



**Minutes of the Regular Meeting of the
Lake Structure Appeals Board**

**Tuesday, May 22, 2018
1:30 p.m.**

Chairman Hoek called the meeting to order at 1:37 p.m.

ROLL CALL

Present: Mark Hoek, Chairman
Bill Bay
Neil Gurney, Seated Alternate
Wyn Hardy, Seated Alternate
David Lusk
Al Joyner, Alternate
Stephen Webber, Council Liaison

Also Present: Michelle Jolley, Recording Secretary
Clint Calhoun, Environmental Management Officer

Absent: Melvin Owensby
Lyn Weaver

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

Mr. Lusk made a motion to approve the minutes of the January 23, 2018 as presented. Mr. Bay seconded the motion. All voted in favor.

NEW BUSINESS

Chairman Hoek explained quasi-judicial hearing rules and procedures.

(A) LSAV-2018001, a variance request from Robert and Mary Ann Peffer from Section 94.05 (A) of the Lake Structure Regulations. The property (Tax PIN 1647446) is located at 180 Ridge Road, Lake Lure, North Carolina.

Mr. Calhoun, and Mr. and Ms. Peffer were sworn in. There were no ex parte communications or conflicts of interest to report. The Board felt they could make a fair and unbiased decision. Mr. and Ms. Peffer did not wish to challenge the Board for cause. James Lee, Attorney for the Peffer's was also present acting on the property owner's behalf.

Mr. Calhoun presented the case. He stated that Mr. and Mrs. Robert Peffer are requesting a variance from Section 94.05(C) of the Lake Structure Regulations, requiring that "no portion of any structure shall be located closer than 15 feet to any side lot line, as projected into the lake." The property (Tax PIN 1647446) is located at 180 Ridge Road.

Mr. Calhoun reported that on April 23, 2018 he received an as-built survey from Donald McEntire which shows that the lake structure does indeed encroach into the setbacks on the right side (looking towards the lake from land). In discussion with Mr. McEntire as well as Mrs. Peffer, Mr. Calhoun determined that there are only two options: (1) structurally correct the structure so that it conforms with the regulations; or (2) apply for a variance, in which case the variance must be granted or else the structure will have to be adjusted structurally. The Peffers have opted for option 2 as they believe that it will be incredibly difficult to modify the structure, given that the encroachment is only four inches where the corner meets the seawall and 11 inches on the front corner at its furthest extension into the lake.

Mr. Calhoun disclosed that he received a phone call from Ms. Davis, adjoining property owner where the encroachment occurs, who stated that she was not opposed to the variance request.

Ms. Peffer stated that they are requesting a variance for the sections of the structure that encroaches onto the adjoining property. Attorney Lee provided exhibits to the Board which were accepted as 'Applicant Exhibits A, B, C, D, E, F, and G' which depict which include pictures of the structure, the original survey and the as-built survey. Ms. Peffer explained that the survey stake on the easternmost point of the property was not present at the time the boathouse was built and stated they were not aware that they encroached onto the neighboring property. She stated that it was their intent to have the boathouse built within the setback lines, nothing that the steps were not as indicated in the architect's plans. Ms. Peffer explained that if the variance is denied it would significantly impact the structure. She also explained that it would be very costly to remove the structure.

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

With regard to application number LSAV-2018001 for a variance from Section 94.05(C) of the Lake Structures Regulations, Mr. Bay moved the Board to find (1)

owing to special or unusual conditions, a literal enforcement of the provisions of the regulation(s) will result in practical difficulty or unnecessary hardship, and (2) in the granting of the variance the spirit of the Lake Structures Regulations shall be observed, the public safety and welfare secured, and substantial justice done. Accordingly, he further moved the Board to grant the requested variance in accordance with and only to the extent represented in the application.

Mr. Hardy seconded the motion. Mr. Bay, Mr. Gurney, Mr. Hardy, Mr. Lusk, and Chairman Hoek voted in favor.

The Board felt that the special circumstances were not a result of the applicant and noted that there were no objections from the affected adjoining property owner.

(B) LSP-2018014, a request from Jonathan Hinkle of Marathon Builders of WNC Inc., on behalf of Peter Landeweer, for a determination regarding obstruction of view for a proposed lake structure. The property (Tax PIN 226122) is located at 2104 Memorial Highway, Lake Lure, North Carolina.

Mr. Calhoun, Mr. Hinkle, and Mr. and Ms. Johnston, adjoining property owners at 2100 Memorial Highway, were sworn in. There were no ex parte communications or conflicts of interest to report. The Board felt they could make a fair and unbiased decision. Mr. Hinkle did not wish to challenge the Board for cause.

Mr. Calhoun presented the case. He stated that Mr. Jonathan Hinkle, as the applicant, on behalf of Peter and Barbara Landeweer, is requesting a view determination for a lake structure he is planning to construct.

Mr. Calhoun explained that on April 12, 2016 the Lake Structure Regulations were amended to allow structures other than piers to be constructed on lots of record with shorelines less than 80 feet, provided that the structure can be situated on the usable portion of shoreline. Section 94.05 (A)(3) states the following:

“Lots of record with 35 to 100 feet of measurable shoreline length shall be limited to any authorized lake structure or combination thereof, with a maximum of two moorings or slips, and shall not exceed the usable shoreline length. Variances are not permitted for the maximum number of moorings or slips; or, structures that are larger than what the usable shoreline will accommodate. Covered or enclosed structures shall require a Lake Structure Appeals Board determination the proposed structure will not materially obstruct the view of the lake from any adjacent upland property.”

He further explained that because the submitted Lake Structure Application is for a covered and enclosed structure on a lot of record having more than 35 feet, but less than 100 feet of shoreline, the Lake Structure Appeals Board is required to determine whether or not the proposed structure will obstruct the view of the lake from any adjacent upland

property. He stated that the proposed structure appears to meet all other requirements of the Lake Structure Regulations.

Mr. Calhoun reported that the existing pier was built by a previous property owner and was destroyed when a large tree fell on it. He noted that there is a potential for a view obstruction, which the Board would have to determine. He disclosed that he spoke with John Wagner, property owner to the north of the proposed structure, who stated he had no objections to the request. He disclosed that he also spoke with the Johnstons mentioning that they are present to speak on their behalf.

Mr. Hinkle stated that he stopped construction and contacted Mr. Calhoun once he realized that proper permits were not obtained. He noted that the proposed structure will not be covered and is similar to other structures in town. He noted that the proposed structure would not obstruct any views of homes located across the Highway from this property.

Mr. Johnston stated that he and his wife own adjacent property and was concerned that the proposed structure would create an obstruction to their view of the lake. He pointed out that the plans call for a sloped roof which creates the obstruction. He submitted pictures to the Board, which Chairman Hoek labeled as "Applicant Exhibit A." The exhibits depicted views from their home looking down to the site of the proposed structure.

Mr. Hinkle explained that there is an alternative to use a shed roof but stated he was uncertain as to how it might affect the structure. He mentioned that prior to the large tree that fell, the Johnstons had no views and questioned the definition of upland property in how it applies to this case. Mr. Johnston objected stating that the tree that fell did not obstruct their views very much and they had intentions of removing that tree prior to it falling for safety reasons. Mr. Calhoun read the definition of upland lot defined in the Lake Structure Regulations. Mr. Hardy felt that any type of construction on this property would create some type of view obstruction.

Mr. Calhoun clarified that the Lake Structure Regulations state that you cannot have a boathouse without having a residence on the lot. He mentioned that the design is for a covered boat slip, not a boathouse because it is not enclosed. He noted that it still falls under the same requirements for views.

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

With regard to application number LSP-2018014 for a Lake Structure Permit, Mr. Hardy moved the Board to find (1) owing to special or unusual conditions, a literal enforcement of the provisions of the regulation(s) will result in practical difficulty or unnecessary hardship, and (2) in the granting of the variance the spirit of the Lake Structures Regulations shall be observed, the public safety and welfare secured, and substantial justice done. Accordingly, he further moved the Board to grant the

requested variance in accordance with and only to the extent represented in the application as amended.

Mr. Hardy seconded the motion. Mr. Bay, Mr. Gurney, Mr. Hardy, Mr. Lusk, and Chairman Hoek voted in favor.

The Board felt that the proposed structure was in line with the Lake Structure Regulations and voted in approval of the the request.

OLD BUSINESS

None

ADJOURNMENT

Mr. Bay made a motion to adjourn and Mr. Hardy seconded. All voted in favor.

The meeting was adjourned at 2:39 p.m. The next regular meeting is scheduled for July 24, 2018 at 1:30 p.m.

ATTEST:



Mark Hoek, Chairman



Michelle Jolley, Recording Secretary