

# **TOWN OF LAKE LURE**

## **Board of Adjustment Regular Meeting**

Tuesday, July 23, 2024 □ 1:00 PM

Lake Lure Municipal Center



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### **Agenda**

**I. Roll Call**

**II. Approval of Agenda**

**III. Approval of June 25 Meeting Minutes**

**IV. Public comments (*if any*)**

**V. Old Business**

**VI. New Business**

- A. Appeal: ZA2024002 – property owner, James Stickney, is appealing staff decision to deny a permit application for a shed on a property with no primary structure. Property is listed as 0 Bear Cliff Way/tax parcel #1652897. The property is zoned R-1A.

**VII. July Department Report**

**VIII. Adjournment**



**MINUTES OF THE REGULAR MEETING OF THE  
TOWN OF LAKE LURE BOARD OF ADJUSTMENT REGULAR  
MEETING**

Tuesday June 25, 2024 at 1:00 p.m.

**THIS MEETING WAS HELD AT LAKE LURE TOWN  
HALL.**

**I. CALL TO ORDER**

*Chairman Greg Gardner called the meeting to order at 1:00 p.m.*

**II. ROLL CALL**

**Board Members Present:**

*Greg Gardner, Chair  
Melvin Owensby, Board Member  
David Lusk, Alternate  
Mark Windfeldt, Alternate  
Neil Gurney, Vice Chair  
Al Joyner, Board Member*

**Absent:**

*Mrs. Kimberly Sayles, Board Member  
Mr. Al Joyner, Board Member*

**Town Council Members present:**

*Commissioner David DiOrio, Council Liaison*

**Town Hall Staff Members Representative Present:**

*Michael Williams, Community Development Director*

*Richard Carpenter, Development and Environmental Review Specialist*

**III. APPROVAL OF AGENDA**

**IV. APPROVAL OF MINUTES**

**A. Approval of the Minutes for the Board of Adjustments Regular Meeting,  
from May 21, 2024.**

*Mr. Gardner asked for a motion to approve the minutes from the April 23, 2024 Board of Adjustment Regular Meeting. Mr. Gurney made motion and Mrs. Sayles seconded. All members voted in favor.*

**IV. PUBLIC COMMENTS**

*No public Comments*

**V. OLD BUSINESS**

*No Old Business*

**VI. NEW BUSINESS**

**A. Variance Request: ZV2024013 regarding 1930 Memorial Highway request for variance from the lake front yard and side yard setbacks to allow for deck expansion. The property is zoned R-4.**

*Rick Carpenters Report, Linda & Arnold Buckner are seeking a variance to keep a deck that was built within multiple setbacks without permits. The property is addressed as 1930 Memorial HWY., Lake Lure, NC (Parcel #216902) and is in the Residential 4 (R-4) Zoning District.*

**Additional Information for the Board:**

*1) Per §Sec. 36-70. Building site minimum dimensional requirements. (c) For primary streets, the front yard setback shall be 40 feet from the centerline, but not closer than*

ten feet from any right-of-way line where such line exists. For secondary streets, the front yard

- 2) *Setback shall be 35 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. In all commercial districts, setbacks shall be measured from the right-of-way line, or where no right-of-way exists, from a point 15 feet from the centerline of the street. In most situations, the front yard lies between the building and the street. However, for lots which abut a lake, the lake side is also considered a front yard. In any zoning district, minimum setback from the lake is 35 feet measured from the shoreline.*
- 3) *Staff discovered the deck constructed without permits in spring of 2024. The owner/applicant surveyed the deck and discovered there were two setback encroachments.*
- 4)

<i>Setback Type</i>	<i>Setback Requirement</i>	<i>Proposed Setback</i>	<i>Reduction</i>
<i>Lake Front</i>	<i>35'</i>	<i>20'</i>	<i>15'</i>
<i>Side</i>	<i>10'</i>	<i>5'</i>	<i>5'</i>

**Staff Analysis:**

*Staff have analyzed the submitted application and supporting material. Staff have made the following determination: The lot appears steep but do not have confirmation of the actual slope. The existing dwelling is an existing legal non-conformity that encroaches into the lake front setback. According to the provided survey, alternative designs could be constructed that meet setback requirements on the opposite side of the dwelling.*

**Staff Recommendation is to review the application on the basis of the following criteria and make a determination to grant or deny the variance:**

- 1) *Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?*
- 2) *Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?*
- 3) *Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?*
- 4) *Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?*
- 5) *Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?*
- 6) *Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?*

*Mr. Buckner (Appellant) 1930 Memorial Hwy – the cabin is 714 sqft not very big and they have realized through the years and age that they need a same level deck, when they purchased the property they were younger and never thought about it, but now they are older and it’s hard for them to get up and down the steps to go outside– no doorway – you have to walk from the back door – the person who built the deck is mark Hargrove from Asheville. The electrical box was redone and it had a permit – pictures will be admitted into the record.*

*David Lusk made a motion to approve the ZV2024013 regarding 1930 Memorial Highway request, Mark Windfeldt seconded, and all voted in favor.*

**B. Variance Request: ZV2024014 regarding 500 Holmstead for a variance to exceed the maximum building height. The property is zoned R-1D.**

*Terry Baker is seeking a variance to construct a dwelling that exceeds the town height requirement. The property is addressed as 1930 Memorial HWY., Lake Lure, NC (Parcel #216902) and is in the Residential 1-D (R-1D) Zoning District.*

*Additional Information for the Board:*

- 5) Per §Sec. 36-70. Building site minimum dimensional requirements. Maximum building height in any district shall be not more than 35 feet as measured from the average finished grade at building foundation line. The average finished grade is determined by adding the elevation of the highest corner of the proposed structure to the elevation of the lowest corner of the proposed structure and divide by two.*
- 6) During the permitting process, staff determined that the average height for the proposed structure was not compliant.*
- 7) The applicant is seeking a 6’ height increase for the single-family dwelling.*

*8)*

<i>Average Height Requirement</i>	<i>Proposed Average Height</i>	<i>Increase</i>
<i>35’</i>	<i>42.15’</i>	<i>7.15’</i>

*Staff Analysis:*

*Staff have analyzed the submitted application and supporting material. Staff have made the following determination: The lot is considered steep and has an average slope of 37%. Staff and the applicant have not explored possible alternative designs. The proposed high side of the dwelling is 56.1’, with a low side of 28.2’.*

Staff Recommendation is to review the application on the basis of the following criteria and make a determination to grant or deny the variance:

- 7) *Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?*
- 8) *Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?*
- 9) *Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?*
- 10) *Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?*
- 11) *Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?*
- 12) *Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?*

*Mr. Terry Baker (Builder) – lakeside of the house has a retaining wall – it is a 3 story house – Odom engineering is handling the land – a retaining wall on the other side – 350 feet from the lake – off the ridge not up on it – the land to our left is a large track, my customer owns the lot to the side Bevan Harness he is a painting contractor in the Tampa area. Lot 3 is the one we are looking at now. (House has 7 bedrooms and 8 baths he has 7 kids), he wants all of his kids to have their own bedroom with a private bathroom.*

*Greg Gardner made a motion to approve variance ZV2024014 regarding 500 Homestead for a variance to exceed the maximum building height, the motion will accept the proposal made by Mr. Baker regarding the height, Mark Windfeldt seconded, and all voted in favor.*

**C. Special Use Permit: SUP2024004 regarding 2550 Memorial Highway regarding a new commercial office building. The property is zoned C-G.**

- *Rick Carpenters Report, On June 6, 2024, George Wittmer submitted a special use application Package, on behalf of KML Investments, LLC, for a 2,940 square foot commercial office building to be located at 2550 Memorial Highway. The application package included the SUP application, permit review fee, site plan and initial rendering of the building. It was followed up with building plans prepared and designed by the American Woodlands Design Studio, email communication from public works and NC DEQ deeming the engineered sewer connection proposal permitted and allowed under the current moratorium, and copy of the NC DOT submitted driveway application.*

- *The applicant has stated, and presented, that the building appearance will be coordinated with that of the adjacent office building at 2556 Memorial Highway (also owned by the applicant). Staff's opinion is that the submitted plans meet the Commercial General ordinance permitted use requirements, including the setbacks, other than 1) the question of whether the applicant's preference to have metal siding on the rear of the building would meet section 36-233, "Fabric and Metal Structures" ordinance; 2) parking requirements based on building area is 15 spaces*
- *Zoning and Planning Board reviewed the application and plans at their June meeting and recommended that the proposed site treatment, building design, relationship of building to site, harmony of buildings and uses with neighborhood character, signs, lights are reasonable and should meet the requirements for a commercial building in the Community General zoning, based on the final issuance of the sewer and driveway permits. They was discussion of whether the plan to have metal siding on the rear of the building would meet the "Fabric and Metal Structures" requirements due to question of "visibility from adjoining residential property". The rear adjoining property is also owned by the applicant and is registered with a conservation easement.*
- *In review with Development Review Committee members, the sewer connection has been deemed appropriate; the driveway application process was addressed and is awaiting final approval from DOT; the safety, accessibility, utilities and site layout have been reviewed and appear to meet requirements. It was noted that due to the less than 3,000 sqft building size, a sprinkler system is not required by fire code.*
- *The building proposal is consistent with the Town's Comprehensive Plan for the location and Commercial General district.*

*Mike William (employee presenting case) – 2550 memorial hwy – relatively simple commercial building, every commercial bldg. has a different review. Less the 3k sqft. It will be an office space. It's gone through the review, with public works, fire Marshall and the zoning dept. with Rick. Sewer it's not formally approved it's been deemed to be approved – it is the employee's recommendation that it is permutable. It is on a flat base – the requirement is that you cannot have a metal siding sheet - it will be used for two offices and ware house space and storage. It still has to go through the zoning board too – we also have to have the amount of parking space. All you are approving or denying is the use of the bldg. and the type of construction, but the zoning permit still has to be met.*

*Jonathan Hinkle - 2524 memorial hwy – I just wanted to say that I am in support of it I have no objections at all.*

*Greg Gardner made a motion to approve the building to be used as a commercial*

*office as long as it meets all of the zoning requirements before permitting Mark Windfeldt seconded, and all voted in favor.*

**VII. MAY DEPARTMENT REPORT**

*Nothing to Report*

**VIII. ADJOURNMENT**

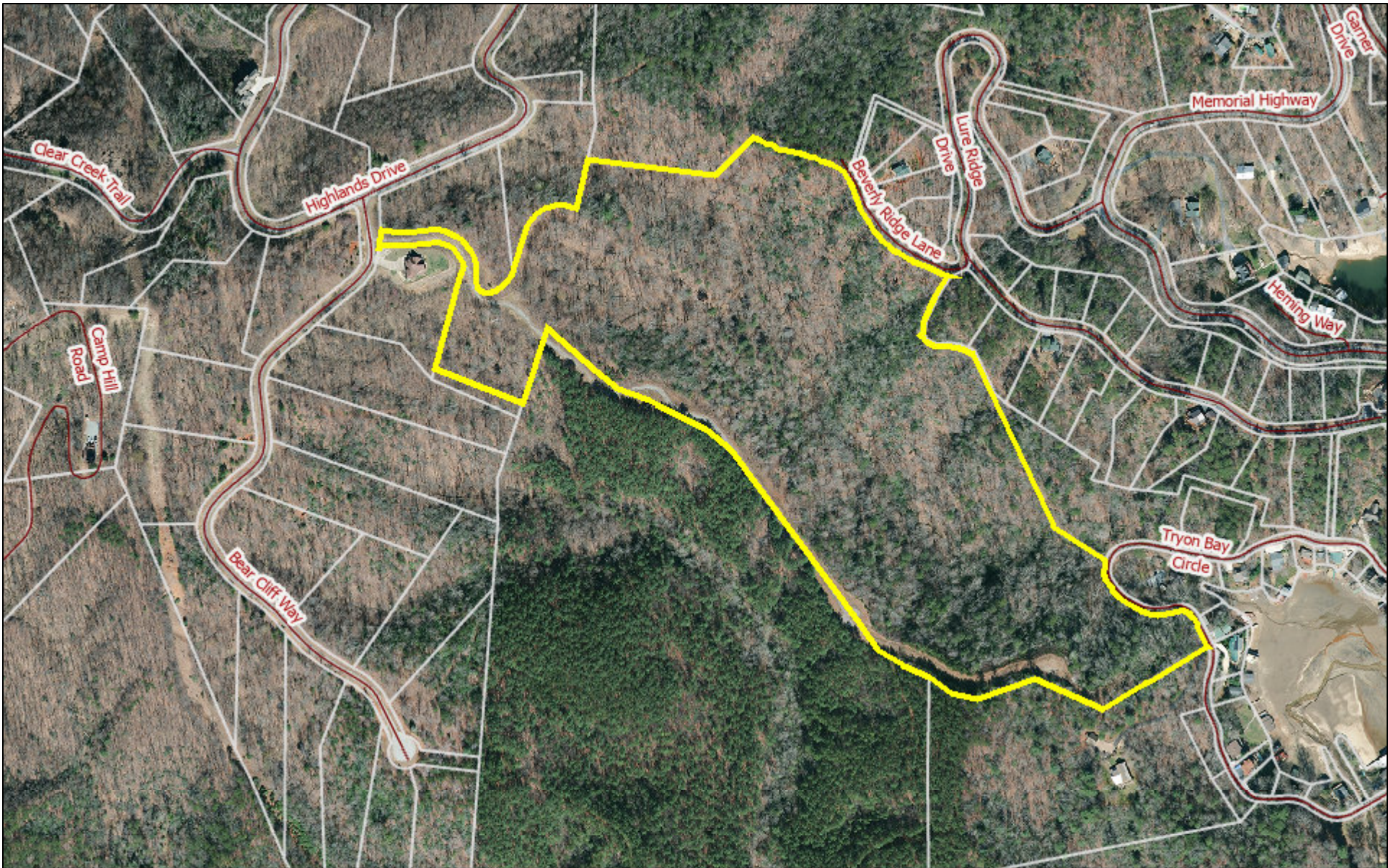
*David Lusk made a Motion to adjourn the meeting, Gregg Gardner seconded. And all voted in favor. Meeting ended at 2:20 p.m.*

**ATTEST:**

\_\_\_\_\_  
Elba A. Willette, Town Clerk

\_\_\_\_\_  
Greg Gardner, Chair





Owner: STICKNEY, JAMES;STICKNEY, ROBIN

Mailing Address: 25 W BLACK OAK DR  
ASHEVILLE

NC 28804

Parcel Num: 1652897

Property Address: 0 BEAR CLIFF WAY

Deed Ref: 2046 - 205

Prop Desc: PL:39-226

Total Acres: 38.8

Deed Date: 5/6/2021

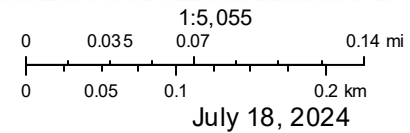
Total Prop Value: 256800

Township: CHIMNEY ROCK

Map Ref: 39 - 226

Map/Block/Lot: 526 1 5

Fire District:





TOWN OF LAKE LURE  
*Community Development Department*

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MEMORANDUM

TO: Board of Adjustment  
FROM: Mike Williams: Community Development Department  
DATE: July 23, 2024  
RE: ZA-202402

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James Stickney has appealed the denial of his zoning application to place a storage shed on a 38.8 acre undeveloped parcel. The Town's Zoning Ordinance designates the parcel's principal use as single family dwellings. Named permitted uses are single-family dwellings, family care homes, customary accessory structures to include storage buildings, residential vacation rentals, and telecommunications facilities and antennae. The property is identified on Rutherford County GIS as 0 Bear Cliff Way, Lake Lure, NC (Parcel #216902) and is in the Residential 1 (R-1A) Zoning District. The southeastern portion of the parcel is adjacent to Stickney's 255 Tryon Bay Circle dwelling and extends northwest to the edge of the Highlands subdivision.

**Additional Information for the Board:**

- 1) Per section 36-57 of the Town's Code of Ordinances, in the parcel's zoning district, a storage building is not permitted as a primary use. It is permitted as an accessory use. (See also section 36-56(b).
- 2) Per section 36-5, an accessory building is subordinate to the principal building on the same lot. An accessory use is for purposes incidental to the principal use on the same lot.
- 3) Per section 36-138, the zoning administrator is responsible for day-to-day administration of the Zoning Ordinance, the BOA shall have the authority to rule on matters of interpretation of the ordinance and consider appeals from decisions of the administrator, and any appeal of a BOA decision shall be to the courts. Town Council shall have the duty of considering and passing the initial ordinance and of any proposed amendments or repeal of the ordinance.
- 4) Per section 36-147, any order, requirement, decision or determination made by the zoning administrator may be appealed to the BOA pursuant to the procedure found in section 36-185.
- 5) Per section 36-185, the BOA shall conduct a quasi-judicial hearing on the appeal or application to determine contested facts and make its decision. The decision shall be based upon competent, material, and substantial evidence in the record of the hearing.

**Staff Analysis:**

I, the Community Development Director, have reviewed and analyzed the permit denial decision made by zoning administrator, Rick Carpenter, have made the following determination: Based upon the information submitted by the applicant, and upon the Town of Lake Lure Code of Ordinances, especially as presented herein, the decision to deny the permit was consistent with the Town's Zoning Code requirements and was the appropriate decision. While it may be argued

that the ordinance does not consider specific individual conditions, the staff is required to uphold that ordinance as written unless and until a revision is approved by Town Council.

**While my opinion is that the appealed decision was consistent with the section 36 Zoning Ordinance, I recommend that the Board review the applicant's appeal on the basis of section 36 and make a decision to grant or deny the appeal.**

**Attachments**

- 1) Application
- 2) Location Map (showing adjacent property owner who were notified of hearing)

**Staff Contact**

A handwritten signature in black ink that reads "Mike Williams". The signature is written in a cursive style with a small dot above the 'i' in "Mike".

Mike Williams, CZO, CFM: Community Development Director  
PO Box 255, Lake Lure, NC 28746/Phone 828-625-9983, Ext. 117/Fax 828-625-8371/  
[mwilliams@townoflakelure.com](mailto:mwilliams@townoflakelure.com)

**Michael Williams**

5/13/24 Notice of denial (email)  
6/13/24 Appeal app delivered/rec'd  
6/12/24 due-by date  
rec'd after 31 days

**From:** Kimberly Martin  
**Sent:** Tuesday, June 18, 2024 11:22 AM  
**To:** Michael Williams  
**Subject:** FW: Permit

**From:** Jim Stickney [mailto:jstickney@isa-avl.com]  
**Sent:** Monday, May 13, 2024 8:56 AM  
**To:** Kimberly Martin <kmartin@townoflakelure.com>  
**Subject:** RE: Permit

Kimberly,

That's disappointing – when we first discussed this it wasn't going to be a problem, since it's not on a main road or within sight of any other houses (or within sight of anyone for that matter, in the middle of nowhere). Also, does it matter that I own the adjacent property with a house at 255 Tryon Bay Circle, which is contiguous to the 39 acres behind it? Finally, do I have recourse through a variance process? I understand the regs and the need for this provision, but I would say that my circumstances are unique and should be allowed. I will also be glad to call Rick after you respond.

Thank you,

**Jim Stickney**  
President 828-230-0077



A member of Legacy Risk Solutions, LLC  
408 Executive Park  
Asheville, NC 28801  
Direct: 828.350.3315  
Main: 828-253-1668  
Fax: 828-258-8164  
jstickney@isa-avl.com  
www.isa-avl.com

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**From:** Kimberly Martin <kmartin@townoflakelure.com>  
**Sent:** Monday, May 13, 2024 8:34 AM  
**To:** Jim Stickney <jstickney@isa-avl.com>  
**Subject:** Permit

You don't often get email from [kmartin@townoflakelure.com](mailto:kmartin@townoflakelure.com). [Learn why this is important](#)

**APPEAL OF ZONING ADMINISTRATIVE ORDER, REQUIREMENT  
DECISION OR DETERMINATION**

Fee: \$300

Appeal No. ZA-2024002

Denied by Board of Adjustments _____	Date of Action _____
Approved by Board of Adjustments _____	

**APPLICANT:**

Name: James Stickney

Phone #: 828-230-0077

Mailing Address: \_\_\_\_\_

Email: jstickney@isa-avl.com

1200 Town Mountain Road  
Asheville, NC 28804

**ADMINISTRATIVE DETERMINATION:**

The Zoning Administrator has determined that According to Kimberly Martin's e-mail of 5/13/24: "Application is denied because there is no structure on the property to allow for an accessory structure"

This is based on his/her interpretation of Section(s) 36-57

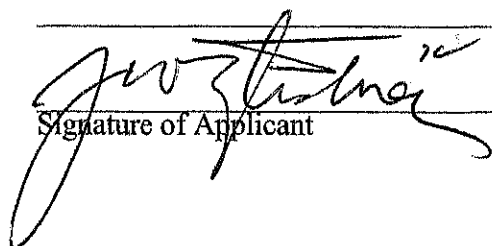
**BASIS FOR APPEAL:**

I believe this interpretation to be in error because: \_\_\_\_\_

Our storage building is the sole and PRINCIPAL structure on the property; the sole and PRINCIPAL use of which is for single-family dwellings.

Please see the attached letter of explanation.

(attach additional sheets as needed)

  
Signature of Applicant

June 13, 2024  
Date

Jim Stickney  
1200 Town Mountain Road  
Asheville, NC 28804

June 13, 2024

Richard Carpenter  
Town of Lake Lure, NC

Re: Appeal of staff decision to decline Zoning Compliance Application submitted May 7, 2024,

Dear Mr. Carpenter:

We take exception to your interpretation of 36-57 that ***the principal use of [my] land is [not] for single family dwellings.***

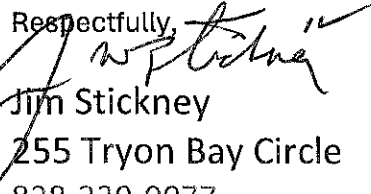
Indeed this would be the principal building on my 39-acre lot, the principal use for which is **nothing** other than “for single-family dwellings”.

When we purchased this land in 2021 it was part (“Phase 4”) of the Highlands of Lake Lure 230-acre development. These 39 acres had been surveyed and drawn off into 17 lots with a road, utilities and intentions of a developer to sell lots and build single-family homes. That plan never panned out and we bought the land from the developer “as is”. We may eventually put at least one house in there. Eventually there is likely to be further development of single-family homes, which ultimately is the only purpose of the land and the reason for its existence.

As such, the land, which is zoned Residential, must be maintained and preserved for use by single-family dwellings. We allow for occupants of other single-family dwellings in the area to walk the property as part of the enjoyment of their own property. Also, prospective single-family home aspirants will need to get around on the grounds to view potential sites. None of this getting around on that land is possible unless we keep the road scraped and cleared, and able to manage trees and vegetation in such a way as to preserve the grounds for use as single-family dwellings. For the tools and equipment required to perform this maintenance and preservation activity it is necessary to store and protect this material in the proposed shed. This is why the utility shed is the “principal building” on the land, which is zoned and used for no other use than “for single-family dwellings”.

We firmly believe that the “Intent” of 36-57.R-1A, R-1B and R-1C and other sections should well accommodate our request to facilitate enhancement of the community through....”Large lot size and low density residential land use are encouraged....and to discourage any use which would be detrimental to the low density, single-family residential nature of the area.....so as not to adversely impact existing and /or reasonably foreseeable uses on adjoining properties”. On the contrary, our building and the use of the land is an enhancement to Lake Lure and NOT the adverse specter that the ordinances are intended to prevent.

Please review this and let me know as soon as possible if we can move forward with securing our tools and equipment on our land.

Respectfully,  
  
Jim Stickney  
255 Tryon Bay Circle  
828-230-0077



**NAME:** Mike Williams

**POSITION:** Community Development Director

**REPORT DATE:** 7/4/24

**PREPARED FOR:** Town Manager & Council

## SUMMARY OF THE MONTH

\*CDD issued 31 permits in June (31 in May, 34 in Apr, 62 in Mar, 43 in Feb, 39 in Jan, 31 in Dec, 31 in Nov, 35 in Oct, 34 in Sept, 39 in Aug, 28 in July, 22 in June, 60 in May Includes 12 Zoning (May=12, Apr=12, Mar=19, 10=Feb, Jan=19, Dec=16, Nov=12, Oct=12, Sep=7, Aug=13, Jul=13, Jun=9, May=22  
5 Lake Structure-inc. shoreline stabilization (May=4, Apr=8, Mar=16, Feb=9, Jan=8, Dec=1, Nov=1, Oct=2, Sept=4, Aug=4, Jul=2, Jun=2, May=9  
4 Land Disturbance (May=3, Apr=7, 9=Mar, Feb=4, Jan=4, Dec=1, Nov=1, Oct=3, Sept=3, Aug=3, Jul=2, Jun=3, May=3  
and 11 Vacation Rental Operator permit (May=2, Apr=2, Mar=9, Feb=6, Jan=5, Dec=1, Nov=1, Oct=2, Sept=4, Aug=2; Jul=5, Jun=4, May=12, Apr=2, Mar=2, Feb=2, Jan=2, Dec=2, Nov=5, Oct=5, Sept=5, Aug=2, Jul=6, Jun=7). Active VROP's = 467 (total active permits based on our updated permit data)  
\*Did Final Inspection/issued Certificates of Completion for 17 zoning or lake structure permits. (May=15, Apr=16, Mar=16, Feb=7, Jan=11, Dec=13, Nov=13, Oct=14, Sept=13, Aug=12, Jul=14, Jun=16)

## TOP ACCOMPLISHMENTS / PROJECT UPDATES

- 1) Zoning and Planning Board conducted a review of KML Investments, LLC's Special Use Permit package regarding a 2,940sf office building with two office spaces and open area for storage. The board reviews site treatment, building design, relationship of building to site and neighborhood character and other considerations reasonably affecting the appearance of the proposed project. The board approved a recommendation to the Board of Adjustments for approval.
- 2) Board of Adjustments conducted quasi-judicial reviews of two variance requests. First was to reduce setbacks and other an increase in the maximum building height. Both were approved as presented. The board also reviewed the Special Use Permit package for the 2,940sf office building to be located within the Commercial General district that had been recommended for approval by Zoning & Planning. The board approved the Special Use Permit.
- 3) Lake Structure Appeals Board had no new business in June.
- 4) Continued working with Tillman Construction (for AT&T) on the cell tower project. It is still under review of the FCC and construction held pending their release.
- 5) Our college intern has helped our department with GIS mapping projects including zoning and protected mountain ridge mapping and continues researching street right of way information. This has been/will be a great collection of information for permitting and public use. She has also worked with public works on sewer and other infrastructure mapping including physical collection of data points, recording information and mapping.
- 6) We are also working on office space planning in preparation for a staff addition that would require a work space, and means to make the space more functional for our use.