

**Minutes of the Regular Meeting of the
Board of Adjustment**

**Tuesday, November 18, 2014
1:00 p.m.**

Chairman Webber called the meeting to order at 1:04 p.m.

ROLL CALL

**Present: Stephen Webber, Chair
David Butts, Alternate
Mark Hoek, Seated Alternate
Roger Jolley, Alternate
John Kilby
Patricia Maringer
Melvin Owensby
Commissioner John Moore (For Bob Cameron, Council Liaison)**

Also Present: Sheila Spicer, Zoning Administrator

**Absent: Michael Gray
Bob Cameron, Council Liaison**

APPROVAL OF THE AGENDA

Chairman Webber requested that the following three items be added to the agenda under Old Business:

- a. Discussion on 2015 Meeting Schedule
- b. Discussion on Board Appointments
- c. Procedural Requirements/Training

Mr. Owensby made a motion to approve the agenda as amended. Ms. Maringer seconded the motion. All voted in favor.

APPROVAL OF THE MINUTES

Ms. Maringer proposed a change on page eight in the last full paragraph of the minutes to remove "to" in the double preposition.

Ms. Maringer made a motion seconded by Mr. Hoek to approve the minutes of the October 21, 2014 meeting as amended. All voted in favor.

HEARINGS

- (A) **VROP-2014028, a vacation rental operating permit request from Penny Beneway, agent for William and Dixie Pinson, to operate a residential vacation rental at 310 Shumont Estates Drive, Lake Lure, North Carolina (Tax PIN 1611901)**

Chairman Webber read the following statement:

"You are advised that the hearing on this matter will be quasi-judicial in nature. Accordingly, we can only entertain testimony or other evidence which is material and relevant to the case at hand. If you desire to testify, you must first be sworn, and you will be subject to examination by the members of this Board, by Town staff, the appellant, or another party who may be opposed to your position.

It is incumbent upon this board to preserve an accurate record of what transpires here; therefore, we ask you to observe some rules of conduct. First, do not speak unless you have been recognized by me and are standing at the podium. Second, when you arrive at the podium, please state your name and address for the record.

The appellant / applicant bears the burden of proving it is entitled to relief from this Board.

"Now, if you expect to testify in this matter, I ask you to come forward so that you may be sworn in."

Ms. Spicer and Ms. Beneway were sworn in. Ray and Winifred Moylan, abutting property owners, were also sworn in.

Chairman Webber stated the Town and applicant were determined to be parties with standing in the case. He asked if anyone else present was seeking party status. Mr. and Ms. Moylan both requested party status. Mr. Moylan stated their interest in the case was different from that of the general public due to the close proximity of the requested use to their property and the personal and financial impacts it may have on them.

Ms. Maringer made a motion seconded by Mr. Owensby to grant party status in the case to Ray and Winifred Moylan. The motion passed unanimously.

There were no ex parte communications or conflicts of interest reported. Ms. Beneway did not wish to challenge any seated members for cause. Mr. Moylan asked each member to disclose whether or not any members seated currently have or have had in the past any interest in rental property. Ms. Maringer pointed out that she currently owns and operates a bed and breakfast establishment. Mr. Hoek stated he owned rental property in the past but does not currently own any. Mr. Kilby stated he currently owns a residential vacation rental (RVR) and has previously lived adjacent to an RVR. He mentioned that his RVR is already permitted with the Town of Lake Lure, so the result of this case will have no affect on him. Mr. Owensby stated he currently owns two long-term rentals; one has been rented long term to the same party for three years, and the other is rented on a recurring basis for no less than one month at a time. Chairman Webber stated he owns no rental property. Mr. Moylan challenged Mr. Kilby's ability to render an unbiased decision based upon his ownership of an RVR. Mr. Kilby stated he had no financial or personal interest in the outcome of the case since his RVR is properly permitted so therefore declined to recuse himself. The Board voted unanimously to allow Mr. Kilby to remain seated on the case.

Ms. Spicer presented the case. She stated the property owners are requesting a 4-bedroom vacation rental. She pointed out the Board's packet includes an application, an agent authorization letter, parking plan, a standard rental agreement, and verification from Jeanette Bosgra with the Rutherford County Finance that this property has been registered with the Tourism Development Authority. She stated the request was sent to the Development Review Committee on November 3, 2014 and pointed out there is correspondence from her in the packet to Ms. Beneway regarding the number of bedrooms being requested. Ms. Spicer reported that she researched the property's septic approval after noticing that the Rutherford County Tax Parcel information indicated the house only has two bedrooms. She stated she found the original zoning permit issued by the Town in 1990, and there was a copy of a septic improvement permit from the Rutherford County Health Department that authorized the construction of a three-bedroom septic system. She said she then contacted the Health Department to see if they had any record on how many bedrooms the constructed system was approved for, but they responded they had no further details. She testified she was unable to locate any documentation that the existing septic system on the property is designed to accommodate the number of bedrooms being requested. Mr. Moylan asked Ms. Spicer if she had found any information that there were any approvals to increase the number of bedrooms after the initial construction of the residence. Ms. Spicer responded that she had not.

Ms. Beneway addressed the Board and stated she had no further information to offer about the request beyond what was included in the packet. She mentioned that the current owner told her a previous owner finished the basement sometime in the past. Mr. Hoek asked if the property is currently being rented. Ms. Spicer responded that an adjacent property owner had filed a complaint stating the property was being rented without a permit, which was confirmed by the owner when contacted. She reminded everyone present that the Zoning Regulations have very specific procedures for when a violation

occurs, and the property owners have been cooperative since being notified a permit is required.

Chairman Webber stated he doesn't feel the Board can grant the VROP for more than two bedrooms without evidence that a greater number of bedrooms have been properly permitted. Mr. Kilby stated he feels the request should be continued until the details on how many bedrooms have been approved are worked out. Mr. Hoek, Ms. Maringer, and Mr. Owensby were in agreement.

Mr. Moylan asked Ms. Beneway if the property owners had mentioned they previously hired a contractor to perform upgrades to the house. Ms. Beneway responded she was not aware of that. Mr. Moylan testified that, when Mr. and Ms. Pinson purchased the property in 2010, they hired a contractor to make repairs to the structure and premises due to water damage in the basement from prior flooding. He stated the contractor gave him a tour of the house at that time, and he observed the basement which had been finished to include two bedrooms and a bathroom. He further stated he observed the fact that the sewage from the basement portion of the home was not being piped into the septic system but rather into the back yard. Mr. Kilby asked if he had notified anyone of the improper sewage disposal. Mr. Moylan responded he notified representatives of the Rumbling Bald Resort Architectural Control Committee, who told him they had no authority over that; he stated he assumed those persons would notify the proper authorities.

Winifred Moylan testified that she has personal knowledge of the basement portion of the dwelling being rented for many years which indicates to her that the basement has been used as living space.

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

Mr. Kilby made a motion to continue the hearing to the January 27, 2015 Board of Adjustment meeting. Mr. Owensby seconded. Chairman Webber clarified that the continuation is to allow time for the property owners to ensure that the number of bedrooms requested have been properly permitted and have adequate septic capacity. The motion passed unanimously.

(B) CU-2014002, a conditional use permit request from Camp Lurecrest to construct a new 40-bed cabin with meeting space in an existing camp. The property (Tax PIN 1648820) is located at 207 Lurecrest Drive, Lake Lure, NC 28746

Ms. Spicer and Mr. Butts were sworn in. Ms. Maringer reported that she spoke to Ron Morgan, Fire Chief, prior to the meeting about fire concerns. There were no other ex parte communication regarding the case reported, and there were no conflicts of interest reported. Mr. Butts did not challenge any of the seated members.

Ms. Spicer presented the case. She stated Camp Lurecrest is proposing to construct a new cabin with sleeping quarters for 40 beds upstairs and meeting space downstairs. She pointed out that the application and plans in the Board's packet address the requirements for camps as specified in the Zoning Regulations. She mentioned that the Development Review Committee reviewed the case on September 25, 2014, and all concerns from that meeting had been addressed. She also mentioned that the Zoning and Planning Board reviewed the request on October 21, 2014 and unanimously voted to recommend approval of the project.

Ms. Maringer asked if the total number of beds indicated in the application includes staff quarters. Mr. Butts responded that, with the addition of the cabin, there will be 300 beds total, of which 250 will be for campers; the remainder will be for staff. Ms. Maringer asked if the increased number of beds could be met in any of the existing buildings in the camp. Mr. Butts stated they could not. Ms. Maringer stated her conversation with Mr. Morgan indicated a need for a water storage tank and asked if this was because the building would be required to have an internal fire suppression system. Mr. Butts responded yes, which was due to the proposed meeting space in the lower level. There was discussion on the changes that may be required to accommodate the fire suppression system. Mr. Butts stated it may require some modification to the size of the structure due to the need of a water storage tank. The consensus of the Board was that the changes in the size of the structure would not alter their decision so long as all required setbacks would be met.

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

During deliberation, the Board discussed a way to craft a condition that would allow modifications to the footprint of the structure to accommodate any required fire suppression equipment without having to amend the conditional use permit.

With regard to application number CU-2014002 for a conditional use permit to construct a 40-bed cabin with meeting space, Mr. Kilby moved the Board to find that 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. Mr. Owensby seconded the motion.

Chairman Webber made a motion to amend Mr. Kilby's motion to add a condition that any modifications to the proposed footprint of the structure to accommodate any specifications for the sprinkler system may be approved by Town staff so long as the structure does not encroach into any required setback. Mr. Kilby seconded and all were in favor.

The Board unanimously voted to approve the original motion as amended.

NEW BUSINESS

None

OLD BUSINESS

(A) Discussion on 2015 Meeting Schedule

Chairman Webber mentioned to the Board that he asked Ms. Spicer if adding an additional week's time between the submittal deadline and the hearing date would assist staff in preparing cases to be heard by the Board. He stated he has asked her to research the regulations to determine if this would create any conflicts.

(B) Discussion on Board Appointments

Chairman Webber stated that Mr. Gray has notified him that he is not seeking reappointment when his term expires at the end of the year. He asked each alternate if they are willing to serve as a regular member; each one confirmed that they were. He asked Commissioner Moore to convey that information to Town Council.

(C) Procedural Requirements/Training

Chairman Webber apologized to the Board for becoming frustrated during the hearing last month for ZV-2014008 and stated for the record that, due to that frustration, he unintentionally voted to approve the request rather than to deny it. He read an excerpt from a report titled "A Survey of Experience with Zoning Variances" written by David Owens and Adam Brueggemann with the School of Government which states, "A board making a quasi-judicial decision must explicitly set forth what it determines to be the essential facts upon which its decision is based. The findings of fact adopted must be sufficiently detailed to inform the parties and a reviewing court about the bases of a decision. Use of a preprinted form noting only that a property does or does not meet the standards for a variance is insufficient. Likewise, a conclusory statement that a standard has or has not been met is inadequate."

Chairman Webber then distributed a training document from the School of Government entitled, "Background Material for Board of Adjustment Workshops" and asked each member to review it carefully. He stated he and Ms. Spicer highlighted key portions in

the document and also copied findings from former Lake Lure variance cases as an attachment at the end.

ADJOURNMENT

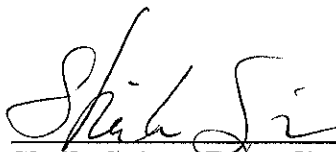
Mr. Kilby made a motion seconded by Mr. Owensby to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:57 p.m. The next regular meeting is scheduled for Tuesday, December 16, 2014 at 1:00 p.m.

ATTEST:



Stephen M. Webber, Chair



Sheila Spicer, Recording Clerk

