



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

**Tuesday, June 27, 2017
1:00 p.m.**

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

ROLL CALL

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

Absent: Melvin Owensby
Rick Stockdale, Alternate
Lyn Weaver, Alternate

Also Present: Brad Burton, Code Enforcement Coordinator
Michelle Jolley, Recording Secretary
William Morgan, Jr., Town Attorney

APPROVAL OF THE AGENDA

Chairman Kilby proposed adding "Chairman's Meeting Procedural Comments" just before "Hearings" as 3 (A) on the agenda.

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

APPROVAL OF THE MINUTES

Mr. Lusk made a motion seconded by Mr. Erickson to approve the minutes of the April 25, 2017 regular meeting as presented and the May 9, 2017 special meeting as presented.

CHAIRMAN'S MEETING PROCEDURAL COMMENTS

Chairman Kilby explained the rules and guidelines for quasi-judicial hearings.

HEARINGS

(A) CU-2017003, a conditional use permit request for the expansion of a non-customary accessory use (boat storage) from Steven A. Norrie, property director for the Lake Lure Village Resort Property Owners association (Tax PIN's 0218405 and 1627580)

Mr. Burton and Mr. Norrie 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. Norrie did not wish to challenge the Board for cause.

Mr. Burton presented the case. He explained the hearing was advertised as expanding a preexisting outdoor boat and small storage area, a non-customary accessory use. However, after review by the Development Review Committee (DRC) and Zoning and Planning Board (ZPB), there was an interest in categorizing this as a standalone use on its own parcel of land. He provided the Board with a report which included input from the DRC and ZPB. He mentioned there was a concern of the status of the existing facility on one of the parcels. He also provided the Board with an updated site plan and narrative to replace the original included in the packet. He asked Mr. Morgan if the hearing could move forward, as it was advertised as an expansion and not individual pads. Mr. Morgan stated nothing has changed otherwise with the plans, and felt the Board could move forward with the hearing. Mr. Burton asked that the Board read over the memo and noted the applicant wishes to move forward since the lake will be drawn down later this year. He explained that ZPB wished to have a to-scale drawing and specificity to the location of the gravel pads.

The memo included in the packet stated:

"Lake Lure Village Resort, through Steve A. Norrie, property director, has made application with the Board of Adjustment to expand a pre-existing outdoor boat and small vehicle storage area located on property owned by the Lake Lure Village property owner's association. Such use has been categorized and interpreted as a "non-customary accessory use," requiring the granting of a Conditional Use Permit by the Board of Adjustment in the R3 zoning district.

The applicant is requesting a phased development effort, with the initial expansion areas denoted as 1, 2, and 3 respectively on their plans, to entail the placement of landscape fabric with $\frac{3}{4}$ " gravel atop to provide the additional storage opportunities. It is assumed each individual space will be denoted by a curb stop or similar with the resident's respective number designated thereon. No structures are proposed in this first phase.

Eventually, and as resident interest develops, covered storage areas are proposed atop these spaces. Mr. Norrie refers to these structures as "pole barns." The illustration as provided with the application indicates a uniform, prefabricated, and assembled on-site design for these structures. The applicant desires consideration and approval of these structures in the context of "future development" and requests that entitlement for their future construction during the hearing, should the Conditional Use Permit be granted.

Staff's only concern with such entitlement would be the current configuration of the parcels where this expansion effort is proposed. As merely placing geo fabric on the ground and covering with rock is not deemed to be a structure, the proposed areas (#1, #2, #3) are of no consequence in terms of compliance with setback requirements. However, the placing of structures on these locations as denoted in the plans provided, will not comply with the setback requirements for the district.

This situation can easily be resolved by having a surveyor recombine parcels 0218405 and 1627580, respectively. Staff would respectfully request, if the Conditional Use Permit is granted with the entitlement of the future development of the enclosed structures, that a condition of the permit be before any structures can be erected, the parcels as described above are recombined pursuant to the requirements of NCGS § 47-30 and recorded with the Rutherford County Register prior to construction. Further, the unnamed cul-de-sac as currently appearing on parcel 1627580 should be abandoned and removed from the recombination plat.

This request was sent to the Development Review Committee for review on June 9, 2017, and members of the Planning and Zoning Board on the same date. Any comments received will be forwarded to the applicant and disclosed at the hearing."

Mr. Burton stated the plans submitted complies with the Planning Board's concerns. He stated Mr. Calhoun made a ruling that one of the creeks on the property is actually a wet-weather ditch. The Board accepted the new drawing as Applicant Exhibit A, the narrative as Applicant Exhibit B, and staff's originally submitted exhibits as 'Staff Exhibit B.' He stated the NCDENR considers gravel as pervious surface and no grading would occur. He pointed out that Mr. Calhoun had no concerns during the ZPB meeting. He explained that the matter before the Board is in regards to the use of the property for storage and the future employment of non-customary accessory buildings.

Mr. Norrie explained the reason for the amendment to the drawing was in response to comments and concerns raised during the ZPB meeting. He stated the units are standalone units with their own entrance and they would accommodate all owners who have requested spots. He pointed out that the units would be earth-tones to blend into the environment and the structures would be uniformed. Landscape fabric is currently being placed down and also gravel for the pads. The area is on a flat parcel, making it safer than boats parked on steep driveways. He added that the new structures would also increase property values. He mentioned that covered storage is part of a five year plan. They also plan to put in Leland cypress trees as screenings. He noted that a culvert was added at the entrance for water runoff.

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

With regard to application number CU-2017003 for a conditional use permit to establish an outdoor storage area; a non-customary accessory use of land, 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. Erickson, Mr. Hoek, Mr. Lusk, and Chairman Kilby voted in favor.

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

(B) VROP-2017007, a vacation rental operating permit request from Michelle Beasley, owner; Valerie Wrobel, agent, to operate a residential vacation rental at 179 Rock Spring Road, Lake Lure, North Carolina (Tax PIN 0216634)

Mr. Burton and Ms. Wrobel were sworn in. Mr. Erickson disclosed that he met with Mr. Beasley on site, discussed the location of the garbage containers, and nothing else was discussed. Mr. Beasley explained that the garbage would not be placed outside. 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. Wrobel did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Michelle Beasley, through Valerie Wrobel, agent, is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental (RVR) at 179 Rock Spring Road, Lake Lure, North Carolina. The property is located in the R-3 Residential zoning district, and there is an existing single-family dwelling on the lot. Residential vacation rentals are a permitted use in the R-3 district subject to special requirements contained in §92.042 of the Zoning Regulations. Section 92.042 (A)(2)(b) of the Zoning Regulations states that VROP applications are to be deemed in the nature of and processed as a conditional use permit.

This request was sent to the Development Review Committee for review on June 15, 2017. One comment received noting that the parking area was not denoted onto the GIS printout; however, a to-scale drawing of the property was included in the packet. Pursuant to §92.046(B)(2) of the Zoning Regulations, Zoning and Planning Board review was not required due to the fact that there were no proposed changes to the appearance of the building or premises. Mr. Burton pointed out the homeowner's property address was listed incorrectly on one of the adjoining property owner's notification letters, but was corrected via a telephone call to that property owner.

Ms. Wrobel stated the correct road name is Rock Spring Road, not Robin Court, as it is listed on some maps. She stated the property is private and there should be no disturbance to neighboring property owners. She noted they have strict rental rules with her company and felt this would be a great property to add as a vacation rental.

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

With regard to application number VROP-2017007 for a vacation rental operating permit to operate a residential vacation rental in the R-3 zoning district, Mr. Erickson 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 as amended. Mr. Lusk seconded the motion. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Lusk, and Chairman Kilby voted in favor.

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

(B) VROP-2017009, a vacation rental operating permit request from Julia K Hill, owner; Valerie Wrobel, agent, to operate a residential vacation rental at 590 Luther Burbank Drive, Lake Lure, North Carolina (Tax PIN 1623724)

Mr. Burton and Ms. Wrobel 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. Wrobel did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Julia K. Hill, through Valerie Wrobel, agent, is requesting a vacation rental operating permit (VROP) to operate a 3-bedroom residential vacation rental (RVR) at 590 Luther Burbank Road, Lake Lure, North Carolina. The property is located in the R-1A Residential zoning district, and there is an existing single-family dwelling on the lot. Residential vacation rentals are a permitted use in the R-1A district subject to special requirements contained in §92.042 of the Zoning Regulations. Section 92.042 (A)(2)(b) of the Zoning Regulations states that VROP applications are to be deemed in the nature of and processed as a conditional use permit. He received no comments or concerns from neighboring property owners.

This request was sent to the Development Review Committee for review on June 15, 2017. One comment received noting that the parking area was not denoted onto the GIS printout; however, a to-scale drawing of the property was included in the packet. Pursuant to §92.046(B)(2) of the Zoning Regulations, Zoning and Planning Board review was not required due to the fact that there were no proposed changes to the appearance of the building or premises.

Ms. Wrobel mentioned that garbage pickup is provided by the Town and the property has plenty of parking spaces. She noted they have strict rental rules with her company and felt this would be a great property to add as a vacation rental.

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

With regard to application number VROP-2017009 for a vacation rental operating permit to operate a residential vacation rental in the R-1A 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 as amended. Mr. Erickson seconded the motion. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Lusk, and Chairman Kilby voted in favor.

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

(C) ZV-2017001, a 5.04' variance request from a 10' side-yard zoning setback requirement for the R-1 zoning district by Michael and Sara Gray at 111 Havnaers Point in Lake Lure (Tax PIN 0222269).

Mr. Burton and Mr. and Ms. Gray 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. and Ms. Gray did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Michael and Sara Gray are requesting a 5.04' setback variance from ten foot side-yard setback required for the R-1 zoning district for their property located at 111 Havnaer's Point in Lake Lure NC.

The memo from the packet stated:

“Background Information and Timeline of Events:

On January 24, 2017, I responded to Ms. Sara Gray for a request to perform a final inspection for ZP-2015047, a project described on their application as “remove and replace retaining walls and steps.” Ms. Gray also had concerns about “unpermitted work” allegedly underway at a house above theirs on Havnaer's Point.

I attempted the final inspection of the Gray project, but I could not reconcile the approved plans in the file with the work as completed on the ground. I told Ms. Gray I would be sending a letter with my observations and left the residence. I did go next to the location of concern up the street, where unpermitted work was underway; I stopped that work, and later was assured that the workers had arrived at the County Inspections Department and pulled their respective trade permits. Zoning compliance was not required for project that was underway at this location.

The same day, January 24, 2017, I sent a letter to Mr. and Ms. Gray, describing my observations and what I felt might be ways to remedy what I felt to be work outside the scope of the permit as issued.

(EXHIBIT 1)

Mr. Gray provided a written response to my letter on or about January 28, 2017.

(EXHIBIT 2)

Mr. Gray submitted what were represented as “as built drawings” on February 11, 2017.

Mr. Clint Calhoun, the Town’s Environmental Management Officer, and I made a site inspection on February 23, 2017 with these drawings, as above, in hand. I asked Mr. Calhoun to accompany me as “a second set of eyes” in the possibility that I was not seeing something correctly as to the plans versus the work performed. Mr. Calhoun and I both noted that a staircase was located in a different location than originally permitted on the plans. Further, a patio-like area had built atop the backfill area of one of the retaining walls and paved in concrete; tying into the raised concrete area one step-up above. This site visit also revealed recent trenching/excavation work underway on the south and west sides of the house, and what appeared to be conduit and/or PVC piping were located within the excavation. I mentioned to Ms. Gray that it appeared electrical and/or plumbing trade work was underway, and as there were no posted permits on site, I was going to advise the County Building Inspections of the work apparently in progress. I did advise Ms. Gray that the County officials might issue a stop-work order for this work if they deemed it necessary.

I returned to Town Hall and had an email exchange with Mr. Gray, apparently triggered from our site visit. It should be noted that also included in this correspondence was his honor, the Mayor, the town manager, the town community development director, the Board of Adjustment chairman Mr. Kilby, and officials with Rutherford County Building Inspections.

(EXHIBIT 3)

I sent a second letter to Mr. and Ms. Gray on February 27, 2017. This letter described the results of the two final zoning inspections and potential remedies to the problems identified.

(EXHIBIT 4)

Between February 28 and March 1, 2017, Mr. Gray and I exchanged emails on the topics of what constitutes a structure and the new information I had learned concerning the ability to “average” distances of structures contiguous to the subject parcel for the purpose of determining a calculated lake front setback for the Gray parcel.

(EXHIBIT 5)

On March 15, 2017, Mr. Kim Warner PE, sent me a response letter on behalf of the Grays. This letter, and survey attachments, satisfactorily addresses and does away with any concerns as to possible encroachment into the lakefront setback, to the benefit of the Grays. This letter also references “the elusive revised [color] drawing” where “brick pavers” are illustrated “in the upper area that is now concrete.”

(EXHIBIT 6)

It is important to note here that up to this point, I had been working and making interpretations from a high-resolution scanned greyscale photocopy of the case file. During this time, approximately 6 or 7 years of zoning case files were off-site, at a scanning facility for archiving purposes. The actual physical files returned around the second week of April, 2017. I immediately pulled the original file ZP-2015047. In the file is a color version of Sheet 1, entitled “Landscape Renovation” with two revision dates: June 19, 2015 and June 26, 2015. The color document is signed and sealed by Kim Warner. This sheet appears to show some sort ground cover (looking like round non-uniform type pavers) behind the lowest retaining wall and up to the intermediate wall. Both of these walls also call for their faces to be done in a “stone veneer” 1.5 to 6” thick per Sheet 2; also in color and signed and sealed by Mr. Warner with the same revision dates, illustrating the walls in their respective cross sections. The cross section of the “upper landing” holds true with the depiction in Sheet 1. The upper landing (the area in question) calls for washed stone backfilling the wall, with soil called for atop the stone to just below the lip of the wall.. The upper landing calls for a stone veneer face, but no ground covering between the two walls (“upper” and “intermediate”) as is drawn between the intermediate and bottom wall.

*If these color drawings are indeed the “elusive drawings” referenced in Mr. Warner’s letter of March 15, they clearly do not indicate any impervious ground cover being illustrated on either of the two sheets for the “upper landing” behind the retaining wall at the 1007.65’ elevation where the concrete deck/patio is currently located and poured flush to the existing “raised concrete,” as indicated in the plans. These sheets have been photocopied, in color, and are **EXHIBITS 6A and 6B.***

The intermediate wall at elevation 1000.5 was never built, and the area behind the upper wall and the lower wall at elevation 993.00’ is in grass with no impervious ground cover.

The Town has accepted an amendment to the plan for the new staircase location.

Between March 16 and March 21, 2017, there was an email exchange between myself, Mr. Kim Warner and Mr. Gray the topic of which was discussion of removing the 5 ft. x 10 ft. section of concrete in the setback area or submitting an application for a variance for the encroachment into the side yard setback.

(EXHIBIT 7)

Additional Information for the Board

- 1) Sara Gray submitted the application for a 5.04' foot variance on June 5, 2017. Sections of the application were not completed.
- 2) A setback variance is the only business before Board as to this application. Acceptance of the Administrator's interpretation of the area as a structure that is subject to setbacks, is evidenced and established by the application for the setback variance.
- 3) § 92.101(D)(1): Non-Conforming Structures / Enlargement, Alteration. As the existing residence already encroaches into the 10 foot southern side-yard setback, consideration should be given to the granting of a variance in this matter. Specifically, the new concrete upper level patio structure is not under roof, and as built, would be considered an enlargement to the footprint of the pre-existing, non-conforming house.
(EXHIBIT 8)"

This request was sent to the Development Review Committee for review on June 16, 2017; no comments or concerns were received.

Mr. Burton stated he visited the property with a high resolution scan from the original request and approval from Sheila Spicer, previous Zoning Administrator, as the original file was out being scanned for archival purposes. He presented the original to-scale drawing of the area to the Board, showing the area in question, which was also included in the packet. He noted an amenity had been built on to the house, which was permitted as a retaining wall. He referenced photos included in the packet, which showed the existing conditions. One of the photos he referenced showed a slab poured flush to the concrete pad, which encroached into the setback. He stated the extension is now a retaining wall with a slab and handrails, creating a deck. He read from the ordinance defining a structure. He referred to Exhibit 6B included in the packet. Of the three walls, only two were built, as indicated in the exhibit. He presented the as-built drawing showing setbacks, provided to him by Mr. Gray, and the original plat to the Board. The Board accepted the original plat as 'Staff Exhibit A' and the as-built drawing as 'Staff Exhibit B.' Mr. Burton also presented Exhibits '6A' and '6B', provided in the packet. They were revised color drawings where "brick pavers" are illustrated "in the upper area that is now concrete" provided to Ms. Spicer for the original request. He noted the entire house lies in the setbacks. He stated the Town approved three walls and a staircase and noted the staircase is not an issue. He stated only two of the three walls were built. He mentioned the application for a setback variance proves the Gray's awareness that they have built an amenity.

Mr. Gray provided an exhibit to the Board of his written response regarding Mr. Burton's letter on or about January 28, 2017, and all relevant documents he had regarding this case. Chairman Kilby labeled the document as 'Applicant Exhibit 1.' Mr. Burton stated he sent Mr. Gray all documents he had on this case, except for the last page in the packet. Mr. Gray pointed out that the seawall was already existing and was never intended to be replaced. He mentioned there was never an intent to build three walls.

Mr. Gray explained that they commissioned Kim Warner, Engineer, to design a drawing for a stable front yard. The original drawing of the upper wall had to be changed to a footed concrete wall with stone facing and moved forward towards the lake. He explained they moved the concrete stairs because of a large tree. Mr. Gray did not feel he was provided with all documents from Mr. Burton and referred to page six (6) of his exhibit, a trout buffer document from Land

Quality in Asheville. He noted the drawing showed that brick pavers could be installed on the upper tier. He stated this drawing was provided to Ms. Spicer showing pavers were to be placed on the upper level. He noted his contention was that they built what was approved. He felt that cutting off part of the concrete pad and planting grass over the area was ludicrous and felt the Town should have prevented him from moving forward with a project that “was not allowed.” He noted he has spent approximately \$12,000 plus on surveys, engineer drawings, etc. The start of the project was in 2014.

Mr. Erickson asked about the drawing illustrating the brick pavers and Mr. Burton noted the drawing was not included in the original file. He mentioned the document appears to be acknowledged from Clint Calhoun and Sheila Spicer, but was not in the original file.

Mr. Burton disclosed that he received one email from a neighboring property owner inquiring about the case and he provided him with the information. He received no other comments from neighboring property owners. Chairman Kilby read an email from Mr. Haney, neighboring property owner, and Roger Jolly, neighboring property owner, who expressed their approval of the request.

Mr. Burton asked Mr. Gray when he received the trout buffer document he presented and why he never shared that document with him. Mr. Gray stated he called Land Quality and asked for a copy of the trout buffer document and received in March, 2017. He conveyed that he did not provide the document to Mr. Burton as he was relying on his engineer, Kim Warner, to speak directly with Mr. Burton and take care of everything for him and stated he relied on Mr. Warner to resolve this conflict. Mr. Burton expressed that it was never relayed to him that Mr. Gray was now in possession of this document in question and he was never provided with it. He pointed out that Mr. Gray never called the Town or the County for a final inspection. He asked Ms. Gray the nature of her phone call to him in January. Ms. Gray stated she called the Town to report their neighbors were conducting unpermitted work and asked to remain anonymous. She also requested a final inspection at that time. Mr. Burton noted while on site in January to do a final inspection, it was found that the original plans submitted were not what was built on site. He left and explained to Ms. Gray that he would be back in contact with her. Ms. Gray stated that during his next site visit, Mr. Calhoun was present as well, Mr. Burton was “very rude and ugly.” Mr. Burton stated that he always tries to be very professional and was not aware that he came across as rude. Mr. Burton stated further that he wished Mr. Calhoun were here to comment on Ms. Gray’s assessment of his behavior; after which Mr. Gray leaned forward unrecognized and addressed Mr. Burton and stated, “But he isn’t, is he?” Mr. Burton asked that the Board continue the case to next month and ask that Mr. Calhoun attend the meeting to give his testimony, as he was also with Mr. Burton while on site for the final inspection. He later rescinded that request.

Chairman Kilby called for a brief recess.

Chairman Kilby asked Mr. Morgan if there was relevance in continuing the case since Mr. Burton stated he would have approved the final inspection had he had the trout buffer document that was presented to the Board. Mr. Morgan stated, “...if the integrity of testimony is brought into question, this is a genuine concern and a relevant reason to continue any hearing to receive the testimony of another witness to address such concerns.” He stated it is the Board’s call

whether to continue the hearing. He mentioned if it is compelled and the Board feels that Mr. Calhoun is needed, the case could be continued to request his presence at the next meeting. Mr. Erickson felt this issue should be resolved since the document was not in the original file, and Mr. Calhoun's testimony was needed. He also mentioned there was no mention of handrails on the wall in the original packet. Mr. Butts did not feel that handrails were an issue. He felt that a variance would solve the issue, but stated they could request other parties to come and testify. Mr. Hoek mentioned that the hearing had migrated into something more than the variance request. Mr. Lusk stated the Board should only be discussing the variance. Chairman Kilby felt the case should be resolved during this meeting.

Mr. Burton explained that if the Board accepted the trout buffer document into the record, he would include it into the file. He stated he would have approved the final inspection if he had this document in the file at the time. However, he added that there is still an encroachment issue. If the variance is approved, the Board is agreeing to extend the setbacks. Mr. Gray asked if Town Council could review the definition of a structure versus the definition of a retaining wall. He asked to proceed with his request for a variance rather than asking for a continuance. Mr. Morgan felt the Board could proceed hearing the request for a variance. However, he pointed out that Mr. Burton commented that he would approve the final inspection with the trout buffer document. Mr. Burton agreed that he would sign off on the final inspection with the document. Mr. Morgan explained that the applicants could retract their variance request. Variances are disfavored in zoning and felt if there's a way to not rule on the variance and staff approve the final inspection, a motion could be made that there is no ruling. Mr. Burton noted that with no ruling, once he signs off, the County would still have to do their final inspection. Mr. Burton felt that armed with this document, he would have granted the final inspection; however, increasing the non-conformity will not go away.

Mr. Morgan explained that based on Mr. Burton's testimony that he would approve their final inspection with the trout buffer document Mr. Gray provided from Land Quality, a motion could be made that the hearing be closed and no decision rendered based on mootness.

Mr. Butts made the following motion:

Mr. Butts moved that the hearing be closed based on the issue of mootness. Mr. Lusk seconded. Mr. Butts, Mr. Erickson, Mr. Hoek, Mr. Lusk, and Chairman Kilby voted in favor.

NEW BUSINESS

None

OLD BUSINESS

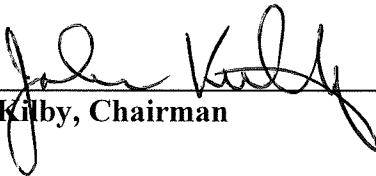
None

ADJOURNMENT

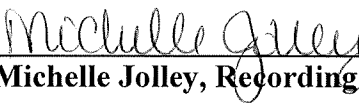
Mr. Butts made a motion seconded by Mr. Erickson to adjourn the meeting. All voted in favor.

The meeting was adjourned at 3:31 p.m. The next regular meeting is scheduled for Tuesday, July 25, 2017 at 3:00 p.m.

ATTEST:



John Kilby, Chairman



Michelle Jolley, Recording Secretary