

**Minutes of the Regular meeting of the
Lake Structure Appeals Board**

**Tuesday, February 24, 2015
1:30 p.m.**

Chairman Webber called the meeting to order at 1:40 p.m.

ROLL CALL

Present: Stephen Webber, Chair
 David Butts
 Ronald Erickson, Alternate
 John Kilby
 Mark Hoek, Seated Alternate
 Patricia Maringer
 Norman McGlohon, Alternate
 John, Moore, Council Liaison

Also Present: Clint Calhoun, Environmental Management Officer

Absent: Bob Cameron, Council Liaison
 Melvin Owensby

Chairman Webber welcomed Ronald Erickson to the Board as an Alternate member.

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Chairman Webber stated that Norman McGlohon was present at the last meeting and was not listed as being present. He also stated that his first name was misspelled at the top of page two of the minutes and should be corrected.

Ms. Maringer made a motion to approve the minutes of the January 27, 2015 as

amended. Mr. Butts seconded the motion. All voted in favor.

NEW BUSINESS

None

HEARINGS

- (A) LSAV-2015001, a request by Neil and Kathy Gurney from Section 94.06 of the Lake Structure Regulations. The property (Tax PIN 221891) is located at 174 Havnaers Point Circle, Lake Lure, North Carolina.**

Mr. Calhoun, Mr. and Ms. Gurney, and Thomas King, neighbor, were sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. and Ms. Gurney did not wish to challenge for cause.

Mr. Calhoun presented the case. He stated the only correspondence he received from adjoining property owners was from Thomas King. He pointed out that the existing dock was at one time a boathouse which was destroyed by a tree. He stated the former property owner removed the boathouse structure, leaving only the dock, and no attempt was made to rebuild the boathouse. He pointed out the Gurney's want to renovate the dock which is not allowed under the Lake Structure Regulations without a Lake Structure Permit. He felt that the work that had taken place exceeded the allowable threshold with regards to the cost limit on repairs, making this a reconstruction project. He mentioned that part of the pre-existing dock had already been removed and new posts put in place, making this a new structure and subject to the requirements of acquiring a Lake Structure Permit.

Mr. Gurney mentioned that the property, including the dock, was surveyed when they bought the property and stated they are requesting to rebuild the dock in the exact place as the original dock was built and would not go outside of the footprint of the original survey. Chairman Webber pointed out that the reconstruction the Gurney's were requesting did not meet all the regulations. He explained that what they were attempting to reconstruct was actually two slips because, according to the regulations, any mooring that is confined on three sides is considered a slip. He explained they are not allowed to have a slip on their property but are allowed one mooring. Mr. Calhoun agreed that it did not meet the current regulations. Mr. Gurney replied stating he spoke with Mr. Calhoun and was told he could work on the pier as long as he did not exceed 50% of the appraised value of the repair. He stated the cost of the pier was \$500. Mr. Calhoun reported that the tax value is only \$300 according to the property card. Mr. Gurney stated he had an appraisal when he bought the house of \$5,000 to replace the dock. He stated he would be willing to have another appraisal done. Chairman Webber mentioned he could not vote in favor of the variance because the request is for two boat slips on a property that is only allowed one mooring.

Mr. Calhoun mentioned that the Gurneys originally wanted to build a boathouse and stated he spoke with Ms. Gurney, explained the process to her, and explained that she would need a variance. He stated he also discussed with her about making repairs. He reported he visited the site and saw that the contractor had already started to tear some things down. Due to this, he stated he could not determine whether it would be repairs or reconstruction. Ms. Gurney replied that they never wanted to build a boathouse. However, she stated they did originally request a roof to be built in the same style as their house but was told they could not do that. She stated they then requested to repair what they have and they were told by Mr. Calhoun that they could as long as it was done within the same footprint and did not exceed 50% of the total value. She pointed out that a large tree fell across the boathouse and destroyed a section of the dock and some of the pilings. She mentioned the only way to repair it was to put in new pilings. She mentioned they put in new pilings in the exact footprint that they were in before. She stated they want to make it look nice and they want to keep it in the same footprint as the original.

Mr. Kilby felt there may have been a misunderstanding between the property owners and Mr. Calhoun, and because of this he stated he would most likely vote in approval of the variance. Ms. Maringer asked Mr. Calhoun if the new pilings were in place when he visited the site and Mr. Calhoun stated yes. Ms. Gurney added that the pilings were not cemented into the ground. Mr. Calhoun stated it was to his understanding that the Gurney's only wanted to make some repairs; he did not know the current configurations of the dock that was there. Discussion ensued.

Thomas King, neighbor to the Gurney's, stated that when the tree fell across the boathouse the previous property owner came before the Board and requested building a new boathouse. He stated the Board denied his request and the he left the damaged boathouse as it was. He mentioned that he was not opposed to the Gurney's request.

Mr. Butts pointed out that the new set of footprints do not exactly match the original footprints of the boathouse. Mr. Gurney replied that there is a center piece showing on the new footprints that is not shown on the original. He pointed out that this piece is on the original dock that is now under water. He stated that Mr. McEntire surveyed the property approximately two years ago when they purchased it. He added that the center piece of the dock was not standing when they purchased the property. Mr. Gurney conveyed they would be content with replacing the dock exactly as it is shown on the original footprints and without the center piece. Mr. Gurney mentioned he did have an appraisal of the house and the dock, but did not have it with him. He stated the original tax value of the dock was \$1,400. He mentioned the depreciated tax value is listed as \$300.

Mr. Calhoun explained that cosmetic repairs, such as replacing a board or two, are generally considered a repair and major work involving piling replacements or structures, etc., is considered reconstruction which requires a permit. He stated this is in Section 94.06 of the Lake Structure regulations. Mr. Calhoun explained the appeal process. He conveyed that his decision, based on what he saw when he visited the property, was that it was reconstruction. He stated he stands with his decision as being reconstruction. He

explained that his determination of the 50% of the total value of the structure that is being repaired is based on the value listed on the tax records. He mentioned that the regulations do not dictate how to determine 50% of the total value. Mr. Gurney stated the dock was added into the appraisal of the house and added an additional \$5,000 to the value of the house. Chairman Webber conveyed that it does not constitute that the dock is appraised at \$5,000; it only adds \$5,000 to the total value of the house. Mr. Gurney mentioned he was willing to have the dock appraised separately.

There was no further discussion, so Chairman Webber closed the hearing.

During deliberations, Chairman Webber mentioned the proposal in the packet and the application were not amended. He pointed out that the Gurney's are asking for a variance to build a structure that is not in the same footprint as was previously there. Mr. Butts and Mr. Kilby felt that repairs are not specifically defined in the regulations. Chairman Webber stated the regulations explain that repairs which cost 50% or more than 50% of the appraised value shall constitute reconstruction. Ms. Maringer proposed reopening the hearing to allow the Gurney's the option to bring back a modified footprint and/or an appraisal of the dock to try and meet the regulations as a repair. Mr. Butts suggested the Board vote on the variance request. He stated if the Board votes against the request, the Gurney's could bring forth an updated appraisal of the dock to Mr. Calhoun and Mr. Calhoun could then determine if the dock is a repair. Chairman Webber pointed out that the Gurney's are allowed one pier and one mooring, but are not allowed a slip. Discussion ensued.

Ms. Maringer made a motion to reopen the hearing. Mr. Hoek seconded the motion. Mr. Butts, Mr. Kilby, Mr. Hoek, Ms. Maringer, and Chairman Webber voted in favor

Mr. Kilby asked Mr. Calhoun if the Gurney's could construct a dock in a T or an L shape. Mr. Calhoun stated they could do a T or L shape as long as all requirements are met and does not extend outside the setbacks. He added that they are only allowed one mooring. Ms. Maringer stated the Gurney's could resubmit plans to construct a dock at either an L or a T shape. She stated it would still require a variance but what they have currently requested does not meet the requirements for a variance. Mr. Kilby conveyed to the Gurney's that they could ask for a continuance and come back with the current survey. He added that they could continue work on the boardwalk and one extension without adding to a non-conformity. Discussion held.

Mr. Calhoun pointed out that Section 94.05A of the Lake Structure Regulations states:

"...the minimum measurable shoreline length required to construct any lake structure shall be 100 feet; provided that the minimum measurable shoreline length required to construct any lake structure on lots of record that existed prior to December 15, 1992, shall be 80 feet; and further provided that seawalls and only one pier not more than four feet in width may be constructed on a lot provided minimum setbacks are met."

Mr. Calhoun mentioned that there are no limitations in the regulations regarding a dock. He stated he agrees that the Gurney's could build a dock in the same footprint as the existing dock. He also agreed they could build a pier no wider than four feet and be contiguous to the dock. He added that the dock and the pier could be built in an L shape but not in a T shape. Mr. Calhoun stated they could repair the existing pier up to eight feet as long as they do not go over the 50% threshold; however, if they reconstruct a new pier the regulations only allow up to four feet wide. Mr. Calhoun pointed out they would need to provide him a value of what is currently there.

There was no further discussion so Chairman Webber closed the hearing.

After deliberations Mr. Kilby made the following motion:

Mr. Kilby suggested that the Board continue the case to a later date to allow more time for the applicants to correspond with Mr. Calhoun and bring back the documentation they need for the variance request. Chairman Webber felt that the Board should vote on the variance requested and not continue the request to a later date. He did not feel the variance could be granted in accordance with the request on their application and mentioned that the application had not been amended. Ms. Maringer agreed and stated she could not vote in approval of the variance request.

Chairman Webber made a motion that the variance requested was for reconstruction and not repairs. Ms. Maringer seconded the motion. Ms. Maringer, and Chairman Webber voted in favor. Mr. Butts, Mr. Hoek, and Mr. Kilby voted no.

Chairman Webber explained that the motion did not pass; however, he stated it did not constitute it as repairs. Mr. Kilby conveyed that an accurate appraisal was not provided and he could not determine how much 50% of the appraised value would be. Mr. Butts agreed but stated an appraisal was provided showing a \$300 appraised value. After discussion, Mr. Butts made the following motion:

With regard to application number LSAV-2015001 for a variance from Section 94.05 of the Lake Structures Regulations, Mr. Butts moved the Board to find (1) owing to special or unusual conditions, a literal enforcement of the provisions of the regulation(s) will result in practical difficulty or unnecessary hardship, and (2) in the granting of the variance the spirit of the Lake Structures Regulations shall be observed, the public safety and welfare secured, and substantial justice done. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Kilby seconded the motion.

Ms. Maringer felt that there were unusual conditions and unnecessary hardships on the property owners. However, she stated she could not vote in the affirmative based on the facts given and the regulations. Chairman Webber noted that the variance request is based on their application. Following discussion Chairman Webber made the following motion:

Chairman Webber made a motion that the BOA agrees and recommends that the Lake Structure permit fees for a new application be waived for the Gurneys. Mr. Hoek seconded the motion. Mr. Butts, Mr. Kilby, Mr. Hoek, Ms. Maringer, and Chairman Webber voted in favor

Mr. Butts, Mr. Kilby, Mr. Hoek, Ms. Maringer, and Chairman Webber voted against the main motion.

(B) LSP-2015009, a request by Bill Okler, agent for Four Angels LLC for approval of a decktop accessory structure. The property (Tax PIN 222101) is located at 117 Neighborly Drive, Lake Lure, North Carolina.

Mr. Calhoun, Mr. Okler were sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. Okler did not wish to challenge for cause.

Mr. Calhoun presented the case. He stated the property owner is requesting to add a decktop accessory structure on top of an existing boathouse that is currently being renovated. He pointed out the packet includes the application, agent authorization letter, copy of home insurance, and a copy of the surveys.

Chairman Webber stated he felt that this request was well within the regulations.

There was no further discussion, so Chairman Webber closed the hearing.

With regard to application number LSP-2015009 for a decktop accessory structure, Mr. Kilby moved the Board to find that the proposed structure (1) meets the standards for a decktop accessory structure contained in §94.05(F)(2) of the Lake Structures Regulations, and (2) will not materially obstruct the view of the lake from any adjacent or nearby properties, Accordingly, he further moved the Board to approve the application in accordance with an only to the extent represented therein. Ms. Maringer seconded the motion. Mr. Butts, Mr. Kilby, Mr. Hoek, Ms. Maringer, and Chairman Webber voted in favor.

The Board felt that all requirements were met. The permit was granted with no conditions.

OLD BUSINESS

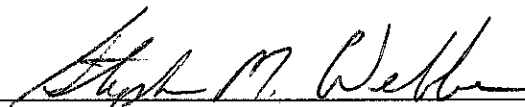
Mr. Kilby asked about the current lake levels and the schedule to return to full pond. Mr. Calhoun explained the lake will return to full pond starting on March 1, 2015.

ADJOURNMENT

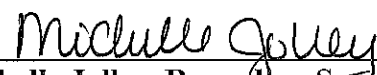
Mr. Kilby made a motion seconded by Mr. Butts to adjourn the meeting. All voted in favor.

The meeting was adjourned at 3:44 p.m. The next regular meeting is scheduled for March 24, 2015 at 1:30 p.m.

ATTEST:



Stephen M. Webber, Chair



Michelle Jolley, Recording Secretary

