



Board of Adjustment

Meeting Agenda

November 19, 2013

immediately following the Planning Board meeting at 7:00pm
Council Chambers, 201 S Main St

Invocation

1. Approve minutes of the February 19, 2013 meeting
2. Variance for Side Yard at 909 Washington St (VR131). Request of Washington Properties II, LLC for a variance from the side yard setback for property located at 909 Washington St (GPIN 8884084619).

A complete agenda packet is available at www.cityofgraham.com

CITY OF GRAHAM
BOARD OF ADJUSTMENT
February 19, 2013

There was a meeting called of the Board of Adjustment on Tuesday, February 19, 2013 at 7:00 pm following the Planning Zoning Board meeting in the Graham Municipal Building. Board members present were as follows: Bonnie Blalock, Bill Teer, Dean Ward, Ricky Hall, and Michael Benesch. Alternate board member, Andy Rumley, was also present. Melissa Guilbeau Planner, Frankie Maness City Manager, Darcy Sperry and Martha Johnson of the City staff were present. The City of Graham attorney Keith Whited was also present.

Invocation was given by Ricky Hall.

1. The Oath of Office was administered to all Board Members present by Martha Johnson, Notary Public. Also sworn in were Darcy Sperry Zoning Enforcement Officer, David Oleszek and James Bradshaw.

2. Melissa Guilbeau told the Board that a Chairman and Vice-Chairman needed to be elected.

A motion was made by Bonnie Blalock to nominate Ricky Hall as Chairman. Second by Dean Ward, motion carried unanimously.

A motion was made by Bonnie Blalock to nominate Dean Ward as Vice-Chairman. Second by Ricky Hall, motion carried unanimously.

Keith Whited, City Attorney explained the function of the Board of Adjustment stating this was a judicial process and the Board is a panel of judges. He said there could not be any conflict among the Board members with any interest in the appeal, no extra conversation outside of the process among the members and that this decision doesn't go to City Council but could go to court. Dean Ward disclosed that he requested GIS drawings from the addressing department of Alamance County and Ricky Hall provided the information to him which could be given to anyone. Dean Ward did get some aerial pictures of different years that he brought to be entered as exhibits. Keith Whited told the Board that the communication between them was ok.

3. David S. Oleszek is requesting an Appeal from a decision of the Zoning Enforcement Officer for a carport located at 530 N Melville St (GPIN 8884276215). Darcy Sperry Zoning Enforcement Officer for the City of Graham presented for the Board the staff report summary along with the AP121 timeline.

Findings of Fact

1. The property that is the subject of this appeal, 530 N Melville St, is zoned R-7. The property contains a single family detached dwelling, a freestanding metal carport and a small storage building. The property is owned by David Oleszek.
2. The structure that is the subject of this appeal is the freestanding metal carport, which is located in the side yard between the house and the property line. It is an accessory building,

as defined in Section 10.16 of the *City of Graham Development Ordinance*, which defines an accessory building as “a subordinate building, the use of which is purely incidental to that of the main building, located on the same parcel or lot with such principal use or building.”

3. Section 10.135 allows that accessory uses are permitted by right in the R-7 zoning district. Section 10.136, Note 1, specifies that “accessory uses in residential districts such as garages, utility buildings are restricted to rear yards or side yards if the required setback can be maintained.”
4. The setback requirements in the R-7 zone are 30 feet for the front yard, 8 feet for the side yard and 20% of the lot depth for the rear yard, as outlined in Section 10.245 of the *City of Graham Development Ordinance*. Note 1 of the same section, which is listed in Section 10.246, applies to the rear yard setback and allows that “accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines.”
5. The City’s Zoning Enforcement Officer made the determination that the appellant’s metal carport was five feet from the side property line and thus did not meet the side yard setback requirement.
6. Section 10.16 of the *City of Graham Development Ordinance* defines a nonconforming structure as “a structure that does not conform to the requirements of this ordinance. The nonconformity may result from adoption of this ordinance or any subsequent amendment.”
7. The appellant, David Oleszek, in his letter of appeal dated December 6, 2012, stated that “this structure has been at its present location for over 20 years and was here when I purchased the property 2 years ago.”
8. No building permit for the freestanding metal carport located at 530 N Melville St could be found.
9. The City’s zoning regulations, as they existed prior to 1999 (when an updated Unified Development Ordinance was adopted), required the following setbacks: 30 feet for the front yard, 8 feet for the side yard and 25% of the lot depth for the rear yard. The zoning regulations prior to 1999 also contained the same “note 1” that allowed that “accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines.”
10. The freestanding metal carport was not erected in conformance with the *City of Graham Development Ordinance* as it existed at the time. Therefore, it does not qualify as a nonconforming structure because its nonconformity was not the result of adoption of the ordinance or any subsequent amendment.
11. The City’s Zoning Enforcement Officer sent a Notice of Violation to the appellant on November 9, 2012.
12. On February 5, 2013, the zoning enforcement officer, via email correspondence, transmitted to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
13. On February 5, 2013, a letter notifying the appellant and adjacent property owners of the hearing was deposited in the US Mail.

David Oleszek of 530 N. Melville Street spoke concerning his appeal he had submitted. He stated that he purchased the property in 2010 and the carport structure was already there. It is 5' from the property line and he understood that it doesn't meet the minimum setback requirements. Mr. Oleszek feels that the complaint was made as an argument between neighbors. He would like the carport to remain where it is. Mr. Oleszek said there is a shared driveway and the entire neighborhood has shared driveways.

Ricky Hall asked if Mr. Oleszek had a survey done when the property was purchased and he said no. Mr. Oleszek said the property had been in and out of his wife's family for years and when it became available they purchased it. Mr. Oleszek said this was his primary residence. Bill Teer asked if there was sufficient room to move the carport over to the house. Mr. Oleszek stated there is but it will not be 10' from the residence and there is also a utility pole behind it that keeps it from being pushed back. Dean Ward asked him in his appeal did he state that the carport had been there for ten to fifteen years and Mr. Oleszek said yes and that he has been coming to Graham since 1986 and the carport has been there since then. Mr. Ward asked him had he ever lived in the house and the carport not been there and he said no. Mr. Ward had a couple of photographs that came from the Alamance County GIS Department that will be entered as exhibit "B" into the record. The first photograph was from 2000 and there was no carport shown and the second photograph from 2005 shows the carport. Mr. Oleszek again stated he is asking to keep the carport where it is on the property.

Next to speak was James D. Bradshaw of 615 Cable Road Elon, N.C. He is now the executor over the estate of his mother since his brother Keith Bradshaw died who was the first executor. Mr. Bradshaw had a copy of the letter appointing him executor. This letter was entered as "Bradshaw exhibit #A" into the record. Mr. Bradshaw's mother lived at 528 N. Melville Street all of his life and the house does share the driveway with 530 N. Melville Street. He is currently overseeing the sale of the house for the heirs. Mr. Bradshaw believes it would improve the possibility for the sale of the house and help the looks of both houses if the carport was pushed back. Mr. Teer asked what he meant by pushed back. Mr. Bradshaw stated that per Darcy Sperry it should be behind the corner of the house away from the street. Mr. Bradshaw brought dated pictures he took which are to be entered as "Bradshaw exhibit #B-#G". Mr. Bradshaw would like for the carport to be moved back. He said it is a prefab structured carport that he is only able to park one car under and there is a lot of extra stuff under there and not being used for what it was originally bought for. Mr. Bradshaw would like for it to be moved back. If the carport is allowed to stay where it currently is, he would like for it to be used for its purpose.

Ricky Hall asked Mr. Bradshaw if he had considered cutting a driveway to the left side of the house. Mr. Bradshaw said that the back door is on the right side of the back of the house and his mother had a sidewalk poured to go that way with only two steps and handrail to get up into the house. The other side of the house would require six or eight steps to get up into the house. Mr. Bradshaw stated that this is an estate house and they don't have the money to do all of that. Ricky Hall asked Ms. Sperry if city employees did stake off the property and confirmed that the property was not in compliance. Ms. Sperry replied yes that is correct. Bonnie Blalock asked what Mr. Oleszek's options were. Ms. Sperry stated to remove the carport all together, or move it to the rear property and meet the 5' setback in the rear yard. Bonnie Blalock was questioning

the power pole which Mr. Oleszek pointed out in the picture. Ms. Sperry said that when she said to move it to the rear yard, it couldn't just be picked up and moved, there would be things that would have to be reconfigured to make it fit.

Dean Ward stated he was concerned about the GIS public records. The photos show it hasn't been there for ten to fifteen years, as the appellant stated. Mr. Ward said he hated to see anyone go through any hardship to move it but no one inquired with the City of Graham about the zoning before putting it there.

Mr. Oleszek asked who the gentleman on the front row was that was advising the Board. Keith Whited, who was the gentleman in question, replied he was the City of Graham's attorney.

Michael Benesch stated to the Board that they should base their decision on facts, not their opinions. Mr. Benesch then stated that the Board must go by the way the laws are written and be as fair as possible. The facts state the carport does not meet setbacks nor was there a permit on file. Hardships are there because someone would have to move the building. The carport was put there illegally and therefore the Board has to make a recommendation based on code.

Ricky Hall asked Darcy Sperry if the shed behind the carport was permitted and she said the shed was not large enough to be permitted but it still must meet the setbacks requirement and because that is considered as rear yard it does meet the setbacks.

Dean Ward asked how far the carport would have to be moved. Ms. Sperry answered 10' to 20', perhaps the length of the carport.

Bill Teer asked Mr. Bradshaw how damaging the carport was to him. Mr. Bradshaw said it was too close to the road and it makes the houses look closer together.

Ricky Hall said the case tonight we have seen evidence presented along with addition evidence that the structure was only there a few years versus 10 to 15 years. We have established there is a non-conforming structure on the property. The evidence presented to us by staff shows us the carport is out of compliance.

Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The property that is the subject of this appeal, 530 N Melville Street, according to Alamance County GIS aerial photographs dated 2000, did not show the structure present in the photo. However, the structure did show up in the aerial photograph dated 2005.
2. The structure that is the subject of this appeal is the freestanding metal carport, which is a nonconforming structure on the property.
3. Based on evidence by staff, the metal carport is out of compliance.

CONCLUSIONS OF LAW

1. The property is out of compliance and can be brought into compliance with minimum effort.

DECISION

For the above reasons, the Board of Adjustment affirms, in whole, the decision of the zoning enforcement officer that is the subject of this appeal.

Keith Whited explained 3 of the 5 the Board can affirm the City of Graham employee decision and it would take 4 of the 5 to overturn her decision.

Ricky Hall made a motion to deny this appeal, seconded by Dean Ward. The vote was 4 to 1 for denial.

Ricky Hall addressed Mr. Oleszek and explained that there was not enough evidence to support his request at this time and Mr. Oleszek will receive a copy of the Board's findings in writing.

Mr. Oleszek asked how long he will have to bring the property into compliance. Darcy Sperry replied she would have to check the ordinance and we will have to let him know. Ms. Sperry said the City of Graham would work with him as much as they could.

Melissa Guilbeau said the minutes from the May 10, 2007 Board of Adjustment meeting needed to be approved. A motion was made to approve the minutes by Michael Benesch, second by Dean Ward. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary



STAFF REPORT

Prepared by Melissa Guilbeau, City Planner

Variance for Side Yard at 909 Washington St (VR131)

Type of Request: Variance

Meeting Dates

Board of Adjustment on November 19, 2013

Contact Information

Washington Properties II, LLC
913 Washington St, Graham, NC 27253
336-570-2282; rs_csm@bellsouth.net

Summary

This is a request for a variance from the required side yard setback, which is 20 feet in the I-1 zoning district. The stated purpose of this request is as follows: "Owner wants to divide the property for a future sale. The distance between the two buildings on the current property is 13 feet which does not meet the side setback requirement of 20 feet. Access easements will be provided for both buildings in the rear of the building from North Main Street and between the buildings where the variance is being requested."



Project Name

Variance for Side Yard at 909 Washington St (VR131)

Location

909 Washington St
GPIN: 8884084619

Current Zoning

Light Industrial (I-1)

Current Use

Recycling Center

Surrounding Zoning

R-7, B-3, I-1 & I-2

Surrounding Land Uses

Single Family Dwellings,
Neighborhood Businesses,
Light Industry, Cemetery,
Railroad

Attached is a **draft of a Resolution for the Board to consider** when making its decision. This draft Resolution should be modified as the Board sees fit and is only provided by staff as a template.



Application for a VARIANCE

P.O. Drawer 357
201 South Main Street
Graham, NC 27253
(336) 570-6705
Fax (336) 570-6703
www.cityofgraham.com/planning

Applicants are encouraged to consult with the City Planner before submitting this application.

Property on which a Variance is sought

Street Address: 909 Washington Street

Tax Map#: 145679 GPIN: 8884084619

Current Zoning District(s):

- R-7 R-9 R-12 R-15 R-18
- R-MF R-G C-R C-MXR
- B-1 B-2 B-3 C-B C-MXC
- O-I C-O-I I-1 I-2 C-I

Overlay District, if applicable:

- Historic S Main St/Hwy 87 E Harden St/Hwy 54

Current Use: Recycling Center

Property Owner: Washington Properties II, LLC

Mailing Address: 913 Washington Street

City, State, Zip: Graham, NC 27253

Applicant

Property Owner Other _____

Name: Washington Properties II, LLC

Mailing Address: 913 Washington Street

City, State, Zip: Graham, NC 27253

Phone # (336) 570-2282

Email: rs_csm@bellsouth.net

I, the applicant, hereby petition the Board of Adjustment for a variance from the strict letter of the *Development Ordinance*, as described in this application.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Signature of Applicant

10/10/13

Date

Purpose of Variance Request

Describe the purpose of this variance request. *What are you trying to do that the Development Ordinance is prohibiting?* If necessary, attach a plot plan or other illustration.

Owner wants too divide the property for a future sale. The distance between the two buildings on the current property is 13 feet which does not meet the side setback requirement of 20 feet. Access easements will be provided for both buildings in the rear of the building from North Main Street and between the buildings where the variance is being requested.

Nature of Variance Request

List the specific provision(s) of the *Development Ordinance* from which you are seeking a variance (for example, side yard setback).

I-1 side yard setback.

Office Use Only. DEVID#

VR131



New Property Boundary



W RIVER ST

N MAIN ST

WASHINGTON ST

SCOTT ST

145679

909

909 SUITE C

912

910

135351

135353

135344

902

135338

907

135373

917

135334

135333

910

135332

135323

135322

404

135324

403

135313

135317

135378

145698

145

145666



Board of Adjustment Resolution of Findings of Fact, Conclusions of Law and Decision

The Board of Adjustment for the City of Graham, North Carolina, having held a public hearing on **November 19, 2013** to consider **case number VR131**, submitted by **Washington Properties II, LLC** of 913 Washington St, for a **variance from the side yard setback at 909 Washington St**, and having heard all the evidence and arguments presented at the hearings, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS OF LAW:

FINDINGS OF FACT

NOTE: These Findings of Fact were prepared by staff and should be modified by the Board as it sees fit.

1. The property that is the subject of this variance request, 909 Washington St, is zoned Light Industrial (I-1).
2. The property contains two industrial buildings that, according to the tax records, were constructed in 1889. The two buildings are separated by a space of approximately 13 feet, according to the applicant and aerial photographs.
3. The minimum side yard width in the I-1 zoning district is 50 feet adjacent to a lot zoned residential or any residence on a lot otherwise zoned, or 20 feet elsewhere, as outlined in Section 10.245 of the *City of Graham Development Ordinance*.
4. An application for a variance was filed with the City Planner on October 10, 2013. According to the application, the property owner desires to subdivide the property, with the new property line running between the two buildings.
5. If the property is subdivided, neither existing building will meet the minimum side yard width of 20 feet required by the *Development Ordinance*.

[insert additional Findings of Fact, if any are made]

CONCLUSIONS OF LAW

The Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

NOTE: These Conclusions of Law were prepared by staff and should be modified by the Board as it sees fit.

1. 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.

Under the strict application of the ordinance, the property would not be able to be subdivided because the existing buildings would not meet the minimum side yard setback of 20 feet, since the buildings are only 13 feet apart.

2. 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 buildings were built in 1889 according to the tax records. The City of Graham first adopted zoning regulations in the 1950s. The spacing between the buildings is peculiar to the property and is not common to the neighborhood or the general public.

3. 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 applicant/property owner did not construct these buildings with only 13 feet between them. The applicant/property owner is seeking to subdivide the parcel so that each building will be on a separate parcel.

4. 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 requested variance will not change the existing condition of 13 feet of spacing between the two buildings, but will allow the applicant/property owner to request that the parcel be subdivided.

DECISION

In exercising its powers, the Board of Adjustment may grant or deny a variance and may impose any appropriate conditions on the variance, provided that the conditions are reasonably related to the variance. The concurring vote of four-fifths of the Board shall be necessary to grant a variance.

For the above reasons, the Board of Adjustment [grants/denies] the variance that is the subject of this application.

[insert additional description of the Decision or any appropriate conditions, if necessary]

Staff recommends that, if granted, the following condition be imposed:

- This variance shall apply only to the two existing buildings in relation to the new property line and shall not apply to any future development on the property (such as new or expanded structures) or to the property as a whole.

The resolution reflects the decision of the Board of Adjustment, made the 19th day of November, 2013.

Attest:

Ricky Hall, Chair

Martha Johnson, Secretary