



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

**Tuesday, April 22, 2014  
1:00 p.m.**

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

**ROLL CALL**

**Present:** Stephen Webber, Chair  
Michael Gray  
John Kilby  
Patricia Maringer  
Melvin Owensby  
Mark Hoek, Alternate  
Bob Cameron, Council Liaison

**Also Present:** Michelle Jolley, Recording Clerk  
Sheila Spicer, Zoning Administrator

**Absent:** David Butts, Alternate  
Roger Jolly, Alternate  
Mike Egan, Community Development Attorney

**APPROVAL OF THE AGENDA**

Chairman Webber proposed adding an agenda item under 'New Business' for a brief discussion, which he stated he would announce at that time. He also proposed adding agenda item (A) under 'Old Business,' brief discussion on permit CU-2014001, which was granted last month.

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

**APPROVAL OF THE MINUTES**

Chairman Webber pointed out “are” should be changed to “is” on the fifth line of the fourth paragraph on page two of the minutes. He also pointed out “council” should be changed to “counsel” on page eight next to the last line in paragraph four. He also stated “he” should be changed to “she” in the first paragraph on page nine.

**Mr. Owensby made a motion seconded by Ms. Maringer to approve the minutes of the March 25, 2014 meeting as amended. All voted in favor.**

## **HEARINGS**

- (A) **ZV-2014002, a request from Roanne Welsh for a variance from Section 92.040 of the Zoning Regulations for the minimum front (street) yard setback. The property (Tax PIN 1649980) is located at 164 Ridgeview Circle, Lake Lure, NC 28746**

Ms. Spicer and Ms. Welsh were sworn in.

Ms. Maringer stated she met the property owner but the case was not discussed. Mr. Owensby and Chairman Webber reported they had visited the property together. There were no conflicts of interest reported, and Ms. Welsh did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated the applicant had been working on various improvements to her existing residence over the last several years, which included the addition of two porches to the existing home. She stated a recent survey has revealed these porches extend into the front street setback on the east side of the property; therefore, the applicant is requesting a variance from the front street yard setback for the encroaching sections of the porches. Ms. Spicer mentioned that due to a recent update to the Rutherford County GIS website, there was no information available and the property card information was not included in the packet. In talking with Ms. Welsh, Ms. Spicer reported she decided to give Ms. Welsh the permit so she could resume with the construction of the log cabin addition, with the understanding that she would have to bring the porch sections into compliance with the regulations. She pointed out the packet includes an application, a Zoning Compliance Permit received from the Town in 2001 and an amendment to that permit received from the Town in 2003, previous aerial photos, and property aerial photos. She mentioned she notified the adjoining property owner but has had no response.

Ms. Welsh presented her case. She stated she is requesting a variance for a 2’ overhang on the porch. She stated that three sides of her home are within the 40’ setback from the road. Chairman Webber asked if she received a permit from the county, and Ms. Welsh stated yes. Chairman Webber conveyed to Ms. Welsh that if the request for a variance is approved, it would only be approved for the 2’ overhang and not for any other portions of the house in the future.

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

Mr. Kilby made the following motion:

**With regard to Case Number VZ-2014002, Mr. Kilby moved the Board to find that the applicants have demonstrated that unnecessary hardship would result from carrying out the strict letter of §92.040 of the Zoning Regulations and, further, has demonstrated compliance with the standards for granting a variance contained in §92.088 of such Regulations. Accordingly, he moved the Board to grant the requested variance in accordance with and only to the extent represented by this application. Mr. Gray seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

Chairman Webber conveyed that he believes the variance meets all of the guidelines. However, he pointed out this variance request does result from the actions taken by the property owner, but the property owner has moved to bring this property into conformity with the zoning regulations by combining the lots.

**(B) VROP-2014005, a vacation rental operating permit request from Robert Sellie to operate a residential vacation rental at 2066 Memorial Highway, Lake Lure, North Carolina 28746 (Tax PIN 1648258)**

Ms. Spicer and Mr. Sellie were sworn in.

Chairman Webber reported he met Mr. Owensby while at Ingles earlier on this date and only discussed the fact that there is no dock on the property. There were no conflicts of interest reported, and Mr. Sellie did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Mr. Sellie is requesting a vacation rental operating permit to operate a 3-bedroom residential vacation rental. She pointed out the packet includes the Certificate of Occupancy from Rutherford County Building Inspections, due to the fact that the property information from Rutherford County GIS indicates there are no buildings on the property. She pointed out the packet also includes an application, a parking plan, a standard rental agreement with the Town's contract addendum, verification from Rutherford County Tourism Development Authority that Mr. Sellie is registered with them due to the fact that he has another rental, and this one has been added with them also.

Ms. Spicer stated the Development Review Committee reviewed this application on April 8, 2014 and the minutes from that meeting are included in the packet. Zoning and Planning Board review was not required because there were no changes to the appearance of the building or premises.

Ms. Spicer noted Mr. Sellie indicated in his application that he plans to offer boat rental with his residential vacation rental; however, there is no proof of a commercial boat license from the Town included with his application. She stated she did briefly discuss this with Mr. Sellie at the time of his submittal, but due to the fact that the home was

recently completed, he was not able to meet the deadline for applying for a 2014 commercial boat license. However, she stated he has indicated he intends to apply for a commercial boat license at the end of this year for approval of a 2015 license.

Ms. Spicer noted she received an email from Dale Burgett, an adjoining property owner, with concerns regarding boat rental without a dock or boathouse on the property. She stated she gave him Mr. Sellie's cell phone number, if he wanted to contact him with any questions, and advised Mr. Burgett that he could attend the hearing.

Mr. Sellie stated he is unsure of whether he would like to offer a boat rental with his vacation rental but mentioned he would like to provide a canoe and a couple of kayaks with the rental. He pointed out his general contractor has provided a permit to the Town for a boat dock, but it has not been approved yet. He mentioned he spoke with a neighbor, Deborah Stull, who has given him permission to park his boat at her dock in the past, because she stated no one was using the dock. Mr. Sellie mentioned he feels she would allow him permission to continue to use her dock in the future, if need be.

Ms. Spicer noted that a non-motorized commercial license can be purchased anytime throughout the year. Commissioner Cameron pointed out that, if the deadline is missed for approval of a motorized commercial license, the applicant would be allowed to apply to the Marine Commission for a commercial license.

Ms. Maringer asked Mr. Sellie who would manage the property, considering he lives almost two hours away. Mr. Sellie stated he has a private arrangement with a housekeeper who lives in Lake Lure to take care of the property in case of an emergency.

Mr. Gray expressed concerns with parking four vehicles and backing into the roadway. Mr. Sellie stated he would like to have the parking area designed where there would be no need to back out into the roadway. He also stated there will probably never be four cars parked there at one time. Ms. Spicer pointed out that backing out into the street is prohibited, according to Section 92.103 of the Zoning Regulations. Mr. Sellie assured the Board the parking area would be designed so there's no backing into the street, and he would display a sign stating the parking is for back-in parking only.

Mr. Owensby asked about steps and rails leading down to the lake. Mr. Sellie conveyed that he has met with K Enterprises to design a landscaped terrace walkway leading down to the lake. He stated the steps would be about 4' wide steps and would not require handrails. Chairman Webber pointed out the vacation rental agreement included in the packet is a copy of an agreement Mr. Sellie uses for another rental he owns in Lake Lure and stated the agreement would need to be modified.

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

Mr. Gray made the following motion:

**With regard to application number VROP-2014005 for a vacation rental operating permit to operate a residential vacation rental in the R-4 zoning district, Mr. Gray 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.**

Ms. Maringer stated she believes a condition should be added that the applicant be required to obtain his commercial boat license before offering a boat rental. Ms. Spicer requested the Board reopen the hearing.

**Mr. Owensby made a motion to reopen the hearing. Ms. Maringer seconded. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

Ms. Spicer stated, according to the Zoning Regulation, the application would not be complete without an approved commercial boat license. She stated the motion would then be incorrect unless a condition was added requiring Mr. Sellie to obtain a commercial boat license before allowing a boat rental with the property.

Chairman Webber closed the hearing.

**Ms. Maringer made a motion to add a condition that the applicant be required to obtain a proper commercial license and permit before allowing a boat rental with the vacation rental.**

Chairman Webber added that the Board would allow Mr. Sellie to obtain the commercial license without being required to come back before the BOA. He stated once it is obtained, he would need to contact Ms. Spicer.

**Mr. Gray seconded the motion. Mr. Gray, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor. Mr. Kilby voted no.**

**In regards to the original motion with the condition, Ms. Maringer seconded. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

Motion passed with one condition.

- (C) VROP-2014006, a vacation rental operating permit request from Exclusive Mountain Properties, agent for Monique Sullivan and Monica Bew, to operate a residential vacation rental at 195 Kens Rock Road, Lake Lure, North Carolina 28746 (Tax PIN 1641496)**

Ms. Spicer and Melissa Messer, owner of Exclusive Mountain Properties, were sworn in.

Mr. Gray reported Ms. Messer and Exclusive Mountain Properties are a client of his but he does not stand to gain financially. There were no conflicts of interest reported. Ms. Messer did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She noted the packet had incorrect directions which were generated when the application was processed. She stated Exclusive Mountain properties, agent for Monica Bew, is requesting a vacation rental operating permit to operate a 4-bedroom residential vacation rental, which is located in the R-3 residential zoning district. She pointed out the packet includes the Town's application, an agent authorization letter from Monica Bew authorizing Exclusive Mountain Properties to act as her agent, a parking plan, a statement from Triple A Sanitation regarding the existing septic tank, a standard rental agreement from Exclusive Mountain Properties, a copy of the Town's contract addendum, and verification from Jeanette Bosgra with Rutherford County Finance stating that this property has been added to the list of rentals with the Rutherford County Tourism Development Authority.

Ms. Spicer stated the Development Review Committee reviewed this application on April 8, 2014 and the minutes from that meeting are included in the packet. She mentioned the only call she received was from Chairman Webber stating the directions were incorrect.

Ms. Messer approached the Board. Chairman Webber reported that the property card only shows one owner, Monica Bew. However, the application states Exclusive Mountain Properties is agent for Monique Sullivan as well. Ms. Messer stated Ms. Sullivan is Ms. Bew's mother and is not listed on the property deed.

Ms. Maringer expressed concerns with safety due to the fact there are no handrails around the property except going up to the steps on the deck. Chairman Webber pointed out the outside steps are all ground level and would not require handrails. Ms. Maringer then asked if the outside flood lights would shine away from the house and Ms. Messer stated yes.

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

Ms. Maringer made the following motion:

**With regard to application number VROP-2014006 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Ms.**

**Maringer 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, she 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. Mr. Gray seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

**(D) VROP-2014007, a vacation rental operating permit request from Exclusive Mountain Properties, agent for Shirley Renee Barnes, to operate a residential vacation rental at 302 Lakeview Road, Lake Lure, North Carolina 28746 (Tax PIN 1649291)**

Ms. Spicer and Melissa Messer, owner of Exclusive Mountain Properties, were sworn in.

Mr. Gray reported Ms. Messer and Exclusive Mountain Properties are a client of his but he does not stand to gain financially. There were no conflicts of interest reported. Ms. Messer did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated Exclusive Mountain Properties, agent for Shirley Renee Barnes, is requesting a vacation rental operating permit to operate a 3-bedroom residential vacation rental. She pointed out the packet includes the Town's application, an agent authorization letter from Dr. Barnes authorizing Ms. Messer to act as her agent, a parking plan, a standard rental agreement with the Town's contract addendum attached, verification from Rutherford County Tourism Development Authority that this rental has been added to their list of rentals, and a receipt from Charlie Sims, a licensed plumber with CNL Plumbing, showing the septic tank was fixed and is working properly.

Ms. Spicer stated the Development Review Committee reviewed this application on April 8, 2014 and the minutes from that meeting are included in the packet. Ms. Spicer mentioned that James Stelling came by the Town Hall on April 16, 2014 and asked about the request. She stated she explained the request to him and Mr. Stelling expressed generalized concerns of noise and trash with residential vacation rentals. She stated she conveyed to Mr. Stelling that he could come back and review the application, in which he did. Ms. Spicer mentioned she explained that he could attend the hearing and express his concerns to the BOA.

Chairman Webber asked about trash containers and Ms. Messer answered they are located at the bottom of the driveway. Chairman Webber stated he believes all the standards have been met.

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

During deliberations, the Board felt that all conditions had been met, and they felt the property owners would work out an agreement in regards to the concerns that were raised. Mr. Kilby made the following motion:

**With regard to application number VROP-2014007 for a vacation rental operating permit to operate a residential vacation rental in the R-1 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. Mr. Gray seconded the motion. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

**(E) VROP-2014008, a vacation rental operating permit request from Exclusive Mountain Properties, agent for Barbara Pepin, to operate a residential vacation rental at 114 Scenic View Lane, Lake Lure, North Carolina 28746 (Tax PIN 229764)**

Ms. Spicer and Melissa Messer, owner of Exclusive Mountain Properties, were sworn in.

Mr. Gray reported Ms. Messer and Exclusive Mountain Properties are a client of his but he does not stand to gain financially. Chairman Webber reported he has had discussions with Ms. Spicer and Mike Egan regarding ownership. There were no conflicts of interest reported. Ms. Messer did not wish to challenge the Board for cause.

Chairman Webber stated the property owner is listed as Audrey Ladr, according to the Warranty Deed, who is now deceased. He pointed out the property was listed as a Life Estate and since Ms. Ladr is deceased the property automatically reverts back to the other nine owners. Chairman Webber stated, according to our attorney Mike Egan, all nine owners of the property would have to appoint Ms. Messer as their agent, or Ms. Pepin would have to have a Power of Attorney from all owners giving her the authority to appoint Ms. Messer as agent. Chairman Webber mentioned he would like the ownership



issue to be resolved before proceeding and recommended Ms. Messer continue the case. Ms. Messer asked to continue the hearing to the May 27, 2014 meeting to get this matter resolved.

**Ms. Maringer moved the Board to continue VROP-2014008 to the May 27, 2014 meeting. Mr. Owensby seconded. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

**(F) VROP-2014009, a vacation rental operating permit request from Spencer and Fran Fredell to operate a residential vacation rental at 117 Bald Mountain Lane, Lake Lure, North Carolina 28746 (Tax PIN 224453)**

Ms. Spicer, Spencer and Fran Fredell, and Tracy McGlohon, agent for Mr. and Ms. Fredell, were sworn in.

Mr. Fredell stated he has appointed Ms. McGlohon as agent to handle the property, but he would represent himself during the hearing.

There were no conflicts of interest reported. Mr. Fredell did not wish to challenge the seated members for cause.

Chairman Webber reported that Mr. and Ms. Fredell's names were not listed as the property owners. He pointed out the property owners were listed as George and Judith Dick. Mr. Fredell stated he has an agreement with the property owners to lease the property for three years with the option to buy, to complete renovations. He mentioned the renovations have been completed and he has submitted for financing to purchase the property. Chairman Webber pointed out that Mr. and Ms. Dick are still technically the owners and asked if Mr. Fredell had any authorization from them to apply for this permit. Mr. Fredell answered yes, and passed out a copy of the lease option agreement. Chairman Webber read over the agreement and noted that it does not specifically convey Mr. Fredell the authority to rent to someone else. He conveyed to Mr. Fredell that he could continue the case to get this matter resolved. Mr. Fredell asked to continue the case to the next month's meeting to resolve this matter.

**Mr. Owensby moved the Board to continue VROP-2014009 to the May 27, 2014 meeting. Ms. Maringer seconded. Mr. Gray, Mr. Kilby, Ms. Maringer, Mr. Owensby, and Chairman Webber voted in favor.**

The hearing was continued to the May 27, 2014 meeting.

### **NEW BUSINESS**

Chairman Webber cancelled his request to hold the discussion he originally proposed.

Mr. Kilby raised questions regarding disclosure of financial gain. Chairman Webber read from Section 92.082 of the Zoning Regulations regarding 'Rules of Conduct' for the

BOA. Mr. Kilby then asked about verifying ownership of a property before a case comes before the Board. Ms. Spicer responded she verifies through Rutherford County GIS who the owner is. She stated if the owner listed with Rutherford County GIS differs from that of the owner listed on the application, she researches the ownership of the property as well as conveys to the applicant that they will need to provide verification of ownership for the hearing. Mr. Kilby then asked if the application should be considered complete if the owner listed on the application differs from the owner listed on the Rutherford County GIS website. Ms. Spicer stated she has a checklist she goes by to ensure the application is complete and if issues arise, she will bring those before the Board. Discussion held.

Chairman Webber pointed out Mr. Kilby had asked him during the recess about boat licensing documents required for a VROP request. Ms. Spicer referred to Section 92.042 (D) of the Zoning Regulations, 'Contents of Application.'

### **OLD BUSINESS**

#### **Discussion regarding CU-2014001**

Chairman Webber mentioned a letter was sent to the Town from the senior counsel for Wyndham Properties, which Ms. Spicer handed out. He stated based on this email, next month's agenda will include a revocation hearing regarding permit CU-2014001 and ownership of the property. Ms. Spicer pointed out that Mike Egan stated the Town would need to request a rehearing.

Chairman Webber pointed out that notification will be sent to Apple Valley Villas and Wyndham Properties requesting attendance at the rehearing from someone in their organization with authority to represent them. He mentioned that if Mr. Cain is not appointed as agent for Apple Valley Villas, he would still need to be at the rehearing, in case he is called as a witness. Ms. Spicer pointed out she has issued a "Stop Work Order."

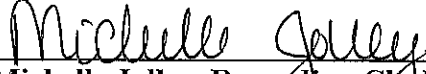
### **ADJOURNMENT**

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

The meeting was adjourned at 3:00 p.m. The next regular meeting is scheduled for Tuesday, May 27, 2014 at 1:00 p.m.

ATTEST:

  
\_\_\_\_\_  
Stephen M. Webber, Chair

  
\_\_\_\_\_  
Michelle Jolley, Recording Clerk