



Board of Adjustment

Meeting Agenda

December 17, 2013

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

Invocation

1. Approve minutes of the November 19, 2013 meeting

Continued from November 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
November 19, 2013

There was a meeting called of the Board of Adjustment on Tuesday, November 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 and Ricky Hall. Board members absent were Michael Benesch. Staff members present were Melissa Guilbeau, City Planner, Kaitland Finkle, Planning Intern, Darcy Sperry, Zoning Enforcement Officer and Martha Johnson, Zoning/Inspections Technician.

Chairman Ricky Hall called the meeting to order and explained the function of the Board.

The Oath of Office was administered to alternate Board member Tim Beshel by Martha Johnson, Notary Public. After receiving the Oath, Tim Beshel left the meeting.

Invocation was given by Ricky Hall.

1. Bonnie Blalock made a motion to accept the February 19, 2013 minutes, second by Dean Ward, motion carried unanimously.
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).

Martha Johnson, Notary Public proceeded to swear in Melissa Guilbeau, City Planner and Sam Unsworth with Richard Jones Real Estate representing the owners of the property.

Mr. Sam Unsworth informed the Board that a long term tenant of the property is moving out. Therefore the property owners would like the flexibility to both lease and sell the property. In order to sell the building, the property must be subdivided into two parcels. Bonnie Blalock asked to which building he was referring, the brick or aluminum. Sam Unsworth said the metal building belongs to the land owners and has a business and the brick building would be for sale/rent.

Ricky Hall asked if any of the property is located in the railroad right of way. Sam Unsworth said no. Ricky Hall asked Melissa Guilbeau if approved, would the property meet parking requirements. Melissa Guilbeau responded that this is only a request for a variance. They would still need to have council approval as it is considered a major subdivision and would therefore come back before the Planning Board. Parking, screening and additional requirements would be addressed during the process of subdividing the properties. Ricky Hall asked if the variance would simply be for one side of the property. Melissa Guilbeau responded that she suggested approval of a condition that the variance shall only apply to the two existing buildings in relation to the new property line and shall not apply to any future development on the property or to the property as a whole. Ricky Hall asked if the property had road frontage or access off of North

Main Street. Sam Unsworth said that North Main turns into a gravel road when coming back behind the buildings. Dean Ward asked if the gravel road was a dedicated road or an easement, or if it was part of the plan. Sam Unsworth responded that if the variance was approved, the gravel road would be an easement for both buildings.

Bill Teer asked if there were any plans that had been prepared. Sam Unsworth answered no, however there were people looking at the property and they wanted to be flexible enough to have the variance and the subdivision complete. In case someone bought it, they wanted to have the 2-3 month process already completed. Bill Teer asked if there had been any complaints about what was being proposed. Sam Unsworth responded no. Dean Ward asked if either one of the buildings were vacant at this time. Sam Unsworth responded no. Dean Ward asked if there are tenants in both or if the same company owned both and was operating out of both. Sam Unsworth said a property management company owns both, the owners do their business out of the metal building and the old brick building is leased (where the tenant will be moving out).

Ricky Hall asked if given approval would the variance apply solely to the new lot or will the remaining lot be included as well. Melissa Guilbeau responded that there will not be a new lot until they go before city council for the subdivision, so this approval would apply to the entirety of the existing lot. Ricky Hall asked if the property currently meets the requirements for parking and screening. Melissa Guilbeau responded that she did not know the answer and would have to investigate it further.

Ricky Hall asked if anyone else had anything to say.

Martha Johnson, Notary Public proceeded to swear in Jim Wright, 225 Trollinger Road, Haw River who owns the seed and feed store. His questions were regarding ingress/egress to the property. Mr. Wright asked if all of the traffic come off of the dead end section of Main Street. He said currently most of the traffic that comes to the building goes through his property causing him additional expenses. Bill Teer asked him what he suggested. Jim Wright said he currently has no problems however he is concerned with who the new tenants will be and how much traffic they will generate.

Dean Ward asked if there was a representative from Washington Properties LLC. Sam Unsworth said he was serving as that individual.

Ricky Hall said it looks as if part of the property is currently being encroached on by the cemetery.

Bill Teer asked where North Main Street ends. Melissa Guilbeau said according to the GIS data, it ends at the pavement. Ricky Hall said you must go by the plat, because the road may go all the way to the right of way, and that without having a plat in front of us that would be a hard thing to say for sure. Dean Ward asked if we could get a plat to look at. Melissa Guilbeau said she may be able to but was unsure and could not produce it immediately.

Bill Teer asked if it could be looked at some more before deciding on a final decision. Melissa Guilbeau said yes.

Dean Ward said he had a few more questions to ask about the proposed entry to the property of Mr. Unsworth. He asked about the location of the loading dock doors on the second building. Mr. Unsworth went up and showed Dean Ward on the map. Dean Ward asked if there would be room for the trucks between the buildings after the properties were subdivided. Mr. Unsworth said that there would be an easement both off of Main Street and between the buildings.

Ricky Hall said his problem was that one side of the property is already encroaching into the railroad right of way. Mr. Unsworth said the owners had never been notified of this. Ricky Hall said it would not benefit the City to give this variance. We would be putting the City at liability.

Dean Ward made a motion to continue the hearing to the next month; this was seconded by Ricky Hall. All voted in favor.

Dean Ward requested some additional documents for the particular plat of the property and street locations. Bill Teer asked to include the railroad right of way.

There was a motion and a second to continue the meeting until the meeting next month. All voted aye. Ricky Hall moved that the application be reopened at the next regularly scheduled meeting on December 17th. Melissa Guilbeau said the meeting is still open and ex parte communications is still in play.

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



145666
145698
135378
W RIVER ST

N MAIN ST

WASHINGTON ST

SCOTT ST

135313

145679

909

909 SUITE C

135351

910

135353

912

135351

135344

902

135338

907

135339

135373

917

135334

135333

910

135332

135323

135324

403

135322

404

135317



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** and continued to December 17, 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 17th day of December, 2013.

Attest:

Ricky Hall, Chair

Martha Johnson, Secretary