialist
Sha'Linda Pruitt, Recording Secretary

1. CU-2021001, a conditional use permit request for the use of an existing commercial building as a vehicle rental service within the CG Commercial General Zoning District by Robert Rothrock at 2564 Memorial Hwy Lane, Lake Lure, North Carolina (Parcel Number 1604850).

FINDINGS OF FACT

Based on the above testimony, the Board makes the following uncontested findings of fact:

- (1) The property identified by Tax PIN 1604850 and located at 2564 Memorial Hwy, Lake Lure, North Carolina is Zoned CG, Commercial General. Car rental facilities are a permitted conditional use in the CG, Commercial General zoning district.
- (2) The application for a conditional use permit is complete and demonstrates that the proposed request will be in compliance with the Town of Lake Lure Zoning Regulations.
- (3) The existing structure is connected to the Town's sewer system and a private water system, which will not affect public health.
- (5) Existing parking is adequate for the proposed use.

CONCLUSIONS OF LAW

- (A) The proposed use, if operated according to the application and plans submitted, meets all of the standards and requirements of the Zoning Regulations of the Town of Lake Lure,

(B) The applicant has demonstrated the proposed use, if operated in accordance with the application as submitted, complies with the required findings for conditional uses contained in §92.046(D) of the Zoning Regulations of the Town of Lake Lure, to wit:

- 1) The proposed use will not materially endanger the public safety;
- 2) The proposed use will not materially endanger the public health;
- 3) The proposed use will not substantially injure the value of adjoining or abutting property;
- 4) The proposed use will meet all the standards and requirements specified in the regulations; and
- 5) The location and character of the proposed use and structures will be in harmony with the neighborhood character and in general conformity with applicable elements of the Town's Comprehensive Plan.

DECISION

Accordingly, the Board of Adjustment hereby authorizes the issuance of a Conditional Use Permit to Robert Rothrock to establish a car rental facility in Lake Lure, NC pursuant to § 92.031C(C)(3) of the Zoning Regulations.

Mr. Gardner gave the motion to find that the application is complete and satisfied all requirements. Mr. Hardy gave the second, all voted in favor.

The case was closed at 1:17

2. ZV-2021001, a 9.5' variance request from a 10' side yard zoning setback requirement for the R-1 zoning district by Andrew and Sara Koch at 147 Tryon Bay Circle in Lake Lure, N.C. (Tax PIN 232595).

The contractor did his due diligence and felt he did not need a permit issued by the town but the town should have been consulted first. The contractors needs to be more forthcoming. Mr.

Doster asked whether the applicant will need to conduct a post survey. Staff spoke to the regulations and requirements regarding surveys.

The lower deck affects the neighbors so how will that be managed. Mr. Anderson stated that would be a civil suit for the property owners to pursue.

TESTIMONY

Testimony in this case is accurately reflected in the minutes of the meeting of March 23rd, 2021 and March 24th, 2021

FINDINGS OF FACT

Based on the above testimony, the Board makes the following uncontested findings of fact:

- (1) Andrew and Sara Koch are the owner of the property identified by tax pin 232595 and located at 147 Tryon Bay Circle in Lake Lure, N.C, which is zoned R-1.
- (2) The pre-existing non-conforming structure located at 147 Tryon Bay Circle was built prior to the zoning regulations being adopted.
- (3) The property, causing a hardship on the property owner.
- (4) Andrew Koch and Sara Koch, seek a 9.5 foot setback variance from a 10 foot side yard setback required for the R-1 zoning district resulting in a 0.5 foot side yard setback

CONCLUSIONS OF LAW

- (A) Unnecessary hardship would result from the strict application of §92.040 of the Zoning Regulations as it pertains to the encroachment of a structure into the side yard setback.
- (B) The hardships result from the reduced buildable area are considered an extraordinary and exceptional condition pertaining to the particular piece of property.
- (C) The applicant bought the house as it was. Therefore, the hardship did not result from the actions of the applicant.
- (D) The request is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice.

DECISION

Accordingly, the Board of Adjustment hereby authorizes the issuance of the zoning variance subject to the following conditions to Andrew Koch and Sara Koch for their property at 147 Tryon Bay Circle in Lake Lure, N.C. pursuant to § 92.086 of the Zoning Regulations.

With regard to Case Number ZV-2021001, I move the Board to find that the applicants have demonstrated that unnecessary hardships exist as per the following testimony:

Unnecessary hardships would result from the strict application of the regulations. A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

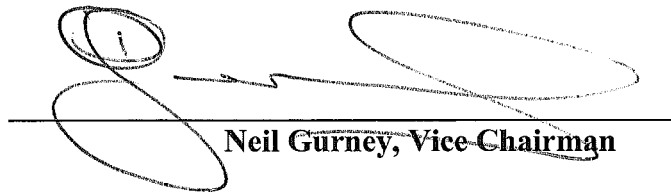
The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question that are not applicable to other lands or structures in the same district.

The hardship did not result from actions taken by the applicant. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The requested variance is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare. Accordingly, I move the Board to grant the requested variance in accordance with and only to the extent represented by the application **Mr. Joyner made the motion Mr. Hardy gave the second. All voted in favor.**

Mr. Gardner made the motion to adjourn and Mr. Doster gave the second. All voted in favor. The meeting ended at 1:30pm

ATTEST:



Neil Gurney, Vice Chairman

Sha'Linda Pruitt, Recording Secretary