

**Town of Angier Board of Adjustment  
June 23, 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, June 23, 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  
Commissioner Alan Coats

**Members Absent:**

**ETJ Members Present:** Chris Hughes  
Lee Marshall

**ETJ Members Absent:**

**Staff Members Present:** Town Clerk Veronica Hardaway  
Planning Director Sean Johnson  
Town Attorney Dan Hartzog Jr.

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

**3. Invocation:** Mayor Smith offered the invocation.

**4. Approval of the March 24, 2020 Meeting Minutes:** With there being no changes, the March 24, 2020 Board of Adjustment Meeting Minutes were approved as presented.

**Motion:** Commissioner Coats  
**Vote:** Unanimous; 7-0

**Approval of the June 23, 2020 Agenda:** The Board of Adjustment approved the agenda with the following amendment: removing item 5B

**Motion:** Commissioner Coats  
**Vote:** Unanimous; 7-0

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

Sean Johnson  
Lillian Wells  
Brandy Babnaw  
Matthew Babnaw  
Gray Matthis  
Irma Esquivel

## **5. New Business**

### **A. Administrative Appeal: Property owner Lillian Wells having a violation located at 738 Chalybeate Springs Road regarding Unscreened Dumpster.**

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated the Planning Department has received an Administrative Appeal request regarding Ordinance Section 7.3.4 – Waste Container Screening. The property in question is located at 738 Chalybeate Springs Road (Harnett PIN#: 0674-31-9392.000). Staff has sent several violation letters to the property owner between late 2019 and April of 2020 notifying them that the dumpster on the property must be screened in compliance with Ordinance Section 7.3.4. As a reminder, the Board of Commissioners adopted an amendment to this ordinance requiring that every waste container on nonresidential and multifamily properties to be screened in the form of an opaque fence with latching gate. Last June of 2019, each property owner was given 6 months from that date to comply with the ordinance. The property owner has been issued three civil penalties totaling \$350.00 and in turn the owner submitted an administrative appeal on April 21, 2020 to appeal the decision of the Code Enforcement Officer to fine the property owner for noncompliance with the Ordinance and to allow the unscreened dumpster to remain.

#### *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 stated that if the Appeal is approved the Code Enforcement Officer's order will be reversed, the civil penalties will be waived, and the property owner will be allowed to leave the dumpster on the property at 738 Chalybeate Springs Road unscreened. If the Variance is denied, the property owners will be required to comply with the Code Enforcement Officer's order to screen the dumpster in question and pay the outstanding civil penalties.

Lillian Wells, 441 Wells Lane, stated she thought initially the letter was a joke because the picture enclosed was of someone else's property. The property in question is not within city limits. This address is where her late husband's plumbing business was located since 1982. She did explain that she did receive a follow up letter with the correct photo and address. The last few years have been tough financially and acknowledged the Town offered a grant that could help but was not equipped with the ability to fund the rest of the project. She moved the dumpster behind a barn on the property that would shield it from view. Town staff would have to physically drive up on the property to view the dumpster. Ms. Wells stated her son was helping her construct and install screening after purchasing supplies, however when the Governor ordered shelter in place they ceased work. Prior to her filing an appeal she received another fine. She has recently rented the building to a businessman that will help her install screening but has not started to date. Ms. Wells requested the Board to consider her placement of the dumpster behind the barn away from view to allow her more time to complete the screening.

Chris Hughes stated although he appreciates the situation Ms. Wells is in, a shelter in place order does not prevent anyone from working on their own property. That shouldn't be an issue for completing this. He understands that she is not within city limits however she is in the Town's ETJ and the ordinance still applies. Mr. Hughes asked what she thought a reasonable date would be for project completion.

Ms. Wells stated within the next 30-45 days, but would depend on when the renter moves in.

Mr. Hughes requested a hard date in the reasonable future to be completed by.

Ms. Wells stated July 15<sup>th</sup> and hopefully would be before then.

Mr. Hughes asked what Ms. Wells feelings would be toward the Town if the project was not completed by then.

Ms. Wells stated "then I deserve what I get".

Town Attorney Dan Hartzog Jr. explained this is in the nature of an appeal so the Board would have to make a decision based on: 1) did the Town apply the law correctly; 2) did the Town exceed its authority; or 3) was there improper application of the ordinance. Essentially it is up to the applicant to tell the Board why the Town's decision was incorrect. The Board has the authority to affirm or remand back to the Planning Director with further instructions on how to proceed.

Mayor Smith asked if the Board had the authority to remand with instructions to delay processing this case until July 15<sup>th</sup> and not incur any further penalties.

Mr. Hartzog Jr. stated an ordinance is either enforced or not enforced. If its not enforced it needs to be across the board and an appeal will not be the proper avenue for someone to delay application of the ordinance. The Board adopted an ordinance and the Planning Director is assigned to enforce that ordinance, an appeal is not the proper way to delay application to just one particular resident over another. It either applies across the Board or doesn't.

Mayor Smith asked if this item can be tabled.

Mr. Hartzog, Jr. stated the hearing can be continued and reconvened in July. According on the dependency of the appeal, all fees will not be charged while the appeal is being decided.

**Board Action:** The Board of Adjustment voted to table this item until the Board of Adjustment meeting July 28<sup>th</sup>.

**Motion:** Commissioner Coats

**Vote:** -

Commissioner Hill called for a discussion prior to the decision of the Board. He explained that he is all for helping others when there are hardships, however the project at hand is not a long process. The applicant has already had excessive time to complete this and thinks July 15<sup>th</sup> is too much time. Mr. Hill stated a couple of weeks would be a sufficient amount of time to complete the screening and that a month and a half is not needed for such a small structure. It is now coming up on a year of when the initial letter went out.

Mayor Smith closed the Evidentiary Hearing

**Amended Board Action:** The Board of Adjustment unanimously voted to continue the hearing until July 28<sup>th</sup> Board of Adjustment meeting and no fines will accrue during that time.

**Motion:** Commissioner Coats

**Vote:** 7-0; unanimous

## **B. Item Removed from Agenda**

### **C. Variance Application: Applicant Eastern Carolina Regional Housing Authority having a Variance Request to Waiver the Limit on Number of Trash/Recycle Containers at Knollwood Court Apartments**

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated the Planning Department has received a Variance request to Code Section 15-35 – Waste Container Limit. He explained that staff sent a notification letter to the property owner in Summer of 2019 making them aware of the recent changes to Section 15-35 of the Town Code regarding the number of waste containers allowed per property. In this letter, staff indicated that these new requirements must be met by the December 4, 2019 deadline. Mr. Matthis contacted staff and stated this Code change would not apply to his property because an agreement between the Town and the US Dept. of Housing and Urban Development signed in 1978. The Town Attorney reviewed the 1978 agreement and determined there was no language in it exempting the property from current Code requirements. The property owner submitted a variance application on April 24, 2020 to request that the waste container(s) on the property be allowed to remain unscreened.

*Town Code Reference:*

*Section 15-35. – Placement, removal of containers; duties of occupants.*

*Residential properties will be provided up to two refuse containers and two recycle containers. Property owners will be billed for each container requiring pickup on the monthly utility bill. Any number of refuse or recycle containers above will require dumpster service at the owner's expense.*

Mr. Johnson stated that if the variance is approved the property owner will not be required to provide a dumpster service at the owner's expense as required by Town Code Section 15-35 for the property located at 559 N. Raleigh Street. If the variance is denied the property owners will be required to provide dumpster service at the owner's expense and comply with the dumpster screening requirements of Ordinance Section 7.3.4.

Gray Matthis, Executive Director of Knollwood Apartments, stated the Town is part of an agreement along with the County that was signed in 1978 that would exclude them from the dumpster ordinance. He explained the only flat spot to put a dumpster is next to the office and would have to cut out much of the curbing. There are several elderly tenants that reside there and would be difficult for them to put the trash in the dumpster. The document between the Town and HUD states they would be treated like a single-family residence.

Town Attorney Dan Hartzog, Jr. stated he has reviewed the document submitted by Eastern Carolina Regional Housing Authority and did not agree with Mr. Matthis' interpretation of the agreement. He explained that he did not see anything that would exempt them from any ordinance requirement.

Mr. Matthis stated he would like to keep the trash carts versus getting a dumpster to keep the residents from having to access at one central location. He stated the apartments are not considered multi-family.

Mr. Hartzog, Jr. stated he was not clear on what the contention is. As he understands this is a variance request which is when an applicant comes before the Board and states they are currently in violation but there's a hardship that's imposed and situations that are unique to the property itself.

Mr. Matthis stated the hardship is to the senior citizen tenants.

Mr. Hartzog, Jr. asked Mr. Matthis if there was anything about the agreement that he contends that would create a hardship that entitles him to a variance.

Mr. Matthis stated he had no idea and was just told when the agreement was signed.

Mayor Smith read Item B found in the variance approval criteria that states: "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". Mayor Smith stated that with respect to the seniors, this goes for any multi-family or multiple occupants.

Mr. Hartzog, Jr. stated that when an applicant brings a variance request, they're responsible for presenting to the Board the information they need to make a decision. The burden is on the applicant and would need to show how they would be exempt from the ordinance.

Mayor Smith closed the Evidentiary Hearing

**Board Action:** The Board of Adjustment voted to deny the variance request and the applicant is required to place a dumpster on the property.

**Motion:** Commissioner Hill

**Vote:** -

Commissioner Hill withdrew his motion to review the Findings of Fact.

#### *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 voted this does apply; however, Commissioner Hill opposed***

**Board Action:** The Board of Adjustment unanimously voted to deny the variance request based on the Findings of Fact.

**Motion:** Commissioner Hill

**Vote:** 7-0; unanimous

Mr. Matthis stated the Town wanted an easement for a pump station behind Knollwood Apartments on their property, "it will now take longer". "I'll put the dumpster on the property and call on the Board to help pick up the trash".

**D. Special Use Permit Application: Applicant Matthew & Brandy Babnaw requested a Special Use Permit to operate a Tattoo Parlor located at 53 W. Depot Street**

Mayor Smith opened the Evidentiary Hearing

Planning Director Sean Johnson stated the Planning Department received a Special Use Permit to operate a tattoo studio by Matthew & Brandy Babnaw. A floor plan has been submitted showing a front desk, waiting area, two artist stations, and one bathroom. The Special Use Permit application notes that the proposed tattoo studio will close at 8:00pm and be closed on Sundays. There are no special requirements for tattoo studios in the Ordinance. Any requirements for this business seen fit by the Board must be added as a condition to the Special Use Permit.

Brandy & Matthew Babnaw, 53 W Depot Street, stated they are requesting a Special Use Permit to open Time Honored Tattoo in the downtown area. Ms. Babnaw stated she has spoken to Harnett County as well as Angier's Planning Department to make sure they were in compliance. There is currently one artist; every client will be permitted to bring one guest. Mr. Babnaw typically performs 1-2 pieces per day at one client at a time. Normal sessions average approximately five hours to complete. The studios hours will be Tuesday – Saturday from 12-8pm; closed on Sundays. There will be a maximum of five people at a time including the artist, receptionist, client and guest.

Mr. Johnson stated there are business specific regulations but there are no requirements for tattoo studios in the ordinance.

There was some discussion amongst the Board regarding crowds hanging around and hours extending past 8pm.

Mr. Babnaw informed the Board that North Carolina will not allow tattooing of a person under the age of 18.

Ms. Babnaw stated the front window will have a logo that will be of nothing extreme. The front lobby area will have art displaying such as an art gallery and will also have a curtain hiding the artist area.

Irma Esquivel, property owner, stated she is 100% supportive of this business and is looking forward to their opening. She appreciated the Board's consideration.

Mayor Smith closed the Evidentiary Hearing

*The Board of Adjustment shall approve, modify, or deny the application for Special Use Permit. 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:*

- A. *The requested use will/will not impair the integrity or character of the surrounding or adjoining districts; **unanimously voted conditions are met***
- B. *The requested use will/will not be detrimental to the health, morals or welfare; **unanimously voted conditions are met***
- C. *Adequate utilities, access streets, drainage, sanitation and/or other necessary facilities have/have not been made or are being provided; **unanimously voted conditions are met***
- D. *That adequate measures have/have not been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and **unanimously voted conditions are met***
- E. *That the Special Use shall/shall not, 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. **unanimously voted conditions are met***

**Board Action:** The Board of Adjustment voted to approve the Special Use Permit to operate a tattoo studio without conditions based on the Findings of Fact.

**Motion:** Commissioner Hawley  
**Opposed:** Commissioner Hill  
**Vote:** 6-1; motion carried

**6. Adjournment:** Mayor Smith entertained a motion to adjourn the meeting. Motion to adjourn was unanimous at approximately 8:44pm.



**Motion:** Commissioner Hawley  
**Vote:** Unanimous; 7-0

*Robert K. Smith*

---

Robert K. Smith  
Chairman / Board of Adjustment

Attest:

*Veronica Hardaway*  
Veronica Hardaway, Town Clerk

