

# **LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET**

Tuesday, November 12, 2013



**Mayor Bob Keith**

**Commissioner John Moore**

**Commissioner Mary Ann Silvey**

**Commissioner Diane Barrett**

**Commissioner Bob Cameron**



## REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL

*November 12, 2013  
7:00 p.m.  
Lake Lure Municipal Center*

### AGENDA

1. Call to Order Mayor  
Bob Keith
2. Invocation Attorney  
Chris Callahan
3. Pledge of Allegiance
4. Approve the Agenda Council
5. Public Hearing – Proposed Ordinance No. 13-11-12 Concerning the Definitions and Regulations Related to Portable Signs and Sandwich Board Signs
6. Consider Adoption of Ordinance No. 13-11-12 Concerning the Definitions and Regulations Related to Portable Signs and Sandwich Board Signs
7. Public Hearing – Proposed Ordinance No. 13-11-12A Concerning the Lake Structure Appeals Board; Modifying the Procedures for Processing Matters to be Heard by the Board.
8. Consider Adoption of Ordinance No. 13-11-12A Concerning the Lake Structure Appeals Board; Modifying the Procedures for Processing Matters to be Heard by the Board.
9. Public Forum: *The public is invited to speak on any non-agenda and/or consent agenda topics. Comments should be limited to less than five minutes.*
10. Staff Reports
11. Council Liaison Reports & Comments

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12. Consent Agenda:
  - a. Approve Minutes of the October 8, 2013 (Regular Meeting )
  - b. Accept a Memorandum from the Zoning and Planning Board Concerning Review of a Proposed Concession Agreement with Lake Lure Tours Submitted by the Board's Chairman Thomas McKay
13. Unfinished Business
  - a. Other Unfinished Business
14. New Business:
  - a. Consider Approval of a Request From the 1927 Lake Lure Inn and Spa Concerning Gazebo Bookings for 2015
  - b. Consider Extending an Agreement with the North Carolina State Employees Credit Union to Lease ATM Space
15. Adjournment

***Agenda Items: 5 & 6***



**Community Development Department**  
**MEMORANDUM**

**TO:** Mayor & Town Council

**FROM:** Shannon Baldwin, Community Development Director 

**CC:** Chris Braund, Town Manager

**SUBJECT:** Becoming More Business Friendly / Sandwich Board Signs

**DATE:** November 4, 2013

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Attached is the proposed ordinance in keeping with the "Becoming More Business Friendly" initiative launched by Town Council now being jointly considered by both the Zoning and Planning Board and the Hickory Nut Gorge Chamber of Commerce.

At its October 15, 2013 meeting, the Zoning and Planning Board discussed this ordinance which was previously reviewed by Town Council. This ordinance, if passed by Council, will permit sandwich board signs for business establishments in the Town of Lake Lure like Chimney Rock Village, City of Brevard, and other municipalities striving to be business friendly.

The Zoning and Planning Board voted to approve and send the attached ordinance to the Town Council for consideration. All voted in favor. This ordinance is neither consistent nor inconsistent with the 2007-2027 Comprehensive Plan.

*Recommended Motion: I move Town Council adopt Ordinance No. 13-11-12 and find that said Ordinance is neither consistent nor inconsistent with the 2007-2027 Comprehensive Plan.*

## NOTICE OF PUBLIC HEARING

Notice is hereby given that at 7:00 p.m., on 12 November 2013, at the Lake Lure Municipal Center, 2948 Memorial Highway, Lake Lure, North Carolina, the Lake Lure Town Council will hold a public hearing with regard to the following matter:

Ordinance #13-11-12: An Ordinance concerning the definitions and regulations related to portable signs and sandwich board signs.

The public is advised that it has the right to appear at said public hearing and present information with regard to this matter. Copies of the proposed ordinance are available for public inspection at the Lake Lure Municipal Center, 2948 Memorial Hwy, 8:00 a.m. until 5:00 p.m., Monday through Fridays, holidays excepted.



**ORDINANCE NUMBER 13-11-12**

**AN ORDINANCE AMENDING THE ZONING REGULATIONS CONCERNING THE  
DEFINITIONS AND REGULATIONS RELATED TO PORTABLE SIGNS AND  
SANDWICH BOARD SIGNS**

**WHEREAS**, the Zoning and Planning Board has recommended modifications to Zoning and Regulations of the Town of Lake Lure as noted in the title of this ordinance; and

**WHEREAS**, the Town Council finds that the proposed ordinance is consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan, particularly with regard to Element 2.0 Economic Development, which states, "Though residential development generates the largest percent of the revenues that comprise the annual budget, the town could benefit from the revenues generated from sales tax, property tax, and reduced infrastructure costs associated with commercial development." Assisting small business in their effort to successfully communicate with their customers will benefit the town by ensuring sales taxes and property taxes are sustained over the long run; and

**WHEREAS**, the Lake Lure Town Council, after due notice, conducted a public hearing on the 12<sup>th</sup> day of November, 2013, upon the question of amending the Zoning Regulations in this respect.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:**

**SECTION ONE.** Section 92.147 of the Zoning Regulations of the Town of Lake Lure, entitled "Definitions", is hereby amended to revise the definition of "Portable Sign" and "Sidewalk or Sandwich Sign" as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

Portable Sign: A sign generally constructed to be easily movable without a permanent attachment to the ground and which may or may not be equipped with wheels. Such signs may be designed for changeable messages. This term does not apply to sidewalk or sandwich board signs permitted in § 92.157.

Sidewalk or Sandwich Board Sign: A An A-frame, inverted V-shape, or similarly shaped moveable sign not secured or attached to the ground or any building or structure. It is portable and usually double-sided.

**SECTION TWO.** Section 92.156 of the Zoning Regulations of the Town of Lake Lure, entitled "SIGNS PROHIBITED", is hereby amended as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

The following are prohibited within the jurisdiction of this chapter:

(C) ~~Sidewalk, sandwich, and p~~Portable signs except for special events.

**SECTION THREE.** Paragraph (B) of Section 92.157 of the Zoning Regulations of the Town of Lake Lure, entitled "SIGNS PERMITTED AND REGULATED", is hereby amended as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

(B) Business, commercial and industrial districts.

(9) Commercial districts may be permitted a single sandwich board sign to be placed adjacent to a sidewalk, the front of the individual business, or in the parking area providing such sign is located on the business establishment's property and does not pose a safety hazard. Business establishments located in the Arcade may also be permitted to place one such sign in front of their business under the breezeway on the walkway providing such location does not pose a safety hazard to pedestrians. This sign shall not exceed four feet in height or eight square feet in area per sign face. The sign must be removed at the end of each day when the business closes. Said signs may include artwork depicting the products and services available from the business, changeable copy, and shall be exempt from the permit requirements of this chapter.

**SECTION FOUR.** Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 92.999 of the Zoning Regulations.

**SECTION FIVE.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION SIX.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION SEVEN.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.



Ordinance No. 13-11-12  
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**SECTION EIGHT.** This ordinance shall be in full force and effect from and after the date of its adoption.

Enacted this 12<sup>th</sup> day of November, 2013.

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Bob Keith, Mayor

ATTEST:

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Andi Calvert , Town Clerk

Approved as to form:

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Chris Callahan, Town Attorney

***Agenda Items: 7 & 8***



## MEMORANDUM

**TO:** Mayor & Town Council

**FROM:** Sheila Spicer, Zoning Administrator/Code Enforcement Officer 

**DATE:** October 28, 2013

**SUBJECT:** Ordinance Number 13-11-12A Lake Structure Appeals Board Procedures

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As you recall, the North Carolina General Statute provisions regarding boards of adjustment were recently amended. These changes necessitated amendments to the Town of Lake Lure Zoning Regulations regarding procedures for the Lake Lure Board of Adjustment, since the Town's regulations were no longer consistent with all of the state requirements. Town Council adopted those amendments at their October 8, 2013.

The members of the Board of Adjustment (BOA) also serve as the Lake Structure Appeals Board (LSAB). The provisions in the Lake Structures Regulations pertaining to the LSAB have historically mirrored as close as possible the provisions in the Zoning Regulations for the BOA, even though consistency with the state requirements is not mandatory as it is for the BOA. The Town can have standards in the Lake Structures Regulations that are either more or less stringent than those that are in the Zoning Regulations but has attempted to maintain a uniform approach for both boards in order to avoid confusion as the Board members switch from a BOA meeting to a LSAB meeting.

In keeping with the attempt to have uniform procedures for both boards, staff has recommended amendments to the Lake Structures Regulations pertaining to LSAB procedures that is fundamentally the same as the Zoning Regulations pertaining to BOA procedures with one exception. Stephen Webber, chairman of both boards, recommends that a supermajority vote still be required to overturn the decision of the Lake Structures Administrator, while there is now only a simple majority vote required to overturn the decision of the Zoning Administrator. Chairman Webber suggested this due to the fact that decisions of the Lake Structures Administrator involve issues pertaining to Town owned property, and the simple majority rule should only apply to Town Council in the event the LSAB's decision is appealed to them. The supermajority requirement is found in Section 94.16 (H)(2) of the Regulations on page 6 of the proposed ordinance.

The Lake Advisory Board unanimously recommended approval of Ordinance Number 13-11-12A at their October 7, 2013 meeting.

## NOTICE OF PUBLIC HEARING

Notice is hereby given that at 7:00 p.m., on 12 November 2013, at the Lake Lure Municipal Center, 2948 Memorial Highway, Lake Lure, North Carolina, the Lake Lure Town Council will hold a public hearing with regard to the following matter:

Ordinance #13-11-12A: An ordinance concerning the Lake Structure Appeals Board; modifying the procedures for processing matters to be heard by the board.

The public is advised that it has the right to appear at said public hearing and present information with regard to this matter. Copies of the proposed ordinance are available for public inspection at the Lake Lure Municipal Center, 2948 Memorial Hwy, 8:00 a.m. until 5:00 p.m., Monday through Fridays, holidays excepted.

**ORDINANCE NUMBER 13-11-12A**

**AN ORDINANCE CONCERNING THE LAKE STRUCTURE APPEALS BOARD;  
MODIFYING THE PROCEDURES FOR PROCESSING MATTERS TO BE HEARD BY  
THE BOARD**

**WHEREAS**, the Town of Lake Lure Lake Advisory Board has recommended modifications to Chapter 94, concerning the procedures for processing matters to be heard by the Board; and

**WHEREAS**, the Lake Lure Town Council, after due notice, conducted a public hearing on the 12<sup>th</sup> day of November, 2013, upon the question of amending the Lake Structure Regulations in this respect.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:**

**SECTION ONE.** Sections 94.16, et seq., of the Lake Structures Regulations of the Town of Lake Lure, concerning the Lake Structure Appeals Board, are hereby amended as follows:

**§ 94.16 LAKE STRUCTURE APPEALS BOARD**

- (A) *Membership.* The Lake Structure Appeals Board shall consist of five regular and three alternate members to be appointed by the Town Council. Members of the Board shall serve a term of three years, provided that terms of office may be adjusted at the time of appointment in order that terms are staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Each alternate member while attending any regular or special meeting of the Board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Lake Structure Appeals Board.
- (B) *Rules of Conduct.* Board members shall comply with the following rules of conduct. Members may be removed by the Town Council for cause, including violation of the rules stated below. **(Amended 5-12-09)**
- (1) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

- (2) ~~No Board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested. A Board member shall have a financial interest in a case when a decision in the case will cause him or his spouse to experience a direct financial benefit or loss; or will cause a business in which he or his spouse owns any interest to experience a direct financial benefit or loss. A Board member shall have a personal interest in a case when it involves a member of his immediate family (i.e. parent, spouse or child). A board member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.~~
- (3) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Lake Structure Administrator, or any other member of the Board, its secretary or the clerk prior to the hearing.
- (4) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
- (5) Members of the Board shall give notice to the Chair at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.
- (6) No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.
- (C) *General Proceedings.* The Board shall annually elect a Chair and a Vice Chair from among its regular members. A secretary clerk shall be provided by the Town; however, when necessary, the Chair shall appoint a secretary clerk, who may be an employee of the town, a municipal officer, or a member of the Lake Structure Appeals Board. The Chair, or in his absence the Vice Chair any member acting as chair, and the clerk, may administer oaths. and request the attendance of witnesses. The chair, or any member acting as the chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under N.C.G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Lake Structure Appeals Board. The Board shall keep minutes of its proceedings, including the

names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

(D) *Meetings.* The Board shall hold regular monthly meetings at a specified time and place. Special meetings of the Board may be called at any time by the Chair or by request of three or more members of the Board. At least 48 hours written notice of the time and place of meetings shall be given, by the Chair, to each member of the Board. All Board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meetings Act.

(1) *Cancellation of Meetings.* Whenever there are no appeals, applications ~~for conditional~~ uses or variances, or other business for the Board, or whenever so many members notify the ~~secretary~~ clerk of inability to attend that a quorum will not be available, the Chair may dispense with a meeting by giving written or oral notice to all members.

(2) *Quorum.* A quorum shall consist of three members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Lake Structure Administrator, or an application for a variance or ~~conditional use permit~~ desktop accessory structure when there are less than four members present.

(3) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 94.16(B)(2), above. The required vote to decide appeals and applications shall be as provided in § 94.16(H) and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.

(E) *Powers and Duties.* The powers and duties of the Lake Structure Appeals Board shall be as follows: **(Amended 5-12-09)**

(1) *Administrative Appeals.* To hear and decide appeals from any decision or determination made by the Lake Structure Administrator in the enforcement of this Chapter.

(2) *Variances.* Upon application, the Lake Structure Appeals Board may authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The Lake Structure Appeals Board shall not have authority to grant a variance when to do so would permit a use of land, building or structure which is not permitted within the applicable zoning district.



In judging an application for a variance, the Lake Structure Appeals Board shall be guided by the following:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- (c) 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.
- (d) The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.
- (e) The special circumstances are not the result of the actions of the applicant.
- (f) The variance is the minimum ~~that will make possible the reasonable use of~~ necessary for the proposed the land, building or structure.
- (g) A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

In granting any variance, the Lake Structure Appeals Board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 94.999.

(3) *Other Matters.* The Board shall hear any other matters specified in this Chapter.

- (F) ***Procedure for Filing Appeals and Applications.*** No appeal shall be heard by the Board unless written notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the Lake Structure Administrator. Applications for variances or for other matters governed by this Chapter may be filed at any time. Both appeals and applications shall be filed with the Lake Structure Administrator, who shall act as clerk for the Board in receiving this notice. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before

an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the Lake Structure Administrator, the Lake Structure Administrator shall notify the Chair of the Board that such appeals or applications have been received. **(Amended 5-12-09)**

(G) **Hearings.** Hearings before the Board shall be governed by the provisions contained herein. **(Amended 5-12-09)**

- (1) *Time.* After receipt of notice of an appeal or a variance, the Board Chair shall schedule a time for a hearing which shall be within 41 days from the filing of such notice of appeal or application.
- (2) *Notice of Hearing.* ~~Notice of any hearing shall be mailed to all affected parties and to such other persons as the Lake Structure Administrator shall direct, at least 14 days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.~~ Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing, to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the Town may rely on the Rutherford County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (3) *Conduct of Hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
  - (a) The Chair, or such person as he shall direct, shall give a preliminary statement of the case;
  - (b) The applicant shall present the argument in support of his appeal or application;
  - (c) Persons supporting or opposed to the appeal or application shall present ~~their~~ arguments for or against the application or appeal;
  - (d) Both sides will be permitted to present rebuttals to opposing testimony;

- (e) Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and ~~any opposing party may cross examine them.~~ Attorneys representing any party may cross examine any witness.

(H) **Decisions.** A decision by the Board shall be made within 35 days from the date of hearing. The 35-day period shall begin on the date the ~~public~~ hearing ends. **(Amended 5-12-09)**

- (1) *Form.* ~~Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary within seven days after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Lake Structure Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance. The decision shall be reduced to writing and reflect the Board's determination of contested facts, if any, and their application to applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board. The decision of the Board shall be effective upon filing such decision with the clerk to the Board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the hearing, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective, and shall certify that proper notice has been made.~~

- (2) *Voting.* The concurring vote of four-fifths of the members of the Board entitled to vote on a matter shall be necessary to reverse any decision or determination of the Lake Structure Administrator, or to grant a variance or to approve any other request under this Chapter.

- (3) *Public record of decisions.* The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

- (I) **Appeals of Decisions of the Board.** Decisions of the Lake Structure Appeals Board shall be final unless appealed by the applicant or an affected property owner to the Town Council

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within 30 days of such decision. Council shall hold a hearing on the record within 45 days of the appeal, and Council's decision shall be final. **(Amended 5-12-09)**

- (J) ***Fees for Applications and Appeals.*** The fee for an application for a variance or other matter regulated by this Chapter, or for an administrative appeal shall be determined by resolution of the Town Council and shall be payable to the Town. **(Amended 5-12-09)**

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~]

**SECTION TWO.** In administering this Ordinance, the Town shall have all the remedies and enforcement powers contained in §94.99 of the Lake Structures Regulations, as supplemented herein, and as provided by the General Statutes.

**SECTION THREE.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION FOUR.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION FIVE.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

**SECTION SIX.** This ordinance shall be in full force and effect from and after its enactment.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Bob Keith, Mayor

ATTEST:

\_\_\_\_\_  
Andi Calvert , Town Clerk

Approved as to content & form:

\_\_\_\_\_  
Chris Callahan  
Town Attorney

***Agenda Item: 12a***



**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL  
HELD TUESDAY, OCTOBER 8, 2013, 7:00 P.M. AT THE LAKE LURE MUNICIPAL  
CENTER**

**PRESENT:** Mayor Pro Tem John W. Moore  
Commissioner Mary Ann Silvey  
Commissioner Bob Cameron  
Commissioner Diane Barrett

Christopher Braund, Town Manager  
J. Christopher Callahan, Town Attorney

**ABSENT:** Mayor Bob Keith

**CALL TO ORDER**

Mayor Pro Tem John Moore called the meeting to order at 7:00 p.m.

**INVOCATION**

Attorney Chris Callahan gave the invocation.

**PLEDGE OF ALLEGIANCE**

Council members led the pledge of allegiance.

**APPROVE THE AGENDA**

Commissioner Bob Cameron made a motion to approve the agenda as presented  
Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous.

**PUBLIC HEARING PROPOSED ORDINANCE NO. 13-10-08: AN ORDINANCE CONCERNING THE BOARD OF ADJUSTMENT; MODIFYING THE PROCEDURES FOR PROCESSING MATTERS TO BE HEARD BY THE BOARD, AND MODIFYING THE STANDARDS FOR GRANTING VARIANCES**

Mayor Pro Tem John Moore opened the public hearing for proposed Ordinance No. 13-10-08 concerning the board of adjustment; modifying the procedures for processing matters to be heard by the board, and modifying the standards for granting variances

No one requested to speak during the public hearing.

**CONSIDER ADOPTION OF ORDINANCE NO. 13-10-08: AN ORDINANCE CONCERNING THE BOARD OF ADJUSTMENT; MODIFYING THE PROCEDURES FOR PROCESSING MATTERS TO BE HEARD BY THE BOARD, AND MODIFYING THE STANDARDS FOR GRANTING VARIANCES**

Public notices were duly published in the Daily Courier newspaper.

Community Development Director Shannon Baldwin and Board of Adjustment Chairman Stephen Webber gave a brief overview of proposed Ordinance No. 13-10-08 and explained that Board of Adjustment procedure is mandated by the state.

After discussion, Commissioner Bob Cameron made the motion to adopt Ordinance No. 13-10-08 concerning the board of adjustment; modifying the procedures for processing matters to be heard by the board, and modifying the standards for granting variances as presented. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

**ORDINANCE NUMBER 13-10-08**

**AN ORDINANCE CONCERNING THE BOARD OF ADJUSTMENT; MODIFYING THE PROCEDURES FOR PROCESSING MATTERS TO BE HEARD BY THE BOARD; MODIFYING THE STANDARDS FOR GRANTING VARIANCES**

**WHEREAS**, N.C.G.S. § 160A-388 authorizes municipalities to establish boards of adjustment to hear and decide requests for variances and conditional use permits and appeals of decisions of administrative officials; and

**WHEREAS**, the Zoning Regulations of the Town of Lake Lure have established a board of adjustment for the purposes enumerated in N.C.G.S. § 160A-388; and

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**WHEREAS**, Session Law 2013-126 has modified the procedures by which boards of adjustment function, as well as the standards for deciding requests for variances; and

**WHEREAS**, Town Council finds that this Ordinance is neither consistent nor inconsistent with the 2007-2027 Town of Lake Lure Comprehensive Plan; and

**WHEREAS**, Town Council further finds that enactment of this Ordinance is reasonable and in the public interest in that it enacts modifications to the procedures and standards for boards of adjustment required by the North Carolina General Assembly; and

**WHEREAS**, the Lake Lure Town Council, after due notice, conducted a public hearing on October 10, 2013 upon the question of amending the Zoning Regulations in this respect.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:**

**SECTION ONE.** This ordinance is enacted pursuant to the grants of authority contained in Section 160A-381 of the North Carolina General Statutes and North Carolina Session Law 2013-126.

**SECTION TWO.** Sections 92.080, et seq., of the Zoning Regulations of the Town of Lake Lure, concerning the Board of Adjustment, are hereby amended as follows:

**§ 92.080 ESTABLISHMENT.**

There shall be and hereby is created a Zoning Board of Adjustment consisting of five members to be appointed by the Town Council. Members of the board shall serve a term of three years, provided that upon initial appointment the terms of office may be staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member while attending any regular or special meeting of the board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment.

**§ 92.081 ALTERNATE MEMBERS.**

The Town Council shall appoint three alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate members shall be appointed for three year terms. Such alternate members while



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attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The alternate members shall be subject to the provisions of § 92.082.

#### § 92.082 RULES OF CONDUCT.

- (A) Members of the board may be removed by the Town Council for cause, including violation of the rules stated below.
- (B) Faithful attendance at meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite to continuing membership on the board.
- (C) ~~No board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested. A board member shall have a financial interest in a case when a decision in the case will cause him or his spouse to experience a direct financial benefit or loss; or will cause a business in which he or his spouse owns any interest to experience a direct financial benefit or loss. A board member shall have a personal interest in a case when it involves a member of his immediate family (i.e. parent, spouse or child). A board member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.~~
- (D) No board member shall discuss any case with any parties thereto prior to the hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Zoning Administrator or any other member of the board, its secretary or clerk prior to the hearing.
- (E) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
- (F) ~~Members of the board shall give notice to the chairman at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the board. When a member is aware of a potential conflict of interest, he or she shall give notice to the chair at least 48 hours prior to the time scheduled for hearing such matter.~~

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- (G) No board member shall vote on any matter that decides an application or appeal unless he has attended the hearing on that application or appeal.

**§ 92.083 GENERAL PROCEEDINGS.**

- (A) The board shall annually elect a ~~chairman~~ chair and a vice ~~chairman~~ chair from among its regular members. The ~~chairman~~ chair in turn shall appoint a secretary clerk, who may be an employee of the town; or a municipal officer; ~~a member of the Zoning and Planning Board, or a member of the Board of Adjustment.~~
- (B) The ~~chairman, or in his absence the vice chairman~~ chair, ~~or any member acting as chair, and the clerk may administer oaths. and request the attendance of witnesses in accordance with G.S. § 160A-388.~~
- (C) The chair or, in the absence of the chair, anyone acting as the chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under N.C.G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment.
- (D) The board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

**§ 92.084 MEETINGS.**

- (A) **Board Meetings.** The board shall hold regular monthly meetings at a specified time and place. Special meetings of the board may be called at any time by the ~~chairman~~ chair or by request of three or more members of the board. At least 48 hours written notice of the time and place of meetings shall be given, by the ~~chairman~~ chair, to each member of the board. All board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meetings Act.
- (B) **Cancellation of Meetings.** Whenever there are no appeals, applications for conditional uses or variances, or other business for the board, or whenever so many members notify the ~~secretary~~ clerk of inability to attend that a quorum will

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not be available, the chairman chair may dispense with a meeting by giving written or oral notice to all members.

- (C) **Quorum.** A quorum shall consist of three members of the board, but the board shall not pass upon any questions relating to an ~~appeal from a decision or determination of the Zoning Administrator, or an application for a variance or conditional use permit~~ when there are less than four members present.
- (D) **Voting.** ~~All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 92.082. The required vote to decide appeals and applications shall be as provided in § 92.086(D) and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the board. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide all other issues before the board, including any other quasi-judicial matter or an appeal made in the nature of certiorari. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.~~

**§ 92.085 POWERS AND DUTIES.**

~~The powers and duties of the Board of Adjustment shall be as follows:~~

- (A) ~~**Administrative Review.** To hear and decide appeals from any decision or determination made by the Zoning Administrator in the enforcement of this chapter as provided in § 92.086.~~
- (B) ~~**Conditional Uses.** Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by this chapter and set forth as conditional uses under the various zoning districts. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter. Before any conditional use permit is issued, written findings certifying compliance with the specific rules governing the individual conditional use shall be made. (See Section 92.045 through 92.049)~~
- (C) ~~**Variances.**~~

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- ~~(1) Upon application, the Board of Adjustment may authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The Board of Adjustment shall not have authority to grant a variance when to do so would permit a use of land, building or structure which is not permitted within the applicable zoning district. In judging an application for a variance, the Board of Adjustment shall be guided by the following:~~
- ~~(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.~~
  - ~~(b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.~~
  - ~~(c) 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.~~
  - ~~(d) The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.~~
  - ~~(e) The special circumstances are not the result of the actions of the applicant.~~
  - ~~(f) The variance is the minimum that will make possible the reasonable use of the land, building or structure.~~
  - ~~(g) A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.~~
- ~~(2) In granting a variance, the Board of Adjustment shall make findings that the requirements of this section have been met. The Board of Adjustment shall make a finding, and a written notice of the decision shall be prepared~~

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~~as prescribed in § 92.086(D). In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 92.999.~~

The Board of Adjustment is empowered and shall have the responsibility to hear and decide (1) appeals from decisions of administrative officials pursuant to § 92.086, below; (2) applications for conditional use permits pursuant to § 92.045, et seq.; and (3) applications for variances pursuant to § 92.087, below.

§ 92.086 APPEALS AND APPLICATIONS GENERAL REQUIREMENTS FOR QUASI-JUDICIAL HEARINGS AND DECISIONS

A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, conditional use permits, and appeals of administrative determinations.

**(A) — Types of Appeals and Applications.**

~~(1) **Appeals.** The board shall hear and decide all appeals from any decision or determination made by the Zoning Administrator.~~

~~(2) **Applications.** All applications for variances shall first be presented to the Zoning Administrator, who in turn shall refer the applications to the Board of Adjustment. Applications for conditional use permits shall be filed in accordance with Section 92.046.~~

**(A) Procedure for Filing Appeals and Applications.** ~~No appeal shall be heard by the board unless notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the Zoning Administrator. Both Notices of appeal shall be filed with the town clerk. Applications for conditional use permits and applications for variances shall be filed with the Zoning Administrator and processed in accordance with these regulations. , who shall act as clerk for the board in receiving this notice. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the Zoning Administrator, the Zoning Administrator shall immediately notify the chairman of the board that such appeals or applications have been received.~~

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- (B) **Notice of Hearing.** Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing, to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the Town may rely on the Rutherford County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. In addition, notice of a hearing on an application for a conditional use permit shall be posted at Town Hall and published in a newspaper having general circulation in the Town within that same time period.
- (C) **Hearings.** The Board shall conduct a quasi-judicial hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. The Board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing. The decision shall be reduced to writing and reflect the Board's determination of contested facts, if any, and their application to applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board. The decision of the Board shall be effective upon filing such decision with the clerk to the Board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the hearing, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective and shall certify that proper notice has been made.
- ~~(1) ***Time.*** After receipt of notice of an appeal or a variance, the board chairman shall schedule a time for a hearing which shall be within 41 days from the filing of such notice of appeal or application. Hearings for conditional use permits shall be in accordance with Section 92.046.~~
- ~~(2) ***Notice of Hearing.*** In any application for projects involving conditional use permits, notice of the hearing shall be posted at Town Hall and published in a newspaper having general circulation in the town at least 10 days prior to the date of the hearing. All applications and appeals notices of the hearing shall be mailed to the affected parties and to such other persons as the Zoning Administrator shall direct, at least 14 days prior to the hearing. Such notice shall state the location of the building or lot, the~~

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~~general nature of the question involved in the appeal or application, and the time and place of the hearing.~~

~~(3) **Conduct of Hearing.** Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:~~

~~(a) The chairman, or such person as he shall direct, shall give a preliminary statement of the case;~~

~~(b) The applicant shall present the argument in support of his appeal or application;~~

~~(c) Persons opposed to granting the appeal or application shall present their argument against the application or appeal;~~

~~(d) Both sides will be permitted to present rebuttals to opposing testimony;~~

~~(e) The chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board may view the premises before arriving at a decision. All witnesses before the board shall be placed under oath and the opposing party may cross examine them.~~

~~(D) **Decisions.**~~

~~(1) **Time.** A decision by the board shall be made within 35 days from the time of hearing. The 35 days shall begin on the date the hearing ends.~~

~~(2) **Form.** Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary within 7 days after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted,~~

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~~the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the board in connection with the granting of a variance. Where a conditional use permit is granted, the record shall indicate, by reference to the appropriate sections of the chapter, that all requirements and standards for the particular conditional use have been met.~~

- (D) **Expiration of permits Authorizations.** Unless otherwise specified, any order or decision of the board in granting a variance or a conditional use permit shall expire if a certificate of zoning compliance for such use is not obtained by the applicant within six months from the date of the decision. See also Section 92.046(G) for additional requirements for expiration of a conditional use permit.

~~(4) **Voting.** The concurring vote of four fifths of the members of the board shall be necessary to reverse any decision or determination of the Zoning Administrator, or to grant a variance or to approve a conditional use permit.~~

~~(5) **Public record of decisions.** The decisions of the board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.~~

~~(6) The Board of Adjustment shall submit a copy of its decision on a specific development to the Zoning and Planning Board.~~

§ 92.087 APPEALS

The Board of Adjustment shall hear and decide appeals of administrative officials charged with enforcement of the Zoning Regulations contained in this Chapter 92 and with the Subdivision Regulations contained in Chapter 91 of the Code of Ordinances of the Town of Lake Lure in accordance with the provisions of this section.

- (A) The Town and any person who has standing under N.C.G.S. 160A-393(d) may appeal a decision to the Board. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- (B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.



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- (C) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (D) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least 10 days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
- (E) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (F) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the regulations shall not stay further review of an application for permits or permissions to use such property; in these situations the appellant may request, and the Board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- (G) Subject to the provisions of Paragraph (F), above, the Board shall hear the appeal within 45 days of the date of filing such appeal, and shall render its decision within a reasonable time thereafter.
- (H) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party would be unduly prejudiced by the presentation of matters

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not presented in the notice of appeal, the Board shall continue the hearing. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all powers of the official who made the decision.

- (I) When hearing an appeal pursuant to N.C.G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S. 160A-393(k).
- (J) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

**§ 92.088 VARIANCES**

When unnecessary hardships would result from carrying out the strict letter of these regulations, the board of adjustment shall vary such regulations upon a showing of all of the following:

- (a) Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (c) The hardship did not result from actions taken by the applicant or the property owner. 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.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

In determining what constitutes an unnecessary hardship, the Board of Adjustment shall be guided by the following:

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- (1) 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.
- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- (3) 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.
- (4) The requested variance will not be injurious to the neighborhood or to the general welfare.
- (5) The special circumstances are not the result of the actions of the applicant.
- (6) A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 92.999.

[PORTION NOT HIGHLIGHTED TRANSFERRED FROM § 92.085.]

**§ 92.089 FEES FOR VARIANCES, CONDITIONAL USES AND APPEALS.**

The fee for a request for a variance, or conditional use, or for an appeal to the Board of Adjustment shall be determined by resolution of the Town Council and shall be payable to the town.

**§ 92.090 APPEALS FROM JUDICIAL REVIEW OF DECISIONS OF THE BOARD OF ADJUSTMENT.**

~~Appeals from the Board of Adjustment may be taken to the courts pursuant to 160A-388 of the General Statutes~~ Decisions of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to N.C.G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in

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accordance with § 92.086(C), above. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~]

**SECTION THREE.** Paragraph (C) of § 92.046 of the Zoning Regulations of the Town of Lake Lure, concerning the hearing for a conditional use permit application, is hereby amended as follows:

- (C) **Hearing.** Upon receipt of a complete application for a conditional use permit, the Zoning Administrator shall assign the application a hearing before the Board of Adjustment ~~and give notice as required by law. Hearing shall be quasi-judicial and shall be noticed and conducted in accordance with the provisions of § 92.086, above. At the hearing, the applicant or designated representative shall appear for the purpose of offering testimony and recommendations as to the application, and the Board shall allocate reasonable time for the expression of views by members of the public with standing attending the meeting in person or represented by an attorney. A decision by the Board of Adjustment shall be made within 35 days. The 35 days shall begin on 45 days of the date the hearing ends.~~

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~]

**SECTION FOUR.** Paragraph (A) of § 92.061 of the Zoning Regulations of the Town of Lake Lure, entitled "Duties of the Zoning Administrator", is hereby amended as follows:

- (A) *Duties of Zoning Administrator.* The Zoning Administrator shall issue certificates of zoning compliance and certificates of occupancy as and shall perform such other duties as are prescribed herein. ~~The Zoning Administrator shall serve as clerk to the Board of Adjustment, and all applications for variances and conditional use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustment. The Zoning Administrator shall be the person principally responsible for the administration and enforcement of this chapter and is authorized to issue notices of violation and citations in accordance with § 92.999, below.~~

**SECTION FIVE.** Paragraph (F) of § 92.046 of the Zoning Regulations of the Town of Lake Lure, concerning the written ruling for a conditional use permit application, is hereby repealed.

**SECTION FIVE.** In administering this Ordinance, the Town shall have all the remedies and enforcement powers contained in Article 13 of the Zoning Regulations, as supplemented herein, and as provided by the General Statutes.

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**SECTION SIX.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION SEVEN.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION EIGHT.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

**SECTION NINE.** This ordinance shall be in full force and effect from and after its enactment.

Adopted this 8th day of October, 2013

**PUBLIC FORUM**

Mayor Pro Tem John Moore invited the audience to speak on any non-agenda items and/or consent agenda topics.

Gary McCall of 420 Boys Camp Road stressed the importance of notifying neighbors if a vacation rental is being considered for approval in a residential area.

Mayor Pro Tem John Moore invited Barbara Searcy to speak since she had signed up to speak during public forum, but Ms. Searcy stated that she did not wish to speak during public forum.

**STAFF REPORTS**

Town Manager Chris Braund presented the town manager's report dated October 8, 2013. (Copy of the town manager's report is attached.)

**COUNCIL LIAISON REPORTS & COMMENTS**

Commissioner Diane Barrett reported the activities of the Parks and Recreation Board.

Commissioner John Moore reported the activities of the Zoning and Planning Board.

Commissioner Mary Ann Silvey reported the activities of the Lake Lure ABC Board and the Lake Advisory Board and stated that the Lake Advisory Board voted to move the location of their regular monthly meetings from the lake operations buildings to town hall.

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Commissioner Silvey also reported the activities of the Lake Lure Classical Academy School Board and asked that council consider authorizing the town manager to add a \$400,000 line item to the capital improvement plan in order to seek funding for the creation of the water and sewer infrastructure in the Island Creek Road area and proposed that Lake Lure Classical Academy provide engineering and design work for the project. Commissioner Silvey explained that extending water and sewer to the site of the future school would provide income from the school and adjacent property. Ms. Silvey further explained that the town can explore state funding options for the potential Island Creek sewer project that the school is not allowed to pursue. Ms. Silvey suggested that the project become a top priority due to the time sensitivity of the school construction project.

Commissioner Bob Cameron reported the activities of the Lake Lure Board of Adjustment/Lake Structures Appeal Board.

|                       |
|-----------------------|
| <b>CONSENT AGENDA</b> |
|-----------------------|

Mayor Pro Tem John Moore presented the consent agenda and asked if any items should be removed before calling for action.

Commissioner Bob Cameron made a motion to approve the consent agenda as presented. Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous. Therefore, the consent agenda incorporating the following items was unanimously approved and adopted:

- a. Minutes of the September 10, 2013 (regular meeting);
- b. Resolution No. 13-10-08 authorizing the financing of police vehicles

**RESOLUTION NO. 13-10-08**

**A RESOLUTION OF THE TOWN COUNCIL OF TOWN OF LAKE LURE,  
NORTH CAROLINA, APPROVING FINANCING OF POLICE VEHICLES**

**WHEREAS**, The Town of Lake Lure ("Town") has previously determined to undertake a project for the financing of two (2) new police vehicles (the "Project"), and the finance officer has now presented a proposal for the financing of such Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL, TOWN OF  
LAKE LURE, NORTH CAROLINA, AS FOLLOWS:**

1. The Town hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated September 26, 2013. The Amount financed shall not

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exceed \$56,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 2.12% and the financing term shall not exceed three (3) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b) (3).
5. The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The Town intends that funds that have been advanced, or that may be advanced, from the Town's general fund or any other Town fund related to the project, for project costs may be reimbursed. From financing proceeds.
6. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other

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resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

- c. a request submitted by the Hickory Nut Gorge Chamber to suspend the alcohol ordinance to allow serving of beer and wine at a business leaders dinner to be held in the Community Hall in October;
- d. a request to present a potential sign regulations amendments to the Zoning and Planning Board for review; and
- e. the following budget amendment concerning electric connections in front of the arcade building and along Pool Creek:

Revenue

Appropriation

General Fund

Transfer from Capital Reserve

\$4,720.00

Public Works- R&M Grounds

\$4,720.00

Capital Improvement Reserve Fund

Transfer to General Fund

\$4,720.00

**End of Consent Agenda.**

**UNFINISHED BUSINESS:**

**a. OTHER UNFINISHED BUSINESS**

There was no other unfinished business.

**NEW BUSINESS:**

**a. BOARD APPOINTMENT – BOARD OF ADJUSTMENT/LAKE STRUCTURE  
APPEALS BOARD**

Board of Adjustment/Lake Structure Appeals Board Chairman Stephen Webber suggested that two of the alternate board members be promoted to regular members and asked that council consider only appointing members who own property or live in town.



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Barbara Searcy of 211 Haveaner's also asked that council not appoint a board who does not own property or live in town.

Council members voted by written ballot.

Town Manager Chris Braund announced the following results:

Melvin Owensby and Michael Gray were appointed to fill the remainder of Vicki Smith and Betty Johnson's regular positions on the Board of Adjustment/Lake Structure Appeals Board with terms expiring December 31, 2014.

Roger Jolly and David Butts were appointed to fill the remainder of Melvin Owensby and Michael Gray's alternate positions with terms expiring December 31, 2014.

**NEW BUSINESS:**

**b. CONSIDER APPROVAL OF THE TOWN FEE SCHEDULE FOR FISCAL YEAR  
2013-2014**

Town Manager Chris Braund gave an overview of a proposed fee schedule for the Town of Lake Lure for fiscal year 2013-2014, including a 9% increase in water rates as assumed in the fiscal year budget approved earlier in 2013.

Mayor Pro Tem John Moore proposed that the water rates remain the same as they were in fiscal year 2012-2013.

Town Manager Chris Braund explained why the increase is proposed and stated that if council chooses not to increase water rates for fiscal year 2013-2014 the budget will need to be amended.

After discussion, Commissioner John Moore made a motion to approve the proposed fee schedule as presented with the exception of the water rates, which will remain the same and be reconsidered at a later date. Commissioner Diane Barrett seconded the motion. Commissioner John Moore, Commissioner Diane Barrett, and Commissioner Bob Cameron voted in favor of the motion. Commissioner Mary Ann Silvery opposed. The motion carried with a vote of three to one in favor. (A copy of the fee schedule is attached.)

**NEW BUSINESS:**

**c. GATEWAY PROPERTY REPORT: FINDINGS & RECOMMENDATIONS**

**Page 21- Minutes of the October 8, 2013 Regular Council Meeting**

Community Development Director Shannon Baldwin provided council members a handout with a report of findings concerning use of the gateway property (104/106 Boys Camp Road) and gave an overview of a memo from Charlie Ellis outlining proposals for the property prepared by the gateway property task force.

After discussion, Commissioner John Moore made a motion to ask the Zoning and Planning Board to review the proposals and make a recommendation to town council concerning use of the property at 104/106 Boys Camp Road. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

**NEW BUSINESS:**

**d. CONSIDER APPROVAL OF A CORRECTION OF THE LAKE LURE CLASSICAL ACADEMY DEED TO CORRECT THE LEGAL DESCRIPTION TO CONFORM TO A NEW SURVEY**

Community Development Director Shannon Baldwin and Attorney Chris Callahan gave an overview of the proposed deed of correction for Lake Lure Classical Academy.

After discussion, Commissioner Diane Barrett made a motion to approve the deed. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

**NEW BUSINESS:**

**f. CONSIDER APPROVAL OF A PROPOSAL CONCERNING ENGINEERING SERVICES TO ASSESS AND MODERNIZE THE SEWER ORDINANCE**

Chris gave an overview of a proposal for engineering services to assess and modernize the town sewer ordinance (Chapter 51) and analyze sewer rates/revenues against operating costs and capital improvement investment needs as outlined in his memo to town council dated October 4, 2013 and in a proposal submitted by Jeffrey Brown, President of Brown Consultants.

Mr. Bruand requested that \$13,000 of the town's capital improvement funds be used to complete the proposed services.

After discussion, Commissioner Bob made a motion to accept the proposal and move \$13,000 from the capital improvement fund to the sewer fund for the project. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

**ADJOURN THE MEETING**

With no further items of discussion, Commissioner Bob Cameron made a motion to

**Page 22- Minutes of the October 8, 2013 Regular Council Meeting**

adjourn the meeting at 8:35p.m. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ATTEST:

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Andrea H. Calvert  
Town Clerk

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Mayor Bob Keith

***Agenda Item: 12b***



## **Zoning and Planning Board**

### **MEMORANDUM**

**TO:** Mayor & Town Council

**FROM:** Thomas McKay, Chair

**CC:** Chris Braund, Town Manager

**SUBJECT:** Proposed Concession Agreement Review

**DATE:** November 4, 2013

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At its October 15, 2013 meeting, the Zoning and Planning Board discussed the Lake Lure Tours concession agreement and then evaluated the projects they believe would enhance the Town Center. The Board expressed support for giving a 10 year contract to Lake Lure Tours if the Town could get nice, relevant improvements for the Town Center in return. Below are the improvements in a prioritized order based on the votes of the Zoning and Planning Board. Although there were a few ties, the Morse Park Bridge ranked first. This information is being forwarded to you for consideration as the negotiations move forward.

1. Morse Park Bridge
2. Open and repurpose picnic area east of Pool Creek
3. New signage at Beach using new branding
3. Open Beach during off-season
4. New entrance gate at Beach
4. Trail system/Pedestrian circulation
4. Day slips (6-8 boats)
5. Remove old Pool Creek Bridge
6. Renovate public restrooms
7. Boardwalk improvements
8. Picnic shelter

Please know the Town Center Master Plan was a wonderful process for the Town and it caused us to see great opportunities for capital improvements. The Board felt that Town Council, Mr. Braund, and staff should make the decisions on the business points while the Zoning and Planning Board should remain focused on the planning aspects of the agreement and how various capital projects would improve public spaces. We certainly appreciate the opportunity to serve in this capacity in keeping with your request.

***Agenda Item: 14a***

**Lake Lure Properties, LLC  
The 1927 Lake Lure Inn and Spa  
625 Oak Street  
Green Cove Springs, FL 32043**

The Town of Lake Lure  
Mr. Chris Braund, Town Manager  
Lake Lure Town Hall  
U.S. 64 / 74 – Memorial Highway  
Lake Lure, NC 28746

September 16, 2013  
(by e-mail)

**Request for Town Council approval of 2015 advance booking of The Lake Lure  
Town Pavilion (Gazebo) by The 1927 Lake Lure Inn and Spa**

Lake Lure Properties, LLC (The 1927 Lake Lure Inn and Spa) wishes to reserve the Town Gazebo for the following dates in 2015:

**2015 Gazebo Date Requests**

**SATURDAYS:**

May: 2, 19, 16, 23, 30  
June: 6, 13, 20, 27  
August: 1, 8, 15, 22, 29  
September: 5, 12, 19, 26  
October: 3, 10, 17, 24  
November: 7, 14

**SUNDAYS:**

May: 24 (Memorial Day Weekend)  
September: 6 (Labor Day Weekend)  
October: 11 (Columbus Day Weekend)

**PAYMENT REQUEST**

Lake Lure Properties, LLC requests that the Lake Lure Town Council approve a term of sale for payment of the rental fees at the 2014 rate of \$500 for these 2015 Gazebo use dates as follows:

- 50% of the total rents on the requested above dates to be paid by June 30, 2014
- Remaining 50% of the total rents of the above dates to be paid by January 30, 2015.

Any Additional Gazebo dates requested by Lake Lure Properties, LLC outside of the pre-reserved dates above, will be paid in full at the time of contract payment receipt from the Inn's client for their respective date.

If multiple events are held on the same day, the Inn will remit to the town an additional event fee (the 2014 gazebo rental rate).

### Rationale:

The Inn commits a large amount of time and revenue towards marketing the Lake Lure Gazebo at Wedding Festivals, online, through direct emails to brides, during facility tours, etc.

In 2012, the Town's Gazebo rentals doubled from 2009 due to the Inn's marketing strategy. There were 27 Inn Gazebo weddings in 2009, and 52 Inn Gazebo weddings in 2012. In 2013, there were 47 Inn Gazebo weddings. Below is arrayed the time spent by the Inn marketing the Gazebo as well as the number of quality tourists that have gained interest in the Gazebo due to the Inn's efforts:

### INTERESTED PARTIES

- 3,000-5,000 online-registered brides per year through the Inn's website.
  - 2012 saw over 6,500 registered bride's on the Inn's website
  - 2013 has seen 8,660 registered, interested brides, to date
- 6,000 potential bride-tourists at Inn's wedding festivals introduced to Lake Lure Gazebo.
- Approximately 25,000 wedding guests (quality tourists) attended the Inn's gazebo ceremonies and receptions from 2009-2013, and rented rooms/cabins, ate meals at local restaurants, shopped in local establishments, etc.
- 300-350 Inn property tours per year, all including marketing of the Town's Gazebo and the Inn's reception spaces.

### MARKETING TIME:

The Inn spends approximately 5,000 hours per year, marketing the Gazebo and the Inn Weddings.

- An average of 6 tours per week x 52 weeks = 312 tours, each an hour long
- Wedding festivals: prep day + festival = 24 hours x 5 festivals = 120 hours for wedding festivals
- Labor Hours
  - 6,000 registered users x 3 email responses each = 18,000 emails: 3,000 hours
  - Individual emails = 35 hours per week x 52 weeks: 1,820 hours

Weddings account for a large portion of the quality tourists' dollars spent with Lake Lure businesses. Revenue to the local businesses from Inn brides (per Gazebo Wedding, based on 100 guests):

- 100 room nights x area average \$100/night = \$10,000
- Offsite meals at \$10 per meal x 2 meals x 150 persons = \$3,000
- Approximately 150 quality wedding tourists frequenting area attractions during each visit= \$?

The Inn has proven this pre-booking marketing strategy to be a successful, working model to drive business to the Hickory Nut Gorge and local businesses, and increasing revenues for business members of the Gorge, both in the High Season (May – October), and Low Season (November – April).

Thank you for your consideration in this matter,

LAKE LURE PROPERTIES, LLC  
The 1927 Lake Lure Inn and Spa

George Wittmer, Managing Member  
Patrick Bryant, Events and Catering Department Manager, Hotel Representative



***Agenda Item: 14b***



## Office of the Town Manager

**TO:** Mayor and Commissioners  
**FROM:** Chris Braund *CB*  
**DATE:** October 14, 2013  
**RE:** ATM Lease -- State Employees Credit Union (SECU)

Earlier this year, the SECU notified us that they would not be renewing their lease with the town for the space where the ATM sits (between the Welcome Center and the Marina). They did not have enough transaction volume to justify the rental fee to the town and the costs of operating and servicing the machine. Although not many locals have accounts with the SECU, the ATM is open to the public and they have no transaction fees.

We were able to get them to extend our lease for 6 months without rent to see if the transaction volume would increase. It hasn't, but SECU has agreed to continue supporting the machine in place "until the ATM must be removed due to low transactions".

At this time, this is the only bank service we've been able to retain or attract.

I recommend the town council approve the attached Letter of Agreement.

Cc: Sam Karr, Finance Director  
Shannon Baldwin, Community Development Director  
Wyn Hardy, Chamber of Commerce  
George Wittmer, Lake Lure Properties  
Adrienne Wallace, Lake Lure Welcome Center

# State Employees' Credit Union®

Facilities Services

October 4, 2013

TOWN OF LAKE LURE  
Attn: Chris Braun, Town Manager  
PO BOX 255  
LAKE LURE, NC 28746-0255

**RE: ATM B8RU – Lake Lure – Town Hall Parking Lot  
2<sup>nd</sup> Letter of Agreement**

Dear Mr. Braun:

Per your conversation with Chery Smith, please accept this Letter of Agreement as an addendum to the Lease between State Employees' Credit Union and Town of Lake Lure, dated March 22, 2012 and 1<sup>st</sup> Letter of Agreement dated February 15, 2013 to include:

**Options:** Month-to-Month beginning November 1, 2013, to be in addition to paragraph # 12 in lease along with rental payment description below. Will remain Month-to-Month until the ATM must be removed due to low transactions.

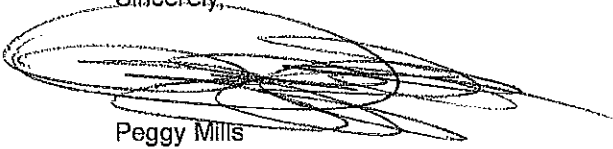
**Rental Payment:** Monthly rental will be \$0.00 (Rent Free) per month during the lease extension period as stated above.

Terms and conditions of the original lease shall apply, except for the terms listed above.

**Please have these two Originals signed, keep one for your records and return one for our files.**

Thank you.

Sincerely,

  
Peggy Mills  
Facilities Administration

Cc: Kim Hollifield, SVP - # 74 Forest City  
Chery Smith, VP - # 192 Rutherfordton

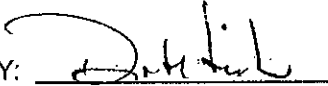
**ACCEPTED:**

**LESSOR: Town of Lake Lure**

BY: \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

**TENANT: State Employees' Credit Union**

BY:   
Dot Hinton, SVP Facilities Services

DATE: 10/4/13



1000 Wade Avenue Post Office Box 26807 Raleigh, NC 27611-6807 919 856-3340 Fax 919 743-6090

www.ncsecu.org

"Equal Employment/Affirmative Action Employer, M/F"

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