



# **Board of Adjustment**

## **Meeting Agenda**

April 21, 2015

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

1. Approve minutes of the December 16, 2014 meeting
2. Old Business
3. New Business
  - a. VR 1501: A request for a variance by Eco Watercourse, LLC to model the effects of a flood after the State endorses the new flood plain maps, for the property located at 1050 Woody Drive (GPIN 8884724405).
4. Administrative reports

*A complete agenda packet is available at [www.cityofgraham.com](http://www.cityofgraham.com)*

CITY OF GRAHAM  
BOARD OF ADJUSTMENT  
December 16, 2014

There was a called meeting of the Board of Adjustment on Tuesday, December 16, 2014 at 7:00 pm immediately following the Planning Board meeting in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Bonnie Blalock, Michael Benesch and Ricky Hall. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Chair Ricky Hall called the meeting to order, explained the function of the Board and gave the Invocation.

1. Bonnie Blalock made a motion to approve the minutes from the October 21, 2014 meeting, second by Bill Teer. All voted aye.

2. Old Business. There was none.

3. New Business

3a. Variance for Koppes Setback (VR144). Request of Shaun Kopczynski for a variance from the front setback along Ingold Dr for property located at 1031 Gant Rd (GPIN 8874806506).

Ricky Hall asked that anyone wishing to speak come forward and be sworn in. Martha Johnson, Notary Public swore in Shaun Kopczynski and Melissa Guilbeau. Later during the meeting Donna Ross was sworn in.

Ms. Guilbeau explained this was a request for a variance by Shaun Kopczynski at 1031 Gant Rd for the front setback along Ingold Dr. The stated purpose of request is to add onto existing building for additional storage and needed warehouse because of increased business.

Shaun Kopczynski, the applicant, of 1031 Gant Rd spoke. Mr. Kopczynski stated he was asking for a 25 ft. setback instead of a 50 ft. setback at the rear of his building in order to build 3000 – 4000 sq. ft. attached building. He showed the Board drawings of the proposed addition.

Dean Ward asked Ms. Guilbeau if this would be considered the rear of the building.

Ms. Guilbeau stated the definition of a through lot which has frontage on 2 parallel streets and to her it appears to be that. That would mean it has a front yard on each street frontage and would require it to have a 50 foot setback on both.

Ricky Hall asked Mr. Kopczynski what type work they do. Mr. Kopczynski said they are a candle and souvenir manufacturer and that they sell to beach communities. Mr. Ward asked how their bulk material currently was being brought into the building. Mr. Kopczynski stated there were few trucks entering from that side because most use Gant Rd and with certain container shipments coming in they would utilize the area where the new addition will be constructed.

Donna Ross of 3149 Heritage Ln, Burlington, NC, spoke next representing David Janey who is one of the adjacent owners to this property. Ms. Ross asked if she understood correctly there would be one entrance and one exit to the property. Mr. Hall replied yes. Ms. Ross asked if there would be any employee parking issues because she understood there currently is. Ms. Ross also asked will the industrial traffic increase in that area and will it affect the quality of life in a mainly residential area. Ms. Ross also asked would the building addition not decrease the employee parking spaces.

Mr. Kopczynski stated there had never been any parking where the new addition is going. Mr. Ward asked how many employees do they currently have and Mr. Kopczynski replied 24. Mr. Ward asked if the addition would mean more employees and Mr. Kopczynski said it could in the future but for now the addition is for storage. Mr. Ward asked the number of tractor trailers they have per week. Mr. Kopczynski said they have daily pickups being possibly one or two in season but not during the season it would be one or two per week.

Ricky Hall closed the hearing.

Ricky Hall made a motion to grant this variance, Michael Benesch seconded the motion. The motion passed 5-0 in favor.

## **FINDINGS OF FACT**

1. The property that is the subject of this variance request, 1031 Gant Rd, is zoned Light Industrial (I-1).
2. The property contains a building used for light industrial purposes, occupied by Koppes Kandles.
3. The applicant would like to add on to the existing building adjacent to Ingold Dr.
4. Ingold Dr, both the paved and gravel sections, is a publicly maintained street.
5. The *City of Graham Development Ordinance*, in Section 10.16 Definitions, provides the following definitions for a “lot”:
  - Lot. A parcel of land, not divided by streets, occupied or to be occupied by a building and its accessory buildings, or by a unified business or housing development and its accessory buildings, together with such open spaces as are required under the provisions of law, and having its principal frontage on a street or other means of access.
  - Lot, Corner. A lot or portion of a lot at the junction of and abutting upon two or more streets.
  - Lot, Flag. An interior lot located to the rear of another lot, but with a narrow portion of the lot extending to a street.
  - Lot, Interior. A lot other than a corner lot.
  - Lot, Through. A lot having a frontage on two parallel or approximately parallel streets.
6. The *City of Graham Development Ordinance*, in Section 10.16 Definitions, provides the following definition for the “front of lot”: The front of a lot shall be considered to be that side

of the lot which fronts on a street. In the case of a corner lot, the narrowest side fronting on a street shall be considered to be the front of the lot. In case the corner lot has equal frontage on two (2) or more streets, the lot shall be considered to front on that street on which the greatest number of lots front, or if un-platted, on that street on which the greatest number of buildings have been erected.

7. Based on the definitions provided in the *City of Graham Development Ordinance*, the lot that is the subject of this variance request is a through lot and a through lot has a “front” on both streets.
8. The *City of Graham Development Ordinance*, in Section 10.245 Area, Height and Yard Regulations, requires the following Minimum Yard Sizes (feet from property line) in the I-1 zoning district:
  - Yard Depth Front. 50 feet for buildings; parking areas shall be set back at least 10 feet from the property line.
  - Side Yard Width. 50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere.
  - Side Yard Width Abutting Street. 50.
  - Rear Yard Depth. 50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere.
9. The existing building, based on a survey of the property prepared by Carolina Cornerstone and dated 10/28/14, submitted by the applicant at the public hearing, appears to be nonconforming with regard to setbacks. It is set back roughly 43 feet from Ingold Dr, where the required front yard setback is 50 feet. It is set back roughly 48 feet from the property to the west, which is residentially zoned, where the required side setback is 50 feet.
10. An application for a variance was filed with the City Planner on November 7, 2014. The nature of the variance request is “we are requesting a 20’-35’ rear setback instead of the 50’ setback that is part of the ordinance.”
11. During the Board of Adjustment public hearing, the applicant specified that the variance being requested was for a setback of 25 feet. The applicant also presented a plan of the property showing the proposed addition, two pictures of the property, and a copy of the notice to adjacent property owners with “west” written next to Ingold Dr.

## CONCLUSIONS OF LAW

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.

From the strict application of the ordinance, the applicant would not be permitted to expand the existing building to within 20 to 35 feet of the property line along Ingold Dr.

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 lot is roughly 2.5 acres with an existing building that is approximately 28,500 square feet.

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 wishes to construct an expansion to within 20 to 35 feet of the property line along Ingold Dr.

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 would result in a structure located within the required front yard of a property zoned light industrial.

### **DECISION**

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

3b. Elect Chair and Vice-Chair for 2015. Dean Ward made a motion to re-elect Ricky Hall as Chair, second by Bonnie Blalock. Michael Benesch made a motion to re-elect Dean Ward as Vice-Chair, second by Bonnie Blalock. All voted in favor.

4. Administrative reports. There were none.

Bonnie Blalock asked Ms. Guilbeau when someone asked for a variance if the process is explained to the applicant prior to coming before the Board. Ms. Guilbeau stated she gives them the application which has recently been updated along with the ordinance sheet showing the four conditions for them to provide evidence and make their case. Mr. Ward said he would like to see more assistance given to the applicant possibly drafting a cheat sheet or given guidelines. Ms. Guilbeau said she could provide a list of examples to the applicants but not too much detail with each case being unique.

There being no further business, the meeting was adjourned.

Respectfully Submitted,  
Martha Johnson, Secretary



# STAFF REPORT

Prepared by Nathan Page, Interim City Planner

## Watercourse Modeling (VR1501)

**Type of Request:** Variance

## Meeting Dates

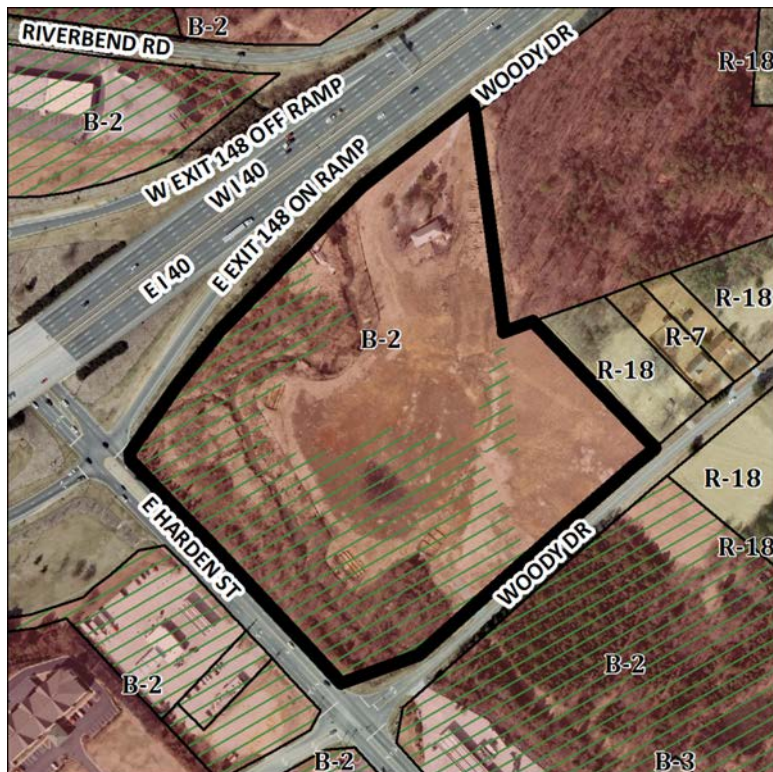
Board of Adjustment on April 21, 2015

## Contact Information

Eco Watercourse, LLC  
Drawer 9, Sanford, NC 27330  
919-895-6001; kbradley@lmoc.net

## Summary

This is a request for a variance from the timeline for the modeling procedures laid out in Article IX. Flood Damage Prevention, City of Graham Development Ordinance, as they relate to a proposed guardrail along Woody Drive.



### Location

1050 Woody Dr

GPIN: 8884724405

### Current Zoning

Conditional Residential (C-R)

### Current Use

Apartment Homes

### Surrounding Zoning

R-18 & B-2

### Surrounding Land Uses

Single Family Houses, General  
Business and Undeveloped

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

Variance requests are heard by the Board of Adjustment. This is a quasi-judicial process, meaning that it is similar to a court of law. Decisions are based on evidence and testimony presented during the hearing. Applicants should submit enough evidence to support the request for a variance. Types of evidence might include maps, drawings, pictures, cost estimates, or other information that will clearly demonstrate that the four criteria for a variance, listed below, are met. Applicants should also refrain from discussing the request with any member of the Board of Adjustment.

## Property on which a Variance is sought

Street Address: 1050 bloody Drive  
Tax Map#: 6-31-20 GPIN: 88842405  
Current Zoning District(s): C-R  
Overlay District, if applicable:  
☐ Historic ☐ S Main St/Hwy 87 ☒ E Harden St/Hwy 54  
Current Use: Mult-Family Apartments  
Property Owner: Eco Watercourse, LLC  
Mailing Address: PO Drawer 9  
City, State, Zip: Sanford, NC 27331

## Applicant

☒ Property Owner Other \_\_\_\_\_  
Name: Eco Watercourse, LLC  
Mailing Address: PO Drawer 9  
City, State, Zip: Sanford, NC 27331  
Phone #: 919 895-6001  
Email: kbradley@mac.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]  
Signature of Applicant

3.25.2015  
Date

## Purpose of Variance Request

Describe the purpose of this variance request. *What are you trying to do that the Development Ordinance is prohibiting? Attach evidence to illustrate and support your case.*

see Attached

## Nature of Variance Request

List the specific part(s) of the *Development Ordinance* from which you are seeking a variance (for example, setbacks).

see Attached

## Criteria for a Variance

When unnecessary hardships would result from carrying out the strict letter of the ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- 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.
- 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 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 requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

## **Purpose of Variance Request**

Eco Watercourse, LLC will be installing guardrail on Woody Drive (adjacent to project at existing twin culvert crossing) as a deemed safety improvement for NCDOT. This work will be accomplished in conjunction with the road widening of Woody to facilitate a turn lane as agreed upon with NCDOT and the Town.

The Town regulates development activity within the floodplain through a Flood Damage Prevention Ordinance and Floodplain Development Permit. All planned development within the Eco Watercourse LLC property is compliant with said ordinances.

The Town and FEMA are currently operating under effective maps dated 2008. Preliminary Maps have been published by FEMA and will be adopted in the near future. Data utilized for the current effective maps is based upon information that is less accurate.

Current regulated 100 YR Flood Elevation just upstream of Woody Drive is +/- 526.5 (Effective). Our modeling with future guardrail (completely blocked) is creating a 100 YR WSE lower than 526.5. This modeling is based upon more accurate field information and the Preliminary Models from FEMA.

We are requesting that guardrail placement can proceed now provided and that a LOMR for the guardrail safety improvement on Woody Drive be submitted to Town and FEMA within 60 days of adoption of the revised Floodplain Panels by the Town (currently identified as Preliminary Panels now).

The LOMR post installation submission is consistent with what NCDOT might do on their own safety improvement projects. The LOMR will be fully compliant with Town regulations.

Use of the Effective Maps is a hardship in that the base data is inadequate and would require substantial fieldwork and use of outdated modeling software (HEC-2) to correlate with 2008 information. More current data is available and will be adopted soon by the Town and FEMA. Our request allows us to submit a LOMR directly after adoption of the "Preliminary Maps" saving fieldwork and regulatory review time. Submission today (using "Effective Information" after extensive fieldwork could also be dismissed by FEMA during mid-review once the "Preliminary Maps" are adopted.



## **Nature of Variance Request**

1. Variances may be issued for functionally dependent facilities.  
The guardrail is a functionally dependent facility considered as an encroachment (permanent structure).
2. This variance will not increase the current effective base flood discharge elevation (Effective Map) at Woody Drive (+/- 526.5).
3. In passing this variance request the installation of guardrail at the proposed location will not increase:
  - The likelihood of materials being swept onto other lands to injure others.  
*The guardrail would likely capture debris that currently may flow over road*
  - The danger to life and property due to flooding or erosion damage  
*Our projected water surface elevation is lower than the current "Effective Map" at this crossing*
  - The susceptibility of damage on the Eco Watercourse Apartment Project  
*All improvements proposed are well above the current base flood elevation as documented in the Site Approval*
  - The importance of service provided by the facility  
*The guardrail installation on Woody Drive improves safety condition 100% of the year (everyday) versus current condition without guardrail. The 100 year flood has at least a 1% chance of occurring each year*

## **Conclusion**

Requiring a CLOMR and LOMR based upon the current "Effective Maps" with the knowledge of pending Map revisions places an unnecessary hardship on Eco Watercourse LLC in that additional work would be performed using less detailed information and modeling software. Such effort may then be dismissed by FEMA once the new "Preliminary Maps" are adopted.

The hardship is peculiar to the site in that the road crossing is within the regulated 100 YR Floodplain currently subject to map revision.

The pending revision to the 100 Year Flood Maps was not an action undertaken by Eco Watercourse LLC.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance. Public Safety is secured and substantial justice is achieved.

# WATERCOURSE APARTMENTS

## FLOOD PLAIN EXHIBIT

ALAMANCE COUNTY, NC

MARCH 19, 2015



CE GROUP

301 GLENWOOD AVE. 220  
RALEIGH, NC 27603  
PHONE: 919-367-8790  
FAX: 919-322-0032

www.cegroupinc.com

License # C-1739



NORTH



SCALE: 1" = 40'

HARDEN STREET - NC STATE HWY 54  
(100' PUBLIC R/W)

N $3^{\circ}28'25''$ W  
396.51'

BASE/FLOOD  
ELEV. 528.1

BASE FLOOD ELEV. 526.24

BASE FLOOD ELEV. 526.14

EXISTING  
CURB INLET  
GRATE=538.4  
INV.=533.4

EXISTING  
RCP  
15" DIA

INV.=529.6

S $74^{\circ}58'01''$ W  
160.04'

INV.=514.1

EXISTING  
18" CMP  
INV.=521.5  
S $48^{\circ}09'06''$ W  
336.52'

EXISTING DOUBLE  
83"x128" CMP

INV.=514.4

INV.=514.8

SITE BENCHMARK  
SEE SITE BENCHMARK NOTE

LIMIT OF DISTURBANCE

WOODY DRIVE - SR 2106  
(60' PUBLIC R/W)  
SEE OFFSITE ROADWAY PLANS  
BY RAMEY-KEMP & ASSOCIATES

FFE = 539.43

FFE  
539.43

BUILDING 100  
3-STORY

(SEE ARCHITECTURAL PLAN FOR EXACT  
DIMENSION AND UTILITY CONNECTIONS)

FFE = 54

LEASING  
CENTER

RETAINING  
WALL



# 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 **April 21, 2015** to consider **case number VR1501**, submitted by **Eco Watercourse, LLC** of P.O. Drawer 9, Sanford NC 27331, for a **variance from the modeling of a guardrail along Woody Drive prior to the issuance of new models from FEMA**, 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, located on Woody Drive, is zoned Conditional Residential (C-R).
  2. The property is currently under construction for apartment buildings, occupied by Eco Watercourse, LLC.
  3. The applicant would like to model the effects of the guardrail on the 100 year storm based upon the new preliminary FEMA maps and updated LOMR modeling data.
  4. The *City of Graham Development Ordinance*, in Section 10.370, Variance Procedures, (3)(c) states "Variances may be issued for any other type of development, provided it meets the requirements stated in this section."
  5. An application for a variance was filed with the City Planner on March 25, 2015. The nature of the variance request is "We are requesting that guardrail placement can proceed now provided and that a LOMR for the guardrail safety improvement on Woody Drive be submitted to Town and FEMA within 60 days of adoption of the revised Floodplain Panels by the Town (currently identified as Preliminary Panels now)."
  6. In section 10.370 of the City of Graham Development Ordinance; subsection (5) states that "A written report addressing each of the above factors shall be submitted with the application for a variance."
- Subsection (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
    - (a) the danger that materials may be swept onto other lands to the injury of others;
    - (b) the danger to life and property due to flooding or erosion damage;
    - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - (d) the importance of the services provided by the proposed facility to the community;
    - (e) the necessity to the facility of a waterfront location as defined under Section 10.364 of the *City of Graham Development Ordinances* as a functionally dependent facility, where applicable;
    - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- (g) the compatibility of the proposed use with existing and anticipated development;
- (h) relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (i) safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

[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.

*From the strict application of the ordinance, the applicant would not be permitted to use the updated information when modeling the effect of the guardrail on the 100 year flood.*

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.

*Previous to development on this parcel, the models found that Woody Drive was overtopped in a 100 year flood. The addition of a guardrail to this site will not increase the volume of water flowing off of the property.*

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 wishes to model the construction of a guardrail after data has been updated to reflect changing regulations and a more comprehensive understanding of storm effects in the vicinity.*

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 would result in the modeled effects from the guardrail being more accurate and based upon the more up to date data available.*

## 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 proposed guardrail, and not to any other portion of the project.

The resolution reflects the decision of the Board of Adjustment, made the 21<sup>th</sup> day of April, 2015.

Attest:

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Andy Rumley, Chair

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Martha Johnson, Secretary