

**DRAFT**

**BOARD OF ADJUSTMENT**

**MINUTES**

**Thursday, November 29, 2018**

The Blowing Rock Board of Adjustment met on Thursday, November 29, 2018 at 5:30 p.m. Members present were Dr. Charles Davant, Laurin Carter, Buz Helms, Tom Dixson, and EB Springs. Staff present were Planning Director Kevin Rothrock and Planning and Zoning Support Specialist Tammy Bentley.

Chairman Davant called the meeting to order at 5:30 p.m.

**APPROVE MINUTES:**

Mr. Springs asked that the minutes be amended to reflect that he said November, 2004 and not 2016 in the sixth paragraph on page 3. *Mr. Dixson made a motion to approve the minutes from October, 2018 as amended. Ms. Carter seconded the motion. All were in favor of the motion.*

Mr. Rothrock advised the Board that Mr. Chad Frazier, applicant for Administrative Appeal 2018-04 has requested, and been granted, a continuance. Mr. Rothrock told the Board that Mr. Frazier had requested the continuance in order to have a witness testify and the witness could not be present tonight. Mr. Rothrock also informed the Board that, Ms. Gail Cohen, principal with Koco Properties and applicant for Administrative Appeal 2018-06, had withdrawn their appeal request earlier today.

**Administrative Appeal 2018-05 Vess/Beaver**

Kevin Rothrock and Mr. Beaver were sworn for testimony to the Board.

Mr. Rothrock reviewed the staff report. Ms. Pamela Vess, wife of Mr. Eddie Beaver, has appealed a Final Notice of Violation and Notice of Penalty issued regarding short-term rental of their house at 204 Green Hill Woods, which is zoned R-15, Single-family where short-term rental of property is not permitted. The property is further identified by Watauga County PIN# 2817-54-5916-000.

Mr. Rothrock gave the history of the zoning ordinance for the Town and revisions as related to short-term rentals. Short-term rentals are not allowed and not been allowed in the R-15 zoning district since 1984. In June, 2018 the Town Council adopted an ordinance clarifying

sections of the Land Use Ordinance dealing with short-term rentals. The ordinance also provided for a permitting process for legal short-term rentals.

Mr. Springs asked when the house was built. Mr. Beaver advised 1995.

Mr. Springs asked how many adjacent properties received public notice of this hearing. Mr. Rothrock advised 12 including the applicant, and the notices were mailed on 11/16/18. Mr. Springs asked if anyone who received noticed had contacted his office. Mr. Rothrock said no. Mr. Rothrock then shared two items that he had received but were not included in the packet. One item was from Mr. James Brown, the applicant's accountant and the other was a letter received from Ms. Vess. Mr. Springs asked Mr. Rothrock if he recalled receiving any phone calls. Mr. Rothrock said no, but he had received an email several years ago.

Mr. Eddie Beaver addressed the Board and thanked them for their time and consideration and the fairness and equitableness from Kevin (Mr. Rothrock). Mr. Beaver told the Board that his wife, Ms. Pamela Vess, could not be present due to her work schedule.

Mr. Beaver said that he took over the subdivision after the original developer went bankrupt adding that they built the house with the financial intention of renting it until they could use it. Mr. Beaver said they established a charitable trust so that foreign-service missionaries, mostly couples, could use the property at no cost. Mr. Beaver said the trust paid for these stays. He added that many of these people return each year. Mr. Beaver said he is requesting a modification to continue short-term rentals and that they would pay the occupancy taxes. Mr. Beaver said that many places are dealing with short-term rentals and that Simpsonville, SC had changed their short-term rental ordinance for one year to 'test the waters'. Mr. Beaver said that if a modification is not possible there will be no animas, but he does want to be have people who love Blowing Rock to be able to use the house.

Mr. Helms asked Mr. Beaver if he is paying occupancy tax. Mr. Beaver said no; that he did not know he should. He added that he did not know short-term rental of the house was not allowed until he received the notice of violation. Mr. Beaver said he would make restitution of the occupancy tax if necessary. Mr. Beaver added that the house had been a short-term rental notoriously and continually for 20 years.

Ms. Carter asked what modification Mr. Beaver is asking for. Mr. Beavers responded that he would like to 'test the waters' for one year with a permit with certain limitations. He added that each rental would be reported, taxes paid and this would be revisited after the first year.

Mr. Beaver said there are several short-term rentals in the R-15 zoning district, and this is one of those, and that another town skirted the issue by allowing one rental during a 30 day period. He added that he had never received a complaint and has had one bad tenant about 8 years ago. Mr. Beaver thanked the Board for this procedure.

Dr. Davant advised Mr. Beaver that this Board does not have the authority to offer a trial rental period. Mr. Rothrock reiterated Dr. Davant's comment and added that he appreciates Mr. Beaver's position, but this Board does not have the authority to change the ordinance. Mr. Rothrock advised that the Board could modify his order, based on the facts and testimony.

Mr. Springs said the Board is required to determine facts.

*Mr. Springs made a motion to determine the following facts:*

1. The property is zoned R-15 which does not allow short-term rentals.
2. The house was built in 1995.
3. The house is not a non-conforming use, as it would have to have been a short-term rental as of March, 1984.

*Mr. Springs' motion was seconded by Mr. Dixon. All were in favor of the motion.*

*Mr. Springs made a motion to conclude, based upon reliable evidence that the property does not meet the requirements for grandfathering, which would require that the property was used as a short-term rental before 1984 and the property did not exist until 1995. The motion seconded by Ms. Carter. All were in favor of the motion.*

Mr. Springs suggested that the Board affirm Mr. Rothrock's decision.

*Mr. Dixon made a motion to conclude that Mr. Rothrock is correct and to affirm his decision. Motion seconded by Ms. Carter. All were in favor of the motion.*

Mr. Beaver told the Board that he had been advised to appeal this decision to the Town Council. Mr. Springs advised Mr. Beaver that he must appeal to Watauga Superior Court. Mr. Beaver then said he was not appealing the decision; that he is just asking for a modification.

Mr. Helms asked Mr. Beaver how often the property was used for the charity. Mr. Beaver responded every 6 weeks. Dr. Davant asked Mr. Rothrock if there is no consideration, is that an issue. Mr. Rothrock said family use is not a problem. Mr. Beaver said the trust pays the property owner for the use by the foreign-servant missionaries.

Dr. Davant asked what proof is required for grandfather status. Mr. Rothrock said that proof is not really required and that the burden is on the applicant. Dr. Davant asked if simply asserting grandfather status is not enough. Mr. Rothrock said that is not enough.

Dr. Davant thanked Mr. Springs for his cogent facts and preparedness.

Mr. Rothrock said he would contact the Board regarding the continuance for Chad Frazier, Appeal 2018-04.

Ms. Betsy Wilcox asked what the formatted process is for the Board of Adjustment. Mr. Rothrock advised that this Board does not usually meet once per month, but he tries to schedule the meetings on the fourth Thursday of the month. He said that Appeal 2018-04 will probably be heard in January.

Mr. Wilcox asked how many continuances can be granted. Mr. Rothrock said he was not sure. Mr. Wilcox asked if fines have been assessed. Mr. Rothrock advised that the appeal stays the fines. Mr. Wilcox asked if the applicant could delay for 6 months. Mr. Rothrock advised that will not happen and he would honor only one continuance.

Dr. Davant inquired about the authority to collect occupancy tax. Mr. Rothrock said the Town can go back a specified amount of time adding that the administrative department is in charge of collecting occupancy tax.

Ms. Wilcox asked if anyone has paid a fine. Mr. Rothrock said that none of these appellants had paid a fine. Ms. Wilcox asked why not. Mr. Rothrock responded that this is not the approach that we take. Mr. Rothrock advised that if an appeal is not filed within 30 days of the final notice of violation and short-term rental use is continued, then civil penalties would be assessed.

Mr. Jack Horner, of Laurel Drive, said the timing of the continuance was critical so that he could address the Board. Mr. Horner respectfully requested that the hearing be rescheduled before December 20, 2018 or after January 9, 2019.

Dr. Davant asked what evidence of a grandfathered use is required. Mr. Horner asked if the use transfers to subsequent owners. Dr. Davant asked about the 180 day discontinued use provision.

Mr. Rothrock advised the Board not to discuss a pending case any further. Dr. Davant said they are not discussing a pending case, but the Board has a perfect right to know the law.

Ms. Carter asked if no fines are assessed how do we know short-term rental use has happening and how do we know it has stopped. Mr. Rothrock said neighbor complaints and Short Term Rental Helper search results. Mr. Rothrock advised that any of the properties whose appeals were denied last month will be assessed civil fines if continue short-term rental is continued.

Ms. Wilcox said she needs clarification on who does what, that this is helter-skelter. Mr. Rothrock said this is not helter-skelter and that the process has been consistent for 17 years.

Dr. Davant said he wants information regarding short-term rentals to be submitted to the Blowing Rocket for publication. Mr. Rothrock said that the information was included in the Town newsletter and is on the Town website.

Dr. Davant asked if the Town Council makes the decision on collection of back occupancy tax and who checks to see who is in a property and why they are there. Mr. Rothrock told Dr. Davant that staff can check the properties. Mr. Beaver asked if he understands Mr. Rothrock saying that the Town has the right to knock on a door and ask why the property is occupied. Mr. Beaver said if so, this is a federal offense. Mr. Rothrock said the curtilage area is accessible to Town staff, but if asked to leave we must comply.

Ms. Carter asked if the only way to know about illegal short-term rentals is complaints. Mr. Rothrock advised there other ways. Mr. Springs noted the internet is a source. Mr. Rothrock said that complaints to the Police Department regarding partying, dogs, etc. are a source Mr. Albert Yount noted the software is a source. Mr. Rothrock said that neighbors are the best source.

With no further business, the Board adjourned at 6:20 p.m.

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Dr. Charles Davant, Chairman

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Tammy Bentley, Planning & Zoning  
Support Specialist