



**MINUTES OF THE REGULAR MEETING OF THE TOWN OF
LAKE LURE ZONING AND PLANNING BOARD**

**TUESDAY, OCTOBER 17, 2023
9:30 A.M.**

Present: Randall Nelson, Chair
Charlie Ellis, Vice Chair
Dave Keenan
Mac Hillabush
Ken Williams

Scott Doster, Town Council Liaison

Absent: N/A

Staff: Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist

The meeting was called to order at 9:30 a.m.

I. ROLL CALL

The Board opened with the pledge of allegiance. All Board members were present.

II. APPROVAL OF THE AGENDA

Mr. Keenan requested to switch the order of Section V ("Old Business") Items A and B. **Mr. Keenan made a motion to approve the agenda, as amended. Mr. Ellis seconded and all voted in favor.**

III. APPROVAL OF THE MINUTES

Chair Nelson noted that there is an error in which the word "not" should be removed in the statement regarding summarizing inconsistencies. **Mr. Hillabush made a motion to approve the minutes from the September 19, 2023 regular Zoning and Planning Board meeting, as amended. Mr. Keenan seconded and all voted in favor.**

IV. PUBLIC COMMENT

Vickie Rogers, 185 Blarney Road, asked to address chickens. Mrs. Rodgers cited the current verbiage in the Chapter 4 ("Animal"). Mrs. Rogers expressed that the Town has worked tirelessly to develop a luxury resort community and has done so through enforcement of ordinances. Mrs. Rogers further expressed that to amend this ordinance would create issues for and take away from the community. Mrs. Rogers explained that reasons that chickens should remain outlawed are as follows: attracts other wildlife, the poop and smell and pests and parasites, and the noise. Mrs. Rogers explained that the illegal keeping of chickens by a resident on Blarney Road has been a nuisance. Mrs. Rogers expanded that the illegal keeping bothers pets and wildlife, threatens property values, and places a burden on local resources of policing the ordinances. Mrs. Rogers noted that she has had issues with the neighbor in reference since April 2020. Mrs. Rogers added that chickens wander into her yard regularly and noted that she has photo evidence. It was noted that Director Williams has had to visit three times for this matter. Mrs. Rogers requested that the Zoning and Planning Board recommend to Council to keep the ordinance as written.

Tom Rodgers, 146 McBrayer Court, explained that he has owned property in Lake Lure for 30 years. Mr. Rogers expressed that he is shocked that Council would take any suggestion from the Daugvila's regarding chickens. Mr. Rogers added that the Daugvila's have been illegally keeping chickens and are now expanding this to try to allow chickens across Town. Mr. Rogers stated that these neighbors have offended all around them, have interfered with utility lines, and continue to flout the rules. Mr. Rogers added that chickens are not necessary. Mr. Rogers expressed that the fact that the Council would even consider allowing chickens is ludicrous.

Chair Nelson reminded the audience that the purpose for the Board is to make recommendations to the Town Council. Chair Nelson that comments have been specific to one case, but the Board is looking at the allowance of chickens comprehensively. Mrs. Rodgers expressed that issues could expand if chickens are allowed.

Sara Gray, 111 Havnaers Point, noted that she and others have dealt with the chickens before. Ms. Gray added that cage stuff has been thrown on McBrayer Court. Ms. Gray expressed that chickens create a bad odor and attract bears. Ms. Gray further expressed that she thinks that the Town would cause many unforeseen issues if chicken become allowed.

Dan Gorman, 241 Washburn Road, noted that he is in favor of a recommendation to allow chickens in a way that is limited and responsible. Mr. Gorman explained that he is a landscape designer who has lived in different areas and has seen how backyard chickens have been embraced in other communities. Mr. Gorman expressed that the previous statements against chickens are more reason to legislate them and control them in a responsible way. Mr. Gorman added that more communities allow chickens than not. Mr. Gorman further added that unless there is legal or data driven reasons, there is no excuse to not allow. Mr. Gorman expressed that if this it goes to council, he would like to present data. Mr. Gorman noted that nuisances and sound ordinances address issues discussed. Mr. Gorman added that nuisances would limit the amount of red tape when there are already ways to address irresponsible chicken owners.

Tom McKay, 1805 Buffalo Creek Road, recommended that the Board take a macro-view of

animal husbandry and what should be governed and legislated on what can or can't be done in the future. Mr. McKay explained that he is a cattle and poultry owner outside city limits and expressed that there seems to be a nationwide need to have the ability to raise livestock if desired with proper grooming and area. Mr. McKay noted that he is surprised that only chickens are being discussed. Mr. McKay expressed that his main concern is about personal property rights of people who have the spatial needs to do what they want on their property. Mr. McKay added that allowing chickens does not harm neighbors and that there are many communities that have already allowed them. Mr. McKay recalled that a similar issue occurred many years ago in regard to horses and ponies, which is why they are allowed. Mr. McKay expressed that this is more of a marco animal husbandry issue and recommended taking a whole look at all property rights in the town. Mr. McKay further recommended against limiting anyone's personal property rights if they are not harming anyone else. Mr. McKay concluded that that if no harm is being done and nuisance ordinances are being followed, it is obvious to him what should be done.

Barba Searcy, 201 Havnaers Point Circle, expressed that the Daugvila's live above everyone in the community, so everything on their property washes down. Ms. Searcy stated that there are four reason people want chickens: eggs, meat, companionship, and sacrifice. Ms. Searcy expressed that she believes that the Daugvila's are participating in the latter. Ms. Searcy expressed concern with allowing chickens.

V. OLD BUSINESS

A. *Review discussion from September 12 meeting regarding "chickens" and recommendation requested from staff regarding a revision of Chapter 4 "Animals" ordinance, and consider making recommendation to Town Council regarding Chapter 4 text amendment.*

Director Williams explained that the Board had spent a lot of time discussing chickens last month and that there was a wide range of thoughts and staff was asked to provide a proposal regarding text amendments at this meeting. Director Williams provided staff's recommendation to the board. Staff's recommendation was as follows:

(Additions are underlined, removals are ~~struck through~~):

Sec. 4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dog having dangerous or destructive propensities means a dog which constitutes a physical threat to humans or other animals, or a dog which habitually turns over garbage receptacles, habitually destroys shrubs, flowers, grass, and other plant growth, habitually kills other animals, habitually attacks or attempts to attack persons, or habitually performs other similar acts.

Chicken coop means a protective indoor space where chicken hens are kept.

Chicken run means a fully enclosed area where chicken hens may move freely in the open.

Free range means permitting livestock to graze, forage for food or otherwise roam freely outdoors as opposed to being confined within an enclosure.

Hen means a female chicken.

Proper enclosure when used in reference to dogs means a building or other structure from which a dog cannot escape, or an outside area enclosed by a fence at least six feet in height secured to the ground in a manner so that a dog cannot escape.

Sec. 4-3. Livestock.

- (a) Keeping of livestock prohibited. It shall be unlawful to keep or maintain any cow, mule, sheep, goat, hog, other livestock, or fowl other than hens as defined in section 4-1, on any lot or within any pen, stable, or other enclosure or building within the corporate limits. This section shall not be deemed to prohibit the assembling of livestock for shipment or the unloading from shipment of livestock, provided that such livestock are not kept within the corporate limits for more than 24 hours prior to shipment or subsequent to unloading.
- (b) Horses and ponies. Horses and ponies may be kept within town limits for pleasure or recreational purposes only, provided that no horse or pony is kept, housed, penned, or maintained in a shed, stall, stable or other place within 200 feet of a residence, including the owner's or boarder's residence, church, store or other place of business. All pens, sheds, stalls or stables, or structures in which the same may be kept, housed or penned, shall at all times be required to be kept clean, disinfected and sanitary, and the same shall not emit at any time any noxious or offensive odor or smell which can be detected by and is offensive to the occupant of any house in the town. Safeguards must be utilized and maintained to minimize the breeding and dissemination of rodents and flies by the use of appropriate pesticides and feed-storage facilities. The pasturing of any horse or pony will be limited to one animal for every two acres of pasture.
- (c) Hens. Up to four (4) hens may be kept within town limits, on residentially zoned properties, for non-commercial purposes only, provided that no hen is kept, housed, penned or maintained within 100 feet of a residence other than the owner's or tenant's, a church, store or other place of business. Additionally, hens shall be kept separated from any property line by a minimum of (25 or 50 feet) and a minimum of (50 or 75 feet) from any body of water or roadway. All areas where hens are kept shall at all times be required to be kept clean, disinfected and sanitary, and the same shall not emit at any time any noxious or offensive odor which can be detected by and is offensive to the occupant of any dwelling in the town. Safeguards must be utilized and maintained to minimize the breeding and dissemination of rodents and flies by the use of appropriate pesticides and feed-storage facilities. Hens must be kept within a completely enclosed chicken coop and/or run, the total area of which shall not exceed (200 or 160 square feet) in size. The free ranging of hens is prohibited. Any individual keeping hens within the town must obtain an annual registration permit with an annual fee in order to be in compliance with this section of the Code of Ordinances.

- (d) Effect upon existing livestock. Persons keeping or maintaining within the corporate limits any of the animals named in subsection (a) of this section, shall remove them from the corporate limits in order to comply with subsection (a) of this section not later than six months from the effective date of the ordinance from which this subsection is derived.*
- (e) Violations. In any event, if any horse, pony or hen being kept pursuant to this section becomes noncompliant with these provisions, upon written notice given by the town to either the owner of the horse, pony or hen or the possessor of said horse, pony or hen, that owner or possessor shall have seven days to correct the deficiencies noted in the written notice, and failure to correct the deficiencies noted in the written notice shall constitute a violation of this chapter.*

Director Williams summarized that staff's recommendation would include a limit of four hens, in residential districts only. Director Williams noted that setback distance recommendations will be determined by the board. Director Williams noted that staff proposed a greater setback distance from the lake because there was concerns expressed at the last meeting. It was detailed that the annual fee would be minimal, but would allow staff to follow up on properties with chickens. Director Williams reiterated that this is staff's recommendations are based on past board discussions.

Chair Nelson asked if the property owners who neighbors expressed concern about during public comment would be in compliance if the staff recommendation were to be implemented. Director Williams answered that he is unsure because he has never seen the chickens free ranging when the property owners had them, but neighbors have reported that they are free ranged. Director Williams noted that the recommended language would not allow for free range chickens, but the property owners in reference would likely be in compliance with setbacks.

Mr. Ellis expressed that it seems that if a property owner were adjacent to a vacant lot and away from the property line, this would be allowed, but if a home were later built on the vacant lot within the buffer it would create a non-conforming use. Director Williams agreed.

Director Williams noted that the horses and ponies section was written to maintain distance from any residents. Director Williams expressed that he would like the Board to consider these factors.

Mr. Hillabush expressed that a universal point needs to be established so no non-conformities are created. Mr. Hillabush further expressed that he would like the regulations to be simple and easily enforceable, and that he thinks that the easiest way to achieve this is to enforce property line regulations. Board members and staff discussed. Commissioner Doster noted to keep in mind that some people have the mobile coops that can be moved and are not permanent structures. Mr. Hillabush stated that a coop should be permanent, but a run would likely be moveable. Mr. Ellis agreed with Mr. Hillabush and expressed that this would be no different from someone building a garage in a setback. Mr. Ellis explained that he was originally in favor of allowing chickens and thought it would adhere to property owners' rights, but hearing comments today has put a pause on this opinion and he is concerned as to

whether or not the nuisances would cover all issues related to chickens. Mr. Hillabush expressed that he thinks that nuisances would address all issues.

Commissioner Doster expressed concern with proximity to the lake because everything runs downhill and substances from coops above the lake will eventually go into the lake. Chair Nelson agreed that it is a concern for him as well.

Chair Nelson noted that another issue is chickens attracting bears and noted that he had been researching this issue. Director Williams explained that he had spoken with a city planner in Asheville who stated that chickens attracting bears is one of Asheville's problems. Director Williams noted that bears and protecting the lake are important. Director Williams expressed concern with being able to guarantee that people will responsibly dispose of the waste of the chickens and noted that it would not be easy for staff to enforce. Mr. Hillabush expressed that it is not the Board's responsibility to determine whether or not people will follow the rules. Chair Nelson noted that if the Board makes a recommendation, people could abuse it. Mr. Hillabush expressed that the Board is only talking about four hens and that a dog would create more runoff than four chickens. Mr. Hillabush agreed that chickens should be kept away from the water, but expressed that he does not think that this would be an issue. Mr. Hillabush also expressed that if feed is appropriately put away, bears will not be an issue.

Mr. Keenan expressed concern that allowing chickens would result in people will asking for the Town to allow other livestock. Mr. Keenan noted that this staff's recommendation is fairly tightly written, but that he wonders how long it will be before people start asking for more.

Director Williams reminded the Board that the original proposal submitted by a property owner cited setbacks within 200 ft. of a residency which is stricter than the staff recommendation.

Mr. Hillabush expressed that people should do what they want on their property as long as they do not infringe on anyone else's rights.

Commissioner Doster asked how many chickens the residents on Blarney Road have now. Director Williams expressed that he understands that they currently have none, but noted that when it was reported to staff there were about six to eight. Commissioner Doster noted that they are an example of non-responsible property owners.

Mr. Ellis noted that the horses and ponies are limited to one animal per two acres and suggested that this regulation should also include a minimum lot size. Chair Nelson agreed. Chair Nelson recalled his past recommendation to only allow chickens in certain residential districts, which would relate to minimum lot sizes. Mr. Hillabush explained that the shape of a lot would also matter and that a property could still be in a setback on a two acre property. Mr. Hillabush noted that with proposed setbacks, not many people on the lake could own chickens anyways. Mr. Nelson expressed that people may not want chickens in higher density residential zones.

Mr. Ellis asked if there is any sense of Council's feelings on this matter. Chair Nelson noted that Council deferred to the Board when it came to them first. Commissioner Doster expressed that he thinks that Council's feelings will depend heavily on protection of the watershed and expressed that he thinks that a minimum acreage should be included. Commissioner Doster also expressed that he does not think that chickens should not be allowed in high density areas. Commissioner Doster added that he thinks that Council will want distances from the lake and acreage limits to be included in the language and that he thinks that Council will want the language to be really tightly written, with larger fines and easily upheld enforcement. Commissioner Doster noted that if there is irresponsible ownership, those owners should only get one chance. Chair Nelson expressed that he does not think that there are a lot of people who want to raise chickens in the town limits. Mr. Hillabush disagreed. Chair Nelson noted that the nuisances may not be worth the allowance of chickens. Mr. Hillabush expressed that he does not think there will be many nuisances.

An attendee noted that the property owners that have been discussed are irresponsible, but others would not be. Another attendee noted that the Board really needs to take a macro view on animal husbandry and expressed that personal property rights is his main concern.

Mr. Ellis explained that he is not completely against allowing chickens, but he has concerns about unintended consequences that may occur and he is not comfortable with the standards that have been laid out. Mr. Ellis noted that it is possible that they could be permitted in specific zones with acre limits. Mr. Ellis concluded that he thinks that he does not think that the Board is ready to make a decision today. Mr. Hillabush asked what Mr. Ellis would need to feel like he could move forward and noted that he thinks that appropriate buffers would eliminate issues. Chair Nelson disagreed. Mr. Ellis noted that when he first read the proposal, he noticed that the proposed footprint was fairly small and questioned where chickens could reasonably go without infringing on other property owners and the watershed. Mr. Hillabush expressed that the watershed issue is minimal at best with four hens. Chair Nelson noted that if the owner does not responsibly clean up after their chickens, it would become an issue. Chair Nelson also noted that abuse of allowance is a consideration for not allowing chickens. Mr. Hillabush reiterated that it is not the Board's role to enforce regulations, but that he wants to make enforcement easy for staff.

Chair Nelson asked if there are any motions or if staff should re-revise the recommendation and bring it back to the Board at the next meeting.

Mr. Hillabush made a motion to recommend to Council to amend the ordinance to allow chickens in the Town of Lake Lure with future recommendations for appropriate definitions. Mr. Williams seconded. The motion carried 3-2 with Mr. Keenan and Chair Nelson voting against the motion.

Mr. Hillabush expressed that for the purpose of ease, it would be appropriate to opt for a 50 ft. limit from a property line and 75 ft. limit from water parameters.

Mr. Hillabush made a motion to recommend the adoption of staff's recommended language with the requirement that hens shall be kept separated from any property line

by a minimum of 50 feet and a minimum of 75 feet from any body of water or roadway, and removal of the language that states that “no hen is kept, housed, penned or maintained within 100 feet of a residence other than the owner’s or tenant’s, a church, store or other place of business.” Mr. Williams seconded the motion. The motion was lost 2-3 with Mr. Keenan, Chair Nelson, and Mr. Ellis voting against the motion.

Mr. Ellis asked if it would be possible to take a recommendation to Council about chickens but uncertain parameters. Mr. Ellis noted that he thinks we can make this happens, not comfortable with the parameters, but not worth if it Council is not in favor. Mr. Ellis asked if would could share the original motion with Council, but note that we do not have specifics. Scott recommended that it could be discussed by Council on the work session meeting on the 25th and Chair Nelson will attend. Hank explained that the Council can still look at staff’s recommendation with the negative recommendation from the planning board.

Chair Nelson noted that Director Williams will report both motions to Council.

B. *Act on board’s September 12 suggestion to rescind August 15, 2023 text amendment recommendations regarding alcohol sales for on-premise uses, and craft a new text amendment recommendation based upon information obtained from researching State regulations.*

Director Williams provided the Board with a summary sheet. Director Williams read his summary, as follows:

1. *Rescind previous recommendation made on July 18 on bars and definitions.*
2. *Recommend amending the zoning ordinance as follows:*
 - a. *Add/revise TOLL definitions per NC General Statutes 18B for the following:*
 - *Hotels and motels – staff recommends revising existing TOLL Section 36-5: Hotels and Motels. 1) The term “hotels and motels” means a building or group of buildings occupied as at temporary abiding place for individuals where rooms are usually occupied singularly for hire and in which rooms no provision for cooking area made. A hotel or motel may include a restaurant and/or on premise consumption of alcohol, including spirituous liquors with a valid NC ABC license. Subsections 2-4 shall remain.*
 - *Restaurant – staff recommends adding definition: Restaurant means an establishment substantially engaged in the business of preparing and serving meals, and shall have a kitchen and inside dining area with seating for at least ten (10) people. A restaurant may include on premise consumption of alcohol, including spirituous liquors with a valid NC ABC license. Mobile Food Vendors and/or food trucks shall not be considered as a restaurant.*
 - *Mobile Food Vendor – means a readily movable trailer or motorized wheeled vehicle, with a valid DMV license tag, equipped to serve food. It shall not be considered as a restaurant.*
 - *Private Club – staff unclear of purpose or necessity*
 - *Community Theatre – staff unclear of purpose or necessity*

- Convention Center – staff unclear of purpose or necessity
- b. Delete 36-65(C)(2): “Bars, taverns, private clubs, or sale of alcoholic beverages for on premise consumption”. – staff notes that ABC Commission defines “Bars” as serving spirituous liquors.
- c. Correct micro-brewery definition error in ordinance to read: Micro-brewery means an independently owned facility that brews craft beer, ale, porter or other fermented malt beverages in quantities up to 15,000 barrels per year with at least 75 percent of its product sold on-site. (See “nano-brewery” & “brew-pub” definitions.)
- d. In 36-62(B) (1) delete:” alcoholic beverages for off-premises consumption”. (Retail stores are permitted use with no limitations of ABC-permitted alcohol sales.)
- e. Recommend that all town ordinances regarding any approved forms of breweries or wineries (i.e. nano brewery to regional brewery) be interpreted to allow retail sales of other ABC-permitted malt beverages and unfortified wines.

Chair Nelson noted that private clubs, community theaters, and convention centers were included in the 1980s resolution regarding allowance of alcohol and noted that these definitions need to be in accordance with state definitions.

Board members discussed that section e of the recommendation does not need to go to Council because it is separate from text amendments.

Commissioner Doster noted that section a of the recommendation should include 30 percent of all sales to match state’s definitions. Chair Nelson agreed.

Chair Nelson asked if it needs to be specified that alcohol can be sold at a restaurant. Director Williams explained he thinks that the ABC Commission will understand that this is allowed without specific language in the definition. Commissioner Doster agreed.

Director Williams summarized that he would like to Board to rescind their original motion, recommend amendments to the zoning ordinance, and recommend that staff interpret that retail sales of other ABC-permitted malt beverages and unfortified wines are allowed in breweries and wineries.

Mr. Keenan made a motion to rescind original motion and to recommend that all town ordinances regarding any approved forms of breweries or wineries (i.e. nano brewery to regional brewery) be interpreted to allow retail sales of other ABC-permitted malt beverages and unfortified wines. Mr. Ellis seconded. The motion carried 5-0.

Mr. Ellis made a motion to recommend the amendment of the Zoning Ordinances to revise definitions to fit the North Carolina General Statute 18B definitions for hotel/motel, restaurants, mobile food vendor, private club, community theatre, and convention center; to remove Section 36-65(C) (2); to correct the “micro-brewery” definition error to reflect that the products sold must be at least 75 percent on-site; and to remove “alcoholic beverages for off-premises consumption” from Section 36-62(B) (1).. Mr. Keenan seconded. The motion carried 5-0.

VI. NEW BUSINESS

There was no new business to discuss.

VII. AUGUST DEPARTMENT REPORT

Board members reviewed the September Department Report.

Director Williams highlighted that the cell tower is moving forward and noted that he has tentatively approved zoning permits which is the final requirement that needs to be met. Board members discussed issues related to the Town's compliance with the Parks and Recreation Trust Fund related to the Boys Camp Road property.

VIII. ADJOURN

Mr. Keenan made a motion to adjourn the meeting. Mr. Ellis seconded and all voted in favor. The meeting was adjourned at 11:25 a.m.

ATTEST



Olivia Stewman, Town Clerk



Randall Nelson, Board Chair