

CITY OF GRAHAM
BOARD OF ADJUSTMENT
December 17, 2013

There was a meeting called of the Board of Adjustment on Tuesday, December 17, 2013 at 7:00 pm following the Planning Zoning Board meeting in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Michael Benesch and Ricky Hall, as well as Andy Rumley sitting as an alternate for Bonnie Blalock, who was not present. 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.

Invocation was given by Ricky Hall.

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). This is a continuation from our November meeting. Dean Ward advised the Board that he had spoken to the City attorney concerning some procedural matters but nothing pertaining to the actual hearing.

Melissa Guilbeau stated that she had emailed Mr. Unsworth about the plat that was requested at the meeting in November. She found a plat from 1987 showing the N. Main Street right-of-way. She also found a deed from 2005 but couldn't find where the plat was recorded. Ms. Guilbeau spoke to the surveyor that drew the plat. He had the file on a cd but was unable to open it. Ms. Guilbeau stated that both buildings are nonconforming for the front yard setback which is 50 feet. The southern building on the lot is also nonconforming for the side yard setback adjacent to residential which is 50 feet. She said that the parking requirement is hard to determine since it is based on the use that would occupy the building.

Mr. Unsworth, from Richard Jones Real Estate, stated that the tenant is moving out and the owner would like the ability to sell the building next to the residential property. Mr. Unsworth stated it was the large building on the bottom part of the property next to the residential houses that the owner hopes to sell.

Andy Rumley asked if there was some type of agreement between property owners concerning the entrance and egress off of Washington Street with the property lines. Mr. Unsworth stated it was hard to tell without a survey but he felt like the lines would be over far enough where there would be two entrances to the subject property off of Washington Street plus the easement coming off of Main Street. Dean Ward said the issue is the entrance and exit next to Mr. Wright's property line where it ties in. Dean Ward asked if a fence or cable is put up would that prevent trucks from getting to the loading docks or impose a problem for Mr. Wright's property. Dean Ward also said that Mr. Wright did mention a drainage issue that had been caused by trucks. Mr. Unsworth said they had a conversation with Mr. Wright after the last meeting. Mr. Unsworth said there didn't seem to be an issue and there would be a joint effort to keep the rock up and help each other with the gravel and driveway upkeep. Melissa Guilbeau

mentioned as a reminder that if the variance is approved it still has to go through the subdivision review process which means it has to go to the Planning Board and also City Council.

Dean Ward made a motion to close the hearing, second by Michael Benesch.

Dean Ward stated he was concerned that he doesn't think this variance meets all four criteria needed to grant a variance and that there could be a potential problem for the next owner. Michael Benesch and Andy Rumley both stated they had issues with the shared driveway, not the 13 feet between the buildings. Ricky Hall agreed saying there is no true driveway from Washington Street. Mr. Hall said it would also hamper emergency services if they had to get to this property.

Dean Ward made a motion to deny the variance as it does not meet qualifications for a variance, second by Ricky Hall. The vote was 4 to 1 with Bill Teer dissenting. The following five 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, 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*.

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. *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. However, reasonable use is already being made of the property and can reasonably continue as one parcel, causing no unnecessary hardship, and subdividing the parcels would cause unnecessary hardship on future owners of the properties due to access issues.*
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.*

1. Ricky Hall made a motion to approve minutes, second by Michael Benesch. All voted aye.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary