

**Town of Angier Board of Adjustment
July 28, 2020, 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, July 28, 2020, inside the Municipal Building Board Room, 28 N. Raleigh Street. Mayor Bob Smith presided, calling the meeting to order at 7:05 p.m.

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

Members Absent: Commissioner Alan Coats

ETJ Members Present: Chris Hughes
Lee Marshall

ETJ Members Absent:

Staff Members Present: Town Clerk Veronica Hardaway
Planning Director Sean Johnson
Administrative Assistant Donna DiMambro
Town Attorney Katie Barber-Jones

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

3. Invocation: Mayor Smith offered the invocation.

4. Approval of the June 23, 2020 Meeting Minutes: With there being no changes, the June 23, 2020 Board of Adjustment Meeting Minutes were approved as presented.

Motion: Lee Marshall
Vote: Unanimous; 6-0

Approval of the June 23, 2020 Agenda: The Board of Adjustment approved the agenda as presented.

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

Swearing In Of Witness: The following persons giving testimony during the evidentiary hearings on the agenda were duly sworn by the Town Clerk.

Sean Johnson
Russ Lockemy

5. New Business

A. Variance Application: Applicant TRL Investment Properties, LLC having a Variance Request to Ordinance Section 7.3.4 – Waste Container Screening Requirements

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated that the Planning Department has received a Variance request from Russ Lockamy for the property at 559 N. Raleigh Street (Harnett PIN#: 0674-62-9517.000). The Variance request is regarding Ordinance Section 7.3.4 – Waste Container Screening. Staff has sent a notification letter to the property owner in Summer of 2019 making them aware of the recent changes to Section 7.3.4 of the Ordinance regarding the requirement to screen waste containers. In this letter, staff indicated that these new requirements must be met by the December 4, 2019 deadline. The property owner submitted a variance application on November 11, 2019 to request that the waste container(s) on the property be allowed to remain unscreened. There have been several delays in scheduling the meeting to hear this case including COVID-19 meeting restrictions and owner requested re-scheduling.

Ordinance Reference:

Section 7.3.4 Screening requirements for outdoor storage, waste containers, and mechanical equipment. The following requirements shall apply to all existing nonresidential and multifamily development:

- A. Any waste container which exceeds 96 gallons existing at the time of adoption of this ordinance shall be brought into compliance with the following screening requirements within six months of the effective date of this ordinance. For interpretation purposes, waste container shall include any waste container, recycling container, grease trap, oil storage container or any other similar container. The Town will offer a \$250 reimbursement per property in order to offset the costs of coming into compliance. Only uses existing at the time of the adoption which are required to come into compliance with this ordinance are eligible for this reimbursement. Eligible properties must apply to the Town Manager for reimbursement.*
- B. All waste containers shall be screened in the form of an opaque wall or fence with a latching gate that will reasonably secure the enclosure from unauthorized entry. The screen shall exceed the height of the waste containers by a minimum of six inches and shall not interfere with the emptying, replacement or removal of waste containers. Chain link fencing with slats or other supplemental screening material shall not be used to meet the requirements of this section. All screening materials shall remain in good condition as determined by the Administrator.*

Mr. Johnson explained that if the variance is approved, the property owner will not be subject to the screening requirements of Section 7.3.4 for the property at 559 N. Raleigh Street; if the variance is denied the property owner will be required to comply with the screening requirements in Section 7.3.4.

Commissioner Hawley shared concern of firetruck access to the back of the building.

Lee Marshall stated there is plenty of space for firetruck access to add screening to the dumpsters.

Russ Lockamy, owner of the property in question, thanked the Board for allowing him to present his case. He discussed two reasons as to why his variance should be considered: 1) The back of his building gets a lot of foot traffic due to the apartment buildings located behind the building; lighting has been added back there for safety. The restaurants in the building are open late and want to prevent people from being able to hide behind the screening. 2) The screening would prevent delivery trucks from making deliveries and he feels that would fall under consideration for a variance as it would cause undue hardship that would stem from the uniqueness of the actual property not having enough space. If the dumpsters were moved, the business owners would have to walk to a central location which may not be close enough to their respective businesses.

Commissioner Hill stated there is more than enough room to construct screening around the containers. He has looked at the location and it looks pretty clean compared to what it usually looks like with trash everywhere.

Mayor Smith asked Mr. Lockamy if he could arrange for larger dumpsters to be placed so they could be enclosed and the tenants would agree to contribute as part of their rent.

Mr. Lockamy stated the tenants currently take care of their own dumpsters.

Mayor Smith asked that if the tenants take care of their own dumpsters, where are they tonight? He asked if Mr. Lockamy was authorized legally to speak on their behalf. Mr. Lockamy is representing himself as the owner of the property requesting a solution as the owner of the property not as an individual tenant and asked if there was any way he could solve this. The mayor questioned if the \$250 waste container screening grant the Town had previously offered was still available.

Mr. Johnson informed the Mayor that the grant has expired as of July 1, 2020.

Commissioner Hawley explained there have been several incidents with individuals going through dumpsters for food and have even had an issue where a child climbed into a dumpster and got stuck. If there was an enclosure around the dumpster this could have been prevented. She understood Mr. Lockamy's explanation of having an undue hardship, however, asked him if he would be willing to take the risk of having a child fall into a dumpster.

Mr. Lockamy stated that he was more fearful of a scenario of someone hiding behind the screening and is looking out for the safety of employees on site.

Chris Hughes stated individuals can hide behind the dumpsters as they are right now. When you drive down Hwy 55 you can see behind the building and it looks messy.

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 will result from the strict application of the ordinance. **The Board unanimously voted this does not apply.***
- 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. **The Board unanimously voted this does not apply.***
- 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. **The Board unanimously voted this does not apply.***
- 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. **The Board unanimously voted this does not apply.***

Board Action: The Board of Adjustment unanimously voted to deny the variance request to Ordinance Section 7.3.4 submitted by TRL Investment Properties, LLC

Motion: Commissioner Hill
Vote: 6-0; unanimous

Board Action: The Board of Adjustment voted to recommend to the Town Manager to honor a \$250 grant consistent to the way it was applied previously to Mr. Lockamy for the construction of the dumpster screenings.

Motion: Commissioner Hawley
Opposed: Commissioner Hill
Vote: 5-1; motion carries

B. Administrative Appeal Continuation Hearing: Property owner Lillian Wells having a violation located at 738 Chalybeate Springs Road regarding an Unscreened Dumpster

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated this appeal is a continued hearing from June 23rd Board of Adjustment meeting. The applicant is Lillian Wells and the property is located at 738 Chalybeate Springs Road. Mr. Johnson provided an updated photo that was taken the previous day, showing the dumpster has been moved from the east side of the property to the inside of an open shelter located at the left side of the property. The dumpster is still visible from the road. He explained that it is allowed to utilize existing structures as part of the screening and build a 3-panel wall with a latching gate however, the dumpster has no panels installed.

Mr. Johnson reviewed the section of the ordinance that references appeals.

Section 15.3.2.1 Appeal of the Administrator

To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by administration in the enforcement of this section.

Rather than requesting a variance from the rules of the ordinance, the applicant is actually questioning code enforcement staff's implementation of the ordinance. The initial violation was sent December 9, 2019 and the most recent violation letter was sent April 15th that indicated there was currently \$350.00 in fines due. It states in the approved previous minutes of last month the Board has given Ms. Wells approximately four weeks (Until July 15th) to complete the dumpster screening.

Mr. Johnson informed the Board that Ms. Wells had asked him previously if she could move the dumpster under the open shelter, however he informed her that would still be in violation of the ordinance.

Commissioner Hawley asked if Ms. Wells was supposed to be present at tonight's meeting and Mr. Johnson responded that she did need to be in attendance and that he hasn't heard from her since last month's meeting.

Mayor Smith closed the Evidentiary Hearing

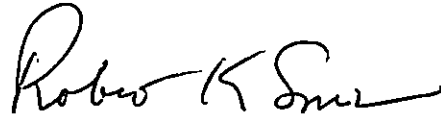
Board Action: The Board of Adjustment unanimously voted to deny the applicants request for an administrative appeal regarding a violation to Ordinance Section 7.3.4 – Waste Container Screening; fines due are still in effect.

Motion: Commissioner Hill
Vote: 6-0; unanimous

6. **Adjournment:** Mayor Smith entertained a motion to adjourn the meeting. Motion to adjourn was unanimous at approximately 7:39pm.

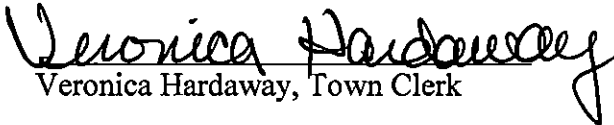
Motion: Commissioner Hawley

Vote: Unanimous; 6-0



Robert K. Smith
Chairman / Board of Adjustment

Attest:



Veronica Hardaway, Town Clerk

