



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

**Tuesday, October 24, 2017  
1:00 p.m.**

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

**ROLL CALL**

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

**Absent: Rick Stockdale, Alternate**

**Also Present: Brad Burton, Code Enforcement Coordinator  
Michelle Jolley, Recording Secretary**

**APPROVAL OF THE AGENDA**

Mr. Burton proposed adding an item under 'New Business' for approval of the 2018 meeting schedule.

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

**APPROVAL OF THE MINUTES**

Chairman Kilby noted he was not at the last month's meeting and did not call the meeting to order; change to 'Vice-Chair Butts.' Mr. Butts proposed the following changes:

- Add "Town of Lake Lure" in front of "Customer Service Supervisor" on page 2, paragraph 5.

- Page 2, change “not a matter of this Board” to “not pertinent to this Board’s decision”.
- Page 5, 2<sup>nd</sup> paragraph, “*next* to a larger single-family home”, not “attached to.”
- Page 6, 5<sup>th</sup> paragraph, change “Mr. Butts” to “Vice-Chair Butts.”
- Page 6, 5<sup>th</sup> paragraph, add “to get to” in front of “the end of the cul-de-sac.”
- Page 7, change the motion to read, “Mr. Owensby made a motion to amend the original application’s parking plan per Ms. Hoek’s request.”
- Page 7, in the motion immediately after “Ms. Weaver seconded the motion,” change “Chairman Kilby voted in favor” to “Vice-Chair Butts voted in favor.”
- Page 8, 3<sup>rd</sup> paragraph, add “parking area” directly in front of “a failing old railroad tie.”
- Page 8, 3<sup>rd</sup> paragraph, change to “Mr. Warner has submitted an engineered signed and sealed plan.”
- Page 8, 3<sup>rd</sup> paragraph, change “is” to “it.”
- Page 8, last paragraph, change “Chairman Webber” to “Council Liaison Webber.”

**Mr. Butts made a motion seconded by Mr. Hoek to approve the minutes of the September 28, 2017 regular meeting as amended. All voted in favor.**

## HEARINGS

**(A) VROP-2017021, a vacation rental operating permit request from Tom and Joey Outlaw, to operate a residential vacation rental at 125 Anglers Way, Lake Lure, North Carolina (Tax PIN 224744)**

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

Mr. Burton presented the case. He stated that Tom and Joey Outlaw, property owners, are requesting a vacation rental operating permit (VROP) to operate a 1-bedroom (plus loft) residential vacation rental (RVR) at 125 Anglers Way, Lake Lure, North Carolina. The property is located in the R-1 Residential zoning district, and there is an existing single-family dwelling on the lot.

This request was sent to the Development Review Committee for review on October 17, 2017 and no comments were received. There have been no responses from anyone regarding this case.

Mr. Outlaw expressed that they have owned the house for about five years and live in Alexander, NC, not far from the area. They plan to retire soon and would like to have a rental as a supplemental income. Mr. Hoek felt a gate should be put up at the top of the boathouse to prevent anyone from falling. Mr. Outlaw stated he has already considered it and would be taking care of that. Mr. Erickson asked that the railings be reinforced at the top of the boathouse and Mr. Outlaw noted it.

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

**With regard to application number VROP-2017021 for a vacation rental operating permit**

to operate a residential vacation rental in the R-1 zoning district, Mr. Butts 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. Butts, Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor.

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

**(B) VROP-2017022, a vacation rental operating permit request from Amy Christopoulos, Bobbi Elliott agent; to operate a residential vacation rental at 167 Pearson Circle, Lake Lure, North Carolina (Tax PIN 230076)**

Mr. Burton and Bobbi Elliott, agent, 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. Elliott did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Amy Christopoulos, property owner, through Bobbi Elliott, agent, is requesting a VROP to operate a 3-bedroom RVR at 167 Pearson Circle, Lake Lure, North Carolina. At the September, 2017 Board of Adjustment meeting, the same property owner had a cottage on a separate adjoining parcel approved for a VROP. The address of that cottage was, at that time, 167 Pearson Circle. Pursuant to discussion by the Board, the agent has worked with Rutherford County 911 to change the cottage address to 197 Pearson Circle. The subject property is located next door to the cottage, new address as 167 Pearson Circle, and is located in the R-2 Residential zoning district; and there is an existing single-family dwelling on the lot.

This request was sent to the Development Review Committee for review on October 17, 2017 and no comments were received. There have been no responses from anyone regarding this case.

Mr. Burton noted he received an email from Jeanette Bosgra, Rutherford County TDA in reference to this address and occupancy taxes. He submitted the email as 'Staff Exhibit 1'. Ms. Elliott explained that this is the larger residence which is on an adjoining parcel as the smaller cottage approved as a VROP last month. She noted the same person owns both but the cottage was ready before the main house. They wish to add this house as a VROP as well.

Mr. Hoek asked about a parking plan for six vehicles. Ms. Elliott noted that right behind the cottage, next to the garage, there is additional parking on the same parcel. Mr. Erickson pointed out that the top concrete is not mortared down on the concrete steps to the left of the cottage. Ms. Elliott stated the maintenance engineer has already added this to his list of repairs.

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

**With regard to application number VROP-2017022 for a vacation rental operating permit to operate a residential vacation rental in the R-2 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. Butts, Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor.**

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

**(C) VROP-2017023, a vacation rental operating permit request from Brandon McNamara, Bobbi Elliott agent; to operate a residential vacation rental at 294 Ridgeway Road, Lake Lure, North Carolina (Tax PIN 1604861)**

Mr. Burton, and Bobbi Elliott, agent, were previously sworn. Mr. Erickson noted he lives in the neighborhood but it would not affect his decision. 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. Elliott did not wish to challenge the Board for cause.

Mr. Burton presented the case. He stated that Brandon McNamara, property owner, through Bobbi Elliott, agent, is requesting a VROP to operate a 3-bedroom RVR at 294 Ridgeway 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.

The subject property was granted a VROP in 2014 (VROP-2014019) for three bedrooms and an occupancy of six persons to Chas. McGahee with Richard Lundy as agent. The current application is a request to increase the occupancy to ten persons. Ten persons would be the maximum occupancy for this residence with three bedrooms. If granted, this would invalidate the previous VROP issued in 2014 and give the new owner, and any successors in title, this revised occupancy status provided the permit was not compromised.

This request was sent to the Development Review Committee for review on October 17, 2017 and no comments were received. There have been no responses from anyone regarding this case.

Ms. Elliott explained that Mr. McNamara would like to change the sleeping arrangements and increase the occupancy to help with rental opportunities, due to the size of the home. Mr. Butts asked about parking. Ms. Elliott noted there is a 2-car garage and two parking spaces up front and a driveway. She stated the garbage is kept in the house, not outside. She mentioned the noise cutoff is at 10 p.m. She noted they have two assistant property managers who live close to the Resort.

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

**With regard to application number VROP-2017023 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. Mr. Butts 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 all requirements were met.

**(D) ZV-2017003, a request for a rear yard setback variance from Martyn Watts, property owner, in order to build a detached garage at 455 Justice Drive, Lake Lure, NC (Tax PIN 1614176)**

Mr. Burton and Mr. Watts were sworn in. Mr. Erickson disclosed Mr. Watts showed him the layout of the proposed location for the garage while on site and they discussed the setback area request. He noted Mr. Watts indicated he wanted to ask for a setback of three feet from the property line. Mr. Hoek disclosed he met Mr. Watts this morning who showed him the proposed layout of the garage. Chairman Kilby disclosed he spoke with Mr. Watts who also showed him the proposed location of the garage and stated nothing else was discussed. 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. Watts did not wish to challenge the Board for cause.

Mr. Burton presented the case and read over the memo included in the packet (attached). Mr. Watts is requesting a 10-foot variance (no setback) from the Town's rear yard setback requirements for construction of a detached structure garage at 455 Justice Drive, Lake Lure, North Carolina. The property is located in the R-1 zoning district. He stated the request was mislabeled on the original application as a request for a side yard setback request but it is indeed a rear yard setback variance request and was advertised correctly. He mentioned that the 2006 survey does indicate a 15' rear yard setback, which was changed by Town Council to 10'. The 2006 survey does indicate a setback and boundary encroachment.

Mr. Burton explained that the adjoining property owner is outside town limits. He requested an opinion from the town attorney if those individuals outside town limits would have standing and the town attorney affirmed they would have standing. He disclosed that he received two calls from adjoining property owners who both stated they had no issues with the request. He read from 92.064(a) of the zoning regulations which indicates that a foundations survey is required. He strongly suggested the Board consider a condition that a foundation survey be required if the request is approved. He pointed out that there is some indication on the plans for a living space in the garage. He noted that the R-1 zoning district does require the granting of a Conditional Use Permit for a garage apartment to be used as a dwelling unit.

Mr. Watts explained when he purchased the home there was a back porch that was encroaching into the setbacks, built by the previous owners, which he took down. There was also a garden shed on the neighbor's property that he removed as well. He stated he would be leaving the country for some time and did not want to leave his vehicles outside for months at a time. He mentioned that he tried numerous times to contact his immediate neighbor via phone, mail, and e-mail, to no avail, to request purchasing a portion of his property large enough to where he would not need a variance from the Town. He stated the building inspector came out to take a look at the site and felt the best location for a garage was what was proposed on the plans submitted for the request, due to the topography of the land. Mr. Watts noted his neighbor lives outside city limits and is not subject to town setback requirements and felt this was unfair and a hardship to him concerning the neighbor's status as a county resident. Mr. Burton respectfully objected to the testimony that this would be a hardship to Mr. Watts. Mr. Watts mentioned his closest neighbor is several hundred feet away and therefore would not affect his neighbors. He stated his intent is to use the garage specifically to store his vehicles and the upper area for storage.

Mr. Erickson asked if Mr. Watts wished to amend the original application from a 0 setback to a 3 foot setback. Mr. Watts stated yes, his intent was to build a garage, including overhangs and gutters, three feet from the property line. He stated the overhangs would be within a foot of the property line but not over. He asked to amend his original application from a 10 foot setback variance to a 9.5 rear yard setback variance.

Mr. Hoek asked Mr. Watts if he had considered building the garage just left of the house on the flat gravel area. Mr. Watts noted he would not have a turn-around area and his only option would then be to park his vehicle inside the garage.

**Mr. Butts moved to amend the original application to a minimum rear yard setback of 9.5 feet. Mr. Hoek seconded and all voted in favor.**

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

**With regard to Case Number ZV-2017003, 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 the following condition:**

*The applicant provide a post-construction “as-built” survey to assure no boundary encroachment has occurred prior to the issuance of any Certificate of Occupancy.*

**Mr. Hoek seconded the motion with the condition.**

Mr. Butts felt that Mr. Watts had other buildable area and did not feel that topography could be used as a hardship. Mr. Erickson felt a hardship has been presented due to the topography of the land. Chairman Kilby noted he would factor in the fact that Mr. Watts’ neighbor was not subject to the zoning regulations since he was not inside town limits and was not subject to the same requirements as Mr. Watts.

**Mr. Erickson, Mr. Hoek, Mr. Owensby, and Chairman Kilby voted in favor. Mr. Butts voted no; he felt topography was not a hardship of the applicant as there was other buildable area on the property.**

The variance request was granted, with a 4-1 vote.

### **NEW BUSINESS**

#### **(A) 2018 Meeting Schedule**

**Mr. Owensby moved to adopt the 2018 meeting schedule. Mr. Erickson seconded and all voted in favor.**

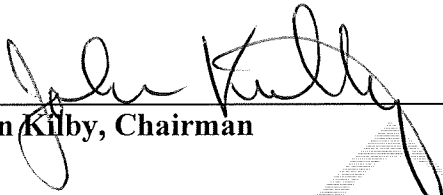
### **OLD BUSINESS**


Chairman Kilby mentioned that today would be Mr. Butts’ last meeting as he would be leaving town and has resigned his position on the Board. Commissioner Webber explained that the ordinance does not prohibit someone living outside city limits to be on the Board.

### **ADJOURNMENT**

**Mr. Hoek made a motion seconded by Mr. Erickson to adjourn the meeting. All voted in favor.** The meeting was adjourned at 2:12 p.m. The next regular meeting is scheduled for Tuesday, November 21, 2017 at 1:00 p.m.

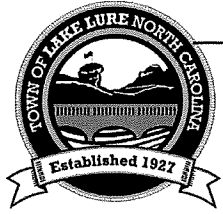
**ATTEST:**

  
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**John Kilby, Chairman**

  
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**Michelle Jolley, Recording Secretary**

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TOWN OF LAKE LURE  
*Community Development Department*

MEMORANDUM

TO: Board of Adjustment

FROM: Brad L. Burton, Code Enforcement Coordinator

DATE: October 15, 2017

RE: ZV-2017003

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Martyn Watts, property owner, is requesting a 10-foot variance (no setback) from the Town's rear yard setback requirements for construction of a detached structure garage at 455 Justice Drive, Lake Lure, North Carolina. The property is located in the R-1 zoning district.

A 2006 survey by Don McEntire, PLS was submitted with the application with the proposed site of the detached garage drawn thereon to scale by the applicant. The survey indicates a fifteen foot rear yard setback at the proposed building site. This dimension was amended by Town Council in March of 2015 to ten feet. While not the subject of this hearing, it should be noted that this 2006 survey does appear to indicate a setback and boundary encroachment, even at the amended ten foot dimension, of the southeast corner of the existing house.

The adjoining parcel due south of the Watts parcel, defined by intersecting boundary lines located S33°29'57"W and N41°51'09"W respectively, is outside of the corporate limits of the Town of Lake Lure.

As it is along the N41°51'09"W boundary where the proposed building site is located, staff made a query of the Town's legal counsel as to whether or not property owners outside of the Town corporate limits and duly noticed of the hearing (due to their respective properties being located within the regulation-prescribed one hundred feet of distance adjoining the Watts' parcel) could be considered parties of standing in this matter. Below is his response:

*The North Carolina statutes do not explicitly address the impact of jurisdictional boundaries on standing. In Good Neighbors of South Davidson v. Town of Denton, the state supreme court took special note of the fact that those complaining of improper spot zoning were located outside of the jurisdiction of the offending town and had no political recourse regarding the challenged legislative zoning decisions, which may have influenced the Court to rule in the County citizens' favor. In the quasi-judicial context, the fact that affected property is outside of the jurisdiction of the decision-making jurisdiction has no bearing on whether or not the property will suffer special damages, which is what neighbors*

*must show in Court to establish standing. Therefore, the neighbors in Rutherford County may fully participate, offer evidence, etc. and have standing (if a sufficient showing is made) to challenge the decision in court.*

Should the Board decide to grant the Variance as requested by the applicant, staff would strongly suggest that a condition of approval be that the homeowner shall provide an “as-built” survey, assuring no encroachment of any new development onto property not owned by him. This instrument shall be provided prior to any

A similar requirement, a “Foundation Survey” is mandated by the zoning regulations when development endeavors are proposed within five feet of a setback:

“§ 94.064A FOUNDATION SURVEY REQUIRED

Where plans submitted for a Certificate of Zoning Compliance show that any portion of a new structure or addition to an existing structure will be within five feet of any required yard, a survey prepared by a registered land surveyor or civil engineer shall be made to insure that the proposed structure will be located as shown on the approved plans. This survey shall be conducted after the construction of any foundation. The survey shall also indicate the location of roof overhangs, decks, chimneys and any other appurtenances that extend beyond the walls of the structure. This survey shall be submitted to the Zoning Administrator for review and, if in accord with the approved plans, the Zoning Administrator shall issue a statement of approval. This statement shall be required before any certificate of occupancy shall be issued by the Rutherford County Building Inspections Office. If the survey is not performed or if the survey shows the structure is not in accord with the approved plans, the Certificate of Zoning Compliance shall be rescinded until such time as a survey shows the location of the structure is in conformance. In the event the Certificate of Zoning Compliance is rescinded, the Zoning Administrator shall notify the Rutherford County Building Inspections Office that the building permit is no longer valid.”

No narrative was presented to the zoning administrator describing the proposed detached garage project. A verbal declaration of an intent to “build a detached garage” was the information provided in a pre-application meeting between the zoning administrator and the applicant. The applicant has provided in his submittal what is assumed to be an elevation of the proposed garage, downloaded from apparently from the Internet, entitled “Man Cave or Mom Cave.” This document describes second floor “living area” of 563 square feet. In “About this Plan” is the following paragraph:

Besides the very practical two car garage with 9' x 8' doors and plenty of storage space, it has an informal traditional exterior that would compliment many architectural styles. The second floor is access with extra wide 42" stairs so transporting bulky items is easier. As a man cave, customize the second floor with a big screen TV and surround sound, poker table, pool table, wet bar, whatever! Mom could furnish it with cabinetry, computer & office equipment, hobby items, comfortable furniture, collectibles, etc. (Beware of teenagers with drums, musical instruments and enormous amplifiers!) **Always check with local authorities**, but in most places this structure is not an apartment and qualifies as an outbuilding.

This is proper advisement, as garage apartments in the R-1 zoning district require the granting of a Conditional Use Permit [ § 92.026(C)(1) ]:

***Garage Apartment:*** *A part of a building in which a garage is located consisting of a room or rooms designed or used as a dwelling unit by an individual or a single family. (Amended 11-15-05)*

If this Variance is granted, no approval given for a garage apartment above the garage area. Storage, “Man and Mom Caves” as living areas described above would be considered an allowable use. Should the applicant wish to use this space as a garage apartment, he may apply for a Conditional Use permit for that use once he has received his Certificate of Occupancy from the Town and Rutherford County Building Inspections.

