

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL  
HELD TUESDAY, JULY 8, 2008, 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER**

**PRESENT:** Mayor Jim Proctor  
Commissioner Wayne Hyatt  
Commissioner Jeanine Noble  
Commissioner Linda Turner

Steve Wheeler, Town Manager  
J. Christopher Callahan, Town Attorney

**ABSENT:** Commissioner Russ Pitts

**CALL TO ORDER**

Mayor Proctor called the meeting to order at 7:00 p.m.

**INVOCATION**

Attorney Callahan gave the invocation.

**APPROVE THE AGENDA**

After discussion, Commissioner Hyatt made a motion to approve the agenda as amended. Adding items for closed session to discuss legal matters and attorney/client privilege in accordance with G. S. 143-318.11(a) (3), G.S. 143-318.11(a)(4) to discuss the location/expansion of a business and G.S. 143-318.11(a)(5) employment contract. Adding an item on the agenda as 9d. under new business to schedule a workshop meeting to hold discussion regarding fire departments and fire protection. Removed item 9a off the agenda regarding a request from Doug Long. Commissioner Turner seconded the motion and the vote of approval was unanimous.

**PUBLIC FORUM**

Mayor Proctor invited the audience to speak on any non-agenda item and/or consent agenda topics and no one requested to speak.

**STAFF REPORTS**

Town Manger Wheeler reported on the council action items log. He made copies of this report available at the meeting for anyone interested.

<b>COUNCIL LIAISON REPORTS &amp; COMMENTS</b>
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Commissioner Turner reported on the activities of the Parks and Recreation Board. Commissioner Turner suggested that the rental rates for usage of the town's gazebo, the meadows and the community hall be reviewed for possible increases in fees. Council members agreed to direct the town manager to make these reviews and report back to them with his recommendations.

Commissioner Noble reported on the activities of the Lake Advisory Committee and the Golf Course Committee.

Commissioner Hyatt reported on the activities of the Board of Adjustment.

<b>CONSENT AGENDA</b>
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Mayor Proctor presented the consent agenda and asked if any item should be removed before calling for action.

Commissioner Noble moved, seconded by Commissioner Turner, to approve the consent agenda items as presented. Therefore, the consent agenda, incorporating the following items were unanimously approved:

- a. minutes of the June 10, 2008 (regular meeting and closed session); and
- b. a request from Mark Fowler and Kasey Green to suspend the town's alcohol ordinance in order to serve beer and wine during a wedding reception being held inside the community hall of the Lake Lure Municipal Center on July 25, 2008, from 5:00 p.m. until 9:00 p.m.

**End of Consent Agenda.**

<b>UNFINISHED BUSINESS:</b>
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<b>a. Other Unfinished Business</b>
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There was no other unfinished business for discussion.

<b>NEW BUSINESS:</b>
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<b>a. Consider a Request from Doug Long on Behalf of the Lake Lure Dragon Boat Organization Regarding Practice Sessions in the River, Waiver of Boat Permit Fees, Suspension of Boat Length Restriction, and Suspension of Peddling Ordinance During this Event</b>
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Town Council removed this item off the agenda per Doug Long's request.

**NEW BUSINESS:**

**b. Discussion Relating to Variance Standards for the Zoning Regulations**

Council members reviewed a memorandum from Community Development Attorney Michael Egan relating to variance standards for the Zoning Regulations.

After discussion, Commissioner Turner made a motion to direct the zoning and planning board to draft revisions to Section 92.085 (C) of the zoning regulations to include the recommendations outlined in a memorandum dated June 27, 2008 from Community Development Attorney Michael Egan regarding variance standards. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

**M E M O R A N D U M**

**To:** The Honorable Mayor and Commissioners  
**From:** Michael Egan, Community Development Attorney  
**Date:** 27 June 2008  
**Subject:** Variance Standards

§92.085(C)(1)(f) of the Zoning Regulations requires that the Board of Adjustment, in order to grant a variance, must find that "the variance requested is the minimum variance that will make possible the *legal* use of the land, building or structure" [emphasis added]. On several occasions, members of the Board of Adjustment have struggled with this standard.

I, too, struggle with it as I believe it sets too high a standard for a variance. Construed literally, it would mean that virtually no variances could be granted. Certainly, it goes well beyond the statutory criteria set forth in N.C.G.S. §160A-388(d):

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to

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the need for a variance, may be imposed on any approval issued by the board.

The most typical variance case heard by boards of adjustment involves a request for relief from dimensional requirements, lot width or setback requirements. A homeowner may want to build a deck or a home addition. It's not uncommon for the existing structure to lie within the setback. Occasionally, the neighboring property owner will testify that he or she has no objection to the request. Building the deck or the addition outside the setback may be possible; yet, it may just as well present a "practical difficulty or unnecessary hardship" which is not objectionable to neighboring property owners. I believe a literal reading of §92.085(C)(1)(f) might preclude the granting of a variance in such cases, inasmuch as the homeowner could continue to make *legal* use of the structure without any additions whatsoever.

After years of observing boards of adjustments, I've learned to trust the members to make sensible and fair resolutions of the cases they hear. It would be my recommendation to either delete this paragraph or revise it to read as does a similar provision in the City of Brevard's Unified Development Ordinance: "That the variance is a minimum one that will make possible the *reasonable* use of the property" [emphasis added].

Indeed, this is nearly indistinguishable from the standard articulated by Brough & Green in *The Zoning Board of Adjustment in North Carolina*: "If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property."

Furthermore, from a legal perspective, it might be preferable to revise §92.085(C) to make the Town's standards for granting variances the same as the statutory requirements, i.e., (1) practical difficulty or unnecessary hardship, (2) observance of the spirit of the ordinance, (3) maintaining the public safety and welfare, and (4) no use variances allowed. The findings currently in 92.085(C)(1) might be made into factors or considerations to guide the decision of the Board. My concern as a lawyer with the current language is that a decision of the Board might be overturned because the Board failed to specifically make one of those eight findings or because a decision, otherwise reasonable, was clearly in conflict with one or more of such findings.

The issue raised in the last paragraph can likely wait until such time as the Town undertakes adoption of a unified development ordinance. I recommend action on the first issue, i.e., legal versus reasonable use, be undertaken more expeditiously.

**NEW BUSINESS:**

**c. Consider Approval of Engineering Drawings for Construction of Docks Adjacent to the Police Department Dockage in the Harbor Area to be Used by the Town to House Debris Nets on Reels for Emergency Lake Clean-up**

Director of Lake Operations Dean Givens reviewed and answered questions regarding his request for approval of the boat dock plan engineering drawings designed by Kim B. Warner, PE, LLC of Forest City, North Carolina as submitted for construction of docks adjacent to the police department dockage in the harbor area to be used by the town to house debris nets on reels for emergency lake clean-up.

After discussion, Commissioner Noble made a motion to approve the boat dock plan engineering drawings designed by Kim B. Warner, PE, LLC of Forest City, North Carolina as submitted for construction of docks adjacent to the police department dockage in the harbor area to be used by the town to house debris nets on reels for emergency lake clean-up. Commissioner Turner seconded the motion and the vote of approval was unanimous. (Copy of engineering drawings for construction of docks are attached).

**NEW BUSINESS:**

**d. Schedule a Special Workshop Meeting Regarding Fire Departments and Fire Protection**

Town Manager Wheeler requested that town council schedule a special workshop meeting to discuss fire departments and fire protection issues.

After discussion, Commissioner Turner made a motion to schedule a special workshop meeting to be held on Thursday, July 17, 2008, 3:00 p.m., at the Lake Lure Municipal Center to hold discussion regarding fire departments and fire protection and hold a closed session during this meeting. Commissioner Noble seconded the motion and the vote of approval was unanimous.

**CLOSED SESSION**

The Mayor recessed the meeting at 7:35 p.m. for a break and reconvened the meeting at 7:45 p.m.

A motion was made by Commissioner Noble to enter into the closed session in accordance with G.S. 143-318.11(a) (3), G.S. 143-318.11(a) (4), and G.S. 143-318.11(a) (5) to: (1) discuss legal matters and attorney/client privilege including an update on the ongoing lawsuit between Patricia Hyatt and the Town of Lake Lure, (2) discuss the location/expansion of a business and (3) employment contract. Commissioner Turner seconded the motion and the vote of approval was unanimous.

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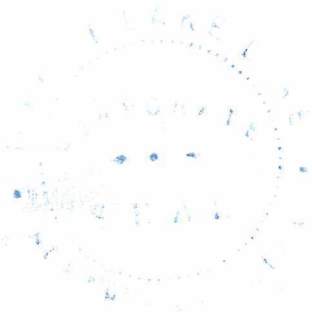
While in closed session, Council members voted to seal the minutes of the closed session meeting in order to avoid frustrating the purpose of the closed session.

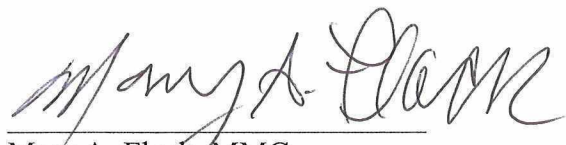
With no further items of discussion in closed session, Commissioner Hyatt made a motion to come out of the closed session meeting and re-enter the regular session of the town council meeting at 8:25 p.m. Commissioner Turner seconded the motion and the vote of approval was unanimous.

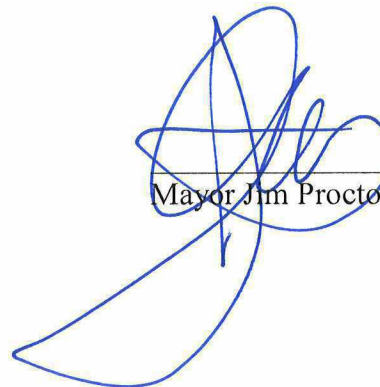
<b>ADJOURN THE MEETING</b>
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With no further items of discussion, Commissioner Noble made a motion to adjourn the meeting at 8:26 p.m. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

ATTEST:



  
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Mary A. Flack, MMC  
Town Clerk

  
\_\_\_\_\_  
Mayor Jim Proctor



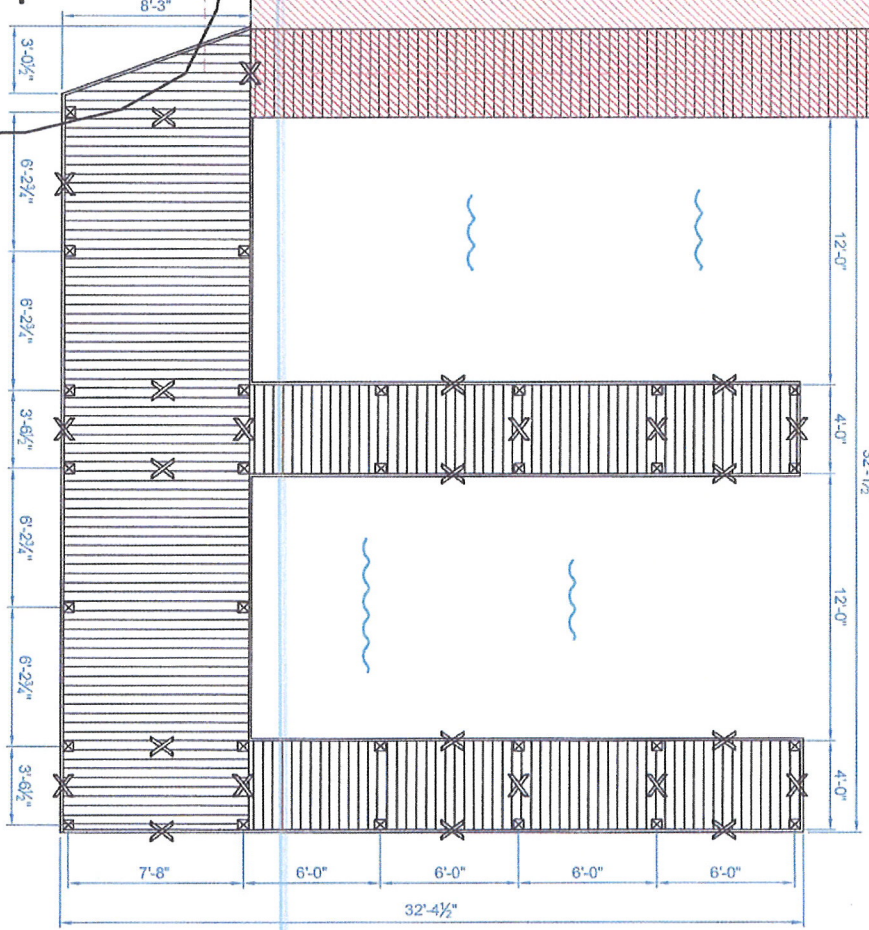
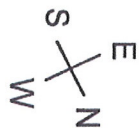
EXISTING BOAT HOUSE WITH  
WALKWAY ON RIGHT

**X** SYMBOL INDICATES WHERE  
CROSS BRACING IS REQUIRED  
BETWEEN SUBMERGED POSTS

NOTE:  
CONSTRUCTION OF BOAT DOCK TO BE 3/4" DECKING, 2X10 JOISTS 16"  
O.C., DOUBLE 2X10 GIRDERS NOTCHED 1.5" INTO 8X6 POSTS AND  
ATTACHED TO POSTS USING 1/2" GALVANIZED THRU BOLTS, 2 BOLTS  
PER BOARD END. JOISTS ARE TO BE ATTACHED TO BEAMS USING  
SIMPSON STRONG TIE 2X10 JOIST HANGERS OR 2X2 LEDGER AS PER  
NC BUILDING CODE. ENTIRE PERIMETER OF DECK TO BE Banded WITH  
PT 2X12'S SECURED FLUSH WITH TOP OF 5/4 DECKING BOARDS. ALL  
LUMBER TO BE PRESSURE TREATED FOR GROUND CONTACT.

PLAN VIEW  
SCALE 1/8"=1'-0"

LAND



CONSTRUCTION NOTES:

- A) SUBMERGED DECK POSTS SHALL BE EITHER 6" TREATED ROUND POSTS OR 6X6 TREATED POSTS AS SHOWN IN PLAN VIEW. TAPERED ON THE SUBMERGED END AND DRIVEN UNTIL REFUSAL WITH A TWO MAN, 75# MANUAL PILE DRIVER, OR EQUAL AS APPROVED BY ENGINEER. POSTS SHALL BE DRIVEN A MINIMUM OF 48" INTO LAKE BOTTOM FOR POST LENGTH GREATER THAN OR EQUAL TO 12'-0". OR 33% OF THE OVERALL LENGTH OF THE POST FOR LENGTHS LESS THAN 12'-0". BUT NO LESS THAN 3'. ALL PERIMETER POSTS TO BE PLUMB AND TRUE. +/- 1/4" PER FT.
- B) SPACING BETWEEN SUBMERGED POSTS NOT TO EXCEED SPACING SHOWN ON DRAWING UNLESS OTHERWISE APPROVED BY THIS ENGINEER.
- C) ALL LUMBER TO BE PRESSURE TREATED.
- D) DECK SURFACE SHALL BE PRESSURE TREATED, 5/4 DECK BOARDS OR 2X6 DECK BOARDS AS NOTED, SECURED W/ 2.5" CERAMIC COATED DECK SCREWS. NAILS ARE NOT PERMITTED TO SECURE DECKING ON NEW STRUCTURE.
- E) 2X6 CROSS BRACING (AS SHOWN IN CROSS BRACING DETAIL), BOLTED TO 6X6 W/ 1/2" GALVANIZED THRU BOLTS, 4 PER 2X6

ALL STRUCTURAL DETAILS NOT SHOWN HERE ARE TO BE AS PER NC BUILDING CODE  
REQUIREMENTS, APPLICABLE TO RUTHERFORD COUNTY AND TOWN OF LAKE LURE ORDINANCES.

**BOATDOCK PLAN**  
TOWN OF LAKE LURE  
LAKE LURE, NC 28746

**PLAN VIEW**  
SCALE 1/8"=1'-0"

DESIGN BY  
KIM B. WARNER, PE, LLC  
139 COUNTRYWOOD DRIVE  
FOREST CITY, NC 28043  
PE NO 19856

DATE 6-4-08  
REV 6-17-08  
REV  
REV

SHEET  
**1**

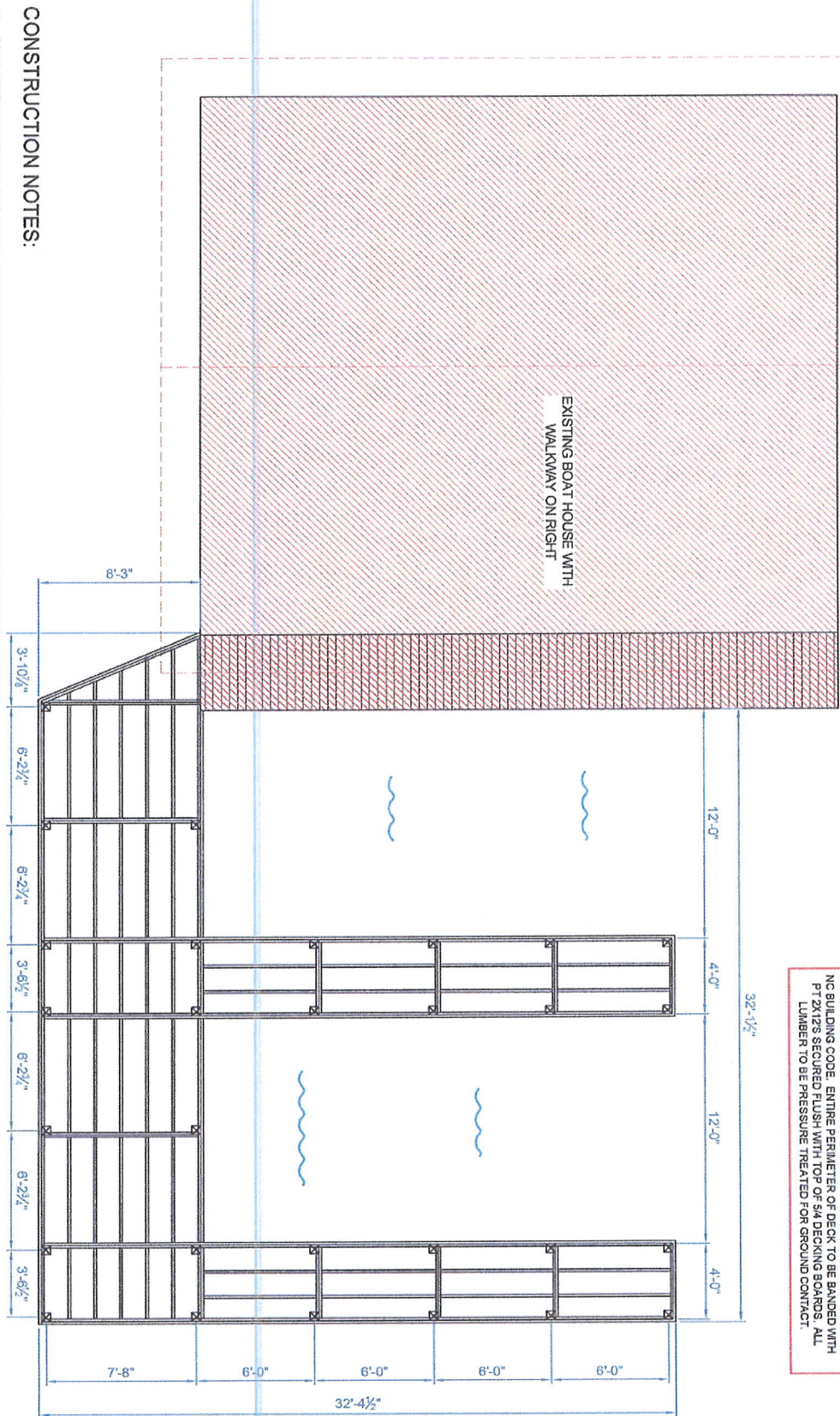
ALL FEDERAL, STATE, LOCAL CODES AND ORDINANCES  
AND REGULATIONS SHALL BE CONSIDERED AS PART OF  
THE PLANS AND SPECIFICATIONS FOR THIS BUILDING AND  
SHALL TAKE PRECEDENCE OVER ANYTHING SHOWN,  
DESCRIBED OR IMPLIED WHERE VARIANCES OCCUR.  
CONTRACTOR IS RESPONSIBLE FOR CHECKING AND  
VERIFYING ALL DIMENSIONS AND EXISTING CONDITIONS.  
VARIATIONS SHALL BE BROUGHT TO THE ATTENTION OF  
THE ENGINEER OR HOMEOWNER FOR RESOLUTION.

SIGNIFICANT CARE AND EFFORT HAVE BEEN  
TAKEN TO ENSURE THAT THESE PLANS ARE  
CORRECT AND COMPLETE. HOWEVER, KIM B.  
WARNER, PE, LLC ASSUMES NO LIABILITY  
EXCEPT TO MAKE CORRECTIONS AND  
REISSUE COPIES AS REQUIRED.

FILENAME: KW-TOWN OF LAKE LURE DOCK



EXISTING BOAT HOUSE WITH  
WALKWAY ON RIGHT



NOTE:  
CONSTRUCTION OF BOAT DOCK TO BE 5/4" DECKING, 2X10 JOISTS 16" O.C., DOUBLE 2X10 GIRDERS NOTCHED 1 1/2" INTO 6X6 POSTS AND ATTACHED TO POSTS USING 1/2" GALVANIZED THRU BOLTS, 2 BOLTS PER BOARD END. JOISTS ARE TO BE ATTACHED TO BEAMS USING SIMPSON STRONG-TIE 2X10 JOIST HANGERS OR 2X2 LEDGER AS PER NC BUILDING CODE. ENTIRE PERIMETER OF DECK TO BE Banded WITH PT 2X12S SECURED FLUSH WITH TOP OF 5/4" DECKING BOARDS. ALL LUMBER TO BE PRESSURE TREATED FOR GROUND CONTACT.

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SUGGESTED FRAMING DETAIL  
SCALE 1/8"=1'-0"



**BOATDOCK PLAN**  
TOWN OF LAKE LURE  
LAKE LURE, NC 28746

**FRAMING  
DETAIL**  
SCALE 1/8"=1'-0"

DESIGN BY  
KIM B. WARNER, PE, LLC  
139 COUNTRYWOOD DRIVE  
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DATE 6-4-08  
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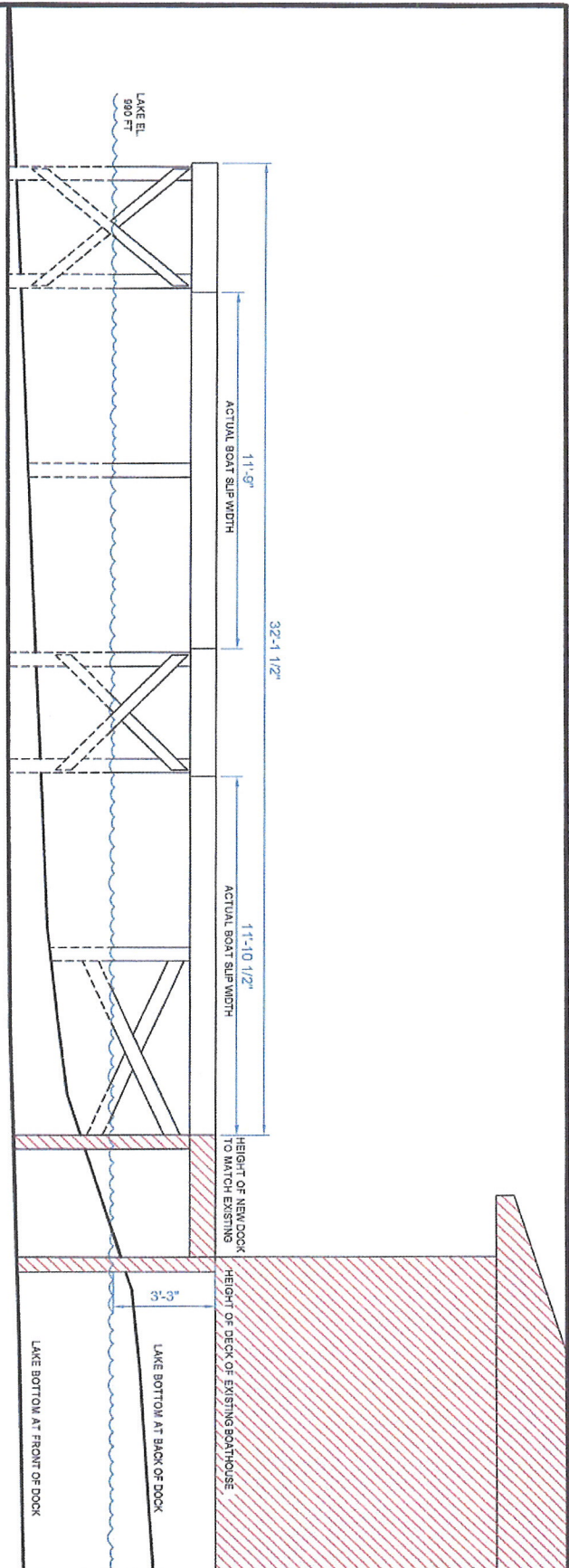
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**2**

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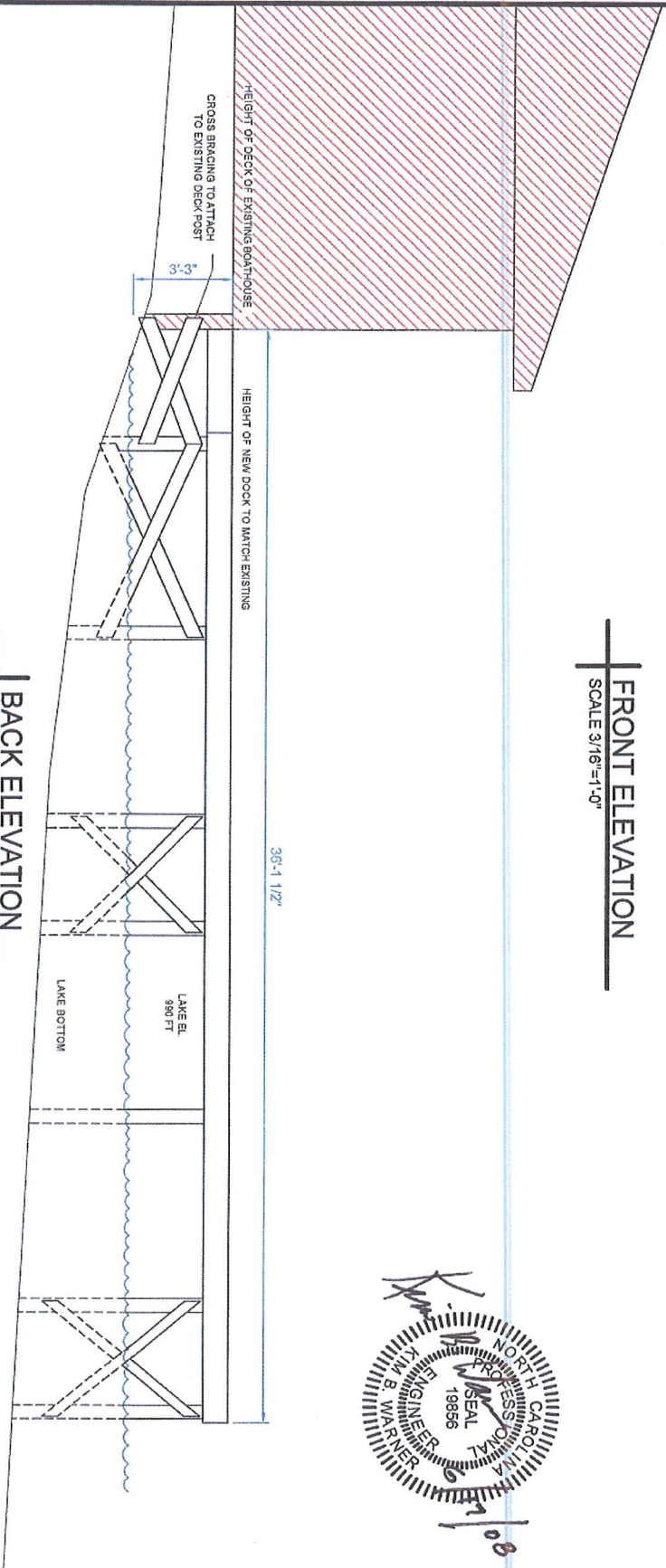
SIGNIFICANT CARE AND EFFORT HAVE BEEN TAKEN TO ENSURE THAT THESE PLANS ARE CORRECT AND COMPLETE. HOWEVER, KIM B. WARNER, PE, LLC ASSUMES NO LIABILITY EXCEPT TO MAKE CORRECTIONS AND REISSUE COPIES AS REQUIRED.

FILENAME: KW-TOWN OF LAKE LURE DOCK





**FRONT ELEVATION**  
SCALE 3/16"=1'-0"



**BACK ELEVATION**  
SCALE 3/16"=1'-0"



**BOATDOCK PLAN**  
TOWN OF LAKE LURE  
LAKE LURE, NC 28746

**ELEVATION**  
SCALE 3/16"=1'-0"

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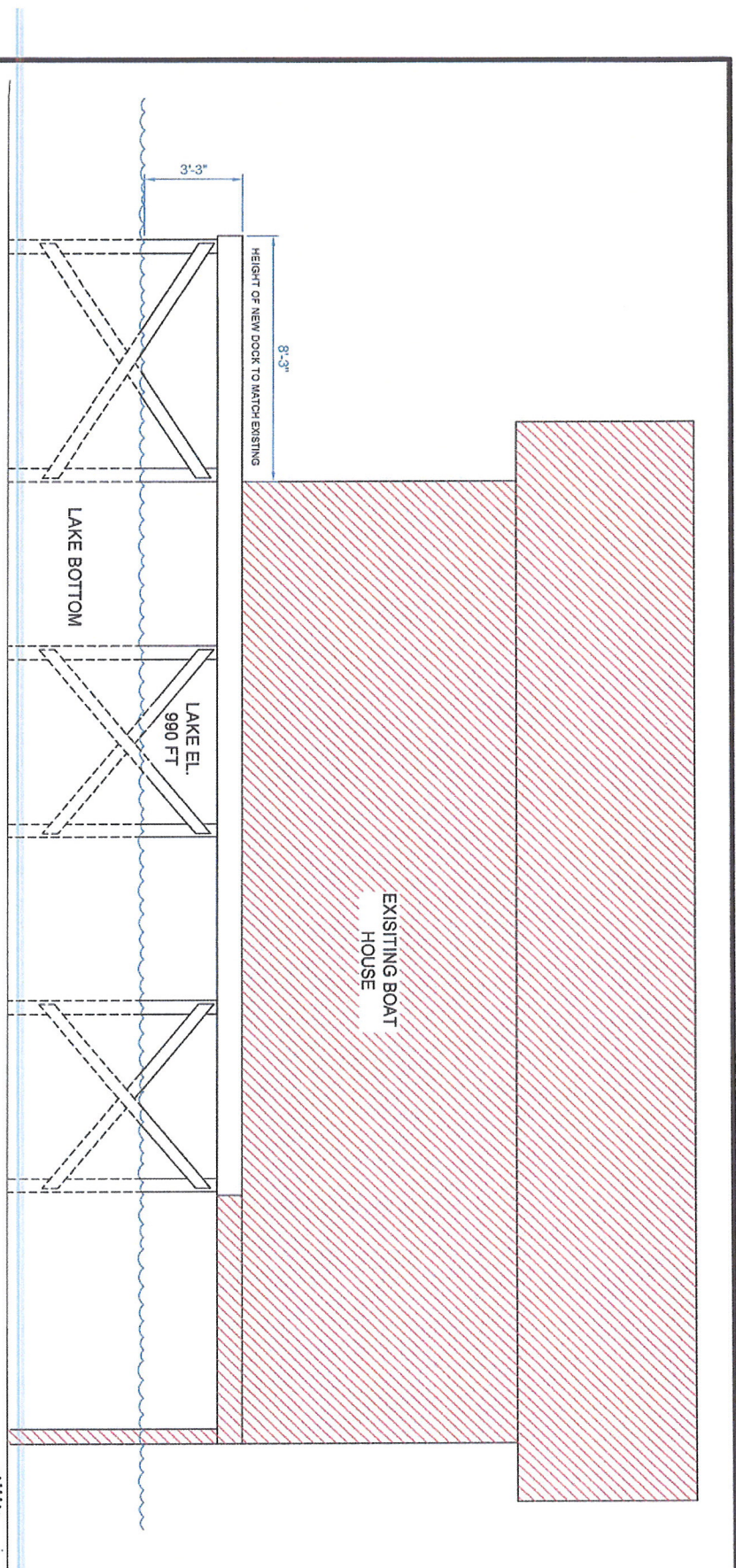
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**SHEET**  
**3**

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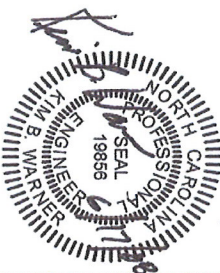
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## RIGHT SIDE ELEVATION

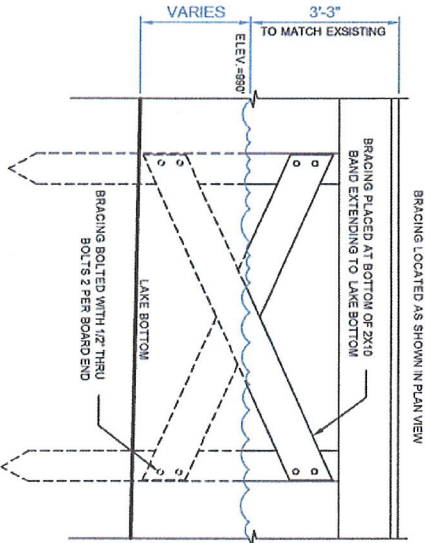
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## CROSS BRACING DETAIL

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TOWN OF LAKE LURE  
LAKE LURE, NC 28746

**ELEVATION**  
SCALE 3/16"=1'-0"

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