

**Town of Angier
Board of Adjustment
Tuesday, April 26, 2022
Municipal Building
28 N. Raleigh Street
Angier, North Carolina 27501
Minutes**

The Town of Angier Board of Adjustment met in regular session on Tuesday, April 26, 2022, inside the Municipal Building Board Room, 28 N. Raleigh Street. Mayor Bob Smith presided, calling the meeting to order at 6:33 p.m.

Members Present: Mayor Bob Smith
Commissioner Loru Boyer Hawley
Commissioner George "Jr." Price
Commissioner Jim Kazakavage

Members Absent: Commissioner Alan Coats

ETJ Members Present: Haley Plumley
Lee Marshall – arrived at 6:48pm

ETJ Members Absent:

Staff Members Present: Town Clerk Veronica Hardaway
Planning Director Sean Johnson
Public Works Director Jimmy Cook

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

3. Invocation: Mayor Smith offered the invocation.

4. Approval of the February 22, 2022 Board of Adjustment Meeting Minutes: The Town Board unanimously approved the minutes as presented.

Board Action: The Town Board unanimously voted to approve the February 22, 2022 Board of Adjustment Meeting Minutes as presented.

Motion: Commissioner Hawley

Vote: 5-0; unanimous

5. 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
Mike Stewart, 4716 Carolyn Drive, Raleigh
T. Warren Gregory, 2729 Parkway Drive, Raleigh

6. New Business

A. Variance Application

Applicant: James W. Johnson, III

Property Address: S. Wilma Street (PINs: 0683-07-3454.000 & 0683-06-0336.000)

Variance Request: Waiver of a portion of required sidewalk, curb & gutter along Campbell Street for a proposed subdivision

Mayor Smith opened the Evidentiary Hearing.

Planning Director Sean Johnson stated the Variance Request is in regards to Ordinance Sections 9.1.5.2 & 9.1.5.3 related to curb & gutter and sidewalk required along the street frontage located at the corner of S. Wilma Street and Campbell Street. The proposed 68 single lot single family subdivision on the property in question received zoning approval on March 1, 2022. The subdivision has since been submitted to the Technical Review Committee (TRC) for preliminary plat review. Because UDO Sections 9.1.5.2 & 9.1.5.3 require curb/gutter and sidewalk along the adjacent street frontage for new subdivisions, a Variance must be granted by the Board of Adjustment to remove this approximately 400 linear foot portion of sidewalk, curb & gutter along Campbell Street from the proposed subdivision plan.

Mr. Johnson reviewed Sections 9.1.5.2 & 9.1.5.3 of the Unified Development Ordinance.

9.1.5.2 Sidewalks

F. Installation of all sidewalk at the entrance of subdivisions and along the adjacent road frontage, as well as sidewalk adjacent to all open space and other common areas within the subdivision shall be installed by the developer prior to plat recordation.

9.1.5.3 Roadway Improvements

A. Concrete curbs and gutters, that meet North Carolina Department of Transportation (NCDOT) standards shall be constructed along both sides of all streets within all residential and nonresidential developments. Curbs and gutters should also be installed adjacent to the existing roadway along either side of the entrance to the development and should provide convenient access for future connection by adjacent development.

Mr. Johnson stated that should the Variance be approved, the TRC will allow the removal of this approximately 400 linear foot portion of sidewalk, curb & gutter along Campbell Street from the proposed subdivision plan. Should the Variance be denied, staff will require this approximately 400 linear foot portion of sidewalk, curb & gutter along Campbell Street as part of TRC review in accordance with the Ordinance.

Town Engineer Bill Dreitzler submitted a supplement letter of his expert testimony as it relates to permitting of wetland impacts by the Army Corp of Engineers. *(Included below)*



Town of Angier

Robert K. Smith
Mayor

Gerry Vincent
Town Manager

Veronica Hardaway
Town Clerk

April 26, 2022

Mr. Gerry Vincent, Town Manager
Town of Angier, North Carolina
P.O. Box 278
Angier, NC 27501

Subject: Tanglewood 3 Subdivision – COE Permitting of a Sidewalk Extension

Dear Mr. Vincent:

As a licensed professional engineer in the State of North Carolina for over 30 years, I offer my qualifications to make expert testimony as it relates to the permitting of wetland impacts by the Corp of Engineers. It is my understanding that the applicant desires to cease construction of the required sidewalk along Campbell Street to avoid potential wetland impacts. Based on Harnett County GIS, there appears to be a section of jurisdictional wetlands immediately southeast of the proposed Stormwater Control Pond. GIS indicates a Bibb Soils which is considered hydric and frequently flooded indicating the likelihood of wetlands.

Based on my years permitting wetland and jurisdictional stream impacts through the COE, it is my professional opinion that any proposed wetland impacts from extending the sidewalk can be minimized and would be a permissible action. While it is possible that the COE may request an alternatives analysis to assure that the sidewalk is being located in the best and least impactful location, I also believe that is in fact the case. Extending sidewalk along Campbell will allow for a safer walkability of the roadway. As the Town's Engineer, it is my recommendation that the applicant make such submittals as may be required to formally request any impacts associated with extending the proposed sidewalk to the southeast corner of the parcel along Campbell Street. If the applicant can demonstrate, after formal submittals to the COE, that the COE will in fact not permit any wetland impacts associated with the sidewalk extension, then engineering could recommend termination of the sidewalk as indicated on the Preliminary Plat.

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Concern was expressed by the Board regarding possible further development along Campbell Street causing the Town to be responsible for installing the section of sidewalk in question.

Mike Stewart, P.E., 4716 Carolyn Drive, Raleigh, stated they interpreted the Ordinance differently. They were under the impression improvements had to be made on either side of the entrances of the adjacent roadway to the adjacent properties; concluding that was only to be on Wilma Street since there is no entrance on Campbell Street. Mr. Stewart feels strongly that the wetlands impacted on the backside were going to cause a domino effect. An Environmental Scientist had reviewed the property and did in fact discover wetlands and put in his report that it is encouraged they use care and good judgement when working in and around stream and wetland areas. Current

environmental regulations require clean water act 404 permit from the Corp of Engineers and a matching 401 water quality certification from NCDENR for any impacts into federally regulated waters including wetlands. Impacts include filling, draining, and mechanized land clearing.

In his opinion, he and the applicant feel strongly that they would be installing sidewalk that leads nowhere. They requested for the impacts to be stopped or they would have storm drains capturing the sidewalk plus everything from the street that would end up in the storm pond. Existing pipe would have to be extended further along the property that would also cause increased impacts to the stream and wetlands.

Mayor Smith closed the Evidentiary Hearing.

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, 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***

Public Works Director Jimmy Cook stated the Town Engineer gave his professional opinion given 30 years of experience. Based on his supplemental letter that was submitted, it is recommended the developer submit applications for wetland impacts to the Army Corp of Engineers. If a permit cannot be obtained, then a variance can be granted at that time.

Board Action: Based on the Variance Approval Criteria, the Board of Adjustment voted to grant the Variance with the condition that an easement adjacent to the Campbell Street R/W for possible future sidewalk construction by the Town be added to the subdivision plan.

Motion: Commissioner Hawley
For: Mayor Smith; Commissioner Price; Lee Marshall
Opposed: Commissioner Kazakavage; Haley Plumley
Vote: 4-2; motion failed

There was discussion amongst Staff present and the Board regarding the Statutory requirement of a 4/5 vote of the Board to approve a Variance request. Upon learning this, the Board voted to reconsider the Variance.

Board Action: The Board of Adjustment voted to reconsider the Variance Request after further discussion.

Motion: Commissioner Price

Vote: 6-0; unanimous

There was some discussion whether the applicant should go before the Corp of Engineers prior to Variance approval.

Board Action: Based on the Variance Approval Criteria, the Board of Adjustment voted to grant the Variance with the condition that an easement adjacent to the Campbell Street R/W for possible future sidewalk construction by the Town be added to the subdivision plan.

Motion: Commissioner Price

Opposed: Commissioner Price

Vote: 6-0; unanimous

The Town Clerk requested the Mayor to take another vote; Commissioner Price opposed his own motion. Commissioner Price intervened and stated his motion was in favor of the Variance approval. No further action was taken.

B. Special Use Permit Application

Applicant: T. Warren Gregory

Property Address: NC 210 N. (PIN: 0683-29-0488.000)

Variance Request: Proposed Mini Warehouse (Mini Storage) Use

Mayor Smith opened the Evidentiary Hearing.

Planning Director Sean Johnson stated the Special Use Permit application is for approval of a Mini Storage development located off NC 210 adjacent to Sundowner Lane.

The mini storage site plan includes:

- Access to future Sundowner Lane – Town street to be installed by adjacent developer
- One 60ft x 250ft storage unit building & one 50ft x 250ft storage unit building
- No outdoor storage proposed
- Minimum 24ft drive aisles throughout the site
- 15ft automatic gate at site entrance
- No formal dedicated parking or office space proposed
- No water or sewer taps proposed
- 1.57 acres of impervious surface proposed

- Fencing proposed: Chain Link fence on North and East side, Black wrought iron on West side, 6ft white vinyl fence on South (NC 210) side
- 10ft buffer on North side adjacent to Spring Village development

Additional Ordinance Requirements:

- 15ft Type C Buffer on North side adjacent to Spring Village Development
- 10ft Type A Buffer on South side adjacent to NC 210
- 10ft Type A Buffer on West side adjacent to Sundowner Lane
- Minimum 18ft wide, concrete driveway apron at entrance to Sundowner Lane
- Curb & gutter along the boundary of the proposed paved drive aisles – to drain into proposed retention pond
- Lighting plan required – to ensure neighboring properties protected from direct glare

Mr. Johnson stated that should the Special Use Permit be approved; the applicant will be allowed to proceed with TRC site plan review. All Ordinance requirements and applicable State permitting will be required prior to construction. Should the Special Use Permit be denied, the applicant will not be allowed to proceed with a mini storage use on the property.

T. Warren Gregory, 2729 Parkway Drive, Raleigh, stated he was under the assumption his fencing could be placed on the property line, and if that was done he asked where his sidewalk would have to go. Mr. Johnson responded that the sidewalk would have to be placed in NCDOT's right-of-way.

Mr. Gregory stated he did not intend on installing a sidewalk, only white vinyl fencing. He also stated he did not intend on installing curb & gutter. He gave the opportunity to the developer that is constructing Spring Village to purchase extra property, however they did not. He requested approval of this Special Use Permit request to allow him to build a mini storage business because it will be a good use. Mr. Gregory agrees to the Ordinance requirements aforementioned above excluding curb & gutter as well as sidewalk.

However, Mr. Johnson indicated that the sidewalk and curb & gutter along NC 210 are an Ordinance requirement and would need to be added to the proposed site plan before approval. He explained to the Board that a separate Variance application would need to be submitted for any variation of the ordinance requirements.

Mayor Smith closed the Evidentiary Hearing.

Special Use Permit Approval Criteria: The Board of Adjustment shall approve, modify, or deny the Application for Special Use Permit following the Public Hearing. In granting a Special Use Permit, the Board of Adjustment shall make written findings that the applicable regulations of the district in which it is located are fulfilled. With due regard to the nature and state of all adjacent structures and uses, the district within which it is located and official plans for future development, the Board of Adjustment shall also make written findings that the following provisions are fulfilled:

- E. The requested use will not impair the integrity or character of the surrounding or adjoining districts; **It was the consensus of the Board this applies***

- F. *The requested use will not be detrimental to the health, morals, or welfare; **It was the consensus of the Board this applies***
- G. *Adequate utilities, access streets, drainage, sanitation and/or other necessary facilities have been made or are being provided; **It was the consensus of the Board this applies***
- H. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; **It was the consensus of the Board this applies***
- I. *That the Special Use shall, in all other aspects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Board of Adjustment; **It was the consensus of the Board this applies***

Board Action: The Board of Adjustment unanimously voted to approve the requested Special Use Permit.

Motion: Commissioner Hawley

Vote: 6-0; unanimous

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


Motion: Commissioner Hawley

Vote: 6-0; unanimous



Robert K. Smith
Chairman / Board of Adjustment

Attest:


Veronica Hardaway, Town Clerk

