



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

**Tuesday, March 22, 2016
1:00 p.m.**

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

ROLL CALL

Present: John Kilby, Chair
David Butts
Ronald Erickson, Seated Alternate
Mark Hoek
Melvin Owensby
Stephen Webber, Council Liaison

Absent: David Lusk, Alternate
Rick Stockdale, Alternate

Also Present: Michelle Jolley, Recording Secretary
Sheila Spicer, Zoning Administrator

Chairman Kilby announced there is an opening on the Board if anyone would like to put in an application.

APPROVAL OF THE AGENDA

Mr. Butts made a motion to approve the agenda as presented. Mr. Erickson seconded the motion. All voted in favor.

APPROVAL OF THE MINUTES

Mr. Butts asked if Chairman Webber opened the meeting, as shown in the minutes. Chairman Kilby noted he opened the meeting. It was also noted that in the motion on page five, Mr. Butts and Ms. Maringer were not present and did not vote on the motion, as was shown.

Mr. Owensby made a motion seconded by Mr. Butts to approve the minutes of the February 24, 2015 meeting as amended. All voted in favor.

HEARINGS

(A) CU-2016001, a request from Susan Harrison for a home occupation to operate a flower shop at her property located at 181 Marina Drive, Lake Lure, NC 28746 (Tax PIN 1635985)

Ms. Spicer, Susan Harrison, and Jim Edwards were sworn in. Mr. Owensby, Mr. Hoek, and Mr. Erickson disclosed they met Mr. Edwards while visiting the property. Mr. Erickson stated Mr. Edwards conveyed that he would not be putting out a sign for the business. There were no other ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Ms. Harrison did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Ms. Harrison is requesting a conditional use permit for a home occupation in order to operate a flower shop in the garage at her property. The business is already in operation at this location. The Town notified Ms. Harrison last year that a permit is required for the use and has been working with her since that time in submitting her applications. The packet includes the application and other documents outlining the use as proposed. The property in question is split-zoned R-4 Residential/Office and R-2 General Residential. The garage that the business is operated out of is located in the R-2 district, and home occupations are a conditional use in that district. The standards for home occupations are located in §92.117 of the Lake Lure Zoning Regulations, and the required findings for conditional uses are located in §92.046(B). She pointed out the packet includes the application, site plan, and a GIS aerial map. The Development Review Committee reviewed this request on March 3, 2016 and the minutes are included in the packet. A variance from the front street yard setback for the garage was granted by the Board of Adjustment on March 16, 2004. A copy of the minutes from that meeting is included in the packet. She mentioned the Fire Chief gave Ms. Harrison recommendations on address requirements and the need for a fire extinguisher. He also noted there would be a fire inspection conducted.

Ms. Spicer noted she received one phone call from a neighboring property owner who saw the posted sign. She asked the nature of the request and if the business already operating there would increase in any way. Ms. Spicer explained the request and that it is for what is operated there now. She noted that Ms. Harrison would have to comply and meet all fire inspection codes before getting her permit.

Ms. Harrison stated she owns Gorge-Us Blooms & Baskets. She noted it is easier to work from home as she is a caretaker for her disabled son. She stated she has no employees at this time. She pointed out it is an internet-based business and no traffic would be generated from the business. She mentioned in the three years she's had the business, she has had very few customers visit her property. She conveyed she keeps the property clean and does not cause problems with the neighbors. She stated she has no intentions at this time of putting up a sign. Mr. Edwards asked about signage, if they ever wanted to put one up. Ms. Spicer stated they would need to fill out a sign permit application and she noted signs are regulated by the sign ordinance.

Mr. Hoek stated he visited the property and was not greeted for about ten minutes. He recommended they get a bell to notify them if someone is on the property. He mentioned the

garage door was open and gas cans were visible that someone could get hold of. Ms. Harrison stated she would be moving the gas cans from the garage so that would not create a safety hazard.

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

During deliberations, the Board felt that all requirements had been met. Mr. Butts mentioned his only concern was with ingress and egress. Since the business is mostly internet-based, he had no other concerns. Mr. Butts made the following motion:

With regard to application number CU-2016001 for a conditional use permit for a home occupation to operate a flower shop, Mr. Butts 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. Hoek seconded the motion. Mr. Butts, Mr. Hoek, Mr. Erickson, Mr. Owensby, and Chairman Kilby voted in favor of the motion with the condition.

The Board felt that all conditions were met and the application was complete.

(B) ZV-2016002, a request from Lynne Lawson Fugate for a variance from §92.040 of the Zoning Regulations for the minimum front street yard setback and the minimum front lake yard setback. The property (Tax PIN 1622389) is located at 355 Tryon Bay Circle, Lake Lure, NC 28746

Ms. Spicer, and Lynne and Scott Fugate were sworn in. Mr. Owensby disclosed he visited the property and met Mr. Fugate on site but the case was not discussed. The Board members did not have any other ex-parte communications or conflicts of interest to disclose.

Ms. Spicer presented the case. She stated that Lynne Fugate has applied for a Certificate of Zoning Compliance to add a dormer to the street front side and the lake side of her house. The proposed dormer on the street front side of the house will be located in the front street yard setback; the dormer on the lake side will be located in the front lake yard setback. The property is located in the R-1 zoning district; the front lake yard setback is 35 feet from the shoreline. However, the property in question qualifies for a front yard setback exception as specified in §92.131 of the Zoning Regulations. The reduced front lake yard setback for this property is 33.61 feet from the shoreline. The closest point from the shoreline to the proposed dormer is 21.1 feet.

Therefore, Ms. Fugate is requesting a variance of 12.51 feet from the front lake yard setback. The property does not qualify for an exception to the 35 foot setback on the street side due to the fact that the average of the neighboring setbacks is greater than 35 feet. The proposed dormer at the closest point is 13.8 feet from the center of the street right-of-way. Therefore, Ms. Fugate is requesting a variance of 21.2 feet from the front street yard setback. Ms. Spicer pointed out the packet includes the application, a proposal for roofline alteration, a site plan, and elevation drawings. She noted she spoke with Wayne Holt, a neighboring property owner, by phone and provided him with information on the request.

Mr. Erickson asked if the added dormers increase the footprint of the house and Ms. Spicer stated no. She stated it does not go any further into the setbacks. Ms. Spicer noted the dormers would be at the same level as the existing roof peak but is raising the section of the roof where they are located. Ms. Fugate stated she would like the dormers for the aesthetics of the home. Mr. Fugate added that the home was built before the regulations were in place.

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

The Board deliberated the case. Mr. Erickson did not feel there would be an increase to non-conformity and was in favor of the variance. Mr. Butts felt the regulations were met with the request to improve the aesthetics of the home. Mr. Hoek was in favor of the variance as well. Mr. Owensby stated he had no concern and noticed other homes in the community have dormers as well. Chairman Kilby mentioned this would not be increasing the size of the home and he had no concerns. Mr. Erickson made the following motion:

With regard to Case Number ZV-2016002, Mr. Owensby 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, have 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 the application.

Mr. Owensby seconded the motion. Mr. Butts, Mr. Hoek, Mr. Erickson, Mr. Owensby, and Chairman Kilby voted in favor.

Mr. Butts felt the hardship was due to the size of the property and the lot being small. He also felt that it falls within the spirit and intent of the regulations, noting the house was built before regulations were in place. The Board felt that all conditions had been met.

(C) ZV-2016003, a request from Marathon Builders of WNC Inc., agent for Gregory and Donna Kasza, for a variance from §92.040 of the Zoning Regulations for the minimum side yard setback. The property (Tax PIN 222042) is located at 123 Edwards Point, Lake Lure, NC 28746

Ms. Spicer presented the Board with a letter from Greg Kasza authorizing Mr. Hinkle to act as his agent. Chairman Kilby accepted the letter as 'Staff Exhibit 1'.

Ms. Spicer and Mr. Hinkle were sworn in. There were no ex-parte communications or conflicts of interest to disclose. Mr. Hinkle did not wish to challenge any of the Board members for cause.

Ms. Spicer presented the case. She stated that Mr. Hinkle with Marathon Builders has applied on behalf of Gregory & Donna Kasza for a Certificate of Zoning Compliance to add a new deck on the lake front side of the house. The proposed deck will be located in the side yard setback, so a variance is required in order to issue the Certificate of Zoning Compliance permit. The property is located in the R-1 zoning district; the front lake yard setback is 35 feet from the shoreline. However, the property in question qualifies for a front yard setback exception as specified in §92.131 of the Zoning Regulations. The reduced front lake yard setback for this property is 9.81 feet from the shoreline. The closest point from the shoreline to the proposed deck is 11 feet; therefore, a variance is not required from the front lake yard setback. The side yard setback in the R-1 district is 10 feet, and the closest point from the eastern side property line to the proposed deck is 0.5 feet. Therefore, Mr. and Ms. Kasza are requesting a variance of 9.5 feet from the side yard setback. Ms. Spicer pointed out the packet includes the application, site plan, and a copy of the property card.

Ms. Spicer noted that the property in question actually consists of two lots as shown in the Rutherford County GIS printouts included in the packet. She asked that a condition be added that the two lots must be combined before the permit is approved. If the properties were not combined, the variance request would have to be modified, since the deck would be closer to the side property line than what is represented in the application. She stated that staff recommends the Board either add this condition, or amend the application.

Mr. Erickson asked about the west end of the property near the catwalk. Mr. Hinkle noted this was an egress area of the property. Mr. Erickson pointed out that the deck is within five feet from the property line on the west side of the property. Ms. Spicer stated he was correct and that a variance from that side yard setback, as well. Mr. Hinkle made a few corrections to the drawing provided in the packet to show that the portion in the west side yard setback will just be a 4 foot wide access structure; he asked to amend the original drawing to note the changes he made. Mr. Hoek asked if the neighbors were ok with the request. Ms. Spicer stated she received a call from James Wingo, 125 Edwards Point, asking for the application to be faxed. She faxed the application and has not heard back from him.

Mr. Hinkle noted he received the elevation certificate from Don McEntire and presented it to the Board for review. He mentioned the Kasza's recently purchased the property. He stated he is renovating the inside of the home to make the home more livable. He mentioned that \$170,000 is the maximum guarantee, which is well below the 50% requirement. He stated they would like to extend the walkway out four feet to connect the back deck to the side yard and for a larger deck. He stated they would ideally like a narrow deck that goes the length of the house to allow them more access, more of a shoreline, and look better aesthetically. Ms. Spicer noted that this is the fourth variation of the plan she has reviewed as they have worked to fit in a larger deck. She stated they have a plan that can be approved without the variance if the Board does not approve this request; however, it is for a deck that is irregular in shape and extends further towards the shoreline.

Mr. Hinkle noted the stairs will go from the deck down to the shoreline, which is their only access to the lake. He stated the proposed deck will be from the second floor, the catwalk is to the deck above the boathouse, and the steps are to the dock below. Chairman Kilby felt this would be their best option. Ms. Spicer read from Section 92.131 of the Zoning Regulations regarding setback exceptions. Mr. Erickson asked if an average setback requirement should have been done on all three properties. Ms. Spicer noted it has always been done in the past by the closest two properties. She stated if the Board would like it done differently that would be up to them. Ms. Spicer noted that the catwalk runs from the entrance of the home to the deck. She stated by definition, it is an access structure and is allowed. Mr. Hinkle mentioned it will be 10 feet off of the house. Mr. Butts noted the variance is for the section that is 10 feet out. Ms. Spicer reiterated the deck is in the side yard setback on the east side. Her interpretation has always been that the structure measured as a whole cannot be more than four feet wide.

Mr. Hinkle asked to amend his drawing included in the packet, removing the back corner on the west side. Therefore, a variance would not be required for that side.

Mr. Owensby made a motion to amend the application to remove the northwest corner of the deck to be in compliance with the regulations. Mr. Erickson seconded the motion. Mr. Butts, Mr. Hoek, Mr. Erickson, Mr. Owensby, and Chairman Kilby voted in favor.

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

During deliberations, Mr. Erickson felt that a similar solution should be done on the east side of the deck so there are no encroachments. He stated by regulations, the Board is not allowed to enlarge a non-conforming use. Chairman Kilby reopened the hearing. Ms. Spicer noted there is no deck currently and the proposed deck is not a non-conforming structure. If a variance is granted for the deck, it would not be non-conforming. She stated there is a plan in her office that goes in line with what Mr. Erickson suggested which is compliant; however, the owners preferred the plan in front of the Board for aesthetics and to keep further away from the lake. Mr. Erickson stated he could not vote in favor of the variance because there was no hardship that existed. He felt since there was a plan in place which could conform to the regulations then there would be no hardship.

Chairman Kilby felt that keeping the deck further away from the shoreline would be a better option. He felt this was an unusual request and stated his opinion is that the further back the deck, the better. Ms. Spicer referred to the guidelines included in the packet. She stated if the Board feels the findings are met, they have the authority to approve the permit. Mr. Butts felt a hardship results from the size and topography of the land. He stated the majority of the house sits outside the setback and was built before the regulations were in place. He stated that decks are a common feature on houses in the neighborhood. Mr. Butts made the following motion:

With regard to Case Number ZV-2016003, Mr. Butts 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, have 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 the application as amended with the following condition:

Prior to issuance of the Certificate of Zoning Compliance, the applicant must combine tax parcel 1622388 and parcel 1622389 as demonstrated on the site plan.

Mr. Owensby seconded the motion. Mr. Butts, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor. Mr. Erickson voted no.

Mr. Butts, Mr. Hoek, Mr. Owensby, and Chairman Kilby felt the hardship was due to the size and topography of the property. Chairman Kilby also noted the house was built prior to the Zoning Regulations. Mr. Erickson felt that there was not a hardship since the regulations could be met with a plan that was submitted to Ms. Spicer.

NEW BUSINESS

Chairman Kilby mentioned that discussion should be avoided on site when visiting properties for upcoming hearings. Ms. Spicer mentioned she tries to mention to all applicants that the Board would be visiting the property and should refrain from discussion while there. Chairman Kilby asked about closing a hearing prior to beginning deliberations. Ms. Spicer noted the Board stopped doing that a couple of months ago to avoid having to reopen the hearing if there was further clarification needed from staff or the applicant.

Commissioner Webber presented his liaison report. He stated that the sound system has been worked on and should be in working order. He asked Ms. Spicer to expand on why a variance was needed for the dormers in case ZV-2016002. Ms. Spicer explained the reason for the variance. Commissioner Webber also suggested Ms. Spicer look into average setback requirements on properties with more than one lot. Ms. Spicer noted she would speak with Shannon Baldwin, Community Development Director, regarding this matter.

Chairman Webber reported that proposed amendments to the Lake Structure Regulations will go to Town Council at the next month's meeting.

OLD BUSINESS

Mr. Kilby mentioned that Ms. Jolley informed him of an error in the Conditional Use motion from the December 15, 2015 minutes. He noted the minutes were provided for the Board members. The following correction was noted in the motion on page three of those minutes:

“With regard to application number CU-2015004 for a conditional use permit to operate a ~~convenience store with accessory sale of motor vehicle fuels and lubricants in the CN Commercial Neighborhood zoning district~~ an accessory residential event venue, Mr. Kilby moved the Board to find....”


Mr. Owensby made a motion to amend the minutes of the December 15, 2015 minutes with the corrections noted in the copy provided. Mr. Hoek seconded the motion and all voted in favor.

ADJOURNMENT

Mr. Butts made a motion seconded by Mr. Hoek to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:42 p.m. The next regular meeting is scheduled for Tuesday, April 26, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary