



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

**Tuesday, September 27, 2016
1:00 p.m.**

Chairman Kilby called the meeting to order at 1:03 p.m.

ROLL CALL

Present: John Kilby, Chair
David Butts
Ronald Erickson
Mark Hoek
David Lusk, Alternate
Melvin Owensby
Rick Stockdale, Alternate
Lyn Weaver, Alternate
Stephen Webber, Council Liaison

Absent: n/a

Also Present: Clint Calhoun, Environmental Management Officer
Michelle Jolley, Recording Secretary
Sheila Spicer, Zoning Administrator

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

Chairman Kilby pointed out that in the motion on page three, "Mr. Lusk seconded the motion" was stated twice.

Mr. Hoek made a motion seconded by Mr. Owensby to approve the minutes of the August 30, 2016 meeting as amended.

HEARINGS

(A) ZV-2016009, a request from Sharon Ryan for a variance from §92.207(A)(2) of the Zoning Regulations for the maximum amount of impervious surface. The property (Tax PIN 225047) is located at 355 Washburn Road, Lake Lure, NC 28746

Ms. Spicer, Ms. Ryan, and Barbara Mears, architect, were sworn in. Mr. Butts disclosed that he introduced himself to Ms. Ryan on her property but did not discuss the case. Mr. Owensby disclosed that he introduced himself to a lady on the property but did not discuss the case. 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. Ryan did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that Sharon Ryan applied for a Certificate of Zoning Compliance Permit to construct an addition to her home. This property is subject to the Mountain & Hillside Development provisions of the Zoning Regulations due to the fact that the average slope of the lot exceeds 30 percent. The Regulations require in §92.207(A)(2) that the impervious surface area of the lot not exceed 6,000 square feet. The existing impervious surface area exceeds that amount, so a variance is required in order to add any additional impervious surface. According to Barbara Mears, Ms. Ryan's architect, there is currently 7,393 square feet of impervious surface area on the property. Ms. Ryan is requesting an additional 1,412 square feet of impervious surface; therefore, a variance of 2,805 square feet is required.

Ms. Spicer pointed out the packet contains a copy of the application, copy of the email from Barbara Mears, and the plans. She mentioned that she received an email from a neighboring property owner, Simon and Lorraine Eggeraat, asking for details of the variance and with concerns. They stated they would not be able to attend the meeting as they were in Michigan. Ms. Spicer responded to their email with the memo, application and plans. She mentioned that Ms. Eggeraat also spoke with Ms. Jolley over the phone, who read the memo to them. The Eggeraat's also spoke on the phone with Mr. Baldwin, Community Development Director, and they indicated to him that they had no other concerns.

Ms. Spicer explained that the amount of impervious surface allowed in a district is per lot, regardless of the lot size. She stated the impervious surface calculations were created by the Planning Board in 2007. She noted that anything under the roof, paved, or concrete is impervious surface; however, gravel and uncovered decks are not considered impervious.

Mr. Butts asked if the variance request included the deck. Ms. Mears stated it does not include the new wood deck. She then stated it does include half of the deck, the condensing unit pads and the pads for the steps. Ms. Spicer explained the overhangs and concrete pad is for the condensing unit and the steps. Ms. Mears mentioned the existing impervious surface is already over the amount allowed in the regulations. Ms. Spicer conveyed that the calculations were included in the memo in the packet.

Mr. Butts felt that Town Council & Planning Board should revisit the regulations on impervious surface. Chairman Kilby agreed. Ms. Spicer stated if the variance is denied, Ms. Ryan has other

options; however, those options would include Ms. Ryan having to remove existing impervious surface.

Mr. Butts made the following motion:

With regard to Case Number ZV-2016009, Mr. Butts moved the Board to find that the applicants have demonstrated that unnecessary hardship would result from carrying out the strict letter of §92.207(A)(2) 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. Erickson seconded the motion. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor.

The Board felt that the application was complete and the hardship did not result from the actions of the applicant but results from conditions that are peculiar to the property due to its steep topography, the long driveway that was constructed prior to the regulations limiting the amount of impervious surface, and the fact that the lot is larger than many other lots that are subject to the Mountain & Hillside Development provisions of the Zoning Regulations. They felt that granting the requested variance will not be injurious to the neighborhood or to the general welfare due to the fact that the majority of the property is covered in dense vegetation that prevents erosion and water runoff from washing onto neighboring properties or the street. The request is consistent with the spirit, purpose, and intent of the regulations in that granting the variance instead of requiring the removal of existing impervious surface in order to construct the addition will reduce the amount of land disturbance to the hillside.

(B) ZV-2016010, a request from Rob Dull, agent for Caldwell and Parmele Calame for a variance from §92.207(A)(1) of the Zoning Regulations for the maximum amount of disturbed area. The property (Tax PIN 230605) is located at 308 Snug Harbor Circle, Lake Lure, NC 28746.

Ms. Spicer, Mr. Calhoun, Mr. Dull, landscape architect, and Nancy Buser, neighboring property owner, were sworn in. Ms. Spicer noted that Ms. Buser called her a few days ago and spoke with her briefly but Ms. Buser had further questions. Ms. Spicer disclosed that she sent out letters to the correct adjacent property owners; however, she sent the letters out addressed with incorrect property addresses. She did resend letters with the correct property addresses but it was past the deadline for notification. She explained the general statutes and town regulations state that notification of the hearing must be provided and she did provide those notifications. She added that the property was posted with a sign. The Board felt the requirements had been met.

Ms. Buser mentioned that she had concerns. She conveyed that her property is on Laurel Lane, and the lower side of her lot is on Snug Harbor; 308 Snug Harbor Circle is across from her property. She stated there has been history with water runoff coming from the Calame property during heavy rainfall and she was concerned because there was no barrier between their rock wall and the road. She felt that Snug Harbor Circle could collapse at some point due to heavy

rainfall, but stated she does not access her property by this road. She also stated she had concerns about parking. Ms. Spicer explained party status, or “standing”, to Ms. Buser. She explained that in order to appeal the Board’s decision, she must be granted standing. Ms. Spicer conveyed that Mr. Dull took a few minutes before the meeting to show Ms. Buser the plans.

Ms. Buser stated she would rely on the Board to make the right decision on the request and would not request standing. Chairman Kilby explained that there are guidelines the Board follows when determining the variance request. Chairman Kilby conveyed that the deadline was missed for this case; however, he spoke with Ms. Spicer and Mr. Dull was allowed to get his paperwork in before the packets went out to be put on the agenda.

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. Dull did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She stated that a Certificate of Zoning Compliance Permit was issued in October, 2015 for the construction of a single-family dwelling at 308 Snug Harbor Circle. (ZP-2015063). The property is subject to the Mountain & Hillside Development provisions of the Zoning Regulations due to the fact that the average slope of the lot exceeds 30 percent. The Regulations stipulates in §92.207(A)(1) that no more than 50 percent of the lot may be disturbed. The original site plan approved with the application depicted a total disturbed area of 7,035 square feet, far below the allowable maximum of 11,782.98 square feet. A recent site visit revealed that land disturbance had occurred outside the boundaries of the building and grading envelope approved with the Certificate of Zoning Compliance Permit. A new site plan was prepared, which includes the expanded disturbed area as well as a proposed accessory structure near the lake. The architect states in the variance application that a total of 18,000 square feet of disturbed area is being requested; therefore, a variance of 6,217.02 square feet is required. Ms. Spicer pointed out that some of the disturbed area outlined by the surveyor on the revised site plan, the heavy dotted line is the existing disturbance limits, crosses the property line onto Randall Stuart’s property. The maximum disturbance limits are 50% of the lot, which means inside the property boundaries. Therefore, the areas that cross into Mr. Stuart’s property would not be counted in that 50% for Mr. Calame’s lot.

Ms. Spicer disclosed she spoke with William Owens on September 20th who requested details on the request. She explained the request to him and he had further questions about repairs to his sewer line, which was damaged from the land disturbance. She stated she transferred him to Linda Ward, Customer Service Supervisor.

In regards to Ms. Buser’s concerns regarding disturbance undermining Snug Harbor Circle, Ms. Spicer conveyed that Tony Hennessee, Public Works Director, was onsite during the preconstruction meeting and has been involved with the review. She noted that the Zoning Regulations have stipulations on damages to infrastructure. She added that a preconstruction damage assessment is part of the zoning compliance application approval. The applicant has to sign the Damage Assessment before getting the certificate of zoning compliance. Any damages to infrastructure would be noted during the final inspection. She stated that a certificate of occupancy will not be issued until any damages have been fixed. Ms. Spicer also explained that a

certificate of zoning compliance will not be issued if there is not adequate parking on site. She pointed out that there is a fairly sizable parking area on site.

Ms. Spicer explained the only approval at this point is just past the house site. She noted that anything from 10-15 feet below the house has not been approved. The lake pavilion has not been approved but is not being considered at this point; just the land disturbance limits. The disturbance has exceeded 50% of the lot as it stands today. Ms. Spicer noted the Board would not give approval of disturbing the neighboring property without the neighboring property owner's approval. Ms. Spicer stated she felt that Mr. Dull could testify to the disturbances to the neighboring property. Mr. Calhoun noted he was not sure that the neighboring property owner even knew about the disturbance. Mr. Calhoun noted the typical procedure would be to get permission from the adjacent property owner, via a letter. He stated that if any land disturbance has been made to the neighboring property, work would need to be done to restore it to the original condition.

Mr. Dull stated he was originally hired by the architect for land planning for the main house and parking only. He was then contracted by the Calame's to work out the lower access to the lake. After much research, he stated he found what is requested to be the best, low impact way to get a house on the lot. He noted that the property is very steep and very skinny. He mentioned that this property has been very difficult because of how skinny the lot is. He explained that he walked the property and could not locate an outlet for a storm drain. He spoke with Ms. Spicer to try to determine whether the culvert servicing Snug Harbor Circle was the Town's responsibility or the property owner's. Essentially, it was made aware that it would be the Caldwell's responsibility. Part of the additional land disturbance, which they had not planned, was from digging up the culvert causing erosion control problems due to rain water. They then relocated the culvert to near the curve in Mr. Stuart's driveway, which is natural drainage which travels down to the lake. He stated the general contractor tried to control runoff into the lake by installing rain silt fences, which go probably six feet onto Mr. Stuart's property. He added that the only disturbance to Mr. Stuart's property is from a shovel when installing the silt fences.

Mr. Dull pointed out that a sewer line on the Caldwell's property was damaged during grading. The sewer line belonged to Mr. Owens, a neighboring property owner. The contractor fixed the sewer line immediately, at his expense, which was another unexpected disturbance. He stated he spoke with Mr. Calhoun and created an updated erosion control plan to clean up disturbed property. He mentioned that most of it has been completed and good grass germination has already started. However, he conveyed that a variance is required for any additional disturbance, which is shown on the revised site plan. He noted those areas do not cross property boundaries.

Ms. Spicer mentioned that Josh Sams, contractor, stated he ran into a buried structure on the property. Mr. Dull explained this was an old fishing structure that was not on any survey. Ms. Spicer noted that it was demolished and covered back up with dirt. Mr. Dull added that there was artificial fill brought in and put on the lot at some point in the past. He noted this could create troubles with soil regarding the foundation of the house. He conveyed that everything was designed in accordance with the regulations. They then ran into issues with the rain, the culvert, the sewer line, and buried building. Mr. Dull felt that all actions were taken to control the erosion as best as they could.

disturbed area; however, if the Board does not place a condition on the variance and the variance is approved, there would be no requirements for replacement. Mr. Calhoun noted he would not have permitted approval for removing the trees inside the trout buffer without a waiver. He added that he made a suggestion to the contractor to get a trout waiver because of the trees that could have hindered construction.

Ms. Buser asked about the parking deck and Mr. Dull stated it would be suspended out. He stated there is a retention that comes all the way around. Walls would be put in and that area would be backfilled. Chairman Kilby noted the only drop-off area would be on the backside of the parking deck. Ms. Buser stated she was very concerned about the parking deck.

Mr. Calhoun noted he had to leave the meeting for a workshop and the Board briefly recessed the meeting.

After the recess, Mr. Butts asked about the Zoning Regulations on disturbing the trees. Ms. Spicer referred to Section 92.121(d) of the regulations regarding land clearing and grading. The tree table is in Sub Chapter 14. She noted that Mr. Calhoun drafted a brochure and Mr. Dull could work with him on replanting trees. She added there is also a state guide. Mr. Butts asked for an arborist's report and Mr. Dull stated he could get that for him via email. He noted that the oak was in bad shape and covered in kudzu. The poplar was in good shape but the property owner felt that it was a windfall. In regards to ZP-2015063 in the site plan, the trees removed must be replanted in accordance with the regulations. Any tree removed occurring outside the regulations, must be replanted in accordance to Section 92.121(d). Mr. Dull felt this was the intention of the property owner. He felt the landscape plan would be significant and would exceed the requirements. Ms. Spicer noted that Mr. Calhoun also stated he needs the landscaped plan submitted to him for approval. Mr. Dull conveyed that he could locate the arborist's report which states the chestnut tree was in declining health and needed to be removed. Ms. Spicer explained that if it was not preapproved, he has to follow the regulations in replanting what was taken down.

Mr. Dull requesting amending the original application, removing the square footage of the disturbance of the neighbor's property, and amending the amount of disturbance to 16,830 square feet.

Mr. Erickson made a motion to amend the square footage of disturbance to 16,830 square feet. Mr. Butts seconded. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor.

Mr. Butts made the following motion:

With regard to Case Number ZV-2016010, Mr. Butts moved the Board to find that the applicants have demonstrated that unnecessary hardship would result from carrying out the strict letter of §92.207(A)(1) 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

condition that a revised landscape plan must be submitted to the Environmental Management Officer, and that any tree removal occurring outside the building and grading envelope from the original site plan must be replanted in accordance with Section 92.121(d).

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

The Board felt that the hardship did not result from the actions of the applicant but results from conditions that are peculiar to the property due to its steep topography, the dilapidated structure and sewer line buried on the property prior to its purchase by Mr. and Ms. Calame, the amount of rainfall during the time of grading, and the need to reroute the drainage culvert. They felt that granting the requested variance will not be injurious to the neighborhood or to the general welfare due to the fact that measures have been taken to protect the integrity of the street and prevent off-site sedimentation. The request, subject to the condition noted below, is consistent with the spirit, purpose, and intent of the regulations in that restoration measures will be taken to replant trees that were removed without prior Town approval.

NEW BUSINESS

Chairman Kilby asked that the Planning Board revisit the regulations on impervious surface. The Board agreed and felt the Planning Board should take into consideration the sizes of different lots. Commissioner Webber noted the impervious surface requirements are only concerning lots that fall into the Mountain & Hillside Development Regulations, with slopes greater than 30%. His opinion was that variance requests are for these type of hardships. He noted he has never encountered any issues before. Chairman Kilby suggested the Board revisit this issue again at the next meeting.

(A) Liaison Report

Commissioner Webber noted there was nothing new to report.

OLD BUSINESS

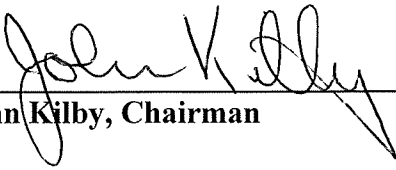
None

ADJOURNMENT

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

The meeting was adjourned at 3:17 p.m. The next regular meeting is scheduled for Tuesday, October 25, 2016 at 1:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary

