



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

**Tuesday, April 26, 2016
1:00 p.m.**

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

ROLL CALL

Present: John Kilby, Chair
Ronald Erickson
Mark Hoek
Lyn Weaver, Seated Alternate
Stephen Webber, Council Liaison

Absent: David Butts
David Lusk, Alternate
Melvin Owensby
Rick Stockdale, Alternate

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

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

(A) Approval of the amended minutes from the October 27, 2015 meeting

Ms. Weaver made a motion seconded by Mr. Erickson to approve the amended minutes of the October 27, 2015 meeting as presented. All voted in favor.

(B) Approval of the minutes from the March 22, 2016 meeting.

Ms. Spicer noted the wording in the first paragraph on page four is a little confusing in regards to the average setback exception in the regulations. The following was her proposed change to the second sentence on page four:

“The property does not qualify for the exception to the 35 foot setback on the street side, due to the fact that the average of the neighboring setback is 35 feet.”

Mr. Hoek made a motion seconded by Ms. Weaver to approve the minutes of the March 22, 2016 meeting as amended.

HEARINGS

Mr. Kilby noted that there were only four seated members present, which constitutes a quorum. Ms. Spicer explained the variance has to have a super majority vote and the vacation rental operating permit case would need a simple majority vote.

(A) VROP-2016005, a vacation rental operating permit request from Doug & Aileen Kelly to operate a residential vacation rental at 114 Sea Wish Way, Lake Lure, North Carolina (Tax PIN 229058)

Ms. Spicer and Aileen Kelly were sworn in. There were no ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Ms. Kelly did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She mentioned the property is owned by DK Professional Realty. She stated that Doug and Aileen Kelly are requesting a Vacation Rental Operating Permit to operate a 2-bedroom residential vacation rental. The property is connected to town sewer and water. She pointed out that the packet includes the application, property deed because this is a newly purchased property, site plan, a certificate from a certified plumber that the sewer connection is operational and free of detectable leaks, standard rental agreement, and verification from Jeanette Bosgra with the Tourism Development Authority (TDA) that the property has been registered with the TDA. The property is located in the CG Commercial zoning district, and there is an existing single-family dwelling on the lot. Residential vacation rentals are a permitted use in the CG district subject to special requirements contained in §92.042 of the Zoning Regulations. Section 92.042 (A)(b)(2) of the Zoning Regulations states that VROP applications are to be deemed in the nature of and processed as a Conditional Use Permit.

Ms. Spicer mentioned the request was sent to the Development Review Committee (DRC) for review on April 1, 2016 and the only comment was from Linda Ward, Customer Service Supervisor, stating that the property is connected to town water and sewer. The request was reviewed by the Zoning & Planning Board on April 19th since there are open permits for improvements to the house and property, and they unanimously recommended approval of the request. She noted that they now have their Certificate of Occupancy for the improvements to the structure.

Ms. Spicer pointed out that she received a call from Ms. Kelly who asked if she could put up a small sign identifying the name of the cabin and the VROB web address. Ms. Spicer explained to her that since the property is zoned CG, a sign is allowed but needs to be included in her application for BOA review. She asked that Ms. Kelly provide her a drawing for the packet ASAP. However, she has not heard anything back from Ms. Kelly.

Ms. Kelly stated they only have a few more weeks to be actively listed as commercial and up and running. She noted she will be the property manager and her permanent home is in Bat Cave. She pointed out that signs have already been made. Ms. Spicer explained that sign drawings must be provided for the Conditional Use Permits. She conveyed that if Ms. Kelly could provide the Board with detailed descriptions of the signs, they may be able to determine if those signs would be allowed. Chairman Kilby suggested a condition be added to the motion that once Ms. Spicer approves of the signs, the permit could be issued. Ms. Spicer and the Board members all agreed.

Mr. Hoek noted that there was no handrail on the top section of the steps for the deck. He also felt that the top step was dangerous and ready to fall off. He also mentioned he did not notice if the trash receptacle was animal proof. Ms. Spicer pointed out that the regulations for vacation rentals require trash receptacles to be animal resistant. Ms. Kelly conveyed she would make sure that it was taken care of.

There was no further testimony, so Mr. Hoek made the following motion:

With regard to application number VROP-2016005 for a vacation rental operating permit to operate a residential vacation rental in the CG zoning district, Mr. Hoek 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. Erickson seconded the motion. Mr. Erickson, Mr. Hoek, Ms. Weaver, and Chairman Kilby voted in favor.

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

(B) ZV-2016004, a request from Cody Hardin, agent for Jack Benners, for a variance from §92.040 of the Zoning Regulations for the minimum front lake yard setback. The property (Tax PIN 229626) is located at 108 Rock Crest Cove, Lake Lure, NC 28746

Ms. Spicer and Mr. Hardin were sworn in. Ms. Weaver disclosed that she was the procuring agent for the purchase of the property for Mr. Benners over seven years ago. She stated she would not benefit from the outcome of this case in any way. There were no other ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. Hardin did not wish to challenge the Board for cause.

Chairman Kilby asked Mr. Hardin if he would like to proceed with the case or ask for a continuance since there are only four members seated. Ms. Spicer added that if one of the board members votes no, the variance will fail and his only option would be to appeal the decision of the Board to Superior Court or to tear the porch down. She explained he does have the option to continue the case. Mr. Hardin stated he would like to proceed.

Ms. Spicer presented the case. She stated that Cody Hardin, agent for Jack Benners, applied for a Certificate of Zoning Compliance Permit to replace the lakefront porch on the existing house. The porch is located in the front lake yard setback; therefore a variance is required prior to issuance of the permit. The property is located in the R-1 zoning district; the front lake yard setback is 35 feet from the shoreline. The closest point from the shoreline to the porch is 3.46 feet. Therefore, Mr. Benners is requesting a variance of 31.54 feet from the front lake yard setback. She noted that the porch has already been replaced, and construction is nearly complete. This work was discovered while out on inspections, and Mr. Hardin was notified that a permit was required, at which time he stopped work on the porch and began the permitting process. He has stated that the porch prior to replacement was in an extremely dilapidated condition, and the only way to restore it to a safe condition was to completely remove and rebuild it. Rutherford County tax records indicate that the house was constructed prior to the adoption of the Zoning Regulations in 1979. While the Zoning Regulations has provisions for replacement of a nonconforming structure that has become unsafe, specific procedures must be followed in order for staff to administratively approve the replacement without the need for a variance. Since those procedures involve inspection of the unsafe structure by the Rutherford County Building Inspector, Mr. Hardin was unable to meet the requirements for administrative approval once the porch was removed. He is therefore requesting a variance for replacing the porch.

Ms. Spicer mentioned that the new porch is substantially the same size. She noted the GIS property card shows the porch as 7x13, which does not show the roof overhangs. She stated Mr. Benners had an appraisal of the property done, and has pictures, which shows that it was a roofed structure. The property card also shows that it has a framed porch.

Mr. Hardin stated the original porch was dilapidated and had partially fallen. He stated he was rebuilding exactly what was originally there. He noted that there was also a three foot walkway from the porch, but it still sits in the same footprint. He stated there was a ramp there too but it did not meet code. Therefore, he extended the porch to bring the ramp up to code, in the same footprint as was originally there.

Ms. Spicer mentioned she received a message from Vicki Smith on April 18th. Ms. Smith stated that she lives across the cove from Mr. Benners and she is in complete support of the improvements at his house as it looks much better than it did before the renovations. She stated she also received a call on April 19th from Marshal Smith, neighboring property owner at 127

Rock Crest Cove. Mr. Smith asked if the request involved requesting permission to use his boat ramp. She told him no, that the request just involves the porch on the lakeside that is completely on Mr. Benner's property. Mr. Smith stated he had no problems with the request and does not need to attend the hearing.

Mr. Erickson asked if the new dock was permitted. Ms. Spicer noted that Clint Calhoun was with her during inspections and he did not mention any concerns.

Mr. Hoek made the following motion:

With regard to Case Number ZV-2016004, Mr. Hoek 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.

Ms. Weaver seconded the motion. Mr. Erickson, Mr. Hoek, Ms. Weaver, and Chairman Kilby voted in favor

The Board felt that a hardship was demonstrated and the application was complete.

(C) VROP-2016004, a vacation rental operating permit request from Donna Morrison to operate a residential vacation rental at 192 Hilltop Court, Lake Lure, North Carolina (Tax PIN 223186)

Ms. Spicer noted that Ms. Morrison was not present. She pointed out that the Board's bylaws state, since the applicant is not present, the case is to be automatically scheduled for next month as the last hearing on the agenda.

Chairman Kilby stated Ms. Morrison was not present; therefore, according to the bylaws, the hearing will be continued until the May 24, 2016 meeting.

Ms. Weaver made a motion that VROP-2016004 be continued to the May 24, 2016 meeting. Mr. Erickson seconded the motion. Mr. Erickson, Mr. Hoek, Ms. Weaver, and Chairman Kilby voted in favor.

(D) A request from Phillip Gregorie to amend VROP-2015013 to allow the use of a boat in conjunction with a residential vacation rental. The property (Tax PIN 222101) is located at 117 Neighborly Drive, Lake Lure, NC 28746

Ms. Spicer and William "Bill" Okler were present. Mr. Okler was the representative for Mr. Gregorie, and also represented him on the original vacation rental operating permit request for this property. Ms. Spicer read the original agent authorization letter. The Board felt they could proceed with the case.

Ms. Spicer and Mr. Okler were sworn in. There were no ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. Okler did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Mr. Gregorie with Four Angels LLC is requesting to amend VROP-2015003 associated with 117 Neighborly Drive. The original permit was approved with conditions by the Board of Adjustment on October 27, 2015; the conditions were met and the permit issued on March 10, 2016. He would now like to amend the permit to allow the use of a boat in conjunction with the residential vacation rental. Should the Board approve the request, Mr. Gregorie will also be required to obtain a commercial boat license and commercial boat permit for any boat offered as part of the vacation rental.

This request was sent to the Development Review Committee for review on April 12, 2016 and there were no comments or concerns. Ms. Spicer stated that staff recommends the approval be conditioned on proof of a valid Town commercial boat license in accordance with §92.042(A)(3)(g).

Ms. Spicer pointed out that the packet includes the memo and letter from Mr. Gregorie, the original order, pictures from when she visited the property on March 10th, and notifications to neighboring property owners. She mentioned she has had no response from anyone regarding the request. She pointed out that the boat is a non-motorized canoe. She stated that Mr. Gregorie was aware of the requirements for commercial license and permits. He has had discussions with Ms. Jolley and Linda Ward, Customer Service Supervisor, regarding the commercial license and permits.

Mr. Erickson made the following motion:

Mr. Erickson moved that the Board approve the request to amend VROP-2015013 to allow the use of a boat in conjunction with the residential vacation rental at 117 Neighborly Drive with the condition that a copy of the approved commercial boat license must be provided to the Zoning Administrator. Ms. Weaver seconded the motion. Mr. Erickson, Mr. Hoek, Ms. Weaver, and Chairman Kilby voted in favor.

(E) VROP-2016006, a vacation rental operating permit request from Dutch Beukema, agent for Carol Lee Jones, to operate a residential vacation rental at 239 Havnaers Point Circle, Lake Lure, North Carolina (Tax PIN226149)

Ms. Spicer and Mr. Beukema were sworn in. There were no ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. Beukema did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Dutch Beukema, agent for Carollee Jones, is requesting a Vacation Rental Operating Permit to operate a 3-bedroom residential vacation rental. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot. She pointed out that the packet includes the application, agent authorization letter from Ms. Jones, copy of the Power of Attorney document authorizing

Deborah and Richard Mitchell to act as power of attorney for Ms. Jones, parking plan, and a copy of the standard rental agreement. Jeanette Bosgra provided verification that this has been included with the list of rentals with the TDA. She mentioned she has had no responses from neighboring property owners.

Mr. Erickson asked about trash receptacles. Mr. Beukema noted that there are two trash cans that he uses bungee cords to hold down. Mr. Erickson noted he only saw one non-animal resistant container and Mr. Beukema confirmed there are two cans on the side of the property; however, only one can is enclosed. He stated they are currently working on building an enclosure for another trash receptacle. Mr. Hoek asked about the steps which only have one handrail. He stated that if steps are more than 30 inches, which they are, it is required per county building code to have two handrails. Mr. Beukema conveyed that there are plans to build a new deck in place of the existing deck. He also stated handrails would be added appropriately. Mr. Hoek noted that the stone steps only had an old log used for a handrail that was rotten. Mr. Erickson noted it was on grade, which would not be required to have a handrail. Mr. Beukema noted he has been cleaning up old debris that was on the property. He stated gutters were cleaned out and rotten siding was being replaced. He added that he is getting bids from contractors to do the repairs.

Ms. Spicer noted the request was sent to the Development Review Committee on April 12, 2016 and no comments were received.

Ms. Weaver made the following motion:

With regard to application number VROP-2016006 for a vacation rental operating permit to operate a residential vacation rental in the R-1 zoning district, Ms. Weaver 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 as amended.

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. Erickson seconded the motion. Mr. Erickson, Mr. Hoek, Ms. Weaver, and Chairman Kilby voted in favor.

The Board felt the application was complete and Mr. Beukema testified that the public safety issues would be addressed.

NEW BUSINESS

Commissioner Webber presented the council liaison report. He expressed that he feels the Board needs to tighten up on technical procedures and the bylaws. He also mentioned that the amendment to the Lake Structure Regulations was approved by Town Council.

Chairman Kilby explained that he would like Board members to provide notice if they cannot be present at a meeting. He stated he would convey this to the members that were not present. He noted that he would like to have five members present for each meeting.

OLD BUSINESS

Ms. Spicer provided an update on George Wittmer's Conditional Use Permit (CUP) he received in December, 2015 for an accessory residential event venue. She explained there was a condition attached that the property must be connected to the Town's sewer system prior to approval of the permit. She stated she received a report from Tony Hennessee, Public Works Director, in March and received a message from Mr. Wittmer last week that a septic company was hired and determined that the property is on a private septic system. Ms. Spicer mentioned she left a message on Mr. Wittmer's phone explaining his options would be to either connect to the Town's septic system or to request an amendment to the original CUP. She added that Mr. Wittmer has until June, 2016 to meet the condition that was applied to his approved permit.

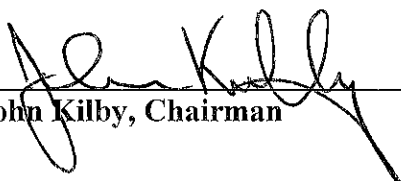
Ms. Spicer noted that staff would notify the Health Department to verify if additional approval from them would be needed for the change of use. She stated the request would not even be brought before the Board until the Health Department gave their approval.

ADJOURNMENT

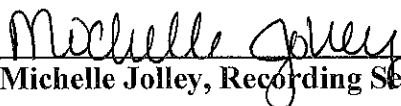
Mr. Erickson made a motion seconded by Ms. Weaver to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:22 p.m. The next regular meeting is scheduled for Tuesday, May 24, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary