



Board of Adjustment

Meeting Agenda

December 19, 2019 following the Planning Board
Council Chambers, 201 S Main St

1. Approve minutes of the May 16, 2017 meeting
2. Swearing in of new members
3. New Business
 - A. VR1702 Whitfield Towing. An application for a variance for the restriction regarding construction of commercial structures in a residential zone.
4. Old Business
5. Public comment on non-agenda items

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

CITY OF GRAHAM
BOARD OF ADJUSTMENT
May 16, 2017

There was a called meeting of the Board of Adjustment on Tuesday, May 16, 2017 at 7:00 pm immediately following the Planning Board meeting. Members present were as follows: Dean Ward, Bonnie Blalock, Ricky Hall, Nate Perry and Barry Hicks. Staff members present were Nathan Page, City Planner, Martha Johnson, Zoning/Inspections Technician, and Frank Glover, Planning Intern.

Chair Ricky Hall called the meeting to order, explained the function of the Board. Martha Johnson, Notary Public swore in Nathan Page, Chris Foust and Board Members: Dean, Ward, Bonnie Blalock, Ricky Hall, Nate Perry and Barry Hicks.

Ricky Hall gave the invocation.

1. Bonnie Blalock made a motion to approve the minutes from the October 18, 2016 meeting, second by Ricky Hall. All voted aye.
2. New Business. VR1701 Border Setbacks. An application to relax a setbacks for multi-family housing.

Chris Foust, the applicant, 1851 S Main Street spoke next explaining his request. Mr. Foust stated his plans are for a single building consisting of 5-6 rental units. His surveyor discovered a deed gap on the adjoining property. Mr. Foust said his proposed building meets the 25 foot setbacks on all sides except the southwest corner which is 19.82 feet. For this reason, he is requesting a variance.

Mr. Hall closed the public hearing. Ricky Hall made a motion to give favorable review to grant this variance for side yard setbacks, second by Dean Ward. All voted aye.

The following five Findings of Fact and four Conclusions of Law were adopted with the motion:

- F1. The property that is the subject of this variance request, 515 Border St, is zoned Residential Multi-Family (R-MF).
2. The property is currently vacant.
3. The minimum yard in a multifamily structure is 25 feet, as outlined in Section 10.245 of the *City of Graham Development Ordinance*. The application is for either side yard to be reduced to 18 feet.
4. An application for a variance was filed with the Planning Department on April 6, 2017. According to the application, the property owner desires to construct 5 or 6 rental units.
5. There is a deed gap that was found by Boswell Surveyors as shown on the attached survey.

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 be required to construct a structure not more than 18.82 feet wide.

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.

While there are a number of errors from old surveys in the vicinity, the location of the corner lot in conjunction with the multi-family setbacks increases the standards for the side lot setbacks.

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 was not aware that the property stakes identified on the lot prior to purchase were placed incorrectly by a previous surveyor.

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 remove the deed gap, it will only permit the construction of a 24 foot wide multifamily dwelling upon the lot.

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 the variance that is the subject of this application.

3. Old Business. There was none.
4. Public comment on non-agenda items. There was none.

The meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary



STAFF REPORT

Prepared by Nathan Page, Planning Director

Whitfield Towing (VR1702)

Type of Request: Variance

Meeting Dates

Board of Adjustment on December 19, 2017

Contact Information

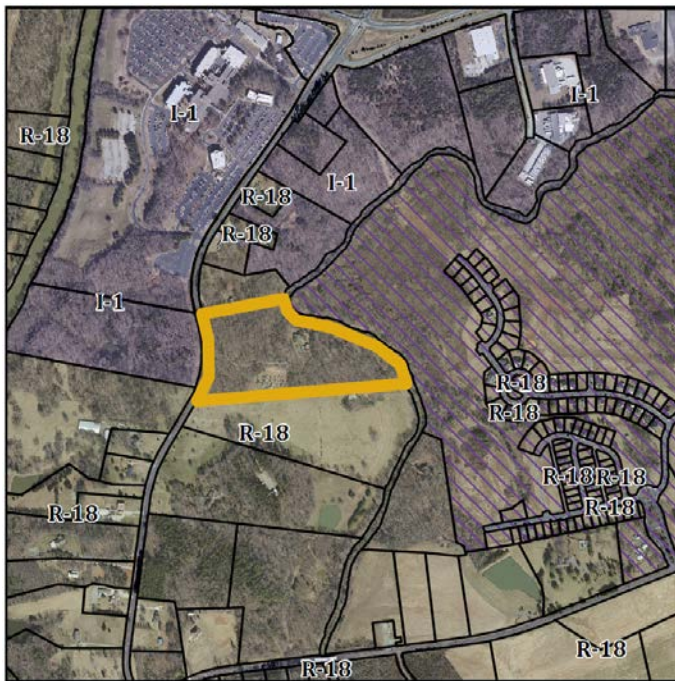
Robert Whitfield

P.O. Box 118, Haw River NC 27258

(336)516-1819

Summary

This is a request for a variance from the restriction regarding construction of commercial structures in residential zones.



Location

1452 Jimmie Kerr Rd

GPIN: 8894418325

Current Zoning

Low Density Residential (R-18)

Current Use

Storage Yard, Single Family Home

Surrounding Zoning

I-1, R-18, PUD

Surrounding Land Uses

Single Family Houses, Alamance Community College, and Vacant

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.

Ted Waggon
336-516-0644

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



RECEIVED
DEC 04 2017
CITY OF GRAHAM
INSP. / P.Z.

Application for a VARIANCE

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: 1452 Jimmy Kerr Rd.
Tax Map#: 152807 GPIN: 8894418325
Current Zoning District(s): R-10 Non-conforming
Overlay District, if applicable:
 Historic S Main St/Hwy 87 E Harden St/Hwy 54
Current Use: Home/Whitfields towing serv
Property Owner: Gloria Whitfield
Mailing Address: P.O. Box 118
City, State, Zip: Haw River, N.C. 27258

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.*

To construct a garage to house tow trucks out of inclement weather.

Nature of Variance Request

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

Requirements of 10.69 and 10.70

Applicant

Property Owner Other SON
Name: Robert Whitfield
Mailing Address: P.O. Box 118
City, State, Zip: Haw River N.C. 27258
Phone # 336-516-1819
Email: _____

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:

- (a) 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.
- (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.
- (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.
- (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.

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.

Robert Whitfield
Signature of Applicant Date

Office Use Only. DEVID# VR1702

We respectfully request a variance to the requirements of the City of Graham Development Ordinance section 10.69 and 10.70. These sections now prohibit Whitfield's Towing Service from building a garage to house the company's tow trucks.

The Whitfield's have owned and operated a towing service located at 1452 Jimmy Kerr Road for the past 52 years. In previous winters the Tow Trucks were stored in a barn that existed on the property when it was purchased. That barn was built in 1936 and eventually had to be torn down due to age and lack of stability.

We are seeking approval to build a garage that will house the company's tow trucks.

When an accident occurs in inclement weather, time becomes a critical factor in seeing the roadways cleared, thus preventing further accidents. Mr. Whitfield's response time is tremendously effected by frost, snow, and ice that must be cleared before he can get to an accident site. Not having a place to keep these response vehicles out of inclement weather not only poses a extreme hardship on Mr. Whitfield but more importantly his ability to serve the City of Graham Police Dept, Alamance County Sherriff's Department, North Carolina Highway Patrol, and the citizens of Alamance and surrounding counties.

Your consideration in this matter would be deeply appreciated.

Ted Wagoner



Representative for Whitfield Towing Service



ENTRANCE TO THE WHITFIELD PROPERTY IS GATED. THE TOW LOT AND WHAT MAY BE CONSIDERED THE UNSIGHTLY PART OF THE PROPERTY IS COMPLETELY HIDDEN FROM THE NEIGHBORS AND PUBLIC VIEW. MR. WHITFIELD HAS GONE TO GREAT LENGTHS BY USE OF BERMS, LEYLAND AND THUJA CYPRESS TREES TO ASSURE THAT NO-ONE IS OFFENDED BY HIS OPERATION. THIS OPERATION HAS BEEN A SERVICE TO THE CITY OF GRAHAM POLICE DEPARTMENT, ALAMANCE COUNTY SHERIFFS' DEPARTMENT, NORTH CAROLINA HIGHWAY PATROL AND THE PUBLIC OF ALAMANCE AND SURROUNDING COUNTIES FOR 52 YEARS AT THIS LOCATION.



ALAMANCE COUNTY
NORTH CAROLINA

1:255

Overview Map

Quick Search

Lat Lon [Clear](#)

All Addresses Search

Parcel ID

GPIN# (State ID)

Old Tax ID

Owner Name

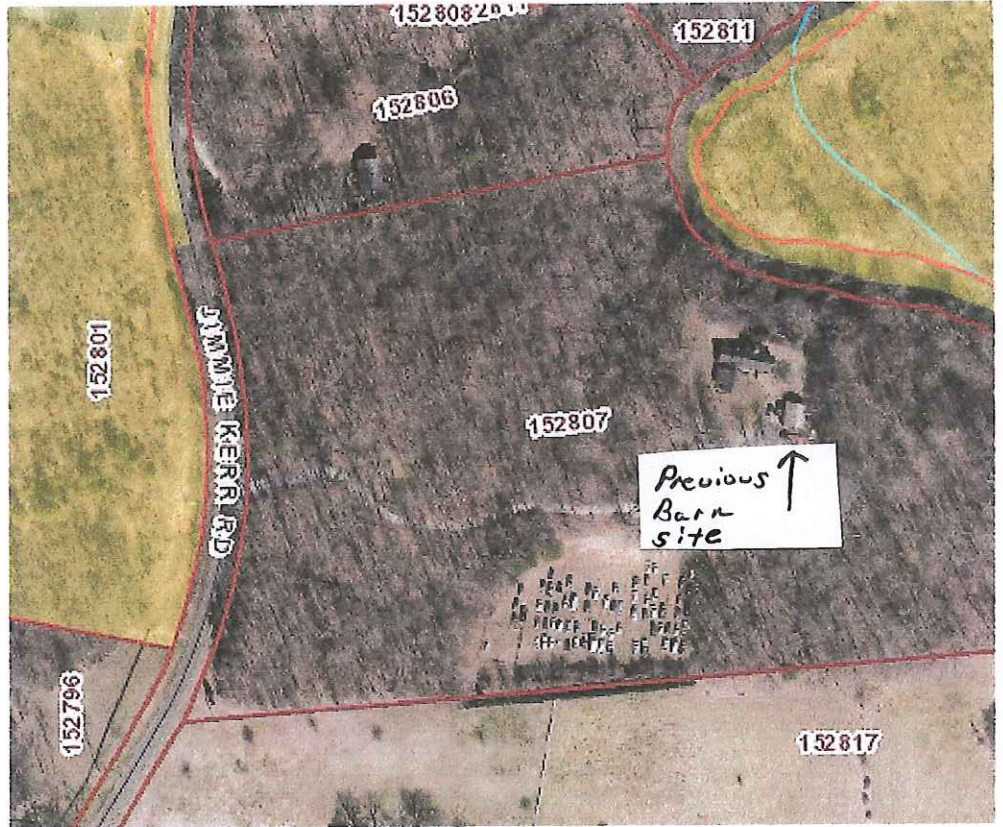
Parcel Site Address

Advanced Search

Search Builder

Coordinate Search

Comparable Search



Excel 2000/2003

	Tax Info	GPIN# (State ID)	Parcel ID	Old Tax ID	Parcel Site Address	Owner Name	2nd Ownr Name	Assessed Value	Parcel Ownr Addr	Parcel Ownr 2nd Addr	OwnCi
1		8894418325	152807	13-14-5	1452 JIMMIE KERR RD	WHITFIELD GLORIA W		272000	PO BOX 118		HAW RIVER

ted wagoner

From: Nathan Page [npage@cityofgraham.com]
Sent: Friday, September 29, 2017 2:18 PM
To: ted wagoner
Cc: City Planner; Aaron Holland
Subject: RE: Whitfield Towing Service Building

Ted,

This property has an existing non-conforming use upon it, a Storage Yard, which was likely existing prior to the zoning of the property by the City of Graham. This use is not permitted in the current zoning of R-18 (Low-Density Residential). However, it is permitted to continue provided it meets the requirements under 10.69 of the City of Graham Development Ordinance, amongst which is the statement that "If a nonconforming use ceases for any reason for a period of 180 days, or if a nonconforming use is changed to a conforming use for any period of time, any use of the land or buildings previously devoted to the nonconforming use shall thereafter be devoted to conforming uses."

As for the structure, the City of Graham has no record that the building existed in this location after March of 2016. If nonconforming buildings, under section 10.70 of the Development Ordinance, "... be destroyed, in whole or in part, by any means, to an extent of... more than 60 percent of its replacement cost or bulk at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance..."

In considering both of these restrictions, it is my determination that without a rezoning, a new structure dedicated to a commercial use on this property would not be permitted.

Please let me know if you have any further questions,

Nathan Page, CZO

Planning Director for Graham, North Carolina
(336) 570-6705x135 npage@cityofgraham.com
www.cityofgraham.com/departments/planning

Aerial from March of 2016, showing the building has already been demolished.

Section 10.69

Nonconforming Uses

Nonconforming uses of land or buildings may be continued, subject to the following provisions or as otherwise provided for in this ordinance:

- (1) If a nonconforming use ceases for any reason for a period of 180 days, or if a nonconforming use is changed to a conforming use for any period of time, any use of the land or buildings previously devoted to the nonconforming use shall thereafter be devoted to conforming uses.
- (2) No nonconforming use shall be extended, expanded, enlarged or moved to occupy a different or greater area of land or buildings than was occupied by such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming. The number of dwelling units of a nonconforming residential use shall not be increased.
- (3) No building devoted to a nonconforming use shall be enlarged, extended or moved unless such building is thereafter devoted to a conforming use.
- (4) Subsection 3 above does not apply to any nonconforming single family dwelling complying with the NC Residential Building Code. Said building may be enlarged, extended, moved, or reconstructed, subject to any and all other applicable requirements.

Section 10.70

Nonconforming Buildings

Nonconforming buildings may remain and be occupied, subject to the following provisions or as otherwise provided for in this ordinance:

- (1) Any enlargement of a nonconforming building must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance in accordance with the variance provisions of this ordinance. Any building or portion thereof may be altered to decrease its nonconformity.
- (2) Should any nonconforming building as defined by the North Carolina Building Code or nonconforming portion of a building be destroyed, in whole or in part, by any means, to an extent of:
 - a. More than 60 percent of its replacement cost or bulk at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance, with the exception of nonconforming buildings used as a single family dwelling and complying with the NC Residential Building Code, which may follow the provisions in subsection "b" below.
 - b. 60 percent or less of its replacement cost or bulk at the time of destruction, it may be reconstructed in the same location and up to the same dimensions as originally existed provided that a permit for reconstruction is obtained within one (1) year of the date of destruction and any requirements for flood damage prevention are met.





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 **December 19, 2017** to consider **case number VR1702**, submitted by **Robert Whitfield of Graham/Haw River** of PO Box 118, for a **variance from Development Ordinance section 10.69 and 10.70, prohibiting the rebuilding of a garage to house commercial vehicles**, 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, 1452 Jimmie Kerr Rd., is zoned low density residential (R-18).
2. The land and property in question has likely been in use prior to the zoning of the property by the City of Graham, as a storage lot for their towing business with no record of interruption in the non-conforming use.
3. An application for a variance was filed with the Planning Department on December 4, 2017. According to the application, the property owner requests a variance from the non-conforming buildings reconstruction restrictions, in order to park commercial tow trucks in a newly constructed garage or building during inclement weather.
4. Section 10.70 requires that any reconstruction be done within 1 year of the removal of the non-conforming building being replaced.
5. We do not know the exact date of the removal of the previous building (barn) and have no formal record of its existence. However, an aerial from March 2016 shows the building had already been demolished. This demonstrates the building was removed from the property longer ago than the 1 year reconstruction window for non-conforming uses.

[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. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection. *Under strict application of the ordinance, the property owner has no legal grounds for pursuing a variance. The untimely reconstruction schedule (ie. waiting longer than 1 year to reconstruct a structure for a nonconforming use) means that granting this request for a variance would constitute a change in the permitted use of the property. Given that land use changes are not permitted by variance requests to the Board of Adjustment this request should not be authorized.*

2. 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 owner could file for a rezoning to an industrial use (I-1), in order to permit the use. This would allow for the rebuilding of the structure in conformance with the property zoning.*
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. *Staff is aware of no hardships peculiar to this 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/property owner was responsible for obtaining a permit prior to the demolition of the barn which was previously used for this purpose. As the demolition permit wasn't obtained, no discussion with the City regarding requirements to rebuild the structure took place.*
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 approval of this variance would result in a de facto use variance, and therefore is against the spirit and intent of the ordinance.*

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.

Staff recommends that, the variance be denied on the aforementioned grounds.

The resolution reflects the decision of the Board of Adjustment, made the 19th day of December, 2017.

Attest:

Ricky Hall, Chair

Debbie Jolly, Secretary