

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington**  
**June 8, 2021**

Meeting was held remotely via the Zoom platform and is available for view online at:  
[https://www.youtube.com/watch?v=kUtpaYcC47w&list=PLX2Do5DiQXjxF2CGACg9z081IN\\_4zCsrQ](https://www.youtube.com/watch?v=kUtpaYcC47w&list=PLX2Do5DiQXjxF2CGACg9z081IN_4zCsrQ)

**Members Present**

**City:**

Mike Gee, Vice Chairman  
Robert Giles II  
Bob Lewis  
Eric Grant (ALT.)

**Members Absent**

**City:**

Chairman Mr. Ed Wilson  
John Glen (Alt.)

**ETJ:**

**ETJ:**

**Staff Present:**

Planning Manager, Mr. Conrad Olmedo  
Principle Planner, Ms. Jamie Lawson  
Chief Code Enforcement Officer, Mr. Chris Marland  
Code Enforcement Officer, Mr. Jeff McClintock  
Director of Engineering Mr. Todd Lambert

**ITEM NO. 1:**

Call meeting to order. Vice Chairman Mr. Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Vice Chairman Mr. Mike Gee stated, the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted, nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupts, disturbs, or disrupts to leave the meeting. Any person who fails to comply with this order is guilty of a class 2 misdemeanor. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

**\*All participants were sworn in and affirmed to speak the truth to the best of their abilities.**

**ITEM NO. 2:**

Approval of the May 11, 2021 meeting minutes.

Mr. Eric Grant made a motion to approve the minutes.  
Mr. Robert Giles seconded the motion.

Approved unanimously.

**ITEM NO. 3:**

**Applicant:** Mr. Daniel Hernandez

**Location:** 478 Sapphire Road, Alamance County parcel identification number 175671 (part in Guilford County, GPIN: 8844006149).

**Details:** Mr. Daniel Hernandez, as applicant, requesting a variance from *Table 4.5.F.11.e.: Maximum Fence and Wall Height*, to allow a 5-foot-high fence to be placed approximately 6' 10" into a required ten (10)-foot setback, as established by the Mackintosh on the Lake Conditional Zoning requirements and *Section 3.12.B., Note 11, Mixed Use (MX) District Dimensional Standards*.

Planning Manager Mr. Conrad Olmedo presented the case to the Board. The variance is to have the fence 6 feet 10 inches within the 10-foot easement that is in place for visibility and for a utility easement. If the fence is lowered to 4 feet, then the utility easement would still be a viable circumstance. Staff does not recommend approval. Staff would be willing to allow the fence to move beyond the storm drain easement if the gate is moved to get access to the storm drain and will allow for the fence to run along the 10-foot easement.

Director of Engineering Mr. Todd Lambert testified that the utility easement is in place to allow any public utility to use this area for installation of their lines. The utility easement itself is not unique to this property because every subdivision is required to plat a utility easement behind the line of ROW. Existing utilities are located in this easement.

Chief Code Enforcement Officer Mr. Chris Marland provided testimony that the code would require permission from each utility owner that could possibly use the easement. The board cannot make the decision for each of them as there is not a representative present at the meeting.

Mr. Randy Herman explained that the fence is a two-part issue of height and location, and of the easement but the requirements to put the fence in the easement cannot be met by any property owner.

Mr. Daniel Hernandez provided testimony that if the fence were to be moved outside of the easement then the fence would be too close to the house and a lawn mower would not be able to fit in the space. The fence at its current height of 5 feet does not have any obstructions to street signs and line of sight. Duke Energy is the only utility in the easement currently and have given written permission to allow the fence. Other Utility companies were contacted and are not utilizing the easement.

Mr. Ryan Spatacini a board member with the Mackintosh Homeowners Association provided testimony that the fence is in line with the standards of the HOA. He provided testimony that in the HOA approval it states that the homeowner will be responsible for applying for additional permission from the city and county.

**Public comment**

Kasey Embry provided testimony that his property has a similar issue as Mr. Hernandez with the easement to the side and rear. Mr. Embry support the fence.

Mr. Ely Oaklish provided testimony that he does not have an issue with the Fence as it is built.

Mr. Todd Lambert emphasized section D ii. of the fence standards in the UDO stating that if a fence is placed in the easement all liability for any removal or maintenance of the fence and even with approval of a variance the rights to the easement will remain with the utility companies.

Chief Code Enforcement Officer Mr. Chris Marland provided testimony that the case was initialized by the city for the violation of having a fence without obtaining a permit.

Mr. Ryan Spatacini provided testimony that in the HOA approval it states that the homeowner will be responsible for applying for additional permission from the city and county. Staff has been in contact with contractors throughout North Carolina about requirements for placing a fence

Mr. Daniel Hernandez testified that he was unaware that a permit was required but through reviewing his agreement with Lowes the contractor of the fence it was found that a permit would be obtained. He is aware of the liability of having the fence in the easement and is confident that utilities can be placed in the 3 feet remaining in the easement.

### **Discussion**

Commission Member Mr. Bob Lewis discussed that the Variance should be granted because the only utility in the easement is Duke Energy and they have given written permission.

Commission Member Mr. Robert Giles discussed that granting this variance would set precedent for people to make cases to encroach on the easement. The easements are put into place for the utility companies.

Commission Member Mr. Bob Lewis discussed that the in this case the homeowner has gone above and beyond what is necessary to rectify the situation.

Vice Chairman Mr. Mike Gee agreed that the allowing the fence in the easement would set precedent for other property owners to do the same. He understands that it was not built with any malicious intent against the city.

### **Motion**

Commission Member Mr. Bob Lewis made a motion to approve the fence based on the findings of fact the unnecessary hardship by the strict enforcement of the code in regards to the safety issue and liability with the drainage easement to the rear, the conditions are unique to the property, the property has three areas of ROW and Easements, the hardship is not caused by the property owner it is evident that the home builders did through the development, and it does not create an issue for surrounding home owners.

Ayes: Mr. Mike Gee, Mr. Bob Lewis

Noes: Mr. Robert Giles, Mr. Eric Grant

Request denied.

#### **ITEM NO. 4:**

**Applicant:** Mr. Tom Pate

**Location:** 443, 445, and 447 Lane St., Alamance County parcel identification number 136226.

**Details:** Mr. Tom Pate, as applicant, requesting a variance to allow a 14-foot-wide mobile home where a minimum width of 16 feet is required per *Section 9.2.C.2.a.: Manufactured or Mobile Homes*.

Planning Manager Mr. Conrad Olmedo presented the variance of 2 feet is for a mobile home that is 14 feet, opposed to the ordinance required 16 feet width. It will be placed across three lots. Staff does not recommend approval.

Mr. Tom Pate provided testimony that the home will be placed across three lots to allow for more space. The 14 feet width trailer has been purchased and is similar to the surrounding lots. The lots do not need to be recombined.

Planning Manager Mr. Conrad Olmedo testified that the intent of the ordinance to have a 16-foot mobile home is to encourage the use of the newer mobile homes constructed, which are built wider. The 14-foot mobile homes are no longer constructed.

Mr. Tom Pate testified that to allow for a mobile home park he had to get a Special Use Permit, and the land use is the same the labeling has changed from R-6 to MDR.

Chief Code Enforcement Officer Mr. Chris Marland provided testimony that most mobile home parks were created in the 70's and were 12 feet. 12-foot and 14-foot-wide mobile homes are no longer the industry standard. The 16-foot mobile home includes HUD requirements, city requirements and state requirements. The mobile home was a nonconforming use prior to the UDO, aside from an SUP.

#### **Public Comment**

Ms. Renee Stewart provided testimony that the mobile home she not be placed because it is nonconforming. It should be replaced with a conforming structure that is in line with current standards.

Mr. Tom Pate provided testimony that the mobile home will not deter from the area, it will be renovated and will be inspected by the city. It will also create affordable housing for a low income family.

#### **Discussion**

Commission Member Mr. Robert Giles discussed that variances of this type have been approved before so this should be approved. It is a good use of a mobile home; it just does not match the size requirement by 2 feet.

All board members are in agreement with Mr. Giles.

Vice Chairman Mr. Mike Gee is in support of the use because it is constant with the use from the past 40 years.

#### **Motion**

Mr. Bob Lewis made a motion to approve the variance of 2 feet for the width of a mobile home at the addresses 443, 445 and 447 Lane St and to address the vacancy period of 5 and a half years. Strict adherence to the city ordinance creates a hardship on the park owner to be able to a mobile home on the property, he is combing 3 lots to make one larger lot to fit the setbacks of a larger home. Conditions creating the hardships because it was an existing mobile home park in the city of Burlington. The hardship was not caused by the property owner. The variance will not be an issue to the surrounding neighborhood.

Mr. Robert Giles seconded the motion.

Approved unanimously.

**MEETING ADJOURNED**

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Chairman Mr. Ed Wilson

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Conrad Olmedo, Planning Manager