

**Town of Angier Board of Adjustment
May 25, 2021, 6:30 P.M.
Municipal Building
28 N. Raleigh Street
Angier, North Carolina 27501
Minutes**

The Town of Angier Board of Adjustment met in regular session on Tuesday, May 25, 2021, inside the Municipal Building Board Room, 28 N. Raleigh Street. Mayor Bob Smith presided, calling the meeting to order at 6:30 p.m.

Members Present: Mayor Bob Smith
Commissioner Loru Boyer Hawley
Commissioner Mike Hill
Commissioner Price

Members Absent: Commissioner Coats

ETJ Members Present: Lee Marshall
Kelly Ennis

ETJ Members Absent:

Staff Members Present: Town Manager Gerry Vincent
Town Clerk Veronica Hardaway
Planning Director Sean Johnson
Code Enforcement Officer Shannon Hodges
Public Works Director Jimmy Cook

2. Pledge of Allegiance: Mayor Bob Smith led the pledge of allegiance.

3. Invocation: Mayor Smith offered the invocation.

Board Action: The Board of Adjustment unanimously voted to excuse Commissioner Coats from the meeting.

Motion: Mayor Pro-tem Hawley

Vote: 6-0; unanimous

4. Swearing in of Witnesses: The following persons giving testimony during the evidentiary hearings on the agenda were duly sworn by the Town Clerk.

Sean Johnson, Planning Director
Jimmy Cook, Public Works Director
Shannon Hodges, Code Enforcement Officer
Amy Schroeder, Applicant

5. New Business

A. Variance Application

Applicant: Amy Schroeder

Property Address: 70 Calabor Court (Harnett PIN#: 0664-94-4917.000)

Variance Request: UDO Section 7.3.5 – Fences Prohibited within Easements

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated the property in question located at 70 Calabor Court is located in the Southern Acres subdivision off Atkins Road. Upon Staff's inspection of the property, a fence, installed by the property owners, is encroaching into a Town of Angier sanitary sewer easement. The Ordinance prohibits fences from being installed within easements. Staff visited the property after a complaint was received. Code Enforcement staff has been in contact with the property owners since December of 2020 and has requested that the fence be moved outside of the easement.

Mr. Johnson referenced Ordinance Section 7.3.5 – Fences and Walls.

Section 7.3.5 – Fences and Walls

A land use permit shall be required for the installation of a fence within the corporate limits of the town. Fences shall not be installed within or across any private or public easement as shown on the property survey or map recorded at the register of deeds.

Mr. Johnson explained to the Board that if the variance is approved, staff will close the active violation case file and the fence can remain in its current location. If the variance is denied, staff will resume the active violation case and continue with fines until the fence is relocated outside of the easement and compliance is reached.

Applicant Amy Schroeder stated her family has relocated to Angier from Texas. They thought they were purchasing a home in Fuquay-Varina so she contacted the Town of Fuquay-Varina regarding the installation of a fence. She was informed by them that they would not need a permit as long as 10ft gates were installed which they have in the front and rear of the property so the Town would be able to access the easement. She then started to receive letters from the Town of Angier stating they were not in compliance with the ordinance.

Ms. Schroeder explained that she believes the house is too big for the lot it's built on and that the easement starts at the end of the house and is located on the entire left-hand side of her property. On the right side of the yard is a large hill so most of the usable land is at the area where the easement is located. She thought she was doing the right thing and did not intend to

be noncompliant. The fence installation cost approximately \$7,000 and would cause an undue burden having to move it. If they were aware of how the property was laid out they would not have purchased the property as they bought the home site unseen due to her husband being in the military. She mentioned that the fence was installed due to having small children and dogs. She stated if the Town needs to gain access to the easement she takes full responsibility if the fence needs to be taken down. She also informed the Board that her HVAC system, propane tank, and tree are all located within the easement that was placed by the builder.

Public Works Director Jimmy Cook stated the issue is to be able to access the easement 24/7 without having to get permission from the property owner. Ms. Schroeder mentioned she has dogs and small children which could be a liability for the Town if something were to happen. The sewer line is roughly 6.5ft-7ft deep at the road and about 12ft deep in the back of the property. In the event the sewer line needed to be accessed, a trench box would have to be used in order to dig and will have to keep the dirt in the area which makes for a small area to work in.

Code Enforcement Officer Shannon Hodges gave a brief summary of details regarding the ordinance criteria of the property.

- *March 10th a letter was mailed to the property owners requesting a land use application be submitted to the Town for the violation*
- *March 22nd another inspection was confirmed in violation*
- *March 23rd an official notice was issued to the property owner*
- *March 30th a conversation was had between the Planning Director and applicant explaining the details of the violation and requirements*
- *April 9th another inspection confirmed in violation and a civil penalty of \$50 was issued to the property owner*
- *April 16th civil penalty was paid*
- *May 4th a variance application was received by property owner to which no further citations were issued until a decision is made by the Board of Adjustment*

Mayor Smith closed the Evidentiary Hearing

There was some discussion amongst the Board regarding the home owner providing written documentation relieving the Town of any liability in the event the Town would need access to the property. There was also discussion on leaving the gate unlocked at all times however, it was the consensus of the Board to find another solution. There was discussion about the home builder being held accountable for their negligence on installing the home owners HVAC and propane tank on the easement side of the property.

Mr. Cook agreed Mr. Schroeder being led in the wrong direction from the builders is true and has heard that in several different cases, but some of the stipulations the Board may put on the home owner may not transfer over to the new owner in the event the home is sold.

Board Action: The Board of Adjustment voted to table the discussion until the next Board of Adjustment meeting on June 22nd.

Motion: Commissioner Hill
For: Kelly Ennis
Motion died for lack of majority

Board Action: The Board of Adjustment then voted to approve the variance based on the findings of fact.

Motion: Commissioner Price
For: Mayor Pro-tem Hawley; Lee Marshall; Kelly Ennis
Against: Commissioner Hill
No Vote: Mayor Smith (which counts in the affirmative)
Vote: 5-1; motion carried

Variance Approval Criteria

Such variances may be granted in such individual case of unnecessary hardship only upon findings by the Board of Adjustment after a Public Hearing that the following conditions exist:

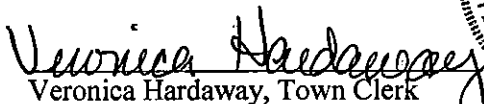
- A. Unnecessary hardship would result from the strict application of the ordinance. **It was the consensus of the Board this applies.***
- B. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. **It was the consensus of the Board this applies.***
- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. **It was the consensus of the Board this applies.***
- D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. **It was the consensus of the Board this applies.***

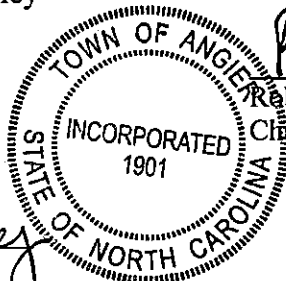
Based on the aforementioned findings, the Variance was approved.

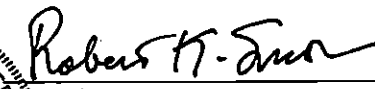
6. Adjournment: Mayor Smith entertained a motion to adjourn the meeting. Motion to adjourn was unanimous at approximately 7:48pm.

Motion: Mayor Pro-tem Hawley
Vote: Unanimous; 6-0

Attest:


Veronica Hardaway, Town Clerk




Robert K. Smith
Chairman / Board of Adjustment