



# Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

Incorporated 1927

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

Tuesday, April 23, 2013  
1:00 p.m.

Chairman Webber called the meeting to order at 1:00 p.m.

### ROLL CALL

**Present:** Stephen M. Webber, Chairman  
John Kilby  
Patricia Maringer  
Bob Cameron, Council Liaison (left early)

**Also Present:** Mike Egan, Board Attorney  
Michelle Jolley, Recording Secretary  
Sheila Spicer, Zoning Administrator

**Absent:** Michael Gray, Alternate  
Betty Johnson  
Melvin Owensby, Alternate  
Vicki Smith

### APPROVAL OF THE AGENDA

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

### APPROVAL OF THE MINUTES

Mr. Kilby made a motion seconded by Ms. Maringer to approve the minutes of the March 26, 2013 meeting as presented. The motion passed unanimously.

### HEARINGS

- (A) VROP-2013004, a vacation rental operating permit request from Mark & Shannon Muhaw, to operate a residential vacation rental at 138 Wilson Court, Lake Lure, North Carolina (Tax PIN 1611945)

Ms. Spicer and Mr. Muhaw were sworn in.

Chairman Webber explained to Mr. Muhaw that since there were only four board members present, all seated members would have to vote in favor of his request for the permit to be granted due to the fact that a 4/5 vote is required. He advised Mr. Muhaw that he has the choice to reschedule for a different meeting date, or he can continue with only four board members present. Mr. Muhaw made the decision to continue on with the hearing.

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

Ms. Spicer presented an overview of the case. She stated the property owners are requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental (RVR) in the R-1C zoning district. She pointed out the Board's packet includes a parking plan, standard rental agreement, and verification that the property has been registered with the Rutherford County Tourism Development Authority. Ms. Spicer reported the Development Review Committee (DRC) reviewed this request on April 9, 2013, and the minutes to that meeting are also included in the Board's packet. Ms. Spicer mentioned that on April 18, Marilyn Wilcoff, neighboring property owner to Mr. Muhaw, called and asked for details on the request. Ms. Wilcoff expressed some concerns over parking at the property, traffic, and potential noise if dogs are allowed to stay on the property. Ms. Spicer explained the town regulations to Ms. Wilcoff regarding parking and noise and mentioned there is a parking plan with the application. Ms. Spicer advised Ms. Wilcoff she should come to the meeting and discuss at the hearing any concerns she may. Ms. Spicer stated Ms. Wilcoff indicated all of her questions had been answered. Ms. Spicer mentioned there were no other calls from property owners with concerns regarding the request.

Mr. Muhaw addressed the Board and advised he had no cross-examination or further questions for Ms. Spicer. Mr. Muhaw presented his case to the Board and stated he lives in the neighborhood and does not foresee any issues from any of the neighbors. Mr. Muhaw mentioned he will monitor the guests that will be staying and, in the end he wants everyone to be happy, and he wants all guests to have a good experience with Lake Lure.

Ms. Maringer asked Mr. Muhaw how many bedrooms the septic permit is approved for, because there was no septic permit included with the application. Mr. Muhaw responded he did not pull the septic permit, but he assumed it lists the house as a three bedroom house. Ms. Maringer asked Ms. Spicer if she got a septic permit, and Ms. Spicer advised that she did not get a copy of the septic permit. Ms. Spicer mentioned that the Rutherford County Property Card was included in the packet, which indicates that the house was built as a three bedroom home. Ms. Spicer also mentioned that she advised Mr. Muhaw at the DRC meeting that he should be prepared to answer any questions regarding the septic. Ms. Spicer advised that Ms. Muhaw included as part of her notes on the application that there is an on-site septic system that is regularly monitored and

maintained. Mr. Johnson asked Mr. Muhaw who maintains the septic system. Mr. Muhaw responded that he maintains the system with enzymes and bacteria.

Mr. Kilby asked if the house would have been issued a Certificate of Occupancy in 1996 when it was built. Ms. Spicer pointed out that there were regulations in place by Rutherford County Building Inspections in 1996, and a new home would have been required to have a Certificate of Occupancy.

Chairman Webber asked Mr. Muhaw if he was the original owner of the home. Mr. Muhaw answered that he was not. Chairman Webber then asked if Mr. Muhaw had done any investigation on the septic system when he bought the home. Mr. Muhaw stated that nothing was done pertaining to the septic system other than a normal home inspection at the time of purchase. Chairman Webber asked where the septic tank is, and Mr. Muhaw responded that it is in the back yard. Chairman Webber then asked where the drain field is, and Mr. Muhaw mentioned that he assumes it goes out past the fenced area behind the house. Chairman Webber asked if Mr. Muhaw lives in the home full time. Mr. Muhaw answered that he does not. Mr. Muhaw also stated he has talked with the previous owner of the house, and they never mentioned having any problems with the septic system.

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

During deliberations Ms. Maringer stated she called Rutherford County Health Department, but couldn't get any further information on the current septic system. She also pointed out there is plenty of parking on the property. Chairman Webber states he was not concerned with the septic system because the property is not in close proximity to a lake or any other water source.

**With regard to application number VROP-2013004 for a vacation rental operating permit to operate a residential vacation rental in the R-1C zoning district, Mr. Johnson 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. Ms. Maringer seconded the motion. The motion passed unanimously.**

In support of granting the permit, the Board pointed out that the application is complete, and the request meets all of the requirements, findings, and intent of the regulations.

**(B) ZV-2013002, a request from Robert & Judy Taylor for a variance from Section 92.040 of the Zoning Regulations for the minimum front (lake) yard setback of 35 feet to 6 feet 4 inches for a variance of 28 feet 8 inches and a variance from the minimum front (street) yard setback of 40 feet to 24 feet for a variance of 16 feet. The property (Tax PIN 221700) is located at 266 Picnic Point, Lake Lure, NC 28746.**

Ms. Spicer, Dr. Taylor, and Kim Warner (Dr. Taylor's engineer) were sworn in.

Chairman Webber explained to Dr. Taylor that since there were only four board members present, all seated members would have to vote in favor of his request for the variance to be granted due to the fact that a 4/5 vote is required. He advised Dr. Taylor that he had the choice to reschedule for a different meeting date or he could continue with only four board members seated. Dr. Taylor asked if he could withdraw at any point if he proceeded with the hearing. Chairman Webber deferred this question to Mr. Egan who stated that, if Dr. Taylor does withdraw at anytime during the hearing, the whole process to get a zoning variance will start over at the next meeting. The meeting was recessed to allow Dr. Taylor to confer with Mr. Warner. He then made the decision to continue with the hearing.

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

Ms. Spicer gave an overview of the case. She stated that Robert & Judy Taylor are seeking permission to construct an addition to their existing dwelling located at 266 Picnic Point Road. The proposed addition will be located in the required front street and lake yard setbacks and will require a 16' variance from the street front setback and a 28' 08" variance from the lake front setback. Ms. Spicer mentioned that Dr. Taylor submitted a completed application, floor plans, site plans, construction drawings, and a project overview drafted by Mr. Warner. Ms. Spicer also advised that the addition would encroach into the existing side yard setback, but Dr. and Ms. Taylor are proposing to move the south property line if the variance is granted since they also own the adjacent lot. This potential recombination is shown on sheet 10B of the plans submitted with the application and included in the Board's packet.

Ms. Spicer mentioned that Mr. Warner has been in contact with her several times about this property, as well as in contact with Clint Calhoun, Environmental Management Officer. Ms. Spicer also mentioned that Mr. Warner has been advised that the Mountain & Hillside Development regulations will apply to this property, and it will require a Level 2 analysis. While all of the required information for a Level 2 analysis has not been submitted at this time, Mr. Warner indicated in the project overview found on sheet 0 of the submitted plans that the property owner intends to provide all of this information if the variance is approved. Mr. Warner also stated in the project overview that a floodplain development permit is not required; however, Ms. Spicer stated that Mr. Calhoun has indicated that is incorrect. Ms. Spicer assured the Board the certificate of zoning compliance permit would not be approved until all required information is submitted, and

all other required permits have been approved.

Ms. Spicer stated that she had a brief conversation by phone with Helen Nelon, neighboring property owner to Dr. Taylor. She stated that Ms. Nelon is present at this meeting, as well as her daughter Mary Nelon. Ms. Spicer mentioned that Ms. Nelon had expressed some concerns during their phone conversation regarding her mailbox located across the street from her property on the edge of Dr. Taylor's property, and stated she was concerned what the impact would be on the location of her existing mailbox. She also mentioned to Ms. Spicer some concerns about parking. Ms. Spicer stated that this was the only phone call she had with concerns about the request.

Chairman Webber asked Ms. Spicer to point out where the Zoning Regulations reference requirements for combining contiguous lots. Ms. Spicer directed his attention to §92.101(B) (1)&(2), as well as §92.130 of the Zoning Regulations. Ms. Spicer stated that in the attorney's certificate of title, which is required for nonconforming lots of record, it asks if there is adjacent property that can be combined with the property to make a conforming lot; in this case there is. She explained Dr. Taylor's existing lot is 0.13 acres, which is less than the minimum lot size; however, if Dr. Taylor gets the two variances he is asking for, he intends to move the lot line to create a conforming lot since he also owns the adjacent 0.58 acre parcel. Ms. Spicer also stated that Dr. Taylor cannot create any nonconformities when moving his property lines. She mentioned she had corresponded by email with Suzy Smoyer, Subdivision Administrator, and Ms. Smoyer mentioned in her email that she reviewed Dr. Taylor's proposed lot change and can approve it as drawn. Mr. Johnson stated that Dr. Taylor's proposal to move the property line should be a condition for approval; Mr. Kilby agreed. Ms. Spicer mentioned that Dr. Taylor will also have the required 100 feet of lot width at the building site if the property is reconfigured as proposed. There was a brief discussion on whether a variance will bring a current nonconforming structure into conformity. Mr. Egan stated the variance should also address the existing structure. Chairman Webber then mentioned that the regulations state nonconforming structures are not to be enlarged, requiring the variance to cover the existing structure as well as the proposed addition. Mr. Kilby asked if anything could be done to make this existing structure conforming, and Chairman Webber stated only a variance can make it conforming. Ms. Spicer mentioned that §92.101 (D) prohibits enlarging a nonconforming structure in a way that increases its nonconformity, and §92.101 (G) allows maintenance and repairs to a nonconforming structure provided that the cubic content of the structure is not increased. Chairman Webber mentioned that in order to grant Dr. Taylor's variance, the condition that Dr. Taylor move his property line to create a conforming lot would have to be included. There were no further questions.

Dr. Taylor addressed the Board and advised he had no cross-examination or further questions for Ms. Spicer. Dr. Taylor presented his case to the Board and stated he bought the house in 1985. He stated his plans are to add an additional 5 ½ bedrooms to the property to accommodate his growing family. He also stated he has hired Kim Warner as his engineer, who is present at this meeting.

Ms. Maringer asked Dr. Taylor if the geotechnical engineer that analyzes the site for the

Level 2 Mountain & Hillside Development requirements will recommend such a large structure on a steep slope. Dr. Taylor referred this question to Mr. Warner who stated he feels the proposed structure can be built on property without a problem. He pointed out concrete will be required than was used when the existing house was built. Ms. Maringer asked Mr. Warner if eliminating the existing parking area removing the three very large trees would make the ground unstable. Mr. Warner said that any excavation will be below the trees so would not be a problem. Mr. Warner stated that the parking will be south of the house on Dr. Taylor's property. He stated there will be a retaining wall constructed to allow for adequate parking off of the street. Ms. Maringer looked over the parking plans and expressed concerns over the existing concrete ditch for water that is coming down the street. Mr. Warner stated the ditch will have to be reworked to make sure that it is piped all the way down and that there is going to be a lot of work done in regards to parking. Mr. Warner stated that he can add additional parking to the plans if needed, and that Dr. Taylor has plenty of space for parking. Chairman Webber confirmed with Mr. Warner that the existing parking will not change and Dr. Taylor stated that it has been the same since 1985.

Chairman Webber asked Dr. Taylor why he wants to build this addition. Dr. Taylor replied that he wants to be able to accommodate his growing family and does not currently have enough sleeping space for his family. He stated that he wants to allow the family to be able to stay under one roof. Dr. Taylor stated that Mr. Warner had told him that a lateral addition would be the safest route, and building another level would not be as structurally safe. Chairman Webber asked Dr. Taylor if he felt like he has reasonable use of his property as a residential lot as it is now. Dr. Taylor stated that he and his family have made due with the situation, but with the family growing it will not be feasible in the future.

Chairman Webber explained to Dr. Taylor that the Board has to be able to answer certain findings of fact in order to grant a variance, and a variance is based on hardships of the land and/or structure, and whether or not the property owner has reasonable use. He explained that based on the testimony he has heard so far, he is having a trouble with the variance being the minimum that will make possible the reasonable use of the land, building, or structure. Chairman Webber asked Mr. Egan if the hardship could be based on the size of the property owner's family if he cannot accommodate his family in his original structure. Mr. Egan said that the Board has the right to grant variances when they're consistent with the standards set forth in the regulations. Mr. Egan stated that it is up to the Board to make this decision. Mr. Kilby stated that he feels that Dr. Taylor has a hardship because he is not able to accommodate all of his family in his home. Mr. Johnson asked Dr. Taylor how many family members will be in the house on a regular basis. Dr. Taylor stated that on the weekends during the summer months it could be his entire family and there would be full use of the house with the addition. Dr. Taylor stated that he included an extra bedroom or two in his variance request for anticipated guests, rather than under-construct and not have enough bedrooms to accommodate his family. Chairman Webber mentioned to Dr. Taylor that he has hurt his case by stating that he has included an additional one or two extra bedrooms because, when a variance is considered, the Board members have to make a decision as to whether it is the minimum variance needed that will make reasonable use of the land, building, and structure. Dr.

Taylor assured Chairman Webber that his intent is to have all the bedrooms full with family members.

There were no further questions from the Board members and Ms. Spicer did not wish to cross-examine Dr. Taylor on his testimony.

Helen Nelon, neighbor to Dr. Taylor, was sworn in.

Ms. Nelon stated that she has lived at her current address for 40 years, and her mailbox is located across from her property where the mailman can access it. She is concerned that if Dr. Taylor is granted this variance, she may have to move the location of her mailbox. Dr. Taylor responded that he will allow Ms. Nelon to keep her mailbox in its current location. He stated that he would be willing to add her mailbox location to his plans as a condition for the variance. Ms. Nelon testified that she had no problem with the existing parking area or the proposed parking area. Chairman Webber asked Mr. Warner if he could extend the parking area another few inches to make sure that no cars will be parking in the road. Mr. Warner assured that he could. Ms. Maringer asked Mr. Warner if he could extend parking to accommodate the extra vehicles when all nine bedrooms would be in use, if the variance is granted. Mr. Warner stated that Dr. Taylor has plenty of room on his property to add additional parking off the roadway if he needs to. Ms. Nelon stated that she has a concern with the turn-around at the end of the road. Mr. Egan stepped in and stated that parking is not relevant to grant the variance. There was a brief discussion about the turn-around and parking.

Mary Nelon, daughter of Helen Nelon, was sworn in. She stated that she visits her mother's residence, but does not live there on a permanent basis. She asked for more clarification on the turn-around. There was a brief discussion on the turn-around and parking. Chairman Webber advised that parking and neighboring property owners using Dr. Taylor's property as a turn-around is a civil matter and is not relevant to grant the variance. Ms. Nelon had concerns that the concrete drain would contaminate the water. Chairman Webber advised that he has complete faith that Mr. Warner will follow all rules and regulations. He also stated that Mr. Calhoun and the Rutherford County building inspector will make sure that everything falls in line with their regulations as well. Ms. Nelon did not have any further questions.

Dr. Taylor did not wish to make any cross-examinations and there were no further questions. There was no further testimony, so Chairman Webber closed the hearing.

During deliberation, Mr. Kilby stated that he feels like all findings are met. Mr. Johnson stated his only concern was whether or not the variance requested will be the minimum that will make possible the reasonable use of the structure. Ms. Maringer stated that she was concerned with whether or not the variance will be in harmony with the purpose and intent of the zoning regulations. She also was concerned with whether or not the variance requested was the minimum that would make reasonable use of the structure. Chairman Webber stated that he had concerns with whether or not Dr. Taylor has 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. He also had concerns with whether or not the variance will be in harmony with the purpose and intent of the zoning regulations, and is concerned that the special circumstances are not the result of the actions of the applicant. Chairman Webber stated that his last concern was whether or not the variance is the minimum that will make possible the reasonable use of the structure. There was a lengthy discussion on each of these findings.

**With regard to case number ZV-2013002 for a variance from §92.040 of the Zoning Regulations, Mr. Kilby moved the Board to find (a) owing to special conditions, a literal enforcement of the provisions of the regulation(s) 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 the existing property boundary will be relocated as shown on sheet 10B of the plans submitted with the application. Mr. Johnson seconded the motion. Mr. Johnson, Mr. Kilby, and Ms. Maringer voted in favor of the motion; Chairman Webber voted against.**

In support of voting to grant the variance, the three Board members stated they felt the findings had been met, and the variance would not be injurious to the neighborhood. However, Ms. Maringer stated she still had reservations about whether or not the request was in harmony with the intent of the Zoning Regulations as well as whether or not the variance requested was the minimum that would make possible reasonable use of the structure.

Chairman Webber stated that he felt all of the findings had been met with the exception of whether or not the variance requested was the minimum that would make reasonable use of the structure. He pointed out that testimony had revealed the structure is not the primary residence of the applicants, so he did not feel there was justification to grant a permanent variance to accommodate only weekend stays.

Chairman Webber advised Dr. Taylor that he will have 30 days from the date he receives the official order to appeal the decision to Rutherford County Superior Court. He also advised that he can apply for a rehearing within one year as long as there is a substantial change from the original plans.

### **NEW BUSINESS**

None

### **OLD BUSINESS**

None

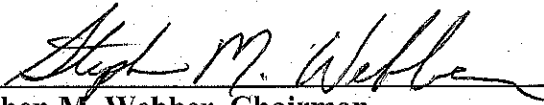


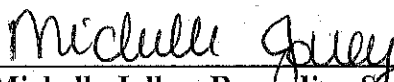
**ADJOURNMENT**

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

The meeting was adjourned at 3:57 p.m. The next regular meeting is scheduled for Tuesday, May 28, 2013 at 1:00 p.m.

**ATTEST:**

  
\_\_\_\_\_  
**Stephen M. Webber, Chairman**

  
\_\_\_\_\_  
**Michelle Jolley, Recording Secretary**