

TOWN OF ANGIER
BOARD OF ADJUSTMENT
Tuesday, July 27, 2021, 6:30 P.M.
Municipal Building
28 N. Raleigh Street
Minutes

The Angier Board of Adjustment met in regular session on Tuesday, July 27, 2021 inside the Municipal building at 28 N. Raleigh Street. Mayor Bob Smith called the meeting to order at 6:29 p.m.

Members Present: Commissioner Mike Hill
Commissioner Loru Hawley
Commissioner Junior Price (Zoom)
Mayor Bob Smith
ETJ Planning Board Member Kelly Ennis
ETJ Planning Board Member Lee Marshall

Members Absent: Commissioner Alan Coats

Motion for Commissioner Alan Coats to be excused from the meeting And for Commissioner Junior Price to participate virtually via Zoom

Motion: Commissioner Loru Hawley
Vote: Unanimous, 5-0

Staff Present: Town Manager Gerry Vincent
Administrative Assistant Donna DiMambro
Town Attorney Dan Hartzog
Planning Director Sean Johnson
Code Enforcement Officer Shannon Hodges
Public Works Director Jimmy Cook

Others Present:

- 2. Pledge of Allegiance:** Mayor Bob Smith led the Pledge of Allegiance
- 3. Invocation:** Mayor Bob Smith offered the invocation.

4. Swearing in of Witnesses for Evidentiary Hearing

Mayor Bob Smith read the oath and swore in the following people to speak during the evidentiary hearing:

Sean Johnson
Jimmy Cook
Shannon Hodges
Melanie Phillips
Jonathan Broadbridge
Phil Phillips

5. New Business

A. Variance Application

Applicant: Jonathan Broadbridge
Property Address: 228 Montasel Court
Variance Request: UDO Section 7.3.5- Fences prohibited within Easements

Sean Johnson, Planning Director, relayed to the Board that Staff received a Variance request submitted by Jonathan Broadbridge regarding the property at 228 Montasel Court, which is within the Town of Angier limits. Mr. Johnson continued by illustrating the property in question and stating that the Town has a 30-foot sewer easement towards the rear of the property.

Based on the plot plan attached to the Fence Permit application submitted by the applicant, the proposed fence would partially encroach on the Town of Angier sewer easement. Understanding this is a violation of the Town's Ordinance, the Code Enforcement Officer placed a stop-work order on the fence when he noticed it was under construction. The Ordinance language reference is Section 7.3.5, which reads "...a fence shall not be installed within or cross any private or public easement...".

Mr. Johnson explained that if the Board of Adjustment were to be approve the Variance, Staff will close the active violation file on the property in question to the extent that the fence may remain at its' current location and may be extended anywhere on the property. If the Variance were to be denied, staff will resume the active violation case and continue with fines until either the fence is relocated outside of the easement, or compliance is otherwise reached.

Mayor Bob Smith asked if there is any precedent in otherwise approving the fence, to which Mr. Johnson replied that variances are to be taken on a case-by-case basis; only weighing the evidence presented in this hearing. Mr. Smith continued questioning, with the preface that the fence would cross the easement, therefore if the Town needed to access the easement, how would the Town go about achieving this? Mr. Johnson replied that Staff is charged with enforcing the Ordinance as written, which prohibits any fence across an easement even if gates are installed. Any other allowance made by the Board of Adjustment would have to be a condition of the approval of the Variance.

Commissioner Mike Hill asked whether the construction of the fence has been completed, to which Mr. Johnson stated the fence is not complete and, to his understanding, the fence has not crossed the easement at this point. Mayor Bob Smith asked whether it is possible to put gates for easement access. Mr. Johnson replied that it is possible, but not allowed by Ordinance.

Commissioner Mike Hill asked Shannon Hodges, Code Enforcement Officer, how the subject matter came to his attention. Mr. Hodges replied that the matter came to his attention when he visited the site and noticed the fence under construction. Because no permits had been issued for the fence in question, he issued a Stop Work Order to the property owners.

Jimmy Cook, Public Works Director, stated that the fence would be crossing the Town's main tributary sewer easement which will also serve properties to the North of Southern Acres. Mr. Cook explained the necessity for the Town to access the sewer easement. If there were a fence obstructing access, then the Town will have to take the fence down to complete work on the sewer line, after which the fence will have to be reinstalled at the expense of the Town. Mr. Cook continued by stating that having gates on easements can also be a challenge.

Commissioner Mike Hill stated that Public Works may, from time to time, have to gain quick access to the main tributary at any given time; to which Mr. Cook concurred. Mr. Hill continues, stating that it can be difficult to contact the property owner and, considering any matter to be time sensitive, this will be problematic.

Mayor Bob Smith notes that the sewer easement crosses a significant number of lots. Mr. Cook stated that the entire width of the 30-foot easement is necessary to be used considering the excavation depth of the sewer line.

Phil Phillips, residing at 1834 Melony Way, Palm River, Florida, relayed his understanding of the necessity for a 30-foot right of way easement as he is a contractor and works with municipalities. Mr. Phillips informed the Board that a fence is not a permanent structure and it can be stated within the variance that the cost for removal or replacement of the fence is on the property owner. Mr. Phillips stated that the easement takes up the majority of the property owner's backyard. Having a fence would benefit the property owners by allowing enjoyment of their yard, protecting children and pets, and to block unsightly vegetative overgrowth. The desire for a fence is common amongst home owners and Mr. Phillips believed this should be permissible given the notion that the sewer line is fairly new and the probability of there being an issue is unlikely.

Commissioner Loru Hawley asked the property owners whether they were aware that there was an easement on their property when they bought the house. The property owner, Melanie Phillips, replied that they were told by the contractor and realtor that there was an easement, but it would be permissible to build a fence with the understanding that it would be at their cost to remove the fence and then reinstall it if needed.

Commissioner Junior Price asked whether the property owners have already built a partial fence. The property owners replied that all that has been installed are some of the fence posts.

Mayor Bob Smith concluded the hearing and requests discussion among the Board members. Commissioner Loru Hawley shared concern for the property owners, stating they are new homeowners and wish to build a fence, yet only to discover the easement engulfs nearly half

of their backyard. Had they known, the property may not have been purchased. Mrs. Hawley continues suggesting that if there were any stipulations, when building the fence, the property owners are willing to grant access to Public Works at any time; to which the property owners consented.

Jimmy Cook, Public Works Director, informs all present that if this Variance were to be granted with all of the aforementioned stipulations, then a precedent of preferential treatment for other variances will be established by which straining Public Works to access twenty or more gates to access the Town's sewer line.

Commissioner Mike Hill asked Mr. Cook if, in order to access the property in question, that he would have to drive through seven other lots. Mr. Cook concurred, informing the Board that this places more liability upon the Town. Mr. Cook continues revealing the scenario that, if this property were to be sold to another person, those homeowners may not be as gracious with the matter. Mr. Phillips replied that the Variance goes with the property and, therefore, must be abided by all future homeowners. Mr. Phillips continues, stating that such a Variance need not be granted to other property owners as it is a case-by-case situation; hence it may not be the case that this Variance would be setting up a precedent for twenty or more properties.

Mayor Bob Smith referenced the last page of the staff report, relaying the Finding of Facts. Going through each item, the results are as follows:

- A. 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.
- 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).
- 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.
- 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.

Mayor Bob Smith iterates to the Board that they are now aware of the conditions and requested a motion. Dan Hartzog, Town Attorney, reminded the Board that in order to approve a Variance, there had to be a 4/5th's majority vote. There being six Board members to vote, essentially five Board members would be required to approve the Variance.

Loru Hawley motioned to approve the Variance with conditions being that the Town has full access (with or without notice) to the property at any time and that the homeowners take it upon themselves to cover any and all damages (intentional or negligent) to the fence in the event Town Staff needs access to the easement.

Commissioner Mike Hill brought up the concern of what it may take to bring the fence down, stating that Public Works will not have time to delicately take the fence down.

Jimmy Cook, Public Works Director, stated that in accordance with State Statutes, the Town must survey all easements twice per year. Mr. Cook further states that the gate must be 12 feet in length and must be sectioned by 6 feet.

Phil Phillips concurred that there needs to be 12 feet of gate on each side and those gates must be sectioned by 6 feet.

Mayor Smith called for a vote of the motion on the floor to approve the Variance with the aforementioned conditions.

Motion: Loru Hawley

Vote: 3-3

Variance denied for lack of a 4/5ths affirmative vote

8. Old Business:

None

9. Adjournment: The Board Of Adjustment meeting adjourned at 7:25 PM

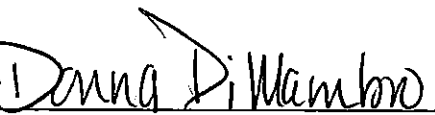
Motion: Loru Hawley

Vote: 5-0



Robert K. Smith

Attest:


Donna DiMambro, Administrative Assistant

