



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

**Tuesday, September 24, 2013
1:00 p.m.**

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

ROLL CALL

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

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

Absent: N/A

APPROVAL OF THE AGENDA

Chairman Webber added item (B) under Old Business for review of the Boff order.

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

APPROVAL OF THE MINUTES

Chairman Webber pointed out that there were two handouts distributed. One was an email Ms. Boff sent to Ms. Spicer requesting changes to the August, 2013 minutes. The second handout was proposed changes to the August, 2013 minutes based on Chairman Webber's review of the audio hearing. Chairman Webber pointed out he read over the email in Ms. Spicer's office on September 23, 2013 and cross-referenced with the audio

hearing to conclude that her requested changes were incorrect to the audio. He then stated he did add some changes to the minutes on page 10 and 13. He labeled the correction he made on page 10 of the minutes "Insert A" and the correction he made on page 13 "Insert B". Chairman Webber asked that Ms. Spicer email Ms. Boff back when the minutes are finalized to which Ms. Spicer agreed.

Chairman Webber also pointed out changes he would like to amend in the September minutes. He stated on page 2 to change "June 25" to "July 23". On page 4 in the first paragraph he noted it shows that Mr. Kilby made the motion and he would like a review of the minutes to see if that was correct. Ms. Maringer stated she thought she had made the motion. On page 6 in the second paragraph on line 6, Chairman Webber pointed out that "Mr. Nelon's" should be corrected to "Mr. Nelons". On page 6 in line 14 he requested changing "for" to "before". The last correction he requested was on page 8, line 2 of the last paragraph to change "affect" to "effect".

Ms. Maringer made a motion seconded by Mr. Gray to approve the minutes of the August 27, 2013 meeting as amended. The motion passed unanimously.

HEARINGS

(A) VROP-2013013, a vacation rental operating permit request from Richard Lundy, agent for Peter and Bilinda Kaufman, to operate a residential vacation rental at 181 O'Brien Road, Lake Lure, North Carolina (Tax PIN 230686)

Ms. Spicer and Mr. Lundy were sworn in.

There were no conflicts of interests reported. Mr. Lundy did not wish to challenge Board members for cause.

Ms. Spicer presented an overview of the case. She stated Richard Lundy, agent for Peter and Bilinda Kaufman, is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental at 181 O'Brien Road. The property is located in the R-3 Resort Residential zoning district, and there is an existing single-family dwelling on the lot. Residential vacation rentals are a permitted use in the R-3 district subject to special requirements contained in Section 92.042 of the Zoning Regulations. Section 92.042 (C)(1) of the Zoning Regulations states that VROP applications are to be deemed in the nature of and processed as a conditional use permit. She pointed out the packet includes the Town's application form, an agent authorization letter from Bilinda Kaufman authorizing Mr. Lundy to act as her agent, a parking plan, a standard rental agreement, and an email from him that they include the Town's contract addendum with each one. In regards to verification that they're registered with the Tourism Development Authority (TDA), Ms. Spicer pointed out Ms. Bosgra, with the Rutherford County Finance Department and collects occupancy taxes for the TDA, emailed her stating Mr. Lundy did call her to add a property but the TDA does not have a detailed list of the

specific properties that Rumbling Bald Resort manages. Ms. Spicer noted she has brought this to the TDA's attention before and was told they are not requiring it.

Ms. Maringer asked Ms. Spicer why there was no septic report included in the packet. Ms. Spicer referred to Section 92.042 (B) of the regulations stating she is not required to get septic documentation from the applicant and this is why it was not included in the packet. Chairman Webber mentioned this is something the Board's hoping to have fixed in the proposed changes of the Zoning Regulations.

Ms. Spicer stated the Development Review Committee reviewed this application on September 12, 2013. The minutes from that meeting are included in the packet. There were no proposed changes to the appearance of the building or premises, so Zoning and Planning Board review was not required.

Ms. Spicer reported she had one response from a neighboring property owner on September 12, 2013. She stated she received a call from a gentleman, who did not wish to give his name, who wanted information on the property at 181 O'Brien Road for foreclosure. Ms. Spicer stated she made him aware that the notice was for a vacation rental operating permit request and not a foreclosure notice.

Mr. Lundy approached the podium and was asked by Chairman Webber if the home on the property has three bedrooms because the property card lists it as having two bedrooms. Mr. Lundy stated he asked the homeowner this and they told him the inspection there shows the permit as having 2-3 bedrooms. Mr. Lundy mentioned he also asked them about the septic tank and was told it was serviced and inspected in November, 2010. He stated the homeowners felt this would be sufficient for a part-time residence and would not need servicing again at this time. Mr. Lundy agreed to have it looked at again if the Board requests it.

Mr. Gray asked Mr. Lundy if the basement was finished. Mr. Lundy stated that it is not finished and the unfinished portion is locked off.

Chairman Webber asked Mr. Lundy if he felt comfortable that the septic would support three bedrooms and Mr. Lundy answered yes. Chairman Webber recommended having the low hanging branches over the driveway trimmed so they do not hit vehicles.

With regard to application number VROP-2013013 for a vacation rental operating permit to operate a residential vacation rental in the R-3 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 and all were in favor.

(B) VROP-2013014, a vacation rental operating permit request from Daniel Teeters to operate a residential vacation rental at 203 Tryon Bay Circle, Lake Lure, North Carolina (Tax PIN 1605329)

Ms. Spicer and Mr. Teeters were sworn in.

There were no conflicts of interests reported. Mr. Teeters did not wish to challenge the Board for cause.

Ms. Spicer presented an overview of the case. She stated Daniel & Karen Teeters are requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental at 203 Tryon Bay Circle. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot. Residential vacation rentals are a permitted use in the R-1 district subject to special requirements contained in Section 92.042 of the Zoning Regulations. Section 92.042 (C)(1) of the Zoning Regulations states that VROP applications are to be deemed in the nature of and processed as a conditional use permit. She pointed out the packet includes the application, a parking plan, a copy of a septic permit issued in 1987, and a standard rental agreement. She noted there are also a couple of different emails included between herself, Mr. Teeters, and Jeanette Bosgra with Rutherford County Finance. Ms. Spicer mentioned that Mr. Teeters was collecting occupancy taxes but was unsure of where to send those but has since sent those occupancy taxes in to the TDA.

Ms. Spicer stated the Development Review Committee reviewed this application on September 12, 2013. The minutes from that meeting are included in the packet. There were no proposed changes to the appearance of the building or premises, so Zoning and Planning Board review was not required. She stated that one of her concerns at that meeting was that his standard rental agreement did not meet requirements in the general statutes and he stated at that time that he would review those statutes and amend his agreement accordingly. Ms. Spicer noted the standard rental agreement in the packet is the amended agreement, which was provided on September 16.

Ms. Spicer mentioned she received two phone calls after the notifications were posted. On September 11, 2013 she stated Terry Fountain, the adjacent property owner, called asking what the sign was for and Ms. Spicer explained the request to him. Ms. Spicer noted the only concern he had was that there are sometimes more vehicles at the property than the owner allows and did not feel that this was at any fault of the owner. Ms. Spicer stated she told him if he had any more concerns or questions that he could come to the hearing. On September 18, 2013 Ms. Spicer mentioned she received a call from Aaron

White, neighboring property owner, asking for information on the request. Ms. Spicer mentioned he wanted to know if the occupancy taxes had been paid and she let him know about the emails she had.

Mr. Gray asked Ms. Spicer if the application was complete. Ms. Spicer stated it is her understanding that it is. Mr. Gray pointed out that under the 24/7 contact on the VROP application Mr. Teeters is the only one listed. He mentioned Mr. Teeters would not be able to make it within an hour since he lives in Florida. Chairman Webber stated he does not believe this is a requirement. Ms. Spicer referred to Section 92.046 (I) which states the owner would have to maintain a call center that will be staffed by a live person anytime the property is used as a residential vacation rental. She noted the regulations do not specify a specific time a contact person would have to be at the property, but a responsible party would have to be there in a certain amount of time. Mr. Egan stated this was changed in the February 28, 2012 amendment.

Mr. Teeters noted the occupancy taxes have been paid and he has an email from Ms. Bosgra which states they were paid.

Mr. Kilby asked Mr. Teeters if he has a local person who looks after the property and if he would have someone to call if an issue came up. Mr. Teeters answered there are a variety of people who help take care of the property. He mentioned if someone was to call him with an issue he would take care of it or the police would take care of it if they were called.

Mr. Johnson stated he believes allowing parking up to four vehicles would be very tight and this might be a concern. Mr. Teeters stated the rental agreement was amended to allow parking up to three vehicles. He mentioned the application should be changed to show three parking spaces.

Ms. Maringer asked how many bedrooms there are because the property card shows seven. Mr. Teeters answered it is set up for five bedrooms, ten people.

Chairman Webber asked Mr. Egan if the short-term rental agreement is commensurate with North Carolina law now. Mr. Egan stated he cannot answer without looking at the statute. Ms. Spicer mentioned when she received the standard rental agreement she glanced through it and it appeared that everything was there.

Chairman Webber stated the parking diagram shows the property line from GIS divides the parking spaces and asks Mr. Teeters if the property has ever been surveyed. Mr. Teeters answered that the property has been surveyed. Chairman Webber asked if Mr. Teeters felt comfortable that those parking spaces are not in the roadway and Mr. Teeters stated he was not aware that there may be an issue until Ms. Spicer told him a couple of days prior to the meeting. Ms. Spicer mentioned she made Mr. Teeters aware that the parking plan does show some of the parking in the roadway and to be prepared in case any questions were raised at the meeting. Mr. Teeters noted he would address this if some

of the parking is in the roadway and can change the number of parking spaces at the property.

Ms. Maringer asked when the last time the septic was surveyed or inspected and Mr. Teeters stated he has not had it inspected in the 14 months that he has owned the home. He mentioned he had an inspector come out to check the septic for leaks or problems, but did not do a complete inspection, and there were no problems reported.

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

During deliberations Ms. Maringer recommended having the handrail leading down to the lake fixed because it is weak. Chairman Webber mentioned his only concern was about the response time and what the intent was of the Town's regulations. However, he noted that the word "intent" is not in the findings and deferred to Mr. Egan for advice. Mr. Egan mentioned it would just have to meet the standards and requirements.

With regard to application number VROP-2013014 for a vacation rental operating permit to operate a residential vacation rental in the R-1 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 and Mr. Gray seconded and all were in favor.

(C) ZV-2013005, a request from Miles Champion, agent for Sylvia Pflum for a variance from Section 92.027 (A)(2) of the Zoning Regulations for the maximum amount of impervious surface. The property (Tax PIN 1627043) is located at 304 Seton Road, Lake Lure, North Carolina 28746

Ms. Spicer and Mr. Champion were sworn in.

There were no conflicts of interests reported. Mr. Champion did not wish to challenge the Board for cause.

Ms. Spicer presented an overview of the case. She stated Sylvia Pflum is requesting a dog kennel on her property located at 304 Seton Road for personal use and stated the kennel is a root structure with a concrete floor. In processing the original application, Ms. Spicer determined the Mountain & Hillside Development regulations would apply. Section

92.207 (A)(2) of the regulations states that no lot may have more than 6,000 square feet of impervious surface. The property currently has 11,684 square feet of impervious surface, the majority of which is for the driveway to Seton Road. Ms. Pflum is requesting to add an additional 242 square feet of impervious surface for the construction of the dog kennel. Since the existing amount on the property already exceeds the maximum limit of the Zoning Regulations, a variance is required to add any additional impervious surface. She pointed out the packet includes an authorized letter from Ms. Pflum authorizing Mr. Champion to act as her agent, plans for the dog kennel, and a survey verifying the slope on the property as indicated by the surveyor. On September 12, 2013 Ms. Spicer mentioned she received a call at home from Ms. Sawyer, a neighboring property owner, asking for specifics of the hearing. Ms. Spicer stated she did not have her application with her and Ms. Sawyer was going to come in the following week to meet with her and look at the application. Ms. Spicer stated she received a call from Ms. Sawyer again on September 17 asking if she was available for her to come in and meet with her. Ms. Spicer mentioned she talked to her over the phone about the application and when Ms. Sawyer realized the property was on the opposite side of the property from hers she stated she had no concerns and did not wish to see the plans.

Mr. Kilby asked Ms. Spicer if the only issue is the impervious surface and Ms. Spicer stated yes. Mr. Gray asked about the noise ordinance and Ms. Spicer responded that the dogs are not there yet. Chairman Webber noted if the noise ordinance is violated, the police could be called to handle it.

Chairman Webber asked what the slope of the lot was and if there is some concern on the placement of the kennel because of the slope. Ms. Spicer answered that, according to the surveyor, there is a 50.92% grade of the entire lot and because the slope of the entire lot is greater than 30% Mountain & Hillside Development Regulations apply and there is a maximum impervious surface on the lot. Ms. Spicer pointed out that the Community Development Director, Shannon Baldwin, has the authority to allow a slope calculation to be taken using separate pieces of the property but this is only in certain cases where there are significant variations in the slope. Ms. Spicer noted that this case does not have a significant variation in the slope which would justify for that regulation to apply.

Clint Calhoun, Environmental Management Officer, was sworn in. Ms. Maringer asked if he had been to look at this property and Mr. Calhoun responded that he has not. Ms. Maringer asked about fecal runoff. Ms. Spicer answered they will have a drain that will connect to their existing sewer lines. She mentioned she spoke with Donnie McCraw, Hydroelectric Plant & Wastewater Collection Supervisor, and he has checked with our engineers and the State and has confirmed there are no prohibitions against piping animal waste through the sewer lines.

Chairman Webber asked when the house was built. Ms. Spicer responded the property card states the construction was finished in 1998, prior to Mountain & Hillside Development Regulations. Chairman Webber stated this would be a nonconforming lot of record because of the impervious surface and Ms. Spicer stated it is not necessarily

nonconforming because it is not undersized. Ms. Spicer read the zoning regulations regarding nonconforming characteristics of use. Discussion held.

Mr. Gray asked Ms. Spicer if 92.111 regarding outdoor privies would apply to this case and Ms. Spicer stated no. Mr. Egan mentioned that, in his opinion, this is a kennel and not an outdoor privy.

Mr. Champion, licensed professional engineer and agent for Sylvia Pflum, presented his case. Mr. Champion addressed some of the Board's concerns that were raised. He pointed out he designed a gutter system which would wash the animal waste down and into the gutter and mentioned he could put a hood on the gutter to make sure the rain water spills out over the gutter.

Ms. Maringer asked Mr. Champion for clarification on the placement of the kennel. Mr. Champion responded the kennel will be on stilts and will be located to the left of the front door of the home, directly below the wall and beyond the gravel path in a clearing.

Chairman Webber asked Mr. Champion what hardship the property owner would suffer. Mr. Champion responded the property owner has four dogs and if she was not granted the variance she would have to house the dogs inside, outside on a rope, or not bring the dogs at all. He mentioned she wants an acceptable humane option for her pets. Chairman Webber mentioned he does not see this as a hardship and asked Mr. Egan for his thoughts based on the legal interpretation of hardships. Mr. Egan responded that he thinks the hardship could be the steepness of the terrain. He also mentioned that there is already over 11,000 square feet of impervious surface, but most of the impervious surface is used for ingress and egress because of the steep terrain. He stated the Board could look at both of these situations as being unique and causing a hardship. Discussion ensued.

Mr. Gray pointed out that half of the concrete on the property services another piece of property which could create another hardship. Ms. Spicer confirmed the only access to the property is through the shared driveway.

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

The Board briefly deliberated the case. Mr. Kilby made the following motion:

With regard to case number ZV-2013005 for a variance from Section 92.207 (A)(2) 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.

Mr. Gray seconded and all were in favor.

NEW BUSINESS

None

OLD BUSINESS

(A) Discussion regarding maximum number of cases for each meeting and meeting times

The Board held a discussion on the maximum number of cases. During discussion, Chairman Webber pointed out that a proposal will be sent to Town Council for the next Council meeting regarding BOA procedures which may have an effect on this discussion. The Board decided to continue this discussion next month after Town Council reviews the proposal.

Discussion was held on meeting times. During discussion the Board decided to keep the meeting time at 1:00 p.m.

(B) Review of the Boff order

Chairman Webber stated anytime there is a denial it has to be reviewed by the Board members before he can sign it to concur that everything is correct. Mr. Gray asked if the proposed changes to last month's minutes were taken into consideration when this order was wrote and Chairman Webber stated yes.

Mr. Johnson made a motion to approve the Boff order as written. Ms. Maringer seconded and all were in favor.

Chairman Webber mentioned that Town Council is going to appoint new Board members at the October meeting and asked if any of the alternate members did not wish to be considered for a regular position. All three alternates stated they would like to be considered.

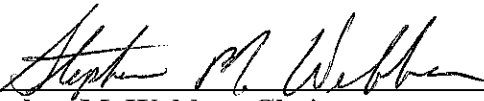
Mr. Egan pointed out that there will be significant changes to the voting requirements and various standards in the ordinance that is being sent to Town Council next month.

ADJOURNMENT

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

The meeting was adjourned at 2:30 p.m. The next regular meeting is scheduled for Tuesday, October 22, 2013 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chairman



Michelle Jolley, Recording Secretary