

**Town of Angier Board of Adjustment
May 28, 2019, 7:00 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 28, 2019, inside the Municipal Building Board Room, 28 N. Raleigh Street. Mayor Lew Weatherspoon presided, calling the meeting to order at 7:00 p.m.

Members Present: Mayor Lew Weatherspoon
Mayor Pro-Tem Craig Honeycutt
Commissioner Bob Smith
Commissioner Loru Boyer Hawley
Commissioner Mike Hill

Members Absent:

ETJ Member Present: Chris Hughes

ETJ Member Absent: Everett Blake III
Lee Marshall

Staff Members Present: Town Manager Gerry Vincent
Town Clerk Veronica Hardaway
Planning Director Technician Sean Johnson
Town Attorney Dan Hartzog Jr.

2. Pledge of Allegiance: Mayor Lew Weatherspoon led the pledge of allegiance.

3. Invocation: Commissioner Smith offered the invocation.

4. Approval of the October 16, 2018 Meeting Minutes: With there being no changes, the October 16, 2018 Board of Adjustment Meeting Minutes were approved as presented.

Motion: Commissioner Smith
Vote: Unanimous, 6-0

Approval of the May 28, 2019 Agenda: With there being no changes, the May 28, 2019 Board of Adjustment Meeting Agenda was approved as presented.

Motion: Commissioner Smith
Vote: Unanimous, 6-0

Swearing In Of Witness: All persons giving testimony were duly sworn by the Town Clerk.

Sean Johnson
Randy Herman
Hope Maldonado
Matthew Green
Lashawn Green
Dale Young
Karina Maldonado

5. Evidentiary Hearing for Special Use Permit – Case SUP 2019-000113 – Property owner Orville & Gaynelle Young. Applicant, Karina Maldonado, is seeking a Variance from Ordinance Section 4.2.9 (c) (10) (PIN#: 0683-69-3344.000).

Mayor Weatherspoon opened the Evidentiary Hearing

Planning and Permitting Technician Sean Johnson stated a notice of violation was sent to the property owners and residents at 33 Laylon Lane on March 29, 2019. The notice declared that the structure added to the manufactured home was prohibited by the Angier Ordinance and ordered it removed. Neither the property owner nor the tenant received a building permit for the structure. The resident, Karina Maldonado, submitted a variance application on April 29, 2019 which placed the violation on hold until a decision is made by the Board of Adjustment.

4.2.9 Manufactured Home Parks

C. General requirements for existing manufactured home parks

10. No living compartment or structure other than that of a prefabricated structure specifically designed for manufactured home use or extension shall be added to any manufactured home parked. This excludes front and rear uncovered porches and decks not exceeding 100 square feet.

Mr. Johnson explained that if the variance is approved, the property owners will not be subject to the requirements of Section 4.2.9 (c) (10) and the structure in question will be allowed to remain on the property at 33 Laylon Lane. If the variance is denied, the property owners will be required to remove the structure in question from the property as quickly as possible.

Town Attorney Dan Hartzog Jr. explained that the 100sq. ft. refers to uncovered porches and decks. No living compartment or structure shall be added however, excluded from that a rear uncovered porch or deck that doesn't exceed 100sq. ft. is permitted.

Karina Maldonado, 33 Laylon Lane, explained there was an issue with the land due to water runoff. Water was going underneath the single wide causing concern that the footers would get washed away or damaged. She stated gravel was laid down initially however, that was getting washed away as well. The structure has been constructed in the area where the water ran and is preventing the gravel from being washed away. Ms. Maldonado explained she was afraid of purchasing a prefabrication because she previously had a gazebo that was blown away.

The Board discussed concern regarding possible liability to the Town if the structure is approved but not constructed properly.

Town Attorney Dan Hartzog Jr. stated there wouldn't be liability to the Town due to the Board only permitting the applicant to build the structure and not the structure itself. The applicant would still have to follow an inspection process.

Dale Young, 710 Benton Street, stated he is the owner of the mobile home park and was not aware of the structure until it was almost completed. The structure is not attached to the home, only the shingles. If the structure does not meet code, the applicant is willing to remove the structure.

Hope Maldonado, 6804 Amaira Court, Willow Spring, stated she is Ms. Maldonado's sister in law as well as her Farm Bureau agent. She explained the gazebo incident and informed the Board that if it had hit anything the applicant would have been responsible.

Mayor Weatherspoon closed the Evidentiary Hearing

Findings of Fact: The Board of Adjustment evaluated the application to ensure the following provisions were fulfilled.

1. There **are** 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. Granting the variance request **will not** confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
3. A literal interpretation of the provisions of the Ordinance **would** deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
4. The requested variance **will** be in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood or to the general welfare.
5. The special circumstances **are not** the result of the actions of the applicant.
6. The variance requested **is** the minimum variance that will make possible the legal use of the land, building or structure.

Board Action: The Board of Adjustment voted to approve the variance as presented.

Motion: Commissioner Smith

In Favor: Commissioner Hawley, Mayor Pro-Tem Honeycutt

Opposed: Commissioner Hill, Mayor Weatherspoon, Chris Hughes
Vote: 3-3, motion fails due to lack of 4/5 vote

Board Action: The Board of Adjustment voted to reopen the Public Hearing.

Motion: Commissioner Hawley
In Favor: Mayor Pro-Tem Honeycutt, Commissioner Smith, Commissioner Hill
Opposed: Mayor Weatherspoon, Chris Hughes
Vote: 4-2, motion carried

The Board discussed the applicant's hardship. Planning Director Sean Johnson explained to the Board the process of a building permit.

Town Attorney Dan Hartzog Jr. read the following Findings of Fact while the Board voted on each individually:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

For: Chris Hughes, Mayor Pro-Tem Honeycutt, Commissioner Hawley, Commissioner Hill, and Commissioner Smith.

Opposed: Mayor Weatherspoon

2. 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.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: Commissioner Hill

3. 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.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: Commissioner Hill

4. 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.

For: Commissioner Smith, Commissioner Hawley, Mayor Pro-Tem Honeycutt, Commissioner Hill, and Chris Hughes.

Opposed: Mayor Weatherspoon

Board Action: The Board of Adjustment voted approve the variance as presented.

Motion: Commissioner Hawley
In Favor: Commissioner Smith, Mayor Pro-Tem Honeycutt, and Chris Hughes
Opposed: Mayor Weatherspoon, Commissioner Hill
Vote: 4-2, motion carried

6. Evidentiary Hearing for Special Use Permit – Case SUP 2019-000101 – Property owner Green’s Tax Service, LLC. Applicant, Randy Herman – Banks Law Firm, is seeking a Variance from Ordinance Sections 17-61 (c) & 17-9 (a) (PIN#: 0673-59-9834.000).

Mayor Weatherspoon opened the Evidentiary Hearing

Planning and Permitting Technician Sean Johnson explained to the Board that a site plan was approved for Green’s Tax Service on July 16, 2014 and received a Certificate of Occupancy April 27, 2018. The owners of Green’s Tax Service and Town Staff had discussions regarding the possibility of a second business occupying the building along with Green’s Tax Service. Staff informed the property owners that the Certificate of Occupancy granted legal occupancy to the building so long as it remained one unit. The property owners were made aware that the Town Code requires each unit to be separately metered, so if a second unit was to be added, a new water and sewer tap would be required. A letter was issued to the property owners and their attorney on February 21, 2019 specifying the necessary steps to establish a second water and sewer service in order to operate a second unit in the building at 33 N Johnson Street.

Sec. 17-9 – Billing; disconnection of service for nonpayment; disconnection of meter

(a) All residential accounts shall be billed by individual meters and require individual sewer connections, where possible. Where two residences share one meter, each shall be billed the flat rate plus one-half of the usage above the flat rate amount. Effective upon adoption of the ordinance from which this chapter is derived, individual meters will be required for all residential, business, commercial and industrial accounts.

Sec. 17-61 – Payment of tap fee

(c) Each dwelling or office unit will be separately metered. For example, a 40-unit apartment complex would be required to install 40 separate water meters. A duplex would be required to install two water meters.

Mr. Johnson explained that if the variance was approved the property owners will not be subject to the requirements of Sections 17-9 (a) & 17-61 (c), and therefore will not be required to install separate water and sewer taps before a second unit in the building is occupied. If the variance is denied the property owners will be required to install a separate water and sewer tap, pay all applicable tap fees, obtain all necessary permits and pass all necessary inspections in order to establish a second unit in the building.

Commissioner Hill requested to be recused as he was employed with the Town as Code Enforcement when Ms. Green came into his office to discuss this matter.

Board Action: The Board of Adjustment voted to approve the recusal of Commissioner Hill.

Motion: Commissioner Smith

Vote: unanimous, 5-0

Randy Herman, Banks Law Firm, representing Green's Tax Service entered into evidence the original site plan that was approved by the Town for the building in 2014. The site plan is stamped and approved by the Town of Angier and it shows the building divided into two units along with verbiage that states the owner has elected to have one water and one sewer connection be made. Mr. Herman stated that when Ms. Green tried to open the second unit of her building she was then told she needed another connection. The building was installed with one water line going up to it with an integrated plumbing system running throughout both halves of the building. In order to install a second water meter, a second water line would also need to be installed along with separating the plumbing to divide both units which would need to be accessed under the paved parking lot. Doing this would cause the owner to close her business while these changes are made resulting in undue hardship.

Lashawn Green, 102 James Helen Court, Willow Springs, explained that in 2012 was when she started the building of her business. She stated the Town knew she was having two units prior to applying for a building permit. Both sides of the building were included in the permit. She was set to open in December 2017 at which time the Town had sewage backup into the building. She clarified that the Town did in fact pay for damages made from the sewage backup. When it was time for a final inspection of the building it did not pass due to having an incorrect commode. Ms. Green then stated she was denied her Certificate of Occupancy for not having a backflow system installed. When she was able to receive her Certificate of Occupancy, it was only issued for Unit A of the building. At that time, she had meetings with Town staff and hired an attorney. Ms. Green indicated that she runs a non-profit business that coincides with her tax business to help low income families with their taxes.

Town Attorney Dan Hartzog Jr. read the following Findings of Fact while the Board voted on each individually:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: N/A

2. 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.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: N/A

3. 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.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: N/A

4. 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.

For: Commissioner Smith, Mayor Weatherspoon, Commissioner Hawley, Mayor Pro-Tem Honeycutt, and Chris Hughes.

Opposed: N/A

Mayor Weatherspoon closed the Evidentiary Hearing

Board Action: The Board of Adjustment unanimously voted to approve the variance as presented.

Motion: Commissioner Smith

Vote: Unanimous, 5-0

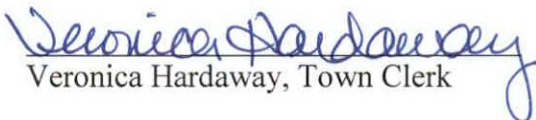
6. Adjournment: Mayor Weatherspoon entertained a motion to adjourn the meeting. Motion to adjourn was unanimous at 8:29pm.

Motion: Commissioner Hill

Vote: Unanimous; 6-0


Lew Weatherspoon
Chairman / Board of Adjustment

Attest:


Veronica Hardaway, Town Clerk

