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# Town of Lake Lure

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## **Minutes of the Regular meeting of the Board of Adjustment**

**Tuesday, June 26, 2012  
1:00 p.m.**

Chairman Webber called the meeting to order at 1:02 p.m.

### **ROLL CALL**

**Present:** Stephen Webber, Chairman  
Michael Gray, Alternate  
Lance Johnson, Seated Alternate  
John Kilby  
Patricia Maringer  
Melvin Owensby, Seated Alternate  
Bob Cameron, Council Liaison

**Also Present:** Mike Egan, Community Development Attorney  
Sheila Spicer, Zoning Administrator, Recording Secretary

**Absent:** Betty Johnson  
Vicki Smith

Chairman Webber introduced Mr. Gray as the newly appointed alternate Board member. Ms. Spicer stated that Mr. Gray was sworn in prior to the meeting.

### **APPROVAL OF THE AGENDA**

Chairman Webber asked that the agenda be amended to add item 4(A) Discussion on July Meeting Date and (B) Training Discussion.

**Mr. Johnson made a motion to approve the agenda as amended. Ms. Maringer seconded the motion and all were in favor.**

### **APPROVAL OF THE MINUTES**

**Ms. Maringer made a motion seconded by Mr. Owensby to approve the minutes of the May 22, 2012 meeting as presented. The motion passed unanimously.**

## **NEW BUSINESS**

### **(A) Discussion on July Meeting Date**

Ms. Spicer reported that she would be attending a training workshop on the day that the July meeting is to be held. Chairman Webber asked if the Board members wanted to change the date of the July meeting or leave it on the regular day and have another staff member representing the Town and handling the recording duties. After a brief discussion, the Board chose to hold the July meeting on the regularly scheduled date.

### **(B) Training Discussion**

Chairman Webber pointed out that the Board is having difficulty scheduling a training session that all members can attend, so he has asked Mr. Egan to schedule a fifteen to twenty minute training session at each meeting that addresses a different topic each time. He stated that he asked Mr. Egan to focus this training session on hardships.

Mr. Egan discussed the role of the Board of Adjustment. He pointed out that members play an important but extremely difficult role. He reminded that all official rulings the Board makes are quasi-judicial in nature. He also reminded that the Board is not involved in setting policy, which is the role of the Town's governing body.

In granting variances, Mr. Egan advised the Board can only rule in favor of the applicant if a hardship has been demonstrated, as the North Carolina General Statutes dictate, and when the spirit of the Zoning Regulations are upheld. He reminded that the General Statutes and the Regulations spell out when a variance should be granted. The test for granting a variance includes:

1. When no reasonable use of the property exists without the granting of a variance.
2. When the special circumstances are particular to the property in question, not the result of the actions of the applicant.
3. When the need for the variance is peculiar to the property in question and not shared by other properties in the neighborhood.

Mr. Egan pointed out the Zoning Regulations have guidelines for granting a variance and, while not required, the Board may want to consider discussing these guidelines before voting on each case. He stated it is each Board member's responsibility to articulate the reasoning for deciding each case that is presented. He also mentioned that granting a use variance (allowing a use that is otherwise not allowed in a particular district) is prohibited by both the General Statutes and the Zoning Regulations due to the fact that it would be changing policy, which is the role of Town Council.

Chairman Webber pointed out the book titled The Board of Adjustment in North Carolina published by the University of North Carolina School of Government contains important information and is a required resource for each Board member.

## HEARINGS

### **(A) VROP-2012010, a vacation rental operating permit request from Mary Elizabeth Strickland to operate a residential vacation rental at 189 Cameron Lane, Lake Lure North Carolina (Tax PIN 1645040).**

Ms. Spicer and Ms. Strickland were sworn in.

Chairman Webber reported he spoke to Gary Wilson at the Rumbling Bald Resort Security gate when he visited the site and asked if Rumbling Bald Resort Security personnel would respond to concerns at the property as the 24/7 contact. He stated Mr. Wilson responded that the security personnel response would be limited to emergency issues unless the property is managed by Rumbling Bald Resort, in which case the security personnel would respond to all calls regarding the property.

There were no other ex parte communications reported and no conflicts of interest reported. Ms. Strickland did not challenge any of the Board members seated for the hearing.

Ms. Spicer gave an overview of the request. She pointed out this is the first vacation rental operating permit (VROP) request for a residential vacation rental (RVR) to be heard by the Board since the Zoning Regulations were amended in February. She stated the request had been reviewed by the Development Review Committee and directed the Board's attention to the minutes of that meeting included in their packet. She also stated the Zoning and Planning Board had reviewed the request and recommended approval as presented. Ms. Spicer reported that two neighboring property owners had contacted her prior to the meeting to ask about the nature of the request. She stated one had indicated there were no concerns, and the other had sent an email with a list of concerns to be forwarded to the Board. She directed the Board's attention to the email from Larry Lorentzen included in their packet.

Mr. Johnson asked about the maximum occupancy of the proposed RVR. Ms. Spicer explained that the septic approval submitted with the application indicates the septic system is rated for a three bedroom residence which, according to the current Zoning Regulations, would allow a maximum occupancy of ten people; however, an email from the applicant also included in the Board's packet indicated she wants to limit the occupancy to eight people.

Ms. Strickland addressed the Board and requested that her application be amended to reflect that Rumbling Bald Resort will manage her proposed RVR and mentioned she had rented the property short-term through them in the past. She also asked that the application be amended to allow a maximum occupancy of ten people.

**Ms. Maringer made a motion to amend VROP-2012010 to reflect that Rumbling Bald Resort will be the operator of the property and change the maximum occupancy to ten persons. Mr. Johnson seconded the motion and all were in favor.**

Mr. Johnson questioned Ms. Strickland about the available parking at the residence. Ms. Strickland stated she has added gravel to the parking area and feels there is adequate space to park four vehicles and still have room for emergency vehicles to turn around in the event of an emergency. She pointed out that Rumbling Bald Resort security has driven up the road on many occasions and not had any problems turning around. Mr. Kilby asked if all of the proposed parking is located on her property. Ms. Strickland verified that it is. Mr. Johnson pointed out that, with a maximum occupancy of ten people, there is a potential for more than four vehicles onsite. Ms. Strickland mentioned that Rumbling Bald Resort has the authority to limit the amount of vehicles that can park at the property and also has space for overflow parking. Mr. Owensby asked if there had been any issues with parking at the property in the past. Ms. Strickland stated there had not. Ms. Maringer pointed out that Mr. Lorentzen's email cited parking problems. Ms. Strickland responded that she feels Mr. Lorentzen doesn't want her to rent the property. Chairman Webber speculated that Mr. Lorentzen simply doesn't want vehicles using his driveway as a turn around and asked if Ms. Strickland can assure the Board this won't happen. Ms. Strickland stated she can convey these concerns to Rumbling Bald Resort but mentioned she has had family and friends visiting in the past with multiple cars parked at the site without any problems or the need to turn around in Mr. Lorentzen's driveway.

Ms. Strickland closed her testimony by pointing out that the home is not just a rental property but is also a second home for her and her family. She stated she needs to occasionally rent the property to offset the cost of the property taxes. She pointed out that she has addressed the concerns outlined in Mr. Lorentzen's email by amending the application to have Rumbling Bald Resort manage the rental of the property, and she will forward any additional requirements imposed by the Board to the property manager.

There was no further testimony, so Chairman Webber closed the public hearing. During deliberations, he directed the Board's attention to the findings of fact included in the packet and asked each member to consider them when deciding how they will vote.

**With regard to application number VROP-2012010 for a vacation rental operating permit to operate a residential vacation rental in the R-3 Resort Residential zoning district, Mr. Kilby moved the Board to find that the application is complete and that the proposed use, if operated according to the application and any conditions attached hereto, meets the following standards: (1) it will not materially endanger the public health or safety; (2) it will not substantially injure the value of adjoining or abutting property; (3) it will meet all standards and requirements specified in the regulations of the Town; (4) it will be in harmony with the neighborhood character and in general conformity with applicable elements of the Comprehensive Plan; and (5) satisfactory provision and arrangement has been made for those matters specified in §92.046(D) of the Zoning Regulations of the Town of Lake Lure.**

**Accordingly, he further moved the Board to grant the requested vacation rental operating permit in accordance with and only to the extent represented in the**

**application and plans and subject to the condition that the standard rental agreement for the property must include a statement that renters are not to use the neighboring property owner's driveway as a vehicle turn-around. Mr. Johnson seconded the motion and all were in favor.**

As justification for granting the permit, the Board members pointed out that the requirements of the regulations have been met, the use is compatible with the neighborhood, and all concerns have been addressed with the amendments to the application and the added condition.

**(B) ZV-2012002, a request by Lake Lure Village Resort for a variance from Section 92.030(C)(9) of the Zoning Regulations for the minimum setback of 60 feet from Lake Lure for common amenities to 16.5 feet on the east side and 39 feet on the west for a variance of 43.5 feet on the east side and 21 feet on the west, as well as a variance from Section 92.040 for the minimum lot width at the building site of 60 feet to a lot width of 44 feet for a variance of 16 feet. The property (Tax PIN 1645305) is located on Village Boulevard, Lake Lure, NC 28746.**

Ms. Spicer, Lake Lure Village Resort Property Owner's Association President Joyce Bare, and Lake Lure Village Resort Property Owner's Association Director William Bush were sworn in.

There were no ex parte communications reported by the Board. Mr. Johnson mentioned he lives in Lake Lure Village Resort and is a member of the Property Owner's Association (POA) but stated he did not stand to gain financially from the outcome of the hearing and felt he could render an impartial decision. Mr. Bush approached the Board and stated that Mr. Johnson was involved with the construction of the previous location of the proposed gazebo before it was removed due to permitting issues and asked for assurance from Mr. Johnson he would not let that affect his decision. Mr. Johnson reported he was not approached to take part in the current gazebo construction and again stated he could remain impartial in regards to the case. Mr. Bush accepted Mr. Johnson's assurances and stated there were no challenges to the Board members seated.

Ms. Spicer gave an overview of the request. She stated the POA wished to construct a gazebo for the use of the property owners in the resort and their guests, which qualifies as a common amenity as that term is defined in the Zoning Regulations. She pointed out that common amenities have a minimum setback of 60 feet from the shoreline of Lake Lure, but the proposed location of the gazebo does not meet that requirement, so a variance is required to approve the request.

Mr. Johnson asked if the resort proposes to reconstruct the gazebo in the location it was previously placed. Ms. Spicer explained to the remaining Board members that the gazebo was previously built without the required permits so, instead of asking for approvals after the fact, the POA decided to remove the structure and secure the necessary permits before

reconstruction. She stated the proposed location is as shown on the site plan included in the Board's packet.

Mr. Bush pointed out that 80% of the resort's boat docks located in close proximity to the proposed location of the gazebo are in use, and the gazebo will offer protection to members using the docks in the event of inclement weather. He also stated the gazebo will be used as a picnic shelter by all property owners and their guests. Ms. Maringer asked if the POA had considered other locations for the gazebo that would not require a variance. Mr. Bush stated the only locations that would not require a variance were in the parking area, all of which is needed for parking.

There was a brief discussion on the visibility of the structure from the lake and concerns over non-resort members accessing the site from the lake and using the structure. Ms. Bare stated that unauthorized use of resort amenities has always been a concern and assured the Board that all possible measures are taken to prevent trespassing.

Chairman Webber pointed out that the elevation drawings included with the application indicate the height of the structure will be approximately 10 feet above the floor of the structure. He asked what the overall height of the structure will be. Mr. Bush responded the grade in the proposed location is essentially flat, and the footings are 6 inches tall. Chairman Webber asked if the overall height would be no more than 11 feet. Mr. Bush stated that was correct.

Mr. Johnson mentioned the elevation drawing also indicated there are no railings on the structure and asked if the proposed gazebo would have railings. Mr. Bush confirmed there would be railings and probably tables with seating but no lighting or plumbing.

There was no further testimony, so Chairman Webber closed the public hearing. During deliberations, he proposed limiting the height of the structure to no more than 11 feet at any point from average finished grade. He pointed out the POA has a responsibility to provide shelter for residents using the amenities, especially since storms can develop quickly in the area. He also pointed out that the peninsula where the gazebo will be located is very narrow.

**Mr. Johnson moved with regard to case number ZV-2012002 for a variance from Section 92.030 (C)(9) and 92.040 of the Zoning Regulations, that the Board find (a) owing to special conditions, a literal enforcement of the provisions of the regulations will result in practical difficulty or unnecessary hardship, (b) in the granting of the variance the spirit of the Zoning Regulations shall be observed, the public safety and welfare secured, and substantial justice done, and (c) the conditions specified in §92.085(C)(1) exist. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application with the condition that no portion of the structure shall exceed 11 feet in height from the average finished grade. Ms. Maringer seconded the motion and all were in favor.**

As justification for granting the variance, the Board members stated the request meets the guidelines in the regulations for granting a variance, the topography and narrow width of the property necessitates the requested variances, and the purpose of the structure as a shelter is required to protect the safety and general welfare of the residents of the resort and their guests.

**(B) CU-2012001, a conditional use permit request from Lake Lure Village Resort for a common amenity in the R-3 Resort Residential zoning district. The property (Tax PIN 1645305) is located on Village Boulevard, Lake Lure, NC 28746.**

Ms. Spicer, Lake Lure Village Resort Property Owner's Association President Joyce Bare, and Lake Lure Village Resort Property Owner's Association Director William Bush were sworn in.

There were no ex parte communications or conflicts of interest reported. Mr. Bush did not challenge any of the Board members seated for the hearing.

Ms. Spicer gave an overview of the request. She stated the POA wished to construct a gazebo for the use of the property owners in the resort and their guests, which qualifies as a common amenity as that term is defined in the Zoning Regulations. She pointed out that common amenities are a conditional use in the R-3 zoning district. Ms. Spicer reported that the Development Review Committee had reviewed the request and directed the Board's attention to the minutes of that meeting included in their packet. She also stated the Zoning and Planning Board had reviewed the request and recommended approval as presented.

Chairman Webber asked Mr. Egan if the evidence just presented during the variance request for this structure could be incorporated into the hearing for this case. Mr. Egan replied that was acceptable as long as the applicant agreed. Ms. Bare and Mr. Bush both agreed. Chairman Webber asked the Board to review the findings of fact and determine if they had any questions that were not answered during the hearing for the variance. All members indicated they had no further questions.

Chairman Webber recommended the same condition regarding the height of the structure placed on the variance be placed on the conditional use permit.

**Mr. Kilby moved with regard to application number CU-2012001 for a conditional use permit to construct a gazebo to be used as a common amenity that the Board find the application is complete and that the proposed use, if located and developed according to the application and any conditions attached hereto, meets the following standards: (1) it will not materially endanger the public health or safety; (2) it will not substantially injure the value of adjoining or abutting property; (3) it will meet all standards and requirements specified in the regulations of the Town; (4) it will be in harmony with the neighborhood character and in general conformity with applicable elements of the Comprehensive Plan; and (5) satisfactory provision and**

arrangement has been made for those matters specified in §92.046(D) of the Zoning Regulations of the Town of Lake Lure.

Accordingly, he further moved the Board to grant the requested conditional use permit in accordance with and only to the extent represented in the application and plans and subject to the condition that no portion of the structure shall exceed 11 feet in height from the average finished grade. Mr. Johnson seconded the motion and all were in favor.

As justification for granting the conditional use permit, the Board pointed out that residents of the resort and their guests need shelter while using the amenities, and the proposed location meets those needs.

**(D) ZV-2012006, a request by Darlene Pavlas for a variance from Section 92.040 of the Zoning Regulations for the minimum side yard setback of 7 feet to 1.5 feet for a variance of 5.5 feet. The property (Tax PIN 223615) is located at 114 Winding Creek Court, Lake Lure, NC 28746.**

Ms. Spicer and Ms. Pavlas were sworn in.

There were no ex parte communications or conflicts of interest reported. Ms. Pavlas did not challenge any of the Board members seated for the hearing.

Ms. Spicer gave an overview of the case. She pointed out that Ms. Pavlas owns one half of a duplex, and her side property line runs through the middle of the duplex. She stated Ms. Pavlas has applied to extend her portion of the existing porch and add a divider wall between her portion and the neighboring property owner's portion; however, the fact that the regulations require a 7 foot side yard setback in the R-3 district and the porch crosses the side lot line, a variance is required. Chairman Webber questioned whether a variance is in fact required since Ms. Pavlas essentially doesn't have a side yard. Mr. Egan advised that a variance would be needed and stated the Zoning Regulations should be amended to address properties with zero lot lines.

Ms. Pavlas addressed the Board and stated she wants to add the divider wall to provide privacy while using the porch. Ms. Maringer asked if the divider wall will extend to the end of the proposed addition to the porch. Ms. Pavlas clarified that the wall will only extend to the edge of the roof line, and she is not proposing to extend the roof, only the floor of the deck.

Chairman Webber asked Ms. Pavlas to clarify that the overall dimensions of the porch and deck addition will be 12 feet wide by 32 feet long. Ms. Pavlas confirmed that is correct.

Chairman Webber asked Joyce Bare, who was still in attendance from the two previous cases, if she would be willing to testify in this case as the president of the Lake Lure Village Resort POA. Ms. Bare agreed, and she was sworn in. Chairman Webber asked if



the POA was opposed to Ms. Pavlas' request. Ms. Bare responded that she doesn't believe the request will require a permit from the resort's architectural control committee and, based on the testimony and the plans discussed, there was no opposition from the POA.

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

**Mr. Johnson moved with regard to case number ZV-2012006 for a variance from Section 92.040 of the Zoning Regulations, that the Board find (a) owing to special conditions, a literal enforcement of the provisions of the regulations will result in practical difficulty or unnecessary hardship, (b) in the granting of the variance the spirit of the Zoning Regulations shall be observed, the public safety and welfare secured, and substantial justice done, and (c) the conditions specified in §92.085(C)(1) exist. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application. Ms. Maringer seconded the motion and all were in favor.**

In justification of the variance, the Board cited the fact that the hardship is due to the property having a zero lot line in the side yard, the privacy partition is needed and all but 2 of the other duplexes in the neighborhood have a partition, the request is not injurious to the neighborhood, and the guidelines of the regulations for granting a variance have been met.

#### **OLD BUSINESS**

None

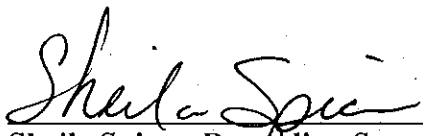
#### **ADJOURNMENT**

**Mr. Owensby made a motion seconded by Ms. Maringer to adjourn the meeting. All were in favor.**

The meeting was adjourned at 3:30 p.m. The next regular meeting is scheduled for Tuesday, July 24, 2012 at 1:00 p.m.

**ATTEST:**

  
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Stephen M. Webber, Chairman

  
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Sheila Spicer, Recording Secretary