



Board of Adjustment

Meeting Agenda

May 19, 2015

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

1. Approve minutes of the April 21, 2014 meeting
2. Old Business
3. New Business
4. Administrative reports
 - a. Training

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

CITY OF GRAHAM
BOARD OF ADJUSTMENT
April 21, 2015

There was a called meeting of the Board of Adjustment on Tuesday, April 21, 2015 at 7:00 pm immediately following the Planning Board meeting in the Graham Municipal Building. Board members present were as follows: Dean Ward, Bonnie Blalock, Michael Benesch, Andy Rumley and Ricky Hall. Bill Teer was absent. Staff members present were Nathan Page, Interim City Planner, Martha Johnson, Zoning/Inspections Technician, Michael Leinwand, Special Project Coordinator, and Frankie Maness, City Manager.

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

Mr. Hall asked that anyone wishing to speak to come forward and be sworn in. Martha Johnson, Notary Public swore in Nathan Page, Michael Leinwand, Frankie Maness, John Fugo, and Kirk Bradley.

Ricky Hall gave the invocation.

1. Dean Ward made a motion to approve the minutes from the December 16, 2014 meeting, second by Michael Benesch. All voted aye.
2. Old Business. There was none.
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).

Nathan Page said they are asking for a variance from the modeling procedures within our storm water procedures regarding Watercourse apartments. There is some possible retention to occur onsite as a result of the guardrail. The intention of the variance is to permit the applicant to model the effect of the guardrail on the floodway after the new flood maps have been updated. These maps were proposed to be updated summer 2014. The data is available but has not been formally adopted by the state, and is therefore unable to be endorsed.

Mr. Ward stated he had a conflict of interest with this project, and he needed to recuse himself because he currently does work for a company that Mr. Fugo owns. Mr. Ward feels it would not be appropriate for him to sit on the Board concerning this project.

John Fugo from Montgomery Development spoke representing the applicant. Mr. Fugo said this was an unusual request to resolve an issue with a set of mapping rules that will soon be obsolete, and a new set that have not been adopted yet concerning the guardrail on Woody Drive. Mr. Fugo felt it would be better to have the updated maps in place since the project won't be complete when the new maps are approved. Mr. Fugo said if the City approves this

variance, NCDOT will give them the permit they need to put the guardrail into place.

Mr. Rumley stated this variance is to allow Mr. Fugo time to get the new updated maps. Mr. Page said the maps have been released but not yet endorsed by the State. Mr. Rumley said this effects the timing of when the work is done in relation to when the project is completed.

Michael Benesch made a motion to grant the variance as provided in the application that was submitted. Ricky Hall asked to amend the motion for the Findings of Facts on all three pages. Ricky Hall seconded the motion. All voted aye.

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

FINDINGS OF FACT

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 the City and FEMA within 60 days of adoption of the revised Floodplain Panels by the City (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.

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 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.

4. Administrative reports. None.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary